

**EFFECTIVE RESPONSES TO
ABUSERS USING LEGAL
SYSTEMS AGAINST VICTIMS
OF DOMESTIC VIOLENCE**

By Asian Pacific Islander Legal Outreach

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LEARNING OBJECTIVES

1. Identify abusive legal tactics used by abusers.
2. Improve strategies for effective responses to abusive legal tactics.


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HYPOTHETICAL BACKGROUND

JOHN  **JANE**

- John is a U.S. citizen.
- Jane is from the Philippines. Her main language is Tagalog. Jane is an overstay on an expired tourist visa.
- John and Jane are married and reside in San Francisco, California.
- John and Jane have one-year old son named Jimmy.

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JOHN  JANE

- During a fight, John begins choking Jane. She tries to fight him off but scratches him in the face.
- John calls the police. John points out the scratch marks and blood on his face.
- The police do not see marks on Jane, and do not use an interpreter.
- Jane is arrested by the police and John is issued an Emergency Protective Order (EPO) against Jane.

⌘ How would you advocate for Jane at this point?

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ABUSE OF CRIMINAL JUSTICE SYSTEM

- Arrest of Jane based on victim-abuser confusion
- Emergency Protective Order (EPO) issued through police
- Jane in police custody and so is separated from her son

⌘ What are some common criminal justice system abuses that you have encountered?

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AND THEN.....

- You find out that the criminal charges have been dropped.
- After Jane leaves jail, John files a civil restraining order (RO) against her and is granted a temporary restraining order (TRO).
- John claims the RO is also on behalf of Jimmy.

⌘ How would you help Jane respond to this RO?

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ABUSIVE RESTRAINING ORDERS

- John files civil RO and argues the need to protect himself and their son Jimmy.
- John requests a move-out order of Jane from the home.
- John requests full legal and physical custody of Jimmy.
- In response, Jane files a civil RO against John.

⌘ Does it matter that John filed for the RO first?


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AT THE RO HEARING

- John argues that Jane is filing an RO against him to get immigration status.
- John argues that he should have sole custody of the child because Jane has no immigration status.

⌘ How would you counter John's arguments?

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MORE DRAMA 

- John loses his request for the civil RO.
- John goes to court the next week and files an ex parte order with a judge for custody of Jimmy, arguing that Jane is a flight risk.
- The ex parte order also requires Jane to give Jimmy's passport to John.

⌘ How would you respond to the ex parte order?

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FLIGHT RISK ARGUMENTS

⌘ If John argues that Jane is a flight risk because she is undocumented, how should you respond?

- Emphasize Jane's ties to the community in the U.S.
- Emphasize Jane's role in supporting child and child's best interests
- Argue cultural factors: e.g. Jane would face shame and lash-back if she returned to the Philippines.

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USE OF IMMIGRATION STATUS AGAINST VICTIM IN FAMILY COURT

- Immigration status is **irrelevant** → Irrelevant evidence is inadmissible (Ca. Evid. Code § 350 / Civil Code § 3339)
- Assert VAWA Confidentiality Laws
- John's use of Jane's immigration status IS A THREAT of deportation, IS ABUSE and IS RETALIATORY.
- Reiterate legal standards.

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KEEP IT COMING.....

- John produces a pre-nuptial agreement written in English.
- It states that Jane cannot ask for any child support.
- It states that during the marriage, Jane must give all her paychecks to John.
- It also says that she must clean the apartment everyday.

⌘ How would you defend Jane against the terms of this pre-nuptial agreement?

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PRE-NUPTIAL AGREEMENTS

- Validity of Agreement
- Scope of Agreement
- Against Public Policy?

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HYPOTHETICAL, PART V

- John then files an Order to Show Cause (OSC) to change the visitation schedule with Jimmy.
- John files a new OSC about every four months.
- Jane does not have an attorney anymore, and is required by the court to provide her contact information to John.

⌘ How would you counsel Jane on John's repetitive OSC requests, as well as safety planning regarding her contact information?

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ABUSIVE COURT FILINGS

- Repetitive OSCs
 - Ensure Judge knows entire procedural posture and history
 - Argue that repetitive OSC filings is an abuse of court process
 - Ask for attorney's fees, sanctions, or orders to limit John's right to file court documents
- Safety planning
 - Advise Jane about providing safe address and contact information

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HYPOTHETICAL, PART VI

- John then files for an annulment.
- He claims that their marriage is based on fraud because she only wanted to marry him to get immigration status.

⌘ How would you counsel Jane about the annulment?

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ANNULMENT

- Abuser must prove fraud by clear and convincing evidence
- If annulment achieved, advise Jane that all legal remedies to a valid marriage are terminated, including:
 - Community property
 - Spousal support
 - VAWA/I-751 waiver immigration options
- Consider cultural and religious factors regarding annulment and marriage

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WINDING DOWN??

- John writes a letter to USCIS that Jane married him for immigration status only. He also sends in the police report of Jane being arrested.
- During the I-751 waiver interview, Jane is interrogated by the immigration officer about John's letter and the police report.

⌘ How would you respond to John's letter and the officer's behavior?

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ABUSE OF THE IMMIGRATION SYSTEM

- Argue that immigration employees cannot make adverse determinations based solely on information provided by abuser/trafficker
- Argue that all information provided by abuser/trafficker must be independently corroborated
- Ask to speak to supervisor of immigration officer

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FOR THE OLDER SET.....



- Ping is a 79-year old widow. He has been in a relationship with Mei Ling, a 77-year old widow.
- They have been living together for 13 years, but never married.
- Ping has no estate planning documents.
- Mei Ling has Power of Attorney for healthcare and financial directives that were executed for her 15 years ago.

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THE PLOT THICKENS...

- Mei Ling has a stroke and is hospitalized.
- Mei Ling's son is the agent under the POAs.
- Her son will not let Ping speak with the doctors or visit Mei Ling without prior consent.
- Ping just goes to the hospital and sees Mei Ling.
- Ping is asked to leave the hospital, and so he leaves.
- Son brings an Elder Abuse Restraining Order against Ping as an agent for Mei Ling.

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ABUSE OF ESTATE PLANNING TOOLS

- Check validity of power of attorneys
- Discuss with agent options to allow visitations: supervised or limited schedule
- Involve Adult Protective Services
- Recommend regularly updating documents to reflect changes in circumstances

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HYPOTHETICAL

- 71 year old Trinh was brought to the US by her son Minh to live with him and his family.
- Minh, his wife Sally, and their two very young children are moving to the suburbs.
- Minh took care of the paperwork and Trinh soon arrived.
- After two years in the suburbs, Trinh wants to move out.
- Trinh has no paperwork or income.

⌘ How do you assist Trinh?

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ABUSIVE IMMIGRATION FILINGS

- Figure out actual immigration status and income sources
- Assess for possible abuse or neglect in living situation
- Screen for inappropriate use of I-130 Family Petition or naturalization process
- Argue for enforcement of Affidavit of Support
- Assess elder VAWA options

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HYPOTHETICAL


- Assuming Trinh is eligible for some type of public benefit, she files for Supplemental Security Income.
- Trinh learns that she is already receiving this benefit as well as food stamps.

⌘ How do you address this?

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FRAUDULENT BENEFITS FILINGS

- Elder Abuse
- Identity Theft
- Fraud



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**IDENTIFYING OTHER TRENDS AND
BRAINSTORMING STRATEGIES**

⌘ What are other trends and responses you are seeing in your cases?

THANK YOU!

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