Putting Domestic Violence Laws to Work

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How do we end intimate partner violence?

1. Replicate what works
2. Keep asking, "How can we improve?"
3. Engage the community

"It's not that I'm so smart; It's just that I stay with problems longer."

Albert Einstein

I. Domestic Violence Council

A. Monthly mtgs + food
B. 3 Prong Approach to Problem-Solving

1. Honestly I.D. Problems
2. I.D. Who Responsible for Change
3. Create Action Plan

Nat'l Council Juvenile & Family Ct Judges Info Packet: www.ncjfcj.org or #1-800-52-PEACE

C. Active Sub-Committees

1. DV Court: helped establish our DV Court
2. Batterer's Intervention Program: monitor & established standards
3. Family Justice Center: starting one
4. Legislation Committee
5. Police Response: Address increase female arrests
6. Youth Issues: overlap w Juv Ct & CPS

e.g. San Diego's Family Justice Center

- "Victims have easy access to advocates, police officers, prosecutors, probation officers, civil attorneys, counselors, doctors and others from one location, approximately 120 professionals from 24 agencies."
- www.familyjusticecenter.org

BIPS: Longer Batterer's Intervention Programs more effective: Montana now mandates min of 40 hrs. to be qualified BIP program.

CA. requires consecutive, weekly BIP for 18 months.

II. What works?
A. Enforcing Protective Orders

1. Ensure Timely Service
2. Prevent Witness Tampering

NEW: Az. Stat. Anon. § 13-3601
Protective Orders

A. Domestic violence means . . .

6. THE RELATIONSHIP BETWEEN THE VICTIM AND THE DEFENDANT IS CURRENTLY OR WAS PREVIOUSLY A ROMANTIC OR SEXUAL RELATIONSHIP.

Factors to consider § 13-3601 A (6):

(a) THE TYPE OF RELATIONSHIP.

(b) THE LENGTH OF THE RELATIONSHIP.

(c) THE FREQUENCY OF THE INTERACTION BETWEEN THE VICTIM AND THE DEFENDANT.

(d) IF THE RELATIONSHIP HAS TERMINATED, THE LENGTH OF TIME SINCE THE TERMINATION.

"Get 'em by the short hairs and their hearts and minds will follow."

B. Project Options, Travis County

- Any victim dropping protective order must attend 2 Classes:
  1. Criminal Justice Options
  2. Community Resources: $$ + Safety Planning
- Taught by trained volunteers
- Assumption that duress &/or lack of knowledge about options cause dropping case
- MUST discuss w victim & be clear she can return

"Family violence is one of the root causes of virtually every major social problem we face as a nation."

Janet Reno, Former AG

C. Relief Nursery, www.reliefnursery.org or www.reliefnurseryofcentraltexas.org

- *Crisis response for families in urgent need*
- *Outreach for Isolated and/or New Families*
- *Therapeutic Early Childhood Classrooms*
- *Home Visits*
- *Alcohol & Drug Recovery Support*
- *Parent Education & Support*
- *Mental Health and Special Education*
- *Transportation and Basic Needs Assistance*

Relief Nursery outcomes:

- ***Child Abuse Reports:*** After 1 year with program, **95%** of families receive no further reports.
- ***Foster Care***: 99% of the children attending the Relief Nursery require no foster care and are able to remain safely at home.
- ***Healthy Development***: **90%** of the children attending the Relief Nursery are developing at age-appropriate levels and 10% receive special education services on-site.
- ***Clean and sober life style***: **85%** of parents with a history of substance abuse who participate in the RN alcohol & drug recovery support program are still clean & sober 17 months after treatment.

D. Harlem Children's Zone www.hcz.org

- Founder Geoffrey Canada: " We will be with your child from the moment they enter our school till the moment they graduate from college."
- **Promise Academy (50 weeks, 8 am -5 pm)**
- **Baby College (from pregnancy – toddler)**
- **Harlem Gems (prepare toddlers)**
- **Pay youth $150 per month to do homework (if not in PA)**
- **Raised $100 million with business plan (on website)**
- **Extraordinary success rate!**

E. Creative Conditions of Probation:

- No employment in law enforcement (Authority: *U.S. v. Paul*, 274 F.3d 155 (5th Cir. 2001).
- Avoid race tracks & not place bets (*U.S. v. Bishop*, 537 F.2d 1184 (4th Cir. 1976).
- Child abusing Dad to sleep in doghouse for 30 days, as he'd done to son after beating (Houston Judge)
- Public apology to battered wife (Houston Judge Ted Poe)
- Probation sends letter to IPV victims with SAFETY PLAN + says tell us if problems

E. COMPLIANCE Hearings

- Periodic judicial review
- CURRENT with CHILD SUPPORT ORDER (Mass. Law)
- WEAPON FORFEITURE
- Say, "YOU CAN'T KEEP DOING THIS."
- If not judge review, then probation officer meetings to check compliance

F. Economic Empowerment

1. TANF Family of 3: TN $185 TX $213 GA. $280 – AZ. $347. - N.Y. $577.
2. Plan: house + car + GED/ job training + *real* job + counseling + medical care + glasses (Lion's Club) + dentist + FOOD

III. Astonishing Levels of Witness Tampering & Retaliation of Adults & Children

- Most common IPV crime, but least charged, prosecuted & sentenced.

A. Types of Witness Tampering

- Endearments
- Pleas for Forgiveness
- Bribery/ Gifts
- Threats re: custody, physical harm
- New Assaults
- Court Manipulation
- Vexatious Over-Litiation
- 3rd Parties Collusion

"What sort of flowers say, 'I promise to obey the restraining order? **(= Witness Tampering!)**

B. What saves lives?

TAKING OFFENDER'S GUNS

Domestic violence creates a compelling state interest justifying taking batterer's guns.

Emerson v. U.S. **,** 270 F.3d 203 C.A.5 (Tex. 2001)

Arizona Gun Seizure Law

- When officer sees firearm on premises, may temporarily seize it if in plain view or found pursuant to consensual search
- And if the officer believes firearm would expose victim or another household member to risk of serious injury or death.

- ARIZ. REV. STAT. ANN. Sec. 13-3601(C)

IN: allows ct order def to surrender all guns & ammo as part of protective order.

s. 34-26-5 specifies defendant surrender them to law enforcement officer or agency.

IV. Witness Tampering of Children

A. Many batterers threaten, harm & coerce children as witness tampering with devastating impact.

- Batterers' willingness to use their children as bargaining chips is termed "custody blackmail" to capture the coercion.

e.g. CO: police must document if children saw or heard DV offense.

Gives court essential info to better provide services to kids & alert parents to impact on kids.

B. Kid's Safety Planning

- Give every child a SAFETY PLAN
- Go over PLAN often
- Teach them CALL 911 when danger
- Plan safe hiding place
- Plan which neighbor turn to

Teach Kids S.A.F.E.

- S = STAY OUT OF THE FIGHT
- A = ASK FOR HELP
- F = FIND an ADULT WHO WILL LISTEN

E = EVERYONE KNOWS IT'S NOT YOUR FAULT

TRAINED DOGS for CHILD ABUSE VICTIMS

- Valerie Wynn, Mary Parrish Ctr, Nashville
  # 615-256-5959
- Betty Ann Whitten, Tyler (TX) District Attorney's Office
  #903-535-0520

V. Need LONG-TERM RESPONSE to Witness Tampering

= most common domestic violence offense but least charged

A. AZ. Influencing a witness.

B. AZ. Tampering with a witness

AZ § 13-2802. Influencing a witness if

A. . . . such person threatens a witness or offers, confers or agrees to confer any benefit upon a witness in any official proceeding or a person he believes may be called as a witness with intent to:

1. Influence the testimony of that person; or
2. Induce that person to avoid legal process summoning him to testify; or
3. Induce that person to absent himself from any official proceeding to which he has been legally summoned.

B. Influencing a witness is a class 5 felony

AZ § 13-2804. Tampering with a witness if

A. . . . such person knowingly induces a witness in any official proceeding or a person he believes may be called as a witness to:

1. Unlawfully withhold any testimony; or
2. Testify falsely; or
3. Absent himself from any official proceeding to which he has been legally summoned.

B. Tampering with a witness is a class 6 felony.

VI. ***Doctrine of Forfeiture by Wrongdoing***

- "This rule is the product of sound public policy & is meant to prevent a defendant from taking advantage of his own wrong & to protect the integrity of the adversary process by deterring litigants from acting on strong incentives to prevent the testimony of an adverse witness."
- *State v. Santiago* (2003 N.Y. Misc. LEXIS 829).

New: Az. Rule Evid 804(b)(6)

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(6) Forfeiture by Wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

- Will take effect Jan. 1, 2010.

A. Forfeiture by Wrongdoing

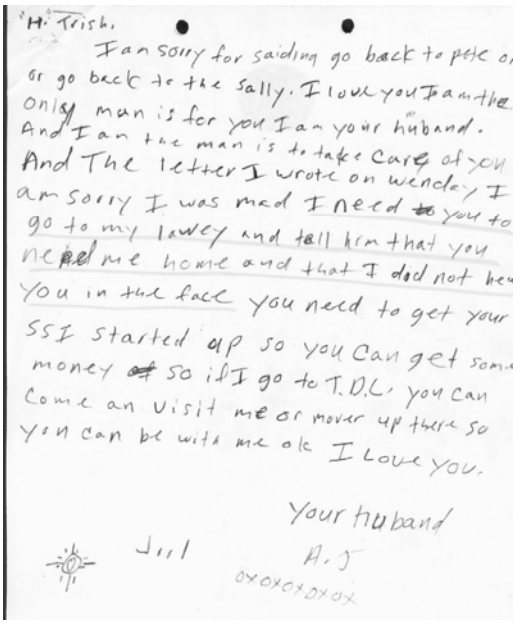
- "One who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation."
- "Undermines the judicial process"
- "Procuring or coercing silence"

Davis v. WA.

- Proof by a preponderance,
- Hearing outside presence of jury,
- Use hearsay

B. Evidence to prove Forfeiture

- Jail mail - tell victims to save all!
- Jail calls – booking calls, near court settings
- Jail visitor logs - Did victim visit right after served with subpoena?
- Past contact with same victim
- Friends and relatives of victim



"H: Trish,

I am sorry for saiding go back to pete o,
or go back to the sally. I love you I am the
only man is for you I am your huband.
And I am the man is to take care of you
And The letter I wrote on wenday I
am sorry I was mad I need ~~to~~ you to
go to my lawey and tell him that you
need me home and that I did not hea
you in the face you need to get your
SSI started up so you can get some
money ~~of~~ so if I go to T.D.C. you can
come an visit me or mover up there so
you can be with me ok I Love you.

Your huband
A. J
oxoxoxoxox

IX. How Apply Standard of "**INTENT TO SILENCE" VICTIMS**:

1. Document **FULL HISTORY of ABUSE**, including isolation & threats
2. Document all conduct indicative of **WITNESS TAMPERING → ALL coercion, threats, promises, harm**
3. Identify **potential WITNESSES**
4. Use an **EXPERT** in difficult cases

C. My Proposal re: The Intent to Silence Calculus

1. Case Factors As Dispositive
   a. Pending Criminal Proceeding

- Preventive or retaliatory animus of Δ
- In *Giles*, Justice Scalia said "... evidence of ongoing criminal proceedings at which the victim would have been expected to testify ... is highly relevant to this inquiry."

b. Murder Infers Intent

- In *Giles*, Justice Scalia states that when an abusive relationship ends in murder,
- "... the evidence may support a finding that the crime expressed the intent to isolate the victim and to stop her from reporting abuse to the authorities or cooperating with a criminal prosecution—rendering her prior statements admissible under the forfeiture doctrine."
- at 2693.

c. Recantation

- Several courts have found that when a victim recants her earlier story of abuse, prior domestic violence between the parties is "relevant to show the trier of fact the context of the relationship between the victim and defendant, where . . . that relationship is offered as a possible explanation for the victim's recantation."
- Often due to duress.

d. Totality of Circumstances

- Cumulative Evidence
- Circumstantial Evidence
- Need examine full history of abuse

2. Mixed Purpose as Intent

- Still forfeiture if Δ had other motives
- "[D]efendant's intent need not have been *solely* to prevent the declarant from testifying." *State v. Ivy* (TN) & *Gonzalez v. State* (TX)

3. Prior Abuse as Intent

- *Giles* said, "*Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry*, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify."
- at 2693

In his *Giles* dissent, Justice Breyer emphasizes that

- permitting presumptive intent with a history of abuse does not constrain a defendant's evidentiary protections, but "simply lowers a constitutional barrier to admission of earlier testimonial statements; it does not require their admission."
- at 2700 (Stevens, J. and Kennedy, J. join dissenting)

Prior Bad Acts okay . . .

- Evidence of prior acts with the complaining witness can directly bolster the complaining witness's testimony by providing significant corroboration; when used for such a purpose, this evidence is admissible and not considered propensity evidence.
- *State v. Dietrich*, 204 P.3d 748 (2009).

Proving Intent

- "Many states allow prior misconduct evidence in domestic violence cases as *probative of intent*, to rebut allegations by the defendant that the injuries suffered by the victim were the result of a mistake."
- *Robertson v. State*, 780 So.2d 94,103 (2000). District Court of Appeal of Florida, Third District.

Proving Intent, Malice, Premeditation & Defendant's State of Mind

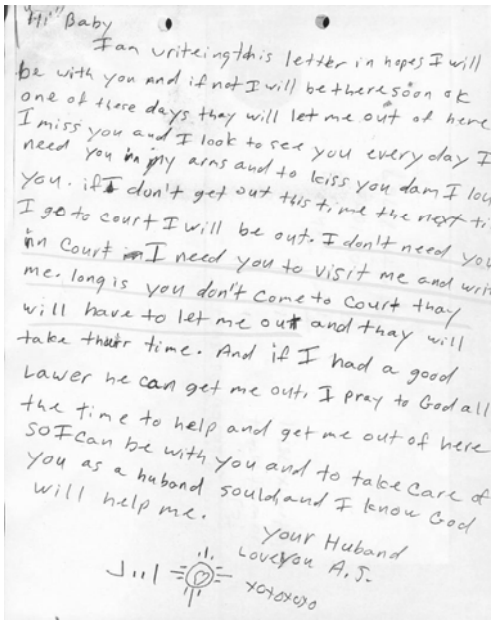
- Evidence of 2 prior *unconvicted* charges for assault were relevant and admissible to establish *motive* for murder - evidence of *old threats relevant to show malice, premeditation and defendant's state of mind*.
- *State v. Smith*, 868 S.W.2d 561 (Tenn.1994) (emphasis added).

prior bad acts:

- *People v. Sims*, 110 A.D.2d 214, 494 N.Y.S.2d 114 (1985) evidence of prior abuse admissible to prove absence of mistake;
- *Wetta v. State*, 217 Ga.App. 128, 456 S.E.2d 696 (1995) testimony by defendant's prior girlfriend that he abused her as well was admissible to show defendant's state of mind.

…

- *People v. Hawker*, 626 N.Y.S.2d 524 (1995) allowing children's testimony in murder case who witnessed the defendants' prior assaults on their mother to show motive, intent, and that murder was continuation of pattern rather than merely product of self defense;
- *State v. Grubb*, 111 Ohio,N.E.2d 1353 (1996) former wife's testimony admissible to prove intent and lack of accident, where defendant was charged with domestic violence and claimed injuries were accidental.



"Hi" Baby

I am writeing this letter in hopes I will be with you and if not I will be there soon ok one of these days they will let me out of here I miss you and I look to see you every day I need you in my arms and to kiss you dam I lou you. if I don't get out this time the next ti I go to court I will be out. I don't need you in Court I need you to visit me and wri me. long is you don't come to court thay will have to let me out and thay will take their time. And if I had a good Lawer he can get me out, I pray to God all the time to help and get me out of here so I can be with you and to take care of you as a huband sould, and I know God will help me.

Your Huband
Love you A.J.

Jill

xoxoxoxo

OTHER ADMISSIBLE HEARSAY LIKELY **NON-TESTIMONIAL**

- Present Sense Impression (e.g., "My head hurts where batterer hit me!")
- Statements for Purposes of Medical Diagnosis (SANE) ("Patient sustained contusions under left eye . . .")
- Medical Records →have victim sign medical release at scene; should be space on police incident report form.

4. Necessity of Context

- Most often, the abuser's on-going coercive behavior is the direct cause of the victim not appearing for trial.
- State should be permitted to use explicit, implicit, and circumstantial evidence to prove that the batterer caused a witness's unavailability.
- Similar to 'continuing tort' doctrine

Enlisting 3rd Party to Intimidate:

- Tape-recorded telephone conversations between defendant & murder suspect in which defendant agreed to attend suspect's trial in order to **intimidate witness** from testifying against suspect
- were sufficient to support conviction for conspiracy to intimidate witness.
- *State v. Martinez*, 143 N.M. 428, 176 P.3d 1160 (2007).

VII. Collect Evidence of ALL Separation Violence & Witness Tampering

- CUSTODY BLACKMAIL
- CHILD SUPPORT THREATS
- PROTRACTED LITIGATION
- STALKING, THREATS, ASSAULTS
- IMMIGRATION THREATS

A. Strategize response options *with* victim because unethical to ignore witness tampering.

- Letter to defendant and his lawyer outlining why this conduct constitutes witness tampering, obstruction &/or retaliation + attach copy of law
- Report crime to police & DA
- If very dangerous, discuss client moving or going underground

VIII. Teach SAFETY PLANNING to Stay Alive Before, During & After WT

- Unethical to see IPV victims and not engage in & teach individualized safety planning
- Especially critical for undocumented, convicted felon, and victims unable/ unwilling call police.
- Ask victim "What are you afraid of & how can we help?"

A. Download & DISTRIBUTE free Adult & Youth Safety Plans + Bunny Bag Info:

www.abanet.org/domviol

= not copyrighted! Massively distribute in your community!

B. Ensure Safety Planning covers:

- FAITH – what resources & support?
- RACE/ CULTURE – what issues are important for the victim and her kids?
- LANGUAGE – what are her skills? Need translator?
- IMMIGRATION – risk of deportation?
- LITERACY – need help learning to read?
- Other, e.g. depression, addiction, disability
- Give each V a calendar to keep track.

3. Six Things to Say to a Victim

- ☑ I am afraid for your safety.
- I am afraid for your children's safety.
- It will only get worse.
- We are here for you when you are ready.
- You don't deserve to be abused.
- How can I help?

C. Cultural Competence

1. Staff reflect rich diversity
2. Ensure on-going training
3. Address disproportionate arrest, prosecution & incarceration of adults & youth of color
4. Ensure community ed materials reflect rich diversity

5. Disproportionate Minority Contact (DMC)

- Milwaukee JUDICIAL OVERSIGHT INITIATIVE I found
- whites often receive citation & fines, Blacks arrested for same offenses.
- *Blacks = 24% population, but = 66% of domestic violence cases in DA office

  *Whites = 62% pop, but = 32% of dv cases in DA office.

6. Children & Youth, too . . .

- Disproportionate # poor and kids of color removed from homes & in foster care.
- Nationwide, juveniles of color comprise just 32% of the youth population yet constitute 68% of the juveniles in secure detention facilities.

Federal Juvenile Justice & Delinquency Prevention Act

- Requires states to assess the extend of disproportionate minority contact (DMC) of youth of color at all stages of the juvenile justice system; and
- To take steps to address the over-representation.
- DMC should also be assessed for adults.

Burns Institute successfully reduces overrepresentation of youth of color in the juvenile justice system.

www.burnsinstitute.org

DMC Is Not an Intractable Problem

- Jurisdictions have shown that disproportionality can be addressed while at the same time assuring public safety.
- Portland, OR went from ADP of 70 youth of color in detention in 1993 to 11 in 2004.
- Santa Cruz, CA reduced DMC from a 30% gap in 1997 to a 6.45% gap in 2005.

D. Stalking Kit to high-risk victim with:

1. SAFETY PLAN;
2. Calendar;
3. Cell phone to access 911;
4. Disposable camera;
5. Micro-cassette recorder;
6. Steno pad with pen; and
7. Flashlight.

* In Troy, NY Radio Shack donated these & Pittsburg Bd. of Realtors donated them.

E. Safety Planning for Providers

- David Merchant has been stalking me since Sept. 2008.
- I prosecuted him for domestic violence and child abuse in 1992, and he blames me for ruining his life.
- Because he is on mental health VA disability, he has all day to harass me & others he blames for his problems.

David Merchant

e-mail to Fox News, U.T., me +

- "Jean didn't tell the members of her coven but, she said to me one time...I never want you to get angry with me. Jeannie knew how I WOULD NOT F__ING QUIT! I DON'T PACIFY EVIL, I DESTROY IT, WHEN I CAN. YOU LISTENING, SARAH BUEL?
  Sarah Bile Miss_Andrist SBUEL@LAW.UTEXAS.EDU"

F. Must educate community:
"Men Can" Campaign on Billboards
& Side Austin Buses
www.instituteforsafefamilies.org

Boston Billboard

- A picture of a little girl with 2 black eyes with the caption:

"SUZY HAS HER MOTHER'S EYES… If you need help, call…"

Resources

- American Bar Association's Commission on Domestic Violence: www.abanet.org/domviol
- Battered Women's Justice Project: 1 of Nat'l Resource Centers on legal issues: www.bwjp.org or 1-800-903-0111
- National Council of Juvenile & Family Court Judges 1-800-52-PEACE www.ncjfcj.org
- **www.mincava.umn.edu/bibs.bibkids.html** invaluable database

Thank you for being part of the solution!

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EVIDENCE BASED INVESTIGATION AND PROSECUTION – USE OF OUT OF COURT STATEMENTS IN DOMESTIC VIOLENCE CASES

CONFRONTATION CLAUSE

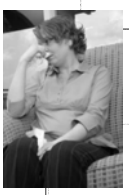
In all criminal prosecutions, the accused shall enjoy the right to … be confronted with the witnesses against him

HEARSAY

Out of court statement-Assertion

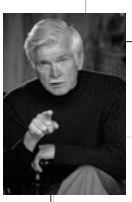
HEARSAY

Can be oral, written, or non-verbal



HEARSAY

Made by a person – "declarant"

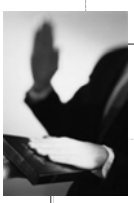


HEARSAY

Offered to prove the truth of the matter asserted

NON-HEARSAY

Prior statement by witness



NON-HEARSAY

Declarant testifies at trial or hearing

and

Is subject to cross examination concerning the statement

and

The statement is inconsistent with testimony

or

The statement is consistent with testimony after a claim of recent fabrication, improper influence or motive

or

The statement is one of identification of a person made after perceiving the person

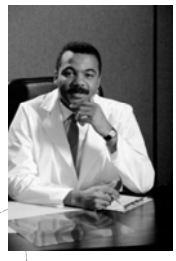
COMMON HEARSAY EXCEPTIONS – WITNESS AVAILABILITY IMMATERIAL

Present sense impression

COMMON HEARSAY EXCEPTIONS – WITNESS AVAILABILITY IMMATERIAL

Excited Utterance

COMMON HEARSAY EXCEPTIONS – WITNESS AVAILABILITY IMMATERIAL



Statements made for purpose of medical diagnosis or treatment

COMMON HEARSAY EXCEPTIONS – WITNESS AVAILABILITY IMMATERIAL

Recorded recollection

COMMON HEARSAY EXCEPTIONS – WITNESS AVAILABILITY IMMATERIAL

Public Records

&

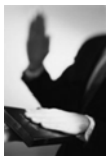
Family Records

COMMON HEARSAY EXCEPTIONS – WITNESS AVAILABILITY IMMATERIAL

Reputation concerning personal or family history

COMMON HEARSAY EXCEPTIONS – WITNESS IS UNAVAILABE

Former Testimony



COMMON HEARSAY EXCEPTIONS – WITNESS IS UNAVAILABE

Statement against interest

COMMON HEARSAY EXCEPTIONS – WITNESS IS UNAVAILABE

Statement of personal or family history

DEFINITION OF "UNAVAILABLE"

Exempted by court on grounds of privilege

DEFINITION OF "UNAVAILABLE"

Persists in refusing to testify despite court order

DEFINITION OF "UNAVAILABLE"

Testifies to lack of memory

DEFINITION OF "UNAVAILABLE"

Unable to be present due to physical /mental illness

DEFINITION OF "UNAVAILABLE"

Proponent unable to procure attendance by process

WRONG DOING AND UNVAILABILITY

A witness is not "unavailable" if the absence or lack of memory is due to the proponent's wrongdoing for the purpose of preventing the witness from attending or testifying

WRONG DOING AND UNVAILABILITY

You can't make someone unavailable and then obtain the benefit of additional hearsay exceptions

AND THEN THERE WAS CRAWFORD

Confrontation clause bars admission of "testimonial" statements by witnesses who are absent from trial notwithstanding whether a hearsay exception applies or not

AND THEN THERE WAS CRAWFORD

Unless:

Witness is unavailable and was subject to cross examination

(preliminary hearings)

WHAT ARE "TESTIMONIAL" STATEMENTS?

Statements directed toward government agents

WHAT ARE "TESTIMONIAL" STATEMENTS?

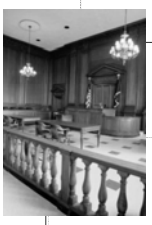
A reasonably objective person should know their statement would be available for use at trial.

"TESTIMONIAL" STATEMENTS

Preliminary hearing testimony (but is admissible if witness unavailable and subject to cross examination)

"TESTIMONIAL" STATEMENTS

Grand Jury Testimony



"TESTIMONIAL" STATEMENTS

Police interrogations (contrast with ongoing emergencies)

"TESTIMONIAL" STATEMENTS

Depositions

Prior testimony

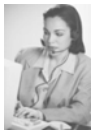
Sworn statements or affidavits

NOT "TESTIMONIAL"

Statements to non-governmental agents; relatives, neighbors, witnesses, paramedics, nurses, doctors

NOT "TESTIMONIAL"

911 calls reporting an ongoing emergency rather than reporting past events



NOT "TESTIMONIAL"

On scene statements reporting an ongoing emergency rather than reporting past events

NOT "TESTIMONIAL"

Casual, off-hand remarks (not "interrogation")

FORFEITURE BY WRONGDOING

New Rule Effective January – Rule 804(b)(6): Witness Unavailable, Hearsay exception

when

FORFEITURE BY WRONGDOING

Statement offered against a party where that party has engaged or acquiesced in wrongdoing

FORFEITURE BY WRONGDOING

The wrongdoing intended and did procure the unavailability of declarant as a witness

FORFEITURE BY WRONGDOING

Common law rule adopted by Arizona Courts before amendment to Rule 804

FORFEITURE BY WRONGDOING

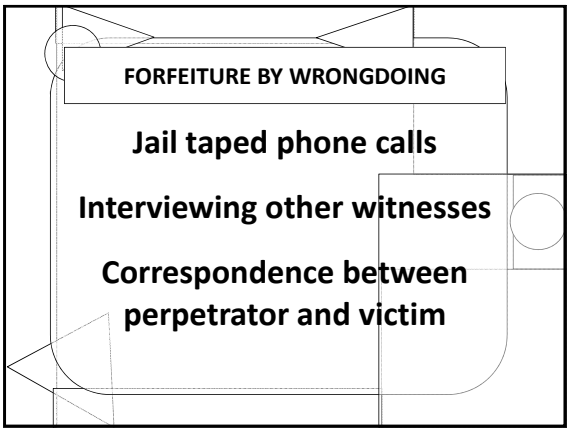
Giles v. California:

- **Defendant waives right to confrontation and hearsay objections when there is a showing defendant intended to prevent witness from testifying**

FORFEITURE BY WRONGDOING

Giles v. California:

- **Simply showing an act of wrongdoing that rendered witness unavailable is insufficient**


FORFEITURE BY WRONGDOING
Jail taped phone calls
Interviewing other witnesses
Correspondence between perpetrator and victim

Arizona Rules of Protective Order of Procedure (ARPOP)

Domestic Violence Rules

Mission: Establish a comprehensive, statewide set of rules of procedure for protective orders … enhance enforcement of protective orders and public safety

Domestic Violence Rules

The Arizona Rules of Protective Order Procedure (ARPOP) were adopted by the Supreme Court and became effective January 1, 2008.

Rule 1(C). Access to the Courts

All courts shall be available during normal working hours

Scenario

Mary has two children with her live-in boyfriend, Paul. She was assaulted last night by Paul and states he has a long history of domestic violence. She also claims he gets drunk and scares the children.

Scenario

Mary fears Paul will follow through on his threat to take the children away from her. They live in a house that is in Paul's name only. She is requesting exclusive use of the home.

Scenario

Can the Judge order Paul to stay away from his children?

Scenario

Does Paul's threat "to take the children" mean a judge can or should prohibit contact with them?

Rule 1(F). Children as Protected Parties

Children should not be included unless:

Rule 1(F). Children as Protected Parties

Physical harm has or may result to child

Rule 1(F). Children as Protected Parties

Alleged acts involved the child, including witnessing DV

Rule 4. Family Law Cases

Family Law Court has exclusive jurisdiction if "pending" action

Rule 4. Family Law Cases

B(5)(b) (New): "active custody order"

Rule 4. Family Law Cases

A(3) Protective Order still valid if issued by limited jurisdiction court while family case pending

Rule 4(A)(4)(c)

If hearing requested on case transferred to Superior Court, hearing SHALL be held within 5 court days of receipt (filing) of order if exclusive use; otherwise 10 days.

City courts
Justice courts
Superior court

Rule 4(B)(5) and (6). Child Custody and Parenting Time

5. <u>NO</u> Exceptions for contact for child custody or parenting time,

except

Rule 4(B)(5) and (6). Child Custody and Parenting Time

6. Superior Court may make exceptions to "implement a child custody or parenting time order" …any change must be by a modified protective order

Rule 4(B)(6)(a) Considerations

1) Alternatives regarding contact that are feasible to carry out the child custody order or parenting time order such as exchanges at a protected setting, public facility or other safe haven or through a third person;

Rule 4(B)(6)(a) Considerations

2) The wishes of the parties;

Rule 4(B)(6)(a) Considerations

3) Each party's history of domestic violence;

Rule 4(B)(6)(a) Considerations

4) The safety of the parties and child or children;

Rule 4(B)(6)(a) Considerations

5) The behavioral health of each of the parties; *and*

Rule 4(B)(6)(a) Considerations

6) Reports and recommendations of behavioral health professionals.

Rule 4(B) Committee Comment

When an action under Title 25 is pending when a protective order is in effect, court should consider:

Rule 4(B) Committee Comment

Supervised exchange of parenting time

Rule 4(B) Committee Comment

Supervised parenting time

Rule 4(B) Committee Comment

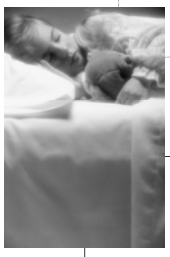
Intervention program

Rule 4(B) Committee Comment

Abstain from alcohol and controlled substances within 24 before and during parenting time

Rule 4(B) Committee Comment

Prohibit overnight parenting time



Rule 6(C). Order of Protection

Review petition for reasonable cause and relationship.

Rule 6(C). Order of Protection

No contact orders – do not include apt. #.

Rule 6(C). Order of Protection

Exclusive use of residence

Rule 6(C). Order of Protection

Prohibited locations

Rule 6(C). Order of Protection

Firearms and ammunition

FAQ

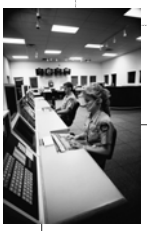
Does an order need to have a foot limitation to be enforced?

FAQ

Does an order have to have a seal or be certified to be enforced?

Rule 6(D) Emergency Order of Protection

Court may issue written or oral order



Rule 6(D) Emergency Order of Protection

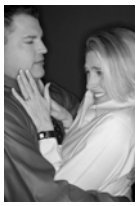
Same remedies

Rule 6(D) Emergency Order of Protection

Expires at close of next judicial business day unless specifically extended by Court

Rule 6(E) Injunction Against Harassment

Series of acts (at least 2)



Rule 6(E) Injunction Against Harassment

Remedies same except exclusive use of residence.

Rule 6 (F). Injunction Against Workplace Harassment

Generally covers location, not persons

Rule 6 (F). Injunction Against Workplace Harassment

Only requires one act

Rule 9. Appeals

A. Appealable orders defined – denying or granting after hearing

EX PARTE **ORDER IS NOT APPEALABLE**

Rule 9. Appeals

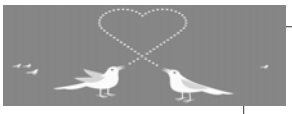
B. Courts to which appeal is to be made

EX PARTE **ORDER IS NOT APPEALABLE**

2009 DV Legislation and Rule Change

SB 1088 –

Amends § 13-3601(A)



2009 DV Legislation and Rule Change

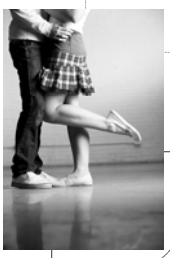
Effective Sept. 30, 2009

2009 DV Legislation and Rule Change

Adds "romantic or sexual relationship"

Four Factors MAY Be Considered

Type of relationship



Four Factors MAY Be Considered

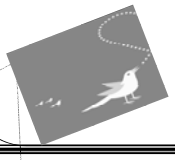
Length of the relationship

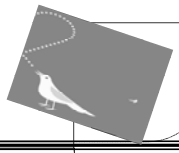
Four Factors MAY Be Considered

Frequency of the interaction between the victim and the defendant

Four Factors MAY Be Considered

If the relationship has terminated, the length of time since the termination





Rules Changed to Reflect Change

The Supreme Court has amended ARPOP 6(C)(3)(b)(6) on an emergency basis to add this relationship to the OP rule, effective September 30, 2009.

New Petition

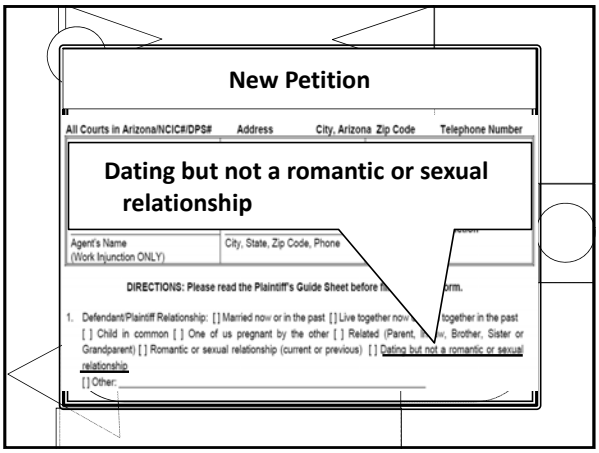
All Courts in Arizona/NCIC#/DPS# Address City, Arizona Zip Code Telephone Number

[ ] Romantic or sexual relationship (current or previous)

Agent's Name
(Work Injunction ONL
le, Zip Code, Phone

DIRECTION the Plaintiff's Guide Sheet before filling out this form.

1. Defendant/Plaintiff Relationsh Married now or in the past [ ] Live together now or lived together in the past [ ] Child in common [ ] One us pregnant by the other [ ] Related (Parent, In-law, Brother, Sister or Grandparent) [ ] Romantic or sexual relationship (current or previous) [ ] Dating but not a romantic or sexual relationship
[ ] Other: _____


New Petition
All Courts in Arizona/NCIC#/DPS#
Address
City, Arizona Zip Code
Telephone Number
Dating but not a romantic or sexual relationship
Agent's Name
(Work Injunction ONLY)
City, State, Zip Code, Phone
DIRECTIONS: Please read the Plaintiff's Guide Sheet before
orm.
1. Defendant/Plaintiff Relationship: [ ] Married now or in the past [ ] Live together now
together in the past
[ ] Child in common [ ] One of us pregnant by the other [ ] Related (Parent,
w, Brother, Sister or
Grandparent) [ ] Romantic or sexual relationship (current or previous) [ ] Dating but not a romantic or sexual relationship
[ ] Other:

Full Faith and Credit, and Firearms

VAWA Full Faith and Credit for All Orders
18 USC 2265

Every order valid anywhere

Full Faith and Credit

Notice given that person can be heard

Full Faith and Credit of Arizona's Orders

Notice requirement met for *ex parte orders*: Defendant can request a hearing

A.R.S. 13- 3602(S)

Full Faith and Credit VAWA

Cross Orders not valid if no cross petition filed seeking relief

Full Faith and Credit VAWA

Issuing state determines relationship for the protective order

Enforcing state or tribe determines how to enforce order

Violations of Protective Orders Enforced in Arizona

Make arrest per 13-2810

HOWEVER

State orders may not be recognized by all tribes

Tribe has jurisdiction over violations on tribal land

Contact Tribe

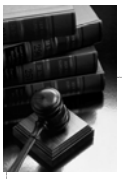
Question

Name 2 ways weapons can be prohibited on order

Is relationship required?

Brady-Firearms

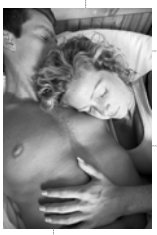
18 U.S.C., 922(d)(8) & 922(g)(8)



Brady-Firearms

All Arizona protective orders are restraint on conduct

"No crimes"

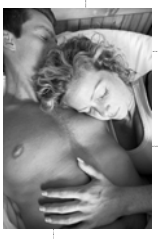


Brady-Firearms

No finding of credible threat required

Brady-Firearms

For Arizona orders: relationship and after hearing



What is the Relationship Test for Brady?

Married now or in the past

DV Benchbook – pages 2-3, 47
18 U.S.C. § 921(a)(32)

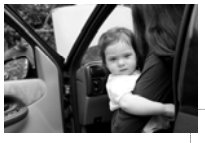
What is the Relationship Test for Brady?

Living together now or in the past

DV Benchbook – pages 2-3, 47
18 U.S.C. § 921(a)(32)

What is the Relationship Test for Brady?

Child in common



DV Benchbook – pages 2-3, 47
18 U.S.C. § 921(a)(32)

What is the Relationship Test for Brady?

Child of defendant

Brady Only After Hearing

Issued, modified or affirmed after hearing in which person had opportunity to participate

Brady form if no changes after hearing

All Courts in Arizona/NCIC/IIDPS/ Address: City, Arizona Zip Code Telephone Number

Plaintiff Birth Date: v. Defendant	Case No.	NOTICE TO SHERIFF OF POSITIVE BRADY INDICATOR OP/IAH Issue Date ___/___/___ (mm/dd/ccyy)

Brady Disqualification

For the duration of the order; 1 year from date of service

If the order expires, is dismissed or is quashed, Brady no longer applies

18 U.S.C. section 922(g)(8)

? Question ?

Can Brady apply to an Injunction Against Harassment?

DV Benchbook – page 48 18
U.S.C. section 922(G)(8)

! Answer – Yes !

- Relationship test is met
- Defendant received notice and had opportunity to appear at a hearing

DV Benchbook – page 48
18 U.S.C. section 922(G)(8)

? Question ?

Can firearms be prohibited during an *ex parte* hearing?

DV Benchbook – page 48
18 U.S.C. section 922(G)(8)

!Answer – State Statute!

- State statute
- Judge finds defendant is credible threat to plaintiff
- Lasts length of order

DV Benchbook – page 48
A.R.S. 13-3602(G)(4)

Lautenberg Amendment 18 USC (d)(9) and 922 (g)(9)

No possession of firearm if convicted of misdemeanor crime of domestic violence (MCDV)

Lautenberg Amendment

Two Part Test:
Crime
and
Relationship

MCDV Must Include

Use of force
Attempted use of force
or
Threatened use of a deadly weapon

MCDV Statute

Finding by a judge of *force is not sufficient;* Statute itself must have element

US v. Nobriga, 474 F.3d 561 (9th Circuit) (2007)

MCDV Statute

However, statute does not need to address relationship

US v. Nobriga, 474 F.3d 561 (9th Circuit) (2007)
US v. Hayes, 2009 WL 436680 (U.S. Supreme Ct.)

Lautenberg Amendment

Relationship Test:

Marriage
Lived together
Child in common
Child of defendant

Lautenberg Amendment

Not Covered:

Pregnant
Parent or Step-Parent
Grandparent or
Step-grandparent
Grandchild or Step-Grandchild
Sibling or Step-Sibling

Lautenberg Prohibition

Does not apply if MCDV is set aside

Arizona Set Aside Statute

A.R.S. 13-907 can apply if no:

serious physical injury
minor under 15
OR
deadly weapon involved

? Question ?

Which firearms prohibition, Brady, Lautenberg or state statute, has an exemption for law enforcement and military personnel?

DV Benchbook – page 48
18 U.S.C. § 922(g)

! Answer !

Brady has this exemption, but only while such personnel are on duty

DV Benchbook – page 48
18 U.S.C. § 922(g)(8)

Contrasts

State statute

- Protective orders only
- No hearing required
- Arizona relationship required
- Lasts length of order

Contrasts

Brady

- Only AFTER a hearing
- Must meet federal relationship test
- Lasts length of Order
- Exemptions

Contrasts

Lautenberg

- Criminal convictions
- Federal relationship test
- Lifetime prohibition
- No exemptions

? Question ?

Which firearms prohibition is a lifetime ban:

Brady or Lautenberg?

18 U.S.C. section 922(g)(9)

! Answer !

Lautenberg:

if misdemeanor crime of domestic violence

18 U.S.C. section 922(g)(9)

Contact ATF Prohibited Possessors

- **Brady violation**
- **Lautenberg**