

Safety and accountability:
The underpinnings of a just justice system



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Table of Contents

Note.....	1
Safety and Accountability: The Underpinnings of a just system.....	1
Domestic Violence.....	1
Safety.....	5
Informed Counsel.....	5
Affordable Counsel.....	6
Security.....	8
User-Friendly Pro Se Systems.....	8
Screening.....	9
Safety Planning.....	9
Exemption from Mediation.....	10
Informed Evaluators, Mediators and Guardians ad Litem.....	10
Parenting education.....	11
Court Supportive Services.....	12
Legal Advocacy.....	12
Expedited Process and Protections.....	12
Dedicated Docketing and Courts.....	13
Preservation of Confidential Addresses.....	14
Court Data Systems.....	15
Expedited Review.....	15
Firearms Forfeiture Directives.....	16
Accountability.....	16
Court structures and processes promoting accountability.....	17
Court Reviews of Compliance.....	17
Accessible Registries.....	18
Bail screening and standards.....	18
Prioritizing and enforcing restitution awards.....	19
Mechanisms for firearms compliance.....	19
Jail Triage.....	19
Leadership of Court Administration and the Judiciary.....	19
State and Local Councils/Task Forces on Domestic Violence.....	20
Domestic Violence Fatality Reviews.....	21
Conclusion.....	21

Note

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Safety and Accountability: The Underpinnings of a just system

It is an act of supreme courage for battered women to implore the civil legal system to bring its authority to bear against the violence and terrorism of batterers. When battered women enter the civil court system they may find a structure that is demonstrably concerned with their safety and accountability requirements or they may find one that is hostile to their justice-seeking.

Proponents of unified family court structures have too seldom squarely addressed these fundamental requirements of battered women, ⁽¹⁾ and, for many, the insistence by judges, attorneys and advocates in the domestic violence field that a unified family court system incorporate structures that protect vulnerable survivors is an intense irritant. Those who would ignore the profound implications of domestic violence in family and civil law practice and the concomitant necessity for court system structures that incorporate essential mechanisms to promote safety and accountability relegate adult and child victims of domestic violence to a system of accidental justice.

The balance of this paper will first briefly describe domestic violence, it will then discuss the constructs of safety and accountability and finally examine how court administration and the judiciary might fully respond to these underpinnings of justice for adult and child victims of domestic violence.

Domestic Violence

The social science literature describes men's violence against their intimate partners as a vast array of physical assaults, sexual abuse, economic exploitation, psychological degradation, property destruction, hostage-taking, terroristic threats, stalking, burglary, theft, slander and homicide. ⁽²⁾

The reports of battered women reveal that most assaults by batterers are not singular; not discreet, individual acts of violence. Many involve sustained beatings that last several hours.

1 There are notable exceptions in New Jersey, Oregon, Hawaii, Nevada, Delaware and DC.

2 Browne, Angela, "Violence against women by male partners: Prevalence, outcomes, and policy implications." **American Psychologist** , 48, 1077-1087 (1993).

Dobash, R.E., Dobash, R.P., Wilson, M. & Daly, M. "The myth of sexual symmetry in marital violence." **Social Problems**. 39(1);71-91 (1992)

Studies confirm that domestic violence is intentional, instrumental and strategic, designed to achieve power and control for the batterer over the abused and her children. ⁽³⁾

Men who batter their partners are consummate rule makers. They construct systems of rules designed to maintain coercive control over abused women and children. These rules attempt to guarantee batterers the services, loyalty, obedience, undivided attention and caretaking of battered women. Rule-making seeks to assure unfettered access to the abused partner. Rules constrain the abused person and mandate prescribed devotion to the needs and requirements of the batterer. Rulemakers brook no disagreement and do not believe that those they control have cognizable, independent interests; all interests must be subordinated to those of the batterer. ⁽⁴⁾

Husbands who inflict domestic violence on their wives are often skillful manipulators; facile in their ability to obfuscate and reframe, able in avoiding adverse consequences for wrong-doing, capable of masking duress, adept at minimizing responsibility for abusive conduct, and effective in exacting concessions from their battered partners. ⁽⁵⁾

Domestic violence in all of its complexity may be simply understood as conduct targeted at an intimate partner to achieve and maintain ownership and control of the battered woman. ⁽⁶⁾

Many professionals, including judges, court administrators and attorneys, believe that battered women will be safe once they separate from the batterer. They also believe that women are free to leave abusers at any time. However, leaving does not usually put an end to the violence. ⁽⁷⁾

The National Crime Victimization Survey recently reported that upwards of 30% of all women homicide victims had been killed by a current or former husband or boyfriend. The rate of femicide by husbands was 25 times higher when women were separated from their husbands than when married and cohabiting. ⁽⁸⁾ An investigation by the New York City Department of Health discovered that 49% of the women homicide victims were killed by an intimate partner

3 Gondolf, E. W. "Male batterers." In R. Hampton (ed.), **Family violence: Prevention and treatment** . Newbury Park, CA: Sage. (1993).
Saunders, D. G. "A typology of men who batter." **American Journal of Orthopsychiatry**. 62:264-275 (1992).

4 Hart, B., "Rule Making and Enforcement/Rule Compliance and Resistance." In Sipes, B. and Hall, E.J. **I Am Not Your Victim: Anatomy of Domestic Violence** . Thousand Oaks: Sage Publications, Inc., 258-263 (1996).

5 Hart, B. "Gentle Jeopardy." **Mediation Quarterly** , 7:4,322 (1990).

6 Pence, E. and Paymar, M. **Power and Control: Tactics of Men Who Batter**. Duluth: Minnesota Program Development. (1986).

7 Mahoney, M., "Legal Images of Battered Women: Redefining the Issue of Separation." 90 **Mich. L. Rev** . 1, 5 (1991).
Kunce Field, J. "Visiting Danger: Keeping Battered Women and Their Children Safe." 30 (3) **Clearinghouse Rev**. 295 (1996).

8 Bachman, R. and Saltzman, L. E., "National Crime Victimization Survey, Violence Against Women: Estimates from the Redesigned Survey." U. S. Dept. of Justice, Bureau of Justice Statistics. 1, 4 (1995).

or family member and women were the victims in 83% of the intimate partner homicides in that city between 1990& 1994. ⁽⁹⁾

Men who batter their wives/partners often endanger and abuse their children. Between 50% and 70% of the men who batter their wives also abuse their children. ⁽¹⁰⁾ Severe child abuse usually occurs in the context of domestic violence, and the onset of child abuse usually post-dates abuse of the mother. ⁽¹¹⁾ The more grievous the abuse of the mother, the greater the likelihood that child abuse will be severe. ⁽¹²⁾ Most children of battered women witness the violence of their fathers against their mothers ⁽¹³⁾ , and some experience symptoms equivalent to those of children who have, themselves, been severely abused. ⁽¹⁴⁾

"Abuse of children by batterers may be more likely when the marriage is dissolving, the couple has separated, and the husband and father is highly committed to continued dominance and control of the mother and children. ⁽¹⁵⁾ Since...abuse by husbands and fathers is instrumental, directed at subjugating, controlling and isolating, when a woman has separated from her batterer and is seeking to establish autonomy and independence from him, his struggle to... dominate her may increase and he may turn to abuse and subjugation of the children as a tactic of... control of their mother ". ⁽¹⁶⁾

One recent study found that separating and divorced women are 14 times more likely than married women to report violence by a spouse or ex-spouse; this study further discovered that although separated or divorced women comprised as little as 10% of the sample, they reported 75% of the domestic violence. ⁽¹⁷⁾ Other studies of court services related to domestic abuse found that 60 - 75% of divorcing couples identified a history of domestic abuse in their marriages.

9 Wilt, S.A., Illman, S. M., & Brody-Field, M., "Female Homicide Victims in New York City: 1990 - 1994." New York Dept. of Health, Injury Prevention Program. (1997).

10 Pagelow, M., "Justice for Victims of Spouse Abuse in Divorce and Child Custody Cases.: 8 **Violence and Victims** 1, 69 (1993); and "The Forgotten Victims: Children of Domestic Violence." Paper prepared for presentation at the Domestic Violence Seminar of the Los Angeles County Domestic Violence Council (1989).

11 Stark, E. & Flitcraft, A. "Women-Battering, Child Abuse and Social Heredity: What is the Relationship?" In Johnson (Ed.), **Marital Violence**. Sociological Review Monograph No. 31, Routledge and Keegan (1985).

12 Saunders, D.G. "Child Custody Decisions in Families Experiencing Woman Abuse." 39 **SOCIAL WORK** 1, 51 (1994).

13 Depner, C. "Evolving Picture of Domestic Violence in Family Court Services." Presentations for Child Custody Evaluators, 1997 -1998. Administrative Office of the Courts, Judicial Council of CA, Statewide Office of Family Court Services. Phone 415/396-9153. Reported that children of more than half of the divorcing couples in the sample witnessed domestic violence by one parent against the other.

14 Schechter, S. et al. "Domestic Violence and Children: What Should the Courts Consider?" 1 **Juv. & Fam. Just. Today** 4, 10 (1993).

15 Bowker, L.H., Arbitell, M., & McFerron, J. R. "On the Relationship Between Wife Beating and Child Abuse." In K. Yllo and M. Bograd (Eds.), **Perspectives on Wife Abuse**. Newbury Park, CA: Sage (1988).

16 Bowker, et al., supra at note 15.

17 Harlow, C. W. "Female Victims of Violent Crime." U. S. Dept. of Justice. 13 (1991).

(18) A California survey indicated that at least one restraining order had been issued in upwards of 56% of divorce cases. (19)

The amount of domestic violence inflicted during and after legal process is not insubstantial. A Toronto investigation of domestic violence in the context of custodial access found that 25% of the mothers reported threats against their lives during custody visitation. (20) A California survey suggested that nearly half of the mothers in divorce proceedings were fearful of future violence by the other parent. (21) Another inquiry noted that women appear to be more likely to be murdered when attempting to report abuse and when seeking legal remedy. (22)

A survey of divorced, Philadelphia-area women found that 70% were abused by their spouses. Nineteen percent cited the violence as their primary reason for leaving the marriage. Fifty-four percent had suffered several incidents of violence and sustained injury from their ex-husbands. Even after separation, nearly one-half of the women experienced violence from their estranged husbands. Not surprisingly, 30% feared further violence during child support negotiations, and, of this subset, 66% did not receive regular child support payments. (23)

Battered women and their dependent children are often economically compelled back into relationship with batterers. Many women who establish households independent of battering husbands/partners find themselves in poverty. (24) A 1986 Philadelphia divorce study found that men who batter are less likely to pay support than men who do not use violence towards their intimates (45% as compared to 76%), and batterers are less likely to fully comply with child support orders (28.3% as compared to 49%). (25)

Economic viability appears to be a critical factor in the decision-making of battered women deliberating on separation from the batterer. (26) The most likely predictor of whether a battered woman will permanently separate from her abuser is whether she has the economic resources

18 Kurz, D. "Separation, Divorce, and Woman Abuse." **Violence Against Women** , 2(1): 63-81 (1996).

Newmark, L., Harrell, A., and Salem, P., "Domestic Violence and Empowerment in Custody and Visitation Cases." **Family and Conciliation Courts Review** , Vol. 33 No. 1, 30 - 62 (January 1995).

19 Depner, supra at note 13.

20 Solicitor General of Canada, "Spouse abuse in metropolitan Toronto: Research report on the response of the criminal justice system." Report No. 1989-02 (1989).

21 Depner, supra at note 13.

22 Sonkin, D.J., Martin, D. & Walker, L. **The Male Batterer: A Treatment Approach**. Springer Publishing Company, (1985).

23 Kurz, D., supra at note 18.

24 Aguirre, B.E. "Why Do They Return? Abused Wives in Shelters." **Social Work** , 30 , 350-354 (1985).

Gondolf, E.W. **Battered Women as Survivors: An Alternative to Treating Learned Helplessness**. MA: Lexington Books (1988).

Okun, L. **Woman Abuse: Facts Replacing Myths**. Albany: State University of New York Press (1986).

25 Kurz, D., & Coughney, K. "The Effects of Marital Violence on the Divorce Process." Paper presented at the American Sociological Association Meeting, (August 9, 1989).

26 Aguirre, supra at note 24.

to survive without him.⁽²⁷⁾ Three critical ingredients of economic independence for battered women include income from a source other than the batterer, adequate transportation and sufficient childcare arrangements.⁽²⁸⁾

Safety

Safety is not simple. Minimally it entails being free of violence and coercion. But safety goes well beyond and includes the ability to negotiate life's daily challenges without having decisions intruded upon and contravened by a controlling partner. It includes the confidence that the battering parent will not disrupt the routines of children. It is freedom from public and private denigration from an abusive spouse. It is a cessation of stalking. It is the knowledge that disagreement with the child's father will not precipitate violent retaliation. Court structures and processes promoting safety.

When battered women conclude that the civil legal system might offer some assistance in their efforts to end the violence in their lives, they often have found that the bar and courts are not receptive to their applications for protection and claims for economic justice. However, the barriers historically posed by the bar and courts are beginning to tumble as professionals seek to construct a legal system that quickly and effectively responds to the safety requirements of battered women and their children.⁽²⁹⁾

Informed Counsel

The first barrier encountered by domestic violence survivors is the lack of counsel adequately informed about domestic violence.⁽³⁰⁾ Even those attorneys well-versed in violence against women are often unwilling to step outside of the traditional family law practice 'box' to persuade their peers and judges that definitive safeguards are critical, that economic recovery is fundamental to restoration and that timely enforcement of court orders is essential.

Training for lawyers specifically about domestic violence, the continuing risk of abuse and the impact on victims, both adult and child, is minimal.⁽³¹⁾ Few law schools incorporate domestic

27 Okun, *supra* at note 24.

28 Gondolf, *supra* at note 24.

29 But see, Stop Violence Against Women, Technical Assistance Project. "Assessing the Justice System Response to Violence Against Women: A Tool for Community-Based Victim Services Programs for Developing Effective Responses." Promising Practices Initiative, STOP TA, Washington, DC (1998).

Hofford, M., Bailey, C., and Dansie, S. **Courts and Communities: Confronting Violence in the Family**. Reno, NV: National Council of Juvenile and Family Court Judges. (March, 1993).

30 The Family Violence Project of the National Council of Juvenile and Family Court Judges. "Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice." **Family Law Quarterly**. Vol. 29, No. 2, (Summer, 1995).

Valente, R. L. "Addressing Domestic Violence: The Role of the Family Law Practitioner." **Family Law Quarterly**. Vol. 29, No. 2, (Summer, 1995).

31 Florida Bar. **The Florida Bar Handbook on Domestic Violence**. (May, 1995).

violence in the curriculum, and then coverage is usually in clinical courses.⁽³²⁾ Many state and local bar associations have not stepped up to the plate to address the particular needs of battered women and children. Too often faculty of continuing legal education programs dismiss the importance of domestic violence in dissolution cases and emphasize the so-called 'inappropriate' use of protective remedies to unfairly advantage the abused parent in divorce proceedings. Yet, remarkable strides are being made in law student and attorney education about domestic violence and essential remedies thereto.⁽³³⁾

Affordable Counsel

A second barrier is the sharp limitation of affordable legal representation for poor and middle income battered women. Even battered women of means often do not have access to the income and assets of the couple and cannot retain counsel.

One response has been to experiment with the unbundling of legal assistance in family law matters. These initiatives are in their infancy, but there are models emerging. Administrative offices of state courts and bar associations have begun to consider professional guidelines for unbundling to permit clients to participate with lawyers in preparing and pursuing family law

32 Goelman, D. & Valente, R. "When Will They Ever Learn: Educating to End Domestic Violence." ABA Commission on Domestic Violence (1997).

Textbooks on domestic violence law are of recent vintage and are not broadly utilized.

Lemon, Nancy K.D. **Domestic Violence Law: A Comprehensive Overview of Cases and Sources**. Austin & Winfield, (1996).

Balos, B. & Fellows, M. L. **Law and Violence Against Women: Cases and Materials on Systems of Oppression**. Carolina Academic Press (1994); this text broadly addresses violence against women, not only domestic violence.

Dalton, C. & Schneider, E. **Battered Women and the Law**. (forthcoming, Foundation Press, 1999).

Cahn, N., Meier, J. and Coombs, M. **CRIMINAL LAW AND THE FAMILY**. Carolina Academic Press (a supplemental text, forthcoming, 1999).

Hassler, R. & Zollo, N. **Domestic Violence Education in Florida**. State of Florida, Department of Community Affairs (forthcoming 1998). For further information contact the Governor's Task Force on Domestic and Sexual Violence, 2555 Shumard Oak Blvd., Tallahassee, 32399. Phone 850/921-2168; fax. 850/413-0812.

A course syllabus on domestic violence has been developed by Sarah Buel of the Domestic Violence Clinic at the University of Texas. For copies of the syllabus, contact Kristin Richards at the ABA Commission on Domestic Violence at 202/662-8637.

33 The Family Violence Project of the National Council of Juvenile and Family Court Judges. "Family Violence in Child Custody Statutes: An Analysis of State Codes and Legal Practice." Special Issue on Domestic Violence, **Family Law Quarterly**, Vol. 29, No. 2, 197 - 227, (Summer 1995).

However, see: American Bar Association, Commission on Domestic Violence. In Goelman, D. and F.L. Lehrman and R.L. Valente (Eds.), **The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook**, (1996).

Florida Bar Association. **Florida Domestic Violence Law: A Manual for Attorneys for Domestic Violence Cases**. (1995).

Mentoring projects have sprung up in a number of jurisdictions. One example is the training that the Atlanta Volunteer Lawyers (AVL) does for pro bono attorneys, law students and advocates assisting abuse victims in civil protection order proceedings. Each volunteer is provided a short course on domestic violence and protection order advocacy and then given on-the-job training at hearings by staff of AVL or the Victim Assistance staff.

claims. The hope is that unbundling will potentially bring representation within the reach of many economically marginal people, particularly battered women. ⁽³⁴⁾

In some jurisdictions, legal hotlines for domestic violence victims have enabled victims to ask questions and obtain limited advice about family law matters. ⁽³⁵⁾

To address the dual problems of uninformed and unaffordable attorneys, several additional representation strategies have been developed. ⁽³⁶⁾ Recently, the domestic violence community has launched partnership projects between legal services, the private bar, law schools and domestic violence programs to create a legal safety net for domestic violence victims. ⁽³⁷⁾

34 The courthouse facilitation movement, predominantly located on the west coast, is examining the practice of unbundling in the family law area and is developing guidelines or standards thereon. In Oregon the OR Family Law Legal Services Commission is studying the advantages and disadvantages of unbundling of legal services. See Maricopa County Self Help Center, *supra*.

35 The New Mexico Coalition Against Domestic Violence offers a legal hotline to battered adults throughout the state. Victims can speak with a lawyer briefly about their civil legal questions and pro se litigation. Referral is made to counsel who are knowledgeable and affordable.

36 The Tri-County Legal Access Project, located in Multnomah, Washington and Clackamas counties in Oregon is a collaboration between legal services organizations, the private bar and domestic violence programs. They provide assistance to pro se battered litigants through clinics on dissolution and custody, offer pro bono counsel in contested dissolution cases, and furnish twice monthly advice clinics on family law matters for victims of domestic violence. One large law firm in Portland teaches the pro se clinics and handles all contested dissolution cases that derive from the clinic. They have developed a program for recruitment and training of pro bono counsel for restraining order and full family law representation panels.

The Florida Coalition Against Domestic Violence obtained a grant to hire, train and mentor a limited number of attorneys across the state to represent battered women in contested custody and other domestic relations cases.

A law firm in the greater Seattle area provides the funding to the county's protection order program to hire an attorney to represent all victims in contested protection order matters.

Legal programs affiliated with shelters and domestic violence programs have begun to offer civil legal representation to clients in complicated or contested domestic relations matters. LifeSpan Center for Legal Services utilizes staff attorneys, volunteers and law students to provide representation across family law issues. The program attempts to cover litigation costs, such as expert witness fees and deposition costs. One unique feature is that the program provides family law legal services to victims in misdemeanor criminal cases identified as high risk.

The Kansas Bar Association, in conjunction with the Legal Aid Society, has established a reduced fee referral panel; battered women with incomes between 125% and 200% of the poverty level may obtain legal assistance on protection order and other family law matters.

In New Hampshire, the state bar association established the DOVE pro bono initiative. In every county in the state a DOVE panel, trained in domestic violence issues and law, offers representation in protection order cases to low income battered women. Some representation is available in family law cases.

Pro bono projects at the ABA and in a growing number of cities and states are offering assistance across the spectrum of family law and other civil legal matters.

Kunce Field, J. **Domestic Violence Advocacy: Models of Representation**. Harrisburg; PCADV/BWJP/Partnership Project. (forthcoming, summer 1999).

37 The Partnership Project of the Battered Women's Justice Project/Civil Division has launched a national undertaking to build capacity and partnerships between the private bar, legal services, law schools and domestic violence programs to increase the quality and availability of legal representation for battered women. Pilots have been established in New England, North Carolina, Oregon and Pennsylvania. Foci of these legal initiatives include welfare, immigration and custody. For further information, contact Bette Garlow at 800/903-0111, ext. 2.

Legal Services of North Carolina recently received a grant to hire 15 experienced attorneys across the state to provide legal representation to victims of domestic violence in emergency civil matters. Cooperative agreements between local legal services and domestic violence programs provide that domestic violence programs will identify clients and set priorities

Security

Yet another safety barrier that has impeded justice-seeking is inadequate security in many courthouses. Battered women often find themselves running a gauntlet of verbal and physical abuse to get into the courthouse and once there too often find themselves subject to the intimidation and threats of batterers. Courts have begun to realize that the risks posed to court staff and the public may be highest in the context of domestic relations practice. Thus, reforms have been initiated. ⁽³⁸⁾

User-Friendly Pro Se Systems

A further barrier to justice for battered women is the lack of user-friendly pro se systems. Limited access to counsel has dramatically increased the number of cases filed pro se in the last decade. The demand created on courts by pro se litigants has moved court administration in a number of jurisdictions to respond; to craft procedures, devise forms and instructional materials, establish referral systems, offer clerical assistance and avail litigants of on-site pro bono consultations. ⁽³⁹⁾

for local service. Plans are to offer training and mentoring to attorneys and advocates. For further information, contact Beth Posner at 919/856-2579.

38 In Connecticut, the courts employ a number of security measures. Dedicated domestic violence dockets are staffed with extra personnel from the sheriff's departments. Staff of the Sheriff's office are trained on domestic violence and the safety risks posed by abusers.

In Delaware, a number of security precautions have been instituted to prevent violence in and about the courthouses. Pursuant to the state's victims' Bill of Rights, separate victim waiting areas are provided that are staffed by trained security personnel or police. The Director of Operations in each courthouse provides extra security whenever necessary. A security hotline is available. Any witness, attorney or judge can request more security in a courtroom and escort service within the building and to cars outside.

39 The Arizona courts, led by the Maricopa County Superior Court (Phoenix), are the undisputed leader in assistance to pro se family law litigants. The work of the Self-Service Center Program can be reviewed on line at <http://www.maricopa.gov/supcrt/ssc/sschome.html> (As of 04/02/04, this site is no longer available)

Maricopa County Superior Court's Self-Service Center Program provides an incredible array of assistance to literate pro se victims. The Center is housed on an entire floor of the courthouse in a spacious, friendly environment where instruction manuals, forms, an electronic referral network, clerical assistance and pro bono consultations with informed counsel are available to all people acting pro se or considering unbundled representation. It serves as a model for other courts considering improving court access to pro se litigants.

See also, Superior Ct. of Arizona in Maricopa County. **Litigants Without Lawyers: Exploring Trends and Solutions to a Changing Client Base in the Nation's Courts.** Phoenix, AZ: Superior Ct. (1995).

The Illinois Family Violence Coordinating Council has acquired funding to create a part-time family violence coordinator in every office. In Pittsburgh, the office of court administrator similarly employs a coordinator and support staff to assist victims in preparing protection order applications, to triage for the courts and to administer the program.

In Broward and Dade counties in Florida, a court-based and a legal aid-based program assist with the preparation of the pleadings, risk assessment, safety planning and development of access plans in custody cases. Similar services are now provided by court and community-based workers in many jurisdictions.

The Hawaii Family Court is undertaking the development of statewide forms. Standardizing the civil protection order forms will help law enforcement, the bar and advocates share an expectation of how restraining orders should look. This should enhance enforceability. Similar standardization of forms might be undertaken in divorce, paternity and other family law cases.

Linguistically accessible court forms and procedures are critical. In Delaware, paperwork is non-legal in terminology and the entire petition is one double-sided page. In Connecticut, the pleadings and related forms are available in several

Screening

Lawyers, mediators, custody evaluators, guardians ad litem and court personnel are starting to screen domestic relations litigants to ascertain if domestic violence has occurred in the marriage or relationship and to assess whether the impact and continuing risk of the violence requires remedy in the litigation. ⁽⁴⁰⁾ Failure to identify and assess may place the victim in legal and physical jeopardy and the professional at risk for malpractice claims.

Safety Planning

Likewise, the bar, court-affiliated professionals, as well as court services and clerical personnel, are introducing practice protocols that invite battered adults to assess the risks posed by batterers (considering the patterns of violence, intimidation and domination and any changes therein, as well as suicidal or homicidal threats and abusiveness toward children), the circumstances of the abuse (e.g. location, weapons, witnesses or stalking), the impact of the violence (e.g. injuries, sleep deprivation, loss of work or property destruction) and strategies to avoid contact, avert violence and obtain prompt and effective protection. Safety planning is an on-going process

languages. In Seattle, the court-affiliated protection order project works with a community program to assure that survivors with hearing impairments have full access to the courts.

In Louisville, Kentucky, the Jefferson County Family Court provides domestic violence information sessions to victims, their family members and other interested persons about domestic violence, court processes and protocols and resources available through the court, community and government agencies. A video is available on the protective order process and relief that judges may order.

It is apparent that the court facilitation movement is on the verge of transforming pro se practice in the country. Developmental work on court-funded and sited positions to assist pro se litigants are being devised. Legislation in Washington and California underwrites court administration support for pro se litigants.

The Florida Bar developed divorce kits to facilitate pro se practice. Noting that divorce lawyers are often beyond the financial reach of many battered women and/or too many lower income clients are unable to pay counsel once retained, kits were crafted to assure access to the courts without imposing financial liability on the bar.

40 Waits, K. "Battered Women and Family Lawyers: The Need for an Identification Protocol." 58 **Alb. L. Rev.** 1027 (1995).

Valente, R. "Screening Guidelines." In Goelman et al, supra at note 22.

Gerencser, A. "Family Mediation: Screening for Domestic Abuse" 23 **Fla.St.U.L.Rev.** 43 (1995).

Screening tools have been devised by national mediation associations, the American Bar Association (ABA) and the Administrative Office of the Courts in a number of states. (See Girdner, L. **Domestic Abuse and Custody Mediation: The State Justice Institute Curriculum** , a joint product of the ABA, the Academy of Family Mediators and the State Justice Institute with input from representatives of the National Council of Juvenile and Family Court Judges (NCJFCJ) Model Code on Domestic and Family Violence committee, forthcoming from the ABA, Spring, 1998).

Hart, B. "Custody and Divorce Mediation." **Managing your divorce: A guide for battered women** Reno: NV; NCJFCJ (forthcoming, 1998).

Illinois Family Violence Coordinating Council, **"Screening and Referral Tool"** Springfield, IL: IFVCC (publication forthcoming).

NCJFCJ, **Family Violence: A Model State Code** . Reno, NV: National Council of Juvenile and Family Court Judges.(1994). See Section 407.

Goelman, D., Dunford-Jackson, B.L., Lemon, N. & Valente, R. "Child Custody and Full Faith and Credit." **Full Faith and Credit: A Passport to Safety.** Reno. NV: NCJFCJ (1997).

Screening for domestic violence is an ongoing responsibility of court-affiliated personnel from intake through disposition. If domestic violence or child abuse is found, appropriate strategies should be employed. Guidelines, outlining ethical, appropriate responses to the discovery of abuse, are being promulgated by courts and professional associations.

that must be employed universally to enable battered women to act strategically to supplement protections afforded by legal process. ⁽⁴¹⁾

Exemption from Mediation

While mediation has increasingly become the process by which courts are handling divorce and custody cases, mediation is not appropriate for disposition of family law claims in the context of domestic violence. Thus, statutes and rules have recently been adopted creating exemptions from court-mandated or referred mediation of family law matters in the context of domestic violence. ⁽⁴²⁾

Informed Evaluators, Mediators and Guardians ad Litem

Particularly in the custody arena, the lack of training of professionals who are an integral part of the legal process has too often resulted in custody and access awards that expose victims to continuing, if not elevated risk of domestic and child abuse. ⁽⁴³⁾ Since many courts now look to the recommendations of evaluators for custody and access arrangements and sometimes craft orders based on little beyond the pleadings and evaluator reports, it is critical that these professionals are well versed in the law and grounded in a thorough understanding of domestic violence. Similarly, where mediators are not fully informed about risks and remedies, they may

41 Hart, B. & Stuehling, J. "Personalized Safety Plan." In Parker, C.L., Hart, B. and Stuehling, J. (Eds.) **Seeking Justice: Legal Advocacy Principles and Practice**. Harrisburg, PA: Pennsylvania Coalition Against Domestic Violence (1992).

Valente, R. L., supra at note 30.

Goelman, D. "Safety Planning." In Goelman, D. and F.L. Lehrman and R.L. Valente (Eds.) **The Impact of Domestic Violence On Your Legal Practice: A Lawyer's Handbook**. Washington, DC: ABA Commission on Domestic Violence (1996).

42 NCJFCJ, supra at note 40. The commentary to Section 311 explains the prohibition to court-ordered or referred mediation in protection order matters as follows:

"Mediation is a process by which parties in equivalent bargaining positions voluntarily reach consensual agreement about the issue at hand. Violence, however, is not a subject for compromise. A process which involves both parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order for protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought."

The section on custody mediation provides alternative code provisions. In Section 408 (A) there is a prohibition against court mandates or referrals during the pendency of a protection order and where allegations of domestic or family violence are raised. If the victim should want to mediate the divorce or custody matter, courts may order or refer to mediation only when "(m)ediation is provided in a specialized manner that protects the safety of the victim" and the mediation is conducted "by a certified mediator who is trained in domestic and family violence." Furthermore, where the victim elects mediation and a specialized process is constructed with mediation being conducted by professionals informed about domestic violence, "(t)he victim (must be) permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate."

43 Limited knowledge about domestic violence will almost invariably suggest custodial arrangements that are embedded in traditional preferences or presumptions favoring joint custody, frequent and continuing contacts, friendly parent considerations and highly interactive or enmeshed parenting plans. In the context of domestic violence, the preferences or presumptions in custody awards are sharply juxtaposed to the above and emphasize safety, autonomy and restoration for adult and child victims and structured, sometimes highly limited, access for abusers. Presumptions or preferred provisions include sole custody in the non-abusing parent, protected exchange, supervised visitation and other safeguards for the abused parent and children. See NCJFCJ, "Model Code...Chapter 4," supra at note 40.

unwittingly facilitate sharply unsafe and endangering agreements. ⁽⁴⁴⁾ Guardians ad litem, whether serving in abuse, neglect or custody cases, must understand domestic violence in order both to carefully assess allegations related to domestic or child abuse, failure to protect and false accusations and to respond thereto.

Parenting education

In recent years, courts have begun to require divorcing parents and those seeking custody to participate in parenting education courses prior to mediation or legal process. Some of these courses have been tailored to address post-separation parenting in the context of domestic violence. ⁽⁴⁵⁾ While many do not screen for domestic violence or child abuse prior to instruction, increasingly, courses provide for separate sessions for victims and batterers. There is an emerging consensus that 'one size fits all' parenting education courses seriously compromise the safety interests of battered parents and children, yet practice guidelines, court rules, state codes and professional standards have not been crafted to avert the dangers attendant upon promoting joint parenting strategies in the context of domestic violence. ⁽⁴⁶⁾

44 California's Family Code requires that custody evaluators and conciliation counselors be trained on domestic violence. Regulations specify that both private and court services child custody evaluators receive 12 hour of training in 7 areas: effects of domestic violence on children; the nature and extent of domestic violence; social and family dynamics of domestic violence; techniques for identifying and assisting families affected by domestic violence; interviewing; documentation of and appropriate recommendations for families affected by domestic violence; the legal rights and remedies available to victims; availability of community and legal domestic violence resources. For further information, contact Susan Hanks, Ph.D., AOC, Judicial Council of California, Statewide Family Court Services, 303 Second St., South Tower, San Francisco, CA 94107, 415/356-6683.

45 Massachusetts has been piloting mandatory parent education for divorcing parents in selected counties for a few years; they are now in the process of taking it statewide. The program provides for waivers in domestic violence cases, but many people do not self disclose. The program is currently working on screening strategies. All of the classes provide for separating spouses (classes are mixed gender, but husband and wife do not attend the same session), and are held at sites with security personnel.

Geri Fuhrmann of the U. of Mass. Medical School and Clare Dalton of Northeastern U. are working on a new parent education program suitable for domestic violence cases.

46 Parenting education is a relatively new field. Three programs that have squarely addressed the issue of domestic violence in the parenting education curriculum and process are: P.E.A.C.E., Nassau County, New York, Parents Apart, Massachusetts and Parenting After Divorce in Denver, Colorado. The P.E.A.C.E. Program Manual has detailed guidelines about how to cope with domestic violence issues. The P.E.A.C.E. Program Parents' Handbook was reviewed by the Nassau County Coalition on Domestic Violence and has extensive sections on domestic violence response.

Connecticut courts may have been the first to promulgate guidelines; these address both safety issues and provide for separate sessions. Massachusetts requires separate sessions for victims and batterers.

Statutes in Arizona, Connecticut, Delaware and Minnesota provide direction to courts about mandates to parenting education courses. Local court rules in Washington state similarly articulate practice guidelines related to classes in the context of domestic violence.

Results from the Braver, Salem, Pearson & DeLuse study (1996 Family and Conciliation Courts Review) show that 59% of mandatory programs (55% of all programs) report making special provisions for cases involving domestic abuse. The responses tailored were not captured in the study.

Within the parenting education field there is a move toward a parallel parenting model (i.e., when parents cannot/should not interact with one another regularly if at all) and increasing numbers of programs raise and address this issue directly.

Kramer, K. M. et al. "Effects of Skill-Based Versus Information-Based Divorce Education Programs on Domestic Violence and Parental Communication" **Family and Conciliation Courts Review** . Vol. 36, 1, (January, 1998).

Schepard, A. "War and P.E.A.C.E.: A Preliminary Report and a Model Statute on an Interdisciplinary Educational Program for Divorcing and Separating Parents." 27 **U. Mich. J. L. Ref.** 131, 170-71, (1993).

Court Supportive Services

Beyond these court-affiliated services, courts in a number of jurisdictions have instituted other services to promote the safety of battered adults and children. These range from skilled translation services to supportive services, childcare, counseling programs for children and supervised visitation centers.⁽⁴⁷⁾

Legal Advocacy

Another impediment to legal remedy for battered women may be the restrictions on the participation of community-based, survivor advocates in family law proceedings.⁽⁴⁸⁾ While advocates cannot represent battered women, they can provide support in legal proceedings and assistance in the development of pro se pleadings, facilitation of document acquisition (e.g. police reports, medical files and school records), instruction on safety planning, identification of essential protective provisions and consideration of presentation plans. Many are able to broker other victim services, including emergency housing, counseling, childcare, food, healthcare, job-training and other human services.⁽⁴⁹⁾

Expedited Process and Protections

Domestic violence intervention requires swift, comprehensive, detailed and readily enforceable response if victims are to be protected from further violence.⁽⁵⁰⁾ Protection order statutes are

47 Support workers in the family court in Jefferson County, IL offer information and referral services to the victims of domestic violence who have petitioned for protective orders.

Childcare poses a significant problem to many battered women seeking justice. Several jurisdictions have instituted childcare centers in the courthouses to assure that children are not exposed to violence or intimidation in the legal process.

In Cook County, Illinois, the domestic violence misdemeanor courts are located in one building. A waiting room for abused adults and their children is child-friendly and staffed by security personnel. Children may remain in the waiting room while their mothers attend court.

In Jefferson County, Kentucky, the family court provides a children's waiting room which is staffed by community volunteers.

In Ontario, the London Family Court Clinic offers assessment and counseling for children of domestic violence.

The Illinois Family Violence Coordinating Council has funded a model supervised visitation site. Expansion of this service is anticipated. See also, the Judicial Supervision Program in Tucson, Arizona.

48 But see the California Family Code at § 6303, which explicitly permits support persons to accompany a victim of domestic violence to various family law proceedings, including but not limited to protection order hearings and custody mediation. The statute specifies that the support person is not to act as a legal adviser but may offer moral and emotional support, and where the victim is not represented, sit with the abused at counsel table.

49 Parker, C.J., Hart, B. & Stuehling, J. **Seeking Justice: Legal Advocacy Principles and Practice**. Harrisburg, PA: Pennsylvania Coalition Against Domestic Violence (1992).

Hart, B., Murphy, S. & Stuehling, J. **Domestic Violence: Legal Advocacy Practices**. Harrisburg, PA: PCADV (1997).

Community-based legal advocacy is offered by domestic violence programs across the country. The Violence Against Women Act of 1994 greatly increased the availability of funding to domestic violence programs and enabled great expansion of legal advocacy services.

50 Dunford-Jackson, B.L., Frederick, L., Hart, B. & Hofford, M. "Unified Family Courts: How will They Serve Victims of Domestic Violence?" **Family Law Quarterly**. Vol. 32, No. 1, (Spring, 1998).

Stop Violence Against Women, Technical Assistance Project, *supra* at note 29.

often crafted to facilitate all of these requirements. These codes are distinguished from many other civil and family law statutes as they outline extensive court responsibilities, incorporate court procedures, specifically detail enforcement processes as well as providing for penalties. Protection order codes embody access mandates that are extraordinary. Immediate access for ex parte emergency protection orders is generous. Ex parte proceedings for temporary protection are available daily in most jurisdictions. Many codes do not require responsive pleadings. Virtually all provide for a hearing on applications for final orders on an expedited schedule; from the next day to within 30 days. Directives regarding service of process are also included in these codes, and courts and sheriff's departments have adopted service protocols that promote immediate service of civil protection orders. Under most codes, respondents who seek to avoid service or who fail to appear after service of process are not able to avoid the extension of emergency orders or the issuance of final orders. Court administration in many states and jurisdictions have carefully tailored structures and processes to accommodate the exigent nature of domestic violence and the necessity of full, immediate relief. Judges have responded to the urgency of domestic violence by limiting continuances and by extending protective provisions in favor of the victims, at a minimum, until the conclusion of the proceedings. ⁽⁵¹⁾

In the spectrum of other family law matters, emergency relief is sharply limited. The lack of swift accessibility to the courts (or agencies/professionals acting in their stead) in custody, support, and divorce matters creates significant barriers to essential safety for battered women and children.

Dedicated Docketing and Courts

Many courts have responded to the high demand for civil protection orders by establishing separate dockets and sometimes dedicated courtrooms. The economies and efficiency achieved thereby have convinced many court administrators to adopt these strategies. The quality of justice, both in terms of safety and accountability, have persuaded advocates and attorneys specializing in protection order practice of the merit of dedicated docketing and courts. ⁽⁵²⁾

Hofford, et al, **Courts and Communities** , supra at note 29.

Town, Michael. "The Unified Family Court: Therapeutic Justice for Families and Children." *Address to the Chicago Bar Association* , March, (1994).

Klein, C. F. & Orloff, L. E. "Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law." 21 **Hofstra L. Rev.** 801, (1993).

Hart, B. "State Codes on Domestic Violence: Analysis, Commentary and Recommendations," **Juvenile and Family Law Digest**, Vol. 25, No. 1, (1992).

A 1997 amendment to the Virginia code authorizes police to electronically seek an emergency protective order and places a priority for emergency order registration within the state system. An Illinois revision requires that a judge be available 24 hours a day to hear applications for emergency protective orders.

51 Griffith, C. & Tucker, M. "A Cry for Help: The Need for Judicial Response to the Threat of Domestic Violence." **The Judges Journal**. American Bar Association Commission on Domestic Violence, 1997. See also, the Commission's "Judicial Checklist from the Judicial Subcommittee."

52 Merryman, M. "Specialized Domestic Violence Courts: A New Means to Address an Age Old Problem." Harrisburg, PA: PCADV (forthcoming 1998).

Also look for report on dedicated domestic violence courts by Susan Keilitz of the National Center for State Courts. (forthcoming 1999).

Some dedicated civil courts include more than protection order matters on their calendars.⁽⁵³⁾ However, they are few, and most triage response; starting with protection order applications, moving quickly to child abuse and neglect allegations and thereafter support, custody and divorce proceedings are calendared. Consolidation is uncommon. Some dedicated dockets or courts handle misdemeanor criminal matters and issue civil protection orders to victims of those misdemeanor charges that proceed to trial.⁽⁵⁴⁾ Consolidation of criminal arraignment and emergency order applications is common. Thereafter, the civil protection orders are generally transferred to the civil docket for hearing on a final order. There are several dedicated felony domestic violence courts.⁽⁵⁵⁾

Preservation of Confidential Addresses

Many battered women seek emergency shelter at programs that maintain confidential locations, and others relocate from the family residence to limit batterer access and enhance safety. Protection order codes generally provide that these addresses not be disclosed, particularly to the abuser or defense counsel. Federal law and regulations also provide for the non-disclosure of shelter and confidential residential addresses of domestic violence victims.⁽⁵⁶⁾ Some custody statutes do likewise. Court administrators have devised systems to maintain the confidentiality of these addresses in protection order proceedings.

Victims of domestic violence often find it harder to safeguard the privacy of their residence addresses from the abuser and the public in other family law matters.

A preliminary listing of dedicated domestic violence courts includes: California (LA Superior Ct., Western Riverside Municipal Court, Rio Hondo Municipal Court, San Francisco Misdemeanor Domestic Violence Court, Sonoma County Superior Court, South Bay Municipal Court, Yolo County Family Violence Court), Denver Domestic Violence Ct., CT (Fairfield Judicial District, Superior Ct., New Haven Judicial District, Superior Ct., Waterbury Judicial District, Superior Ct.), Washington, D.C., DE (3 in the Family Division), FL (Volusia County, Eighth Judicial Circuit, Dade County, Broward County, Twentieth Judicial Circuit), IL (First Municipal Court, Chicago, Will County, Markham Municipal District Court), IN (Marion Municipal Court), KS (Shawnee County Court, Topeka), MI (Berrien County Trial Court, Wayne County Trial Court), MN (Hennepin County), NV (Second Judicial District Court, Reno), NM (Second Judicial District Domestic Violence Court, Albuquerque and 11th Judicial District Court), NY (NYC Superior Court), OH (Cleveland Municipal Court), NC (26th District Court, Charlotte), PA (Family Court and Protection from Abuse Courts, Philadelphia), TN (Shelby County), TX (Dallas County), WA (Seattle Municipal Court, King County Superior Court, Pierce County Superior Court).

53 In New Hampshire there is an experiment to bring all family cases together under one jurisdictional umbrella: all juvenile (including abuse and neglect, delinquency and CHINS), divorce, custody, support, guardianship, adoptions, TPRs and protection orders. The experiment is being piloted in 2 of the state's 10 counties. The pilots are a "one judge, one family" model.

54 See Cook County Dedicated Domestic Violence Court. For further information, contact Presiding Judge Coco at 1340 South Michigan Ave., Chicago, IL 60605.

55 Brooklyn has one felony domestic violence court operational and is planning for another in the near future. See also, King County (Seattle) WA.

56 Zorza, J. "Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women." **Family Law Quarterly**. Vol. 29, No. 2, Summer, 1995, at 282, footnotes 76 - 78.

Campbell, B.J. **Report to Congress: The Confidentiality of Communications Between Violence Victims and Their Counselors. Findings and Model Legislation**. U.S. Department of Justice. (December, 1995).

Court Data Systems

Automation of court records has dramatically expanded in the past several years, as has the software that permits family law judges to access criminal history and criminal court databases, juvenile justice records, child abuse dispositions, and support adjudications.⁽⁵⁷⁾

In a growing number of jurisdictions, judges now have the ability to identify all the legal proceedings in which both the domestic violence victim and perpetrator have been a participant in a particular judicial district and even within the state. Thus, a judge may be able to determine if other protection orders on behalf of other victims are extant or might be able to assess compliance patterns with other court orders.

Leaders in the domestic violence field have maintained that the best decisions in cases involving domestic violence will result if judges have accurate and extensive information. Several state statutes and the Model Code⁽⁵⁸⁾ require the protection order applicant to apprise the court of all other proceedings in which the parties have been involved; thus permitting judges to review other dispositions and take judicial notice thereof. However, principles of due process and fundamental fairness might appropriately restrict the scope of review and the judicial notice appropriately taken of the other legal outcomes. Guidelines or parameters for judicial review of these data from other proceedings should be crafted in local rules or in professional canons for judicial practice. Notice to the parties of the particulars of the review and the conclusions, if any, reached thereby must be given to the parties.⁽⁵⁹⁾

Expedited Review

In all family law cases where *ex parte*, emergency relief is available to endangered litigants or the parent of a child at risk, a denial of the relief requested by the victim should be subject to expedited review. Since the purpose of civil protection orders is to safeguard against future life-endangering violence and to enable the abused to construct a stable residence independent of the abuser if separation is elected, the denial of relief to an eligible applicant portends significant risks. Thus, judicial error, if any, must be corrected with dispatch. State legislators,

57 In Cook County, IL, the Office of the Chief Judge devised an electronic process for protection order application by *pro se* litigants which is linked to a database in which judges can input corresponding orders. The addresses that are confidential do not appear on any printed application or order although they are retained in the database.

The Protection From Abuse Database (PFAD) in Pennsylvania likewise is designed to be a seamless electronic application, order, service, registry and modification system. Confidential addresses are maintained within the courts database, and all electronic copies available to law enforcement, prosecutors, attorneys and probation officers will not reveal any confidential address.

Security of confidential addresses is potentially easier in an electronic system which permits access to authorized personnel only and which allows only judges and court personnel to read these addresses. However, courts that are not automated have devised various methods for maintaining confidential addresses, particularly those contained in protection order applications.

58 See NCJFCJ, *supra* at note 40. Section 304(3) related to disclosure of all other legal proceedings in protection order application.

59 Dunford-Jackson et al, at note 50.

court rules and administrative procedures in a number of jurisdictions have addressed this problem.⁽⁶⁰⁾

Firearms Forfeiture Directives

State and federal statutes now require most persons against whom final protective orders are entered to relinquish firearms and ammunition for the duration of the order.⁽⁶¹⁾ The dangers posed by firearms in domestic assaults and femicides are high.⁽⁶²⁾ Few state codes provide clear direction about enforcement of possession prohibitions.⁽⁶³⁾ Only a handful of jurisdictions have written procedures for the law enforcement agency(s) charged with enforcing these provisions about action to take in the absence of timely surrender.⁽⁶⁴⁾ Explicit directives are essential for consistent enforcement of these safety provisions.

Accountability

Accountability to the courts, victims and the community is a critical component of a just justice system. Research demonstrates that men stop battering women partners to the extent that they perceive that penalties for further violence will be both certain and severe.⁽⁶⁵⁾ It appears that most batterers engage in a cost/benefit analysis in electing to continue or terminate their violent assaults on wives or women partners. In those jurisdictions where the courts and the criminal

60 In Reno, Nevada, any denial by a magistrate is subject to immediate review by a family court judge. In DE, all protection order proceedings are on the record and directly appealable without a trial de novo to the Supreme Court.

61 Hart, B. "Firearms and Protection Order Enforcement: Implications for Full Faith and Credit and Federal Criminal Prosecutions." Paper presented at the Domestic Violence Conferences of the National College of District Attorneys in 1996 and 1997.

62 Bonderman, J. "Firearms and Domestic Violence." **Stopping Violence Against Women Using New Federal Laws: Study Guide**. Washington, DC: ABA Commission on Domestic Violence and Center for Continuing Legal Education and Center for Pro Bono. 1996.

Bonderman, J. "Firearms and Domestic Violence." In Goelman, D. and F.L. Lehrman and R.L. Valente (Eds.), **The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook**. Washington, DC: American Bar Association, Commission on Domestic Violence, 1996.

Saltzman, L. E. et al. "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults. 267 **J. Am. Med. Ass'n**. 3043, 1992.

63 But, see California Family Code § 6389 (West 1996).

64 See Appleton, WI Police Department. <http://www.appleton.org/police>

In Delaware, there is an electronic data system related to weapons. When a firearms prohibition or surrender directive is included in a protection order, it advises the defendant of the date and place to which the firearms are to be surrendered. When the defendant surrenders the weapons, the agency electronically confirms surrender. A receipt is issued to the defendant. If surrender does not occur as specified, the system will send electronic notice to the agency which is then charged with immediately dispatching officers to arrest the violator. The victim also receives notice of violation and may then file for civil contempt.

65 Carmody, D.C. and Williams, K.R. "Wife Assault and Perceptions of Sanctions." **Violence and Victims**, Vol. 2, No. 1, (1987).

Jaffe, P., Wolfe, D.A., Telford, A. & Austin, G. "The impact of police charges in incidents of wife abuse," **Journal of Family Violence**. 1(1), (1986).

justice system respond to domestic violence as serious criminal conduct and impose sanctions accordingly, the cost/benefit balance tips in favor of desistance. ⁽⁶⁶⁾

'Zero tolerance' must be the standard to which domestic violence perpetrators are held by courts; that is, no tolerance for continued violence, stalking, non-payment of support and restitution, failure to participate in counseling or community services, manipulation around custodial access, and attempts to control the victim or intrude upon her life. Only when courts require such accountability will batterers desist in their violent and controlling tactics and will victims achieve the safety and autonomy to which they are entitled. Sure, swift and consistent enforcement that results in immediate and sufficient sanctions appears to best deter or incapacitate batterers. Unless courts, in concert with law enforcement and prosecution, take definitive action in response to recidivism, adult and child victims will continue to live in fear and peril. Only batterers who are accountable, who follow the directives of the court and abide by the law, should be privileged to be free of legal and community sanctions.

Court structures and processes promoting accountability.

Court Reviews of Compliance

Tight scrutiny and close supervision of domestic violence perpetrators appears to deter recidivism, perhaps best when coupled with counseling or educational programs for abusers. ⁽⁶⁷⁾ Few courts schedule regular compliance reviews with batterers subject to protection orders or probation, but judges and court personnel in jurisdictions that invest time in compliance reviews find that they are good prevention strategies. ⁽⁶⁸⁾

Where judges mandate counseling or educational intervention with batterers, contracts or referrals to batterer intervention programs should require regular reports to the court about attendance, participation and completion of programs, and immediately report recurring violence to court personnel. Most standards for batterer intervention programs, whether embodied in

66 Hart, B. "Domestic Violence Intervention System: A Model for Response to Woman Abuse." **Confronting Domestic Violence: Effective Police Response**. Eds. Hart, B., Stuehling, J., Reese, M. & Stubbing, E. Harrisburg, PA: PCADV, (1990).

67 Conversations with Pat McGrath about the compliance reviews of the South Bay Municipal Court, Chula Vista, California and the low rates of recidivism reported.

68 Judge Martin Herman, sitting in the Superior Court of New Jersey, Woodbury, NJ, clearly articulates the importance of compliance reviews related to civil protection orders and the practice is reportedly routine in New Jersey. Judge William Cannon in San Diego County established a system of periodic reviews that serve both as compliance assessment and a judicial teaching tool for those serving terms of probation for domestic violence misdemeanors.

Judge Lawrence Hauser of CT points out that the requirement of a next day appearance by all accused of domestic violence crimes, even by those who have bonded out, gives the opportunity, not only for the immediate issuance of a protective order, but next day intervention of the family violence intervention of the court which can then devise recommendations to the court for conditions on release to safeguard victims and facilitate perpetrator accountability.

In DE, perpetrators must submit proof of enrollment in batterer intervention programs to victim advocates who can advise victims of batterer compliance with the counseling mandate. Many battered women remain with batterers when they believe that they are attending and investing in counseling, hoping that participation will facilitate change and eliminate violence. When these women learn of non-compliance, they often separate from the non-complying perpetrator.

See Hofford et al. **Courts and Communities** , supra at note 29, at page 24.

state code or regulation or adopted by professional associations, require regular reporting about compliance of court-mandated participants and impose a duty to warn foreseeable victims and law enforcement of threats or of imminent danger. ⁽⁶⁹⁾

Accessible Registries

With the inception of civil protection order statutes, courts and law enforcement agencies constructed registries of extant protection orders so that officers responding to alleged violations were able to verify the existence of orders and assess whether violations had occurred. Arrests appear to be more likely where registries enable verification; officers may be less reluctant to arrest than in those communities where evaluation of a violation is based solely on a court order in the possession of the victim. Concern that officers will be subject to liability for wrongful arrest is mitigated when officers are able to rely on registries.

Initially, registries were very primitive paper files kept in a bin at the police agency where the victim resided. More recently, electronic registries have been implemented and many of these are statewide databases. In fact, registries are now operational or in design mode in more than two-thirds of the states. ⁽⁷⁰⁾

Electronic registries have demonstrably facilitated interstate enforcement of protection orders. Law enforcement and courts are able to readily ascertain the particulars of orders issued in other states. Judges can locate their colleagues in other jurisdictions who have issued orders sought to be enforced and discuss the evidence presented, findings of fact, the particulars of orders and the history of compliance. Electronic registries enable seamless participation in the FBI's NCIC protection order file.

Bail screening and standards

Bail has been a recurrent accountability problem. Screening for criminal history, outstanding warrants, valid protection orders, and risks posed by batterers is perfunctory, at best, in many jurisdictions. Pre-trial services and courts have begun to promulgate guidelines for identification of domestic violence cases and screening of the risks posed by the accused therein. Similarly, bail schedules and guidelines for denial and revocation are beginning to be tailored to the often elevated risk posed by those accused of domestic violence crimes. ⁽⁷¹⁾

69 See the web site of Catholic Social Services of Ann Arbor, MI, <http://www.csswashtenaw.org/intro.htm> , which contains a comprehensive library of state and local standards for batterer intervention programs.

Austin, J. & Dankwort, J. "A Review of Standards for Batterer Intervention Programs." A paper prepared for VAWnet, a dedicated electronic network of state domestic violence coalitions and allied national organizations (1997).

70 Zeya, S. **Full Faith and Credit Enabling Legislation and Registries Matrix**, Harrisburg, PA: Pennsylvania Coalition Against Domestic Violence (December 1997).

See "Full Faith and Credit." at .

71 Several years ago, Chief Justice Stephens of Kentucky directed that pre-trial services personnel utilize specialized screening tools to identify domestic violence perpetrators (whether or not the crime charged entailed domestic violence), to undertake a risk assessment of the accused so identified and to recommend bail and conditions thereon in light of risks posed to the victim. Tools were developed for implementation of this directive.

The unified court structure in Hawaii and the close working relationships between law enforcement, prosecutors and the courts have produced standardization of bail statewide for domestic violence misdemeanors.

Prioritizing and enforcing restitution awards

Historically, crime victims were the last to receive funds paid by offenders. Court costs, fines, penalties, counseling fees, etc. were paid before any funds were directed at victim restitution. In some jurisdictions, this ordering has been reversed so that victims achieve the first benefit from payments made pursuant to sentencing.

Where restitution is broadly conceived, i.e. where victims may claim not just medical or counseling reimbursement, but property replacement, lost wages or tuition, relocation costs, funds expended for participation in legal process, etc., the adverse impacts of domestic violence may be mitigated.

Tightly monitored repayment schedules have permitted victim restoration in an increasing number of jurisdictions.

Mechanisms for firearms compliance

Unless courts and law enforcement collaborate in monitoring firearms compliance, many offenders will not surrender weapons pursuant to court order. Many batterers feel very strongly that their right to bear arms is inalienable and mount great resistance to compliance. Only in jurisdictions where monitoring is close and enforcement follows immediately on the heels of non-compliance will the intent of state and federal law be met. Few jurisdictions have designed such enforcement mechanisms. ⁽⁷²⁾

Jail Triage

In a handful of judicial districts, courts have taken the initiative to work with those managing local jails to assure that beds are available for those batterers not admitted to bail and those serving time for misdemeanor offenses. These, usually informal, agreements for management of population to afford space for violent domestic offenders are essential accountability mechanisms. ⁽⁷³⁾

Leadership of Court Administration and the Judiciary

Court administrators and judges around the country have responded to the crisis of domestic violence by stepping out of the box and stepping up to the plate of the legal system and leading in profound changes in the structures and processes of the legal system. Over the course of the last ten years, leaders from administrative offices and the bench have pursued their professional mandates and fiduciary responsibilities seriously in the pursuit of justice for abused adults and children. Those most effective have embraced and articulated the vision of building

72 See endnote 64.

73 Judge Una Keenan of the East Cleveland Municipal Court established a practice more than a decade ago that prioritized bed space in the local detention facility for domestic violence perpetrators. Thus, if an offender needed to be detained, non-violent offenders were to be released.

In San Francisco, the city jail facilities have designated beds (and an intervention program) for domestic violence perpetrators.

justice through collaboration broadly with leaders in other components of the legal system, the advocacy movement and the community.⁽⁷⁴⁾

Two mechanisms that have proved effective vehicles for court and bench assessment of the barriers to justice and deliberation about reforms to effect impartial, fair and expedited legal remedy for victims and accountability for perpetrators are Task Forces/Coordinating Councils and Domestic Violence Fatality Reviews.

State and Local Councils/Task Forces on Domestic Violence

Judges and court administrators have organized or faithfully served on coordinating bodies that have transformed practice and policy throughout local and state legal systems. In some jurisdictions, like San Jose, California, although initially the vision of cooperation for coordinated reform may have been held primarily by one leader from the bench, one who diligently seeded the idea and patiently persuaded others to join him, until incremental expansion reached a critical mass of people who brought their own personal and institutional power, vision and commitment to the justice-seeking effort, creating an explosion of activity and reform across the face of the civil and criminal legal systems. In other jurisdictions, the leadership arose from other sectors and invited the bench and court administration to the table. The models of coordinated community response are numerous.⁽⁷⁵⁾

74 Edwards, L. "Reducing Family Violence: The Role of the Family Violence Council." **Juvenile and Family Court Journal** (1995).

Hofford et al. **Courts and Communities**. supra at note 29, pages 4 - 6.

In New Hampshire, in 1993 the bench and courts developed a statewide protocol for the District Courts for handling domestic violence cases. It was an 18 month effort, involved all three branches of government and all agencies working in the domestic violence field. Recently, the interdisciplinary team that attended the national conference on full faith and credit of protection orders in Albuquerque did a statewide interdisciplinary conference on FFC.

75 Hart, B. "Coordinated Community Approaches to Domestic Violence," Paper presented at the Strategic Planning Workshop on Violence Against Women, National Institute of Justice, Washington, D.C. (March 1995).

Confronting Violence Against Women: A Community Action Approach. American Prosecutors Research Institute & NCJFCJ (1998).

While many judges and court administrators have made stunning contributions to the court reform efforts to facilitate justice in the domestic violence field, and the author risks the disappointment of many in not offering a very long list of these leaders, two who have offered unique contributions are Judge Len Edwards of San Jose and Judge Susan Carbon of New Hampshire. Judge Edwards has worked consistently (and like a "hummingbird") to build an incredible network of professionals and lay people across the legal, health, advocacy and community systems in Santa Clara County, CA to create systemic reforms to end family violence. He did not do it alone, but?

Len has crossed the country and beyond many times to engage his colleagues in consideration of the importance of judicial leadership to create court structures and processes that promote safety and accountability. Judge Susan Carbon, while serving in leadership of the state bar of New Hampshire, orchestrated a statewide coordinating initiative that produced protocols for practice for almost every conceivable professional group in the state within and beyond the legal and health systems.

In Washington state, a unique collaboration between the Chief Justice and the Attorney General, facilitated by the Administrative Office of the Courts and in consultation with the state domestic violence coalition, brought together all the leadership within state government, the courts, the advocacy community to develop a state plan at the executive level for delivery of services and justice and to put an end to domestic violence. The outgrowth of this collaboration permeates the fabric of public life, as well as the legal systems, in that state.

The first New Hampshire statewide conference on family violence in 1994, an interdisciplinary event, was the birthplace of the statewide network of District Court coordinating councils. Judges and clerks were the initial leadership of the nearly all of the 30 judicial districts; judges and clerks remain heavily involved, although they are no longer the primary pool of

Domestic Violence Fatality Reviews

Judges have been instrumental in the development of domestic violence fatality reviews. Modeled on child death review initiatives, these efforts have permitted the legal system, the advocacy community and the medical field to examine community systems to assess whether domestic violence homicides might have been prevented had responses of various institutions throughout the community been different. A fatality review serves a number of functions -- problem identification, analysis of the problem in the context of the entire community of relevant institutions, response reformulation, and evaluation of the efficacy of systemic reforms. Reports generated by these endeavors can promote public accountability by government and courts and can serve as a vehicle for education about reforms and their efficacy.⁽⁷⁶⁾

Courts and judges can employ these and many other vehicles in leadership to enhance the delivery of justice to battered women and children. These formal mechanisms may not be the most efficient for making change in discreet or individual components in the legal system. Issuing local court rules, purchasing a fax machine to transmit orders to law enforcement, devising safe waiting areas in courthouses, drafting instructional manuals for court clerks, devising a protocol for translation services, creating forms for service of process that facilitate identification and location of batterers, negotiating storage space for weapons with the local national guard post (to begin a very long list) will greatly transform the delivery of protections and the achievement of accountability.

Conclusion

As a consequence of court reforms in structure and processes, in some places, most of the time, battered women and batterers encounter a just justice system.

Court structures and processes promoting justice for victims of domestic violence can be incorporated in a unified family court system and they are similarly applicable to more traditional court configurations. Many would contend that the structures and processes that have materially improved the response of the legal system to victims and offenders of domestic violence, at least those articulated in this paper, can best be implemented within a unified family court system. While that may be true, it is not true that the unifying of family courts will per force create these changes or even enhance the justice-seeking of battered women and children. Only those court systems that attend carefully to safety and accountability and create specialized structures and procedures to promote both will achieve justice and contribute significantly to the societal change required to end violence against women and children in the family.

chairs. The councils are supported by a part-time statewide coordinator of the councils who liaisons with all the councils and is responsible for the newsletter which is intended to provide periodic information-sharing. The council chairs meet twice each year to network.

76 Judges Mike Town and Frances Wong of Hawaii were the first in an emerging body of judicial leadership to formally undertake domestic violence fatality reviews.

Researchers Byron Johnson and Neil Websdale have recently completed the first report of Florida's statewide domestic violence fatality review investigation. The report can be found at .

There are many models for these investigations. The first national conference on domestic fatality reviews will be held in Key West in October. It is a joint undertaking of the National Council of Juvenile and Family Court Judges and the Florida Governor's Task Force on Domestic and Sexual Assault. For further information, contact NCJFCJ at 800/52-PEACE.

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