Defense of Domestic Violence Cases

3.1 Pre-Incident Preparation

There are many times when you represent parties who either have instituted a divorce action, or are about to begin one, and their fear is that they will be unjustly accused of domestic violence as a pretext to get them out of the house, lose custody of the children, or for some other strategic purposes.

The first thing I advise the client to do is to get a hand held voice activated tape recorder which they can purchase from Radio Shack for under $80.00. That way in the event that the other spouse precipitates an event, hoping to trap your client, they will have the entire circumstances on tape. A video would be better, but unfortunately the incidents occur spontaneously and sporatically. I did have an incident on one occasion where the question was who denied who visitation, and at the time of the pick up and delivery, the video tape revealed the actions of the custodial parent, despite her words which were completely opposite to her physical movement.

Advise your client, in case the police are called for any occasion, that they are to cooperate, obey the police no matter how irrational the behavior of the alleged victim, and leave the house if instructed.

I further warn them that police can make an arrest under the following circumstances:

1. The victim exhibits signs of injury caused by an act of domestic violence

The word "exhibits" is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Probably cause to arrest may also be established when the police officer observes any manifestation of an internal injury suffered by the victim.

If there are no visible signs of injury, but the victim states that an injury occurred, the officer then should consider other relevant factors in determining whether there is probably cause to make an arrest. This determination is solely within their discretion.

2. A warrant for defendant exists.

There is no definition or explanation of what kind of warrant qualifies. One can assume it is a pre-existing domestic violence warrant, but perhaps a traffic warrant may also qualify.

3. A probable cause that a weapon was involved in domestic violence.

4. The police officer may also arrest a person or may sign a criminal complaint against them if there is probable cause to believe that an act of domestic violence has been committed even if there is no injury.

In some domestic violence cases, there are cross complaints against each other and each party might have signed of injury. Who to arrest? The Manual provides that in determining which party in domestic violence incidents is the victim where both parties exhibit signs of injury, the officer should consider:

A. The comparative extent of the injuries suffered;

B. The history of domestic violence between the parties, if any; or

C. Other relevant factors.

If an attorney is involved at this point, he may point out to the police they should not arrest his client because of a lack of the above requirements, not that it really will do any good because the police are going to proceed how they want to proceed, and resent the interference of attorneys especially at this stage.

I also advise the client to be prepared to leave the house quickly and have a stash of cash stored outside the house, as well as a separate bank account in case funds become subsequently frozen.

I advise them to have an extra set of keys for the car to make sure the car can not be easily blocked in a garage or a driveway, extra clothes available and if they take prescription drugs to have their prescription number or extra drugs available.

The client will have an opportunity to come back to the house to pick up clothes, drugs, etc. but in too many cases when they come back, these items are missing.

Have a list of vital phone numbers: doctors, lawyers etc.

If the client has any weapons in the house, I instruct them to put them in to a safe place outside the house, prior to any incident.

PRE-INCIDENT CHECKLIST:

PREPARATION

[ ] Cash - Stored out of house

[ ] Keys - Extra Set - Hidden

[ ] Tape recorder or video tape

[ ] Police call access - panic button, cellular phone, friend

[ ] Clothes - Extra for self and children

[ ] Prescription drugs or medical insurance cards

[ ] Lawyer's telephone number

Weapons Dispose of.

POST-INCIDENT

3.2 Interviewing and Preparing Your Client.

The initial choice you are going to have to make is whether or not you want to wait until the return date of the ex parte restraining order which is within l0 days of the issuance of the temporary restraining order; or whether you wish to move to accelerate the action, and move for an immediate final hearing. There are of course advantages and disadvantages to each.

A falsely accused defendant who has been thrown out of their home may have no place else to live but a motel. They have lost visitation with their children or even custody. In these instances you would want to move as quickly as possible because of the hardship that they are enduring, even if it means less time to prepare their case.

On the other hand if someone has somewhere else to live, can bear for the l0 days not to see their children, (if that's one of the reliefs that is requested, then it may be to their advantage to wait until final hearing and use that time to their advantage to thoroughly prepare their case.

Have your client give you an exact narrative of the alleged predicate event as well as whether there was any history of domestic violence in the past. Were there any other false allegations, what became of them? Was the same matter litigated previously? Has there been a history of the alleged victim trying to get the defendant out of the house by other means such as court motions?

Is there any other motivation for the alleged incident, i.e. revenge, custody, strategic positioning in a matrimonial case? Explore all these avenues and see if there is any kind of proof that you can elicit, such as someone who has heard the alleged victim talk about

these motivations; or documentary proof such as tape recordings, letters, or other admissions.

Discovery

Discovery in domestic violence cases is prescribed by Rule 5:5-1 which limits discovery in all civil family actions. Most of the discovery that is available in any other criminal or civil case, is available in domestic violence cases with the exception of the depositions of the plaintiff. The rationale for excluding the plaintiff is that a victim of domestic violence, who may be suffering from the "battered woman's syndrome" is not likely to proceed with the final restraining order after being subjected to depositions. The court noted that depositions is an intimidating process especially for a victim of domestic violence, which coupled with the absence of a judge to protect the victim who is usually not represented. This case did not deal with other depositions besides that of the plaintiff.

Since domestic violence actions are summary in nature, it would appear that interrogatories and other forms of depositions can only be done by leave of the court for good cause shown. The exception to this is the production of documents; (R.4:18-1) requests for admissions; (R.4:22-1); and copies of documents related to in pleadings (R.4:18-2) which are permitted as of right.

In order to produce both physical and testamentary evidence, take advantage of the notice for production of documents, the notice in lieu of subpoena, etc.

Get a list of these witnesses and any documents you might need from your client prior to hearing. There will be lay witnesses who know the background on the case or actual eye witnesses to the occurrence. Expert witnesses such as doctors and police can be interviewed and subpoenaed. Find out from your client what they will testify to and whether testimony will be in your client's favor. Interview the witnesses in person or by telephone, and only as a last resort, subpoena them to court without having interviewed them. Your opportunity to interview them may be at time of trial, at which time you can make the decision either to have them testify or release them. The danger there is that the adverse party will also have an opportunity to interview them, and if you do not use them as a witness, they might. Most witnesses if they have been avoiding talking to you, before

the subpoena, will call you immediately thereafter in order to discuss the case and possibly avoid their appearance.

Find out if there is any kind of photographs or tape recordings that are available.

Inspect any physical evidence such as torn clothing, broken dishes. You may either visit the scene of the domestic violence or have pictures taken or both so that you can understand what happened in the context of the exact surroundings.

Interview and subpoena expert witnesses, and secure their reports, including hospital records, medical records, etc.

If the police were witnesses and had to make a reluctant arrest, or were able to see the condition of the premises or the victim, obtain first their police reports and then you might wish to subpoena them as well as any 911 tapes, emergency tapes of the local police department.

A victim who says that she was afraid for her life, in danger and harassed by the defendant, may reveal a different tone and temperment when they call the police on the 911 tape.

The Rules provide that when the alleged victim makes their application for a temporary restraining order, whether in person or by telephone, it has to be by means of tape-recording interview, or have a stenographic machine available, and in the last resort, there must be "adequate longhand notes summarizing what is said" which should be made by the judge. Get copies of the transcript of the proceedings or copies of the notes to be able to compare at the time of trial with the actual testimony.

Prepare financial information. If you can, prepare a complete Case Information Statement and if it is to your benefit to do so, prepare one. On the other hand, you might just want to prepare a weekly budget sheet which is all that is required.

If your client is abusing drugs or alcohol, have them stop immediately, if for no other reason, that the court might order that immediate tests be done.

Prepare for the possibility that you may have your client choose not to return to the house and have alternate housing available or that you might lose the case no matter how innocent your client is.

If the parties are already living in separate habitats, or your client does not wish to return to the house anyway, certain consents and restraints can be incorporated into a matrimonial proceeding if one is pending; or the domestic violence case can be delayed until one is instituted.

Domestic violence law does not provide a consent order to be issued without an admission of guilt. There are also no longer "in house restraining orders" which permitted the restraints but allowed the parties to live in the same house. A matrimonial restraint does not carry an admission of guilt nor any criminal sanctions for violation of a restraint in the matrimonial case as if they are in a domestic violence case. Perhaps even mutual restraints can be negotiated.

Remember domestic violence are hearings of "credibility". It is the victim's word against your client's, with usually no one else present.

The burden of proof is only "the preponderance of evidence". The judicial climate is such that most judges no matter what the allegations and no matter what the defense, would order a restraint because it is safer to enter one than to deny one and worry about the consequences, not only the victim, but to themselves as sitting judges if they've made the wrong choice. It is easier for a judge to rationalize imposition of a restraining order, than to face the wrath of the victim, their superiors and the press if they are wrong.

Look for a settlement if at all possible if you believe that the facts are strongly against you.

In some cases, even if your client is blameless, your client may not want to return to the house or risk a domestic violence finding against them.

Be prepared in the event that you lose, and prepare your client for some alternatives.

Develop a parenting schedule with visiting dates, times of pick up and delivery, and alternative people to act as intermediaries. The victim may resent certain people being involved, so it is wise to have a few choices. Have alternative places to pick up the child other than curb side if necessary, and as a last resort, the local police station.

Make arrangements to pick up your client's personal belongings and supply, if possible, including clothes, financial documents, insurance policies, prescription drugs, insurance cards etc.

The Act provides for the defendant to return to the house with the assistance of the police to get their personal items, but the patience of the police is taxed so that the duration of the time available to pick up these items, as well as amounts of times necessary, are strictly limited.

3.3 CLIENT PREPARATION CHECK LIST.

For the Defense:

[ ] Previous history of domestic violence

[ ] Appeal temporary restraining order for earlier date

Do it quickly - short return date

[ ] Exact narrative of alleged predicate event

[} Review complaint and certification

[} Real motivation for alleging incident, i.e. revenge,

custody etc.

a. Substantiation of real motivation, i.e. tape

recordings, prior writings, witnesses.

[ ] Discovery - Notice for Production of Documents R.4:18.1

[ ] Notice in lieu of subpoena R.1:9-1,2

[ ] List of witnesses to be used at hearing, lay and

expert and what they will testify to.

[ ] Production of photographs, tape recordings

[ ] Inspection of physical evidence - torn clothing
broken dishes

[ ] Visit scene of domestic violence, take pictures
or diagram

[ ] Expert witnesses, experts' reports, hospital
records, medical records

[ ] Testimonial evidence - subpoena and interview fact
witnesses

[ ] Subpoena police and police reports, all tapes

[ ] Subpoena medical reports

[ ] Transcript of hearing to obtain temporary restraints,
order (if Municipal Court - tape recording)

[ ] Prepare financial information

[ ] If client is using drugs or alcohol, have them

stop in case tests are ordered

If you lose:

[ ] Have times of visitation and names of intermediary to

facilitate visitation.

[ ] Have alternative living arrangements

[ ] Have times available to pick up personal belongings,

list of belongings needed and financial information

needed.

3.4. The Trial of Domestic Violence Cases:

Deportment:

The trial of a domestic violence case is like no other trial. Your client is presumed to be guilty as they walk in the door; the judge is overworked and other cases are stacked up behind yours; the trial is usually preemptory and the court will rush you.

As defense counsel, you must resist the pressures of the court to abbreviate your case and especially your cross examination.

The first thing I stress to a client is that of their appearance and their deportment, as a reaction to the alleged victim's allegations and their response is as important as the evidence that is presented in the court. I warn them that the intake officer of the Probation Department, the court clerk and law clerk, the Sheriff's officers, are all observing the parties and surely would report to the judge any adverse behavior. Your client must be vigilant and alert from the minute he walks into that court house until the end of trial as to what they say and how they behave.

You must instruct them even if the most vile, salicious and mandacious remarks are made by the victim, they should not react adversely and should sit at the counsel table stoically. They should not write copious notes in a hurried manner, tug at your jacket sleeve and interrupt your train of thought as you are trying to listen to the testimony, and draw attention to themselves from the judge.

Standard of Proof:

The standard of proof in a domestic violence case, although quasi criminal in nature, is not guilt beyond a reasonable doubt, or not even the civil standard of clear and convincing evidence; but rather the "preponderance of the evidence standard". Under this standard the victim can establish their case in convincing the trier of fact, the judge, that the evidence establishes that it is more probable that the incident occurred than it did not occur.

The term "preponderance of evidence" usually means that in weighing the evidence presented by both parties, if the court gives greater weight to one party than the other, that is that one's evidence is more convincing than the other, that party will prevail.

STATUTORY DEFENSES

The plaintiff must establish in theory that each and every element of the act of domestic violence occurred. But in reality, if they usually establish that one of any number of alleged acts occurred, the defendant will be found guilty.

The Code of Criminal Justice provides:

"A person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently as the law may require, with respect to each material element of defense."

The statute in its various parts defines the various kinds of culpability, specifically, definitions of purposely, knowingly, recklessly and negligently.

The Code does state that its construction applies to offenses not only defined within the Code, but also outside of the Code.

As in any criminal case, there are specific statutory defenses to any crime, and thus to any act of domestic violence. Although technically they all apply, in reality some are inapplicable in the domestic violence arena, such as mutual consent, joint participation, intoxication, duress, ignorance or mistake and even justification.

The only viable defenses for domestic violence actions are self-defense and de minimis infractions.

Self Defense.

A person is justified under the statute using force upon or toward another person when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

The reality, though, is that you have two parties, one weaker, one stronger, and the court is not going to believe that the stronger party used self-defense in order to fend off the advances of the weaker party. For example, if a woman actually attacks a man and scratches his face, and he simply holds her off and in so doing causes her bruises, Nine times out of ten the court is not going to believe that the bruises on the woman are as a result of a man defending himself; but rather an aggressive posture on his part.

De Minimis

The rules also provide for de minimis infractions in which the actions are "too trivial to warrant the condemnation of conviction for these actions cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense."

See comments in another section such as harassment in which the courts have used this statute to dismiss warrantless actions.

Credibility.

Most domestic violence cases revolve around one party's version of an incident against another. He said, she said. There are rarely witnesses to the incidents, video tapes or tape recordings. Thus the way to defend the case is by testimonial evidence both direct and circumstantial. Testimonial evidence of course is evidence obtained from human beings who take the witness stand and testify as to events. Direct evidence is evidence in which an individual testifying establishes as directly proving a fact. Circumstantial evidence is evidence that proves a fact from an inference to the existence of a fact which may be logically and reasonably drawn from another fact or group of facts. Both direct and circumstantial evidence are accepted as means of proof and have various degrees of persuasiveness.

In a domestic violence situation, direct evidence would be that the victim saw the defendant pull the phone out of the wall. Circumstantial evidence would be that when the victim left the house, the phone was intact, that when they returned, the defendant was there and the phone was on the ground.

The direct evidence goes to prove that the defendant tore the telephone out of the wall; the circumstantial evidence established the facts from which the inference can be drawn that the defendant tore the phone out of the wall.

Competency.

The victim may not be competent to testify if the defense counsel can establish that there is an impediment as to their perception or memory. Rules of Evidence 602 provides that a trial judge may reject testimony of a witness relating to the witness's perception as to a particular matter if the judge finds insuffient grounds to prove that a witness has personal knowledge of the matter.

Obviously if an eye witness was present at the event and observed the event in question, they would be competent. On the other hand, if the witness does not have personal knowledge of the matter, did not see the event happen, i.e. they were told about the event by someone else; or their perception was flawed, they would not be competent to testify.

In order to preclude the evidence, the judge must reject the testimony of the witness only if he finds that no trier of fact would reasonably believe that the witness actually perceived the matter. Inherent in the discrediting of the witness is the fact that the witness does not have personal knowledge of the matter and thus their testimony should not be admitted. The person is deemed to be competent if he can observe, remember, narrate and recognize the duty to tell the truth. Lack of mental capacity is no longer sufficient grounds to establish a witness's incompetency.

Obviously in a domestic violence situation if the victim and the defendant are spouses, the witness spouse may not be barred from testifying. On the other hand, if the domestic violence is between non spouses, and a spouse is a witness, they may be deemed incompetent to testify because of the spousal privilege under Rule of Evidence 501. Under 501(2) the spousal immunity does not attach under the "Offended Spouse" exception.

There is no parent/child privilege, which would forbid children from testifying against their parents.

An attorney for the defendant can also be prohibited from testifying under the lawyer/client privilege under Rules of Evidence 504. This, of course, extends not only to what a lawyer may have seen but also to disclosure of any communication between himself and his client.

As stated before, the rules provide there is a presumption that the witness is competent to testify. A witness can acquire personal knowledge through any of their senses. Thus a person can see what happened or hear what happened if it did not directly happen in front of them.

If you are challenging a witness on personal knowledge grounds, ask the judge for permission to voir dire the witness before they give their testimony. For example, if the testimony profferred is that the witness saw a particular event, you might be able to show that the witness was unable to see the event because of an obstructive view, distance problems, problems with eyesight, etc. and at the very beginning of their testimony, throw doubt as to their conclusions. The court may only allow you to do this upon cross

examination. Often the court will rightly allow the testimony, and not preclude it; but rather judge these attacks upon personal knowledge as going to the weight of the evidence rather than their competency to testify.

If evidence is an issue allowed into evidence by the court, but after cross examination, you are able to demonstrate the witness did not have personal knowledge concerning the events testified to on direct examination, move to strike the testimony.

There may be special problems presented when there is a child witness to the domestic violence. Under the Rules of Evidence it is not presumed that anybody was an incompetent witness. Thus a young child could be allowed to testify if they have the capacity to observe, remember, relate or narrate; and they understand the duty to tell the truth.

The younger the child, the more there is a presumption that the child is incompetent to testify. This is of course a rebuttable presumption and if it can be shown that the child has the capacity to testify, they would be allowed as a witness.

It would be a proper time to voir dire the child as to their competency prior to them testifying. The court most likely will not want a child to testify against either one of their parents, and may be looking for a way to avoid this confrontation.

In order for a child to testify, the proponent must demonstrate that the child:

1. Has the ability to observe the event about which they are about to testify;

2. Has the ability to remember the event about which they are to testify;

3. Has the ability to narrate to the judge that which they observed;

4. That they understand the oath that is taken, i.e. the child recognizes that they have a duty to tell the truth and they understand what the truth is.

Any attack upon these foundations may nullify a child witness especially with the predalictions of the court in order not to have them testify even though proposed by your adversary.

A spouse who is a witness also may be nullified and prohibited from testimony because of the marital privilege unless of course the spouse is the victim. The domestic violence may very well be against a third party and not the spouse who may have witnessed the events and you might want to negate their testimony.

Impeachment:

WORK IN PROGRESS

3.4 MAGIC WORDS TO JUDGE

FOR THE DEFENSE

General

Defendant was merely responding honestly to his wife's inquiries despite the fact that these statements were made to belittle and demean the plaintiff, they were not made for that purpose although they might have had that effect.

"Such a finding would be insufficient as a matter of law to meet the statutory standard."

Actions were "accidental and unanticipated".

The criminalization of inconsequential acts that the Legislature never intended to prohibit will now solve this problem.

Defendant did not have any reasonable basis for her belief that she was terrified by defendant's actions.

That conduct cannot be found by a preponderance of the evidence that constitutes domestic violence.

Defendant's conduct may have been inappropriate or improper. However, there is some justification for his or her conduct.

This matter fits into a category of domestic contretemps then a "matter of consequence".

The difficulty task facing each judge who must rule on domestic violence complaints is that they never know with certainty which persons, among the many each day who swear out complaints seeking protection from alleged domestic violence, are actually at risk.

The court with necessity must distinguish between bickering between the parties from prohibitive acts of domestic violence.

Plaintiff's repeated and petty complaints to the local police department evidence a lack of perspective and a sense of proportion that led to the filing of this complaint and the complaint and that are consistent with the conclusion that he should not believe the plaintiff.

By dismissing the complaint, we are not asking the court to condone the offense of inappropriate behavior of the defendant, but merely to reassert the importance of the Prevention of Domestic Violence Act but denying its application to trivial and petty communications between separated spouses who appear to be misusing the Act.

Ongoing disputes between the parties should have been referred to the Family Part judge to whom the pending divorce action was assigned. This judge would have the authority to take effective action to protect the children from harmful, offensive conduct that is done by either one of the parties in their presence. The parties' disputes over custody, visitation, support and assets are already before the court in their matrimonial litigation.

By invoking the Domestic Violence Law in this instance is to trivialize the plight of true victims of domestic violence.

There is insufficient credible evidence to support the plaintiff's accusation of domestic violence.

The invocation of the domestic violence law in this instance trivializes the plight of true victims of domestic violence and would violate the true spirit of the Legislature's purpose.

The Legislature did not intend to commission any of these acts automatically would warrant the issuance of a domestic violence order. The law mandates that acts claimed by the plaintiff to be domestic violence must be evaluated in light of the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment and physical abuse and in light of whether immediate danger to the person or the property is present. This requirement reflects the reality that domestic violence is ordinarily more than an isolated aberrant act and incorporates the Legislative intent to provide a vehicle to protect victims whose safety is threatened. This is the backdrop on which the defendant's acts must be evaluated. N.J.S.A.2C:25-29(a)(1)and (2).

We are mindful that the dissolution of a marriage is often acrimonious but such acrimony should not be used as a weapon to gain strategic advantage of the matrimonial court, thus trivializing and distorting the beneficial purpose of the Act to protect against regular abusive behavior. Matters such as the present case, do not rise to the level of domestic violence and can be addressed by the Chancery Division, Family Part, under its equitable powers.

These are not acts which can be characterized as alarming or seriously annoying.

The courts are conscious of the burgeoning domestic violence case load in the Superior Court, and jurisdictional scrutiny is necessary to insure that the Act is not trivialized and the Superior Court is not overrun with disorderly person cases probably allocable to the municipal courts.

These findings indicate that the focus of the Legislature was regular serious abuse between spouses. That this is so is underscored by the reference to torture, battery, beatings and killing in the findings.

Separate and apart from these evidential insufficiencies which preclude a finding of the predicate act of harassment, defendant's conduct was plainly never contemplates by the Legislature when it addressed the serious social problem of domestic violence. Plaintiff's complaint asserted that there was no history of domestic violence, and there was no finding by the judge of a history of abuse or an immediate threat to safety. What occurred between these parties, whose relationship had ended and who were living apart, was a

conflict over finances and possession of the marital premises. During an argument, tempers flared and defendant threatened drastic measures. He carried out his threat with the childish act of turning off the phone. While this was not conduct to be proud of, plaintiff was neither harmed (except in the most inconsequential way) nor was she subjected to potential injury. As such, the invocation of the domestic violence law trivialized the plight of true victims of domestic violence and misused the legislative vehicle which was developed to protect them. It also had a secondary negative effect: the potential for unfair advantage to a matrimonial litigant.

Some people in seeking a restraining order come to court with the intent of gaining an advantage in a pending divorce action in order to obtain custody of the children or possession of the home or both.

There are "serious" policy implications of permitting allegations of this nature to be branded as domestic violence and used by either spouse to secure a ruling on critical issues such as support, exclusion from marital residence and property disposition, particularly when or where that a matrimonial action is pending or about to begin.

We recognize that in the area of domestic violence as in some other areas of our law, some people may attempt to use the process as a sword rather than as a shield. The Judicial System must once again rely on the trial courts as the gatekeeper. The Legislature has established a self-regulating provision in the Act so they can be used to protect against frivolous prosecutions under the 1991 Act. The gap filler of the nature is the de minimis infraction provision, N.J.S.A.2C:2-11.

As we said in Murray:

"We are concerned, too, with the serious policy implications of permitting allegations of this nature to be branded as domestic violence and used by either spouse to secure rulings on critical issues such as support, exclusion from marital residence and property disposition, particularly when aware that a matrimonial action is pending or about to begin."

Neither the harassment statute nor the Prevention of Domestic Violence Act were intended to place trial judges in the role of superior monitors over modern-day parenting. In our view, plaintiff's repeated and petty complaints to the local police department

evidence a lack of perspective and sense of proportion that led to the filing of this complaint and are consistent with the judge's own conclusion that he believed "neither the plaintiff not the defendant."

Domestic violence is ordinarily something more than an isolated abhorrent event.

It must be understood that our decision today does not in any way condone the offensive and inappropriate behavior of either party. Our point is to reassert the importance of the Prevention of Domestic Violence Act by denying its application to trivial and petty communications between separated spouses who appear to be misusing that Act.

Harassment

This may be an "over-the-top, in-your-face gesture but it was not likely to alarm nor seriously annoy a reasonable person. On the contrary, it is merely a minor irritant attached to a legitimate legal communication.

"Human nature being what it is, this is unfortunately the kind of infantile tweaking we have come to expect of litigants whose hopes and dreams for their marriage and family life have been dashed."

The Legislature did not intend to criminalize "irksome or vexing communications".

Certainly defendant, as the natural father of the child, had a right to express disapproval at the way the child was being punished. Although he may have chosen other words, his conduct did not rise to the level of harassment.

Plaintiff's disputed allegations, even if true, are trivial because there is insufficient evidence that defendant acted with the required "intent to harass" the plaintiff.

Despite the vulgarities that both parties obviously exchanged on numerous occasions and the inappropriate behavior to which they exposed their children, defendant's behavior cannot fairly be said to have violated the criminal code or to have been evidence or risk of escalating or future violence.

Neither the harassment statute nor the Prevention of Domestic Violence Act were intended to place trial judges in the role of super monitors over modern day parenting.

There can be no finding of intent to harass with respect to the actions of the defendant against the plaintiff, only that the defendant was alarmed by them, which fall short of the mandate of the statute.

Verbal harassment is not merely "offensive language". It's got to be more than a mere expression of opinion using offensive language.

Can't proscribe mere speech, use of language or other forms of expression. The First Amendment permits regulation of conduct, not mere expression.

It was no purpose to harass, defendant's speech was merely "defensive language" as opposed to verbal harassment.

"It is a trivial, non-actionable event".

"Objective fear" is that fear which a reasonable victim similarly situated would have had under the circumstances.

No purpose to harass - defendant's speech was merely "offensive language" as opposed to "verbal harassment".

The Appellate Court noted that "we are of the further view that the prosecutor as a matter of prosecutorial discretion, clearly has the right had he chosen to exercise it, not to prosecute this matter", and further stated

"The Domestic Violence Act affords critically needed protections in appropriate situations. It was not intended to attempt to regulate and adjudicate every loss of temper, angry word, or quarrel between persons connected by familial relationship."