WORKING WITH DOMESTIC VIOLENCE CLIENTS

Elimination of Bias Presentation
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INTIMATE PARTNER VIOLENCE AND LIFETIME TRAUMA*

For many women, abuse by an adult partner is their first experience of victimization; for others, intimate partner violence occurs in the context of other lifetime trauma. A number of studies have begun to explore the link between histories of physical and sexual abuse in childhood and experiencing partner abuse as an adult. Women who are physically or sexually abused as children or who witness their mothers being abused appear to be at greater risk for victimization in adolescence and adulthood by both intimate and non-intimate perpetrators. 1-4 5, 6, 7, 8 And, women who experience adolescent IPV are more likely to experience IPV as adults. 9

Studies of battered women in both clinical and shelter settings have found high rates of childhood abuse and childhood exposure to domestic violence. In a 2007 study by Kimerling et. al., women who experienced childhood physical or sexual abuse were almost 6 times more likely to experience adult physical or sexual victimization. 10 Across studies, the average reported rates of childhood physical abuse and childhood sexual abuse among women in intimate partner violence shelters or programs are 55.1% and 57.0% respectively. 11

For women who have experienced multiple forms of victimization (e.g. childhood abuse; sexual assault; historical, cultural or refugee trauma), adult partner abuse puts them at even greater risk for developing posttraumatic mental health conditions, including substance abuse (a common method of relieving pain and coping with anxiety, depression and sleep disruption associated with current and/or past abuse). These conditions and coping strategies may, in turn, place them at risk for further abuse. 12, 13, 14, 15-21 The intersection between substance abuse and IPV is discussed in greater depth in another chapter in this textbook.

Socioeconomic factors can also expose women to victimization which compounds their risk for developing the range of mental health sequelae noted abuse. For example, low-income women (those most likely to be seen in both intimate partner violence shelters and the public mental health system) have the highest risk of being victimized throughout their lives. In one study, the lifetime prevalence of severe physical or sexual assault among very low-income women was found to be 84%; 63% of those studied had been physically assaulted as children, 40% had been sexually assaulted as children, and 60% had been physically assaulted by an intimate partner. 22 Similarly, studies conducted in welfare to work programs have documented lifetime rates of intimate partner abuse ranging from 55% to 65% 23-26, as opposed to rates of 20% found in random population samples. 27

A body of clinical literature describes the retraumatizing effects of more subtle forms of social and cultural victimization (e.g. microtraumatization or insidious trauma) due to gender, race, ethnicity, sexual orientation, disability and/or socioeconomic status.\textsuperscript{28, 29-31 32, 33} Thus, although intimate partner violence itself is associated with a wide range psychological consequences, women living in disenfranchised communities face multiple sources of stress in addition to violence, including social discrimination, poorer health status and reduced access to critical resources, all of which can increase psychological distress.\textsuperscript{34, 35} Again, many domestic violence survivors have experienced other forms of trauma, some of which may be going, that can affect their responses to current IPV.

**IPV and Mental Illness**

While most survivors of domestic abuse do not develop long lasting psychiatric disabilities, mental illness appears to heighten women’s risk for abuse \textsuperscript{36, 37}. Poverty, homelessness, institutionalization, unsafe living conditions and dependence on caregivers exacerbate these risks, leaving individuals with psychiatric disabilities vulnerable to victimization by a range of perpetrators - within families, on the streets, in institutional and residential settings, and by intimate or dating partners. For example, a study of homeless women diagnosed with a serious mental illness found that a significant majority had been abused by a partner (70% had suffered physical abuse, 30.4% sexual abuse).\textsuperscript{38} Rates of physical or sexual abuse in adulthood by any perpetrator were 87% and 76%, respectively. Intimate partner violence, itself, is often a precipitant to homelessness.\textsuperscript{22, 39, 40} Moreover, intimate partner violence presents particular risks for individuals with serious mental illness. Exposure to ongoing abuse can exacerbate symptoms and precipitate mental health crises, making it more difficult to access resources and increasing abusers’ control over their lives. Stigma associated with mental illness and clinicians’ lack of knowledge about IPV, reinforce abusers’ abilities to manipulate mental health issues to control their partners, undermine them in custody battles and discredit them with friends, family and the courts. In a series of focus groups conducted in Chicago, DV advocates and survivors described a number of these tactics. For example, abusers use strategies such as threatening to commit and/or committing their partners to psychiatric institutions; forcing their partners to take overdoses, which are then presented as suicide attempts, and withholding psychotropic medications. Other examples include asserting that accusations of abuse are simply delusions, lying outright about their partners’ behaviors and rationalizing their own (e.g., claiming their partner “needed to be restrained”). This kind of manipulation not only increases an abuser’s control over his/her partner, but also can have a chilling affect on a woman’s ability to retain custody of her children, which is often one motivation behind her partner’s behavior. While this type of phenomenon cuts across cultures, immigrant women who are isolated and do not speak English are particularly vulnerable to this type of abuse.\textsuperscript{41}
Acute symptoms of mental illness can also heighten a woman’s risk for victimization. Although psychiatric crises are often precipitated by recent trauma, for a woman experiencing symptoms of acute psychosis, clinicians may interpret accusations of victimization as delusions, thus leaving her vulnerable to further victimization. Women may be at particular risk for assault when experiencing cognitive or emotional difficulties associated with psychotic disorders. In addition, symptoms of severe trauma, such as dissociation or flashbacks, may also mimic psychotic disorders, heightening the potential for misdiagnosis and treatment that does not address underlying issues of abuse. Responses to previous trauma, such as dissociation or potentially risky coping strategies, may also increase a woman’s vulnerability to abuse. In addition, trauma or mental illness in childhood or adolescence can disrupt key developmental processes, leaving women without the skills they need to negotiate power and decision-making in relationships. When having to manage without these skills is compounded by abuse in adulthood, the likelihood of having legitimate rights respected in any relationship may become even more remote.

References


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Victim Blaming: an Overview
Developed by Clackamas Women’s Services and Volunteers of America Home Free

What is Victim Blaming? Victim Blaming is a term we use to describe what happens all too often when talking about domestic and sexual violence: people find fault within the survivor for being in that situation, or outright blame her for the violence that someone else perpetrated against her. Victim blaming is when we don’t hold batterers accountable or acknowledge that batterers make a conscious decision to hurt someone. Victim blaming ignores the fact that no one wants to be hurt, no one ever “asks for it,” and no one ever deserves abuse.

Victim blaming includes comments and actions that reflect the ideas above and diminish the fact that someone is a survivor and has been seriously hurt. It can also apply to issues besides domestic and sexual violence such as homelessness, HIV infection and alcohol or drug addiction. Many different people victim blame: friends and family, law enforcement, advocates and social workers, etc. Batterers are often the biggest victim blamers. We also see victim blaming ideas and thoughts in the systems of our society such as the courts, television, and language. Many survivors internalize these ideas and often blame themselves for the violence perpetrated against them.

Examples of victim blaming:

<table>
<thead>
<tr>
<th>Batterer/Society</th>
<th>Victim/Survivor</th>
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<tr>
<td>• “Why doesn’t she just leave him?”</td>
<td>• “If I can just be a better girlfriend this won’t happen anymore.”</td>
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<tr>
<td>• “She was asking for it, you should have seen what she was wearing!”</td>
<td>• “I’m so stupid, why do I get into these relationships?”</td>
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<td>• “If you hadn’t been doing that, I wouldn’t have hit you.”</td>
<td>• “This is all my fault.”</td>
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<td>• “If that was me, I wouldn’t put up with being treated like that.”</td>
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Victim blaming is harmful for many reasons. It is detrimental to survivors. Blame is a big part of emotional abuse and most batterers do blame the people they hurt. When we victim blame we continue this abuse and further cause the survivor to question herself and feel hurt. Imagine leaving an abusive situation only to be hearing the same types of things from people who are supposed to be helping you.

In terms of the bigger picture, victim blaming is dangerous because it perpetuates misconceptions about domestic and sexual violence and does not hold perpetrators responsible for their actions. Holding batterers responsible is the only way we will end abuse, as they are making the choice to hurt others. Victim blaming only perpetuates abuse by putting out the false idea that a survivor can stop the abuse. The 1999 Oregon Governors Report on Domestic Violence found that 90% of all survivors (within one year) had tried to stop abuse, but in less than 30% of the cases did it get better.

Victim blaming needs to be interrupted. Offering information is a good way to interrupt the blaming and inform someone. Good things to reference are the cycle of violence, the effects of emotional abuse and the long list of barriers to leaving an abusive situation.

Examples of interruptions:

- “I think a better question is why doesn’t he stop hitting her? Or why doesn’t he leave?”
- “Actually, no one ever asks for it. In fact no one deserves to be hurt, no matter what.”
- “There are a lot of reasons why it’s hard to leave an abusive relationship: financial, fear, and cultural reasons to name a few.”
- “You can say you wouldn’t put up with that, but you don’t know what it’s like for her or what factors she has to consider.”
- “The person who is responsible for the violence is the abuser, they make the choice to hurt.”
- “It’s not your fault, you did not deserve to be hurt.”
- You are [she is] not stupid for being in that relationship. Most abusers do not start out abusive and can be quite charming. You [she] couldn’t have known from the get go.”
Understanding Traumatic Triggers

Traumatic triggers come in many forms. A trigger is a reminder of past traumatizing events. Many things can be a possible trigger for someone. For example, what seems like an “ordinary” request such as, “Make sure the children are ready for school on time,” can be a trigger for a survivor whose abusive partner terrorized and punished her if the children were late for school. Part of our work is in changing our frame so that we always keep in mind that survivors’ responses to seemingly neutral events and interactions with people may reflect a trauma response. Survivors may have adopted long-term patterns that reflect their efforts to adapt to a traumatizing life. We also work to hold in mind that this behavior and these patterns reflect strategies that survivors have developed to keep themselves safe—that is, they reflect strength and resiliency.

What Happens When Someone Is Triggered

We can understand how it might be for a survivor of a flood, like a survivor of Hurricane Katrina, who was swept away as water rushed into her house. We can understand how she might feel frightened when someone turns on a shower without warning—just the sound of sudden water may reawaken the old experience. In a similar way, a person who has experienced terroristic abuse and control by a partner or family member may be triggered by encountering a person in authority. A survivor whose abuser made and enforced “rules” in the house may feel anxious or frightened even by the words “shelter rules.”

Can We Eliminate Triggers?

Once we become aware of triggers, we might feel an impulse to “get rid of all the triggers.” Of course, we will avoid violent images or angry tones in our speech, keep video and film with aggressive content out of the common shelter areas, and try to make the environment calm. But there will always be trauma triggers that we cannot anticipate and cannot avoid. Part of trauma-informed work is supporting survivors as they develop the skills to manage trauma responses both in our shelter and elsewhere in the world.

Examples of Possible Triggers

Traumatic triggers come in many forms. A person might be triggered by a particular color of clothing (“My batterer always wore a plaid jacket home from work, and that’s when he would come after me”), by the smell of a certain food (“I was cooking taco meat when my batterer attacked me”), or even the time of year (“When it snows I remember the night I got pushed out into the snow in my nightgown”). Encountering such triggers may cause us to feel uneasy or afraid. Sometimes we know why we are feeling a certain way and other times we aren’t sure why. Recognizing when we are being triggered is an important part of building the skills to manage our trauma responses.
Impact of Trauma on Interaction and Engagement: Information Sheet for Domestic Violence Advocates*

Trauma can affect a survivor’s...
- Interactions
- Stress tolerance and ability to regulate emotions
- Responses to negative feedback
- Ability to screen out distractions

It could look like...
- A survivor seeming “cool” and detached
- A survivor who is highly sensitive and whose feelings are easily hurt
- A survivor is suspicious and not trusting
- A survivor does not “read” or trust warmth and caring from staff and other survivors

When someone is experiencing a trauma response, she may...
- Not be able to talk to you about what is happening
- Not notice what is happening
- Not know what will help or think that nothing will
- Need some time alone or be comforted by having you near
- Feel too upset or overwhelmed to interact with you
- Not want to say what she needs because she does not feel safe enough, she may want to protect you, or she may believe that she should not say

Connection and Reflection Skills:
We know that any survivor may have difficulty engaging with an advocate who offers to help her. It is important to develop communication skills that acknowledge a person’s trauma-related barriers to communication, while also following the survivor’s lead in the conversation. We can do this by using two sets of skills—our connection skills and our reflection skills. Our connection skills include our ability to engage, be available, be present, convey empathy, avoid judgment, and be open and honest about what we are offering. We sometimes think of these as “lifelines,” meaning that they may not be picked up immediately but are available when the other person is ready. Our reflection skills include our self-awareness and responsibility for understanding our own needs and reactions, both of which help to sustain our connection skills.

* This handout is adapted from Access to Advocacy: Serving Women with Psychiatric Disabilities in Domestic Violence Settings: A Curriculum for Domestic Violence Advocates, National Center on Domestic Violence, Trauma & Mental Health, Chicago, IL (2007).
Creating Trauma-Informed Services: Tipsheet Series

Tips for Creating a Welcoming Environment

The environment we create communicates our beliefs about the people we serve. This environment and the way we offer services are critical aspects of our work to increase access to our programs for women who are experiencing psychiatric disabilities or the effects of trauma. Most of us understand what it feels like to be welcomed. It’s the feeling that comes when we have a sense that people want to have us around and that the environment is set up in a way that is comfortable for us.

Offering welcome may mean giving food or drink to a guest, providing a comfortable place to sit, or making sure that the room is not too hot or too cold. In DV programs, we may convey our welcomes by choosing our language thoughtfully (e.g., saying “survivor” rather than “victim” or “client”) or by selecting art that reflects the cultures of the communities that we serve. In creating a welcoming environment, it is important that we attend to both physical and interpersonal aspects of our program.

1. Offer trauma-informed services.

“Our support groups and individual meetings are intended to help you increase safety for yourself and your children and to help you find and use your best resources so that you can have the kind of life that YOU want to have.”

Offering trauma-informed services recognizes the pervasiveness of trauma and its impacts on a survivor’s ability to cope, to access our services, and to feel safe in a new environment. When your services demonstrate that staff are comfortable with many kinds of behavior and a wide range of needs, this lets a survivor know that she is welcome as she is. Thus, offering trauma-informed services is a critical component of creating welcoming environments in DV programs. We offer trauma-informed services when we:

- Become knowledgeable about trauma and participate in ongoing training on how to offer trauma-informed support.
- Recognize that responses to trauma may include a numbing of feelings, a desire to avoid things that are reminders of previous traumatic experiences, and an increased sensitivity to these reminders, to people, and to the environment.
- Provide information to survivors about trauma and its effects.
- Offer flexibility and choices when possible as to how a survivor can interact with our programs and our staff.
Take seriously a survivor’s trauma responses (e.g., she may be jumpy or anxious, she may have a hard time sleeping, or she may need to avoid a neighborhood that has too many reminders of past experiences).

2. Understand symptoms as adaptations.

“*We work hard in our program to make sure that each person is able to make choices about how she contributes to the community while living here. We understand that people have different ways of doing this.*

In trauma-informed settings, we see a survivor’s behavior as reflecting adaptations to a world that has not always been safe. Instead of trying to fix a person’s behavior, we begin with an understanding that many factors (including a person’s genetic tendencies, brain chemistry, and life experience as well as the person’s current environment and access to resources) affect how the world looks to her, what feels safe, what she thinks may happen, and how she asks for and uses our services. If a survivor has a mental illness, she knows that she neither has to hide that she has a mental illness nor disclose it in order to get the help she is seeking. Of course, this does not mean that we will not have reactions if a person’s behavior is troublesome, disrespectful, or dangerous. It does mean that the way we communicate our reactions should not shame or embarrass a person. Saying, “*We want everyone to be safe and comfortable here. You have been shouting for a while and that worries some of us,“ is better than saying, “You can’t keep making all that noise—you need to sit down and be quiet.” Both statements let the survivor know that people are reacting to her behavior, but the first is respectful and acknowledges that the survivor is doing the best that she can.

3. Adapt the physical space.

“*We have different kinds of spaces here in the shelter—a room where people can sit quietly to collect their thoughts, safe spaces outside to work off some energy, and an area stocked with art supplies for people who want to draw or paint to express themselves.*

When we arrange the physical environment to accommodate a wider range of feelings, interactions, and behavior, we make our programs more accessible to all. If the program staff recognize that anyone might want a quiet place or need to move around more, or that noise or very cluttered environments can be unsettling, it communicates that a wide range of people are welcomed and wanted in your program.

For more information or for technical assistance, please contact the National Center on Domestic Violence, Trauma & Mental Health at info@nationalcenterdvtraumamh.org or 312-726-7020(P) or 312-726-4110(TTY).
Creating Trauma-Informed Services: Tipsheet Series

Practical Tips for Increasing Access to Services

Domestic violence, lifetime abuse, and trauma can significantly impact a person’s mental health and well-being. Experiencing abuse can affect how a person feels, thinks, and interacts with the world. Sometimes, trauma-related mental health symptoms improve with increased safety and support. Other times, the mental health effects of trauma may be long-lasting or may develop into a psychiatric disability. People with a psychiatric disability are at a greater risk for abuse and may also experience an exacerbation of symptoms as a result of being abused.

As advocates, we know that survivors come to our programs with many diverse needs. We can take steps to ensure that our program is accessible to all survivors, including survivors who are experiencing the mental health effects of trauma or psychiatric disability. Think about how your services might be experienced by someone who has experienced trauma. Remember that abuse can affect how a person feels, thinks, and interacts with the world.

Ask yourself...

1. How might this make someone feel? What are some ways that I can support survivors to manage feelings?

Describe common effects of trauma and domestic violence on feelings; reassure her that she’s safe and that she’s not alone; offer calming words, deep breathing, and other grounding techniques; describe things that I am doing to help keep her safe; have flexible policies about locks and lights; work with her to redirect energy; offer calming distractions or diversions; discuss the impact of past impulsivity; help her to understand, anticipate, and plan her response to future triggers; keep her company; remain calm myself; reassure others; ask what matters to her; ask about hopelessness; don’t blame her.

Additional strategies I can use...
2. Is information provided in ways that a person can understand easily? Are choices offered thoughtfully? What are some ways that I can support survivors around thinking, processing, planning, and energy level?

Remember that she guides the speed of the discussion; be willing to present information slowly; simplify choices; explain clearly; be willing to repeat myself; ask about disturbing or unwelcome thoughts; reduce excess stimulation; ask about suicide; offer realistic options; offer my realistic optimism; don’t challenge unrealistic beliefs but respond to the fear, worry, or distress; break down plans into small steps; pace schedule and expectations; have flexible programs and plans; offer breaks; celebrate everyday accomplishments; ask directly about sleep disturbance; offer an alarm clock or wake up calls.

Additional strategies I use...

3. How is she experiencing my interactions with her? How is she experiencing interactions with others? How can I support her around interacting with others?

Keep a respectful stance; validate conflicting feelings; affirm senses of urgency; only promise what I can deliver; be honest about personal and program capacities and limitations; be clear about your expectation of safe behavior; offer food, tea, and routine activities; model values of mutual safety and respect; offer breaks from the interaction; give space; remain engaged myself; notice when my feelings are getting in the way of the interaction and take breaks for myself.

Additional strategies I use...

For more information on the intersections of domestic violence, trauma, mental health, and substance abuse, contact the National Center on Domestic Violence, Trauma & Mental Health at (312) 726-7020, 312-726-4110 (TTY), or info@nationalcenterdvtraumamh.org.
CLIENT INTERVIEWING

Margaret B. Drew, Esq.

Nothing will establish a positive client-lawyer relationship more easily than a comfortable interview. While the topics may be difficult, providing a safe physical and emotional setting for the client will give her the support she needs to tell her story.

The lawyer must remember that clients who have experienced abuse may need more time to become comfortable in the professional relationship. Some fears and concerns that may weigh heavily on the client are:

- For many years she may have been warned by her abuser not to disclose the fact that she is being abused, let alone the details.
- She may be concerned that somehow the abuser will learn about her disclosures and may believe that she is at higher risk because of the disclosure. Advising the client of lawyer-client privilege and an explanation of what that entails will reassure the client of confidentiality. See Confidentiality in this Chapter.
- An abuse victim may feel shame and some responsibility around the abuse, limiting her ability to disclose details early in the professional relationship.
- This may be the client’s first experience with an attorney, causing an anxiety all its own.
- Other victims may exhibit opposite responses during the initial interview. For example:
  - A client may be eager to tell her story. She may feel relieved that there is a professional willing to listen.
  - She may talk continuously out of anxiety about the new relationship.
  - The client may have many questions for you, and she may prefer to address those questions rather than discuss the topics you have in mind.

While clients in trauma may react to this new relationship in varying ways, there are techniques that the attorney may employ to provide the client with a respectful and beneficial interview. If the lawyer speaks in a clear and respectful manner, the client will, with time, become comfortable and able to provide the needed information.

- Give the client your full attention. It is difficult to establish a relationship if you are distracted by note taking, telephone calls or staff interruptions.
- Make a record of your conversation immediately following the interview.
• “Wrap up” the interview by letting the client know that there is certain statistical information you will need for court filings and at that point, take notes as to dates of birth, children’s names, etc.

• An exception may be when a client is having difficulty talking about her experiences. Inquire as to the statistical information first and then place your note pad down for the balance of the interview, giving her your full attention.

• Become comfortable with silence. Giving the client quiet time to consider her answer serves her well, as it will the interviewer.

You will develop instincts over time as to what form of guidance and space the client needs to tell her story. You will need to set aside your own discomfort and focus on the client’s needs. These interviews will take time. Generally, one and one-half hours is a comfortable length of time to obtain a good sense of the client and her case. Any longer time would be too stressful for the client, absent extraordinary circumstances. Some clients may have limited time, however, because of a need to account for their whereabouts to the batterers. You may find the following strategies may help make your client more comfortable:

• After some pleasantries, simply ask the client what brought her to your office.

• If the client was referred through a pro bono panel or other domestic violence resource, acknowledge the source and ask what it is the client hopes to accomplish through your services.

Many clients will not identify themselves as abuse victims. They might consider their experience to be typical marital or relationship problems. It may not be until the second or third interview that the client begins to see herself as being in an abusive relationship. See Screening Guidelines in this Chapter.

Sexual abuse can be especially difficult for a client to reveal. Unless the information is critical to an upcoming hearing, you may want to inquire as to any of the abuser’s sexual behavior that made her uncomfortable in a later interview. For the male interviewer where the client is reluctant to discuss sexual acts, consider asking a female lawyer or paralegal to conduct this part of the interview. Explain to your client why you are changing interviewers at that point.

Take Care of Yourself

Be prepared for your own emotions to surface during or after interviews with an abused client. You may feel anger, sorrow, shock, fear or denial. An entire range of thoughts and feelings may surface. Your own abuse issues might be triggered. You may want to:

• Discuss these emotions with a mental health professional.

• Talk with an experienced domestic violence attorney or advocate about how he or she deals with these feelings.
• Make certain that your feelings and history are not driving your strategic decisions and/or your relationship with the client.

Dealing with your own responses is critical to establishing an open relationship with your client.

• Suspend your judgment. Behavior that may ordinarily be puzzling or even shocking to you is better understood when one has studied the dynamics of abusive relationships.

• Reassure your client that she did not deserve the abuse that she suffered.

• Assure her that the abuser is solely responsible and accountable for his behavior.

• Discuss how she is feeling about the legal process and issues it raises.

• Let her know that her safety is your first concern and that you and she will need to have on-going discussions about her safety as the case proceeds and decisions are made. See Safety Planning in Chapter Two.

The Importance of Language

The language that the lawyer uses is critical to maintaining a healthy lawyer-client relationship. See Cross Cultural Communication in this Chapter.

• Clarity is crucial. Clear and precise language will serve you well. Your voice has a great deal of authority with clients. Abuse victims are conditioned to listen carefully to the abuser’s instructions. Failure to follow them could be used by the batterer as an excuse for further abuse.

• For that reason, abuse victims will often follow your advice in a literal sense. Sarcasm and irony could be dangerous when used with clients recently separated from their batterer.

• Be sensitive to any special circumstances of your client’s case. For example, if your client is in a same sex relationship, be mindful to adjust your speech accordingly. Your client, a child or partner may have a disability. Your client may not be able to read well. Being respectful of those circumstances is critical.

• Respectful, mindful speech will serve you well in all aspects of life; it is critical in working with trauma victims.

• Ensure that the staff treats the client in a respectful manner, as they would any other client.

Often attorneys are reluctant to be direct and open with abuse victims. We may feel great empathy with the client and want to shield her from any further distress. The client will appreciate your honesty. Abuse victims are often very strong. They have learned how to
survive. It will be very difficult for them if they learn that you have not been forthright in your information and advice.

- Be direct and honest with your client. While emphasizing the strengths of your client's case, be realistic in setting outcome expectations.

- Do not be afraid to tell a client that you need to research a matter, or that you need time to think about an issue. Your thoughtfulness and honesty will be appreciated.

- Discuss with your client how to prepare for court and what she might expect there. Avoid predicting what a judge or jury is likely to do.

- Each time you interview your client, ask what his/her worst fears are about the court proceedings. It will help you prepare her for her testimony, deposition, etc. You will be able to practice with her how she will respond to questions raised by the other side. More often than not, you will be able to alleviate your client's fears.

Setting Boundaries

Setting and recognizing appropriate and professional boundaries is critical to the lawyer's emotional health and the client's safety. The lawyer must recognize the limits of his or her role. The lawyer might at first feel obligated to assist the client in all aspects of her life. Resist! You can only do your job as a lawyer and provide referrals for other services.

- Respect that you are trained as a lawyer. Should your interviews stray too far from the information that you need for safety planning and the case, you might be left with less time and energy for the legal effort that lies ahead.

- You have been retained as a lawyer, not a therapist. While emotional and mental issues must be addressed in any abuse case, be prepared to discuss mental health referrals with your client. There are many sliding scale mental health programs available. Your local shelter advocates may advise you as to which therapists understand domestic abuse issues. Alcoholics Anonymous and Al-Anon are excellent, free referrals, where appropriate.

- You could create a dangerous dependency if you take on all of your client’s problems. Do you really want her calling your office rather than 911 if her partner is breaking into her home?

- Make clear during an interview the parameters your role and the roles that other professionals may have in her life.

Speak to your client about professional limits. While assuring her that her case is very important to you, letting her know your office practices as well as what is expected of her can be enormously helpful.

- Let the client know your policy on returning telephone calls. (e.g., you return calls within 24 hours or staff members may contact her if you are out of the office).
• How can she contact you in an emergency? Is there a staff member she may contact? Should she designate in messages whether or not an emergency exists?

• Help her sort out which professionals to contact in any given situation (e.g. the lawyer, the police, therapists or school administrators).

Finally, when completing an interview, finish on a hopeful note. Many women and families are hugely successful in separating from the abuser. They go on to lead independent and happy lives.

Let her know that she has shown a great deal of courage in surviving. She will appreciate your support and your optimism. Survivors want to know that life can be better. You are an important link to her hopeful future.
CHECKLIST

☐ Give the client a comfortable and safe environment for the interview.

☐ Speak respectfully and mindfully during the interview.

☐ Be aware of your own emotions and reactions. Do not let your feelings and/or history drive decisions in your client’s case or your relationship with your client.

☐ Do not let your emotions rule the interview. This is not about your anger or horror at the events that have occurred.

☐ Be comfortable with silence. Simply waiting until your client has had time to think or gather herself will help her feel safe and heard.

☐ Trauma victims may need time to recover memories. Know that you may need several interviews with the client to obtain pertinent information.

☐ Be clear and thoughtful in the advice and information you give to the client.

☐ Be realistic and supportive during the interview.

☐ Be aware of your professional limits. Refer your client to others for support services such as domestic violence counseling, mental health or substance abuse treatment where appropriate.
As you already know, Family Law is unique because it depends in large part on the rapport you create with your clients. Unlike arenas such as Probate Law, Family Law is a person to person field. The issues you are handling can have a major impact on your client’s life. For sexual assault survivors, one of the key barriers to working with an attorney can be the lack of trust – they may have been violated, blamed, or disbelieved many times. The big questions sexual assault survivors face are: Can I trust you? Will you believe me? Will you take this seriously? Are you going to stick with me? Attorneys can be intimidating to survivors, and there can sometimes be what amounts to a clash of cultures. Building rapport is a key piece of being able to have the important conversation about safety. Here are a few things that can help you bridge the gap:

- **Create Structure:** An attorney can have a significant impact on reducing the anxiety their clients are experiencing. Creating structure is one of the key strategies for reducing client anxiety. For example, let your client know how much time you have to spend with them and what you hope to accomplish during that time. Be clear about your boundaries and communicate your limits.

- **Ask Questions:** Clients don’t always ask all the questions they need answered in order to evaluate their options. Also, when cleanest are still in shock it can be difficult for them to be aware of gaps between perception and reality. Has she received medical attention? Does she have a safe place to stay? Is the abuser, or any of his community, making any kind of threats to her? Is she being threatened with retaliation for taking legal steps? Be prepared for for personal disclosures that may be surprising to you.

- **Take Initiative:** Be proactive in asking about potential safety risks and initiating safety planning conversations. Ask about any new developments in her life that may be creating safety risks. Clearly discuss safety options and their legal ramifications. Is she planning on leaving the state? What are her expectations for the resolution of the case? Has her abuser tried to contact her since your last conversation? This is especially important when there are kids in common and a trial in progress.

- **Stay in Touch:** Ensure regular, efficient and ongoing communication with your client over the course of the case. If you are not going to be available to your client, consider involving an advocate in the communication flow.

- **Talk Strategy:** Articulate your role in the case and how you are planning on addressing the issues.

- **Prepare Her:** Many survivors have never been to court before and will benefit form general education about the physical space, court procedures, and her role during the proceedings. Let your client know if her abuser will be at court with her, what kinds of questions the other attorney may be asking her, etc. Prepare sexual assault survivors to talk publicly about the details of the assault.

- **Validate the Survivor:** Let the survivor know how important their safety is. Acknowledge them for their successes. Let them know that you believe them. Do not judge the decisions they may have made to maintain their safety or cope with the abuse.

- **Use Advocates:** Advocates can help by accompanying survivors to court, having conversations about longer-term safety issues, or acting as a client-attorney liaison. Make sure you have releases of information.

- **Write it down:** Ensure she only has to tell her story once. Even if the case is turned over to other agency staff, documentation should save her from having to repeat herself. If the client has been working with another attorney, ask for those files as well.

- **Issue expertise:** If your client is facing situational issues you are unfamiliar with, be sure to connect with a colleague who has experience in that particular arena (i.e. clients working in the sex industry or other marginalized community).

- **Negotiation:** Prioritize client safety in all negotiations with the other party. Do not compromise safety in exchange for faster settlement.

- **Leave the Door Open:** Depending on the situation, it may be appropriate to have a conversation with your client about future contact they may have with their abuser. Make sure she is aware of the legal ramifications of reconciliation. Reiterate that support services will still be available to her regardless of her decisions.

Volunteers of America, 2004
Originally presented by PWCL & the Tri-County Sexual Assault Task Force, 4/03
How to Ask About Domestic Violence

When aware of a domestic violence situation, your next step is to provide the abused partner an opportunity to disclose. The following questions and comments can be used to elicit disclosure, or at least let the person know that you are available and willing to help.

Indirect Questions:
- How are things at home?
- What does a typical argument look like in your family? Does one person usually win?
- How do you and your partner deal with conflict?

Direct Questions:
- Is someone hurting you?
- Are you frightened by your partner’s temper?
- Have you ever been hurt, threatened, or intimidated by a partner?
- Are you afraid that your partner might hurt you? In the past have you been afraid of being hurt?
- Have you ever been pressured to have sex when you didn’t want to?
- Do you think... (getting a job, talking to a counselor, having me talk with your partner, etc.) will put you in danger at home?
- Are you afraid your relationship with your partner will worsen if you...?
- Do you feel safe in your home?

Validating Messages:
- You don’t deserve this. It’s not your fault. No one deserves to be abused.
- I’m concerned about you. It doesn’t sound like you are safe.
- You have a lot of courage.
- You’re not alone in this. There are options and resources to help you.
- If you want to talk about this at another time, I’m here to listen.
How to Ask About Domestic Violence (continued)

Door Openers:
- Tell me about what has happened.
- Is that the worst thing that happened?
- That sounds very frightening!
- Could you say more about __________?
- What is it that you need to be safe?

From STAND! Against Domestic Violence
What is Domestic Violence?

Domestic violence is a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation or emotional, sexual or economic abuse to control the other partner in the relationship. Domestic violence does not necessarily involve physical violence and it equally affects all aspects of our society, rich or poor, regardless of race, ethnicity, religion or national origin.

“Domestic violence is an epidemic.”

Domestic violence is an epidemic. One out of nearly every three women will be the victim of domestic violence in her lifetime. Between three and ten million children are exposed to domestic violence every year and that exposure has a negative impact on their development. Moreover, studies indicate that forty to sixty percent of men who abuse women also abuse children.

How to Screen Your Clients for Domestic Violence – Examples and Suggestions

It is not easy to bring up these issues, but it is critically important. Think carefully about your manner of speaking and your actions before you begin to ask these questions. Incorporate questions about domestic violence in your standard intake process to minimize the stigma and encourage disclosure.

Here are some examples of questions to integrate into your standard interview for any new client:

- Has your intimate partner ever pushed, slapped, hit or hurt you in some way?
- Has your intimate partner ever hurt or threatened you?
- Has your intimate partner ever forced you to do something you did not want to do?
- Is there anything that goes on at home that makes you feel afraid?
- Does your intimate partner prevent you from eating or sleeping, or endanger your health in other ways?
- Has your intimate partner ever hurt your pets or destroyed your clothing, objects in your home, or something you especially cared about?
- Has your intimate partner taken the children with out permission, threatened to never let them see you again, or otherwise harmed them?
**Why Should I Screen My Clients to Determine if they are Victims of Domestic Violence?**

Given the prevalence of domestic violence in our society, it is likely that some of your clients are in, or have been in, violent relationships that impact the legal advice you will provide. For example, your client may be seeking advice in a personal injury case and the prospective defendant is the perpetrator of domestic violence. Similarly, in a sexual harassment case, the harasser may have also been in a violent relationship with her and his behavior may also be a violation of an existing protection order. However, your client may not disclose this information to you because she may not think it is related to the advice sought or she is embarrassed or ashamed.

“To make sure you are ethically representing your client and to avoid malpractice…”

To ensure that you are ethically representing your client and to avoid malpractice, it is critical that you learn if she is a survivor and consider how this information affects your representation. Moreover, if their safety is at risk while you are representing them, your safety may be at risk as well.

**How Do I Screen My Clients to Determine if they Are Survivors of Domestic Violence?**

Interview your client alone. Let your client know that you ask a series of standard questions of all of your clients when you embark on representation.

Explain why you are asking about domestic violence:
*It is an epidemic.*

*It impacts how you provide representation.*

*You care and can provide referrals and support.*

Include direct questions about domestic violence in your standard set of questions such as “Do you feel safe at home?”

**What Should I Do If My Client Discloses That She is a Victim of Domestic Violence?**

Let her know that your conversation with her about the violence is confidential and that it is not her fault. You do not and should not provide her with counseling or tell her what you think she should do about the situation. Instead, provide information about resources in your community for herself and her children such as a hotline, shelter, or domestic violence legal services.

For advocacy, counseling and referrals 24 hours a day provide her information about how to contact the National Domestic Violence Hotline: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Explain that she will reach an advocate who can talk with her about her situation, her safety, and the options available to her. All conversations with advocates at the National Hotline are strictly confidential.

**What if I Suspect That My Client is a Victim of Domestic Violence but She Has Not Disclosed?**

Remain supportive and let her know that if, at any time, she needs resources about domestic violence she should feel comfortable asking you. Remind her that if she is a victim, that information is important for you to know so that you may best represent her.

**Should I Be Concerned for My Client’s Safety and Mine If She Discloses That She Is Currently Being Threatened by Her Batterer?**

The danger of violence, including the risk of death, escalates when a domestic violence survivor attempts to leave a batterer. Seeking legal assistance is a step towards independence, which threatens a batterer’s sense of power and control and may lead to increased violence. If you represent a client who is planning to leave or to take any legal or financial steps to separate from a batterer, alert her to the increased likelihood of violence.
Your safety may also be at risk. Please review the Safety Checklist for Attorneys below for ways to increase your safety.

**Safety Checklist For Attorneys Representing Victims of Domestic Violence**

- For your safety and that of your client and your staff, safety planning is crucial. Be aware of your own safety. Most batterers seek to control their former or current partners, rather than their lawyers, and many batterers appear to be well behaved in court.
- Nevertheless, lawyers for victims of domestic violence may be threatened by batterers and their family members. Take precautions if a problem arises. Carefully review your office security procedures.
- If the batterer is representing himself and is coming to your office, do not hesitate to ask a law enforcement officer to sit outside your office or seek similar precautions. You may wish to obtain a protection order that includes the batterer staying away from you and your office.
- Instruct your staff as to how much interaction they should have with a batterer who represents himself and calls your office. All staff should be particularly careful not to reveal last names or personal contact information.
- Find out the safest way to contact your client and the names of other individuals who will know how to reach her.
- Ask for your client when you call and speak only to your client about the case. Do not leave messages with other family members or on an answering machine or voice-mail unless your client has told you this is safe.
- If questioned by family members, do not indicate that you are a lawyer; rather, give an innocuous reason for the call, such as taking a survey. Avoid leaving your last name if you do leave a message.
- Always ask your client first if it is safe to talk. The batterer may be present, even if the batterer no longer lives with your client. Develop a system of coded messages to signal danger or the batterer’s presence, or if you should call the police.
- Block identification of your number when calling your client. Suggest that your client block hers.
- Keep your client’s whereabouts confidential, including during discovery.
- If your client fails to respond to your calls, make extensive (but confidential) efforts to confirm that your client is safe. If your client has decided to drop the case, try to verify that your client has not been threatened or coerced. Let your client know that she should not be embarrassed to call you in the future.
- If your client wants you to, or if it may be a life/death matter, call the police if your client is in danger, and, where possible, confirm that a non-responsive client is safe.
- Talk to your client in advance about what to do if she disappears – does she want you to try and locate her?

“...call the police if your client is in danger...”

**Resources For Attorneys Screening For Domestic Violence**

Check your local telephone directory or search on line for information about local resources in your community for victims of domestic violence. These include: The local police department, victim witness program, local domestic violence hotline, domestic violence shelter, and counseling program. Request information pamphlets and other outreach materials from these organizations. By making these materials available in your waiting room, you will increase the safety and security of your clients as well as increase the likelihood of her disclosure to you.
Each state has at least one statewide coalition on domestic violence that may be a resource such as the Maryland Network Against Domestic Violence or the Washington State Coalition Against Domestic Violence. Most state domestic violence coalition websites provide information on local programs and resources for victims of domestic violence.

Information about state coalitions and other national domestic violence organizations may be found on the website of the National Coalition Against Domestic Violence at www.ncadv.org.

The American Bar Association Commission on Domestic Violence provides resources for attorneys nationwide on domestic violence including, publications, a listserv, and technical assistance and training for attorneys representing victims of domestic violence. Information about these resources may be found on our website: www.abanet.org/domviol.

If your client requests information for her own safety planning, you may wish to provide information from one of these resources:


For information on Technology safety, see this site of the National Network to End Domestic Violence: www.nnedv.org

The use of gender specific language, however, should not be construed to mean that domestic violence perpetrators are all male, nor should it be construed to mean that domestic violence exists only in heterosexual relationships. The screening attorney should be sensitive that domestic violence can be present in all intimate relationships.

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10 Myths about Custody and Domestic Violence and How to Counter Them

Attorneys who represent victims of domestic violence in custody matters often encounter the following false claims. To assist with overcoming these myths, the ABA Commission on Domestic Violence provides these facts and statistics for use in litigation.

**MYTH 1: Domestic violence is rare among custody litigants.**
- Studies show that 25-50% of disputed custody cases involve domestic violence.

**MYTH 2: Any ill effects of domestic violence on children are minimal and short-term.**
- “Children who are exposed to domestic violence may show comparable levels of emotional and behavioral problems to children who were the direct victims of physical or sexual abuse.”
- Adverse effects to children who witness DV are well-documented, including aggressive behavior, depression, and/or cognitive deficiencies.
- A continuing study by the CDC has shown a significant relationship between exposure to “adverse childhood experiences” (including witnessing domestic violence) and development of adult health problems, including pulmonary disease, heart disease, hepatitis, fractures, obesity, and diabetes (not to mention IV drug use, alcoholism, sexually transmitted diseases and depression).
  - [http://www.acetstudy.org/](http://www.acetstudy.org/)
  - [http://www.cdc.gov/od/oc/media/pressrel/r980514.htm](http://www.cdc.gov/od/oc/media/pressrel/r980514.htm)

**MYTH 3: Mothers frequently invent allegations of child sexual abuse to win custody.**
- Child sexual abuse allegations in custody cases are rare (about 6%), and the majority of allegations are substantiated (2/3).
- False allegations are no more common in divorce or custody disputes than at any other time.
- Among false allegations, fathers are far more likely than mothers to make intentionally false accusations (21% compared to 1.3%)

**MYTH 4: Domestic violence has nothing to do with child abuse.**
- A wide array of studies reveal a significant overlap between domestic violence and child abuse, with most finding that both forms of abuse occur in 30-60% of violent families.
- Other studies have shown intimate partner violence ("IPV") to be a strong predictor of child abuse, increasing the risk from 5% after one act of IPV to 100% after 50 acts of IPV.
**MYTH 5: Abusive fathers don’t get custody.**

- Abusive parents are more likely to seek sole custody than nonviolent ones...


- ...and they are successful about 70% of the time.

  American Judges Foundation, [Domestic Violence and the Court House: Understanding the Problem... Knowing the Victim](http://ojj.bjs.dni.us/dvomv/jurisprudence/pubs/omvfinal/page5.html).

- Allegations of domestic violence have no demonstrated effect on the rate at which fathers are awarded custody of their children, nor do such allegations affect the rate at which fathers are ordered into supervised visitation. (i.e. abusers win unsupervised custody and visitation at the same rate as non-abusers)


**MYTH 6: Fit mothers don’t lose custody.**

- Mothers who are victims of DV are often depressed and suffering from post-traumatic stress disorder, and as a result, can present poorly in court and to best-interest attorneys and/or custody evaluators.


**MYTH 7: Parental Alienation Syndrome ("PAS") is a scientifically sound phenomenon.**

- The American Psychological Association has noted the lack of data to support so-called “parental alienation syndrome,” and raised concern about the term’s use.


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CHECKLIST FOR CREATING PARENTING PLANS THAT REDUCE CONFLICT

Parents who are experiencing moderate to high conflict with each other are encouraged to consider the following ideas when creating a parenting plan. This checklist is not intended for use by parents who are able to negotiate parenting time schedules in a cooperative way. Keep in mind that not all of the ideas are appropriate for all parents. The parenting plan should take into consideration the unique circumstances of each family.

♦ Parenting time provisions.
  ✓ Specify the exact days and times the child will be with each parent.
  ✓ Consider how holidays, vacations, and special occasions will be treated.
  ✓ Draft the schedule in a way to minimize the number of transfers from parent to parent (for example, have the non-residential parent pick up the child from school or day care rather than from the residential parent’s home).
  ✓ Eliminate mid-week parenting times and insignificant holidays and add an extra weekend overnight instead.
  ✓ Consider keeping the school year schedule in effect during the summer and have the child stay with the non-residential parent for a couple of weeks during the summer, and also for a week in October, February and May.

♦ Pick up, drop off.
  ✓ Specify the exact time and location for pick up and drop off, with a short grace period.
  ✓ Fashion the plan to avoid face to face contact between the parents during the exchange when possible.
  ✓ Face to face exchanges should occur in public places (restaurant, library, day care, etc.).

♦ School and extracurricular events.
  ✓ Parents should avoid attendance at these events at the same time, unless they are major life events.
  ✓ Specify in the plan which events each parent shall attend or a method for determining who will attend (for example, Mom attends on even numbered days and Dad attends on odd numbered days).
  ✓ Both parents should make it possible for the child to participate in regularly scheduled activities, such as sports and other extracurricular events, even if the activities occur during parenting time.

♦ Anti-Move Provision. The law requires each parent to give the other parent reasonable notice before moving more than 60 miles further distant from the other parent.
  ✓ Clearly define what “reasonable notice” is.
  ✓ Geographic distance may be shortened to something less than sixty miles.
  ✓ Create a restriction which prevents a parent from moving the child outside of the school district.
  ✓ Consider making the moving parent prove that the move is in the child’s best interest.

♦ Safety Considerations.
  ✓ If drugs, alcohol and/or domestic violence are involved, consider using supervised visitation services, supervised pick up/drop off, drug and alcohol evaluations, testing, treatment, and/or batterers intervention. Ask for information about the court’s Parental Access Program.

♦ Communication.
  ✓ Generally, the parents should not communicate about the child in the child’s presence.
  ✓ Specify that the parents are not to communicate with each other through the child.
  ✓ Depending on the preferences and resources of the parents, e-mail or telephone contact between the parents may be appropriate.
  ✓ A method for the child to communicate with the parents may be specified.

♦ Decision making.
  ✓ Specify decision making responsibility. Generally, the less cooperation that is required, the less potential for conflict.
  ✓ Discuss specific items (i.e., diet, religion, appearance, dating, etc.) that both parents have an interest in at the time the plan is drafted.
Flexibility:
✓ Specify the degree of flexibility that will be allowed. High conflict parents may need an inflexible, highly structured plan.

Child’s Toys and Possessions.
✓ Each parent has a set of toys, clothing, car seats and other personal items for the child.
✓ When the above is not possible, be specific about which items will be transferred and what shape they will be in when they are returned (i.e., washing most of the clothes being returned).

Child’s refusal to spend time with a parent.
✓ Child should not be permitted to decide if s/he will be spending time with the non-residential parent.
✓ Teenagers’ social needs and busy schedules should be taken into consideration.
✓ If child is extremely ill, make up time can be forwarded to the following week. Siblings should still go.

Dispute resolution.
✓ Parents should consider submitting future disputes about the parenting plan to a parenting referee.

Examples of Language to include:

Conflict reduction.
When the marital relationship deteriorates, parents sometimes overlook the fact that the child loves each parent. It is stressful for the child when the parents disagree, particularly about parenting time and other parenting issues. The child wants the parents to agree on parenting time and wants the parents to be mutually supporting parents.

The child needs to have regular ongoing contact with both parents. The custodial parent needs to support the non-custodial parent’s role in the child’s life. Likewise, the non-custodial parent needs to maintain regular, ongoing contact with the child as specified in this parenting plan. The court expects the non-custodial parent to exercise all the parenting time provided for in this parenting plan.

The child needs to be able to express love for both parents. Each parent needs to create an atmosphere that allows the child to freely express their love for the other parent without making the child feel guilty. Parents often subconsciously or otherwise convey to the child dislike of the other parent. This causes conflict for the child and is detrimental to the child’s relationship with both parents.

Calendarizing the Schedule. Many parents have difficulty reading the parenting plan. The following language forces the parents to sit down early in the process and work out a calendar. That way, issues such as who has the child on Christmas are not dealt with at the last minute. It also allows parents to visualize the yearly schedule in advance so they can plan vacations and other events without interfering with the other parent’s time.

Mother shall prepare a calendar of the weekly and holiday schedule each year and shall send it to Father. The purpose of the calendar is to visually illustrate how the schedule described in this parenting plan is to be implemented during the upcoming year. Mother shall immediately prepare a calendar which covers the period through August 2001. Thereafter the calendar shall be provided on an annual basis covering the period of September 1 to the following August 31. The calendar must be consistent with this parenting plan. Father shall have two weeks within which to object to Mother’s recitation of the schedule as set forth in the calendar. Once finalized, the calendar shall be binding upon both parties. Father’s right to spend time with the children shall not be affected by Mother’s failure to promptly prepare a calendar.

MEH: MyFiles/FLAC/highconflict.plan.checklist/051501
Batterer Manipulation of the Courts to Further Their Abuse, and Remedies for Judges

Despite assumptions by laypersons that domestic violence ends with separation, in reality the batterer may respond to separation by escalating behavior in order to reestablish control or punish a partner for leaving. For example, the use of custody proceedings is a strategy commonly identified by batteryers themselves as a means to control or harass former partners. Research shows that batterers are more likely to apply for custody and equally likely to have it granted in comparison to non-violent fathers. As a result, battered women have an ongoing need both for safety planning after separation and for consideration of a range of remedies and interventions from courts and court-related services.

Growing research indicates that litigation filed for the sole purpose of harassing a victim is not uncommon in civil legal matters involving domestic violence; and that it creates challenges for judges to determine whether a matter is legitimate and if not, what appropriate sanctions may be. Such was the case in Davey v. Dolan, a federal district court case in New York that imposed sanctions for vexatious litigation.

In that case, the former husband, an attorney, sued the former wife (who, along with her children, had been granted an order of protection from domestic violence) and others, seeking several million dollars in damages from alleged wrongs arising from events surrounding his divorce. He also sued his son, two of the wife’s family members, the wife’s legal counsel and their respective law firms, the judge who presided over the divorce, and the State of New York, all for issues related to the divorce itself.

Davey first filed claims in state court and, when he was not successful there, filed his claims again in federal court. Each of the courts involved issued admonishments to Davey, and the United States District Court in 2006 held that he had failed to state any cognizable claim against any of the defendants. The court also held that Davey had litigated or could have litigated all of his claims in his prior suits. Therefore, Davey was sanctioned for what the court stated were frivolous actions, and ordered not to file any future suits relating to the divorce. The court held that all claims were completely without merit and that Davey should have known his suits would not be successful.

Davey filed a motion for reconsideration, but the court again in 2007 found no claims upon which relief could reasonably be granted. It reaffirmed a previous finding that “given the utter lack of merit of [his] claims, his vexatious litigation history, and the fact that he has continually and continues to file repetitive suits,” an injunction against pursuing additional, related litigation was proper.

The court went on to note that Davey knew, or should have known, that he had very little likelihood of succeeding on the merits of his claims for reconsideration, and therefore sanctions were proper in this case. In fact, the court stated that the sanctions (attorney’s fees and expenses) were “quite reasonable, given the utter lack of merit of [Davey’s] claims and his evident intent to harass [his ex-wife and her sister].”

Sara Buel, clinical professor of law at the University of Texas School of Law, reports that legal clinics across the country have described an increase in similar cases. Said Buel, “this is a daunting problem for many of us. I’m delighted... the former husband, an attorney, sued the former wife... he also sued his son, two of the wife’s family members, the wife’s legal counsel and their respective law firms, the judge who presided over the divorce, and the State of New York, all for issues related to the divorce itself.
to see the [Davey] court take a stand against [vexatious litigation].”

The sheer volume of lawsuits that he filed made clear Davey’s intent to harass. However, intent is likely to be murkier in the bulk of cases. To discourage frivolous claims, courts can analyze situations where an abuser appears to be using the legal system to further the abuse and can impose appropriate sanctions. A few ideas for bolstering the safety of domestic violence victims and avoiding waste of judicial resources include:

- Not letting first or subsequent violations of any order go by without consequences.
- Ordering the abuser to pay all reasonable costs, expenses, and attorney’s fees incurred by the defendants in responding to the violation of any order or the filing of frivolous lawsuits, including lost wages of the victim.
- Even if not required to do so in your jurisdiction, making findings in your order that will be helpful to you and the parties should additional actions follow, such as requiring prior authorization from the court before filing further litigation or requiring the abuser to attach the court’s opinion and order of injunction to all subsequent filings.

Endnotes:
5. Among them, that Mary Davey telephoned the police to report an incident of domestic violence for the sole purpose of gaining a tactical advantage in the divorce.
6. 453 F.Supp.2d at 758.
7. 496 F.Supp.2d 387, 390

The U.S. Department of Justice, Office on Violence Against Women (OVW) recently introduced the Guiding Principles for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Supervised Visitation Program). The Guiding Principles are a set of principles, standards, and practices to guide best practice in the provision of supervised visitation and exchange in cases of domestic violence, sexual assault, child abuse, stalking, and dating violence, and that reflect the statutory requirements and objectives of the grant program.

The Guiding Principles were initiated when OVW, in partnership with Supervised Visitation Program technical assistance providers, convened a National Steering Committee (Committee) comprised of a diverse spectrum of national experts representing various disciplines of practice. The Committee included members from the judiciary and legal community, child welfare and domestic violence services, supervised visitation and exchange services, batterer intervention services, culturally-specific organizations, mental health professionals, federal agencies, and the academic community. Over the course of four years, six meetings were convened to further the development of the Guiding Principles, incorporate new and emerging trends around best practice, and gain insight about Supervised Visitation Program grantees.

OVW, the Committee, and technical assistance providers were acutely aware of the need to incorporate the voices of Supervised Visitation Program center service providers into the document. As a result, opportunities to learn from Supervised Visitation Program grantees were built into the development process. These opportunities included an all-grantee meeting during which grantees provided insight, professional perspective, and guidance to the Committee, and a grantee panel to review and

Continued on page 14
DOMESTIC VIOLENCE SAFETY PLAN

Safety During an Incident

• Try to be in a room with an exit—a window or a door leading outside. Avoid the kitchen, bathroom, or places near weapons.

• Try to get to a room that has a phone, or have a cell phone handy if possible.

• Develop a code word with your children, family, or friends so they can call 911 or someone safe for you.

• Teach your children how to use the phone and whom to call for help.

• Keep your purse and car keys in the same place so they can be found quickly.

• Tell trusted neighbors to watch for signs of violence so they can call the police.

• Use your own instincts and judgment. The main concern is to protect yourself until you are out of danger.

Safety When Preparing to Leave

• Plan where you will go if you leave your house and how you will get there. Consider trusted family, friends or the domestic violence program in your community.

• Open a savings account in a new bank in your name only.

• Set aside (with friends or at home) an extra set of keys, money, extra clothing, important numbers and paperwork so you can leave quickly.

• Consider getting a pre-paid, private cell phone that your abuser does not know about.

Safety With a Restraining Order

• Consider whether you should obtain a restraining order. Your local domestic violence program can help you with the process. A restraining order can:
  - Order the abuser to stay away from you or your children.
  - Order the abuser to leave your home.
  - Give you temporary custody of your children and order your abuser to pay you temporary child support.
  - Order the police to come to your home while the abuser picks up personal belongings.
  - Order the abuser not to call you at work.
  - Order the abuser to give guns to the police.
**Safety in Your Home After Separating**

- Change the locks on all doors. Install deadbolts and peepholes.
- Secure all windows and purchase an alarm system if possible.
- Install motion sensor lighting outside the house.
- Inform neighbors that your partner no longer lives with you and to call the police if he/she is seen at your home.

**Safety Outside Your Home**

- Keep a charged cell phone with you at all times. If you do not have a cell phone, your local domestic violence program can provide you with a cell phone which calls 911 only.
- If you have a restraining order, keep a copy with you at all times. Inform your workplace, family, trusted neighbors and friends about the restraining order.
- Inform your children’s school and daycare provider if you have a restraining order and whom you allow to pick up the children.
- Use a variety of routes to go to and from home. Consider changing the stores and bank you frequent.
- Park your car in well-lit, open areas.
- Seek support at your workplace if you are afraid your abuser may try to contact you there. Let your supervisor and co-workers know what the abuser looks like and ask for someone to escort you to and from the building.

**Your Safety and Emotional Health**

- If you are planning to return to an abusive partner, talk with someone you trust about safety concerns.
- If you have to talk with your partner, find the safest way to do so—through a third party, by mail, or with a third party there.
- Keep a journal. This journal can be used to record restraining order violations or incidents of abuse. Keep the journal away from your partner.
- Attend a domestic violence support group or seek counseling.
PREPARING FOR COURT PROCEEDINGS WITH SURVIVORS OF DOMESTIC VIOLENCE

Tips for Civil Lawyers and Legal Advocates

Legal proceedings are often stressful for participants, whether or not they are survivors of trauma. Many survivors of domestic violence find the proceedings challenging in ways specific to the trauma they have experienced—ways that others may not be able to anticipate. Your ability to recognize and adjust to the challenges survivors experience will affect their ability to participate in and contribute to successful outcomes in their cases.

Interpersonal violence is usually traumatic to the survivor, especially when the perpetrator is someone who was loved and trusted. Although the experience of violence is subjective and varies from individual to individual, we know that the greater and more prolonged the trauma, the more likely a survivor is to experience some after-effects. Cases of domestic violence involve an ongoing pattern of coercion, intimidation, and emotional abuse, reinforced by the use and threat of physical or sexual violence. Thus, survivors will most likely have experienced more than one traumatic event.

Many lawyers and legal advocates find legal proceedings challenged or interrupted when a survivor is reminded of a traumatic experience. Reminders of previous trauma can be evoked by seeing people, by places or activities, or by experiencing the feelings and sensations associated with past traumatic events. These reminders can cause feelings of fear or distress or put people “on alert.” They can also “restart” posttraumatic stress reactions or behavior even years after a traumatic event has occurred.

These reminders can cause a literal re-experiencing of the event itself as well as the feelings and sensory associations with the trauma. The feelings associated with trauma may include panic, anger, disorientation, physical pain, grief, or numbing and shutting down. The sensory associations may be smells, sounds, or physical feelings. Moreover, in order to manage the painful feelings “triggered” by the reminder, survivors of trauma often cope in ways that are instinctive to them but confusing to other people: by dissociating, minimizing, or trying to control unrelated aspects of their environment.

Specific to the court environment, traumatic reminders come in many forms. This may be the first time the survivor has seen the person who abused them in a long time, and they may be triggered by being in the same room as their abuser, by a

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particular facial expression, a seemingly benign comment, the color of their abuser’s clothes, or the way their abuser smells.† Encountering such reminders may cause a survivor to feel uneasy, afraid, or terrified. At that moment, the survivor may re-experience what they felt when they were initially traumatized, as if it is happening at that time. Also keep in mind that the abuser may be intentionally doing things or using the court process itself (e.g., filing motions unnecessarily for the purpose of creating opportunities for contact) in order to try and make the survivor feel uneasy, afraid, or terrified.

It is also helpful to remember that, generally speaking, the intent of perpetrators of domestic violence is to control what the survivor says, thinks, feels, and does. Even though confronting their abuser publicly may in the long run be empowering to a survivor, the contentious nature of the legal process requires them to participate in a very public challenge of their partner and often to tell others what has happened—these actions being in stark contrast to the usual dynamics of their relationship. This public confrontation may be intimidating to the survivor, particularly when standing up for themselves in the past led to retaliation. It may also trigger memories of previously attempted challenges that ended traumatically.

**Acting Proactively to Prepare for Triggers**

A good course of practice in your work with survivors of domestic violence is to anticipate some of the ways trauma can manifest itself. Start by creating a partnership, proactively providing information about trauma and how it can come up in court, and asking survivors if they would like to strategize with you around ways that the legal process might be triggering or retraumatizing. In general, work with survivors of domestic violence in ways that help them to identify and prepare for trauma triggers in every step of their legal case.

Engaging in even minimal planning steps will help all survivors of domestic violence. Advance planning helps to minimize surprises and unpleasant experiences during proceedings. However, while some survivors are very self-aware and open about their fears and potential triggers, others will not be able to share their fears ahead of time.

Here are some things to keep in mind as you prepare to minimize the

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‡ We use the pronouns they/them to be inclusive of the experiences of all survivors, across gender identities.
chances that a survivor will be triggered during the court proceedings:

- For some people who have experienced trauma, knowing what to expect with a new experience can help reduce anxiety. Discussing this with a survivor can also create emotional safety, which over time may help to build their trust in you. Consider incorporating a what-to-expect discussion into every survivor’s routine preparation for court, whether or not you know them to experience any after-effects of trauma. Think through and discuss with the survivor the logistical details of the court proceeding, including where both parties will wait before court opens, where they will take breaks, and the location of restrooms. There is a balance here of giving them enough information to help them know what to expect and giving them too much information, which could potentially overwhelm them. Let them guide you. Check in as you discuss each stage of the process and ask whether they have concerns. If so, explore strategies that you might employ to mitigate their concerns. In some cases, you might find it helpful to meet at the court where the case will be held early (before the hearing begins) or even on an earlier date to discuss the steps in the process.

- Ask the survivor if they would like to enlist one or two people to help support them through the court proceeding. If the survivor so desires, coach their supportive people to be prepared to meet them at the parking ramp or bus stop, accompany them to the restroom, and help them manage unexpected events. Ask if they are working with an advocate, and if not, ask whether they would like to see if an advocate is available to accompany them.

- You can use your body to block the view to the opposing party as much as possible during the proceeding. The survivor may want to plan to look away when you are not able to physically block the abuser and to focus on you or a supportive person or advocate.

- If you have already noticed trauma responses or the survivor has expressed fear, discuss and develop a working strategy to manage any reaction they may experience during the proceedings. The survivor is the expert on their own circumstances, so partnership is critical. If they see a clinician, encourage them to discuss with their therapist strategies to get through the court proceeding and how you might be able to help.

**Tips for Minimizing the Risks of Emotional Triggers...**

1. Go over “what to expect.”
2. Team up with a domestic violence advocate.
3. Enlist support people that the survivor trusts.
4. Make a plan for how to deal with the abuser’s presence in the courtroom.
5. Make a plan for what to do if the survivor is triggered during the court proceedings.
Managing Triggers that Occur During Proceedings

When a person is in the midst of being triggered, they may have a range of responses that affect their ability, at that moment, to participate in the legal process. For example, they may start crying uncontrollably, become angry, panic to the extent that conversation or cogent testimony is impossible, or dissociate to the point that they disengage from the testimony. Helping them to manage this emotional crisis may lessen the panic they feel, build their trust in you, and make subsequent proceedings go more smoothly.

- Ask the court for a recess when the survivor feels they need one or when you notice them experiencing a trauma response.

- If a survivor’s answers to questions are slow and incomplete, this may be a sign of dissociation usually brought on by intense fear or reliving of a particular attack or experience. Once in recess, ask them in a calm voice to take some deep breaths. You may want to ask them if they know where they are and what day it is. This is useful for helping a survivor to ground themselves in the present and bring themselves out of the past. You may need to remind them where they are and that their abuser can’t hurt them right now. You might say, for example, “Their attorney asked you a question intended to scare you. You did get scared, you went away, and nothing bad happened.”

- If you have taken a break because the survivor became upset or agitated, validate their feelings. Acknowledge that what’s happening is very upsetting and that they are doing a great job.

- Follow your plan. If you didn’t make a plan or if it’s not working, ask the survivor what would help them to feel better and to continue. Sometimes just silently being with someone for a few minutes can help them to calm themselves and be prepared enough to continue.

Going to court can be challenging for anyone and can be even more so when the court process itself is retraumatizing. Our responses as lawyers and legal advocates helping survivors attend to and prepare for trauma triggers can make a tremendous difference to a survivor’s experience in court, as well as their ability to follow through with their legal case, and ultimately to the success of their case.

References


Understanding Traumatic Triggers, The National Center on Domestic Violence, Trauma & Mental Health, December 2011.
Safety Considerations in the Courthouse
Adapted from North Carolina’s Domestic Violence Best Practices Guide for District Court Judges (updated 12/2010)

Strong security measures not only enhance safety and deter violence but also make the court system more accessible to injured and fearful parties. Providing a degree of structure and predictability to persons who have experienced trauma can be an effective stabilizer and increase the likelihood that they will use the court system for protection and relief.

A. Courtroom Safety
The possibility of intimidation, disruption or violence always exists when parties in a domestic violence case are together in the same courthouse or courtroom. Violence and tension increase in the time span surrounding court dates. A “NCSC [National Center for State Courts] study confirms that abused women are especially vulnerable to physical violence after they initiate court proceedings...”¹ The following practices improve safety in the courtroom.

I. Seating Arrangements are helpful in reducing opportunities for intimidation within the courtroom. Options that judges might impose:
- Victims/plaintiffs (in first action if multiple actions filed) on one side of the courtroom and defendants on the other. Any family members or friends present should sit on the side of the person they are in court to support.
- Defendants sit in the first few rows, and victims/plaintiffs sit behind the defendants. By sitting in front of the victim/plaintiff, a defendant has less opportunity to stare, whisper or intimidate. Sitting in the rows behind the defendant also allows the victim/plaintiff to easily access the courtroom exit. Rows may be designated with signs or instructions from court officers.
- Designate several rows on one side of the courtroom for victims and witnesses. This makes it easy for the prosecutor to locate witnesses/victims.

II. Staggered Departures increase the victim/plaintiff’s safety once s/he leaves the courthouse.
- The judge can require the defendant to remain in the courtroom (preferably seated in the front of the courtroom for the judge or court officers to monitor) for 15 minutes after the victim leaves. If the defendant has family members or friends present, they should remain in the courtroom as well. Be sure to allow the victim to leave first — a defendant who leaves first might use this time as an opportunity to accost the victim in the parking lot, slash victim’s tires, etc.

III. Court Officers should be used to increase both the parties’ and the public’s safety. The court should work with court officers and their supervising agency regarding security in both the courthouse and the courtroom and consider the following options.
- Assign two court officers to the courtroom so there can be one officer in the courtroom at all times. During court recess, the courtroom should remain open with one officer stationed in the courtroom and one monitoring the hallways. Parties should not be forced to encounter each other outside the supervision of an officer. While court is in session, the second officer should periodically check the hallway as cases resolve and parties leave court. If the courtroom must be closed, court officers should make certain it is cleared before locking the door and should station an officer in the hallway outside the courtroom.
- Regularly assign the same court officers to the courtrooms that hear domestic violence cases. These officers should be specifically trained in domestic violence safety and should participate in the local domestic violence advisory committee. Consistent assignment allows officers to identify potentially volatile situations. Also, because the same parties often return to court, a regularly assigned officer may know of any previous hostility or violence.

- Assign an officer to stand between counsel tables at all times when pro se parties are presenting their case before the judge. This creates a physical and symbolic barrier between the parties that can enhance safety and reduce intimidation.
- Have an officer available to escort a victim/plaintiff to his/her car. In addition to providing an escort upon request, the judge should affirmatively offer an escort when there are safety concerns based on the facts of the case or behavior exhibited in the courtroom.
- Encourage and cultivate relationships between court officers and community partners. For example, officers should become familiar with domestic violence advocates who regularly attend court. Advocates are often a good source of information and can advise court officers of any potentially volatile situations. If advocates meet with victims/plaintiffs in the courthouse (outside of the courtroom), officers should know the location of these meetings in order to plan for their safety and quickly respond to volatile situations. Depending on the seriousness of the situation, advocates or other community partners might also be in need of an escort.
- Court officers should be made aware of hostilities towards service providers, such as domestic violence advocates and abuser treatment program staff, lawyers, judges and other court staff involved in domestic violence proceedings.

IV. Courtroom Etiquette is important as it sets the tone for a safe courtroom. Standard rules of courtroom etiquette should be announced before court by court officers and reinforced by the judge as appropriate. Sample rules include:
- No cell phones, pagers, or other mobile devices.
- No communication between the defendant and victim/plaintiff when a no contact order or domestic violence protective order is in place (this includes any contact through third parties or non-verbal communication).
- Defendants must sit apart from and stay away from the victim/plaintiff at all times when there is a stay away order in place.

V. Courtroom Announcements about courtroom etiquette should be made by court officers before the judge enters the courtroom. Once the judge begins the court session, s/he should make announcements regarding how court will proceed and reiterate any courtroom etiquette s/he deems important. Suggestions for judges to announce:
- Clarify that criminal charges against the defendant are prosecuted by the State. Victims and witnesses are not parties to the case and therefore do not have the authority to "drop" criminal charges. Making this announcement in front of both victims and defendants may reduce potential pressure on victims to drop criminal charges.

VI. Local Domestic Violence Advisory Committee. Members of the local domestic violence advisory committee have unique perspectives on court security and are a good resource for designing and reinforcing safety policies and procedures. Community concerns:
- How visible is security staff or equipment to litigants? Observable security measures reassure victims and put defendants on notice that safety is a priority.
- Is the courthouse security staff trained to recognize and intervene in situations involving intimate partner violence?
- Do court employees know the court's protocol when a dangerous situation develops?
- Is security staff available to provide an escort within the building and/or to vehicles?
- Is signage in the courthouse clear so that the public can easily find the clerk's office, courtrooms and exit(s) out of the building?
- Is a separate waiting area available for plaintiffs and victims? If not, are they likely to be in close proximity to defendants in the hallways? If so, are court officers or other court staff monitoring the hallway during recesses, before and after court?
- Is the space used by domestic violence advocates for meeting with victims highly visible and easily accessible to security staff and victims?

Adapted by VOA Home Free from North Carolina's Domestic Violence Best Practices Guide for District Court Judges
RESOURCES/BIBLIOGRAPHY


ABA Commission on Domestic and Sexual Violence website: http://www.americanbar.org/groups/domestic_violence.html

Free Resources for attorneys (whether ABA members or not) include Statutory Summary Charts for all 50 states, SCOTUS cases, and Technical assistance. Publications specific to DV are available at:


See particularly free downloadable Comprehensive Issue Spotting Booklet at http://www.americanbar.org/groups/domestic_violence/publications.html

And free downloadable Standards of Practice For Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases at:


Excellent resource for Family Law Attorneys for preparing cases for trial is The Civil Law Manual: Protection Orders and Family Law Cases, available for purchase at:


Marion County Courts, Suggestions for Creating Parenting Plans that Reduce Conflict: www.courts.oregon.gov/Marion/docs/Services/HighConflictSuggestions.pdf


Oregon Coalition Against Domestic and Sexual Violence: http://www.ocadsv.com/

National Coalition Against Domestic Violence: http://www.ncadv.org/


Victims Rights Law Center: http://www.victimrights.org/
National Resource Center on Domestic Violence: www.nrcdv.org

Federal Office on Violence Against Women: www.ovw.usdoj.gov

The Northwest Network (LGBT survivors): www.nwnetwork.org

National Center on DV, Trauma, and Mental Health: www.nationalcenterdvtraumamh.org

National Center for State Courts: Court Security Resource Guide: NCSC.org