



Family Violence Appellate Project
Recent Developments in CA
Domestic Violence Law Cases &
Statutes
and the Psychology Behind Them
 Nancy K. D. Lemon, Judge Tara Flanagan,
 and Dr. Mindy Mechanic

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Who We Are

Founded in 2012, FVAP is the first ever non-profit organization in California dedicated to providing legal representation and support to domestic violence survivors at the appellate level.

FVAP partners with pro bono attorneys from California's top law firms and corporate legal teams to provide free, high-quality legal representation to low- and moderate-income survivors, giving them the best chance at appeal.

FVAP also provides technical assistance to attorneys, domestic violence advocates, and self-represented litigants on domestic violence issues arising in family law cases.

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Overview

- Custody
- Immigration
- Issuance of Restraining Orders
- Mutual Restraining Orders
- Renewals of Restraining Orders
- Anti-SLAPP Suit in Response to Restraining Order Request
- Termination of Parental Rights (Juvenile Court)
- Right to a Free Court Reporter
- Criminal Cases

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Custody

Jaime G. v. H.L., 25 Cal.App.5th 794 (2018)

- Father petitioned to be declared father
- Parties self-represented
- Both lived with significant others
- Father worked, mother unemployed
- 7 year old son lived with father, who said mother was on drugs, which mother denied
- Mother had not seen son for several months

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Custody

Jaime G. v. H.L., continued:

If you were the judge, what type of custody would you order, based on the facts so far?

What would be the reasons for your order?

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Custody

Jaime G. v. H.L., continued:

Court ordered joint legal custody, son to live with father during week (primary physical custody), son with mother on weekends.

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Custody, continued

Jaime G. v. H.L., continued:

Mother requested DVRO, said she left him after 9 yrs due to DV

Mother alleged father recently drove erratically toward mother and son, hit and pushed her

Father denied this, alleged mother used meth and became paranoid on it

Mother testified that she feared father's continued verbal and psychological abuse

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Custody, continued

Jaime G. v. H.L., continued:

If you were the judge, would you grant mother's request for a DV Restraining Order (DVRO)?

If you did grant a DVRO, what would be the reasons for your order?

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Custody, continued

Jaime G. v. H.L., continued:

Court granted 2 year DVRO

Is this a finding of DV for purposes of Family Code section 3044, the rebuttable presumption against custody to abusers?

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Custody, continued

Jaime G. v. H.L., continued:

Answer: Yes, issuance of DVRO= finding of DV

At same hearing, when mother's attorney cited Family Code § 3044, court awarded mother sole physical and legal custody, and visitation to father.

Mother's attorney objected to father's visitation

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Custody, continued

Jaime G. v. H.L., continued:

If you were the judge, would you have granted the father visitation?

If so, what would be the reasons for your order?

Doesn't Family Code section 3044 state that anyone found to have committed DV in last 5 years should not have visitation? Or that it should be supervised?

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Custody, continued

Jaime G. v. H.L., continued:

Answer: No, Section 3044 does not deal with visitation

Family Code § 3100(c) states that when there is a DVRO, judges should craft visitation so as to limit child's exposure to conflict or violence, & ensure safety of all family members

§ 3100(b): if DVRO in place, judges can order supervised visitation, or suspend or deny visitation

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Custody, continued

Jaime G. v. H.L., continued:

If you were the judge in this case, what type of visitation order would you issue?

What would be the reasons for your order?

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Custody, continued

Jaime G. v. H.L., continued:

At later hearing, court changed order to joint physical and legal custody

Reason given: father was the more stable and suitable parent

Does this comply with the Family Code?

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Custody, continued

Jaime G. v. H.L., continued:

Answer: No.

1. Parent modifying custody or visitation order must show significant change in circumstances
2. Family Code § 3020: living in home with DV is detrimental to children; health, safety & welfare of child is paramount
3. Family Code § 3044: Once DVRO issued, restrained parent must rebut presumption against any type of custody (joint or sole, physical or legal)

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Custody, continued

Jaime G. v. H.L., continued:

Mother's attorney objected that father had not rebutted § 3044 presumption against custody to him

What are the factors the court is required to consider in determining whether the presumption has been rebutted?

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Custody

Jaime G. v. H.L., continued:

- Answer:
1. Best interest of the child to be with abuser (Note: can't rely on preference for frequent & continuing contact)
 2. Successful completion of batterer's program (NOT anger management)
 3. Successful completion of alcohol or drug abuse program if appropriate
 4. Successful completion of parenting class if appropriate

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Custody

Jaime G. v. H.L., continued:

5. Compliance with terms of probation or parole, if applicable
6. Compliance with restraining order, if applicable
7. Committing any further acts of DV.

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Custody

Jaime G. v. H.L., continued:

Note: AB 2044, effective 1/1/19, amended §§ 3011, 3020, 3044, and 3100 (see handout)

§ 3011(b)(1)(C)(2): removed “substantial” from corroboration required to prove abuse

§ 3020(a): New: “Children have the right to be safe and free from abuse”

§ 3044(a): New: presumption triggered if parent abuses current partner, not just co-parent, grandparent, or child

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Custody

Jaime G. v. H.L., continued:

AB 2044, continued:

§ 3044 (b) New: Court must find it is in best interest of child to be with abuser, and that on balance, the other 6 factors support findings in § 3020.

(f): New: Intent to comply with *Jaime G. v. H.L.*

(g): New: Must make DV finding under 3044 prior to custody hearing; may make temporary custody orders if necessary, complying with 3011 and 3020

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Custody, continued

Jaime G. v. H.L., continued:

Mother’s attorney asked court to walk through the 7 rebuttal factors in § 3044

Court started to do that, stating that 1st factor, best interest of child, was paramount here

Mother’s attorney interrupted several times, court ended hearing without discussing each factor

Mother appealed, arguing court did not comply with 3044 or § 3011(e)(1), requiring court to state reasons in writing or on record if awards custody to alleged abuser

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Custody, continued

Jaime G. v. H.L., continued:

If you were the appellate court, what would you rule?

What would be the reasons for your ruling?

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Custody, continued

Jaime G. v. H.L., continued:

Appellate court stated most reasonable interpretation of 3011(e)(1) here: trial court must address each of 7 rebuttal factors, “mandatory checklist”

Court states this was legislature’s goal: ensure that family courts give great weight to DV, instead of ignoring it or assuming it won’t happen again

Also: written findings necessary for appellate review, to create body of precedent for consistent and predictable results, and for researchers to be able to determine if presumption is producing such results

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Custody, continued

Jaime G. v. H.L., continued:

Appellate court remanded case to trial court to provide statement of specific reasons it found 3044 to be rebutted, on record or in writing

Appellate court declined to order sole custody to mother, up to trial court after addressing each rebuttal factor

First CA appellate case to hold that trial courts must address each of the 7 rebuttal factors in 3044, in writing or on the record

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Custody, continued

S.Y. v. Superior Court, __ Cal.App.5th __ (2018)

Father physically abused mother, including strangling her, forcing her & toddler out of house
Both parties obtained Temporary Restraining Orders, but after hearing testimony, court dismissed both TRO's

Mother asked Health and Human Services to investigate father for emotional child abuse; they did, then closed case

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Custody, continued

S.Y. v. Superior Court, continued

Father sought primary physical custody

Family Court Services recommended joint legal custody, primary physical custody to mother, father to have supervised visits

FCS also recommended parents take parenting & co-parenting classes, mother get therapy

Court adopted these in temporary order, but ordered sole legal & physical custody to mother since parents not communicating well

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Custody, continued

S.Y. v. Superior Court, continued

6 months later at trial, father testified he did not see child for months; mother said did not understand court orders re visitation

Mother could not find classes or therapists who spoke Chaldean or Arabic, & MediCal would not pay, so she did not comply with temporary order
Professional supervisor testified that father's visits went well, child happy to be with him, father no longer violent to child

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Custody, continued

S.Y. v. Superior Court, continued:

Trial court changed custody to joint physical & joint legal

Court ordered father to take 12-week DV class, finish parenting class he started, no corporal punishment, no smoking around child

Mother ordered to get therapy or take parenting class

Court stated father's greater English proficiency was one reason he should have joint custody

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Custody, continued

S.Y. v. Superior Court, continued:

On appeal, mother argued court erred by relying in part on father's greater English proficiency

Also erred by not specifically addressing each of the 7 rebuttal factors in Family Code § 3044(b)

Two amicus briefs: 1) language proficiency issue violates Equal Protection, Title VI of Civil Rights Act, 1st Amendment

2) § 3044(b) mandates completion of batterer's program and parenting class in every case

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Custody, continued

S.Y. v. Superior Court, continued:

Appellate court upheld trial court's order

Held that reliance on English proficiency was wrong, but harmless error: substantial evidence supported joint custody in this case

Rebuttal factors are "statutory suggestion," not mandatory that batterer complete DV program or parenting classes unless ordered to do so

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Custody, continued

S.Y. v. Superior Court, continued:

Appellate court stated that DV program can be shorter than 1 year in family law cases

It noted that Penal Code § 1203.097 requires 52 week batterer intervention program as condition of probation, but only in criminal cases

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Custody, continued

S.Y. v. Superior Court, continued:

Appellate court agreed with *Jaime G.*: court must consider each of 7 rebuttal factors

But disagreed with *Jaime G.* that court must discuss each rebuttal factor in statement of decision - not required by statutes or case law

AB 2044 amends § 3044: courts must follow *Jaime G.*, "make specific findings on each of the factors in subdivision (b);" this may resolve split between *Jaime G.* and *S.Y.* decisions

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Custody, continued

S.Y. v. Superior Court, continued:

S.Y. decision: health, safety, & welfare of child is the primary consideration in DV cases, per Family Code § 3020(c)

Mother testified that she was not concerned for child's welfare when he was with father

No more violence by father after separation from mother

No harassment of mother by father that arose to level supporting DV restraining order

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Custody, continued

S.Y. v. Superior Court, continued:

Trial court did not address substance abuse by father, another rebuttal factor, but no evidence that this was relevant in this case

Same with probation or parole compliance, since father was not on either of these

No DV restraining order, so court did not have to address whether father complied with it

Statement of decision was adequate in setting forth trial court's reasons for joint custody

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Immigration

Bianka M. v Superior Court, 5 Cal.5th 1004 (2018)

Bianka's father abused her mother with machete while Bianka in utero in Honduras

After her birth, father refused to give mother money or food for baby or have anything to do with her
Mother came to U.S., Bianka followed when she was 10, entering without authorization, lived with mother

Mother petitioned to be declared Bianka's parent, Bianka petitioned for Special Immigrant Juvenile Status (SIJS) since father abandoned her; this would allow her to stay in U.S. legally

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Immigration

Bianka M. v Superior Court, continued:

Bianka's attorney mailed court documents to father and spoke to him on phone, explaining proceedings

Father did not file response

Family court stated it could not act unless father joined as party

Bianka appealed; FVAP filed amicus brief in favor of Bianka, arguing court could act without father being joined as party

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Immigration

Bianka M. v Superior Court, continued:

If you were on the appellate court panel, what would you rule?

What would be the reasons for your ruling?

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Immigration

Bianka M. v Superior Court, continued:

Court of appeal upheld trial court

Ca. Supreme Court reversed: trial court has authority to issue SIJS finding for abused, neglected, or abandoned child without father's participation if he has been properly served

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Immigration, continued

Bianka M. v Superior Court, continued:

High court: furthermore, trial court cannot deny SIJS relief because child's primary motive is to obtain immigration relief

Outcome is important because seeking cooperation from abusive parent can put child or abused parent in more danger and expose them to unnecessary trauma

First case with this holding in CA, precedential

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Issuance of Restraining Orders

In re Marriage of Davila and Mejia, __ Cal.App. 5th __, 239 Cal.Rptr.3d 805 (2018)

Wife filed for DVRO, alleging husband threatened to physically harm her, verbally abused her frequently, she feared for her safety

Also stated she feared for safety of her 3 children by prior relationship - husband physically abused son, verbally abused daughter, threatened to physically abuse children and to take them to Mexico

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Issuance of DVRO's, continued

In re Marriage of Davila and Mejia, continued:

At hearing, wife testified that husband held gun to her head and threatened to kill her 2-3 times

She felt terrified, hid gun; when he found it he threatened to kill her if she hid it again

Husband denied threatening wife with gun, accused wife of welfare fraud and lying in past

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Issuance of Restraining Orders

In re Marriage of Davila and Mejia, continued:

If you were the judge, would you issue a DVRO?

If so, what would be your reasons for doing so?

If you would not issue a DVRO, why would you deny it?

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Issuance of Restraining Orders

In re Marriage of Davila and Mejia, continued:
 Court found wife credible, issued 2-year DVRO protecting wife and children
 Husband appealed, arguing trial court erred because wife had not specified gun threats in her request
 He argued this was lack of notice to him, so denial of Due Process

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Issuance of Restraining Orders

In re Marriage of Davila and Mejia, continued:
 If you were on the appellate court panel, would you uphold the trial court or reverse it?
 What would be your reasons?

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Issuance of DVRO's, continued

In re Marriage of Davila and Mejia, continued:
 Appellate court upheld issuance of DVRO, stating:
 Trial court did not err in admitting wife's testimony
 No statute or case requires testimony to be limited to specific allegations in application for DVRO
 Also, husband did not object at trial to wife's testimony
 Even if he had objected, wife's statements that he threatened to physically harm her and she feared for safety of herself and children were sufficient to put him on notice re alleged threat of physical violence

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Issuance of DVRO's, continued

In re Marriage of Davila and Mejia, continued:
Opinion, continued: Husband had opportunity to respond to wife's testimony, and denied gun threats
 Nor did husband request continuance to respond to wife's testimony
 Trial court correct in not giving credence to alleged welfare fraud where no written evidence of this
 Substantial evidence of abuse of wife supported trial court's issuance of DVRO

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Issuance of DVRO's, continued

In re Marriage of Davila and Mejia, continued:
 First case in CA to hold that trial courts can base DVRO's on testimony of DV survivors even if they did not give specific details in written request
 Significant because most petitioners for DVRO's have no attorneys, many are limited English proficient, many are traumatized so do not recall exact details or incidents
 This should not prevent them from obtaining protection, as long as DVRO applications contain sufficient allegations of abuse to put respondents on notice generally
 Respondents can ask for continuance to deal with unexpected testimony from petitioners

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Mutual Restraining Orders

Melissa G. v Raymond M., 27 Cal.App.5th 360 (2018)
 Mother had primary physical custody of son, born 2010
 Father got 3 year DVRO against mother in 2010, he did not seek to renew it
 2017: court ordered weekly visitation for father
 After first visit, each parent accused other of assaulting them, each denied doing this to other parent

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
 At second visit, friend of mother's brought son, made video of father on friend's phone
 Father said friend pushed phone close to his face, called him racial epithet, spit on him
 While father was holding son, father knocked phone out of friend's hand
 Mother denied this version of events but was not present during incident

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
 At another visit, father claimed mother assaulted him: grabbed arm, bit him, punched and scratched face; left teeth marks, documented in police photos and report
 Mother denied this, said father bit himself; claimed she was the one who called police
 Father filed for DVRO, sole custody
 Mother filed for DVRO, supervised visits with father

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
 Same judge who issued visitation order presided over hearing re the 2 DVRO requests
 Mother said if DVRO granted, it should be mutual
 Father's counsel: no evidence to support mutual DVRO's, mother not credible; per Family Code § 6305, before issuing mutual order, court must find each party acted as a primary aggressor and neither party acted primarily in self-defense

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
 If you were the judge, how would you rule?
 (show of hands)
 DVRO for father?
 DVRO for mother?
 Mutual DVRO's?
 No DVRO?

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
 Court found father knocked phone out of third party's hand while son present, which supports DVRO against him
 Court stated because there were independent acts of DV on different occasions, it did not have to analyze which party was a primary aggressor
 Court issued 2 DVRO's, ordering parties to leave each other alone, made no finding re primary aggressor or self-defense, declined to switch custody to father

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
 Father appealed (represented by FVAP), arguing court must make findings under Family Code § 6305 before issuing either one mutual DVRO or 2 separate DVROs.
 If you were a judge on the appellate panel, how would you rule?
 What would the reasons for your ruling be?

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
Appellate court agreed with father, based on language of § 6305, legislative history, case law
Reversed trial court, remanded for factual findings regarding primary aggressor and self-defense
First case to hold that § 6305 applies to separate incidents

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
Holding based on statutory requirement in Penal Code § 836 (determining dominant aggressor) to consider "history of DV between persons involved" and "protect[ing] victims of DV from continuing abuse"
– i.e., do not treat separate incidents as unrelated to each other
(Note that Penal Code uses "dominant aggressor," Family Code uses "primary aggressor," these are equivalent)

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Mutual Restraining Orders, continued

Melissa G. v Raymond M., continued:
Also, appellate court stated trial courts should not issue mutual orders because expedient, or because in order to obtain own order survivor yields to abuser's request for mutual order
In comment that survivors may yield to abusers' requests for MRO's, appellate court showed understanding of dynamics of DV

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Renewing Restraining Orders

Rybolt v Riley, 20 Cal.App.5th 864 (2018)
Mother obtained initial DVRO against father, including stay away order of 25 yards
Court found father had intentionally or recklessly attempted to cause bodily injury to mother, placed her in apprehension of imminent serious bodily injury, stalked and threatened her, and he did these repeatedly

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:
1 year later in custody hearing, court found father failed to comprehend nature & gravity of his conduct
Father got his sister and others to follow mother, threaten her via email, copy private parenting documents
What custody order would you issue if you were the judge?
What would your reasons be for this order?

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:
Judge found that father had not rebutted § 3044 presumption, raised by DVRO
Judge stated: father blamed multiple third parties, including mother, former lawyer, co-parent counselor, mediator, etc. for continuance of his own activities
Father also drew child into these disputes several times

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Later, court allowed father to attend back to school night, extracurricular activities of son
 If mother alone, father ordered to arrange school official to escort her to car after the event
 Mother testified that father violated DVRO at school events and extracurricular activities many times
 He came within 15 feet of her, she called police twice
 Father insisted on attending son's events during mother's parenting time but failed to take son to practices & games during his own time

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Mother testified that father insisted he attend parent teacher conference with mother, said he was not allowed to schedule separate meetings, not true; then did not show up, but she was very anxious in anticipating he would
 Mother testified that she's anxious, shaky, nauseous when around father, very afraid of him
 Her new husband confirmed in testimony mother's adverse physical symptoms when around father

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Mother installed video cameras, changed locks
 Mother testified that son is worried about her when father around, aware of her distress
 Father denied intending to intimidate or harass mother, said police told him he was not really doing anything wrong when came to close to mother, disputed several incidents she testified to
 Father now in law school, concerned that another DVRO could keep him from being admitted to the bar
 Father said he had completed 52 week "anger management" course since first DVRO granted

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Father admitted he'd been fired from CHP for dishonesty
 He also lied to family court about his income so he would pay lower child support, but was found out
 If you were the judge, would you issue a new DVRO?
 If so, what would be your reasons?
 Would the new DVRO be 5 years or permanent?

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Court issued new 5 year DVRO:
 mother's apprehension of future abuse genuine & reasonable;
 father violated DVRO several times;
 he used extracurricular activities as pretext to manipulate, control, disturb mother;
 circumstances had not changed sufficiently to reduce need for protection

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Note that violation of first DVRO not required to get renewal under § 6345 and case law
 Reasonable apprehension of future abuse generally (not future physical abuse) is required for renewal
 Court is also to consider whether circumstances have changed so no need for further protection (e.g., one party has moved across country or out of U.S.).

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Court ordered father not to attend extracurricular activities during mother's parenting time unless she agrees in writing

Father appealed:

1. insufficient evidence that mother had reasonable apprehension of future abuse
2. circumstances had changed since first DVRO issued
3. court did not consider best interests of child
4. prohibition on extracurricular activities is vague and overbroad

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

If you were a judge on the appellate panel, how would you rule?

Would you uphold the issuance of the renewed DVRO, or not?

What would be the reasons for your ruling?

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Appellate court upheld new DVRO:

Mother's apprehension of future abuse was reasonable – fear of father's disturbing her peace was sufficient abuse

Imminent and present danger of abuse not required, nor fear of future *physical* abuse

Original DVRO based on serious physical, sexual, emotional, and mental abuse, a consideration on renewal

Contrary to father's argument, he did violate DVRO, though this is not required for renewal

Any violation of DVRO is very serious and gives very significant support for renewal

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

Circumstances have not changed:

father may have completed 52 week "anger management" class, and may be in law school, but being fired by CHP for dishonesty has greater impact on his future career than new DVRO will

OK for family court to ban father from extracurricular activities during mother's time
Order is not vague and overbroad

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Renewing Restraining Orders, continued

Rybolt v Riley, continued:

First CA published decision to deal with post-separation abuse taking place under the guise of attendance at extra-curricular activities of child

Typical behavior of many parents who have abused co-parent, and who may be more interested in harassing and intimidating co-parent than attending and participating in child's activities for child's sake

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Renewing Restraining Orders, continued

- *Martindale v. Ochoa*, 2018 WL 6574949, __ Cal.App. 5th __ (published 12/13/18)
- Mother obtained 3 year DVRO against father, based on his jealousy, threats to hurt, kill, and destroy her, property destruction, restraining her, raping and bruising her 7 years earlier
- At hearing to renew DVRO, mother testified that she was still afraid of him, installed cameras and other security at home

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- Mother also testified that 3 years before renewal hearing, father made false report that she abused daughter, police said “unfounded”
- And that father failed to acknowledge his past abuse, which made her afraid of him
- She testified he violated order several times by being in same vicinity in public and removing bike & patio furniture from her place

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- Father testified he went out of his way to avoid mother, e.g., did not go to daughter’s events; when he joined gym he made sure she was not a member; he left gym when he saw her there 3 times after she joined it
- He also tried to withdraw CPS report, fearing child would be removed from mother
- Same judge at both hearings

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- Court issued detailed written decision, found father more credible than mother at renewal hearing
- Court stated testimony at original hearing not sufficient by itself to support renewal, and alleged violations of DVRO not significant
- It noted when mother joined gym, she asked if father was member, he was; joined anyway

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- Trial court also noted that when mother encountered father in bar, she was aggressive toward him
- Mother appealed denial of renewal of DVRO
- Appellate court agreed mother had not shown reasonable fear of future abuse; denial of renewal of DVRO not abuse of discretion

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- Appellate court: granting of DVRO does not confirm trial court made finding that every allegation of abuse was true, just that mother met burden of proof overall
- Mother’s joining gym where father was member indicates she was not afraid of him
- So did her being aggressive to father in bar

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- Also, father left whenever he found himself in presence of mother during DVRO: at gym, at daughter’s school, at bar, etc., so no violations of DVRO
- Appellate court distinguished this case from *Cueto v Dozier*, another DVRO renewal case, where father failed to attend court ordered anger management classes
- Abuse of discretion not to renew that DVRO

Renewing Restraining Orders, continued

- *Martindale v Ochoa*, continued:
- *Cueto* trial court denied renewal based on lack of violations but admonished father not to contact mother
- Admonishment indicated Ms. Cueto had shown reasonable fear of future abuse
- Here, no admonishment by trial court or court order that father attend anger management or batterer's program and no reasonable fear of future abuse

Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, 22 Cal.App.5th 92 (2018)

Gordon B., 75 year old disabled veteran, lived alone, testified against neighbor at 2 animal control hearings. Then neighbor and 4 associates began to harass him, destroy his property, tried to run him down, etc.

Gordon got Elder Abuse TRO against all 5 people; 2 disappeared; neighbor and 2 others were served

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Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, continued:

At hearing, trial court issued 1 year RO against neighbor and his wife, including 100 ft stay away and order to get rid of all guns

Gordon requested renewal, testified he called police several times to enforce order, each time things got better

Court said Gordon must present evidence of significant threat or act of violence to get renewal

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Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, continued:

Gordon's attorney noted drastic improvement with RO, Gordon's fear that if RO not in place, neighbor's behavior will go back to what it was. Court stated this was speculative, insufficient. Court admonished neighbor to stay away from Gordon, his property, and his car, but denied renewal of order.

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Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, continued:

Gordon appealed denial of RO renewal

Argued court used wrong legal standard when stated he must present evidence of significant threat or act of violence to get renewal

If you were on the court of appeal, what would you rule?

What would be the reasons for your decision?

(Note that standard for Elder Abuse RO's is same as for DVRO renewals)

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Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, continued:

Appellate court agreed with Gordon, reversed trial court

Analogized to DV Prevention Act statute and cases since Elder Abuse RO's are relatively new and the 2 statutes are virtually identical

No need to show further abuse during first RO to get renewal

Standard is reasonable apprehension of future abuse

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Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, continued:
Court should look at facts on which original RO was based, and whether circumstances have changed significantly (have parties moved on with their lives?)

Here, parties are still neighbors, and Gomez continues to act hostile to Gordon

Gordon's fear based on more than speculation, and evidence that RO worked = good reason for renewal

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Renewing Restraining Orders, continued

Gordon B. v Sergio Gomez, continued:
Appellate court cannot tell what basis was for original order (e.g., were there threats?), or whether neighbor tried to run Gordon down again (trial judge interrupted to ask if he called police when Gordon was testifying about that incident)

Reversed and remanded: trial court must hold another hearing to determine if Gordon has reasonable apprehension of future abuse sufficient to warrant renewal of RO

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Anti-SLAPP - Response to Restraining Order Request

L.G. v M.B., 25 Cal.App.5th 211 (2018)
Wife, M.B., filed for divorce and got TROs against husband and former nanny, L.G.
Wife alleged husband and nanny abusive to her
Wife did not obtain DVRO against husband, and settled TRO case with nanny
Nanny sued wife for defamation, Intentional Infliction of Emotional Distress, etc., said wife seduced her, nanny was conscientious, caught in middle of marital fights, finally quit her job

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Anti-SLAPP suit, continued

L.G. v M.B., continued:
Generally statements made in litigation are privileged – i.e., cannot be basis of a defamation lawsuit
However, nanny claimed wife's allegations about her were malicious and wife knew not true, so they did not fall within litigation privilege
Wife filed anti-SLAPP suit against nanny
SLAPP = Strategic Lawsuit Against Public Participation, i.e., nanny should not be able to prevent wife from making statements in litigation about abuse by nanny

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Anti-SLAPP Suit, continued

L.G. v M.B., continued:
Exception to litigation privilege when allegation concerns third party against whom spouse not seeking relief ("divorce proviso")
But exception applies only if spouse reasonably believes statements are true and makes them without malice
Trial court agreed that litigation privilege did not apply to wife's allegations, nanny likely to prevail on her claims, so threw out wife's anti-SLAPP suit against nanny
Appellate court agreed, upheld trial court

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Anti-SLAPP Suit, continued

L.G. v M.B., continued:
FVAP's amicus brief argued that litigation privilege exception should be read narrowly to exclude statements made in DVRO applications, so DV survivors could not be sued for statements they made to try to obtain relief
Appellate court commented in decision that this is up to legislature, not the courts

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Termination of Parental Rights (Juvenile Court)

J.H. v Superior Court, 20 Cal.App.5th 530 (2018)

Father battered wife (stepmother of children) and children; she also abused children; DSS removed children

Father refused to cooperate with DSS, hostile to them and court, who ordered him to take anger management classes and enter therapy

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Termination of Parental Rights (Juvenile Court)

J.H. v Superior Court, 20 Cal.App.5th 530 (2018)

After 6 months, father got extension re whether his parental rights would be terminated

Court ordered him to act appropriately with DSS and address his anger issues

At 12 months, he was still hostile, had complied only a bit with case plan, had not visited children much

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Termination of Parental Rights, continued

J.H. v Superior Court, continued:

At hearing to terminate father's parental rights, original DSS caseworker could not testify since she no longer worked for DSS.

Father did not subpoena her.

Original caseworker's supervisor testified instead; she read DSS case notes, witnessed one of father's visits with children, interviewed his therapists, wrote part of DSS report.

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Termination of Parental Rights, continued

J.H. v Superior Court, continued:

Father objected to testimony under *People v Sanchez*:

When expert seeks to relate testimonial hearsay, violates 6th Am Confrontation Clause unless declarant unavailable and defendant had prior opportunity to cross examine declarant or forfeited this right by wrongdoing.

Query whether supervisor = expert; she was percipient witness to visit between father and children, and participated in DSS process

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Termination of Parental Rights, continued

J.H. v Superior Court, continued:

Father's parental rights terminated.

On appeal he argued trial court erred in not allowing him to cross examine original DSS caseworker, and allowing supervisor to testify instead, which violated *Sanchez*.

If you were on the appellate court, how would you rule?

What would be the reasons for your decision?

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Termination of Parental Rights, continued

J.H. v Superior Court, continued:

Appellate court upheld trial court:

1. Father did not subpoena original caseworker.
2. DSS report is hearsay, but *Sanchez* does not apply because Welfare & Institutions Code creates certain exceptions to hearsay rule.

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Termination of Parental Rights, continued

J.H. v Superior Court, continued:

Furthermore, *Sanchez* is a criminal case, where focus is punishment, while juvenile court cases are civil and not focused on punishment.

6th Am. right to confrontation, raised in *Sanchez*, applies only to criminal cases.

Due process clause creates right to confrontation in civil cases, but not same as criminal right of confrontation.

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Termination of Parental Rights, continued

In re Bruno M., __ Ca. Ct. App.5th __ (2018)

Father abused mother over many years, including strangling her until unconscious, split lips, threats to kill, holes in walls, jealousy, etc.

Father convicted of DV: jail time, 1-year batterers program, 3 years probation, protective order

Father had mother committed for suicidal ideation and wanting to hurt him

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Termination of Parental Rights, continued

In re Bruno M., continued:

He abused her again, she called police, who called DCFS. He was charged with DV again.

Mother got DVRO, which included children.

Juvenile court found children afraid of father, gave custody to mother, supervised visits for father, 3 year protective order included children

Father appealed part of order that included children, arguing they were “never in the line of fire” when he beat mother

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Termination of Parental Rights, continued

In re Bruno M., continued:

If you were the appellate court, how would you rule?

What would be the reasons for your ruling?

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Termination of Parental Rights, continued

In re Bruno M., continued:

Appellate court upheld trial court:

Children present when father physically abused mother, son thought maybe mother dead, son acted violent to mother and sister (copying father’s behavior), very young daughter covered ears during mother’s beating

Father threatened to abscond with children

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Termination of Parental Rights, continued

In re Bruno M., continued:

Court held DV has effect on children even if not physically abused, and these children at risk of physical harm, at times in line of fire, father sometimes forgot they were present when beating mother

Court cited *Perez v Torres-Hernandez*, an FVAP case, which cites social science research linking child abuse and spousal abuse

First CA juvenile court case to hold that witnessing DV can be basis for finding that parent disturbed peace of children, justifying including them on restraining order

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Termination of Parental Rights, continued

In re Bruno M., continued:

Extensive body of social science literature regarding effects on children of witnessing DV

See, e.g., ACEs study – long term effects on health

These studies are the basis for protections for children in Family Code §§ 3011, 3020, and 3044

Appellate court showed understanding of this in its opinion – even though children not physically abused, their peace was disturbed

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Right to a Free Court Reporter

Jameson v Desta, 5 Cal.5th 594 (2018)

Ca. Gov. Code § 68086(b)(1): if someone qualifies for waiver of court fees, this includes free court reporter (though still have to pay for transcript)

However, San Diego and most other counties in CA adopted new rules after 2008 recession: no more free court reporters in most civil trials. Party could bring own reporter, and pay them.

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Court Reporters, continued

Jameson v Desta, continued:

Jameson, prisoner in San Diego, sued Dr. Desta, prison employee, for malpractice, for prescribing medicine for hepatitis that permanently damaged his vision. Jameson qualified for waiver of court fees.

At trial Dr. Desta's attorney moved for nonsuit after Jameson's opening statement, court granted it.

Appellate court upheld this: up to Jameson to prove trial court erred, no transcript of proceedings due to lack of court reporter, so Jameson lost.

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Court Reporters, continued

Jameson v Desta, continued:

Jameson asked Ca. Supreme Court to review, request granted.

FVAP, co- counseling with Morrison & Foerster, submitted amicus brief, which 30 organizations and individuals signed onto.

FVAP brief focused on effect of lack of reporters in DV family law cases.

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Court Reporters, continued

Jameson v Desta, continued:

CA Supreme Court unanimously held that low-income litigants have right to verbatim record of trial court proceedings.

Struck down San Diego's local rule eliminating court reporters from civil cases unless parties pay for own court reporter because local rule contained no exception for low-income people who had received fee waivers.

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Court Reporters, continued

Jameson v Desta, continued:

Supreme Court: Ca. has policy of "providing equal access to justice to all persons regardless of their economic means."

California law should not "properly be interpreted to authorize a court to withhold court reporter services from [a poor] litigant when a litigant who can afford to pay for a private court reporter is permitted to obtain such services."

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Court Reporters, continued

Jameson v Desta, continued:

“... the absence of a verbatim record of trial court proceedings will often have a devastating effect on a litigant’s ability to have an appeal of a trial court judgment decided on the merits.”

“... the policy at issue here places indigent civil litigants at a significant disadvantage with respect to the right of appeal compared to those litigants who can afford to pay for a private shorthand reporter.”

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Court Reporters, continued

Next step: Repeal Gov. Code section prohibiting use of electronic recording in favor of live court reporters in many cases, including family law matters.

Decision notes benefits of electronic recording, recommended in 2017 report by Commission on the Future of California’s Court System.

Jameson court: “... an official court reporter, or other valid means to create an official verbatim record for purposes of appeal, must generally be made available to [poor] litigants upon request.”

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Criminal Cases

Bonivert v City of Clarkston, WA, 883 F.3d 865 (9th circuit)(2018)

When law enforcement responded to DV call, cohabitant survivor and child outside, boyfriend inside
Survivor consented to police entering house, but said boyfriend not danger to self or others, no weapons
Boyfriend did not allow police to enter, doors locked
Police broke in, threw boyfriend to floor, tased him, handcuffed him, tased him again; arrested him for DV, assaulting officer, and resisting arrest

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Criminal Cases, continued

Bonivert v City of Clarkston, WA, continued:
Boyfriend sued police for civil rights violation, alleging wrongful entry and excessive force
District court granted summary judgment for police

Boyfriend appealed

9th circuit reversed and remanded: while DV cases are volatile, they do not create an automatic emergency justifying entering without a warrant; for that, actual or imminent emergency must be unfolding

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Criminal Cases, continued

People v Henderson, 20 Cal.App.5th 467 (2018)

Defendant stalked victim, violated DVRO, vandalized home of other victim; victims were mother and daughter

Pled no contest, sentenced to 2+ years custody

At sentencing, he argued should not have to pay for new home security system for victims, since not convicted of *violent* felony; court ordered him to pay

Appellate court upheld trial court: Penal Code provides for restitution including home security system even if felony not violent

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Criminal Cases, continued

People v Holzmann, 18 Cal.App.5th 1241 (2018)

Defendant pled no contest to stalking ex-wife, who apparently worked at Apple Computer in Cupertino

Terms of 5 year probation included stay away order from Apple campus, no distance specified
Defendant appealed, arguing this term was so vague it was invalid

Appellate court upheld trial court: term not vague even though no distance specified

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Criminal Cases, continued

People v Johnson, 21 Cal.App.5th 267 (2018)
 Defendant assaulted girlfriend, including biting her face and leaving permanent scars
 At trial, DA introduced evidence of prior DV under Evid Code § 1109, which allows prior uncharged acts of DV
 Defendant convicted of DV and mayhem
 Appealed: trial court failed to hold hearing on competency to stand trial even though defendant on suicide watch in jail, acted out in court a lot, self mutilating, etc. – court said he was master manipulator
 Appellate court reversed for failure to determine if competent to stand trial

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Criminal Cases, continued

People v Megown, 28 Ca. Ct. App.5th 157 (2018)
 Defendant had long history of abusing girlfriend
 Threatened to kill her and her mother with gun when mother came to girlfriend's aid
 Charged with violating DVRO, DV on girlfriend with great bodily injury, assault with semiautomatic weapon, criminal threats
 DA introduced evidence of prior uncharged DV toward girlfriend under Evid Code § 1109 (disposition to commit DV)

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Criminal Cases, continued

People v Megown, continued:
 Convicted, sentenced to 17 years prison
 On appeal, argued trial court erred in allowing prior DV against girlfriend to be used in conviction for assaulting mother, and allowing uncharged DV incidents that were more than 10 years old

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Criminal Cases, continued

People v Megown, continued:
 Appellate court upheld trial court:
 Assault against mother falls within definition of DV since girlfriend reasonably apprehensive re imminent injury to another and witnessed it
 Also, DV evidence used to prove element re mother other than disposition to commit DV

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Criminal Cases, continued

People v Megown, continued:
 And 16-year old DV evidence properly admitted in interest of justice: showed common plan or scheme of threatening third parties who came to aid of girlfriend to prevent them from contacting police
 Old evidence also showed pattern of violence
 It was also relevant to girlfriend's fear and her refusals to call police or seek other help

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Questions & Answers

Does anyone have any questions?

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Evaluations

Please fill out the evaluation form. We appreciate your feedback.

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Thank You!

Erin Smith, Esq., Executive Director
esmith@fvaplaw.org
 Nancy K.D. Lemon, Esq., Legal Director
nlemon@fvaplaw.org
 Jennifer Wagner, Esq., Director of Programs
jwagner@fvaplaw.org
 Shuray Ghorishi, Esq., Senior Staff Attorney
shuray@fvaplaw.org
 Cassandra Allison, Esq., Staff Attorney
callison@fvaplaw.org
 Taylor Campion, Esq., Staff Attorney
tcampion@fvaplaw.org
 Arati Vasani, Esq., Staff Attorney
avasani@fvaplaw.org

449 15th St., Suite 104
 Oakland, CA 94612
 (510) 856-7358 (tel)
 (866) 920-3889 (toll-free)
www.fvaplaw.org



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