

Intimate Partner Sexual Abuse:

DISCUSSION GUIDE FOR FACULTY

ELENA GALVAN V. ALBERTO GALVAN

Q1.

At this point you may:

[Choose all that apply]

- **Dismiss the petition and instruct her that the Family Court is not a rehabilitation clinic.**
 - An *ex parte* order of protection is often issued on a limited understanding of the evidence in a case. This case presents several indications that there may be more to the situation in the Galvan household than Ms. Galvan is able to communicate at this time.

Ms. Galvan is appearing in court for the first time in a long marriage, overcoming significant language and cultural barriers in order to seek help from the judicial system. She has not received the benefit of any assistance from an advocate. The limitations in her articulation of her case may well stem from lack of linguistic competence as well as lack of guidance in formulating her pleading to the court.

A court should strive to retain jurisdiction of the matter until the case can be more fully fleshed out.

That Ms. Galvan is emotionally unable to elaborate on her assertion that her husband does “whatever he pleases with her” since their family priest counseled her to be more accommodating could indicate institutional pressures that make it difficult for her to raise the issue of sexual abuse in court.
- **Inform Ms. Galvan of the availability of services through a domestic violence agency that assists victims in court.**
 - An ideal approach would be to recess the proceedings to allow her to meet with an advocate who could help her articulate her case to the court and ensure that her safety needs are being met. No matter what course of action the court takes, Ms. Galvan should be referred to a domestic violence advocate with Spanish language resources.
- **Set a return date for the petition, allowing for service on Mr. Galvan, but not issue an order of protection until further evidence can be presented.**

--or--

Issue a temporary order of protection that does not exclude Mr. Galvan from the home but directs him not to “harass, intimidate, or annoy” his wife.

- Depending on a State’s standards, the court might issue a summons to Mr. Galvan to appear in court and respond to the allegations; issue a summons and a temporary, limited order of protection directing him to refrain from

harassing, assaulting or annoying Ms. Galvan but not directing him to vacate the family home; issue a full temporary order of protection with a short return date.

- **Include, in the temporary provision, a direction to refrain from drinking alcoholic beverages.**
 - Addressing the issue of Mr. Galvan's alcohol consumption is probably not permissible or advisable without some independent assessment of his needs. Directing that he refrain from harassing, assaulting or annoying her, however, would give her some recourse if he did so while intoxicated or sober.

Supplemental Petition Request:

You decide to issue a summons for Mr. Galvan to return to court, but have not yet issued an order of protection.

Before the return date, Ms. Galvan returns to court with a supplemental petition. Her face is bruised. In her petition, she alleges that after she had Mr. Galvan served with the summons, he "pushed me down and yelled that I cannot take his home away. Then he tore off my blouse, struck me on the face, and choked me until I was unconscious. When I regained consciousness, I was very wet in my vaginal area, and I believe that he had sexual relations with me."

She reiterates that she does not want her husband to go to jail. When you ask why, she begins to cry, and states that he would be deported and that she would be left alone to care for their six children.

She says, "He is a good father. Just not such a good husband, sometimes. He needs help." With the assistance of an advocate from Safe at Home, and through a translator, she testifies as follows:

"I came to this country from the Dominican Republic in 1990. I am 39 years old. I have six children. My sons are 16, 11 and 5 and my daughters are 14, 8 and 3. My husband, Alberto is a good friend of my sister's husband. I speak very little English. I want to take English classes, but my husband never let me. He always said that between my job with the cleaning service and the kids I barely had time to cook and clean for him as it was.

Now I will tell you that Alberto Galvan has beaten me since before we got married. It continued throughout my pregnancies. I thought my brother-in-law would get him to stop, but he didn't want to get involved. I went to the priest who married us. He counseled me about the sanctity of marriage, and my duty as a wife to accept my husband's will.

I know my duty as a wife. I was raised to know it. I watched my mother and my aunts submit to my father and my uncles. But now it's getting worse and worse. What will happen to my kids if he kills me? My sister and her husband agreed to let me and the kids stay with them, but I don't know for how long. When I told Alberto I was moving out, he cut up my clothes, including my uniform for work.

I am here to get an order of protection against him, custody of the children, child support, and restitution to replace my clothes. If he wants to see the kids, the visits should be supervised.

My husband also wants custody of the children. He told me that if I go to court he's going to get an order of protection against me. He's twice my size! When he tried to take the kids away from me, I called the police. When they finally came, Alberto said I hit him first, and they arrested both of us, even though I was the only one with the bruises and the black eye. But the officers didn't speak Spanish and Alberto speaks very good English.

I don't like to come here. No one speaks my language. People are mean to me because I don't understand them and they don't understand me. But I understand enough to know they think I'm not worth helping. A woman I met in the waiting room at Safe at Home—she's Dominican too—told me they don't care about immigrants here. They think our men beat us up because that is the Dominican way, and the courts should stay out of it.

The last time I was here the interpreter who helped me was a member of our church. He told me I should be ashamed of myself for bringing such a private matter to public attention. I believe that he did not interpret my words correctly for the judge. I also wondered if he, or the judge, or my husband, will call immigration and if they will deport me. Even if they don't call, who knows what will happen now that I have been arrested?

Maybe things will get better soon. Maybe Father Rodriguez and the interpreter are right. Or maybe now that Alberto knows that I'm serious about this—I never moved out before—he'll change. We've been together since I moved here, and he is the children's father."

Q2.

From the point of view of Elena Galvan, what issues affect her access to justice?

While Ms. Galvan could self-petition for permanent residency, as a victim of domestic violence, her husband would be subject to deportation if he were convicted of a criminal offense. She expresses great concern about how she would support herself and her six children if Mr. Galvan were incarcerated or deported. These very practical consequences of seeking help from the judicial system can discourage immigrant victims from seeking help or from disclosing more severe types of abuse.

A second obstacle for Ms. Galvan is her lack of fluency in the English language. When she first appeared in court, an official interpreter was unavailable, and the court officer who served as her interpreter turned out to be a member of her church congregation, who privately criticized her for airing her problems in court. In close-knit immigrant communities, there are real risks that an interpreter will have some community relationship with a litigant. The court must be vigilant to ensure that interpreter services are entirely neutral.

Ms. Galvan is also taking action contrary to the advice she has received from her religious counselor. She could face criticism from family and friends beyond what a petitioner from a different sort of community would face. Such lack of community support affects her safety, and her ability to proceed with seeking relief from the court. Ensuring that she has access to support services will be critical to her success in seeking safety.

Q3.

From your point of view as a judge, what issues are relevant to your concerns and responsibilities?

Stepping into the world of the court system can seem like a journey to a foreign land for any Family Court litigant. That is especially true for an immigrant person who may be defying cultural strictures by seeking judicial intervention for highly personal and often embarrassing matters. If that person is rebuffed because her case is less than artfully presented, an important opportunity to intervene for the good may be lost forever.

Because Ms. Galvan is an immigrant with limited capability in English, the court must make every effort to ensure that she has a full and fair opportunity to present her case. If her claims do not seem fully fleshed out or sufficiently substantial upon first presentation, she should be referred to an advocate or some assistance group that can provide her with counsel and guidance in articulating her claims and support her through the court process.

The court should also be alert for the experiences that Ms. Galvan hints at, but does not express directly. The court can ask open-ended follow-up questions that will help uncover a fuller picture. What does she mean by being a "good wife," and how does that relate to Mr. Galvan visiting prostitutes? What did she understand Father Rodriguez to mean by directing her to "do as her husband wishes"? What did her husband wish her to do that required a direct order from a priest to secure her compliance? What does it mean that he can "do whatever he pleases" with her? Why would she ask the court to "make" him stay away from her to prevent another pregnancy? What prevents her from communicating that concern to him directly?

These unspoken issues suggest there is more going on here than untreated alcoholism. With astute listening and questioning, the court may be able to uncover the real risks the petitioner is facing, but is unable to articulate without some help. Given that she has stated that her husband's behavior is "erratic" and that she is "fearful" of him, knowing

the answers to the questions above will help the court respond in a meaningful and appropriate way to the situation.

Q4.

Does the fact that she was arrested influence your determination of her petition?

- Yes
- No

When police arrive at the scene of a domestic incident, parties may often make cross-allegations against one another. While some jurisdictions require arresting officers to make a determination of which party was the primary aggressor, others do not hold police to the same standard, and even in those that do, some police officers simply do not do it. Even in jurisdictions where a “primary aggressor” analysis is the preferred approach, there may be exceptions to that policy, such as when both parties present with injuries.

That a party was arrested is not determinative of fault or wrongdoing.

Q5.

Assuming the evidence adduced at the hearing supports Elena Galvan’s version of the events, what relief would you grant her:

- **Do you grant the order of protection?**
 - Ms. Galvan should be granted a full order of protection, directing Mr. Galvan to refrain from harassing, abusing, or annoying her, and to stay away from her home and place of work, as well as the schools of their children.
- **Who gets custody of the children?**
 - Custody, under these circumstances, is indicated for the mother. Mr. Galvan has a long history of sexually abusing his wife. A person convicted of a sex crime would have a difficult time establishing a right to custody of children. In some jurisdictions, that fact alone would preclude consideration of such a request.
While the question has not been fully explored in the context of intimate partner sexual abuse, there may be no reason—in terms of real risk to children—to distinguish between a person who commits intimate partner rape and other types of sexual assault. A court must consider carefully the increased risk of lethality associated with intimate partner sexual abuse before allowing any contact between an abuser and children.
- **Do you award supervised visitation?**
 - A history of sexual abuse of an intimate partner is associated with increased risk physical and sexual of abuse of a child. Moreover, the respondent appears to suffer from untreated alcoholism that causes erratic

behavior. Depending on the law in your jurisdiction, visitation should occur, if at all, only in a supervised setting.

- **Do you award child support?**
 - She should be awarded sufficient child support to allow her to remain independent. Economic dependence on the abuser is a common reason why a woman allows an abuser back into the family home.
- **Do you grant the restitution?**
 - It is appropriate to require Mr. Galvan to accord restitution to Ms. Galvan for the replacement cost of the clothes that he destroyed. Some victims may also need assistance with payment of medical bills stemming from abuse.