



Bias and Misconceptions: What needs to be recognized before you take a case to the courtroom

There are significant challenges in investigations, advocacy and trial presentations in domestic violence cases. It is incumbent on investigators, victim's advocate, and prosecutors to not only gather evidence but also share evidence across disciplines to overcome these misconceptions.

It is necessary to educate jurors and the community-at-large the nature of domestic violence. Domestic Violence is about power and control, it is insidious, and many times begins gradually and increases until such time an event occurs, and law enforcement become involved.

Myths and Misconceptions

Women have a perceived lack of credibility

Women are "emotional" or "too sensitive"

Women should "just leave" or "must have done something to provoke" the abuse

Domestic Violence cases are considered less serious than stranger assaults

Generally, people are unable to understand the dynamics of power and control.

Fail to understand that the crime prosecuted is part of a bigger pattern of mental and physical control

Reasons

Domestic Violence is a hidden crime

Victims are often isolated

Abuse does not occur in public

Victim coping behavior includes cooperation with abuser, minimizing, recanting, hiding abuse



Objectives in Prosecution

Proof of Elements – this is a crime, each and every element must be proven beyond reasonable doubt.

Proof of Identity – this defendant is responsible, not anyone else beyond a reasonable doubt.

Proof of Credibility – Every single witness has credibility issues. Some witnesses must paint as not credible, others must be overcome credibility issues. Each witness must be prepared to be cross-examined.

Prosecutors must prepare witnesses for what to expect in court, from the judge, the jury, the defense, (each and every single time)

Practice prior to testimony/evidence presentation:
Use of demonstrative evidence and presentation of evidence.

Objectives in Investigation

Documentation of the sequence of events throughout the relationship, not just the “event”

Providing the language used by the victim, witnesses, and defendant, not just officer’s rendition of what happened.

Physical evidence collection: photographs of the scene, victim, defendant. Photographs can reveal much about the conditions at the time of the event, can assist if experts need to review during prosecution, can bolster circumstantial evidence, and sets the scene for jurors.

Motives for the event. Motive is NOT an element in the prosecution of dv; however, it can assist in explaining to the jurors. The motive for power and control is just as important if not more important than a motive for the actual assault.



Anticipate Defenses

Self-defense or Provocation defense seeks to show that the defendant's actions were necessary and thus, not criminal.

"It happened but it wasn't that bad" defense seeks to obtain a lesser included conviction.

"It was really both of us" seeks to say that the defendant wasn't completely responsible. This seeks to shift blame to the victim to share in culpability, to again, obtain a lesser-included conviction.

"Didn't happen" defense is two-fold. The defendant is either saying the state cannot meet their burden of proof or that the victim is lying, or it was accident. It's the "Prove It" defense.

Defense Strategies

"The relationship was fine" strategy seeks to exploit a victim who did not tell anyone about the abuse, delayed reporting, or failed to co-operate.

"The abuser is a good guy" this strategy attempts to show the defendant in the best light: in the courtroom, community, education or whatever "looks" good to the juror and makes them question that this great dad, volunteer, worker, (insert good characteristic) couldn't have possibly done what these people are saying he did.

"What evidence?" This evidence? It was mishandled, misinterpreted, misleading or inconclusive. This is attacking the State and the burden of proof.

"The investigation is bad" it was botched, or procedure wasn't followed. This will include attacks on mishandling of evidence, violation of procedure, failure to collect evidence (even if inconsequential), chain of custody challenges.

The "victim is a bad person" and so you should not believe the victim. This is either a character attack or highlighting what the victim did leading up to the abuse, during the abuse, or after the abuse.



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The defense will seek out past negative behaviors, mental or physical health history, emotional problems, and any substance abuse problems. Victim is “assertive” “strong-willed” “had a temper” “had an affair” or “drinks” or “uses drugs.”

The ABOVE is all about planting a seed.

Notice the word choice – it’s not overboard – it’s just enough while attempting not to insult jurors.

Someone who drinks can be a drunk but not everyone is drunk who drinks.

Being too dramatic about these issues, can **decrease** the defense’s credibility. They tend to tread lightly.

Prosecutors can use the descriptions to their advantage. Objections should be carefully considered during these types of defense presentations.

Jury Considerations

Every Case needs a theme for jurors to follow. A map, set of parameters, something to assist in putting the case together.

The Prosecutor should be their “leader.” They should look to the prosecutor for truth and guidance. Do not allow another player in the court to fill that role.

Jurors need information. Take the lead and provide them with the truth.

Jurors need to make “sense” of things, if they don’t make sense. This can lead to incorrect conclusions, or disregard of important evidence.

Jurors must consider jury instructions, select admissible evidence, create a sequence of events, evaluation credibility, and test their theories. This “test” will determine guilty or not guilty.

Jurors need education about domestic violence.

Jurors pull from their background and experience, the DV event by itself is inadequate.



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Jurors need context information. This includes description of relationship, prior abuse, and relationship dynamics information.

Expert Witnesses in the Area of Domestic Violence are extremely useful in assisting jurors' ability to understand power and control.

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