

**Decision-Making in Custody Cases Involving
Domestic Violence:
Perspectives from the Family Court Enhancement
Project**



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Learning Objectives



At the conclusion of this presentation, participants will be better able to:

- Describe the purpose of the FCEP Project
- Recognize the challenges in domestic violence custody and parenting time decision-making, and ideological, legal, and structural factors which contribute to them
- Assess the utility of a four-part framework for approaching these types of cases
- Identify steps that can be undertaken for system assessment and improvement in their own jurisdictions

FCEP Goal



The FCEP Goal is to improve the family court response to divorce and parenting cases involving domestic violence so that resulting parenting arrangements protect the emotional and physical well-being of victimized parents and their children.

Mixed Messages



**Criminal
Court**

**Family
Court**

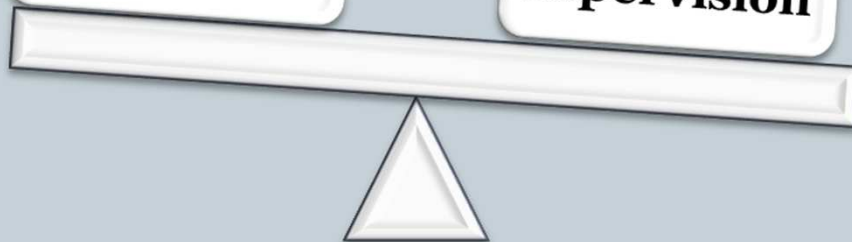
**Friendly
parenting**

“Just leave”

**Cooperatio
n**

**“why don’t
you get it?”**

**No
supervision**



Putting the FCEP into Context



- Multiple roundtables with numerous subject-matter experts
- Multiple barriers identified to safe outcomes
- Other OVW-supported projects (Judicial Guide, Differentiation Project)

FCEP Project Partners



- Coordinated by the National Council of Juvenile and Family Court Judges, national partners include:
 - ✦ Office on Violence Against Women, U.S. Department of Justice (OVW)
 - ✦ Battered Women's Justice Project (BWJP)
 - ✦ National Institute of Justice, U.S. Department of Justice
 - ✦ Center for Court Innovation (CCI)
 - ✦ National Council of Juvenile and Family Court Judges (NCJFCJ)

FCEP Sites



- Multnomah County Circuit Court, Family Law Department (*Portland*, OR)
- Family Justice Center, Fourth Judicial District of Minnesota (*Minneapolis*, MN)
- Circuit Court of Cook County (*Chicago*, IL)
- Family Court for the State of *Delaware*

Small Group Discussion



What are the *consequences* of not making good parenting decisions in cases involving domestic violence?

Why We Need to Get it Right



- Strong link between DV and physical and sexual child abuse (median occurrence of 41% and a range of 30% to 60%).
- Children who witness violence and coercive control by one parent toward the other experience at least the same level of serious effects as those who were direct targets of the abuse. [Include aggressive behavior, anxiety, health problems, depression, cognitive deficiencies, etc.]

More Whys ---



- Where there is a history of DV, child contact is the most common context for reassault during the post-separation period.
 - ✦ [Stark, 2009]
- Each child's experiences, perceptions, and responses are unique. Any intervention should be tailored to that child's particular risk set and situation.
 - ✦ [NCJFCJ, A Judicial Guide to Child Safety in Custody Cases (2008)]

Stages of the FCEP



Gather Documents & Host Launch

Training, Court Mapping

Identifying Priorities & Challenges

Work Plan Development

Intensive TA,, Institutional Analysis & Logic Modeling

Resulting Community-Specific Work Plan

Implementation

Intensive TA

Systems Change & Data Collection

Progress To-Date



- Launch Events Hosted (4)
- Logic Modeling
- Work Plans
- Data Gathering: surveys, walk-throughs, file reviews, subcommittee work to design better practitioner responses
- All Sites

Large Group Discussion



Name 3 challenges to good decision-making in parenting cases involving domestic violence.

Common Challenges in FCEP Sites



- Self-represented litigants (SRLs)
- Custody in protection order cases
- How to tailor dispute resolution methods, including mediation and facilitated resolution, to meet the needs of parties
- Courts / Practitioners / Parties lack adequate information
- Avoiding the perception that being DV-competent means being biased in favor of the victim

Common Ambitions Identified in Proposals



- To improve their ability to detect and respond to domestic violence that has not been overtly identified;
- To develop and implement comprehensive judicial training on domestic violence;
- To identify and bridge philosophical differences regarding domestic violence as it appears in the family court;

Common Ambitions, cont'd



- To improve consistency in the handling of cases among judicial officers; and
- To learn best practices for addressing the needs of victims, perpetrators, and their children while ensuring fairness for everyone who comes before the court.

Framework



What is
actually
going on?

What can
be done
about it?

Identify
Domestic
Abuse

Understand
Nature &
Context of
Abuse

Determine
Implications
of Abuse

Account for
Abuse in
Decisions
and Actions

Is abuse
an issue
here?

What
does it
mean?



**Identify
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How to Screen Depends On:



- Your Role and Function
- Nature of the Proceeding
 - Legal issue to be decided
 - Applicable legal standard

Research on Screening



- Domestic violence is often not detected in disputed child custody cases.
 - Johnson, Saccuzzo & Koen, 2005; Ballard, Holtzworth-Munroe, Applegate & Beck, 2011.
- Screening for physical violence alone is insufficient to detect coercive controlling abuse.
 - Beck & Raghavan, 2010.
- Practitioners who do not use systematic screening methods tend to under-detect IPV between custody-disputing parents.
 - Holtzworth-Munroe, Beck & Applegate, 2010; Ballard, Holtzworth-Munroe, Applegate & Beck, 2011.

Screening Protocols



- Elements of a good screening protocol
 - Systematic and universally applied
 - Behaviorally-specific
 - Focused on multiple forms of abuse
 - Attuned to both past abuse and more recent abuse
 - Alert to established risk factors
 - Structured in a way that promotes safe and informed disclosures
- Sample protocol: Domestic Violence Interview Guide



Identify
Domestic
Abuse

**Understand
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- Patterned
- Intimidation
- Dominance
- Entitlement

Coercive
Controlling
Abuse



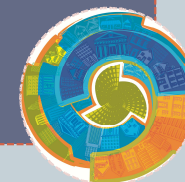
- Produced and shaped by coercive controlling abuse

Violent
Resistance



- No power and control tactics at work

Abuse Unrelated
to Coercive
Control



Coercive Control



- A harmful course of conduct that:
 - Subordinates the will of a current or former partner
 - By:
 - ✦ Violating their physical integrity (violence)
 - ✦ Denying them respect and autonomy (intimidation)
 - ✦ Depriving them of social connectedness (isolation)
 - ✦ Appropriating or denying them access to the resources required for personal liberty (control).

- ✦ Evan Stark (2007), *Coercive Control*, p. 15

Coercive Control



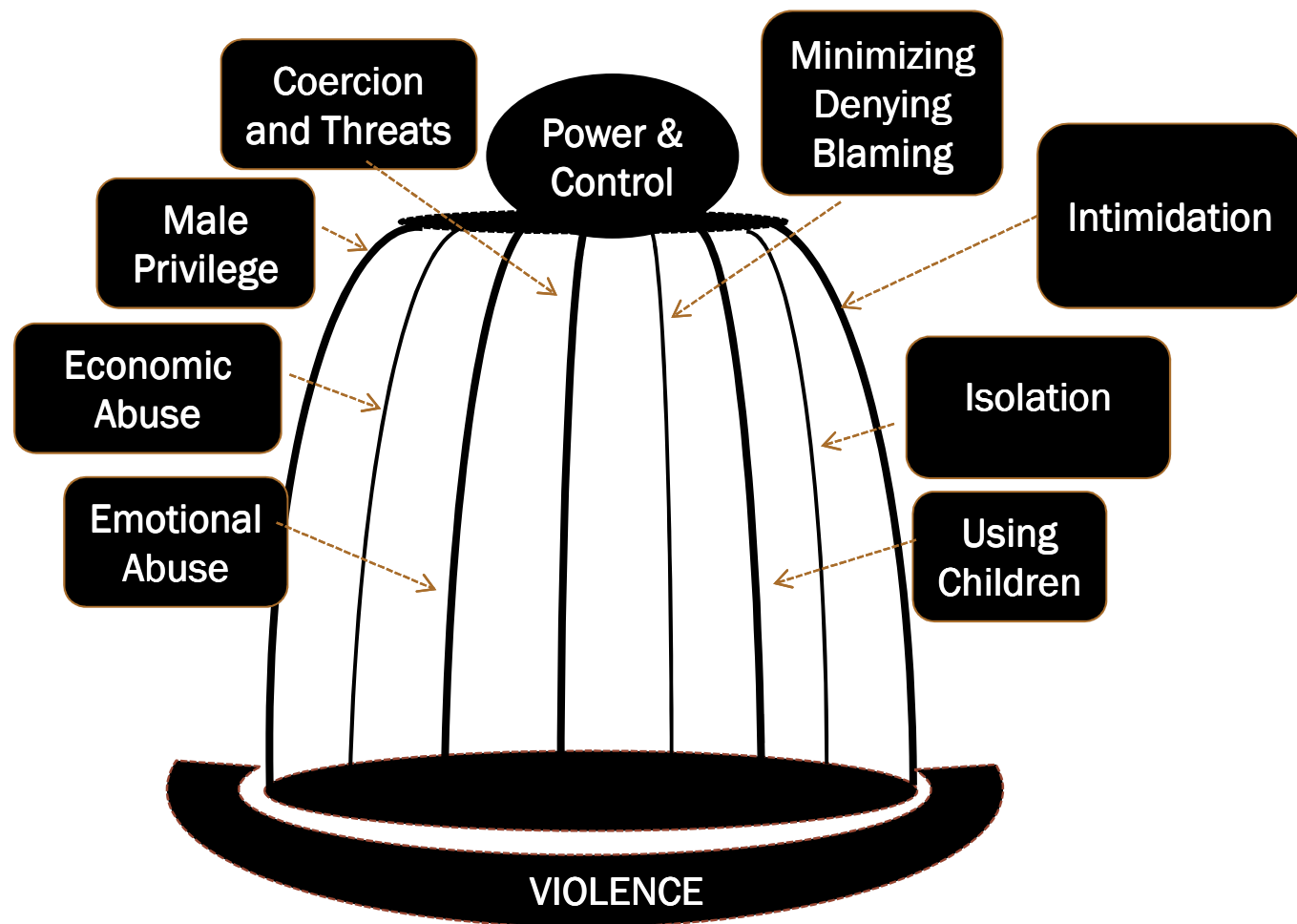
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 Duluth, Minnesota 55802
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www.duluth-rose.org

Exercise

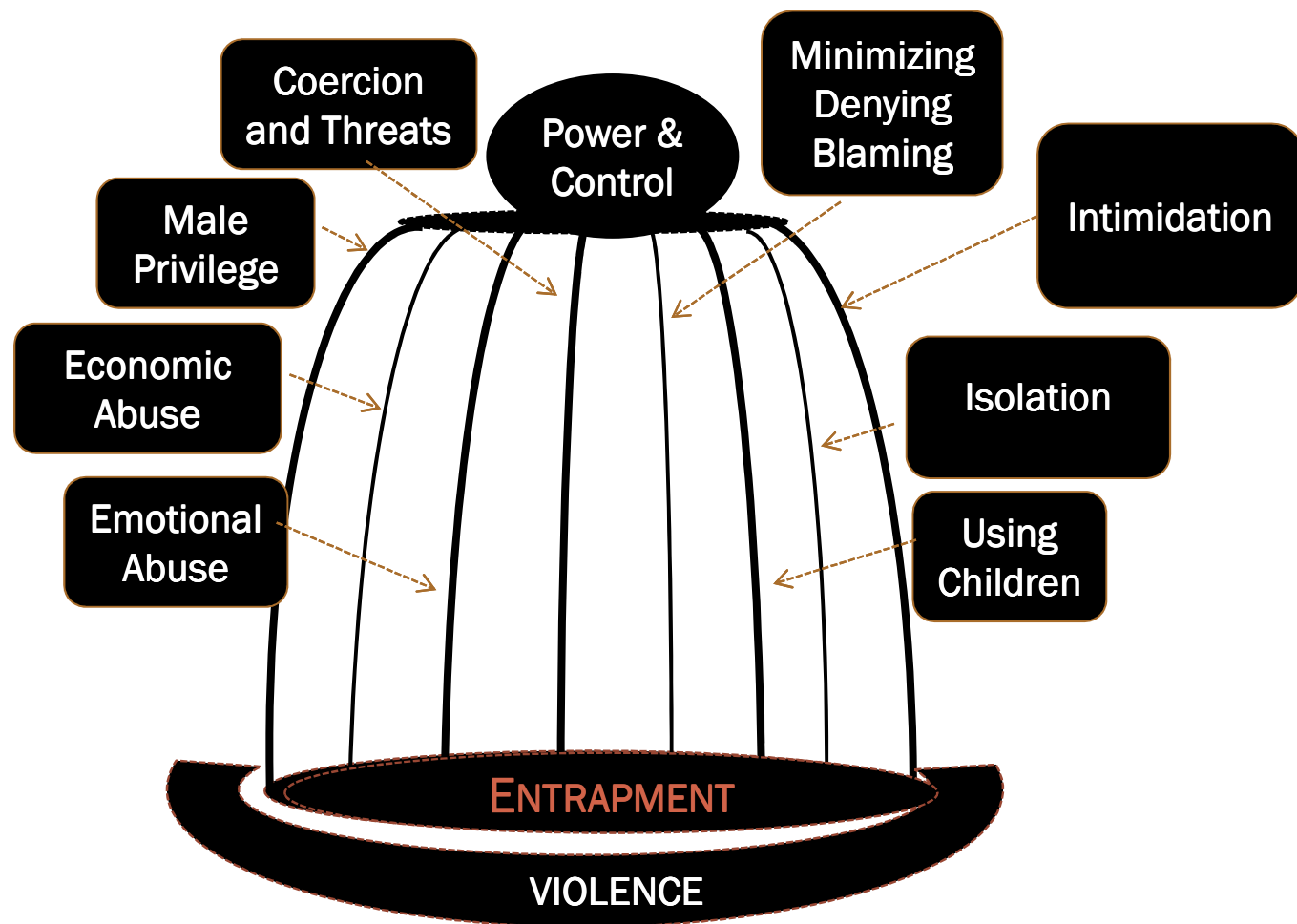


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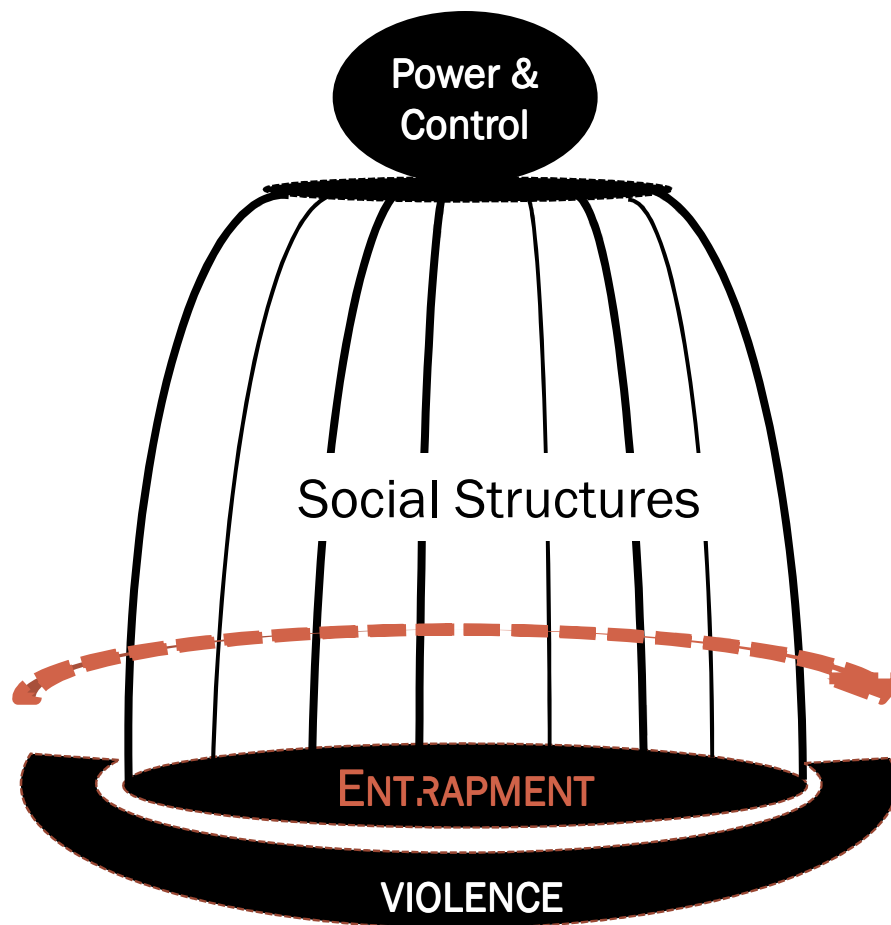
Coercive Control



Coercive Control



Coercive Control



Ripped from the Headlines...



Whisked Out of Jail, and Back to the N.F.L.

N.F.L. Teams' Ties to Police Put Victims of Domestic Violence in a Bind

By Steve Eder, The New York Times

16 November 2014

Wives in Domestic Abuse Cases Say NFL Culture Made Them Feel Trapped

By Steve Eder, The New York Times

18 November 2014

Coercive Control Redux



- **Coercive control is not like other forms of abuse**
 - It is *qualitatively* different, not just different in degree or severity
 - Distinguishing feature – it places the victim in an objective state of entrapment
 - It is not *psychological*, but *structural*
 - It has significantly different implications for parenting, co-parenting and dispute resolution, among other things
- **Confounding factors**
 - There is no reliable test for coercive control.
 - The tactics of coercive control can be hard to see.
 - The tactics of coercive control may seem innocuous.
 - On its face, coercive control can look exactly like low level physical abuse.



Safety



Children



Parenting



ADR
Process



Outcomes





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Domestic
Abuse

Understand
the Nature
& Context of
Abuse

**Determine
the
Implications
of Abuse**

Account for
Abuse in
Decisions
and Actions

Implications of Abuse



- Problems for the Victim Parent
- Problems for the Child
- Problems for the Abuser
- Benefits for the Abuser

The Boy on the Stairs





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Even when IPV is detected, cases often proceed without accommodations for safety or power differentials.

Kernic, Monary-Ernsdorff, Koepsell, & Holt, 2005; Bow, 2006

Co-Parenting Analysis

Identify Domestic Abuse

- Does a structured interview reveal any signs or indications of physical, sexual, emotional, economic, or coercive controlling abuse?

Understand the Nature & Context of Abuse *(for purposes of co-parenting)*

- What is the quality of the parents' interactions with each other?
- What is the quality of the parents' interactions with each child?
- Does either parent interfere with the other's access to necessary and/or available resources?
- Does either parent threaten the other's capacity for self-determination?
- Does either parent pose a risk to any other family member's physical, sexual, or emotional safety, security or well-being?

Determine the Implications of Abuse *(for co-parenting)*

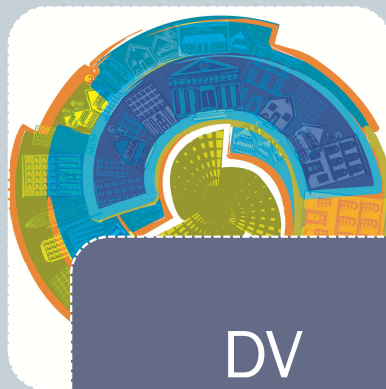
- Are relationships free from violence, threats of violence, and coercive control? Y N
- Do parents recognize and support children's needs? Y N
- Do children feel safe, secure and supported by parents? Y N
- Is communication between parents direct, constructive, and focused on the children? Y N
- Do parents separate their role as parent from their role as partner? Y N

Account for Abuse in Actions and Decisions *(about co-parenting)*

- Is there cause to:
 - Limit or monitor the abusive parent's access to a child or victim-parent?
 - Limit or monitor the abusive parent's decision-making authority?
 - Monitor the abusive parent's compliance with the parenting plan?
 - Support the victim-parent's efforts to protect a child?
 - Strengthen a child's support system?



Initial
Screening
Guide



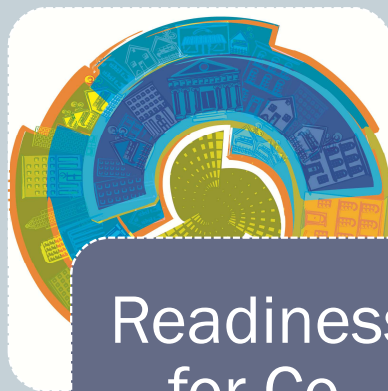
DV
Interview
Guide



Best
Interest
Worksheet



DV
Planning
Guide



Readiness
for Co-
Parenting
Guide



Readiness
for
Mediation
Guide



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Mock Hearing



Looking at Self Represented Litigants
(*SRLs*)
through the lens of the FCEP.

Large Group Discussion



- What went well in the hearing?
- How safe did the victim feel?
- How safe / confident did each feel in presenting what they wanted?
- Did the parties know what was happening?
- What could have been done *before* the hearing to assist an SRL in a DV-related custody case?
- What about *after* the hearing?

Resources



Office on Violence Against Women

- Grants

<http://www.justice.gov/ovw/training-and-technical-assistance>

<http://www.justice.gov/ovw/grant-programs>

- Technical Assistance

<https://ta2ta.org/directory.html>

Resources



The National Council of Juvenile & Family Court Judges:

www.ncjfcj.org

- National Judicial Institute on Domestic Violence (Training)
- National Resource Center on Domestic Violence: Child Protection and Custody (Training and Technical Assistance)

Resources



The Battered Women's Justice Project:

<http://www.bwjp.org/our-work/projects/national-child-custody-project.html>

- National Child Custody Project
- Webinars, Practice Guides, TTA Requests

Center for Court Innovation

<http://www.courtinnovation.org/topic/domestic-violence>

- Technical Assistance
- Demonstration Courts



Thank you!!