



CCCBA's *Family Law and Criminal Sections*  
*proudly present...*

**#7 YOU SAID WHAT?!**

**OVERLAPPING ISSUES IN FAMILY & CRIMINAL COURT**

[Honorable Christopher Bowen](#), Contra Costa County Superior Court

[Ariel Brownell Lee](#), Law Office of Ariel Brownell Lee

[Billie-Jean Lee](#), Lee Family Law

## AGENDA

Using a domestic violence hypothetical, we will discuss:

1. Competing interests and concerns in Family Law and Criminal Law
2. Anatomy of a Domestic Violence Restraining Order Process
3. Anatomy of a Misdemeanor Domestic Violence Charge
4. Domestic Violence Restraining Orders and Criminal Protective Orders
5. Common evidentiary issues occurring in both areas of law
6. Child custody issues affecting both areas of law



# PROGRAM MATERIALS

## **Cross Over Issues in Family Law and Criminal Law**

### **Hypo Facts:**

Harry and Wendy were married for 15 years and 3 months and then separated in January 2022 after a DV incident. They have a 13-year-old daughter named Dorothy.

In 2015, Wendy was convicted of a misdemeanor for embezzling from her employer.

In the last 5 years of the marriage, Harry was abusing Ritalin on and off. This negatively affected Harry's relationship with Wendy and Dorothy. Harry was frequently irritable, paranoid or depressed. When Harry was irritable or paranoid, he became verbally abusive to Wendy and Dorothy. As a result of Harry's abuse, Wendy and Dorothy are very bonded. In addition, Wendy has been the primary caretaker of Dorothy.

In October 2020, Harry successfully completed a private drug treatment program. Wendy noticed significant improvement in Harry's behavior in the ensuing year.

Unfortunately, in August 2022, Wendy noticed Harry acting overly confident and often irritable again—symptoms that she noticed Harry experienced when he's abusing Ritalin.

On October 15, 2022, Wendy found, hidden in the garage, several empty bottles of Ritalin prescribed for different unknown people. Wendy brought Harry to the garage and confronted him with the empty bottles. Harry denied using again. He claimed the bottles were from his former addiction. Wendy did not believe him, and a heated argument ensued. Dorothy heard arguing and went out to the garage. Harry became angrier and more aggressive. At one point, Harry was yelling at Wendy and walked menacingly towards her, with his fists balled up. Wendy grabbed a nearby hammer, raised it above her head, and said, "This ends tonight," and took a step toward Harry with the hammer still raised. Dorothy screamed and ran back into the house. Harry ran after Dorothy and called 911.

Distraught over what occurred, Wendy immediately left the garage and ran to her best friend/neighbor's house. When neighbor opened the door, Wendy was hysterical and sobbing. Wendy blurted out, "I thought Harry was going to hurt me. He was screaming at me, he was spitting, and he had his fists balled up then he came towards me. I grabbed a hammer and raised it above my head. Then Dorothy screamed, and they both left."

Police arrived and interviewed the parties separately. Harry informed the police that the parties were arguing because Wendy accused him of abusing Ritalin again. They were both yelling. Suddenly, Wendy grabbed a nearby hammer, raised it, said, "This ends tonight," and took a step towards him. Dorothy screamed and ran back into the house. Dorothy saw the whole incident. Harry fled. He followed Dorothy into the house and called 911.

Police tried to talk to Wendy. Wendy, who was still crying and distraught, only said to police, "What have I done?! I raised the hammer, but I don't know . . . I don't know if he meant to hurt me." Then, Wendy stopped talking to the police and invoked her right to remain silent. Wendy

was arrested and taken to jail. At the scene, a police officer called the on-duty judge, who issued an EPO protecting Harry and Dorothy, and served Wendy.

On October 18, 2022, Harry requested a DVRO in family court, alleging that the parties were arguing, when Wendy raised a hammer over her head and took a step towards him, saying “This ends tonight.” Harry also alleged that Wendy threatened him in the Dorothy’s presence. Court granted a TRO on October 19 with a no abuse order, no contact order, and an order to stay at least 100 yards away from Harry, Dorothy, the house, Harry’s car and workplace, and Dorothy’s school. Both Harry and Dorothy are protected parties. The Court ordered no visits between Dorothy and Wendy pending the hearing on November 7.

On October 19, Wendy was arraigned on misdemeanor charges of brandishing a weapon (PC 417(a)(1)), simple assault (PC 240), child endangerment PC 273a(b). Wendy pled not guilty, waived time, and was released on bail. Judge issued a CPO. A further hearing is set on November 21.