

Family Law Education Reform Project

Hofstra FLS – Client Background (Divorce)

OVERVIEW

This document contains background facts and case materials for a Divorce skills exercise. The materials are designed to give participants an overview of the facts and disputes in the Allen divorce proceedings.

EXPLANATION AND COMMENTS

The information contained herein contains background facts that are known to both parties in the divorce action. Separate documents contain background facts known only to specific parties. The materials should be distributed in conjunction with this ideal. This information is dispensed only to the clients for the *client* interviewing session. The materials are then distributed to the attorneys for the *client counseling* session. To see a timeline of materials distribution and skills sessions, please refer to the Hofstra Family Law with Skills syllabus.

ABOUT THE AUTHOR

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Professor DiFonzo has had a wide-ranging two decades of law practice before becoming a full-time professor, including stints as a federal prosecutor and as a litigator in the areas of family law, criminal defense, negligence, and professional malpractice. In all, he conducted over 30 jury trials and several dozen appeals. He has taught at Hofstra since 1995. From 1995-2003, he served as Director of the Criminal Justice Clinic. From 2005-2008, he served as Director of the LL.M. Program in Family Law.

ALLEN PROBLEM
BACKGROUND FACTS
(Known to both sides)

Family Law with Skills

Fall 2008

Time Line

- Summer 1989: David and Lynne Allen meet while working at a hospital.
- February 1990: David and Lynne Allen marry.
- Summer 1991: David Allen finishes his residency and receives a research grant.
- 1991: David Allen joins a group practice with two other radiologists.
- 1992: The Allen's first child, Jane, is born.
- 1993: David Allen is invited to buy into the group practice as an equal partner.
- 1994: The Allen's second child, Joey, is born.
- 1995: The Allens leave their NITA City apartment to move to the suburbs.
- 1999: Lynne resumes her education at NITA University.
- 2001: Lynne earns a BA in communications and starts work at a radio station.
- Fall 2002: Lynne accepts a full-time position as assistant programming director.
- Late 2002: David begins an affair with his X-ray technician, Norma Starks.
- January 2003: During an argument, David tells Lynne about his affair with Norma.
- Late January 2003: David moves out of the house for a month and stays with Norma.
- 2003: Lynne creates a successful daytime radio show with syndication possibility.
- 2004: David Allen is offered a job as the executive vice president of the NRA.

The current interview with counsel takes place in Fall 2004.

Summary of the Facts

The following summary is designed to give participants a brief overview of the facts and disputes in the Allen divorce proceedings. This summary is not a substitute for the greater detail contained in the documents that follow.

The Allens have been married for fifteen years and have two children together, Jane, age thirteen, and Joey, age eleven. David and Lynne live in the home together. David moved out of the residence for about a month but returned because he feared living apart would negatively impact his relationship with the children. The Allens sleep in separate bedrooms and David spends some nights during the week at his girlfriend's house. The children know that their parents are having marital problems and have overheard them arguing. There is no history of domestic violence between David and Lynne.

David, a radiologist, told Lynne, a radio programmer, that he wants a divorce in order to pursue a relationship with his X-ray technician, Norma Starks. David and Norma have been having an intimate relationship for three years. David began seeing Norma after Lynne entered the workforce four years ago. Lynne's job at the local radio station required David to become more involved with the day-to-day care of the children, from preparing meals, to putting them to bed. As a result he was not able to spend as many hours at his job. David felt like Lynne was not spending enough time with him or the children. She refused to talk about their marital problems, and David would yell at her while she remained silent.

Lynne responded to David's anger by telling him he didn't take her career or her feelings seriously. Since Lynne would not talk about her feelings, David felt they were at an impasse. David confided his problems with Lynne to Norma. As a widow raising two children, Norma knew how difficult it was to parent alone. David and Norma spent many hours working together, and David learned that Norma was president of her children's PTA and greatly involved in her children's lives. David was impressed by her ability to excel at her profession and at parenthood. They soon began a sexual relationship.

Further strain was placed on the Allen's marriage when Lynne was promoted to full-time assistant programming director three years ago. On a number of occasions, Lynne called David at work to ask that he take care of the children so that she could stay late at the station. This required David to give up research sessions so that someone would be home with Jane and Joey. On two occasions Lynne arrived home extremely late smelling of alcohol. This concerns David because it is out of character for Lynne. When David commented on her drinking, Lynne made light of it, saying she was only trying to relax.

David and Lynne are arguing more frequently, and often in front of the children. Jane and Joey's personalities have changed greatly as a result of the tension in their parents' relationship. The school psychologist told the Allens that Jane and Joey's teachers have expressed concern about changes in the children's behavior. Meetings with appropriate school personnel have reinforced these suspicions.

Where Jane was once intensely interested in school and friends, she has become critical of

her teachers and peers. She spends a great deal of time at gymnastics and recently put herself on a strict diet and began losing weight. Over the past three months, Jane has lost nearly fifteen pounds. She is now 5'1" and weighs 102 pounds. David is worried about his daughter's weight loss, although Lynne thinks she looks fine without her baby fat. Jane is angry with her father over her parents' marital problems and refuses to spend any time with him, especially when Norma is around. She told her family that she wants to live with Lynne no matter what happens.

Whereas Jane blames their father, Joey takes his dad's side. He thinks that either Lynne or both parties are to blame. Joey and Jane used to get along well, but now they quarrel often. Jane is upset that Norma has made comments like "think of me as a second mother" and "feel free to call me Mom." Joey, on the other hand, thinks Norma is "friendly, sweet, and cool" and likes that she is interested in their lives. Joey complains about Lynne staying late at work. He has great difficulty sleeping, regularly waking up with nightmares and sometimes wetting the bed. He is ambivalent as to whether he lives with his mother or father after the divorce.

Background Facts Known to Both Sides

Both Dave and Lynne agree on the following facts, and will provide them to their lawyers if asked appropriate questions.

For purposes of this exercise, NITA is a County in New York State.

David Allen and Lynne (Grant) Allen's Family History

Lynne Grant grew up in Northern County, NITA as the only child of an upper-middle class couple. During Lynne's childhood, her father successfully expanded a modest family general contracting business. Lynne's mother attended college, but never worked, devoting herself instead to caring for Lynne, civic and club activities. Lynne was raised as a Presbyterian, although her family was not especially religious. She attended private schools in preparation for college.

David Allen was born and raised in a middle-class family in Lawrence, NITA, the second of three children. His father was in the garment business, manufacturing children's clothing. David's mother helped David's father by keeping the books and running the office. David's mother was not heavily involved in her children's day-to-day lives. An aunt, now deceased, and different housekeepers largely raised David. David's mother is comfortable in a traditional role and rarely challenges her husband's authority.

David was always considered to be the serious one in the Allen family. He was an obedient child and a leader in school. He was shy about dating, however, and was self-conscious about his looks. David worked hard while attending Lawrence High School and was awarded a substantial scholarship to attend Tufts University as a pre-med student.

Lynne attended Bennington College, majoring in English. She was a slightly better than average student, but had trouble directing herself towards a career goal. She dated while in college but did not have a steady boyfriend. She was outgoing and vivacious, but more interested in campus activities than in academics or serious romantic relationships. She enjoyed being with other people and working in groups.

During her junior year at Bennington, still uncertain about her career goals, Lynne approached her father about joining him in the family construction business. Her father felt that the construction business was no place for his daughter and discouraged her involvement. Frustrated by this rebuff, and even less decided about her future, Lynne decided to take time off from college. After completing her junior year, she moved to NITA City to share an apartment with a college friend who was studying architecture at NITA University. Lynne got a job as a patient representative at NITA Medical Center to cover her expenses while she sorted out her future.

After completing his pre-med studies at Tufts University, David attended NITA Medical School. David interned at NITA Presbyterian and then became a resident and radiological fellow at NITA Medical Center. During the course of his training he developed an interest in -- and demonstrated considerable talent for -- radiological research and treatment. During his residency David had one serious relationship with a nurse. This relationship did not work out, however,

because she felt that David put his medical career before everything.

The Allen's Marriage and Children

About seven months after that relationship ended, in the summer of 1989 David met Lynne, who was a patient representative. They began meeting for coffee to discuss the progress of his patients. The conversations soon turned to more general discussions of medicine and of David's research in particular. David was very charmed by Lynne and flattered by her attention to his research. They would spend long hours going over his research results. Lynne helped edit his research reports and his first articles. Lynne also helped write and edit his application for a NITA Radiological Association (NRA) grant.

In the fall of 1989, David asked Lynne to marry him. He felt that since his career seemed to be going very well he was ready to settle down. Lynne and David married in February of 1990. When they married, both David and Lynne assumed they would have children. David felt that they should begin their family only when they were on secure financial footing.

In the summer of 1991, David finished his residency and fellowship. He was then fortunate enough to receive a research grant funded by the NRA. In 1991, David joined a group practice with two other radiologists. The income from his employment with the group supplemented the research salary he received from his research grant (the NRA grant is subject to continuing renewals).

Both David's research work and his group practice flourished. For the first two years David was a salaried employee, and in 1993 he was invited to buy into the Power Diagnostics group practice and become an equal partner with the other two radiologists. He made his practice his first priority, investing most of his time at work.

David and Lynne decided they were financially secure enough to begin their family. Their first child, Jane, was born in 1992. In 1994 a second child, Joey, was born. Lynne agreed to stay home with the children until they reached school age. She did this somewhat reluctantly, as she feared the social isolation and lack of adult and community contact which might result from staying at home full time. However, she found great satisfaction in motherhood. Lynne, following in her mother's footsteps, became very active in a variety of community affairs.

By 1995, with Jane approaching preschool and Joey about to start toddling, Lynne and David decided to leave their NITA City apartment and move to the suburbs. They purchased a large older home in Huntington, NITA (an attractive suburb), close to where David's parents lived, which Lynne began fixing up.

David's parents loved having their grandchildren close by. They visited frequently. David's parents babysat occasionally when asked, but did not volunteer to take care of the children. David's mother did not want to be burdened with extensive child care responsibilities, as she continued to work in the family garment business. David's father and Joey became particularly close as they both shared a passionate attachment for history and learning.

Lynne Allen's Return to School and Entrance into the Workforce

By 1999, with Joey in kindergarten, Lynne felt she wanted to complete her degree and get back into the working world. Lynne transferred her Bennington credits to NITA University, where she could commute to classes and complete her BA on a part-time basis. She changed her major to communications and through her coursework became involved in programming at WNUR, the campus radio station.

During this period Lynne and David's relationship was stable and the tranquility of their family life was marred only by the sudden death of Lynne's father in 2000. Lynne's mother recovered from the loss and became even more involved with her civic and club activities. Lynne and David suggested she live with them for a time, but she refused. Mrs. Grant, who is now sixty-one, did not want to intrude on her children and grandchildren's lives.

In 2001, Lynne received her BA in communications. Through her community activities, she became friends with a woman who sold advertising time on a 24-hour news format radio station. Lynne's friend put her in touch with several people in management at local radio stations. Lynne's networking eventually produced an offer from a small commercial station that she admired, WKJW, whose studios are near NITA University. The station featured a mixed-bag of information and music, appealing to upwardly mobile, middle-class tastes. Lynne accepted a part-time position with the station in the programming and feature development department.

David was pleased that Lynne had completed her college degree. Being raised in a family that placed a premium on education, it had always bothered him that she did not have a college degree, though he had kept this to himself. He was, however, ambivalent about her return to work. He understood her desire to reestablish an identity separate from wife and mother -- and to prepare for the inevitable day when Jane and Joey grew up -- but he worried about the effect it would have on the children.

Once Lynne started working, David believed she became much less supportive of him and his work. In the evening after the children were in bed he thought she was often more interested in catching up on her paperwork and bouncing programming ideas off of him, than in sharing the ups and downs of his research and practice. David found himself focusing more of his energy and attention on work and Jane and Joey, as compensation for what he perceived as Lynne's reduction of interest in him. Lynne recognized David's concerns and feelings about her career, but she felt that he would eventually adjust.

David had always been an active parent to his children, taking them on outings and supervising their homework. As a doctor, David took responsibility for the children's medical care. Before going to work at the radio station, Lynne had been responsible for such things as cooking meals, feeding and bathing the children, putting them to bed, getting up with them in the night. When Lynne started working, David adjusted his schedule and became more involved with the day-to-day care of the children, spending more of his evenings with Jane and Joey and fewer with his journals.

Meanwhile, Lynne continued to devote a substantial amount of time and energy to caring for the children. She was insistent that they not be "shortchanged" by her return to work. She

found that her new schedule left her frazzled, with less time than she would have liked for interests other than her work and her children. Lynne, however, was invigorated by her job. She found she had a keen sense for radio work, and was rewarded with increasing responsibility at the station. She felt she had given her "all" to her family for thirteen years and was ready to grow in other ways.

In the fall of 2002, Lynne accepted a full-time position as assistant programming director of WKJW. Her duties in programming were expanded, and she was given control of "new feature" development. The salary- \$30,000- was small for the position, but Lynne felt that she would be missing a rare opportunity to gain experience if she passed it up. She found that managing a full-time work schedule along with her parenting responsibilities was exhausting, but worth the effort. David's mother helped greatly by watching the children after school.

The Deterioration of the Allens' Marriage

David felt that while Lynne was barely managing to have time for her work and the children, their relationship was completely left out of the equation. By this point Lynne and David were not communicating very much. Their previously active sex life deteriorated dramatically. David resented Lynne's career, while Lynne felt his resentment was unreasonable. Lynne became withdrawn and avoided discussing their marital problems. This caused David to yell at her. Lynne told David that he didn't take her feelings or her career very seriously. David got even angrier, saying he didn't know what Lynne's feelings were since she never discussed them.

David's comments, far from easing the tension, made Lynne increasingly angry. She chose to direct even more of her time and energy into her work. On a number of occasions in late 2003, Lynne called David at work, saying that he needed to take care of Jane and Joey so that she could work late at the station. More than once, this required David to leave his research during a particularly productive session. Twice, Lynne arrived home very late with alcohol on her breath. She made light of the matter when David commented, saying that she had merely had a drink with dinner to relax. While she hadn't seemed intoxicated, David was alarmed because Lynne almost never drank.

David began an affair with his X-ray technician, Norma Starks, in late 2002, while Lynne was spending an increasing amount of her time at work. Norma had worked for David since 2001, making a salary of \$20,000. She is thirty-seven years old and widowed with two children, ages five and eight, after her husband succumbed to a protracted battle with cancer.

1. Norma was the president of her children's school's PTA and a girl scout troop leader. She was involved in all the activities of her children, a quality that impressed David. He knew that it was not easy for a single parent to successfully raise two children without any assistance. Although they miss their father, Norma's children are doing well in home and at school.

- 2.

3. Norma had completed college and held a two-year "lab tech" certificate from a local technical school. She was fascinated by David's intelligence and his personal commitment to his children. She believed he was an excellent father and provider. As she and David spent long hours working on the research project, Norma became taken with David and told him how much she admired him and his work.

David was flattered by Norma's attention, particularly because he felt that Lynne had emotionally abandoned him. Norma supported his career in the way Lynne no longer did. David confided in Norma that he and Lynne were having problems. He told her that Lynne was preoccupied with her own life, and that she refused to reduce her career involvement in order to spend more time with David. Shortly after these talks, their affair began.

At first David felt guilty about his involvement with Norma, but escalating arguments with Lynne made him angry and resentful of her. During one particularly heated argument in early January 2003, David told Lynne about his affair with Norma and announced he wanted a divorce so he could continue his involvement openly. After David admitted his affair to Lynne, he left the marital residence and stayed with Norma in her apartment in the middle of NITA City.

This living arrangement continued for about a month. David moved back into the marital residence, where he currently lives with Lynne and the children. David told Lynne he moved back in because he didn't want their marital difficulties to harm his relationship with the children, a harm he feared would be compounded if he lived out of the house. David sleeps in the guest bedroom in the house, and Lynne sleeps in the bedroom they used to share.

The Effect of Marital Problems on the Allen Children

David and Lynne find themselves arguing more and more bitterly, and more often in front of the children. David rejected Lynne's suggestions that they go to counseling, saying that their relationship is over. Lynne has put herself in individual therapy once a week with a psychologist whose office is near her station. She told David the focus of her therapy is an attempt to work out the tension she feels in balancing career concerns and family responsibilities.

Lynne has also periodically suggested that David move out again, but David has refused. There is significant tension in the house. David spends some weeknight evenings at Norma's apartment (he tells Lynne in advance so that someone will be home with the children), but most nights he sleeps at home.

David and Lynne have told their children they are having marital problems, and the children have overheard their frequent arguments. The children have been seriously affected by the strains in their parents' marriage.

David blocks out three evenings during the week to spend with Joey and one day during the weekend. He tries to spend time with Jane but she refuses to partake in any activities with him.

Jane has always been a bright but headstrong girl. In past years when her parents' relationship seemed stable, she was intensely interested in school and friends. She was close to both parents, but not demonstratively affectionate. Recently, she has become critical of her teachers and peers. She is actively involved in gymnastics, and her teachers and her father became alarmed when she placed herself on a strict diet and began losing weight. Over the past three months she has lost nearly fifteen pounds. Jane is now 5'1" and weighs 102 pounds. She has stopped inviting friends home. Jane is very attached to Lynne, and she vocally blames her father for her parents'

marital difficulties and refuses to spend any time with him.

Joey is a rather shy but self-confident boy who has always done extremely well in school and had many friends. He usually admires his older sister and in the past he has identified with her attitudes. With the onset of the marital problems in the Allen household, Joey has come into increasing conflict with Jane. When Jane blames their father for the problems, Joey quarrels with her, saying Lynne is to blame or that both are to blame. He tries to restore balance in Jane's view of David and Lynne's marital difficulties. Joey complains frequently about Lynne's being away at work in the evenings. Joey insists that if David moves away again, he wants to move away with him. Joey has also been having great difficulty sleeping -- often waking with nightmares -- and has wet the bed several times.

The children have met Norma and her children on several occasions. Jane had a significant negative reaction to Norma, and does not want to spend time with her. Lynne discussed Jane's reluctance to be with David while Norma is around. Jane reluctantly told Lynne about a conversation with Norma that upset Jane greatly. According to Jane, Norma recently told Jane and Joey they should "think of me as a second mother" and "feel free to call me "Mom." Jane told Lynne that Norma offered to take her to the mall to buy clothes. Jane asked Lynne "Mom, am I losing you?"

Lynne then asked Joey about this conversation. Joey confirmed that it occurred. He also said, however, that Norma was friendly, sweet, and "cool," and she seemed very interested in both him and Jane. He reported getting along well with Norma and her children.

Lynne brought this incident up to David, but David did not see what the problem was. In his view, Jane's reaction was simply the result of her over-identification with Lynne. David explained to Lynne that after the divorce and his marriage to Norma, the children would indeed have two mothers. Lynne became furious at this statement and stomped out of the room. The subject has not been discussed since.

David and Lynne have recently received a letter from Joey and Jane's school psychologist. The psychologist indicated that the children's teachers have expressed concern about the children's behavior, in particular Jane's belligerence with her teachers and her weight loss (see copy of letter attached to these Background Facts). When David and Lynne met with relevant school personnel to discuss the letter, the same information was confirmed.

David's parents are devastated by the disintegration of Lynne and David's marriage, and are somewhat angry at David because of his affair with Norma. Lynne's mother is also upset at the situation, though her feelings about who is responsible are ambivalent. She believes, for example, that Lynne should stop working if it will save her marriage. She is upset at David because of his affair with Norma.

Lynne and David Allen's Career History and Advancements

In January of 2003, Lynne presented the WKJW managing board with a new feature proposal for their 1:00 PM weekday slot. The time slot had been a thorn in the side of station

management for some time, plagued by low ratings and declining advertising revenues. Lynne proposed trying a sports program with a new angle. The show would be pitched to "baseball widows" - women with husbands so obsessively involved with sports that the wives feel "widowed" during the season. The program would cover college and pro ball, highlighting current action and providing background and education about the sport. All features would be constructed from a woman's perspective and in a slightly humorous vein.

The station accepted the proposal and suggested that Lynne host "Baseball Widows" herself. She created the concept and possessed the requisite sports knowledge to pull it off. (While Lynne's father had not allowed her to work in the contracting business, he had no such reservations about involving her in his passion for baseball, taking her to many games in her youth. Lynne maintained an interest in sports throughout her adult life, and while not as fervent as her father, remained an active spectator. Lynne, David, and the children often attended the NITA Mets games, and Lynne avidly read as much about baseball as she could).

"Baseball Widows" had its broadcast debut as spring training commenced in 2003. By late summer, the audience was at an all-time high for the time slot, with positive effects for WKJW's other programs as new listeners tuned in. Fourth quarter 2003 advertising revenues for this previous difficult time slot showed so dramatic an increase that the large local stations began to take notice. Early this year, Lynne and WKJW received several offers to market "Baseball Widows" regionally. She is currently at the point of entering serious negotiations with several radio networks. This may be the major turning point in her radio career. She could receive a raise in the near future and be making upwards of \$50,000/year.

David is also at a career crossroads. Through the years of NITA Radiological Association research grants, David has become very involved with the association. David has taken part in numerous conferences over the years, has been fundamental in planning several symposia, has served on a number of the association's committees, and three years ago chaired the association's National Committee on Ethics in Radiology Research.

Three months ago, the NRA (which is headquartered in NITA City) learned that it would lose its current executive vice president (the chief administrator in the national organization). After a series of interviews with several candidates, David among them, the association offered David the post. The compensation is generous for such a position (\$120,000 annually). Due to potential conflicts of interest and time, David would have to give up his practice to accept the post.

With the Association's sizeable staff and over \$200 million in research grants to award annually, David believes he would be making a greater contribution to the field than he currently does in his practice. The current executive vice president has agreed to remain with the association until a replacement is found. David wants very much to accept the position, but has not yet made any commitment. He has, however, mentioned the possibility to Lynne and discussed it with his partners in Power Diagnostics.

Over the past three years all four shareholders in Power Diagnostics have experienced reductions in their income due to decreases in third-party insurance reimbursement rates, increased use of less invasive procedures, rising costs of malpractice insurance, and competition by a new

radiology practice at their primary hospital. David's personal compensation has decreased even more as a result of his decision to work less in his practice and spend more time with his research. Over the past few years David's gross practice income has decreased from \$600,000 (in 2000) to \$320,000 (in 2004).

Letter from School Psychologist

Dear Mr. and Mrs. Allen:

As the school district's psychologist I was asked by Mrs. Wolf (Jane's guidance counselor) and Mr. Marcus (Joey's teacher) to evaluate your children for the reasons stated below. I have conducted a preliminary examination, and at the end of this school year would like to share my findings with you.

Mrs. Wolf states that she has become increasingly worried about Jane's behavior. She noted that for the last three months, Jane's teachers report a dramatic change in Jane's involvement with both them and with fellow schoolmates. She has become more critical of everyone, openly refusing to involve herself in classroom discussions, does not do assignments she thinks are "silly," for little kids or "dumb," and has a general negative outlook.

At times this has led to arguments with classmates, and on two occasions actual fights. Also, her interest in gymnastics (for which she is quite talented, I'm told) has become more intense. To become more accomplished she has placed herself on a "diet," refuses to eat lunch, and has lost a noticeable amount of weight. When I met and asked her about these things, she essentially told me to mind my own business and that our meeting was further proof that the school wasn't very good. I felt she appeared sad and worried behind her defiant front. However, she would not allow for direct confirmation of this observation.

Mr. Marcus contacted me for advice about your son, Joey. He states that over the past three months, Joey, who normally is enthusiastic and a real "team" member, has become quiet and withdrawn. He appears to be daydreaming in class and also is fatigued much of the time. Although still friendly and cooperative, the change has been very noticeable. When I spoke to Joey alone, he appeared to be an intelligent and self-confident boy with a very direct way of relating.

He told me that he was worried about his parents, particularly his father. Joey appears to accept the fact that his parents are likely to be separated or divorced, and is very clear that he does not want this to happen. Joey tells me that if a divorce or separation does occur, he is adamant about living with his father. He seems anxious and troubled about loyalty questions.

Although the reports are based on limited contacts with your children, there is enough evidence to recommend further evaluation by a child psychologist/psychiatrist to intervene in helping your children through a difficult period. Hopefully this will prevent further adjustment problems from developing.

Please feel free to contact me regarding this for further advice or the names of health care professionals I can recommend.

Maureen Green, Ph.D.