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# Planning a Domestic Violence Court

The New York State Experience

*Written by*

Robert V. Wolf  
Liberty Aldrich  
and Samantha Moore

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#### **About the Authors**

Robert V. Wolf is director of communications, Liberty Aldrich is director of domestic violence and family court programs, and Samantha Moore is a senior domestic violence associate at the Center for Court Innovation.

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# 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.<sup>1</sup>

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.<sup>2</sup> 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."<sup>3</sup> 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.<sup>4</sup>

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.”<sup>5</sup>

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.<sup>6</sup> A 1996 study found the rate to be even higher, documenting that 60 percent of orders of protection were violated within one year.<sup>7</sup> And still another study found that more than 17 percent of victims killed in domestic incidents had obtained orders of protection.<sup>8</sup>

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.<sup>9</sup> Although the judge was ultimately exonerated for his handling of the case,<sup>10</sup> 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.<sup>11</sup>

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.”<sup>12</sup>

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.”<sup>13</sup>

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.<sup>15</sup> 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.”<sup>16</sup>

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.<sup>17</sup>

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."<sup>18</sup>

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."<sup>19</sup>

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.'"<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> Also, the percentage of protection orders issued in these cases rose from 87 percent to 98 percent.<sup>25</sup>

The court has helped cut the dismissal rate in half—from eight percent to four percent.<sup>26</sup> 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.)<sup>27</sup> 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.”<sup>28</sup>

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.”<sup>29</sup> 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.<sup>30</sup>

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.”<sup>31</sup> 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.<sup>32</sup>

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.”<sup>33</sup> Prosecutors routinely dropped charges, explaining, “Judge, it’s only a husband and wife dispute which got a little out of hand.”<sup>34</sup>

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."<sup>35</sup>

## 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.

**For more information, call 212 397 3050 or e-mail [info@courtinnovation.org](mailto:info@courtinnovation.org).**

**Center for Court Innovation**

520 Eighth Avenue, 18th Floor  
New York, New York 10018  
212 397 3050 Fax 212 397 0985  
[www.courtinnovation.org](http://www.courtinnovation.org)

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