

## **Domestic Violence, Divorce and Mediation: Options, Discussions and Interventions**

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Domestic Violence and Mediation are the focus of an increasing number of clinical programs. Both areas lend themselves to interdisciplinary work. This presentation will focus on teaching students about the intersection of domestic violence and mediation, in either clinic. Some domestic violence advocates would prefer to never mediate cases. Some mediators feel all cases are eligible for mediation.

Victims of domestic violence should have the opportunity to make an informed choice about which divorce process -- mediated or adversarial -- will best meet the needs of their families. One size does not fit all. Social science research tells us that families experience different types of violence and consequently differ from each other in ways that are significant for choosing a divorce process. The adversarial and mediated divorce processes differ from each other in terms of effectiveness, satisfaction rates, compliance with agreements or orders, etc. Within each category of process, significant differences in quality exist.

How do we work within the legal and social work constraints to teach students about the implications of domestic violence on mediation? Prof. Ver Steegh has recently published an article titled: Yes, No, and Maybe: Informed Decision Making about Divorce Mediation in the Presence of Domestic Violence. Our presentation will look at her research in this article and discuss the implications for clinical teaching.

**Summary of Contextual Factors to be Considered in Choosing a Divorce Process**

<b>Factors</b>	<b>Indicators Consistent With Choice of Adversary System</b>	<b>Indicators Consistent With Choice of Mediation</b>
<b>Type of Violence Experienced</b>	-Walker's <i>cycle of violence</i> . -Johnston and Campbell's <i>ongoing and episodic male battering</i> or <i>psychotic and paranoid reactions</i> . -Ellis and Stuckless' <i>control instigated violence</i> .	-Johnson and Campbell's <i>female-initiated violence</i> or <i>male-controlling interactive violence</i> or <i>separation-engendered and post divorce trauma</i> . -Ellis and Stuckless' <i>conflict instigated violence</i> .
<b>Frequency and Severity of Abuse</b>	-Ongoing and severe abuse.	-Abuse not presently occurring.
<b>Victim Status</b>	-Victim suffers from PTSD or depression -Victim intimidated and fears retribution.	-Victim able and willing to state her needs, problem solve, and make own decisions.
<b>Likely Abuser Response</b>	-Abuser likely to comply with court orders.	-Abuser likely to comply with voluntary agreements.
<b>Quality of the Process</b>	-Judges specially trained and experienced in handling domestic violence cases. -Timely access to the courts.	-Specially trained and experienced mediator who implements and enforces safeguards. -No limit on number of sessions. -Includes mediation of all issues (custody, parenting time, property, support).
<b>Legal Representation</b>	-Victim represented by an attorney. -Attorney experienced with domestic violence cases.	-Victim representation important and very helpful but not as critical as in adversary system.
<b>Presence of Children</b>	-Couple has no children or other need for ongoing contacts.	-Couple has children (especially if young) and will have ongoing contact that must be carefully structured to ensure safety.
<b>State Law</b>	-State law provides for a rebuttable presumption against award of custody to batterer. -State law includes a presumption against joint custody if domestic abuse has taken place.	-Mediation process helped by presumptions against award of custody to batterer and against joint custody but mediation process not entirely dependent upon it.
<b>Financial Resources</b>	-Victim able to afford extended litigation and hiring of experts.	-Victim has limited financial resources.
<b>Decision Making Approach</b>	-Victim is comfortable with judge making decisions for the future. -Rights based analysis.	-Victim prefers to make her own decisions for the future within the mediation context.

**Research Summary**

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	<b>Adversarial</b>	<b>Mediated</b>	<b>Mediated - Domestic Violence</b>
<b>Settlement Rates</b>	-98% settled -2% judge decided	-Average 60% (range 40-80%)	-51-76%
<b>Satisfaction</b>	-40% satisfied -20-30% see as fair -50% say process worsened relationship -50-70% say impersonal, intimidating, intrusive	-77% satisfied (range 60-93%) -85% see as fair -15-20% say process worsened relationship (less potentially damaging to relationship)	-80% satisfied -Mandatory mediation 70-90% satisfied -Women may be more satisfied -Interactions may be improved
<b>Compliance/Relitigation</b>	-Lower compliance rates	-Higher compliance rates -Less relitigation during first few years	-Compliance rates equal to other mediated divorces -May prevent future violence (especially voluntary multisession)
<b>Children</b>	-71% of parents say escalated conflict to further extreme -80% joint legal custody -Mother primary custodian in 2/3 of cases but 1/2 of fathers who pursue may receive -Mothers may be more likely to be awarded sole custody -Courts may fail to link domestic violence and parenting (friendly parent)	-Detailed parenting arrangements -Parental cooperation positively associated with amount of time spent in mediation -May be more likely to agree to joint custody -Choice of process has less effect on children than does ongoing level of conflict -Children more likely to have ongoing long term contact with nonresidential parent	-Detailed parenting arrangements
<b>Judge/Mediator</b>	-Judge may or may not be knowledgeable about domestic violence and parenting	-Participants say impartial, sensitive, skilled	-Only 70% receive ongoing domestic violence training -Only 80% screen -Only 40% do private interviews -Little or no regulation or credentialing -Need special training re techniques and case supervision -73-96% use special techniques
<b>Time and Cost</b>	-Seen as costly and inefficient	-Less costly (may save 42-134% in fees) -May be completed in half the time -Unsuccessfully mediated cases take longer than cases where no mediation attempted	
<b>Attorneys</b>	-At least one party unrepresented in 70-90% -Represented party may be more likely to be awarded physical custody -Dissatisfaction with attorneys -Communication issues -Victim of domestic violence needs strong representation and sufficient resources to pay attorney		-Attorney as spokesperson/support person -Presence may decrease likelihood of unfairness
<b>Special Issues</b>	-May exacerbate conflict -Emphasizes differences		-Too private? -Power imbalance--victims see selves as less powerful but not more likely to give in, some able to negotiate effectively -5-15% opt out

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