

Domestic Violence

Domestic Violence (*included in workbook)

1. *Substance Abuse Treatment and Domestic Violence [Treatment Improvement Protocol (TIP) Series 25]*. Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services. 1997. NCADI # BKD239.
This publication offers guidance to clinicians and non-clinicians alike as substance abuse treatment services are considered in domestic violence court.
2. *Creating a Domestic Violence Court: Guidelines and Best Practices*. Emily Sack. State Justice Institute. May 2002
This is a comprehensive publication that discusses the planning and implementation of a domestic violence court from the beginning of the process. It also offers case examples of existing domestic violence courts.
3. *What Makes a Domestic Violence Court Work—Key Principles*. Mazur, Robyn, and Liberty Aldrich. Center for Court Innovation Think Piece (2002).
This article identifies principles of an effective domestic violence court and spotlights the New York model.
4. *Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impact from the Kings County Experience* Lisa Newmark, Michael Rempel, Kelly Diffily, and Kamala Mallik Kane Urban Institute Justice Policy Center. 2001
An evaluation documenting the implementation process and the impact of the Kings County Felony Domestic Violence Court on referrals to batterer intervention programs, provision of services to victims, case outcomes, recidivism, and other case processing measures.
5. **Domestic Violence Courts, Components and Considerations*, Julia Weber, Journal of the Center for Families, Children & the Courts, 2000.
6. **Planning a Domestic Violence Court: The New York State Experience*, Robert V. Wolf, Liberty Aldrich, Samantha Moore, Center for Court Innovation, 2004.

Domestic Violence Courts

Components and Considerations

In May 2000, the Judicial Council of California released a legislatively mandated descriptive study of the state's domestic violence courts.¹ While the study revealed certain common practices among domestic violence courts, it also revealed that this is an emerging field that has yet to produce a particular model of court practice or procedure. By focusing on those courts indicating that they assign judicial officers to a special domestic violence calendar, exclusively or as part of a mixed caseload, and regardless of the specific models and practices they followed, the California study determined that at the time of the report the state had 39 domestic violence courts in 51 of its 58 counties.² In a 1998 survey that identified courts employing "specialized process[ing] practices for domestic violence cases," the National Center for State Courts found that there were more than 200 such courts throughout the United States.³

Although many different civil and criminal courts handle domestic violence cases, interest in establishing specialized domestic violence courts is increasing as the judicial system and legislatures continue to explore better ways of addressing intimate partner violence.⁴ Consequently, this is a particularly important time to carefully consider domestic violence court practice and procedure so that innovations reflect an understanding and commitment to safety, accountability, and guiding legal principles. This article further explores issues raised in the California study and considers what obligations domestic violence courts have to litigants and the larger community.

DOMESTIC VIOLENCE COURTS: WHAT ARE THEY, AND WHAT DO THEY DO?

Although there is no single definition of a "domestic violence court," the specialized approach many courts are taking to handle domestic violence matters has received increased attention in recent years.⁵ Various jurisdictions have established "domestic violence courts" that hear either criminal or civil matters or a combination of both. Some communities have also established juvenile domestic violence courts that address perpetration of violence by those under 18. While there is significant variation in how these courts are structured, they have a number of important similarities that enable domestic violence courts to identify themselves as separate and distinct from other courts. Whether calendars are civil or criminal, in domestic violence courts particular attention is paid to how cases are assigned, the need to screen for related cases, who performs intake-unit functions, what types of services are provided to victims and perpetrators, and the importance of monitoring respondents or defendants. This article addresses those courts seeking to be identified in the community as domestic violence courts.

In some jurisdictions, all domestic violence matters of a particular type—for example, felony assault and battery cases—may be handled by the specialized calendar. In other places, domestic violence matters may be combined in a court that handles both criminal and civil domestic violence matters on the same docket. Throughout



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Domestic violence courts represent one of the more recent judicial innovations aimed at addressing cases that appear in criminal, juvenile, and family law courts throughout California and nationally. This article expands upon issues raised in a recent descriptive study of California's courts and considers various tensions that arise as notions of safety and accountability intersect with legal concepts. Those establishing domestic violence courts are encouraged to consider a number of questions about various aspects of court process and procedure. By so doing, courts and policymakers can more effectively address the question of what responsibility domestic violence courts have to the larger community. ■

the country, domestic violence courts handle a wide variety of cases including criminal misdemeanor and felony assault and battery, child custody, juvenile and other family law matters, and civil restraining orders. This wide variety has developed in large part because domestic violence may be an issue in any of these subject-matter areas. Most nonspecialized courts, however, do not have ways of identifying “domestic violence cases” or methods of ensuring that court personnel know when related cases are active or pending in the court system.⁶ Therefore, one of the features of many domestic violence courts is a screening process that allows court personnel to identify related cases as well as to initially identify a case as one involving domestic violence.⁷

By definition, specialized courts require dedicated resources, especially facility space and specialized court personnel. For many communities, the lack of these particular resources serves as one of the significant obstacles preventing the establishment of domestic violence specialty courts.

WHY SHOULD COURTS FOCUS ON DOMESTIC VIOLENCE?

Domestic violence is a serious public health problem that requires intervention from a variety of institutions. Recent research indicates that 25 percent of women and 7.6 percent of men surveyed have experienced some form of physical assault or rape by an intimate partner during their lifetimes.⁸ In 1993, California’s Statewide Office of Family Court Services’ Statewide Uniform Statistical Reporting System (SUSRS) reported that in 62 percent of the 2,735 families participating in court-based child custody mediation, at least one parent stated that there had been physical violence at some point in the relationship with the other parent.⁹ Additionally, in half of all mediating cases, a domestic violence restraining order had been granted at some point.¹⁰ At least one parent in 49 percent of all families seen in mediation also reported that their children had witnessed incidents of violence in their families.¹¹ For many people, the court is one of the community institutions to which they turn for assistance when they experience intimate partner violence.

However compelling the statistics, they are not the only reason courts need to focus on domestic violence. Deborah Epstein provides two reasons domestic violence should be prioritized in efforts to reform courts: first, “domestic violence is rarely a one-time event, and without effective intervention, it typically increases in frequency and severity over time.”¹² Courts are well positioned to offer immediate, strong, and enforceable responses to violence that may make it less likely that further violence will

occur. Second, children are often harmed by adults who are battering other adults and may also be affected by the violence being directed only at another adult in the family.¹³ Many states have enacted legislation requiring that courts focus on the best interest of children and have specifically noted that violence and abuse are contrary to the best interest of children.¹⁴ Additionally, the fact of violence, if not acknowledged or addressed, can create an unsafe environment for court-connected personnel as well as litigants. Screening for domestic violence, combined with immediate and appropriate referrals, can enhance the safety of parties and court personnel. So, given that courts need to be addressing domestic violence, what is the most effective way for courts—specifically, emerging specialty courts—to respond?

EMERGENCE OF DOMESTIC VIOLENCE COURTS

There may be a tendency to relate the emergence of domestic violence courts to the establishment of other specialty courts, such as drug courts. Both specialty courts represent recent judicial innovations designed to better respond to significant individual and community problems.¹⁵ Both often use a “team approach” involving the judge, prosecutor, defense counsel, treatment or intervention provider, and probation or correctional personnel.¹⁶ By considering them as close developments, however, we may neglect the particular context in which domestic violence courts have developed and the unique considerations that must be taken into account in addressing intimate partner abuse and violence.

For example, in domestic violence matters, unlike most drug court cases, the court must contend with both a victim and a perpetrator and, frequently, their children. Knowing this, the judge has the challenge of fashioning a response that holds the perpetrator accountable while simultaneously enhancing the victim’s safety, since the litigants may be dependent upon each other for financial support or have reason to be in contact in the future. Treatment programs that address a range of issues are often considered appropriate in drug court and in domestic violence court. However, if a domestic violence court utilizes interventions that focus on treatment at the expense of accountability, it is possible that the dangerousness associated with domestic violence will be minimized. Additionally, as Andrew Klein has noted:

[O]ne reason drug courts are successful is that apart from anything else, they represent a sane alternative to draconian minimum mandatory drug laws. No one, I think, could realistically describe enforcement of domestic violence laws as draconian.¹⁷

The nature of domestic violence and the significant role courts can play in intervening in domestic violence cases require that careful consideration be given to what makes these courts different from other courts generally and other specialty courts specifically.

COORDINATED COMMUNITY RESPONSES

In an effort to expand the number of institutions that are responsive to domestic violence concerns, battered women's advocates have been working for years with community institutions to improve the way in which police departments, hospitals, mental health services, and courts work with victims and their families.¹⁸ These efforts have in large part been focused on improving coordination and communication, because up until recently, in almost all jurisdictions, there was a significant lack of coordination and systemic response to intimate partner violence that probably put many victims at greater risk.¹⁹ The lack of communication, coordination, cooperation, and understanding among various agencies meant that there were few standards, little consistency, and even less institutional accountability to the community. To counter these deficiencies, efforts to establish "coordinated community responses" developed and were perceived as one significant way to address these problems. The Duluth Abuse Intervention Project, which includes a strong arrest, prosecution, and probation component combined with victim services, is one of the most well known examples of a coordinated community response.

As is true currently with domestic violence courts, coordinated efforts take a variety of forms. Hart identifies the following approaches:

- Community partnering, which involves creation of work plans and utilizes coalitions
- Community intervention projects, which differ from community partnering largely insofar as they provide direct services to batterers from entry through exit from the justice system
- Task forces or coordinating councils, which generally provide assessments of community needs and recommendations for changes
- Training, technical assistance projects, and community organizing initiatives²⁰

Often, coordinated efforts emerge as a result of high-profile domestic violence cases; other times they result from political pressure or increased awareness of domestic violence as a result of research or policy changes. Given the legal recourse they provide, courts were always con-

sidered an essential component of a successful coordinated community response. In some communities, judicial leadership has resulted in formation of coordinating councils, and other coalitions or councils have benefited from the participation of judicial officers and other court-connected personnel.

Ideally, a successful, coordinated community effort sends the message that victims will be protected and that battering is dangerous and needs to be stopped. Because courts can offer legal remedies that can enhance safety (restraining orders and parenting plans) and increase accountability (contempt charges, arrest, prosecution), they are vitally important. However, to be most effective, courts need batterer intervention programs, probation departments, shelters, counseling services for victims, and supervised visitation programs. If those services are unavailable or not part of the coordinated effort to prevent violence, even the most committed court will have a difficult time addressing domestic violence.

Coordination within courts is just as important as coordination between community organizations and courts. Proponents of effective court practice note the importance for victim safety of coordinating cases within the justice system and have recommended that "family violence coordinators" be hired to work within court systems to coordinate and manage court processes.²¹ Therefore, dedicated domestic violence courts have, in large part, grown out of the push for coordinated community responses and those efforts geared specifically at improving court practice.

As more courts consider participating in coordinated community responses by establishing domestic violence courts, it may be useful to consider two important questions:

- Given that we are in a period of transition and experimentation, how can courts integrate various guiding principles of intervention to handle domestic violence matters most effectively?
- If a community declares itself as having a domestic violence court, what responsibilities does that court have to litigants and the community at large?

This article draws upon the thinking generated by advocates and researchers to suggest that when courts make the decision to establish or identify themselves as "domestic violence courts," they have a particular set of obligations that need to be addressed. By carefully considering that responsibility and the tensions that domestic violence courts will experience, communities may be more likely to produce courts that are responsive and representative of more effective responses to domestic violence.

GUIDING PRINCIPLES OF INTERVENTION

The movement to end domestic violence has consistently advocated adherence to two central principles of intervention: (1) enhance victim safety and (2) ensure batterer accountability. Regardless of whether a doctor, family member, employer, or law enforcement officer is intervening, these two principles are considered paramount. The consequences of ignoring either victim safety or batterer accountability may be dire. For example, focusing only on punishing or rehabilitating a perpetrator of a domestic violence crime may unintentionally place a victim at greater risk of additional harm if professionals do not take into consideration the effects on the victim of the criminal procedure. Likewise, if interventions only focus on individual victim safety and fail to hold batterers accountable for their behavior, it is unlikely that the batterer will stop being abusive or violent. While these principles may seem obvious on their face, in practice addressing both these concerns can be challenging and require a great deal of thought and planning.

For many years, victim advocates have sought to ensure that courts utilize these guiding principles in intervening in domestic violence cases. Courts have not always been perceived as being sensitive to the significant impact they have on victim safety or batterer accountability. In fact, the law historically provided little or no recourse for those experiencing intimate partner violence.²² Today, while significant statutory improvements and improved court practice combine to create more legal remedies and better outcomes, some courts are still criticized for not consistently being responsive enough to both safety and accountability.

Moreover, the judicial system has its own set of "guiding principles" that may at times appear to be at odds with those evinced by the domestic violence advocacy community. In a criminal law context, for example, "getting tough" on domestic violence has in many jurisdictions meant adoption of a "no-drop policy" supporting prosecution of perpetrators regardless of whether or not a victim agrees to cooperate with the process.²³ One could argue that this approach recognizes that the dynamics of domestic violence are such that perpetrators may try to coerce their partners into not cooperating with prosecutors. By developing an approach that makes victims less responsible for pursuing the case, the focus is more appropriately placed on the criminal behavior and the accused. However, this approach may also elevate perpetrator accountability over and above victim safety, as it ignores the fact that a victim may not want to participate in criminal justice proceedings out of genuine concern for her

well-being.²⁴ Therefore, the criminal court that wants to focus on a strong response to illegal behavior regardless of whether it occurs within the context of an intimate partner relationship and seeks to be responsive to victim safety has the responsibility of ensuring that victim services are available, responsive, and accessible. By doing so, it is more likely to be integrating each guiding principle.

In child custody matters, family courts have been guided by another set of principles that may conflict with victim safety. For example, frequent and meaningful parent-child contact is often encouraged,²⁵ but it also can interfere with a parent's safety if it requires contact with an abusive spouse. Similarly, courts utilizing the best-interest-of-the-child standard may have significant discretion in determining how to weigh evidence or allegations of acts of domestic violence in awarding custody. Those states that have implemented rebuttable presumptions in this context have indicated the significant role evidence of domestic violence should take in this process.²⁶ Nonetheless, there is generally significant room for courts to determine various outcomes in handling these matters.

Given the discretionary nature of the principle, in considering a child's best interest in the face of evidence of domestic violence, a court may come to a variety of conclusions. This reality can lead to one of the most problematic outcomes for mothers who are accessing domestic violence courts in family matters: the "bait-and-switch" phenomenon. In this scenario, a mother experiencing domestic violence seeks recourse in the family court. The court, faced with the need to make a decision regarding child custody, considers both parties' behavior and decisions within the context of the relationship. At this point, it may become clear that the mother has stayed in the relationship in the face of violence and abuse. Even though her decision to access the court suggests an interest in separating from the violence, court-connected personnel and judicial officers may still be asking themselves the ever-present question: Why does she stay?

If judges or court personnel answer that question by focusing on the victim, the case may end up being referred to dependency court or child protective services and be considered as a "failure-to-protect" matter.²⁷ From the court's standpoint, there may be genuine concern about a child's well-being for a number of reasons. For example, the court may have evidence of an abused parent's drug use, a victim/mother may have failed to appear for a restraining order hearing, or the court may want to enable the family to avail themselves of the additional resources for families in court. However, in this scenario, from the standpoint of the victim the guiding principle of "best interest of the child" ultimately pits the state against a

mother who *chose* to access the court system. The system at this point is positioned to intervene and focus not on the domestic violence that has been perpetrated, but on what is perceived by the court as the mother's inappropriate response. In other words, the mother has come to the domestic violence court to report domestic violence, the court says it focuses on domestic violence, and yet, from the woman's standpoint, the focus switches to her ability to prevent the batterer from harming the children. From there, it quickly becomes an assessment of the best interest of her children that does not include an understanding of the dynamics of domestic violence. Not only will this type of outcome pose a problem in individual cases, but it may also create a situation in which help-seeking by the community decreases. Courts need to figure out how to be cognizant of this problem and, through training and development of protocols, implement practices that reflect an understanding of the need to support the best interest of children by integrating notions of safety for victims and accountability for perpetrators into decision making.²⁸

A third area in which principles of intervention may conflict is the role that therapeutic jurisprudence may play in domestic violence specialty courts. By definition, domestic violence generally involves criminal acts between intimates, which may pose something of a conundrum for courts.²⁹ In addressing the criminal aspect of a case, the court may neglect the fact that the parties may have a history and perhaps a future together, especially if they have children. At the same time, if the court places undue emphasis on the fact that the litigants have had a relationship, the seriousness of the criminal behavior and the accountability of the perpetrator may be inappropriately minimized. The possibility of this happening is of greatest concern when notions of therapeutic jurisprudence are inappropriately applied to domestic violence courts. Like drug courts, domestic violence courts may have therapeutic benefits insofar as court intervention can in many instances improve people's lives. However, the danger lies in the possible minimization of the need for a strong law enforcement response in domestic violence cases.³⁰ Ordering perpetrators into batterer programs (not anger management or couples counseling³¹) and referring survivors to victim services or other assistance does not in and of itself represent a "soft" approach to domestic violence. Research on effective responses to battering suggest batterer intervention and court oversight combine with responsive law enforcement efforts to affect outcomes.³² Consequently, courts need to carefully consider the relationship of legal rules and procedures to the fundamental goals of increasing victim safety and ensuring batterer accountability.

DOMESTIC VIOLENCE COURTS: COMPONENTS AND CONSIDERATIONS

In considering how notions of safety and accountability might most effectively be integrated into specialty courts, it is useful to address each component of domestic violence courts: case assignment, screening, intake, service provision, and monitoring. Each of these aspects of domestic violence courts is considered and discussed in greater detail in the remainder of this article. The table on page 28 provides a way of analyzing these components and various considerations, posing questions that courts may contemplate as they assess their ability to provide safe and accountable procedures.

CASE ASSIGNMENT

One of the distinguishing features of domestic violence courts is the assignment of cases to specialized judges and the use of specialized personnel.³³ Some courts use a "combined calendar" in which both civil and criminal domestic violence matters are heard. Other courts assign a certain segment of domestic violence cases (for example, all felonies) to a particular judicial officer. There are family courts that reserve a portion of the calendar each week for hearing child custody matters that involve domestic violence restraining orders and others that hear all domestic violence child custody matters. Which cases are assigned to which courts has significant implications for domestic violence victims, perpetrators, and children involved in these proceedings.

For several reasons, there are potentially tremendous benefits in assigning cases to a dedicated calendar. First, the specialized personnel assigned to these calendars become intimately familiar with the complexities of domestic violence matters. Judicial officers, law enforcement personnel, and social services staff who work in these courts develop an expertise or specialty that can provide significant satisfaction as they employ their knowledge and experience in administering the court. Second, there is greater likelihood of consistency in orders. If the court becomes specialized and demonstrates an understanding of the complexities associated with these cases, it is more likely that the community will perceive that consistency as the court taking domestic violence matters seriously. Third, it may be more efficient for the various service providers who appear in domestic violence court to know that on a particular day and at a particular time a specific group of professionals will be addressing domestic violence-related cases. Otherwise, representatives may find themselves waiting as non-domestic violence cases are handled just in case a matter requires their expertise.

Domestic Violence Courts: Components and Considerations

	Separate Courts	Process and Procedures	Outcomes	Addressing Safety and Accountability	Effects on Community Relations	Effects on Court Personnel
Case Assignment to a Domestic Violence Court or Specialized Calendar	Is the separate court comparably funded?	Are cases moving at a pace that is responsive to victim safety and conducive to holding batterers accountable? Are orders more consistent? Are appropriate local service providers available to assist litigants?	Are outcomes measured in the separate domestic violence court, and if so, how? Are reports of "success" accurate?	Are protocols in place for case assignment so that information sharing supports the nonoffending parent and addresses victim and child safety?	Does the community perceive that the court takes domestic violence seriously? Do local service providers find the dedicated court responsive, accessible?	Are backup personnel available for court-connected professionals and judicial officers? Is there mentoring/support for judicial officers and personnel? Is it more or less appealing to be assigned here?
Screening for Domestic Violence and for Related Cases	Is screening done on only those cases assigned to the separate court?	Is screening for domestic violence and for related cases done throughout the life of a case?	Are screening mechanisms being reviewed to determine effectiveness?	Is screening resulting in discovery of related cases? Are more consistent orders resulting?	Is it clear to the community why screening for domestic violence and related cases is beneficial?	Are court personnel being trained and supported to screen?
Intake Unit	Is there a specialized intake unit with trained personnel?	Are intake personnel well trained on procedures that enhance safety?	Are outcomes being measured?	Is the intake unit well versed in protecting confidential addresses and taking other precautionary measures to protect safety?	Is the intake unit perceived as being accessible?	Do specialized personnel have backup?
Service Provision	Are safe, appropriate, and accessible resources available in the separate courts? Do litigants in non-domestic violence courts receive similar assistance if needed?	Are services mandatory where appropriate and available/optional where mandatory services would not be appropriate?	Are services accessible financially, physically, culturally, and linguistically?	Are the programs to which the court makes referrals safe and accessible, and do they reflect best practices?	Are services developed/offered in conjunction with the local community?	Are opportunities available for multidisciplinary teams, cross-training, coordination between services?
Monitoring	Is monitoring different in the domestic violence court than in other courts? If so, is it more or less strict?	Who provides monitoring, the court or probation?	Is monitoring increasing compliance with court orders? decreasing incidents of battering and abuse?	Does the monitoring agency consider victim safety? Are standards in place and are they followed?	Are monitoring systems set up to coordinate with local batterer and victim advocacy programs?	Are resources available for frequent monitoring?

In this way, community relations may be improved as the court can offer a more efficient and organized opportunity for service providers to assist the court.

The very act of creating a separate domestic violence court simultaneously creates one of the biggest potential benefits and one of the biggest potential disadvantages. In criminal matters, by separating domestic violence from other criminal cases, the judicial system is drawing attention to the fact that domestic violence is different from other crimes. The differences are significant insofar as the criminal justice system has traditionally been focused on addressing crimes between strangers, not people who may continue to have a relationship or who have children in common. There can be a great deal of value for victims if a criminal court understands this difference and provides court-connected services and personnel that can identify resources and respond accordingly.

However, separate courts may be a result of what has been described as an “overreaction to . . . uniqueness.”³⁴ Durham posits that compelled testimony and “victim-in-charge” policies, developed specifically to address the particular characteristics of domestic violence cases, create a situation in which the focus is on the victim or survivor and not on the perpetrator. She suggests that, in order for courts to be effective, support for the victim must be provided, the criminal justice must be accessible, and domestic violence must be treated as a crime and “the abusers as criminal.”³⁵ If the perception is that domestic violence courts are more likely to use “diversion” or “counseling” instead of holding batterers accountable for their behavior, the community will eventually lose faith in the courts’ ability to effectively address domestic violence. If the focus of the criminal justice system moves away from accountability, then it will not be useful or offer an improved process for addressing domestic violence. The danger in establishing separate courts is that domestic violence will be handled “differently”—i.e., less seriously. If “differently” means more attention is paid to the obstacles and barriers to accessing the system, safety and accountability are more likely to be addressed; if “differently” means more lenient, then it is less likely that the courts will be perceived as safe and well positioned to address accountability.

THE NEED FOR RESOURCES

It is important that, in considering how cases get assigned to particular calendars, domestic violence courts pay careful consideration to the arguments that are made to support their establishment. Given the limited resources available to most courts, it may be tempting to make the argument that cases will move more quickly or require fewer judicial and other resources in a specialized court.³⁶

In some instances, this may be accurate and beneficial for the parties and the court. However, it is also true that domestic violence courts may require significant resources. For example, a reallocation of personnel and facility space or an increase in both may be necessary. In making the case for domestic violence courts, policymakers must return to the guiding principles of intervention and consider whether in all cases faster case processing is better for victim safety and batterer accountability. Without data to describe and justify a particular approach, it is difficult to draw conclusions. However, the temptation to argue on behalf of domestic violence courts by downplaying the need for resources needs to be avoided in order to prevent the perpetuation of limited resources for these cases.

Along the same lines, it is important to consider whether or not the very act of separating domestic violence courts from other courts will create a situation in which the domestic violence court is unable to receive the funds it needs to carry out its functions. While many courts struggle with limited resources, there are any number of reasons a separate domestic violence court might find itself in a situation in which it has even fewer resources than already-strapped courts. Despite the number of people appearing on family matters (which often involve allegations of domestic violence), family courts tend to have the fewest resources.³⁷ Those establishing domestic violence courts therefore need to ensure that, by separating domestic violence matters from other matters, the specialty courts do not become marginalized or under-resourced. By assigning domestic violence cases to a separate calendar and not funding the specialty court accordingly, courts risk lending support to the notion that domestic violence court is a less desirable assignment than other criminal or civil calendars. Given the various resources that are needed in these cases, separate courts that are inadequately funded are unlikely to be able to respond to domestic violence in a way that is accountable to the larger community.

Personnel resources must also be considered. As domestic violence courts make use of specialized personnel, it is important that (1) training be available for all court personnel and (2) plans be made for inevitable absences and personnel changes. Because domestic violence will not always be immediately identified and all domestic violence matters will not automatically find their way to domestic violence court, it is useful to have as many court-connected personnel trained to recognize and respond appropriately when these issues present themselves. Additionally, assigning specialized personnel to a domestic violence docket requires the availability of backup personnel. Too often a change in leadership or assignment creates a crisis in the court and the community

because the particular approaches used by that judicial officer and associated court personnel are not institutionalized. Some of that can be avoided if provisions are made for the inevitable absence or unavailability of specialized personnel.³⁸

EFFECTS ON COURT PERSONNEL

It is also important to consider the effect a specialized assignment may have on people who may be working with domestic violence cases exclusively. While there is significant concern among some judicial officers that the emotional and complex nature of these cases may contribute to personnel experiencing "burnout," court personnel also report that they derive significant satisfaction from working on a dedicated domestic violence calendar.³⁹ To avoid burnout, those jurisdictions that have a consistent team of people working in the dedicated court may be able to form a network of colleagues who can assist in the administration of the specialty court. Others may benefit from increased contact with the community through participation on domestic violence coordinating councils. Still others find satisfaction from consulting with a multidisciplinary team of people working to find solutions that benefit entire families and enable the development of a more systemic approach to the seemingly intractable problems many families present.

OUTCOMES

Realistically assessing outcomes is one of the more challenging aspects of domestic violence courts as it is tempting to want to argue that domestic violence courts produce better outcomes. While this may be true, there are a number of questions concerning what constitutes a "better outcome" and how that can best be measured. Some may suggest that using recidivism rates—for example, whether a family appears again in the same court—is a useful way of measuring outcomes. However, not seeing a family in court again may be just as much about their feeling that the court was not responsive as it is about the court intervening successfully. Likewise, measuring success by looking only at whether the batterer successfully completes a batterers program without having a sense of whether or not a victim feels more autonomous and safe may produce exaggerated notions of success. Given the limited resources available to domestic violence courts, many are relying on anecdotal information to measure effectiveness and report a variety of positive outcomes.⁴⁰ It is critically important that in assessing effectiveness, emphasis be placed on whether victims are, or feel, safer as a result of court intervention. This guiding principle should be employed not only in implementing court processes but also when evaluating outcomes. Additionally, resources need to be made

available to courts for data collection and research so that they may be in a better position to evaluate effectiveness with victim safety in mind. Many courts are keenly aware of the limited knowledge they have about their impact and would welcome the opportunity to better understand their processes and procedures.

SCREENING FOR DOMESTIC VIOLENCE AND RELATED CASES

In domestic violence courts, "screening" may refer to either assessing cases for the occurrence of domestic violence or searching for related cases. Screening for the occurrence of domestic violence is most often done by court-connected personnel (mediators, investigators, or evaluators). This type of screening requires well-trained personnel, adoption of protocols and methods for screening, and significant clarity about the purpose of the screening process. This approach accurately assumes that not all domestic violence matters will be obvious and that domestic violence issues may still be relevant, especially in child custody matters, even when a case is not initially identified as such.

Whether or not a particular court has the resources to screen adequately has significant implications for those experiencing or perpetrating domestic violence. Today, parties are often unrepresented and many families have matters pending in more than one courtroom.⁴¹ Parties may not reveal information about domestic violence or related cases out of concern or misunderstanding about what may happen or out of lack of understanding of the court system. At the same time, if a judicial officer or other court-connected personnel, such as a family court services mediator or child custody evaluator, is unaware of related pending cases, it is possible that the family will emerge from the court system with conflicting and possibly unworkable court orders. In that case, it is unlikely that the court will be perceived by the community as accessible or responsive.

An even worse case scenario may be imagined when information is shared about related or pending cases but no protocols are in place to address concerns of safety and accountability. In those cases, it may be that information sharing contributes to, rather than prevents, a victim's sense of confusion and distrust of the judicial system. The most profound example of this is apparent in the situation described earlier: a victim of domestic violence comes to court seeking protection and recourse as a result of an assault or battery. As a result of screening, additional details on the matter may be gathered and the screener may believe a referral to juvenile court is necessary. If the purposes of the screening were identified initially, the court may be more likely to avoid the situation in which

the victim feels undermined after having shared information in the screening process. For example, the court might clearly state on written questionnaires or intake forms that screening will be done for the purpose of assessing risk to children or to provide more appropriate services. While providing notice does not in and of itself preclude the possibility of a victim of domestic violence being referred to services or other court proceedings (inappropriately, perhaps, from her standpoint), it may prevent petitioners from being surprised by the process or outcome. Other purposes of screening include assessing whether parties can meet together in mediation or evaluation sessions or to determine capacity to negotiate on behalf of oneself in a custody mediation.

INTAKE UNITS

Intake units in domestic violence courts relate closely to screening as it is through the intake unit that much of the initial screening takes place. Some courts have established specialized units staffed by personnel with experience in working with victims and perpetrators. The intake unit may serve as “the first point of contact for victims of domestic violence”⁴² and staff may help petitioners better understand the court process. Difficulties may arise if these intake units do not include specially trained personnel or individuals who are sensitive to the complexities of these cases. In some jurisdictions, intake staff assist litigants in filling out forms, provide an orientation to the legal system, or escort parties to court and through the courtroom process.⁴³

A lack of resources may compel some jurisdictions to consider assigning someone with less domestic violence experience to the intake unit and in so doing run the risk that it is inhospitable to litigants. This can directly affect safety, for if victims perceive the court as inaccessible, they are less likely to reappear or get the help they need when they do initiate or participate in court proceedings.

Personnel training is crucial. For example, it is essential that staff understand the importance of maintaining confidential addresses and that they have information about additional community resources. Intake units need to be physically, culturally, and linguistically accessible so that people from a variety of communities will be able to utilize the court.

In many ways, the intake center is the center of the domestic violence court and has the greatest potential to shape litigants’ experiences. As has been noted,

An effective domestic violence intake center must serve as the point of entry for all domestic violence complainants in civil and criminal cases. It should be designed to provide comprehensive services through a coordinated effort of staff.⁴⁴

SERVICE PROVISION

One of the more universal features of domestic violence courts is the increased accessibility of social or community services for petitioners and respondents.⁴⁵ Many non-specialized courts invite representatives from local counseling and housing services to be available in court when the calendar is called so that individuals may be provided with immediate assistance. Others provide referrals to court-connected personnel, such as child custody mediators or evaluators, who may be able to provide direct assistance or more individually tailored referrals to community agencies. But as a result of the volume of cases and limited resources, not every case is assessed individually, so that those appearing in court may or may not receive tailor-made responses to the host of difficulties they may present. Domestic violence courts, however, tend to offer a range of services for children, parents, victims, and batterers.⁴⁶

People appearing on other calendars may need a variety of services that might be offered only in the domestic violence court. For example, community agencies, including supervised visitation services, counseling programs, and services specifically for children, may have representatives available in domestic violence court to provide information, referrals or direct service. One of the issues to consider in establishing a domestic violence court handling family matters is that if individuals can get certain community services only in domestic violence court, what kind of impact will that have on litigants who are appearing on more general calendars? High-conflict families who may not be experiencing “domestic violence” may still need similar resources; thus, it is worth considering whether cases have to be identified as domestic violence matters in order for certain services to be offered.

One of the challenges associated with service provision in domestic violence courts, civil or criminal, is the question whether mandatory services are appropriate and for whom. Currently, many states require those found to have perpetrated domestic violence to attend a batterers’ program.⁴⁷ In most places, these programs provide for group sessions that may last for one year or longer and provide information to the court about compliance with court orders and completion of program requirements. While “success” is defined and measured in a variety of ways by different programs, there is “fairly consistent evidence that [batterers’] treatment ‘works’ on a variety of dimensions and that effects of treatment can be substantial.”⁴⁸ Such services are likely to be more beneficial when they follow recognized standards and are culturally and linguistically accessible.

On the other hand, while victims might find counseling programs worthwhile, mandating that victims attend

counseling programs carries significant risk. Any effort to ensure that victims of domestic violence receive assistance must be done in the context of understanding that intimate partner violence involves power and control. When a victim of domestic violence becomes involved in the court system, court-connected personnel need to intervene in a way that acknowledges that in many cases the victims themselves have the greatest understanding of what is necessary for their safety and that of their children. This approach acknowledges and supports the autonomy of adults who happen to have been victimized and can contribute to the process of recovery and empowerment. Court personnel may be able to provide more effective assistance with safety plans and appropriate referrals when they recognize that mandating certain courses of actions for victims may place them in greater jeopardy.⁴⁹

If services can be offered to support individuals and families, they should be developed primarily by local domestic violence victim service organizations. Courts, especially domestic violence courts, need to be clear about their role and have an understanding of the significant impact they can have on victims and batterers if they send the message that coming to court *seeking protection* means being required to participate in various programs. Such an approach may have the unintended effect of reinforcing the batterer's belief that the victim is responsible for the violence and that his role is relatively inconsequential, or that if they are both ordered into counseling, they are equally culpable. Courts need to resolve how to best provide services that are accessible and attractive to those who may benefit from them without using the power and control tactics with which the victim is already familiar.

Social service agencies should also be considered in terms of their willingness and ability to comply with local rules, standards of practice, professional ethics, and other recommendations for best practices. Even if courts do not perceive that they have a formal relationship with local social service agencies, for litigants the distinction between "court-connected" and "court-referred" may be inconsequential. Domestic violence courts should become familiar with the various resources that exist. One way of doing this is for courts to participate on coordinating councils and local coalitions so that personnel learn about local organizations. Additionally, by subscribing to newsletters and staying current on social science information, court personnel may be better equipped to discuss best practices with local agencies and emerge as leaders in the area.

MONITORING

In many ways, once a court has issued an order in a case, the court has completed its job and must leave the enforcement of that order to other players, such as police

or sheriff departments. There are instances, however, in which courts stay involved in cases even after orders have been made. In these instances, the challenge for the court is how to create orders that will be complied with while at the same time not creating a situation in which courts are serving as long-term case managers. For many years, probation departments have provided supervision or monitoring. Today, many communities use a combination of batterer intervention service providers and probation to monitor batterer compliance with court orders. If a violation occurs, the batterer may find himself back in front of the judge on a probation revocation hearing. Other approaches include frequent monitoring by the judicial officer as well as probation and batterer intervention programs. In these courts, probationers are expected to appear regularly for 30-, 60-, and 90-day meetings with the judicial officer assigned to hear the matter. Recent research indicates "a substantial increase in compliance" with batterers' program requirements when mandatory court monitoring is in place.⁵⁰

Domestic violence courts also need to take into consideration what happens when individuals, court-connected personnel or litigants, fail to appear. When a calendar is being called, generally there are people in the room at all stages of the process. If the message is that one can fail to appear with few repercussions or that probation officers or other monitoring agencies may not be present, it is less likely that perpetrators will take the authority of the court seriously. How the judicial officer chooses to handle such occurrences can have significant impact on the perceived effectiveness of these courts.

INTERVENING EFFECTIVELY

As one of the judicial system's most recent responses to domestic violence, domestic violence courts represent a potentially significant method of handling civil and criminal cases. By identifying domestic violence as a serious community issue that requires dedicated resources, specialized courts can send a strong message about the importance of addressing domestic violence effectively and consistently. However, in order to do so, domestic violence courts need to adhere to the guiding principles of intervention and focus their efforts on enhancing victim safety and ensuring batterer accountability. Domestic violence courts can be faced with a variety of competing notions of intervention. However, by becoming aware of the need to proceed with caution and to carefully consider the implications of identifying itself as a "domestic violence court," the court may be perceived by the larger community as accessible and responsive. At the same time, courts and legislatures need to recognize that success may result in increased caseload and more demands on

the system. Additional resources need to be allocated to support courts handling domestic violence cases and to supporting additional research so that over time, judges, court-connected personnel, and policymakers can develop an even better sense of the most effective and responsive ways for courts to intervene in domestic violence matters.

NOTES

1. JUDICIAL COUNCIL OF CALIFORNIA, DOMESTIC VIOLENCE COURTS: A DESCRIPTIVE STUDY (2000).
2. *Id.* at 10.
3. Amy Karan et al., *Domestic Violence Courts: What Are They and How Should We Manage Them?*, 50 JUV. & FAM. CT. J. 75 (Spring 1999).
4. Courts state a variety of reasons for establishing domestic violence courts. Some indicate that they felt a need for more consistency and predictability while leaving room for judicial discretion. Others indicate that a dedicated docket provides support for victims because there is an advocate in the courtroom and it is “good for ‘baby’ [junior] prosecutors who are dealing with the nuances of domestic violence for the first time.” Susan R. Paisner, *If It’s Friday, It Must Be Domestic Violence Court*, 6 DOMESTIC VIOLENCE PREVENTION 3 (June 2000). Legislators have indicated their belief that domestic violence courts are effective as well. See 1998 Cal. Stat. 703 (mandating the domestic violence court study and stating that “[t]he Legislature finds and declares that domestic violence courts have been proven to benefit victims of domestic violence and to provide for the efficient handling of domestic violence cases”).
5. See Karan et al., *supra* note 3, at 75; Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1287 (2000).
6. Karan et al., *supra* note 3, at 75.
7. Victims of domestic violence may not initially reveal experiences of abuse out of fear, concern for their safety and that of their children and other family members, concern that they will not be believed, or lack of understanding of what information the court will find most relevant. Additionally, recent research indicates that of those surveyed and reporting physical assault by an intimate partner, approximately 73 percent of women and 86 percent of men did not report the assault to the police. In the same study, approximately one-third of women and one-quarter of men said “they did not want the police or courts involved,” indicating, as the study’s authors note,

that “many victims of intimate partner violence—men and women alike—do not consider the justice system a viable or appropriate intervention at the time of their victimization.” See PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NCJ Doc. No. 181867, at 51 (U.S. Dep’t of Justice 2000). One of the benefits of a specialized intake unit is that personnel can assist individuals in presenting their story in an appropriate manner to the court so as to provide a greater likelihood that interventions may be effective.

8. *Id.* at iii.

9. Charlene E. Depner, Court-Connected Mediation of Child Custody and Visitation: Statewide Statistics From the Family Court Services Uniform Statistical Reporting System, Presentation at Domestic Violence Training for Child Custody Evaluators, Monterey, Cal. (Dec. 15–17, 1997).

10. *Id.*

11. *Id.*

12. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 7 (1999).

13. *Id.* at 8.

14. See, e.g., CAL. FAM. CODE § 3011 (West 1994 & Supp. 2000) (requiring that courts consider any “history of abuse by one parent or any other person seeking custody against any of the following: (1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary; (2) The other parent; (3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship”); see also CAL. FAM. CODE § 3020(a) (West 1994 & Supp. 2000) (declaring that “perpetration of child abuse or domestic violence in a household where a child resides is detrimental to a child”).

15. According to the U.S. Justice Department, “drug courts leverage the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, and case management.” U.S. Dep’t of Justice, at www.ojp.usdoj.gov/dcpo/ (visited Aug. 2, 2000).

16. David Rottman & Pamela Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, NAT’L INST. JUST. J. No. 240 (July 1999).

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17. Andrew Klein, *Letter*, NAT'L BULL. DOMESTIC VIOLENCE PREVENTION (Mar. 1999).
 18. For a discussion of the purpose, goals, and elements of a successful coordinated community response, see Barbara Shaw, *Planning a Coordinated Community Response*, in FAMILY VIOLENCE: BUILDING A COORDINATED COMMUNITY RESPONSE: A GUIDE FOR COMMUNITIES 11 (American Medical Ass'n 1996).
 19. Barbara Hart, *Coordinated Community Approaches to Domestic Violence*, Presentation at the Strategic Planning Workshop on Violence Against Women, National Inst. of Justice, Washington, D.C. (Mar. 31, 1995).
 20. *Id.* at 3-4.
 21. NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE: RECOMMENDATIONS FROM THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES 39 (1990).
 22. See Tsai, *supra* note 5, at 1289 (citing several examples, including *State v. Rhodes*, 61 N.C. (Phil. Law) 349 (1868), in which the North Carolina Supreme court "addressed the question of whether a husband could be punished for unprovoked and moderate correction of his wife, and stated that 'we will not interfere with family government in trifling cases' where 'personal conflicts inflicting only temporary pain ... are not comparable with the evils which would result from raising the curtain, and exposing to public curiosity and criticism, the nursery and the bed chamber.'").
 23. See Gena L. Durham, *The Domestic Violence Dilemma: How Our Ineffective and Varied Responses Reflect Our Conflicted Views of the Problem*, 71 S. CAL. L. REV. 652 (1998) (discussing the pros and cons of a "no-drop" prosecutorial policy and the view that "[t]he major problem with the compelled testimony policy is that it sets up an adversarial relationship between the victim and the prosecutor").
 24. Not that the two are always incompatible; in fact, one can rarely be accomplished without the other. If procedures are in place to support a victim's safety, it is more likely that courts will get better information and be able to more effectively hold perpetrators accountable.
 25. Note that some states have approached this potential conflict by addressing both issues simultaneously. See, e.g., CAL. FAM. CODE § 3020(b) (West 1994 & Supp. 2000) (stating that "[t]he Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy except where the contact would not be in the best interest of the child ..."); see also CAL. FAM. CODE § 3020(a) (stating that "the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child"). Section 3020(c) notes that where (a) and (b) are in conflict, "any court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members." CAL. FAM. CODE § 3020(c)
 26. See, e.g., CAL. FAM. CODE § 3044 (West 1994 & Supp. 2000) (creating a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a party seeking custody and found to have perpetrated domestic violence within the previous five years is detrimental to the child's best interest).
 27. See Somini Sengupta, *Tough Justice: Taking a Child When One Parent Is Battered*, N.Y. TIMES, July 8, 2000, at A1 (discussing the Bronx Family Court's approach in cases in which one parent has been a victim of domestic violence and children have been removed from parental care); see also Epstein, *supra* note 12, at 35 (discussing how an "integrated court system" can lead to more victims being charged with child abuse or "failure to protect").
 28. The National Council of Juvenile and Family Court Judges recommends that in promoting "stability and permanency for children," courts and child welfare personnel should "try to keep children affected by maltreatment and domestic violence in the care of their non-offending parent (or parents) whenever possible." They note that "[m]aking adult victims safer and stopping batterers' assaults are two important ways to remove risk and thereby create permanency for children." NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE AND CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE 19 (1999).
 29. For a comparison of court treatment of domestic violence and date rape as two examples of crimes in which the parties know each other, see Durham, *supra* note 23, at 657.
 30. Therapeutic jurisprudence "proposes that we be sensitive to ... consequences, and that we ask whether the law's antitherapeutic consequences can be reduced and its therapeutic consequences enhanced without subordinating due process and other just values." Rottman & Casey, *supra* note 16, at 9. Drug courts are the most familiar example of a therapeutic approach. The question for domestic violence courts is, Does a therapeutic approach hold perpetrators accountable for violent crimes? Generally, drug courts are applying these principles to those

found guilty of nonviolent offenses. If domestic violence courts are perceived as specialty courts that emphasize a “therapeutic approach” to violence, they may be viewed as treating domestic violence as a “non-crime” or a lesser offense that does not warrant the restrictions placed on those found guilty of violent crimes perpetrated against strangers. The danger for battered women is that battering and abuse will be perceived as a family problem that can best be solved through counseling, alternative dispute resolution, and educational programs. While it is likely that there are therapeutic benefits to successful domestic violence courts, this in no way implies that domestic violence should be taken less seriously.

31. Regarding batterers’ treatment, *see* NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, FAMILY VIOLENCE: IMPROVING COURT PRACTICE 50 (1990) (noting that “[i]nappropriate approaches might be those which orient themselves toward the couple before dealing with the offender’s criminal behavior; focus on anger control without dealing with the underlying issues of self-esteem, power and control; or approaches which put the needs of the offender above the needs of the court system for accountability and safety”). As the council observes, “[s]uch approaches not only will be ineffective in dealing with the battering behavior, they put the victim at substantial risk of revictimization.” *Id.*

32. Edward W. Gondolf, *Mandatory Court Review and Batterer Program Compliance*, 15 J. INTERPERSONAL VIOLENCE 437 (Apr. 2000).

33. *See* Karan et al., *supra* note 3, at 76. In this context, “specialized” generally refers to those with specific training in domestic violence issues.

34. Durham, *supra* note 23, at 643.

35. *Id.* at 657.

36. For example, 30 of 39 domestic violence courts described in the California domestic violence courts study indicated that “more efficient use of resources” was one of their goals in establishing a domestic violence court. Clearly, using resources more efficiently is probably beneficial to victims and others accessing the court. The problem arises when there is little acknowledgement that in order to handle domestic violence cases more *effectively*, additional resources may be necessary. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 1, at 19.

37. *See* JUDICIAL COUNCIL OF CALIFORNIA, ACHIEVING EQUAL JUSTICE FOR WOMEN AND MEN IN THE CALIFORNIA COURTS 179 (1996) (discussing the “devaluation of family law” and the finding of the Advisory Committee on Gender Bias and the Courts that “[t]he family law court has been relegated to an inferior status among the

other departments of the court ... [and] [t]he proportion of the court’s resources devoted to family law is not commensurate with its volume, complexity, or importance to the parties and society”). Domestic violence courts, like family courts, involve a disproportionate number of cases with women and children seeking or requiring protection or assistance from the court.

38. The policies and procedure manual for domestic violence courts of Mecklenburg County, North Carolina, notes that judges “should schedule their vacations and other absences from court for weeks when they are not assigned to Domestic Violence Court.” In cases in which this is not possible, the manual states, “another Domestic Violence Court judge should cover for the absent judge.” Domestic violence court judges are required to “be interested in this subject, knowledgeable about its dynamics and the courtrooms’ procedures, and committed to the goal of reducing domestic violence in our community.” DOMESTIC VIOLENCE COURTS: POLICIES AND PROCEDURES, Manual Domestic Violence Task Force, 26th Judicial Dist., Mecklenburg County 4 (Oct. 1997).

39. Jeffrey Bostwick, Comments at Panel Discussion on Domestic Violence Courts, Family Violence & the Courts: A Coordinated Community Response, Judicial Council of California (May 18–19, 2000).

40. For example, Greta G. Holloway, an assistant state’s attorney in Montgomery County, Maryland, believes that a dedicated domestic violence docket offers various benefits, including more victim support, and that the domestic violence court’s approach has been successful. She goes on to note, in response to the question “how she would precisely define ‘success,’” that “no one has died.” Paisner, *supra* note 4, at 4. The Brooklyn Domestic Violence Court indicates that the “probation violation rate for defendants sentenced in 1998 is nearly half the typical rate for this population,” [that] “victim advocates assigned to the court have made contact with virtually all victims ... and [that] the Court has achieved an average dismissal rate of 4.7 percent over its first two years.” Center for Court Innovation, Demonstration Projects, Brooklyn Domestic Violence Court, at www.courtinnovation.org/demo_04bdvc.html (visited Aug. 2, 2000).

In Florida, based on a survey of judges and state’s attorneys, the staff of the state’s Senate Criminal Justice Committee found that people were “mostly positive about domestic violence courts,” although “defense attorneys took a largely negative view.” They also found that “domestic violence courts, especially those which combine the civil and criminal components, increase administrative efficiency ... [and] that the difficult family and abuse issues make domestic violence specialization beneficial to

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the administration of justice.” FLORIDA’S CORRECTIONS COMM’N, AN OVERVIEW OF FLORIDA’S CRIMINAL JUSTICE SPECIALIZED COURTS, prepared by Florida Senate’s Criminal Justice Comm. Staff, REP. NO. 97-P-21 (Oct. 1997).

41. Center for Families, Children & the Courts statistics “show that in half of the families who come to family court [in California] (53 percent), at least one person is in pro per. When only one party is represented, neither mothers nor fathers are more likely to have attorneys. In 12 percent of the families fathers were the only represented party; mothers were the only party with an attorney in 13 percent of the cases.” CENTER FOR FAMILIES, CHILDREN & THE COURTS, REPORT 12: PREPARING COURT-BASED CHILD CUSTODY MEDIATION SERVICES FOR THE FUTURE 3 (Judicial Council of California, Sept. 2000).

42. Tsai, *supra* note 5, at 1305.

43. For example, in Quincy, Massachusetts, those seeking restraining orders first meet “with a domestic abuse clerk in a separate office established exclusively for restraining orders.” Assistance with paperwork and information about local resources are provided; then petitioners attend “a briefing given daily by the District Attorney’s Office, in which a victim/witness advocate” provides information on the court process, civil and criminal legal remedies, and other resources. After this, “the domestic abuse clerk provides moral support by accompanying the woman to the courtroom” for the expedited hearing process used in Quincy. *Id.* at 1298.

44. Epstein, *supra* note 12, at 29.

45. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 1, at 14: Out of 26 domestic violence courts indicating that they provide referrals to services, 20 said they assign advocates to petitioners.

46. *Id.* Referrals are to agencies and organizations providing, for example, community support, children’s services, substance abuse treatment, pro bono attorneys, emergency housing, services for immigrants, support groups, public assistance, job counseling, elder assistance, and medical services. The court may also provide interpreters and translators. One of the difficulties courts experience is not having the resources to provide needed services or appropriate referrals. For example, not all domestic violence services are accessible to those who do not speak English. See Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in CRITICAL RACE THEORY 364–67 (Kimberle Crenshaw et al. eds., The New Press 1995) (discussing the policies that keep women from being able to access certain services); see also Gloria Bonilla-Santiago, *Latina Battered Women: Barriers to Service Delivery and*

Cultural Considerations, in HELPING BATTERED WOMEN: NEW PERSPECTIVES AND REMEDIES 229–34 (Albert R. Roberts ed., Oxford 1996) (noting that in a study of “twenty-five incarcerated battered Latina women, ... because of language and cultural barriers, most ... had received no assistance or protection from the police, legal aid, welfare, family counseling agencies, or community mental health centers”).

47. See, e.g., CAL. PENAL CODE § 1203.097 (West Supp. 2000) (mandating court referrals to certified batterers’ programs for certain offenses).

48. Alyce LaViolette, *Batterers’ Treatment: Observations From the Trenches*, 1 CENTER FOR FAM., CHILDREN & CTS. UPDATE 13 (July 2000).

49. See also NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, *supra* note 28, at 66 (suggesting that “[c]hild protection services should avoid using, or use with great care, potentially dangerous interventions such as couple counseling, mediation, or family group conferencing in cases of domestic violence”).

50. See Gondolf, *supra* note 32, at 435 (describing findings indicating that court review increases the likelihood that participants in court-referred batterers’ programs will comply and complete programs).

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A Public/Private Partnership with the
New York State Unified Court System

BEST PRACTICES

Planning a Domestic Violence Court

The New York State Experience

Written by

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Liberty Aldrich
and Samantha Moore

2004

This publication was supported by the New York State delegation to the United States Congress through funding provided by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, under Grant No. 2002-DD-BX-0046. Points of view and opinions in this document are those of the authors and do not necessarily represent the official position or policies of U.S. Department of Justice.

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Acknowledgements

There are many people whose experience, expertise and feedback informed this report. Among those the authors wish to thank are: Greg Berman, Deirdre Bialo-Padin, Leta Binder, Ted Bunch, Paula Calby, Matthew D'Emic, Kinaja Janardhanan, Sharon Lastique, John Leventhal, Wanda Lucibello, Mike Magnani, Irene Prager, Jack Ryan, Emily Sack, Laura Saft, Lisa Schriebersdorf, Jezebel Walter, and Ovita Williams.

Quotations that are not footnoted were obtained during first-person interviews with Robert V. Wolf in Fall 2001.

The New York State Experience

Introduction

Over the last 15 years, court systems around the United States have developed hundreds of specialized courts to deal with the crime of domestic violence. Most of these domestic violence courts share two key goals: improving defendant accountability and enhancing the safety of victims. This report chronicles the inception and evolution of the Domestic Violence Court Model in New York State beginning in 1996 with the genesis of the Brooklyn Felony Domestic Violence Court. Today, under the leadership of Chief Judge Judith S. Kaye, the court system has over 30 domestic violence courts in operation or in planning throughout the state.

This report, which communicates the lessons of New York's experience, is based on courtroom observations, a review of current literature in the field, an independent evaluation of the Brooklyn Felony Domestic Violence Court and interviews with nearly two dozen planners, court staff, court partners and service providers.

Brooklyn Felony Domestic Violence Court: Background and Context

In an attempt to offer a window into how a domestic violence court is developed and implemented, this white paper focuses largely on the experience of the state's first domestic violence court—the Brooklyn Felony Domestic Violence Court, which opened in 1996. Because it was the state's first, the planning process was particularly important.

From the outset, the court's planners faced a number of challenges. For one thing, the projected caseload was high—up to 300 to 400 indicted felonies a year. And because the new court would handle felonies exclusively, the charges would be very serious, including homicide, attempted homicide and aggravated assault. In many cases, the defendants would have extensive histories of violence and contact with the criminal justice system.

To better handle these challenging cases, planners with the New York State Unified Court System and the Center for Court Innovation gave the new court a number of specialized features, including: a courtroom dedicated exclusively to the handling of felony domestic violence cases with a single presiding judge; a fixed prosecutorial team; court staff who receive special training in domestic violence issues; innovative computer technology to help the judge closely monitor defendants' compliance with court orders; a probation program that brings offenders back into the courtroom for post-disposition monitoring; and extensive services for victims, including counseling, safety planning and links to housing. A study published by the Urban Institute five years after the court's launch found tangible results: dismissals

were down, guilty pleas were up, the probation violation rate was halved, and virtually every victim had been offered services.¹

Even after eight years, the Brooklyn Felony Domestic Violence Court is still a work in progress. Court staff and project planners are continually looking for more effective ways to meet the court's goals of improved victim safety and increased defendant accountability while continuing to insist on protecting the defendant's right to due process. Although no two domestic violence courts are going to be identical, the Brooklyn experience offers lessons to anyone interested in sparking new thinking about the problem of domestic violence and experimenting with innovative ways to respond to it more effectively.

Response of Police and Prosecutors

In New York, as in many jurisdictions around the country, police and prosecutors have been at the forefront of the criminal justice system's response to domestic violence. Prompted by a 1994 state law, police began to make an arrest in all felony domestic abuse cases and in many misdemeanor cases as well.² In addition, each police precinct in New York City began training at least one officer in domestic violence, and police officers, in an attempt to prevent future problems, began visiting homes with histories of domestic violence.

Also in the 1990s, many prosecutors began placing more emphasis on domestic violence by developing teams that specialized in family violence cases. Kings County (Brooklyn, N.Y.) District Attorney Charles Hynes was a leader in this effort. In 1990, he established a Domestic Violence Bureau. The bureau's mandate was simple, according to Hynes: "To give special attention to domestic violence cases."³ As time went on, the bureau developed an expertise in the handling of these difficult cases. The assistant district attorneys in the unit, for instance, found ways to pursue a prosecution even when the victim declined to press charges. They also began seeking, when possible, tougher sentences than had been pursued in the past.⁴

The District Attorney's Office also made a commitment to improving its services to victims. The bureau hired two social workers to work as "victim advocates," referring clients to safe houses and linking them to services like job training. The advocates also helped the victims understand the court process and served as liaisons between the victim and the prosecutor. Yet faced with 10,000 misdemeanor cases and 300 felony cases annually spread throughout the court system, it was impossible for the social workers to reach every victim, according to Ovita Williams, director of clinical services for the Brooklyn District Attorney's Office.

The Court System Adapts

As police officers and prosecutors developed new strategies, pressure built on the court system to do the same. Emily Sack, who led the planning team at the Center for Court Innovation and is currently Associate Professor of Law at Roger Williams University, describes it this way: "The police and prosecutors would be frustrated when they came to court. They would have done all this work to build a case, and a lot of the judges would basically be back in the old days and wouldn't take it all that seriously."

Without the understanding of judges, many of the new policies, including mandatory arrest, seemed pointless. “Everything depended on who the judge was,” says Wanda Lucibello, chief of the Special Victims Bureau in the Brooklyn District Attorney’s Office. “The popular culture from the bench was that ‘If the victim is not ready to go forward, and she isn’t willing to participate in the prosecution, then why are you wasting the resources of the court?’ ”

Some of the problem had to do not with individual judges but with the entire system, which for so long reflected the societal norm that domestic violence didn’t merit vigorous sanction. As the state’s chief judge, Judith S. Kaye, points out: “The basic outlines of our criminal justice system—including what we expect courts to do and how we expect them to do it—were formed long before domestic violence was recognized as an act deserving criminal sanction. Not surprisingly, a system built on the model of offenses against strangers may falter when applied to crimes that occur in the context of intimate human relationships.”⁵

How did the system falter exactly? The most obvious problem was that many victims, despite judicial intervention, continued to be abused, and, even worse, killed. According to national surveys, 34 percent of batterers in domestic violence cases violated orders of protection.⁶ A 1996 study found the rate to be even higher, documenting that 60 percent of orders of protection were violated within one year.⁷ And still another study found that more than 17 percent of victims killed in domestic incidents had obtained orders of protection.⁸

Judge Kaye had already set in motion a plan to develop an experimental domestic violence court when, as often happens in the field of criminal justice, a tragic event pushed the issue to the top of the policy-making agenda. A Brooklyn man, Benito Oliver, despite two orders of protection, tracked down and killed his girlfriend, Galina Komar, on February 12, 1996. Blame for the widely-reported murder fell on the Brooklyn Criminal Court judge who three weeks earlier had reduced bail for Oliver after he’d been jailed on a misdemeanor charge of stalking Komar.⁹ Although the judge was ultimately exonerated for his handling of the case,¹⁰ the tragedy sped up the timetable for the launching of the Brooklyn Felony Domestic Violence Court, which heard its first case in June 1996.

**Re-examining
Fundamental
Premises**

In planning a new kind of court to handle domestic violence cases, the New York State Unified Court System and the Center for Court Innovation, which serves as the court system’s independent research and development arm, faced a number of challenges. Perhaps the biggest challenge was the unique nature of domestic violence, which involved not only criminal behavior but complex social relationships that made every step of the case—from arrest to disposition—more difficult. The reality of domestic violence meant that many of the court system’s fundamental premises—which, as Kaye has noted, were “built on the model of offenses against strangers”—had to be re-examined.¹¹

Judge Randal B. Fritzler, a district judge in Washington, and Leonore M.J. Simon, a criminal justice researcher, point out that “there are strong emotional ties between

the victim and the offender, complicated in many cases by the economic dependence of the victim on the offender and the likelihood that she will be continuing contact with him because of their children.”¹²

According to Chief Judge Kaye, “Because of their intimate bond with the victim, perpetrators of domestic violence present a particularly high risk for continuing, even escalating violence against the complainant as they seek further control over her choices and actions. Unlike victims of random attacks, battered women often have compelling reasons—like fear, economic dependence or affection—to feel ambivalent about cooperating with the legal process. In a system that generally assumed a victim’s willingness to cooperate, this ambivalence is an anomaly that frequently results in the dismissal of the case.”¹³

To develop a response to this unique type of crime, planners from the Center for Court Innovation conducted focus groups of judges and victims, spoke with prosecutors, defense attorneys and other experts in the field, conducted in-court observations and data analysis to track how domestic violence cases were being handled, and went on site visits to other domestic violence courts. In this way, they were able to identify a number of obstacles that hampered an effective response to domestic violence.

Focus Groups

Focus groups with judges revealed a need for additional information and resources. Judges in these groups complained that they simply didn’t have enough information about defendants’ behavior to monitor compliance with orders of protection and other court mandates. Without more effective communication between all the key players—including court staff, prosecutors, defense attorneys and probation officers—the judges found it difficult to enhance victim safety or to hold defendants accountable for violations. For instance, a judge might send a defendant to a batterers’ intervention program, but without regular and reliable communication between the program and the court, the judge would have no way of knowing—without waiting months for the next court date—that a defendant failed to show up.

Judges also asserted that they lacked links to community-based resources, including programs for both batterers and victims. The court lacked the time, staff and expertise to identify and evaluate service providers, and thus found it difficult to make meaningful referrals. This problem was underscored when the Brooklyn Domestic Violence Court opened and began referring defendants to a batterers’ intervention program as a condition of release. “In the beginning, we had 100 percent attendance,” says Jezebel Walter, the court’s senior resource coordinator. “But it turned out not to be true. The service provider was just making it up.” Walter says the program wasn’t “used to working with the court,” and therefore didn’t appreciate the necessity of accurately reporting defendants’ compliance.

Victims expressed the feeling that the criminal justice system was frequently unresponsive to their needs. While victims played a central role at the time of arrest, they seemed to play an increasingly less significant role as a case progressed. Without outside help, victims felt unable to escape the influence of their batterers. They remained vulnerable to further assault, and often recanted their accusations,

making it more difficult for prosecutors to advance the case. In focus groups, victims said they found the criminal justice system to be both confusing and unfriendly. “They said that they didn’t like going around to a lot of different agencies to get help. They felt that they were constantly having to tell their story over and over again—to the shelter, to the victim services agency, to the prosecutor,” says Emily Sack. “And they also felt discouraged by court procedures because they never knew what was happening from one appearance to the next.” Planners felt that a new court would have to meet three goals in this area: increase the safety of the victim; make the process easier and less confusing for victims; and provide victims with services to help them break the cycle of violence.

Interviews with Prosecutors and Defense Attorneys

Interviews with prosecutors and defense attorneys identified a need for education among members of court staff, including judges. Interviewees asserted that a lack of understanding of the unique nature of domestic violence among court staff contributed to frequent dismissals when victims declined to cooperate with prosecutors, and led to inconsistent responses to potentially dangerous situations. Some judges would routinely issue orders of protection; others would not. Some judges would make the defendant sign for receipt of an order of protection, which made it possible to prosecute violations, but others would not. “Every judge had their own quixotic rules,” says Deirdre Bialo-Padin, chief of the Brooklyn District Attorney’s Domestic Violence Bureau. Adding to the challenge of education and consistency was the fact that cases were scattered throughout the system. At any given time, domestic violence cases in Brooklyn were pending in about 20 different felony courtrooms.

Identifying Key Court Components

Planners sought to develop a court model that responded to these various concerns but in doing so they were careful to stay focused on two key goals: increasing defendant accountability and enhancing victim safety. In fact, “defendant accountability and victim safety” has become the mantra of New York’s domestic violence courts—as it has in domestic violence courts around the country.

“We were not going to promise the world we would stop domestic violence. Instead, we wanted to have goals we could reach,” says Michael Magnani, the court system’s administrator for special projects. In pursuit of these goals, planners looked to other “problem-solving” courts in New York for inspiration, including successful community courts and drug courts. Among the principles that they borrowed from other models were:

Immediacy Experience showed that quick judicial action improved defendant compliance. Drug courts had already found that swift placement in a treatment program raised the rate of participation and ultimate success in treatment. The Midtown Community Court, a problem-solving court that addresses low-level and quality-of-life crime in Manhattan, had also found that by having offenders start their community service sentences quickly—usually within 24 hours of their appearance before the judge—the court was able to dramatically raise the rate of

compliance. Similarly, planners of the domestic violence court thought that by bringing defendants swiftly before a judge following their indictment, and by bringing them back to court for frequent “check-ins,” the judge would be able to respond more quickly to violations or other issues. A fast response, they hoped, would prevent a problem from potentially escalating and also send a message to defendants that the court was taking the charges against them seriously.

Intensive monitoring Drug courts require defendants to return frequently to court for drug-testing and to report on their progress. Drug courts also communicate regularly—often daily—with treatment providers, so that they know right away about problems with compliance. In drug courts, this type of intensive monitoring furthers the goals of rehabilitation. While rehabilitation was not going to be a goal of the Brooklyn Domestic Violence Court, planners thought rigorous monitoring could help the court enforce orders of protection and keep victims safe. Thus, they decided to have defendants come back to court often—sometimes once a week—and also built relationships with batterers’ programs so that the court could stay better informed about defendant compliance. They also sought to improve communication among the various courtroom players so that crucial information—for instance, a report by a victim that a defendant had violated a protection order—didn’t slip through the cracks. One way they decided to improve monitoring was by developing a computer application that would give the judge up-to-date case information from a terminal on the bench. Liberty Aldrich, the director of domestic violence and family court programs at the Center for Court Innovation, calls judicial monitoring “the distinguishing feature of the court.”

Coordination Planners recognized that the criminal justice system was often fragmented and that communication could be improved between police, prosecutors, defense attorneys, victim advocates and others. To enhance communication and coordination, planners borrowed from the Midtown Community Court the concept of a “resource coordinator,” who is responsible for collecting all necessary case information before every appearance, improving communication between the court and batterers’ programs and developing outreach efforts to educate court partners—as well as the community at large—about domestic violence. Planners felt the court could do more than simply process cases, but serve as a catalyst to improve the way the criminal justice system responds to domestic violence.

Specialized staff Planners knew that in order to improve victim safety and defendant accountability, the new court—like other problem-solving courts—would need the help and expertise of non-court professionals. In addition to creating the position of resource coordinator, planners sought to place in the courthouse trained victim advocates who understood the emotional and material needs of victims and who could work with them during the life of a case (and even post-dispo-

sition, if needed). To enhance communication and a sense of teamwork, planners offered the victim advocates (who were employees of the District Attorney's Office and Safe Horizon, a victim services agency) office space next to the courtroom.

Although the court system borrowed many ideas from the drug court model, planners were careful to reiterate again and again that the domestic violence court was substantially different from a drug court. The biggest difference, they emphasized, was that the new court's purpose was not rehabilitation or treatment. Without research showing that rehabilitation of batterers was possible, the court decided to focus on protecting victims and holding defendants accountable for their actions.

"People sometimes liken domestic violence courts to drug courts, but that would be a mistake," Sack says. "Yes, we borrowed some ideas from drug courts, like the value of concentrating cases of one type in a single place, increasing judicial monitoring and using specialized staff, but domestic violence courts don't use sanctions and rewards, they don't applaud defendants for their achievements and they don't hand defendants a diploma when they're finished." Adds Magnani: "This wasn't going to be a drug court, where you're trying to rehabilitate offenders and get them to repair their lives. The research just isn't there to show how or even if you can rehabilitate batterers. This court is about holding defendants accountable and protecting victims from more abuse." Because of this different emphasis, the court did not adopt the "cooperative" elements of drug courts either—in domestic violence courts, defense counsel continue to play their critical adversarial role.

Staff

Before the court could open, planners needed to pull together a crucial ingredient: the staff to run it. What follows is a closer look at the people who make the Brooklyn Felony Domestic Violence Court work:

Judge Finding a judge was the first order of business. The court system tapped John M. Leventhal, a Supreme Court justice, to preside over the courtroom. Leventhal says he was honored by the request, but nonetheless had reservations. One was the controversy still swirling around the judge in the Komar case. Leventhal couldn't help but wonder if the unpredictable and complex nature of domestic violence didn't doom any judge to failure—that despite rigorous court involvement, a tragedy was ultimately unavoidable. "There's an emotional dynamic, and things can be unpredictable," Leventhal says. "I knew that I would always be worrying that something awful may happen." Despite his concerns, however, Leventhal agreed to participate.

In 1998 a second Brooklyn Felony Domestic Violence Court was opened in response to an increasing number of felony domestic violence cases in Brooklyn. Judge Matthew D'Emic was assigned to the new court.

Victim advocates The court relied on the District Attorney's Office and Safe Horizon to hire the victim advocates. While Safe Horizon had plenty of experi-

ence working with victims, the idea of a domestic violence court was new to them. Administrators wanted advocates who could work well not only with victims, but with everyone in the courtroom. “We needed somebody who would be very outgoing and could stay in the loop, someone who would stand out in a group, and yet also be respectful,” says Paula Calby, vice president of criminal justice programs at Safe Horizon. “We did group interviews with seven to nine people at a time and asked several questions, like ‘What is domestic violence?’ Part of what we wanted to see was how they would interact in a group setting. Could they get their message across but also listen? Some of the applicants just walked out of the room. They couldn’t handle it.”

Attorneys The prosecutor’s office already had a team that handled family violence cases, so it was only natural that they became the court’s permanent prosecution team.

As for the defense bar, they continued to be drawn from disparate sources: Brooklyn Defender Services, Legal Aid Society, the assigned counsel panel and private attorneys. Defenders resisted the idea of having a fixed team of defense attorneys in the courtroom. For one thing, “we don’t believe we need special experience to defend DV cases,” says Lisa Schriebersdorf, director of Brooklyn Defender Services. She also worried that a defense lawyer who is permanently assigned to the court could become co-opted by the system. “You could get lawyers censoring themselves because they think they know what the judge is going to do. Every lawyer should be asking for probation where appropriate, even if the judge always refuses it. An attorney should ask over and over again because maybe the judge will one day change his mind,” Schriebersdorf says.

Resource coordinator During the planning process it became clear that Leventhal would need a staff person to assist in monitoring defendant compliance with court mandated programs and other court orders, as well as tracking victim access to services. Planners envisioned that this person would be responsible for obtaining information from off-site agencies in order to provide the judge with up-to-date, thorough information for each court appearance and when appropriate, alert the judge to any change in status between appearances. The Unified Court System applied for and received a grant from the federal Violence Against Women Office in order to hire a resource coordinator.¹⁵ After a thorough screening process, Jezebel Walter, who has a master’s degree in social work and extensive experience in the human services field, was hired to fill the position. In addition to coordinating compliance information, Walter took on the task of coordinating community outreach.

Judicial Monitoring The court developed a multi-faceted approach to strengthen the enforcement of court orders. The first part of the plan was to require defendants to return to court on a regular basis to report on their compliance with orders of protection or bail condi-

tions. “The idea of bringing someone back to court when there wasn’t a legal procedural reason for doing so was unusual. It had been done in drug courts, but that was to support treatment goals. In this setting, we were doing it as a monitoring tool. We thought it would help send the message to the defendant that the court really cared about this case and was going to react swiftly to any violation,” Sack says.

Prosecutors and victim advocates embraced the idea of rigorous judicial monitoring. “One of the problems in domestic violence is overcrowded court calendars,” Calby, of Safe Horizon, says. “The court generally doesn’t want to add extra cases or appearances, so it was really unique to see Judge Leventhal adjourning cases every week or two so he could check to make sure they were going to the batterers’ intervention program. We were thrilled about it. The court was monitoring the defendant instead of looking at the victim and asking, ‘Why are you doing this?’”

Leventhal, however, worried that frequent court appearances wouldn’t be enough. In other states, judges had more tools for monitoring defendants, such as pre-trial probation. Leventhal wondered if there was some other way to track defendants between appearances. Leventhal experimented with setting curfews for defendants, and requiring them to call the court at pre-arranged times. Eventually he settled on the idea of requiring attendance at a batterers’ program as a condition of bail. He was very careful to assert that this requirement was not a punishment—since the defendant had not been convicted—but was simply a monitoring tool. Defendants were required to attend sessions at community-based batterers’ programs once a week; attendance was to be carefully monitored, and any lapses were to be reported to the court immediately. “We now use batterers’ intervention programs on everyone,” Leventhal says.

Batterers’ Intervention Programs

In many states, including New York, batterers’ programs are not regulated. This means that virtually anyone can open shop as a batterers’ intervention program. It also means that there is no uniform protocol for running such a program. As two researchers have written: “The underlying philosophy and goals of each group vary dramatically.”¹⁶

To ensure quality programming, the court’s resource coordinator, Jezebel Walter, visited all the programs in the city that offered batterers’ intervention services. Walter says the experience was invaluable: it gave her a solid sense of how these programs worked. It also gave her a chance to do outreach and explain to the programs how the court worked. After the first batterers’ intervention program selected failed to report defendant absences to the court, Walter quickly learned that “the most important thing in picking a batterers’ intervention program is that they report attendance accurately.”

Over time, the court has been able to nurture the development of a batterers’ intervention program that best suits its needs. The program that the court now refers to is part of Safe Horizon. The program originally accepted only clients facing misdemeanor charges, but at the urging of the court the program now accepts felony defendants as well. Safe Horizon changed the name of the program from

Alternatives to Violence Program to Domestic Violence Accountability Program. Officials at Safe Horizon felt that the old name mistakenly suggested that the program was in the business of rehabilitating defendants. The new name, they feel, is more consistent with the court's emphasis on defendant accountability.

The 26-week program brings together groups of about 15-20 participants for 75 minute sessions once a week. The sessions consist of lectures about domestic violence, including lessons about institutional sexism and the oppression of women in society. Ted Bunch, the director of the program, emphasizes that the program provides education, not counseling. If a client asks for counseling, Bunch refers them elsewhere. "We function in a very limited role—we provide education," Bunch says. "We believe these men operate within the structure of a society that endorses and allows their behavior and their belief that they should be able to dominate and control their female intimate partner. The court holds the batterers accountable for their offense. We hold them accountable for the way they treat their partners."

Bunch says the program is therefore based not on a belief that batterers are suffering under a psychological defect that causes them to be abusive. Rather, the program operates under the belief that "men make conscious choices to be abusive," Bunch says. "They don't have records of being abusive to other people and if they do, then they are not batterers, they are sociopaths."

Is a Batterers' Program Punishment?

Prior to the opening of the court, judges occasionally used batterers' intervention programs as part of a sentence. But there was very little follow through or accountability. What role should a batterers' program have in a specialized felony court? The Brooklyn Felony Court eventually developed a solution unique to its situation: program mandates are made pre-disposition as a condition of bail rather than as part of the sentence. And their use has been widespread: Leventhal and D'Emic send about 70 percent of defendants to these programs as a condition of release.¹⁷

Defense attorneys from the beginning objected to the practice, saying that their clients were being punished for cases that were still pending. "It's punishment before the conviction," says Lisa Schriebersdorf, director of Brooklyn Defender Services. "What if a client is innocent? Why does he have to go to a program where they call him a batterer? You can't call it just monitoring. You don't just check in and leave."

Since the alternative is having their clients stay in jail, defense attorneys for the most part have not raised strenuous objections. But some, nonetheless, find the practice coercive: "It's coercive because what can we do? If we don't go along, then our clients go to jail," says Laura Saft, supervising attorney for the Brooklyn Defender Services.

In 1999, a decision by D'Emic explained the court's position on the use of batterer intervention programs as a condition of bail. D'Emic argued that attendance at a batterers' program was no more punitive than other restrictions imposed by an order of protection. D'Emic noted, for example, that a protection order "can be as drastic as ordering the defendant out of his own home." He continued: "Rather than imply-

ing guilt, attendance at the program, in tandem with its educational benefits, reminds the defendant, as does the order of protection, that although at liberty, he is still bound by the dictates of the court, which can rescind his liberty on his failure to abide by those dictates. . . . Like requiring the defendant to stay away from the complainant's home, school or place of business, or for that matter to stay out of a certain neighborhood, attendance at a program is a tool for the court at a minimal inconvenience to the defendants."¹⁸

Leventhal and D'Emic say that they don't care what the defendant says or does at the batterers' program, only that he attends. Nor do they look upon attendance at the program as a reason to accept a reduced plea or to congratulate the defendant. This attitude reflects their contention that a batterers' program as a condition of bail is strictly a monitoring device—it tells them where the defendant is at least once a week.

Judges, court staff, prosecutors and victim advocates in general seem to feel that batterers' programs do not definitively change behavior. Betsy Tsai, a former domestic violence court resource coordinator, looked at studies of batterer intervention programs and found that "although various program evaluation studies have been conducted over the years, the outcome is inconclusive as to whether batterer intervention programs actually result in reduced levels of violence. As one commentator notes, 'There is virtually no methodologically sound evidence of effective treatment interventions for domestic violence.' In fact, studies have shown extremely inconsistent results, with some indicating a decrease in the rate of recidivism for men in intervention programs and others indicating an increase in such violence."¹⁹

While Bunch, the director of the Domestic Violence Accountability Program, believes his program has some impact on batterers, he also feels that it can't be the only response. In fact, Bunch believes courts in general rely too heavily on batterers' programs. If a defendant, for instance, misses several sessions, "the court more often than not sends him back to our program," Bunch says. "But every time we send him back to do the program, we are saying, 'It wasn't that bad. Go do it right this time,' but the victim didn't have a second chance to do it right. She was beaten."

Probation and Parole

Rigorous monitoring of defendants continues throughout the case—and even beyond. Leventhal reasoned that if frequent court appearances were going to improve compliance with court orders, then probationers could benefit from frequent court visits as well. "I thought right away, 'Why don't we try and cut the [probation] violation rate?' I said, 'Let's bring probationers back every two months for the first year.' That way, I can go over the conditions of probation, remind them that an order of protection is still in effect, and respond quickly if there's a problem." The Department of Probation liked the idea, since the judge would be using his authority to help enforce the terms of probation. "When the probationer knows they have to go before the judge, it changes their behavior. . . . When a warning comes from the judge, it carries a lot more weight than from the probation officer," says Irene Prager, an assistant commissioner for the Department of Probation. Over time, the practice

has proven effective. The court has been able to cut by half the usual probation violation rate for this population, according to the New York City Department of Probation.

The Probation Department itself has also helped improve results by creating a dedicated domestic violence unit. The unit enrolls every batterer in an intensive supervision program. In the intensive program, probation officers have only 18 cases each, as opposed to the usual high-risk caseload of 80 to 100 per officer. The lower caseload allows the officers to monitor clients more closely through regular office visits and surprise home visits. It also gives them time to develop relationships with victims, and link both victims and offenders to services.

“Our goal is to hold the perpetrators of domestic violence accountable for their actions and offer referrals to victims,” says Leta P. Binder, administrative manager for operations at the Department of Probation. “Our officers receive special training in how to work with victims, and they encourage both the perpetrator and the victim to change their behavior. If you don’t get them to change, the victim will be victimized again and the perpetrator will victimize again.” To ensure that the judges receive timely and accurate updates about every client on probation, the Probation Department assigned an officer to serve as a permanent liaison to the domestic violence court.

Leventhal decided that parolees could benefit from monitoring as well. While the court doesn’t wield the same authority over parolees that it does over probationers, Leventhal and D’Emic have developed a relationship with the state Parole Board, which returns all parolees upon their release for a final appearance before the judge who sentenced them. “Parolees meet once with me,” Leventhal says. “I think many of them are surprised to see me again. It gives them the impression hopefully that I’m still watching them. I reinforce to them that services are available and I go step by step over the conditions of their parole.”

Services for Victims

Every victim is assigned an advocate as early in the case as possible—often prior to arraignment. “We devote a considerable amount of time to each client,” Kinaja Janardhanan, a victim advocate, says. “We try to accommodate their needs right away. If a client needs a housing letter or a place in a shelter, we’ll try to accommodate them that very day. I think the victims feel more reassured when we can help them right away.”

The advocates from the District Attorney’s Office and Safe Horizon divide the work equally. “We alternate week to week in grand jury indictments,” Janardhanan says. “We take the victims from one week, and the D.A. takes the victims from the next week.” The advocates have offices in the courthouse, which ensures that there’s always an advocate on hand. “Victims can speak to the advocates at the same time that they speak with the assistant district attorneys,” Sack says. “This makes it easier for the victims, who don’t have to keep repeating their stories, and it also fosters more collegiality between the D.A.’s and the advocates.”

The victim advocates perform many functions. Probably their most important task is to develop a safety plan for each victim. As the name suggests, a safety plan is a blueprint for avoiding future violence. It can involve precautions like placing a victim and her children in a shelter for battered women or supplying a victim with a cell phone with a direct connection to the police in the event of an emergency. “No matter what, we try to make sure they don’t leave us without a good safety plan,” Paula Calby, of Safe Horizon, says.

Victim advocates also explain to victims how the court works. They tell them about court procedures and keep victims updated about the progress of a case. They also encourage victims to call if they have any questions or concerns. And the advocates actively keep the lines of communication open. “Before every court appearance we try to call the victim to make sure everything is OK,” Janardhanan says.

This kind of support can make a huge difference to victims, who are often suspicious of the legal system. “I didn’t expect that I would have to participate in the court case but the judge and the victim advocates helped me follow the procedures, get an order of protection and everything turned out for the best,” says “Sarah,” a woman whose husband set her house on fire. “The advocates from Safe Horizon gave a clothing allowance for me and my children because we lost our belongings in the fire. At first, it was difficult to have my case heard in public but my attitude changed because it was my husband who committed the crime not me. He was the one that set my house on fire. Now he’s in jail. My focus now is on trying to get a good job and to make my family’s life better.”

Victim advocates, and the court itself, have come to recognize over time the wide range of victims’ needs. They’ve found, for example, that there are special groups of victims—the elderly, for instance, and immigrants—who need unique services. They’ve also found an acute need for job training among victims trying to build independent lives. “We quickly discovered that economic self-sufficiency was crucial,” Sack says. “We heard over and over again, ‘I would like to leave him, but I don’t have a job.’ So right in the courthouse we started holding job-training sessions for victims. If you had told me five years before that we’d be doing job training, I would have said that was a little far-fetched.”

Building Partnerships

The introduction into the courtroom of new players (such as the resource coordinator and victim advocates) as well as the introduction of new procedures (like the use of batterers’ programs as a monitoring device) requires flexibility from all participants. Not surprisingly, it took awhile to build trust among the various players, who were used to clearly defined roles that kept them isolated from each other. “It’s not a social work culture, but a legal culture,” says Jezebel Walter, the resource coordinator, “and some people didn’t see the value at first of working together.”

Walter offers this example: “When we started, we were asking the assistant district attorneys to work closely with the resource coordinators and the victim advocates, but they weren’t particularly interested. Then one day the victim advocate told us that a defendant contacted a victim, and the assistant district attorney said, ‘Why

didn't I know about that?' and we said, 'You need to talk to the victim advocates to get that information.' After that, they saw the benefits of having a relationship with the victim advocate. Obviously, the more information they have, the easier it is to build a case."

The court has built bridges to a number of stakeholder agencies, including probation, parole, the Administration for Children's Services (the city's child welfare agency) and Family Court. In the past, a judge presiding over a criminal case didn't always know the status of a related case in Family Court and vice versa. This meant that one judge often wasn't aware that another judge had already issued an order of protection, or if the defendant was in compliance with past court orders. "I would see it happen again and again," says Lisa Smith, a professor at Brooklyn Law School and a former executive assistant district attorney in Hynes' office. "The judge would ask the prosecutor: 'What's the status of the case in Family Court?' and the prosecutor would say 'I don't know.' And the judge would say, 'What kind of order of protection did they issue in Family Court?' And the prosecutor would say 'I don't know.' The judge would get angry and the prosecutor would say, 'I've tried to get the information, your honor. I've left messages, but no one has gotten back to me.'"²⁰ The resource coordinators now regularly reach out to Family Court, allowing the judges in both courts to have better and more up-to-date information at their fingertips.²¹

One of the court's more unusual initiatives are regular stakeholder meetings that bring together agencies and individuals who work in the field of domestic violence. These meetings, which are led by Leventhal and D'Emic, are intended to serve as catalysts for communication. The hope is that by bringing together professionals from different disciplines, the court can improve the way it works as well as spark new and more effective responses to domestic violence in the community at large. The stakeholder meetings, which typically bring together defense attorneys, prosecutors, court clerks, victim advocates, batterers' program administrators, probation officials and other social service providers, give all of the players a chance to learn about how other agencies handle domestic violence cases and collectively improve the system's overall functioning.

Leventhal provided this example of how a stakeholder meeting had a tangible impact on policy: "We learned through partnership meetings that when someone is in jail, the correctional institution doesn't know it's a domestic violence case. They also didn't know if there was an order of protection in effect. That meant that the defendant could write or call the complainant, or the complainant could visit the defendant in violation of the order—and the jail didn't do anything to stop them. So I talked it over with the state Department of Corrections and now we attach a copy of the order of protection with the final commitment order, so the jail knows there's an order in effect and all its specific terms."

In another effort to both improve the community's understanding of domestic violence and improve the functioning of the court, the judges hold occasional breakfast meetings that bring together people who work with victims and defendants. "We've really tried to expand our definition of what is relevant to the court," Sack

says. “There are whole groups of people that impact our court because they have contact with victims or defendants—like emergency room workers or the shelter providers, or police officers. So we’ve had a series of meetings where we invite them to have breakfast with the judges. The judges explain what the court does and then listen to everyone’s concerns.”

Domestic Violence Technology

In the spring of 2000, the domestic violence court added a new tool for handling domestic violence cases: a computer software program that uses Internet technology to connect the court with criminal justice agencies and social service providers. It allows users—which include judges, attorneys, victim advocates and batterers’ intervention programs—to share information instantaneously.

Prior to the development of the technology application, the court and its partners communicated through paperwork, faxes and phone calls—lines of communication that were time-consuming and inevitably fueled delays. If a defendant failed to attend a court-ordered program, it could take days for that fact to appear as a written report in his file. There were also often delays in the filing of orders of protection on the New York State Domestic Violence Registry, the statewide electronic archive of all orders of protection—which meant that the police had no way of knowing that an order of protection was in force. Furthermore, partner agencies often did not learn right away about the terms of court orders and outcomes of court appearances.

The new technology changes all that: the judge can access up-to-date information about each case through a terminal on the bench. The information available includes a defendant’s compliance record at the batterers’ intervention program, and, with victim consent, updates on victim status and reports of alleged violations of orders of protection. Off-site partners access the system through the Internet using a password; this allows them to file updates and compliance reports directly into the application from their offices. And orders of protection are created electronically through the application. Once executed by the judge through an electronic signature pad, the order of protection is automatically uploaded to the state’s Domestic Violence Registry.

The technology application was developed by the Center for Court Innovation with funding from the U.S. Department of Justice’s Violence Against Women Grant to Encourage Arrest Policies program and a STOP Formula grant from the New York State Division of Criminal Justice Services. The Unified Court System is currently working to adapt this technology statewide.

Addressing Challenges

The court system considers the defense bar a full partner in the Brooklyn Domestic Violence Court. Defense attorneys were invited to planning meetings and the director of Brooklyn Defender Services spoke at the ceremony celebrating the court’s fifth anniversary. Some defense attorneys also attend the monthly partners’ meetings, where they contribute with questions or comments about issues that concern them. Nonetheless, while defense attorneys say they appreciate the court’s willingness to hear them out, they remain the court’s most vocal critics. At the top of their list of

complaints: the court, they feel, ignores the wishes of victims. They particularly object to the prosecutor's "no-drop" policy—what the District Attorney's Office prefers to call "evidence-based prosecutions." Under that policy, the D.A. tries to build a case even if the victim refuses to cooperate. Although the policy's existence is not directly related to the existence of a specialized domestic violence part, defenders feel that its execution is facilitated by the judges who are attuned to the specific evidentiary issues that such a prosecution raises.

"These situations should be handled on a case by case basis," says Lisa Schriebersdorf, director of Brooklyn Defender Services. "But policies like 'no-drop' mean that things are not being considered case by case. The majority of victims have the right and ability to make these complicated decisions. No one tells me who I have to be married to and who I have the right to live with, so what right does a prosecutor have to ignore a victim's wishes?"

Prosecutors agree that victims—up to 30 to 40 percent of whom do not wish to continue with prosecution—have a role to play. But they feel that other evidence is important, too. "In evidence-based prosecution we basically treat the case like a homicide case, where you gather evidence without the help of the victim," says Assistant District Attorney Wanda Lucibello. "Assuming you can pull the case together, then why not go forward with it? I don't mean to belittle victim autonomy, [but] like it or not, victims of family violence are often intimidated into silence. We therefore have to respond to it differently."

Clearly, evidence-based prosecution has helped produce more convictions. "Until we started doing evidence-based prosecution, the prosecutor was basically under the control of the defendant," Lucibello says. "If the victim wasn't cooperating, then the defense attorney immediately argued that this client deserved to have the case dismissed. Once we started evidence-based prosecution, then we got leverage to craft a plea." It's important to note that the debate about evidence-based prosecution is not just occurring in Brooklyn but around the country. It's estimated that 66 percent of district attorneys nationally have adopted some form of no-drop policy, according to Georgetown University law professor Deborah Epstein.²²

Defense attorneys have also criticized a number of appellate and supreme court decisions that they say favor prosecutors. Court rulings have set new standards for assault in grand jury testimony, using a *prima facie* standard of evidence while awaiting assessment of the longer-term nature of the injuries. They have ruled that a defendant cannot use evidence obtained through illegal wiretaps of the victim's phone in his defense, since the state and not the victim is the prosecuting party. The judges have also made certain exceptions to the rules of evidence—for instance, they've allowed prior "bad acts" to be admitted as evidence and also allowed the admission of 911 tapes, which do not allow for cross-examination.

Perhaps the most serious charge leveled by the defense bar is their claim that the court is biased in favor of the prosecution. They say this attitude is expressed not only in the way the court handles cases, but in the way the judges have made it their "personal mission to make sure no one gets killed in a domestic violence incident in

Brooklyn,” according to Schriebersdorf. “That’s not a judge’s job. His job is to make sure the defendant gets a fair trial. Maybe it’s the prosecutor’s or police’s job to protect the victim, but it’s definitely not the judge’s job.”

The judges, however, disagree. “I say the most important thing is the judge has to sleep at night,” Leventhal says, “and the way to do that is to keep the victim safe during the case. No one thinks domestic violence is right, so when I speak out against domestic violence, does that mean I’m biased? I don’t think so.”

Liberty Aldrich, of the Center for Court Innovation, concedes that the role of the judge in a domestic violence court is still controversial. How far can a judge go and maintain impartiality? For instance, should a judge educate himself about domestic violence, or could too much knowledge prejudice his thinking? Can a judge speak out against domestic violence, or would that fuel the perception that he’s biased? Should he meet with community organizations to learn about issues that concern service providers, victims and offenders, or should he isolate himself so as not to have any distractions from the individual cases that come before him? “A lot of people say that judges shouldn’t know anything about domestic violence other than a crime occurred,” Aldrich says. “Some judges will say, ‘What do I need to know other than whether he punched her on December 5?’ But we feel that it’s just like drug treatment courts in that knowledge helps frame the issues about how drug addiction works, the likelihood of relapse, etcetera. It helps the judge make better decisions, ones that are more fair to everyone involved. Understanding domestic violence doesn’t bias the judge’s decision about whether or not a specific incident occurred on December 5.”

Results

Perhaps the most important result after the court’s first eight years in operation is that no victim linked to an open case has been killed. That means that a basic level of victim safety has been achieved. This may be at least partly due to the fact that “victim services are clearly expanded under the specialized court, in that all victims are assigned an advocate and receive a protection order during case processing (and often afterwards as well),” according to an evaluation of the court by the Urban Institute.²³ Prior to the court’s opening, only about 55 percent of victims of domestic violence were assigned a victim advocate; after the court opened, the percentage soared to virtually 100 percent.²⁴ Also, the percentage of protection orders issued in these cases rose from 87 percent to 98 percent.²⁵

The court has helped cut the dismissal rate in half—from eight percent to four percent.²⁶ The Urban Institute evaluation further found that while conviction rates rose only slightly (from 87 to 94 percent) guilty pleas rose significantly (from 73 percent to 88 percent) and the number of those found guilty at trial dropped (from 14 percent to 6 percent.)²⁷ This suggests that police and prosecutors have been building better cases, which, in turn, have persuaded defense attorneys to rely more often on plea bargaining than trial.

This phenomenon is not unusual, according to Pace University researchers Adele Bernhard and Audrey Stone. “Trials are rare in domestic violence courts partly

because domestic violence courts will proceed with different evidence than that which is routinely relied upon in the generalized criminal court,” they write. “Domestic violence trials often go forward without the victim’s cooperation or participation, eliminating the accused’s chance to directly confront his accuser. Those who choose trial are confronted by their prior record, observations of witnesses and police officers, medical records, and 911 calls rather than direct accusation. Such circumstantial proof can be more persuasive than live witnesses and is less vulnerable to cross-examination. In the face of that proof, the accused may shirk trial.”²⁸

Given this phenomenon, it should come as no surprise that prosecutors speak favorably of the court. The court has not only helped the D.A. reduce the number of cases that go to trial, it has helped make the D.A.’s domestic violence bureau function more efficiently. “By consolidating the cases into two [courtrooms], you get the most effective use of resources. Our people no longer have to run up and down nine flights among various courtrooms, and the people who know most about the case can stand up on it, rather than have a colleague who isn’t familiar with the case stand in,” says Assistant District Attorney Deirdre Bialo-Padin, chief of the domestic violence bureau.

A consolidated court calendar also helps “make abundantly clear what the new issues are,” Bialo-Padin says. The Urban Institute evaluators support this observation, noting that “it is . . . much easier to identify and address gaps in the total system of services when all domestic violence felonies are concentrated together.”²⁹ One such gap that came to everyone’s attention was the need to provide psychiatric care for a select number of defendants. That has led the court and its resource coordinators to begin seeking reliable programs to provide this type of care for defendants with significant mental illness.

Bialo-Padin also says it was a major plus that the same judge hears a case from beginning to end. “There’s continuity with the judge, so you don’t get playing the ends against the middle, with different people making different representations to different judges. A lot of what happens with a case isn’t written down. The files are rolled up pieces of paper with very little space for detailed notes, and there’s no record of the conversations at the bench. So to have the same judge handle a case from beginning to end means all that knowledge that isn’t written down doesn’t get lost.”

Prosecutors say the court has given them more confidence that domestic violence cases can be handled successfully. In the past—because of resistance from judges as well as prosecutors’ lack of practice handling cases in which the victim refused to cooperate—prosecutors were hesitant to tackle some cases. “In earlier years, we stayed away from a lot of cases. But today we’re taking them to trial because we now have experienced lawyers who can still prosecute a case even where the victim testifies for the defense,” Bialo-Padin says.³⁰

The court has also changed some prosecutors’ attitudes about how to respond to domestic violence. Lucibello says that she’s come to believe that “there are instances where an alternative to jail might be more beneficial for both victim safety and

offender accountability.” Although victims are protected while a defendant is in jail, defendants are eventually released “and sometimes they come out more dangerous,” Lucibello says. “If you don’t put him in jail, then you can give him a longer period of monitoring. I’ve heard victims say, ‘While he’s being supervised and monitored, he really hasn’t been an issue to me anymore.’ Sometimes the monitoring that the court makes possible gives us more long-term control.”

While the Brooklyn Domestic Violence Court has lived up to its goals of improving victim safety and defendant accountability, it hasn’t been able to fulfill every expectation. For instance, court planners had hoped at the outset that the court would speed the processing of cases. This has not happened, in part because the court spends a good deal of time monitoring on-going cases. But some have come to believe that there’s no need to rush cases along. “It takes time to work with the victim and get the evidence,” Emily Sack says. “In the meantime, the defendant is being monitored. In some sense, it’s better that we aren’t rushing these cases because we can monitor the defendant longer.”

Bench burnout is another issue confronting the court. After eight years on the job, Judge Leventhal says he still worries constantly that a case will take a tragic turn. “I live with my cases all the time, which can interfere with my time outside of the court,” Leventhal says. “On weekends and when I’m on vacation, I watch the news and I want to see if there is a homicide. I want to know if it’s in Brooklyn and I want to know if it involves my court.”³¹ Leventhal says he constantly considers asking to be re-assigned, but then is persuaded by the on-going challenge of the job to stay. “At the Domestic Violence Court, I feel like I’m doing meaningful work every day,” he says.³²

Another challenge facing domestic violence courts, and other problem-solving courts in general, is funding. The good news from the Brooklyn experience is that it doesn’t take a lot of extra money to start a domestic violence court. By partnering with other agencies, like Safe Horizon and the D.A.’s Office, the court system was able to launch the court with only a modest expenditure of new funds. “A lot of people think that a domestic violence court must be really expensive, but it’s a lot less expensive than a drug court,” Sack says. “We started the court without almost any extra funding. The only new expense was the salary of the resource coordinator.” Magnani points out that the lack of extra funds forced planners to be creative and build meaningful partnerships with others. “We had to be as efficient as possible. I think having no money made the partnerships better,” he says.

Replicating the Model

The successful planning and implementation of the Brooklyn Felony Domestic Violence Court has led to an effort to institutionalize the model across the state. Today, there are over 30 domestic violence courts in operation or in the final planning stages in sites ranging from densely populated urban communities to suburban and even rural settings. These courts include: Auburn City; Binghamton City; Bronx Misdemeanor; Bronx Felony; Brooklyn Misdemeanor; Buffalo City Misdemeanor; Clarkstown Town; Glens Falls City; Kingston City; Monroe County Felony; Nassau

Felony; Nassau Misdemeanor; Queens Misdemeanor; Spring Valley Town; Suffolk County; Syracuse City; and Westchester Felony/Misdemeanor.

As the number of domestic violence courts continues to grow, particularly outside of the city, concerns have arisen about the planning and implementation of the courts. Several courts have faced challenges in adapting the Brooklyn model and reported obstacles that had surfaced in Brooklyn—such as defense bar issues. The New York State Office for Court Administration asked Judge Judith Harris Kluger, Deputy Chief Administrative Judge for Operations and Planning, to take charge of overseeing statewide implementation. She and staff from the Center for Court Innovation now work together to ensure fairness and efficacy.

In addition, in an effort to support the planning process and institutionalize domestic violence courts in New York, the New York State Office for Court Administration and the Center for Court Innovation began to develop training curricula, planning timelines, and best practice protocols. They also began to provide on-site technical assistance to local planners.

Judge-to-Judge Training

In 1999, the Center for Court Innovation began holding judicial roundtables for all judges presiding over domestic violence courts in New York State. The intent of these forums is to use the knowledge of practicing judges to ensure that best practices and protocols are instituted in newly developing domestic violence courts. The roundtables provide judges with an opportunity to share knowledge, discuss areas of concern, brainstorm about potential solutions and spark experimentation.

The roundtables, which occur three times a year in locations throughout the state, typically begin with a panel or presentation by judges. The afternoon session usually includes a discussion by an expert on a relevant issue. Past sessions have included discussions of: offender accountability, innovations in high volume domestic violence court models, engaging the defense bar, Family Court and Criminal Court case coordination and communication, the nexus between child maltreatment and domestic violence, and judicial ethics and leadership.

In partnership with the Unified Court System, the Center for Court Innovation is also developing a domestic violence training curriculum for judges. The curriculum will emphasize the importance of frequent defendant monitoring, the value of having a consistent response to defendant noncompliance, the need to create strong links to victim services and techniques for fostering community collaboration. The training curriculum will be offered to all judges who handle domestic violence cases in New York, including those who do not sit in domestic violence courts.

On-Site Technical Assistance

In addition to trainings, the Center for Court Innovation has a team of planners that promote best practices to ensure consistency and quality control in New York's domestic violence courts.

The Center arranges for planning teams to visit domestic violence courts to see first-hand how they work. Center staff also link planning team members to training opportunities in New York and around the country.

Information exchange is a key component of the Center's technical assistance that continues to be refined. Inspired by the judicial roundtable model, the Center began in 2003 to convene teleconferences for both new and seasoned resource coordinators so they can share practices and solve problems together.

**Planning Timelines,
Best Practices and
Resource Materials**

The Center for Court Innovation has created a range of written materials to assist domestic violence court planners. A white paper entitled *What Makes a Domestic Violence Court Work?* explains the theory behind domestic violence courts. Another white paper, *Youth Dating Violence: Can a Court Make a Difference?*, describes the development of the Brooklyn Youthful Offender Domestic Violence Court, which addresses the unique issues that adolescents in violent dating situations bring to court. The *Domestic Violence Toolkit* includes staffing descriptions and a number of best practice fact sheets on key elements of the court, including coordinated community response, batterers' programs and orders of protection.

Over time, it became clear to planners at the Center that each site needed to create a planning document to ensure that important policies and procedures were in place before a court opened. Planners developed an outline that details the important elements of a domestic violence court—such as case identification and screening, docketing, staffing plans, service plans, and judicial monitoring—to help facilitate the planning process among court partners. This outline, in addition to a step-by-step planning checklist and timeline, became a key component of the *Domestic Violence Toolkit*. To ensure its relevancy, updated practices and information continue to be added to the toolkit by planners. The materials in the toolkit are also supplemented by a semi-annual newsletter generated by the Center.

Conclusion

Prior to 1990, domestic violence cases in Brooklyn weren't taken that seriously. As District Attorney Charles J. Hynes recalls: "One recommended approach was to have a police officer take an abuser from the household and walk him around the corner and then let him go home. This practice only infuriated the abuser and led him to further abuse his victims, making the victims and their families reluctant to call the police. When arrests were made, abusers rarely faced criminal prosecution because the courts and the district attorneys were reluctant to seek punishment in cases that were considered family disputes."³³ Prosecutors routinely dropped charges, explaining, "Judge, it's only a husband and wife dispute which got a little out of hand."³⁴

The situation today, however, is quite different. Thanks to the joint efforts of police, prosecutors and judicial leaders, domestic violence cases are no longer routinely dismissed. In addition, victims are offered extensive services. And protocols are in place for monitoring defendants both pre- and post-disposition.

The Brooklyn Domestic Violence Court has played a key role in this transformation. Although still a work in progress, the court has demonstrated that a more effective judicial response to domestic violence is possible. With the help of partner agencies, the Brooklyn court has improved victim safety and enhanced defendant

accountability. It has reduced the rate of dismissals and helped cut the probation violation rate. It has also demonstrated that a court can serve as a catalyst in the community: by convening partners' meetings and regular seminars, it has fostered a community-wide discussion about the problem of domestic violence and ways to address it.

As a work in progress, the Brooklyn Domestic Violence Court—like other domestic violence courts around the state and country—is continually trying to refine the way it does business. There are still many open questions when it comes to adjudicating domestic violence cases. In addition, exactly how much say a victim should have in prosecuting a case is still a hotly debated topic. The question of rehabilitation and program mandates will also likely get more attention in the years ahead. While defense attorneys maintain that batterers can reform, there is little research so far to support that contention. Indeed, after a decade or more of monitoring program mandates for defendants, domestic violence courts still know little about which defendants are routinely sentenced to which types of programs and why; how they are doing in those programs, and what, if any, benefit they receive. There are numerous other questions to be explored, among them: What are the predictors, if any, that violence in an intimate relationship may escalate? What judicial responses to domestic violence are most effective? What other services can courts offer to benefit victims and their families?

The story of the Brooklyn Domestic Violence Court begins, in one sense, with the death of Galina Komar—a senseless murder that reflected the criminal justice system's failure to develop a coherent and consistent response to a crime that was for too long ignored. But in just a few short years, the court, along with its many partners, has turned the situation around. The court now stands, in some ways, as a symbol of the criminal justice system's ability to adapt to a changing society. The Brooklyn Domestic Violence Court, and other experimental problem-solving courts, reminds us that the judiciary can embrace new thinking. With careful planning, and input from all the key players, the judiciary can improve its handling of even the most complex and emotionally charged cases and in that way deliver justice that, in the words of New York's Chief Judge Judith S. Kaye, "is both fair and effective—justice that respects rights and saves lives."³⁵

Notes

1. Lisa Newmark, Mike Rempel, Kelly Diffily, Kamala Mallik Kane, *Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impacts from the Kings County Experience* (Washington D.C.: Urban Institute Justice Policy Center, October 2001).
2. CPL 140.10 (4): New York's mandatory arrest legislation does not require an arrest in misdemeanor cases when the victim declines to press charges and the victim's safety is not threatened.
3. Charles J. Hynes, "Fighting Domestic Violence," *New York State Bar Association Newsletter* (Winter 1999).
4. Hynes tells this story about why he created the Domestic Violence Bureau: "In 1989, while campaigning for election as District Attorney, I dropped by night court to watch arraignments. I took a seat near the front of the courtroom, close to the judge's bench. I noticed a young woman of perhaps 17 years of age. To me she looked barely more than a child. I could see that her face was lacerated and swollen and that her body was trembling. I heard the assistant district attorney, who was standing between this young crime victim, the defense attorney and the defendant, declare in a firm voice, 'Judge, it's only a husband and wife dispute which got a little out of hand.' I vowed that when I became district attorney no assistant district attorney would ever take that position in a domestic violence case in Kings County." *Ibid.*
5. Judith S. Kaye and Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for the Problem Solving Approach*, 27 *W. St. U.L. Rev.* 1, 1999/2000.
6. Betsy Tsai, "The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation," 68 *Fordham Law Review* 1285 (March 2000).
7. Tsai.
8. *Ibid.*
9. Gary Spencer, "New York Court of Appeals Removes Judge Duckman From Bench," *New York Law Journal* (July 8, 1998).
10. The Komar case led to an investigation of the judge, Lorin M. Duckman, who was removed from the bench in July 1998 after the State Court of Appeals found that he "improperly dismissed 16 misdemeanor cases" and also had a "five-year history of abusive behavior toward prosecutors." Duckman, however, was exonerated of wrongdoing in the Komar case. See Spencer.
11. Kaye and Knipps.
12. Randal B. Fritzler and Leonore M.J. Simon, "Creating a Domestic Violence Court: Combat in the Trenches," 37 *Court Review* 28 (Spring 2000).
13. *Ibid.*
14. Newmark, et al.
15. The New York State Unified Court System took on full responsibility for maintaining this position after the grant period ended.
16. Adele Bernhard and Audrey Stone, "Domestic Violence Court and the Role of Prosecutors and Defenders," presented at "Creative Courts—Creative Responses: A

Pace Women's Justice Center Think Tank on Domestic Violence Integrated Courts," (Nov. 2, 2001).

17. Newmark et al.

18. *People v. Bongiovanni*, 183 Misc. 2d 104, 701 N.Y. S. 2d 613.

19. Tsai.

20. Lisa C. Smith, speaking on a panel at "Problem-Solving Courts: From Adversarial Litigation to Innovative Jurisprudence," a symposium presented by the *Fordham Urban Law Journal* and the Louis Stein Center for Law and Ethics, Feb. 28, 2001.

21. New York has also instituted Integrated Domestic Violence Courts in order to bring family and criminal cases together before a single judge and thereby eliminate these gaps in information.

22. Deborah Epstein, "Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges and the Court System," 11 *Yale J.L. & Feminism* 3.

23. Newmark et al.

24. Michele Sviridoff, Nora Puffett and Michael Rempel, "Select Research Findings From Two Specialized Domestic Violence Courts: The Bronx Misdemeanor Domestic Violence Court and The Brooklyn Felony Domestic Violence Court," data presented at "Domestic Violence Judicial Roundtables," Nov. 5 2001, Tarrytown, N.Y.

25. *Ibid.*

26. Newmark et al.

27. *Ibid.*

28. Bernhard et al.

29. Newmark et al.

30. The evaluators from the Urban Institute also found that the "D.A.'s Office seemed more likely to indict cases with less severe police charges since the Felony Domestic Violence Court began."

31. "Reflections of Problem-Solving Court Justices," *Journal of the New York State Bar Association* (June 2000).

32. *Ibid.*

33. Hynes.

34. *Ibid.*

35. Kaye and Knipps.

Center for Court Innovation

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders and strengthen communities.

In New York, the Center functions as the State Court System's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts and others.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping courts across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through a variety of written products, including original research, journal articles and white papers like this one. The Center also provides hands-on technical assistance, advising court and criminal justice planners throughout the country. Current areas of interest include community prosecution, court technology, drug courts, domestic violence courts, mental health courts and research/evaluation.

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