

COLORADO DOMESTIC VIOLENCE BENCHBOOK

A Project of the Colorado Family Peace Task Force
Funded by the State Justice Institute (1995)
Judge John Popovich and Barbara Zeek Shaw, Co-Chairs
Jacqueline St. Joan, Benchbook Editor

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INTRODUCTION

by

Jacqueline St. Joan, Editor
Colorado Family Peace Task Force

With the publication of this benchbook and the series of judicial trainings in domestic violence slated for 1995, Colorado law and practice reach a new standard in the effort to end violence in our families and our personal relationships. Over the past several years, in both the domestic and juvenile areas, our judges, in collaboration with interested community organizations, have begun an exciting educational process related to domestic violence.

In March 1993 Colorado sent a delegation to a landmark conference, "Courts and Communities Confronting Violence in the Family." Funded by the State Justice Institute, the conference required every state and all the territories and the District of Columbia, to send state teams, comprised, according to SJI specifications, of three judges, one victim advocate, and one prosecutor. Chief Justice Rovira appointed District Judge Alex Martinez, District Judge Nick Massaro, Ms. Barbara Shaw of Project Safeguard, Deputy District Attorney Kathy Sasek, and myself, then a Denver County Judge.

The reason that the conference was so important was that it was the first time the judicial system was being asked on a national level to participate in planning and education for improving the legal system's responses to domestic violence. During three days of workshops, plenary sessions, small group discussions, and caucuses, each state was asked to develop such a plan. And Colorado's team did so, bringing it back to the state for further development and implementation.

From that skeletal plan has developed what is now known as the Colorado Family Peace Task Force, co-chaired by Judge John Popovich and Barbara Shaw. Housed by the Office of the State Court Administrator, the task force has shifted some personnel and added some purposes. The team that went to San Francisco joined a newly formed team of judges who had attended a juvenile justice conference, also sponsored by the State Justice Institute (SJI) and the National Council of Family and Juvenile Court Judges. A public defender, probation, community agencies, and other judges joined.

We sought and obtained \$40,000 in SJI funding, and now are beginning the major work of the task force: completion of a series of five regional trainings of judges and court personnel, and probation officers over the first four months of 1995. Individual judges have been trained as judicial educators in domestic violence. Five training sites (Denver, Pueblo, Greeley, Grand Junction, and Alamosa) have been chosen in order to assure easy attendance by busy judges and to keep the training groups small enough so that discussions can be more meaningful. And this

domestic violence benchbook is being developed as a ready reference and in-depth resource for the use of all of our judges statewide.

In the process we have been asking what is the appropriate role of a judge in handling domestic violence cases. We have discovered that different judges have different comfort levels with both the subject of domestic violence and with the idea of interacting with community groups in addressing this societal problem. There is a spectrum on which judges place themselves in relation to the idea of being pro-active in addressing domestic violence, juvenile justice, alcoholism, drug addiction, or any social problem. Some couch their discomfort in ethical terms and may believe that the Code of Judicial Conduct prohibits judges from certain activities, particularly in interacting with the community. Some are comfortable being actively involved in some issues, but not domestic violence issues. Some feel they would prefer not to, but have no choice but to be active in their communities. Some would have it no other way than to be pro-active. They believe that ethical considerations in fact create an obligation that judges educate themselves and intervene by exerting judicial authority to protect victims, as the courts have traditionally done in protecting those with less power -- for example, children and victims of racial and other forms of discrimination. Victim's rights legislation and domestic violence legislation underscore judicial duties in these cases.

The members of the Family peace Task Force also struggle with these issues. Some of us see our task as one which arises from the viewpoints raised in the "Gender and Justice in the Colorado Courts" Report (1990). With respect to domestic violence, that report noted that many of the domestic violence cases considered at their task force hearings "reflect the failure of the judicial and law enforcement systems to protect female victims of known offenders." (at 73). A study by the United Way had concluded that "the judiciary is in a 'pivotal position,' either reinforcing the message given by the rest of the criminal justice system that domestic violence is a crime of serious consideration, or lessening the impact of the coordinated response by sentencing too leniently or not enforcing perpetrator noncompliance with the conditions of sentencing." (at 75).

The Gender Bias Task Force specifically recommended the following:

1. Funding for probation departments should be increased sufficiently to allow adequate supervision for domestic violence offenders.
2. Mutual protective or restraining orders should not be entered unless specifically requested.
3. The Judicial Department should study the results of investigations in other states concerning the effect of jail sentence, counselling, and other sanctions on repeat domestic violence offenders, and recommend legislation incorporating the most effective sanctions.

4. Training and education programs for judges should include information about the characteristics of batterers and victims, and about research done by social scientists on sanctions and recidivism.
5. Probation officers should receive similar training in all departments. (Of the 12 metropolitan-area probations departments that participated in the United Way study, only 8 reported that training is provided in the area of domestic violence.)
6. *Pro se* access to courts should be facilitated for people seeking protective orders. For example, the Judicial Department should prepare and distribute a handbook for victims. This care should be provided in courthouses.
7. Complete records of prior arrests and complaints for domestic violence should be made available to all district and county court judges in time to prevent inappropriate release on personal recognizance. This will require systematic, computerized record-keeping and adequate computer access for all courts.

The work of the Family Peace Task Force, created by Justice Rovira, then interfaces with this earlier work of the Gender Bias Task Force, which was created by Justice Quinn.

With all of this in mind, this book has been compiled, written, and edited by two judges - Judge John Coughlin and myself, assisted by four law student-interns from the University of Denver and the University of Colorado -- Tessa Alexander, Maura Dougherty (who acted as intern coordinator), Phyllis Roestenberg, and Melissa Weyant. The structure and some of the content of the book is based on earlier work by the Family Violence Prevention Fund, a well-respected policy making organization located in San Francisco. The FVPF, under grants from SJI, drafted two volumes of domestic violence legal and social science material to be adapted by individual states to their local law and practice. With the assistance of the student interns and the support and feedback of many judges and community resource persons, I developed much of the criminal law and protective orders material while I served as a Denver County Judge assigned to the Protective Orders court. Judge Coughlin developed the domestic relations chapter.

To make this book more useful to you, I want to point out some of its features and our thinking in designing this book as we have. We want you to use this book.

The book has **simple organization**: Introductory material, ten substantive chapters, a special article on diverse perspectives on domestic violence, and one Index.

Colorado law has been checked first and other law cited only where there seemed to be no Colorado law on point. Where **pertinent statutes are directly quoted**, they are set off from the body of the text with double lines. New domestic violence legislation passed during the 1994 session is noted by House Bill number and is highlighted in the Table of Contents, the Index, and the text.

Material that may be viewed in a new of different way when seen in the context of domestic violence cases has been **boldfaced to draw your attention** to it. It is not intended to direct your decision-making, but to help you find what you need quickly.

Helpful, **checklists and scripts** are added. Their location in the book is noted **IN CAPS** in the table of contents.

The appendix contains a wealth of up to date information which was too much to integrate into the text and still keep the book useful. The material will interest judges in solving practical problems and in reflecting on larger ones. References to specific appendices are made throughout the text. The idea is that the judge could make quick reference to the text and note the Appendix material for reading later.

Scripts in the protective orders and criminal sections are included so that new judges, or judges who only rarely hear these cases can have a higher comfort level with handling them.

Probation, protective orders and other forms have been inserted in the text and added to the Appendix, according to our estimation of their frequency of use.

We have honestly tried to address the special **human needs** of judges and court personnel who are exposed to domestic violence cases, and to insert a little humor, poetry, inspiration or polemic here and there. We hope we have offended no one in this slight departure from usual benchbook form.

We have also tried to reflect the concern that judges naturally feel about the **impact on children of witnessing domestic violence in the home**. There are a number of suggestions of ways in which judges can take actions to benefit children in our daily work.

I want to say a word about our use of gendered language in the book. We debated on the use of gender neutral language v. gender specific language. Should we use "he or she" with every reference to an abuser or a survivor of abuse? Or should we refer to abusers as "he" and survivors as "she?" Isn't that sexist? Or is it too simplistic? On the one hand we recognize the absolute necessity that our laws be gender neutral in both their form and their enforcement. And we recognize that in many contexts gender neutral language is preferable. On the other hand, somehow gender neutral language in the context of the realities of domestic violence seems to distort, rather than to clarify the issues, since research indicates women are thirteen times more likely than men to be the victim in cases of spousal assault. Of all spousal violence incidents reported on the National Crime Survey, 91% were victimizations of women committed by husbands or ex-husbands. [Bureau of Justice Statistics Special Report April 1994] We recognize that women too can be violent. We don't want to ignore the plight of the abused man; but until that form of abuse is uncovered and studied, it is difficult to say much here. Furthermore, in reviewing social science and legal research, it appears that other professions have reached the same conclusion with respect to the use of language. Article after article had a paragraph or a footnote something like this one -- except usually shorter. In any event, we had to decide, and

received a consensus of support from our "readers," and thus you will find in this book that the male pronouns describe abusers and the female pronouns describe the abused. Similarly we have generally used female pronouns to refer to plaintiffs and the male pronouns to refer to defendants in protective orders cases.

As part of our editorial process, we circulated 30 copies of this draft for a two month period of discussion and comment. We asked judges to test its usefulness by actually keeping it on their benches and agreeing to make reference to it. We asked many others to read all or sections of it and to answer a specific set of questions that are designed to determine where we have succeeded and where we have failed to meet our goals. Many readers sent us written responses to our focus questions, all of which were very helpful in making final revisions. As a result of this feedback, we simplified the organization of the first draft and removed unnecessary pages and generally reduced its size.

Given the diversity of opinion on the bench, we can expect that there will be a diversity of responses to this book and to the trainings that are scheduled. Yet all of us, as judges, face the issues addressed in this book and all of us choose how we will respond. Our goal in this work is to raise the level of understanding of the varied and complex dynamics in domestic violence cases and to increase the range of choices that judges know about and believe they have in responding within the law from the bench. We all zealously protect our independence in judicial decision-making, and at the same time strive to improve our knowledge so we can be better judges. On this we all can agree.

Finally, please let us hear from you if there are comments or corrections that should be made for the benchbook. We hope to find the means to update the book every year or two. Send comments to Colorado Family Peace Task Force, c/o J. St.Joan, 1339 Quince St., Denver, CO 80220.

We hope that this book will improve the quality of justice we are asked to administer every day. We dedicate it to our belief that justice in the family will lead to peace in the home and in the world.

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INSERTS:

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- Domestic Violence Behavioral Checklist
- Standard Conditions of Probation Form
- Standards for Supervision
- Stalking/Obsession Checklist

COLORADO PROTECTIVE ORDERS

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**DOMESTIC VIOLENCE IN
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Permanent Restraining Order (Domestic Abuse Act Counterclaim)
Permanent Restraining Order (Rule 365 Counterclaim)
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