

At the Intersection of Family Law and Domestic Abuse

By: Deena Anders

The statistics about the rate of domestic abuse are well known and, despite the knowledge that one in four women will experience violence at the hands of a person who claims to love her during a lifetime, we are typically at a loss when confronted with the issue directly in our personal or professional lives. Talking with a friend about the pattern of abusive behavior in his relationship can feel judgmental and nosy. Asking a potential client about the power dynamic in their dissolving relationship can feel irrelevant and prying. We fall back on stereotypes – it could not be happening to this person because she has a career, or to him because he’s a man, or to someone with that car, or at my church – and avoid asking the questions that might reveal the uncomfortable, and dangerous, truth of abuse in intimate relationships. Yet in the sphere of family law, knowing the signs of abuse, the risk of lethality, the dynamics of abusive relationships, and being willing to speak about it openly and knowledgably is critically important.

Talking about Domestic Abuse

The language, as well as the definitions, surrounding abuse within a relationship remains politicized and varies widely. Domestic Violence, the term most frequently used to name both this phenomenon and define it in criminal statute, is broadly recognized but is considered, by some, to be reductive since it privileges the violent components of the abuse, rather than the more subtle degradations and diminishments of abuse. This is important to note in speaking with clients or friends about what is happening in their relationship because the act of physical violence (hitting, spitting, kicking, etc.) is only one component of the pattern of behavior used by a person perpetrating abuse and, perhaps more importantly, the least frequently used. People who have been abused in a relationship most often cite the emotional abuse (sometimes called verbal abuse), characterized by persistent insults and put-downs, as having the most lasting negative impact on their well-being. The emotional abuse is deployed, alongside psychological abuse (threats of harm and sabotage), sexual abuse, and, as mentioned earlier, physical abuse, by a person executing a systemic, patterned strategy to keep their partner reliant upon, bound to, and controlled by them.

Limitations to Current Methods of Screening

Since domestic abuse creates a disparity in each partner’s ability to make decisions or advocate for appropriate and equitable outcomes in the family law sphere, it is essential to recognize it as early in the process as possible. Recent assessments of family court and family law structures have indicated that there is no shared understanding of domestic abuse and that the methods most frequently used to screen for it (client/participant disclosure, past criminal charges, or the presence of an Order for Protection) make some unfounded assumptions about the person being screened. As noted in the section above on “Talking about Domestic Abuse”, not all abusers use physical violence, yet physical violence, or threats thereof, are the only basis for criminal charges. Similarly, a person who is being controlled by their partner through emotional, sexual, and psychological abuse frequently feels that their experience is not, actually, domestic abuse. They may have been convinced that if they were a better partner everything would be okay. They might imagine that they cannot be a real victim of abuse because they have never

been hit. Or they may understandably rely on stereotypes to exclude themselves from the undesirable realm of an abused person, much as we may do in our interactions with people experiencing abuse.

Adequate methods of screening must establish the context of the abusive tactics, recognize that not all people who experience abuse see it as a significant enough issue to be shared in the court setting, understand that the methods of abuse vary, and, most dishearteningly, the real or perceived consequences of disclosure in a family court setting. The Mediator's Assessment of Safety Issues and Concerns (MASIC) is an example of a practitioner administered tool that both screens for lethality in the relationship, with questions about the employment status of each party, whether they have ever lived together, whether there are children from another relationship, and access to weapons, as well as establishes an understanding of each party's degree of agency in decision-making and how they feel about the position they hold. Additionally, this interview asks the subject to identify the worst thing their partner will say about them – this is important because threats of exposure, of drinking, cheating, poor parenting, or mental health issues is a common way for an abuser to maintain control beyond the end of the relationship.

For the Family Law Practitioner

We have all been subject to ineffective, universal, generic screening for domestic abuse. An example might be the ubiquitous “are you safe at home?” question asked by the rooming nurse trying desperately to avoid eye contact, and wedged between the allergy questions and the blood pressure check. However, a family law practitioner has the opportunity to create a supportive and open environment in which gaining a clear and relevant understanding of the relationship between the partners, whether domestic abuse is present or not, is feasible and beneficial to all involved parties. The key component to establishing this environment is to provide information about all potential paths of action, incorporating the special circumstances and consequences of each in the context of domestic abuse, and, once established, work for an outcome that is tenable for your client. A person who has experienced domestic abuse, and the corresponding limitation to control in his or her life, will benefit from a practitioner who is able to provide patient, experienced, guidance that allows the client to make informed decisions.

Some concrete steps that family law practitioner can take to prepare to be an excellent resource for the client who has experienced domestic abuse include:

- 1) Get to know the advocacy agencies serving your community and the scope of services they provide. A great first call to make when working with a person experiencing domestic abuse is our statewide domestic abuse service navigator DayOne, (1-877-223-1111 www.dayoneservices.org) which will put you in touch with the nearest domestic violence shelter. Connecting a client to an independent advocacy advocate can be a protective factor, especially when there is a heightened risk of lethality. Advocates provide safety planning, connection to community resources, support groups, and an established relationship with local law enforcement and the courts.
- 2) Explore your own inherent biases. We all have ideas about what domestic abuse can be, who experiences it, who perpetrates it, and what should be done about it. Your client's

story may differ greatly from what you imagine it would be and creating a space for your client to tell the story is the best way for you to help.

- 3) Understand the dynamics of domestic abuse and coercive control. Your local advocacy agency may be available to provide this training and Minnesota is home to a number of nationally recognized research and practice organizations like Praxis (www.praxisinternational.org), BWLAP (www.bwlap.org), and BWJP (www.bwjp.org), among others that offer regular webinars and trainings.
- 4) Familiarize yourself with the lethality factors. In 2009, the Minnesota Gender Fairness Implementation Committee created the Bench Guide available online: <http://www.bwjp.org/resource-center/resource-results/domestic-violence-risk-assessment-bench-guide.html>
- 5) Be brave. This is a tough topic to discuss, the realities of relationships can be messy, confusing and scary, and each step your client takes away from the abuser represents a risk. Accurately assessing the risk and working to find a path reduce it is part of the way you can fully represent your client.

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