

Domestic Violence & The Courtroom
Knowing The Issues... Understanding The Victim



How Can Judges Help?

What can a judge do to help stop domestic violence, promote victim safety and support, and hold offenders accountable?

First: The judge must take time to **listen carefully**. Your demeanor demonstrates to the victim that you are concerned about his or her circumstances and the underlying events. Judges should understand that the victim may not choose to participate in the proceedings for a variety of reasons, including intimidation and fear.

Second: Remember that the initial step toward stopping the abuse is being able to identify it as abuse. Denial, rationalization and minimization are coping methods used by the abused person and often those closest to the victim. Ironically, these same methods are often used by the individual who perpetrates the violence and coercive control. The judge should learn about and take advantage of all the resources available to provide comfort and safety for the victim and offer those resources at the courthouse, if possible. The judge must **recognize that the victim may be overwhelmed by the proceedings**.

Third: The **victim must be informed of his or her options**. The court should take a proactive approach, work with community organizations, and identify resources to ensure that victims are informed of their options and have access to safety planning and support from governmental and non-governmental advocates.

Fourth: What transpires in the courtroom may be unfamiliar and confusing to a lay person. Imagine trying to negotiate the criminal justice system having just survived an assault. While a victim may understand the legal issues intellectually, he or she may be overwhelmed with the enormity and complexity of the information. Comprehension of the available options often becomes difficult. A judge must take time to plainly explain the proceedings and **provide an opportunity for the victim to safely give input** if the victim chooses to give input.

Fifth: A victim may want to present as compliant to the judge. As a result, the victim may appear very complacent in the courtroom, even when he or she does not agree with what is taking place. A judge needs to take the time to ask for specific details. A victim may tend to accept responsibility for things that are not his or her fault out of fear of further abuse. A victim may accept inaccuracies in the record for similar reasons. Remember, this is often a strategy of survival. A judge must **make sure the court record is clear and complete**. This may include affording the victim the opportunity to state any objections in a safe setting. Judges must take great care to prevent dangerous or unfair settlements, custody and visitation orders.

Sixth: The courtroom atmosphere is often inherently intimidating to the victim. Judges should be particularly aware of methods to **minimize additional intimidation factors**. Court cases generally focus on a particular incident, but the victim may have been exposed to years of intimidation and he or she may live daily in a context of coercive control. A judge can use his or her authority to the fullest extent of the law and enforce every relevant law in the case. Judges can also create a courtroom ambiance that promotes "zero tolerance" of domestic violence. For example, a judge can instruct bailiffs not to permit the litigants, family members or friends to interact in an intimidating manner in the courtroom or during a court recess. A defendant may sometimes behave in an inappropriate manner or make intimidating comments about the victim during a courtroom recess. Allowing this to happen sends a message of defiance to both the court and victim, and makes it appear that the defendant is immune to the court's authority. The victim may be too intimidated to participate.

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Do Not Blame the Victim

A victim of domestic violence may act in ways that seem incomprehensible or confusing to people not aware of the dynamics and strategies of abuse. The victim may deny the abuse in a desperate attempt for self preservation.

The abuser's control of a victim may affect the simplest decision a victim may need to make. Domestic violence is a crime by the perpetrator, not the victim. A batterer must take full responsibility for his or her violent behavior. Mutual restraining orders are not appropriate. Abuse often escalates in frequency and severity over time. It rarely goes away without community response and intervention.

Research suggests that a short period of incarceration, followed by court ordered counseling, may stop the cycle of violence. The counseling must be specific in nature, focusing on power and control issues, not anger, and targeted to stop the abusive situation. There is, however, no guarantee that an abuser will desist even with the best batterer intervention program. Judges should be aware that many experts, the American Bar Association, and the National Council of Juvenile and Family Court Judges caution against using anger management programs in cases of domestic violence. Anger management programs are not effective and may even be dangerous in domestic violence cases. Remember, anger is often *how* he/she is being abusive, not *why* they are being abusive. The perpetrator is *not* "out of control" of their anger. Perpetrators use their anger *to* control!

A victim of domestic violence may have a compromised ability to view other people's behavior in an objective or neutral light. A victim's ability to trust other people is often damaged by the experience of domestic violence. Furthermore, a victim has often been isolated by the perpetrator and, therefore, typically has a very limited social network.

Many people believe that the victim of violence must somehow have invited it, encouraged it, or even found some kind of satisfaction from it. No victim likes to be abused. People who have been victimized by domestic violence have the same expectations of love, trust and a fulfilling relationship, as we all do.

Studies show that in more than half of all battering incidents, the batterer is under the influence of alcohol or drugs. While drugs and alcohol do not *cause* the violence, they are often used as an *excuse* for the violence. This excuse will persist as long as we allow it to go unchallenged.

Batterers are not all the same. Some also commit other crimes and may have a long history of disobeying the law and violent behavior. Others may respond to batterer intervention programs that help them learn about gender-role socialization, unraveling the strategies of aggression, violence and coercive control, and advanced techniques that can be used to identify and end the abusive behaviors.

Offender Accountability

Typically, offender "accountability" relates to one's ability to account for his/her actions or to do what it is they have been ordered to do by the bench. Accountability as it relates to domestic violence is more significant and far reaching than this. Think of accountability as synonymous to recovery as it relates to addiction. Accountability is not a destination, it is a process. Admission of guilt/responsibility is only the first step and accountability is and should be much more involved than "responsibility". As defined by the Alternatives to Domestic Aggression Program in Washtenaw County, Michigan, "accountability" is defined as "actions toward or involving others that reflect the integrity of the person you want to be." For additional information on understanding offender accountability, please see: http://www.csswashtenaw.org/ada/Operationalizing_Accountability_Cape_Garvin.pdf

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No One Is Immune / Everyone Suffers

Domestic Violence transcends all demographics and knows no age, socioeconomic, religious, racial, gender or educational barriers. It is a myth that only the poor or uneducated are victims of domestic abuse. Most studies indicate that there is also a high incidence of intimate partner violence in more affluent neighborhoods. Although a poor victim has the terrible problem of not having resources available, the more affluent spouse may also be in an equally desperate trap due to social stigmas, greater economic pressures and the increased societal position and power that the partner may have at his or her disposal. A lesbian or gay victim may have even greater barriers when there is discrimination because of the ability to leverage homophobia against the victim.

Statistics on Domestic and Sexual Violence

Statistics on Domestic and Sexual Violence

Domestic and sexual violence, including stalking, come before the courts in large numbers of cases. Domestic violence cuts across all racial, ethnic, economic class, religious, and educational lines. Despite many legislative and public policy reforms, domestic violence remains a substantial social problem in the U.S. and around the world. Recent statistics support this disturbing reality:

- Nearly one in four women in the U.S. reports experiencing violence by a current or former spouse or boyfriend at some point in her life.¹
- Women are much more likely than men to be victimized by a current or former intimate partner.² Women are 84 percent of spouse abuse victims and 86 percent of victims of abuse at the hands of a boyfriend or girlfriend; about three-fourths of the persons who commit family violence are male.³
- In 2008, males age 12 or older experienced about 101,000 nonfatal violent victimizations (rape/sexual assault, robbery, or aggravated or simple assault) by an intimate partner (a current or former spouse, girlfriend or boyfriend). In the same year, females age 12 or older experienced about 552,000 nonfatal violent victimizations by an intimate partner.⁴
- The rate of intimate partner victimizations for males was 0.8 victimizations per 1,000 males age 12 or older. The equivalent rate of intimate partner violence against females was 4.3 victimizations per 1,000 females age 12 or older.⁵
- On average, more than three women a day are murdered by their husbands or boyfriends in the U.S. In 2005, 1,181 women were murdered by an intimate partner.⁶
- 15.5 million children in the U.S. live in families in which partner violence occurred at least once in the past year

¹ Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence, *Morbidity and Mortality Weekly Report*. February 2008. Centers for Disease Control and Prevention. Available at www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm.

² *National Crime Victimization Survey: Criminal Victimization*, 2007. 2008. U.S. Department of Justice, Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv07.pdf>

³ Family Violence Statistics: Including Statistics on Strangers and Acquaintances. 2005. U.S. Department of Justice, Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.

⁴ Catalano, Shannan,. Female Victims of Violence, U.S. Department of Justice, Bureau of Justice Statistics: Selected findings, Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>.

⁵ Id.

⁶ Catalano, Shannan. 2007. Intimate Partner Violence in the United States. U.S. Department of Justice, Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm>.

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and seven million children live in families in which severe partner violence occurred.⁷

- Approximately one in three adolescent girls in the U.S. is a victim of *physical, emotional* or *verbal abuse* from a dating partner – a figure that far exceeds victimization rates for other types of violence affecting youth.⁸
- Women of all ages are at risk for domestic and sexual violence, and those ages 20 to 24 are at the greatest risk of experiencing nonfatal intimate partner violence.⁹
- Young women age 20 to 24 also experience the highest rates of rape and sexual assault, followed by those 16 to 19.¹⁰ People age 18 and 19 experience the highest rates of stalking.¹¹
- Access to firearms increases the risk of intimate partner homicide greater than five times more than in instances where there are no weapons. In addition, abusers who possess guns tend to inflict the most severe abuse on their partners.¹²
- In 2002, 54 percent of female homicide victims were shot and killed with a gun. Handguns were used in 73 percent of these cases.¹³

For additional and updated statistics regarding domestic, sexual, and dating violence, and stalking, visit the website of Futures Without Violence, formerly Family Violence Prevention Fund, at http://www.futureswithoutviolence.org/content/action_center/detail/754

Everyone Suffers

It is devastating for children to witness verbal or physical abuse, or to see the aftermath: an injured parent, a destroyed home. Fear, anger, feelings of isolation, low self-esteem, and loss of trust are all common in children who witness abuse. Learning disabilities and behavioral problems which may be present are likely to intensify as they get older. In households where women are abused by their partners, there is often a high incidence of child abuse by the abusive parent. It is also becoming increasingly apparent that children in violent homes are frequently victims of incest and, unfortunately, the legacy of abuse does not stop when the children leave home. Children develop behavior based on what they have experienced growing up. Children from violent homes are at high risk for becoming adult victims or abusers themselves.

⁷ Whitfield, CL, Anda RF, Dube SR, Felittle VJ. 2003. Violent Childhood Experiences and the Risk of Intimate Partner Violence in Adults: Assessment in a Large Health Maintenance Organization. *Journal of Interpersonal Violence*. 18(2): 166-185.

⁸ Davis, Antoinette, MPH. 2008. Interpersonal and Physical Dating Violence among Teens. The National Council on Crime and Delinquency Focus. Available at <http://www.nccd-crc.org/nccd/pubs/Dating%20Violence%20Among%20Teens.pdf>

⁹ Catalano, Shannan, 2007. Intimate Partner Violence in the United States. U.S. Department of Justice, Bureau of Justice Statistics. Available at [http://www.ojp.usdoj.gov/bjs/intimate /ipv.htm](http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm).

¹⁰ National Crime Victimization Survey: Criminal Victimization, 2007. 2008. U.S. Department of Justice, Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv07.pdf>

¹¹ Baum, Katrina, Catalano, Shannan, Rand, Michael and Rose, Kristina. 2009. *Stalking Victimization in the United States*. U.S. Department of Justice Bureau of Justice Statistics. Available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/svus.pdf>.

¹² J.C. Campbell, D; Webster, J; Koziol-McLain, C.R.; et al. 2003. Risk Factors for Femicide in Abusive Relationships: Results From A Multi-Site Case Control Study. *American Journal of Public Health*. 93(7).

¹³ *When Men Murder Women: An Analysis of 2001 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents*. 2003. Violence Policy Center. Washington, DC. Retrieved January 9, 2004. <http://www.vpc.org/graphics/WMMW03.pdf>.

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Another component of the strategy of the perpetrator of domestic violence is to focus on family and friends. The isolation and terror that victims live with deprives those closest to them of meaningful and fulfilling relationships. The abuser may harm or threaten harm to others close to the victim in an effort to hurt or control the victim. An abuser may harm children, other family members, friends, pets, personal belongings and the family home.

Isolation keeps a victim trapped. Frequently, a batterer isolates the victim from the family socially, emotionally and geographically. The victim is frequently forbidden to have access to friends and family, and may be denied the opportunity to go to school or work outside the home. There is little or no access to or control over finances. In the midst of this terrible isolation, the abuser employs "brainwashing" tactics, and with no input to the contrary from anyone outside the relationship, there will be no way for the victim to test reality.

The abuser's coercively controlling behavior further isolates the victim from those persons and things that are important to the victim's well-being. After a long period of isolation, the victim may feel emotionally overwhelmed, terrified and confused. If the victim should enter into a new relationship, he or she tends to have an overwhelming fear of the abuser's threats of harm. The victim may also feel tremendous guilt over having put another person in danger. At the same time, the victim may question and struggle with issues of trust, not knowing if the new relationship is real or simply a repetition of the patterns previously established by the abuser.

Forms of Emotional Battering

Social and Sexual Prejudice: Added to all of the other forms of emotional battering that a victim suffers, he or she also lives in a society that perceives the victim as helpless, second class, emotionally immature and often irrational. This means that as a victim struggles to break free from an abusive situation or relationship, he or she has to battle social, financial and cultural pressures that may prevent the victim from breaking free from the batterer. Although we often pay more attention to the physical and sexual violence, more often emotional battering provides the context in which repeated abuse occurs. For example, a batterer may use:

Insults: Constant or extreme criticisms that injure individuals' personal, emotional, sexual and professional image. Insults can greatly undermine a person's self-confidence and eventually render the victim emotionally incapacitated.

Rejection: Direct or indirect statements that create feelings of unworthiness. Constant rejection teaches a victim that he or she is unworthy of receiving loving behavior. Rejection can be used as punishment for not cooperating with an abusive partner. Abusers may also employ rejection in an attempt to justify their rage or anger towards the victim.

Emotional Threats and Accusations: Direct or indirect statements made in an attempt to cause emotional or physical harm to the victim. This includes lying about the victim's behavior, attitude or emotional state.

Emotional Blackmail: A statement or behavior in which the individual uses fear, guilt, insecurity or confusion to trap a victim into giving the abuser power over him or her.

"Crazy-Making": This behavior, also known as "gaslighting", distorts reality and destroys the possibility of honest communication. Demonstrated in the classic movie, *A Clockwork Orange* and in the stage play *Gas Light*, this behavior is a very effective device to increase confusion and insecurity in the victim.

Possessive and Punitive Behavior: This behavior and/or thought pattern is manifested when the abuser perceives another person as physical property or an emotional extension of himself or herself. Behavior includes jealousy, limiting freedom, creating isolation, denying a person's capabilities or opportunities to develop. Many times it includes using shame and guilt to prevent a victim from getting the deserved support and protection he or she needs.

Basing Relationships on Unrealistic Expectations: This includes an assumption by the abuser that he or she knows what is best for the victim. Denying someone the opportunity to discover and define himself or herself prevents the possibility of a mutually beneficial and healthy relationship.

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Threats to Harm or Take Away Children: One of the most common reasons given for resuming an abusive relationship is the fear that the abuser will act on the threats of taking the children from the victim. Studies show that some batterers are effective at convincing judges and other authorities that the victim is unfit or undeserving of custody.

Financial Blackmail: A batterer often controls the victim's finances, denying access to money. Financial battering may range from not allowing the victim to earn money, to preventing education or access to work. If the victim is currently working, the abuser may make threats to destroy the means of earning a living.

Stalking: One in 6 women and 1 in 19 men report having have been stalked, according to the “National Intimate Partner and Sexual Violence Survey” (<http://www.cdc.gov/violenceprevention/nisvs/index.html>) released in December of 2011 by the US Department of Health and Human Services Centers for Disease Control and Prevention. Citing that report, the Hon. Susan B. Carbon, then Director of the US Department of Justice Office on Violence Against Women, wrote in a January 2012 message: “Stalking behaviors can include seemingly innocuous acts, such as making unwanted phone calls; sending unsolicited or unwanted letters or emails; or leaving unwanted items, presents or flowers, but when taken together, and when feared by the victim, may constitute a criminal act. Other forms of stalking include following or spying on the victim; showing up at places where the victim is likely to be without a legitimate reason; waiting at places for the victim; and posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth. Newer technologies, such as text messaging, emails, and electronic monitoring devices (including cameras and GPS), are also utilized by perpetrators to stalk victims. Stalking is also frequently a precursor to much more serious, and sometimes lethal, acts. In fact, 76% of female intimate partner murder victims had been stalked by their partners prior to their death.”

Recognizing the Violence

A victim of domestic violence often has confused thoughts and feelings. As surprising as it may seem, many are not really sure if they are being abused. They know that something is very wrong, but just cannot seem to identify it properly. Denial, rationalization and minimization are methods of coping day-to-day with the reality and severity of the abuse. The first step toward ending a violent relationship is to identify it as such. For many victims, identifying oneself as a victim of battering is an extremely difficult step. To assist judges in identifying victims, the following Physical Abuse Indicators and Lethality Assessment can be applied:

Physical Abuse Indicators

The following is a list of Physical Abuse Indicators in the order of less to more severe on a lethality or injury scale. Most ongoing abuse escalates in more or less this order, so that the presence of an action identified below is indicative of probable past abuse, even if there have been no serious physical injuries or prior police or court involvement. In addition, even if the abuse has not reached a certain danger level, it does not mean that the situation is not dangerous or physically abusive. A person can be severely injured as a result of "**minor abuse.**" It is crucial when using the Physical Abuse Indicators, that the judge include the victim's opinion about the level of danger in order to help accurately assess a situation.

- Verbal abuse, humiliation, isolation from family and friends.
- Throwing things, punching walls, hurting pets, preventing the victim from leaving, demanding sex.
- Pushing, shoving, grabbing, shaking, and throwing things at the victim.
- Slapping with open or back of hand, twisting arms, legs and fingers.
- Kicking, biting, hair pulling, banging or shaking head.
- Choking, attempted strangulation, smothering.
- Beating up (pinned to the wall/floor, repeated kicks and punches).
- Threatening with weapons, knives, guns, autos, poisons.
- Assault with a weapon.
- Forced sex.

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Lethality Assessment

Research has found that there are certain factors that are important in assessing the lethality potential in a particular situation. However, predicting lethality is difficult, as all serious battering relationships can be unpredictable and have the potential to quickly escalate. Nonetheless, the reported presence of some of these factors can be used to assist you in making judgments about the level of protection necessary at any particular moment:

- Increased violent episodes.
- Severity of violence is escalating.
- Intoxication and drug abuse
- Threats to harm the children.
- Forced or threatened sex acts.
- Suicide threats or attempts.
- Access to weapons.
- Psychiatric impairment of the victim or abuser.
- Proximity of victim and abuser.
- Abuser's need or control of contact around children.
- Current life stress.
- Previous criminal history.
- Defiance of Court Orders and judicial system.
- Presence of new relationship.
- Unemployment

There is a growing understating of the gendered dimensions of domestic violence, namely that battered women's use of force may result in women being misidentified as the perpetrator. When in court, battered heterosexual women accused of using physical violence against their intimate male partners often over-report their use of violence. In contrast, their abusive male partners typically deny any wrong doing. This is critically important as it may result in women being charged to the fullest extent of the law whereas the true batterer receives a plea bargain, if even charged. Furthermore, the male partner then often uses his partner's Batterer Intervention Program referral as one more coercively controlling tactic against her. The following distinctions in behavior are important to note:

- men are more likely than women to underreport violence perpetration (DeKeseredy, 2009; Edleson & Brygger, 1996; Heckert & Gondolf, 2000; Hilton, Harris, & Rice, 2000; Szinovacz & Egley, 1995);
- women are more likely than men to over-report violence perpetration (Hilton, Harris & Rice, 2000; Szinovacz, 1983; Szinovacz & Egley, 1995); and
- men who batter typically minimize, deny, and justify their violence and abuse (Anderson & Umberson, 2001; Buchbinder & Eisikovits, 2004; Heckert & Gondolf, 2000; Henning & Holdford, 2006; Ptacek, 1990; Totten, 2003).

In January of 2012, the Director of the US Department of Justice Office on Violence Against Women, the Hon. Susan B. Carbon, cited a report disseminated in December of 2011 by the US Department of Health and Human Services Centers for Disease Control and Prevention, the "National Intimate Partner and Sexual Violence Survey" found at <http://www.cdc.gov/violenceprevention/nisvs/index.html>. Judge Carbon noted the data documents how women are disproportionately impacted by domestic violence, sexual assault and stalking:

- "Women are much more likely than men to have been slammed against something, choked or suffocated, and beaten.
- Nearly 4 times more women experienced injury-causing domestic violence, and nearly 5 times more women needed medical care.
- 1 in 4 women and 1 in 20 men experienced domestic violence that made them afraid.
- 1 in 5 women and 1 in 22 men experienced domestic violence that made them concerned for their safety."

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Cultural Considerations for Judges in Cases Involving Domestic Violence

Issues of culture arise frequently within the complex framework of domestic violence cases. Culture shapes an individual's response to domestic violence, a batterer's response to intervention and acceptance of responsibility, and access to other services that might be crucial for adult victims, children and perpetrators. Furthermore, the culture of the courtroom, a victim and a perpetrator will impact the consideration and outcome in a case.

An understanding of the cultural context can help the court to shape appropriate access and responses that promote safety, accountability, and the fair administration of justice. This section introduces judges to a basic framework regarding culture, describes some of the concepts and terms commonly used when discussing culture, and suggests how culture applies in cases involving domestic violence.

“**Culture**” is a complex term with varied definitions and meanings to different individuals. A contemporary definition of culture refers to the shared experiences or other commonalities of groups of individuals based on factors of identification that have developed in relation to changing social and political contexts, such as race, ethnicity, gender, sexuality, class, disability status, religion, age, immigration status, language, and other axes of identity, within the historical context of oppression. Judges will hear many terms regarding culture. The following text introduces some of these terms, including commentary about their usage, in order to understand culture and its implications in particular cases involving domestic violence.

Cultural identity refers to the way in which a person defines himself or herself, based on the person's unique set of experiences. Culture determines how persons interact with others, how others view them, and how they view themselves.

Dominant culture operates as the norm against which all other cultures are compared. For example, in the U.S., attributes of the dominant culture include English as a primary language, “whiteness” (a term that incorporates perceptions and assumptions about color), Christianity, physical and mental ability, male, economic resources, and heterosexuality. An individual with one or more of these attributes might identify or be identified with the dominant culture in varying degrees. Dominant cultures operate in all parts of the world with varied attributes based on local dynamics of difference.

Privilege. Dominant culture members receive privileges simply because they possess one or more attributes of that culture. One privilege, for example, is not having to recognize one's culture as the norm, which causes many persons to have difficulty identifying and describing their own cultural heritage. Dominant culture privileges include access to power, which can be based on political connections, economic wealth, and position or status. Privileges for one group can create the dynamics of domination for other less privileged groups. A person who recognizes that dominant culture identity includes certain privileges and access to power, previously taken for granted, can work to avoid subconscious influences from those factors.

Oppression. Oppression is defined as a systemic, hierarchical condition anchored in power imbalance. Access to power and privilege of dominant culture status creates the dynamics of oppression. A person's experience of not belonging to the dominant culture on any axis of cultural identity sets that person up as a target for oppression. A target of oppression is considered inferior, inadequate or, simply, not as worthy as dominant culture members.

Culture of the Judiciary. In addition to an individual cultural identity, every judge belongs to the culture of the judiciary. Members of the judiciary have a nexus of shared experiences and other commonalities that sets the judiciary apart as a distinct culture. Common attributes generally include gender, education, economic class, and in the United States, English language. With respect to education, economic class, and language skills, most judges fall within an elite segment of the dominant culture, despite their other attributes of individual identity. The position of judge also includes an inherent amount of authority, and the status of judge fosters deference that sets judges apart from the general population.

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Cultural Misinformation (stereotypes). Cultural misinformation applies a set of oversimplified characteristics to a group and attributes them to the group's individual members simply because it is assumed that they have those attributes of identity. Cultural misinformation limits what a person can see and understand about an individual. It has often been used to justify mistreatment of individual members of a group. The challenge for judges is to become aware of previously unconscious cultural attitudes and then attempt to put them aside so that judges obtain accurate information about the individuals in court.

Justice as Colorblind. The concept of colorblind justice was once touted as a key benchmark of fairness in the American justice system. Essentially, a judge has been asked to treat every person the same without consideration of color, gender, economic class, sexual orientation, etc. While courts have embraced this ideal in efforts to support equal treatment of all persons regardless of race or ethnicity, this concept conflicts with a modern analysis of cultural considerations in legal cases. Judges are now asked to consider how their own cultural background might affect the way they relate to and think about people from different cultural backgrounds. For example, a judge must look at color as one significant factor in society's creation of misinformation about different races and determine how that might affect the judge's thoughts, beliefs, and perceptions. To ignore color or another difference is to deny recognition of a central component of an individual's cultural heritage or identity that distinguishes him or her from the dominant culture.

Cultural Competence (or Competency). Many people declare themselves as "culturally competent" after studying culture, completing a class, or having contact with persons whose cultural attributes differ. Cultural competence, however, is an ongoing, continuous process; it is *not* an outcome or achievement. As integral parts of their roles, and as required by the Canons of Judicial Ethics, judges strive to conduct themselves impartially and free from bias or prejudice. Similarly, they can engage in a constant, lifelong process of working towards cultural competence in every case.

Judicial Checklist: Applying Information About Culture in Cases Involving Domestic Violence

Judges can take specific actions to become more informed about culture and to apply information about culture in individual cases. These actions include the following:

Individually as a Judge:

- Examine your cultural heritage and identity. This examination can reveal how your own culture has been shaped by dominant culture values and what cultural attributes have been lost or gained in the process of adaptation.
- What is your cultural identity?
- How does your own cultural identity affect, limit, or enhance your work as a judge?
- What do you believe about other identities of other persons who are different?
- Increase your awareness of potential "blinding preferences" (another way to characterize potential bias) and work towards developing cultural competence skills. For example:
 - Learn to recognize and reject preexisting beliefs about a culture.
 - Challenge assumptions that might arise based on what you see or hear.
 - Focus on understanding information provided by individuals within the context at hand (e.g., victims, witnesses, etc.).
 - Forego the temptation to classify or label persons based on cultural misinformation (stereotypes).
 - Use inclusive language.

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In All Cases:

- Analyze the facts and circumstances.
- Assess what you know in general about a particular cultural identity.
- Identify cultural misinformation that might be disguised as general information.
- Use specific questions to learn about a victim's individual cultural experiences.
- Evaluate a victim's specific experiences in light of the general information.
- Remember that culture is *never* an excuse for criminal behavior. Substantively, for example, a party may *not* successfully argue that culture or country/community of origin sanctions violence against an intimate partner. Domestic or sexual violence affects persons from all cultural backgrounds. A black eye or fractured rib causes suffering by a victim regardless of where she was born, the language she speaks, or her economic resources. An explanation of a cultural difference does not equal a justification of abusive conduct.
- *All* cultures have forces that both condemn and condone domestic and sexual violence, through laws, social service structures, and community-based programs.

In the adjudication phase of a criminal case:

- Cultural identity can impact *due process protections*. For example,
- A party's access to justice (and due process) may demand interpretation services if he or she is not English proficient.
- Potential immigration issues may necessitate advising of immigration implications as part of collateral consequences of a plea.

In the disposition phase of a criminal case and in civil cases

- Pivotal questions regarding cultural difference are:
- How does cultural difference impact remedies to assist the victim or avoid unnecessary harm to the victim?
- How does cultural difference facilitate the imposition of meaningful interventions for perpetrators that increase their potential for compliance?

For additional discussion of culture and practical application in domestic violence cases, judges are encouraged to participate in interactive judicial education workshops provided by the *National Judicial Institute on Domestic Violence (NJIDV)*, a partnership of the U.S. Department of Justice Office on Violence Against Women, Futures Without Violence (formerly Family Violence Prevention Fund), and the National Council of Juvenile and Family Court Judges (NCJFCJ). For more information and a current schedule of ongoing workshops, visit www.njidv.org or www.futureswithoutviolence.org.

Battered Women Syndrome

Battered Woman Syndrome (BWS) is a collection of psychological symptoms, often considered a subcategory of Post Traumatic Stress Disorder, and can be measured by a trained mental health professional.

Battered Woman Syndrome can cause a woman to act in ways that confuse those who wish to help her, thus making it extremely difficult for her to participate in the legal system, even though she wants the abuse to stop.

Symptoms: BWS is a psychological reaction that can be expected to occur in normal people who are exposed to repeated trauma, such as family violence. It includes at least three groups of symptoms that assist the mind and body in preparing to defend against threats. Psychologists call it the "fight or flight" response.

The "Fight" Response Mode: In the "fight" mode, the body and mind prepare to deal with danger by becoming hyper-vigilant to cues of potential violence, resulting in an exaggerated startle response. The automatic nervous system becomes operational and the individual becomes more focused on the single task of self defense. This impairs concentration and causes physiological responses usually associated with high anxiety. In serious cases, fearfulness and panic disorders are present and phobic disorders may also result. Irritability and crying are typical symptoms of this stage.

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The "Flight" Response Mode: The "flight" response mode often alternates with the fight pattern. Most individuals would run away from danger if they could do so safely. When physical escape is actually or perceived as impossible, then mental escape occurs. This is the avoidance or emotional numbing stage where denial, minimization, rationalization and disassociation are subconsciously used as ways to psychologically escape from the threat or presence of violence.

Cognitive Ability and Memory Loss: The third major impact of BWS is to the cognitive and memory areas. Here, the victim begins to have intrusive memories of the abuse or may actually develop psychogenic amnesia and not always remember important details or events. The victim may have trouble following his or her thoughts in a logical way, being distracted by intrusive memories that may be flashbacks to previous battering incidents. The victim may disassociate himself or herself when faced with painful events, memories, reoccurring nightmares or other associations not readily apparent to the observer.

The American Judges Foundation

With over 50 years of tradition and achievement, The American Judges Foundation is comprised of people interested in and dedicated to promoting education, fostering public awareness of the law and the legal system, and furthering community involvement with the judiciary in the United States, Canada and Mexico.

This non-profit organization provides judges with resources vital for continuing their role as knowledge gatherers, information seekers and decision makers. Through conferences, forums, discussions and publications, judges are exposed to current trends within the legal system and kept current with societal issues that affect their jurisdiction.

The American Judges Foundation's mission is to keep the judiciary at the forefront and provide the necessary educational tools needed to meet society's ever-changing needs.

The American Judges Association

The American Judges Association (AJA) is a non-profit organization housed in the National Center for State Courts. It is the largest independent group of Judges in the United States, "the "voice of the judiciary"®. Currently, AJA includes both present and former judges of courts of all jurisdictions in the United States, Canada, Mexico, Puerto Rico, Guam, American Samoa, and The Virgin Islands. Its Board of Governors is composed of representatives from fourteen districts.

The objective and purpose of the AJA is: to promote and improve the effective administration of justice; to maintain the status and independence of the judiciary; to provide a forum for the continuing education of its members and the general public; and for the exchange of new ideas among all judges.

The AJA's impact on judicial education has been effective in a number of ways. AJA has sponsored more than 50 annual conferences, bringing together leading jurists and legal scholars and other experts to discuss matters of importance affecting the judiciary and users of the courts.

With over 50 years of service and commitment to the judiciary, AJA continues to exemplify excellence in judicial education.

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This educational booklet provides a judge with critical information about victims of domestic violence. This booklet stresses the need for sensitivity and understanding for those victims who appear before the court scared, confused or intimidated. This booklet will help a judge to promote zero tolerance of domestic violence and provide a courtroom sensitive to the needs and safety of the victim as well as safeguarding the rights of the accused. The booklet was revised and updated in 2011 and 2012 by: the Hon. Joe Giarrusso, Jr. (ret.), and the Hon. Elizabeth Pollard Hines, Co-Chairs of the AJA Domestic Violence Committee 2011 - 2012. The AJA would like to acknowledge and thank: the AJA Domestic Violence Committee, Michael Runner, J.D., Director of Legal Programs, Futures Without Violence (formerly the Family Violence Prevention Fund), for his expert assistance and links to statistics in the booklet; Michael Runner and Dr. Sujata Warriar for the section on cultural competency; David J. H. Garvin, MSW, LMSW, Chief Operating Officer, Catholic Social Services of Washtenaw County (Founder and Former Director of Alternatives to Domestic Aggression, Catholic Social Services of Washtenaw County), for his review of the 2011 and 2012 revisions; Lisa Young Larance, MSW, LMSW, Alternatives to Domestic Aggression Supervisor and RENEW Founder and Program Coordinator, Catholic Social Services of Washtenaw County, and Susan G.S. McGee (SusanGSMcGee@aol.com) for her assistance with prior revisions to this booklet.

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