

Creating a Domestic Violence Court: Combat in the Trenches

Randal B. Fritzler and Leonore M.J. Simon

I. INTRODUCTION

The prevalence and incidence of domestic violence makes it a major public health problem for many women, with over a third of women treated in emergency rooms having been injured by intimate partners.¹ Since colonial times, and especially over the past 30 years, legal reforms aimed at protecting women from domestic violence have failed at a national and a local level. With half of all battered women living in households with children, these children are at risk for repeating the cycle of violence.

The failure of criminal and civil reforms may be due to the fact that domestic violence cases, especially low-injury or non-injury cases, compete with other crimes for scarce criminal justice resources. These domestic violence cases that are upstaged by "more serious crimes" can, and often do, escalate into high-injury or homicide cases. Including domestic violence cases on dockets with other crimes also ignores the unique characteristics of domestic violence—they warrant separate handling by a specialized court and personnel because of their complicated and often dangerous character. Moreover, the failure of past reforms may be due, in part, to our strict adversarial system, which focuses on procedures and defendants at the expense of victims.

This article describes a court and the community collaboration to develop and implement a dedicated domestic violence court in Vancouver, Washington. The Vancouver Domestic Violence Court is premised on principles of therapeutic jurisprudence, preventive law, and restorative justice with the

aim of holding the offender accountable, ensuring the safety of victims and their children, and improving victim satisfaction with the justice process.

We set forth the strategies that were used to overcome jurisdictional and political obstacles to more efficient and effective processing of domestic violence cases. In doing so, ideas for the role of the specialized judge and other legal actors in achieving therapeutic, preventive, and restorative outcomes in the lives of domestic violence families are explored. Strategies for translating theoretical concepts into daily practice are discussed.

To fully appreciate why the Vancouver court was created, Part II of the article reviews the historical problem of the legal processing of domestic violence cases. Part III then describes domestic violence in Vancouver, Washington. Part IV describes the integration of three innovative jurisprudential paradigms, "therapeutic jurisprudence, preventive law, and restorative justice," that are the foundation for the new domestic violence court. The actual process that Vancouver used to develop its domestic violence court is described in Part V; the idea of "one stop shopping" and coordination of services in the current court are described in Part VI. Part VII discusses some unintended consequences that may flow from creation of a domestic violence court.

II. HISTORY, CURRENT STATISTICS, AND UNIQUE CHARACTERISTICS OF DOMESTIC VIOLENCE CASES

The social and legal policy toward assisting battered women has a long and checkered history in American society.² For

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Footnotes

1. The term *domestic violence* carries different meanings across the literature. In this article, the term will be used to refer to actual or threatened physical violence directed toward an intimate that would be considered a crime if it were directed at a stranger.

2. See Elizabeth Pleck, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* 33, 66, 163 (1987); Linda Gordon, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE* 255, 257, 280, 281, 283 (1989); U.S. COMM'N ON CIV. RTS., *UNDER THE RULE OF THUMB* [hereinafter *CIV. RTS.*]; *BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE* (1982); Jefferey Fagan, U.S. DEP'T OF JUSTICE, *THE CRIMINALIZATION OF DOMESTIC VIOLENCE: PROMISES AND LIMITS* 3-4, 6-7(1995) [hereinafter *CRIMINALIZATION*]; David A. Ford, *Wife Battery and Criminal Justice: A Study of Victim Decision-Making*, 32 *FAM. REL.* 463, 472 (1983); Leonore M.J. Simon, *A Therapeutic Jurisprudence Approach to the Legal Processing of Domestic Violence Cases*, 1 *PSYCHOL., PUB. POL'Y & L.* 43, 43-44 (1995).

most of American history, societal responses to domestic violence withheld legal protection.³ Male batterers have seldom, if ever, experienced arrest⁴ or prosecution⁵ as severely as other violent offenders.⁶ As a result, domestic violence cases have had higher dismissal rates and less serious sentences compared to other violent crimes.⁷ In addition to the inability of battered women to prosecute their batterers, women have often been denied restraining orders in civil courts.⁸ When protective orders have been available, their enforcement has been weak,

the penalties for violations have been minor or nonexistent, and they have not been available on an emergency basis.⁹ Such impediments to prosecution of, and legal protection from, intimate partner violence led the United States Civil Rights Commission to conclude that

[P]enalties for violations have been minor

3. Even today, there are differences of opinion as to whether legal interventions are appropriate to control crime within the family. Some argue that the legal system cannot be expected to understand the unique circumstances of each family and cannot be depended upon to take actions that are in the best interests of the victim, the offender, or the family as a whole. See Murray A. Straus, *Identifying Offenders in Criminal Justice Research on Domestic Assault*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 15-16 (Eve S. Buzawa & Carl G. Buzawa eds., 1996). This argument for applying different standards for criminal acts within families assumes that domestic violence offenders specialize in domestic violence crimes. Research that examines this assumption finds that a large proportion of domestic violence offenders commit other crimes and cannot be considered specialists. See Leonore M.J. Simon, *Do Criminal Offenders Specialize in Crime Types?*, 6 APPLIED & PREVENTIVE PSYCHOL. 35, 39 (1997) (reviewing both the general criminological research as well as the domestic violence research that supports that the majority of offenders are generalists). It is generally true that studies of batterers arrested or brought to police attention reveal that most have prior histories of criminal records. Franklyn W. Dunford et al., *The Role of Arrest in Domestic Assault: The Omaha Police Experiment*, 28 CRIMINOLOGY 183, 194 (1990); J. David Hirschel et al., *The Failure of Arrest to Deter Spousal Abuse*, 29 JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY 7, 30 (1992); Lawrence Sherman & Richard Berk, *The Specific Effects of Arrest for Domestic Assault*, 49 AMERICAN SOCIOLOGICAL REVIEW 261, 266 (1984); LAWRENCE SHERMAN ET. AL, POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS 157 (1992).
4. See Sarah Fenstermaker Berk & Donileen R. Loseke, *Handling Family Violence: Situational Determinants of Police Arrests in Domestic Disturbances*, 15 LAW & SOC'Y REV. 317, 319 (1980-1981); Carolyn R. Hathaway, *Case Comment: Gender Based Discrimination in Police Reluctance to Respond to Domestic Assault Complaints*, 75 GEO. L.J. 667, 672 (1986). Virtually all proposals to reform societal responses to domestic violence center heavily on police as gatekeepers, yet police departments tend to devalue the handling of domestic violence calls. Eve S. Buzawa et al., *The Role of Arrest in Domestic Versus Stranger Assault: Is There a Difference*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 161, 163 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (finding that as the level of intimacy between the parties increases, the probability of an arrest for assault decreases).
5. See Naomi R. Cahn, *Innovative Approaches to the Prosecution of Domestic Violence Crimes: An Overview*, in DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE 161 (Eve S. Buzawa & Carl G. Buzawa eds., 1992); Ford, *supra* note 2, at 472; but see Donald J. Rebovich, *Prosecution Response to Domestic Violence: Results of A Survey of Large Jurisdictions*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 176, 183 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (finding that larger jurisdictions are less likely to allow victim cooperation to affect their decision to prosecute).
6. See Eve S. Buzawa & Carl G. Buzawa, *Introduction*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 1, 4-5 (Eve S. Buzawa & Carl G. Buzawa eds., 1996); Simon, *supra* note 2, at 64-75; CRIMINALIZATION, *supra* note 2, at 8; Morton Bard & Joseph Zacker, *The Prevention of Family Violence: Dilemmas of Community Interaction*, 33 J. MARRIAGE AND THE FAMILY 677 (1971); Ford, *supra* note 5, at 467, 473 (finding an indifferent legal processing of cases that was true of police, prosecutors, and judges); Frances Lawrenz et al., *Time Series Analysis of the Effect of a Domestic Violence Detective on the Number of Arrests Per Day*, 16 J. CRIM. J. 493, 494 (1988).
Critics of police behavior have suggested that leniency in the criminal justice system as a whole contributes to the offender's denial. See R. EMERSON DOBASH & RUSSELL DOBASH, WOMEN, VIOLENCE, AND SOCIAL CHANGE 146 (1992); Kathleen J. Ferraro, *Policing Woman Battering*, 36 SOCIAL PROBLEMS 61 (1989); Simon, *supra* note 2, at 46-47; Lisa G. Lerman, *Prosecution of Wife Beaters: Institutional Obstacles and Innovations*, in VIOLENCE IN THE HOME: INTERDISCIPLINARY PERSPECTIVES 250, 256-257 (M. Lystad ed., 1986); David A. Ford, *Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships*, 25 LAW & SOC. REV. 313, 320 (1991); Rebovich, *supra* note 5, at 185 (indicating that 50 percent of prosecution offices surveyed admitted to the existence postcharge diversion programs effectively dismissing the charges after completion of a domestic violence program); Robert C. Davis & Barbara Smith, *Crimes Between Acquaintances: The Response of the Criminal Courts*, 6 VICTIMOLOGY 175 (1981).
7. See Davis & Smith, *supra* note 6, at 177. Although research suggests that stranger offenders fare worse than nonstranger offenders in sentencing outcome, no specific research examines sentencing differential between domestic violence offenders and stranger offenders. MICHAEL GOTTFREDSON & DON M. GOTTFREDSON, DECISION MAKING IN CRIMINAL JUSTICE: TOWARD THE RATIONAL EXERCISE OF DISCRETION 72 (1988); Simon, 1995, *supra* note 2, at 74.
8. See CIV. RTS., *supra* note 2, at 47-49.
9. See CRIMINALIZATION, *supra* note 2, at 3. Since first enacted in Pennsylvania in 1976, every state and the District of Columbia now provide for the issuance of restraining or protective orders to protect victims of spousal/partner violence. Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 214, 219-229, 235-236, 239-240 (Eve S. Buzawa & Carl G. Buzawa eds., 1996). The issuance of these orders has become the chief means of protecting victims of domestic violence in many jurisdictions. The limited effectiveness of restraining orders in domestic violence cases continues to plague the legal system. A study based on a sample of restraining orders in two jurisdictions within a single

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the American legal system treated battered women as second class citizens.¹⁰

Although not for the first time in history,¹¹ the feminist movement in the 1970s focused attention on battered women.¹² The resulting reforms primarily emphasized applying sanctions to offenders. The reforms ranged from increasing access to

criminal and civil legal remedies; to laws mandating arrest; to mandatory treatment and supervision of convicted batterers; and to the creation of specialized courts.¹³

The reforms have not reduced the problem of domestic violence.¹⁴ For example, in 1992-93, females experienced seven times as many incidents of non-fatal violence by an intimate as males did. Each year, women experienced over one million violent victimizations committed by an intimate compared to about 143,000 incidents that men experienced.¹⁵ Many of these incidents require medical attention. Thus, in 1994, 37% of females treated in emergency rooms were injured by an intimate compared to 5% of males.¹⁶ Without legal intervention,

many non-fatal incidents escalate to more serious incidents. Thus, female homicide victims are more than seven times as likely to have been killed by intimates than are male victims.¹⁷ In fact, intimates killed 30% of female murder victims compared to 4% of males.¹⁸

There also is evidence that the (at least) 3.3 million children a year who witness domestic violence are the "hidden victims."¹⁹ This victimization often results in children repeating the cycle of violence. Battered women are six times as likely to have witnessed violence as a child than adult batterers, whereas males who witness violence are ten times as likely as other children to become abusers.²⁰

A. Unique Characteristics of Domestic Violence Cases Necessitate a Special Court

The failure of criminal and civil reforms may be due to the fact that domestic violence cases, especially low-injury or non-injury incidents, compete for resources with other crimes.²¹ As long as domestic violence cases are processed in the same courts that handle other crimes, they are less likely to be treated seriously. This is problematic because many low-injury, domestic violence cases escalate into high-injury or homicide cases that might have been prevented with effective legal sanc-

state in 1991 found that unwanted contacts in the first three months were reported by over half of the women who obtained temporary restraining orders. Acts of severe violence were experienced by 29% of women who possessed restraining orders. Severe violence in the year before the order predicted severe violence in the year after the order. The level of the man's resistance at the time of the hearing significantly increased the probability of severe violence. Compared to women without children, women with children were 70% more likely to experience violent acts. Women who indicated that they did not get everything they needed from the court order were significantly more likely to report severe violence than women who did receive what they wanted in the order. Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* at 214, 221-237. In another recent study of restraining orders in Quincy, Massachusetts, in 1990, almost 80% of the abusers had prior criminal histories within the state of at least one criminal complaint that ranged from underage drinking to murder. Not only did most have prior records, but also, the average record length was 13 complaints. Only a third restricted their past violence to women. Almost half of the abusers (49%) re-abused their victims within two years of the 1990 restraining order. The percentage arrested for abuse was 34%, whereas 22% were arrested for new crimes. The only statistically significant predictors for new abuse as measured by a new arrest were age and prior criminal history. Andrew R. Klein, *Re-abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work*, in *DO ARRESTS AND RESTRAINING ORDERS WORK?* 192, 193-202 (Eve S. Buzawa & Carl G. Buzawa eds., 1996). A survey of prosecutors found that the most common response to offender retaliation against victims who testify is the use or protective orders even though they concede that the effectiveness of this option is questionable and that violations of such orders often result in minimal punishment. Rebovich, *supra* note 6, at 189.

10. See CIV. RTS., *supra* note 2, at 91-93.

11. See Pleck, *supra* note 2, at 18.

12. See Pleck, *supra* note 2, at 182-200; CRIMINALIZATION, *supra* note 2, at 8-9; PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE & CENTER FOR DISEASE CONTROL, PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 1 (1998).

13. See CRIMINALIZATION, *supra* note 2, at 3; N. Zoe Hilton, *Introduction*, in *LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS AND EVALUATION*, 3-4, (N. Zoe Hilton ed., 1993); Buzawa & Buzawa, *supra* note 3, at 5-6; Eve Buzawa et al., *The Response to Domestic Violence in a Model Court: Some Initial Findings and Implications*, 16 BEHAV. SCI. & L. 185, 185-86 (1998).

14. See CRIMINALIZATION, *supra* note 2, at 25.

15. See DIANE CRAVEN, U.S. DEP'T OF JUSTICE, *FEMALE VICTIMS OF VIOLENT CRIME 2* (1996).

16. See MICHAEL RAND, U.S. DEP'T OF JUSTICE, *VIOLENCE RELATED INJURIES TREATED IN HOSPITAL EMERGENCY DEPARTMENTS 5* (1997). See also Tjaden & Thoennes, *supra* note 12, at 9 (1998) (finding that 30% of women injured during their most recent physical assault since age 18 received some type of medical treatment that included ambulance/paramedic services, treatment in a hospital emergency department, or physical therapy).

17. See CRAVEN, *supra* note 15, at 2.

18. See LAWRENCE A. GREENFELD ET AL., U.S. DEP'T OF JUSTICE, *VIOLENCE BY INTIMATES: ANALYSIS OF DATA ON CRIMES BY CURRENT OR FORMER SPOUSES, BOYFRIENDS, AND GIRLFRIENDS 6* (1998).

19. See Buzawa & Buzawa, *supra* note, 3 at 3. In fact, more than half of battered women live in households with children under the age of 12. Greenfeld, *supra* note 18, at 15.

20. See Debra Kalmus, *The Intergenerational Transmission of Marital Aggression*, 46 J. MARRIAGE & FAMILY 3, 15 (1984); Alan Rosenbaum & K. Daniel O'Leary, *Marital Violence: Characteristics of Abusive Couples*, 49 J. CONSULTING & CLINICAL PSYCHOL. 63, 69-70 (1981); Barbara Star, *Comparing Battered and Nonbattered Women*, 3 VICTIMOLOGY 32 (1978).

21. See CRIMINALIZATION, *supra* note 2, at 35.

PRINCIPLES OF AN EFFECTIVE DOMESTIC VIOLENCE COURT

Randal B. Fritzler and Leonore M.J. Simon

Therapeutic jurisprudence proposes that judges and lawyers be sensitive to the beneficial or harmful consequences that their actions and decisions have on the parties that come before them. In applying the therapeutic jurisprudence approach, the effectiveness of chosen practices depends upon the legal issues involved and the context in which these issues are presented. In essence, therapeutic jurisprudence is what good judges do anyway on a daily basis. The therapeutic jurisprudence approach forces all judges to reflect on and evaluate their effectiveness. As applied to domestic violence, therapeutic jurisprudence suggests that some basic principles can achieve offender accountability and victim safety. They should be applied only where they do not violate other standards of good court performance.

1. When dealing with domestic violence, it is a mistake to try to force what one is doing into the drug court format. Drug courts ordinarily focus on nonviolent offenders whereas domestic violence cases deal with violent crimes against intimates. Although diversion and dismissal of charges may be appropriate after successful completion of a drug treatment program, the slate cannot be wiped clean in domestic violence cases. Rehabilitation of the domestic violence offender is desirable, but offender accountability and victim protection are paramount. Because of the seriousness of violent behavior and the repetitive nature of domestic violence, a legal record needs to be maintained.
2. Judicial demeanor toward defendants and victims can increase compliance with court orders as well as have therapeutic effects. Judges can use their authority to make victims feel welcome in the court, to express empathy for their injuries, and to mobilize resources on their behalf. With offenders, judges can be respectful while insisting that offenders take responsibility for their violence and acknowledge the court's authority over their behavior. Judicial recognition of offender success in treatment, compliance with court orders, and demonstrated alternatives to violence can give the offender a sense of self-efficacy and achievement.
3. One of the most important roles of a domestic violence court is to confront the perpetrator's cognitive distortions. Distorted thinking includes minimizing or denying the violence and blaming the victim. Seize the opportunity provided by the trauma of the arrest to intervene in the perpetrator's life while he is still receptive, and encourage voluntary mental health activities as well as alcohol evaluation and treatment. Be mindful that accepting a "no contest" plea and other compromises or plea bargains can serve to reinforce distorted thinking by allowing the offender to avoid full responsibility for his behavior. It also can be harmful by causing the victim and the offender to believe that the offender can escape responsibility for present and future acts with some degree of impunity. Instead, stress that domestic violence is a chosen behavior, and that contrary to what the perpetrator has believed in the past, it will not get him what he wants.
4. Involve the defendant in contracting with the court and assisting the court in establishing the terms of no contact orders and terms of supervision (i.e., distances, supervised visitation with children, how items of personal property may be obtained). Including input from the offender in fashioning the order can increase compliance. It also lets the individuals know how seriously the court takes the "no contact" and protection orders.
5. We do not like the phrases "fast track" or "rocket docket," but are convinced that these cases need to be acted on immediately with continual court involvement. Otherwise, the court loses judicial effectiveness. Continuances and other dilatory tactics need to be discouraged in every case.
6. Take advantage of the domestic violence dockets to "red flag" children at risk. Appropriate referrals to child advocacy and child welfare agencies should be initiated.
7. Sentencing should be swift but not severe. Some jail time may get the offender's attention that there are consequences for his behavior, but it should be proportionate to his offense. Excessive fines should be avoided as they can rarely be collected and often take needed resources from the family.
8. Routine post-sentencing reviews should be calendared without cause and need to include domestic violence treatment providers, victim advocates, and probation officers to modify restrictions on the offender when there is substantial compliance, as well as to impose graduated sanctions when there is non-compliance.
9. Within the framework of the American justice system, the domestic violence judge who applies therapeutic jurisprudential principles should also be an expert on the special evidentiary issues that arise repeatedly in the context of domestic violence cases. Using his or her familiarity with the law, the judge may also apply these skills to draft custom jury instructions that better frame the issues for jury consideration.
10. Coordinate domestic violence cases with other cases occurring contemporaneously that may involve the perpetrator, victim, or their family. The domestic violence judge should be particularly aware of related dissolution cases, other criminal matters, juvenile court cases, child abuse and neglect cases, and paternity proceedings. In issuing orders, especially those involving "no contact" or protection order provisions, be careful to avoid conflicting or incompatible orders.

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tions at the outset. For example, in one study, slightly more than half (51%) of the defendants in spouse killings had been previously arrested.²²

Including domestic violence cases on dockets with other crimes fails to consider the unique characteristics of domestic violence.²³ First, almost a third of battered women who possess a temporary restraining order are likely to experience

acts of severe violence within three months.²⁴ In fact, by the time they seek injunctive relief, battered women have an extended and severe history of abuse with the offender that suggests that formal intervention through a petition to the court for relief is used, not as a form of early intervention, but rather as a signal of desperation following extensive problems.²⁵ Most domestic violence victims have suffered previous attacks by the defendant²⁶ and may be in a relationship with the defendant, possibly living with him.²⁷ Furthermore, 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.²⁸ Moreover, unlike other cases of violence between acquaintance males that occur in public, the private location of the violence in domestic cases and its recurring nature increase the danger to the victim.²⁹ Most importantly, battered women are most often killed when seeking legal redress or when leaving a violent relationship.³⁰ Such factors complicate victim resolve to invoke criminal or civil remedies or to leave the relationship.³¹ Women who are economically dependent on the batterer may not have independent transportation to make multiple trips to the courthouse.³² Women with children may have to find child

care for court appearances.³³ Injured battered women may find employers unwilling to accommodate court appearances even though the employers had been considerate about medical appointments.³⁴ Most importantly, domestic violence victims may be less concerned with punishing the offender than with guaranteeing their own safety, surviving economically, protecting their children, and obtaining therapy for the offender.³⁵ They may also see the threat of prosecution as a means of terminating the relationship and escaping the violence.³⁶

Another distinguishing characteristic of domestic violence is that victims must confront barriers to effective participation in the legal system.³⁷ Unlike other victims of violent crime, battered women are often viewed by legal actors as responsible for the crimes committed against them because they are viewed as having provoked the offender³⁸ or having failed to leave the relationship. Victims often report that legal actors treat them as bringing unimportant family matters to court.³⁹ In addition, unlike many victims of assault by strangers, but like other categories of victims known to defendants, domestic violence victims may be reluctant witnesses.⁴⁰ Some battered women become discouraged because of delays, lack of witness protection, or prosecutor indifference.⁴¹

The legal system is further hampered when similar attitudes are shared by the offender and victim.⁴² The batterer minimizes or denies his violence, underestimating the amount of violence he uses and its frequency.⁴³ He blames the victim for his behavior, claiming that she provoked him.⁴⁴ When the batterer evades responsibility, the battered woman may blame herself, believing she should have been able to prevent the violence or should have left the relationship.⁴⁵ This self-blame may cause the victim to feel that the batterer does not deserve to be arrested or prosecuted.

An additional legal obstacle is the common legal actor belief that battered women will be safer once they separate from the offenders and once prosecution has begun.⁴⁶ The reality is that a batterer may escalate his violence to coerce the victim to rec-

22. JOHN M. DAWSON & PATRICK A. LANGAN, U.S. DEP'T OF JUSTICE, MURDER IN FAMILIES 2, 5 (1994). It cannot be determined from this study for what types of offenses those defendants had previously been arrested. It is interesting that the study indicates that 35% of the victims in spouse killings also had prior criminal records. Note that this study's definitions of spouse includes spouses and common-law spouses, but that intimates who were not living together are included in the "other" family category.

23. CRIMINALIZATION, *supra* note 2, at 28.

24. Harrell & Smith, *supra* note 9, at 225.

25. Harrell & Smith, *supra* note 9, at 231.

26. CRIMINALIZATION, *supra* note 2, at 29.

27. Barbara Hart, *Battered Women and the Criminal Justice System, in DO ARRESTS AND RESTRAINING ORDERS WORK?* 100 (Eve S. Buzawa & Carl G. Buzawa eds., 1996).

28. Fagan, *supra* note 2, at 29; Harrell & Smith, *supra* note 6, at 231. See also Kate Paradine, *The Importance of Understanding Love and Other Feelings in Survivors' Experiences of Domestic Violence*, COURT REVIEW, Winter 2000 at 40.

29. Fagan, *supra* note 2, at 29.

30. ANGELA BROWNE, WHEN BATTERED WOMEN KILL 114 (1987); BUREAU OF JUSTICE STATISTICS, DOMESTIC VIOLENCE: VIOLENCE BETWEEN

INTIMATES 2 (1994).

31. Hart, *supra* note 27, at 100-01.

32. Hart, *supra* note 27, at 102.

33. *Id.*

34. *Id.*

35. *Id.*; David Ford, *Prosecution as a Power Source: A Note on Empowering Women in Violent Conjugal Relationships*, 25 LAW & SOCIETY REV. 313 (1991).

36. Lisa G. Lerman, *The Decontextualization of Domestic Violence*, 83 J. OF CRIM. L. & CRIMINOLOGY 217 (1992); Ford, *supra* note 34, at 328.

37. Hart, *supra* note 27, at 99.

38. *Id.*, at 101.

39. *Id.*

40. FRANK J. CANNAVALE & WILLIAM D. FALCON, WITNESS COOPERATION 36 (1976).

41. Hart, *supra* note 27, at 102.

42. *Id.*

43. Simon, *supra* note 2, at 52-53.

44. *Id.*

45. Simon, *supra* note 2, at 61.

46. Hart, *supra* note 27, at 100.

oncile with him, to retaliate against her for bringing charges, or to coerce her to drop the charges.⁴⁷ As many as half of all batterers threaten retaliatory violence,⁴⁸ and at least 30% of batterers may inflict further assaults during the predisposition phase of prosecution.⁴⁹ Continuation of violence has been found as well in studies of women who seek civil protection orders.⁵⁰ A battered woman who has made prior attempts to seek prosecution or civil protection orders, only to have the perpetrator escalate his violence, may be unwilling to face the risk that legal action may further endanger her.⁵¹ Understandably, victims may be more concerned about preventing future violence than about penalizing the defendant for previous crimes,⁵² creating a tension with those in the legal system focused on convictions.⁵³ This is why any legal intervention in domestic violence cases needs to utilize coordinated outreach services to track and ensure victims' safety.⁵⁴

A final, unique characteristic of domestic violence cases that necessitates special handling by the courts is that these cases may suffer from a strict application of our adversarial legal system, which focuses on procedural issues and society's goals of deterrence, punishment, and retribution at the expense of the victim's welfare. The adversarial system may be better suited to litigating crimes between strangers and certain other issues brought before our court system. However, it may be less effective when dealing with crimes between intimate partners where the adversarial approach may exacerbate the problem and increase the danger to victims.

This article describes the strategy that Vancouver, Washington, developed to facilitate participation of battered women in the legal system. It describes the development and implementation of a misdemeanor domestic violence court that handles civil protection orders as well as criminal proceedings under the direction of one judge.

III. DOMESTIC VIOLENCE IN VANCOUVER, WASHINGTON

Clark County, the fastest growing county in Washington State, is a jurisdiction of 337,000 people in southwest Washington with a growth rate of 42% percent since 1991.⁵⁵ Vancouver, the county seat, is the state's fourth largest city,

with a population of 135,100.⁵⁶ Within five years, Vancouver is projected to be the second largest city in Washington, after Seattle.⁵⁷ The proximity to Portland, Oregon, results in the daily commute of one-third of Clark County's workforce to Portland.⁵⁸

Approximately 30% of emergency 911 calls in Clark County are domestic violence related.⁵⁹ A local study indicated that a quarter of the neighborhood population surveyed had been physically assaulted by a domestic partner within the last year.⁶⁰ Arrests for domestic abuse increased 74% in the two-year period ending in 1998.⁶¹ In addition, from 1992 through 1998, there was a 200% increase in domestic violence-related homicides.⁶² Domestic violence cases represent nearly a fourth of the current cases in the county prosecutor's office.⁶³ In 1998, there were almost 978 filings for civil domestic violence protection orders⁶⁴ and 1,499 misdemeanor criminal domestic violence cases.⁶⁵

In the past, courts, victim advocacy groups, social services, and the medical treatment community in Vancouver have tried to address the domestic violence problem while operating entirely independently. Previous attempts to bolster the response of individual system components may have placed battered women in greater jeopardy, encouraging them to seek legal remedies when systemic response was uneven or focused on offender sanctions. The court system failed to evaluate the efficacy of judicial practices or to incorporate community input. Because of previous failures, the community representatives concluded that a unified vision about the goals and methods of reform were needed.⁶⁶

IV. INNOVATIVE JURISPRUDENTIAL PARADIGMS IN DOMESTIC VIOLENCE CASE PROCESSING

The purpose of the domestic violence court is to reduce the incidence of domestic violence. The domestic violence court may be able to accomplish this by incorporating principles of

[T]hese cases may suffer from a strict application of our adversarial legal system

47. *Id.*

48. ROBERT DAVIS ET AL., NEW YORK VICTIM SERVICES AGENCY, VICTIM-WITNESS INTIMIDATION IN THE BRONX COURTS (1990).

49. Stephen Goldsmith, *Taking Spouse Abuse Beyond a "Family Affair,"* 17 LAW ENFORCEMENT NEWS 7 (1991).

50. Klein, 1996, *supra* note 9, at 199 (finding that 49% of batterers in Massachusetts restraining order cases re-abused their victims within two years of the issuance of the order); Harrell & Smith, *supra* note 6, at 223-24 (finding that 60% of women reported acts of abuse within a year of the issuance of the restraining order, with 29% reporting severe violence).

51. Harrell & Smith, *supra* note 6, at 223-30, 237-39.

52. Hart, *supra* note 27, at 101.

53. *Id.*

54. *Id.* at 112-13.

55. STATE OF WASHINGTON, OFFICE OF FINANCIAL MANAGEMENT, 1999 POPULATION TRENDS, September 1999, 9.

56. *Id.* at 10.

57. VIOLENCE AGAINST WOMEN GRANTS OFFICE, DEPARTMENT OF JUSTICE, CLARK COUNTY DOMESTIC VIOLENCE COURT PROJECT, GRANT PROPOSAL TO ENCOURAGE ARREST POLICIES, OFFICE OF JUSTICE PROGRAMS, April 1998, 3, Resubmitted April (1999) [hereinafter GRANT PROPOSAL], on file with the first author.

58. *Id.* at 3.

59. *Id.*

60. *Id.*

61. See Interview with Charlene Hiss, Clark County District Court Administrator, in Vancouver, Wash. (Dec. 9, 1999).

62. *Id.*

63. See GRANT PROPOSAL, *supra* note 59, at 3.

64. See Interview with Charlene Hiss, *supra* note 61.

65. *Id.*

66. See ANNE L. GANLEY, WASHINGTON STATE GENDER AND JUSTICE COMMISSION, DOMESTIC VIOLENCE: THE WHAT, WHY AND WHO, AS RELEVANT TO CIVIL COURT DOMESTIC VIOLENCE CASES 1-2 (1993).

A key tool of the preventive lawyer is the "periodic legal checkup."

therapeutic jurisprudence, preventive law, and restorative justice to assure the safety of the victim and hold the offender accountable.

Therapeutic jurisprudence investigates the law's impact on the emotional lives of participants in the legal system by encouraging sensitivity to thera-

peutic consequences that may result from the legal rules, procedures, and the roles of legal actors.⁶⁷ "The fundamental principle underlying therapeutic jurisprudence is the selection of options that promote health and are consistent with the values of the legal system."⁶⁸ Simultaneously, therapeutic jurisprudence seeks to avoid perpetrating harm to individuals in the legal system.⁶⁹ Although the concept of therapeutic goals in the legal system is not new, courts have limited therapeutic practices to areas such as mental health, family, and juvenile law.⁷⁰ The failure to apply therapeutic goals and practices to domestic violence cases, however, has perpetrated a "second assault" on victims.⁷¹

A specialized court that treats domestic violence cases as seriously as violence between males at each stage of the legal process can enhance therapeutic outcomes by holding the offender accountable and assuring the victim's safety. These benefits can be obtained by coordinating the legal response of the courts, law enforcement, corrections, and victim advocates to these cases. For example, a coordinated, specialized domestic violence court can work with police officers called to the scene of a domestic violence incident by issuing protection orders by phone 24 hours a day, in much the same way search warrants are currently issued in exigent circumstances. The court can facilitate collaboration between police,

probation/pretrial services, the victim, and victim advocates in making decisions to jail a batterer pending criminal proceedings, if no reasonable assurance can be made that the victim will be safe upon the offender's release.⁷² The court can proactively enhance the well-being of the victim by routinely issuing a civil order of protection in conjunction with any pending criminal case and encouraging prosecutors to initiate civil protection orders in criminal cases. Probation officers can monitor pre- and post-sentencing compliance of court orders by an offender, and can schedule cases of non-compliance immediately for the judge to determine whether graduated sanctions are warranted.

Preventive law is a second perspective that seeks to minimize and avoid legal disputes and to increase life opportunities through legal planning.⁷³ A key tool of the preventive lawyer is the "periodic legal checkup."⁷⁴ It also seeks to identify "legal soft spots" and potential trouble points, and to come up with strategies to avoid or minimize the anticipated legal trouble.⁷⁵ Although preventive law generally is designed so that good, private legal or business practice can avoid legal conflicts or disputes, we suggest that it also can be used by a domestic violence court judge to prevent future violence by proactively monitoring domestic violence cases to insure that court orders are being carried out. For example, calendaring court reviews of domestic violence cases in which protection orders have been issued, whether or not there is a reported problem, can prevent the recurrence of violence, while reducing a woman's sense of hopelessness when a batterer continues to beat her despite the order. An example of the opportunity to identify a "legal soft spot" occurs when the court receives recommendations from offender treatment providers, often based on self-reports of offenders, to dismiss the protection orders and unify the couple. Prior to any decision, the court can consult with victim advocates who may be privy to the fact that the victim

67. PAMELA CASEY & DAVID B. ROTTMAN, NATIONAL CENTER FOR STATE COURTS, *THERAPEUTIC JURISPRUDENCE IN THE COURTS* 1 (1998); Simon, *supra* note 2, at 43, 49-51; Leonore M.J. Simon, *Sex Offender Legislation and the Antitherapeutic Effects on Victims*, 41 ARIZ. L. REV. 485, 525-526 (1999); David Wexler, *The Development of Therapeutic Jurisprudence from Theory to Practice*, 68 REV. JUR. U.P.R. 691 (1999); Peggy Fulton Hora, William G. Schma & John T.A. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 442-448 (1999). The University of Puerto Rico Law School has begun the International Network on Therapeutic Jurisprudence, directed by David Wexler, as well as creating the Therapeutic Jurisprudence Forum as a regular feature in the University of Puerto Rico Law Review. See also David B. Wexler, *Some Thoughts and Observations on the Teaching of Therapeutic Jurisprudence*, 35 REVISTA DE DERECHO PUERTORRIQUEÑO 273, 277 (1996). The International Network maintains a Web site at <http://www.law.arizona.edu/upr-intj>, an up-to-date bibliography, and sponsors conferences. The First International Conference on Therapeutic Jurisprudence took place July 8-11, 1998 at the University of Southampton, Winchester, England, and reflects the prominence of this legal theory in the international legal world. See UNIVERSITY OF SOUTHAMPTON, *THERAPEUTIC JURISPRUDENCE: THE*

FIRST INTERNATIONAL CONFERENCE ON THERAPEUTIC JURISPRUDENCE (1998).

68. Casey & Rottman, *supra* note 67, at 1.

69. Simon 1999, *supra* note 67, at 516-525.

70. Casey & Rottman, *supra* note 67, at 1.

71. Simon, *supra* note 2, at 43-49, 62.

72. The problem of utilizing jail as violence prevention or as a sanction in domestic violence cases often is problematic in jurisdictions like Vancouver that suffer from jail overcrowding. It is not uncommon for sheriff's deputies to reveal that these cases are routinely booked and released. Thus, a more coordinated policy involving the jail staff, the sheriff's office, the prosecution, and the court may need to determine the relative seriousness of cases kept in jail compared to those that are booked and released.

73. See generally LOUIS M. BROWN & EDWARD A. DAUER, *PERSPECTIVES ON THE LAWYER AS PLANNER* (1978); Edward P. Richards III, *Should Preventive Law, Like Some Medicine Be Mandated by Government?*, PREVENTIVE L. REP., June 1992, at 28.

74. See Robert M. Hardway, *PREVENTIVE LAW: MATERIALS ON A NONADVERSARIAL LEGAL PROCESS* 189-92 (1997); See also Edward A. Dauer, *Future of the Legal Profession Lies in Utilizing Preventive Law*, PREVENTIVE L. REP., Mar. 1990, at 25.

75. Hardway, *supra* note 74, at 192.

does not want to return to the relationship and does not want the order dismissed. The use of preventive law in domestic violence cases emphasizes that it is good legal practice for public lawyers and actors to apply laws to batterers in a manner calculated to anticipate and prevent future harm to victims.

On an individual basis, the "periodic legal checkup" could consist of calendaring a case after arrest, sentencing, or issuance of a protection order for the victim to come to court every week for two years and report on her freedom from violence and her ability to get services such as child support. On a system basis, once a month, police, prosecutors, judges, probation, and victim advocates could convene to assess how well the law is protecting domestic violence victims.

Preventive law and therapeutic jurisprudence can work in tandem to encourage legal actors to identify "psycholegal soft spots,"⁷⁶ areas where legal intervention or procedure may lead to anxiety, distress, or additional trauma for domestic violence victims. For instance, booking and releasing domestic violence offenders due to jail over-crowding can result in further violence to the victim. Court issuance of protection orders without follow-through by law enforcement in entering the order on relevant computer information systems, a problem recently identified in several counties of Maryland,⁷⁷ can result in injury or death of the victim and her children. In fact, such publicity about the failure of the system to protect victims despite the issuance of a protection order could have the effect of discouraging other victims from seeking legal redress.

Instead, principles of preventive law and therapeutic jurisprudence suggest that legal actors from police and prosecutors to judges should depart from the more cynical, dispassionate, traditional roles of legal actors to the less emphasized role of sensitive, empathic counselor.⁷⁸

Restorative justice is the third paradigm that could be brought to bear on the restructuring of the legal system to be more therapeutic to domestic violence victims.⁷⁹ Restorative justice advocates that victims should have more input into the proceedings, and the state or the community should restore victims as far as possible to their former condition through compensation and neighborly support.⁸⁰ Additional goals include holding offenders accountable, requiring them to make amends, offering them the opportunity to rehabilitate themselves, and enabling them to earn re-acceptance into the community.⁸¹ Although restorative justice focuses, in large part, on property crimes between strangers, its principles could work together with therapeutic jurisprudence and preventive law to restore the mental and physical well-being of domestic violence victims. For example, consistent enforcement of protection orders could restore women to the community without the fear and risk of violence that is present

**Restorative
justice is the
third paradigm
that could be
brought to
bear**

76. Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL W. L. REV. 15 (1997).

77. Craig Whitlock, *More Risk for Victims of Abuse: Md. Audit Finds Backlog of Unfiled Restraining Orders*, THE WASHINGTON POST, Nov. 14, 1999 at C1 (describing how a batterer killed his two young children with a handgun that he was allowed to buy because a background check failed to show that he was under a restraining order obtained by his wife). This incident exposed the fact that three counties in Maryland have accumulated stacks of restraining orders that sit for several weeks or months before they are logged into computer databases by sheriffs' departments. *Id.* One wonders how many other law enforcement units in other jurisdictions give such low priority to this issue.

78. See Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85, 116 (1994) (suggesting that the popular dissatisfaction with the legal profession is in part due to lawyers' overemphasis on litigation and underemphasis on counseling). See also Hon. Edward D. Re, *The Lawyer as Counselor and the Prevention of Litigation*, 31 CATH. U. L. REV. 685 (1982).

79. The history of the criminal law indicates that early in Anglo-Saxon times, the victims received compensation from the offender and were directly involved in the criminal justice process. As the state took over the responsibility, the victim was removed as a party to a criminal action. This was due to a philosophical shift that reconceptualized harm done to an individual as harm done to the community or state. As a result of this historical shift, until the last two or three decades, victims' needs and wishes have not been considered in criminal prosecutions. See JOANNA SHAPLAND ET AL., VICTIMS IN THE CRIMINAL JUSTICE SYSTEM 1 (1985) (indicat-

ing that the historical shift from viewing a crime victim as an injured party to conceptualizing the injured party as the state resulted in neglect of the victim in criminal proceedings); MARTIN WRIGHT, JUSTICE FOR VICTIMS AND OFFENDERS 1, 14 (1991); HOWARD ZEHR, MEDIATING VICTIM/OFFENDER CONFLICT (1982); Gilbert Geis, *Victims of Crimes of Violence and the Criminal Justice System*, in PERSPECTIVES ON CRIME VICTIMS 62 (Burt Galaway & Joe Hudson eds., 1981); Daniel W. Van Hess, *Restorative Justice*, in CRIMINAL JUSTICE RESTITUTION, AND RECONCILIATION 5-8 (Burt Galaway & Joe Hudson eds., 1990) (noting that under Henry I, certain offenses became crimes against the king's peace); Howard Zehr & Mark Umbreit, *Victim/Offender Reconciliation: An Incarceration Substitute*, 46 FED. PROBATION 63 (1982) (noting that victims in general want more inclusion in the criminal process).

80. See Joanna Shapland et al., *supra* note 79, at 268; Wright, *supra* note 79, at 14, 19, 20, 27, 116-119, 133; Geis, *supra* note 79, at 70; Anne M. Heniz & Wayne A. Kerstetter, *Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining*, in PERSPECTIVES ON CRIME VICTIMS, *supra* note 79, at 266. In the United States in the 1970s, in addition to rape-law reform, the general victim's rights movement made attempts to provide victims with input into decision making from arrests to sentencing in criminal cases. See Donald J. Hall, *The Role of the Victim in the Prosecution and Disposition of a Criminal Case*, in PERSPECTIVES ON CRIME VICTIMS, *supra* note 81, at 318. The U.S. President's Task Force on Victims of Crime suggested that the victim in every prosecution should have a constitutional right to be present and to be heard at all critical stages of judicial proceedings. See LOIS HAIGHT HERRINGTON ET AL., U.S. PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT 17-36, 63-71, 72-82 (1982).

81. See Hall, *supra* note 79, at 318.

The organizing committee adopted the "one judge" concept . . .

in the majority of domestic violence cases. Where desirable, consistent enforcement could include providing effective treatment for the offenders with the goal of reintegrating them in the community. This would not entail reconciling the family at all costs. Instead, the focus would be on having the commu-

nity more involved and responsible for the fate of families in its midst. Restorative justice principles may warrant convicting and incarcerating the offender and providing social services to the victim that will facilitate the transition from economic dependence to economic and self-sufficiency. Families in the community could be enlisted to be available to women and their children when they need safety or social support.

V. THE PROCESS OF DEVELOPING THE DOMESTIC VIOLENCE COURT

In 1997, the authors formed the nucleus of a steering committee to develop a domestic violence court. The second author provided academic sources, intern support, and developed a plan for evaluation of the court. A partnership also was forged with the community to foster support for the court by insuring that key players outside the judicial system had a role in the organization and implementation of the court. Key individuals had already been to several national domestic violence conferences. A collaborative team was drawn from a number of agencies, each bringing specific skills and perspectives to the table. Included in the planning and implementation phases were both authors, the county probation department, the city and county prosecutor's offices, city and county law enforcement, YWCA victim advocates, and offender treatment providers.

An attempt was made to include the defense bar. Opposition from defense attorneys has been a major obstacle in similar projects in Florida and California. In Vancouver, the opposition was defused in part because the first author was a former criminal defense attorney in Vancouver and had a good relationship with the defense bar. Although the defense bar chose not to provide much input into the development process, there has been little opposition to the domestic violence court from defense attorneys.

We were not so fortunate with the county prosecutor's office. The county prosecutor selected late 1997 to revive its "domestic violence diversion program." This program allows offenders to pay a substantial fee in exchange for avoiding a conviction. It was not politically feasible to stop the implementation of the diversion program. One tool to control the

diversion process is judicial review of dismissals. This requires that the judge be satisfied that appropriate justification exists before any admission to the diversion program is granted. By exercising this review, the court has been able to limit the number of offenders diverted and cases dismissed. Discussions have taken place with the county prosecutor to examine the diversion program's conflict with the goals of the domestic violence court.

The organizing committee adopted the "one judge" concept for the dedicated court. The Superior Court judges readily accepted the suggestion by the District Court that efficiency could be increased by sharing the domestic violence workload. In the fall of 1997, the Superior Court judges agreed to confer Superior Court jurisdiction on the District Court judges, giving the District Court jurisdiction over civil domestic violence protection orders.⁸² Since early 1998, civil protection order petitions were added to the domestic violence court caseload. Ultimately, this consolidation of services between the District and Superior courts may have been the single most important aspect of the process. The consolidation of functions prioritized domestic violence cases and made the services more accessible to victims. The resulting system treated court users as clients who deserved a high level of service while reducing obstacles to those seeking relief.

The cooperation experienced with Superior Court judges was not as easily achieved within District Court itself. The nature of Washington's elected judiciary gives little consideration to the ability of judges to work together, or to their varying abilities. Many judges seem to believe they have a right to conduct their court as if it were their own kingdom. This predisposition, when combined with the desire to protect their own self-contained courtrooms, creates resistance to change among judges. Many judges also fear any change that may increase their workload, or worry that an innovation may infringe on the legislative branch of government, confusing making new law with creating a new organizational structure to enforce existing laws more effectively. These factors, together with jealousy, fear of the unknown, and concern that another judge may obtain some political advantage, are obstacles to developing a new court structure.

The organization and culture of the five Clark County District Court judges had been described by past consultants as highly resistant to change.⁸³ The presiding judge must obtain majority approval for each decision involving any new initiatives. This can make it difficult to sustain a long-term project, as it can be undermined at any time by a vote of the judges. The first author served as presiding judge for two terms in 1997 and 1998 through the planning and implementation phases of the domestic violence court. From time to time, at the direction of the presiding judge, the judges held retreats to

82. Washington law provides that domestic violence victims may file a petition for a civil protection order with the court. The civil protection order is a broad-based wide-ranging order that provides that the law enforcement agency in the jurisdiction where either the petitioner or respondent resides can restore the petitioner to the common residence of the parties. The order can remove the respondent from the home, grant the petitioner pos-

session of property, and provide that the police effectuate transfer. It can also determine custody and visitation, and direct law enforcement agencies to obtain possession and custody of minor children for the petitioner. WASH. REV. CODE § 26.50 (Supp. 1998).

83. Leland Fish, CLARK COUNTY DISTRICT COURT ORGANIZATION, July 1992. Manuscript on file with first author.

build a consensus and collegiality. In this case, the consensus-building approach met with limited success, and decisions had to be made to proceed with the project without unanimity.

Nevertheless, the majority of the judges did see some value in changing the court's response to domestic violence. They were aware of the active domestic violence task force and the strong interest in the Vancouver City Attorney's office in bringing about change. State legislation also demonstrated the priority that legislators accorded domestic violence. Support also existed in the news media, which reported favorably on the court.⁸⁴ Government officials, including the county commissioners, wrote letters of support.⁸⁵ There was enthusiastic feedback from probation officers, treatment providers, and victims. The converging political support allowed us to move through the planning phases with little opposition. It did not hurt that the judges who lacked a personal interest in the subject were aware that 1998 was an election year, and the issue was an important one for many political constituents.

Since implementation of the domestic violence court, the other judges have acknowledged for the first time that the presiding judge position should be occupied by a judge who possesses the interest and knowledge to sustain special projects. This is important because the specialized knowledge of the presiding judge is useful when that judge acts as spokesperson for the court with the public, the press, and other county departments. It also is significant because the bar, probation departments, treatment providers, the press, and the public naturally look to the presiding judge for vision and leadership.

VI. THE COURT IN ITS PRESENT FORM: "ONE STOP SHOPPING" AND COORDINATION OF SERVICES

Implementation of the court has resulted in "one stop shopping" for victims.⁸⁶ Prior to implementation of the domestic violence court, victims were shuffled between the District Court clerk's office, the Superior Court clerk's office, and the prosecutor when seeking relief. With the new court, the safety of victims was increased by establishing one place from which to seek relief. The domestic violence court resolves situations of the past where an order issued in a District Court criminal action or pursuant to a civil anti-harassment proceed-

ing was in conflict with the civil domestic violence protection order or an order issued out of a family court proceeding. Court clerks who deal only with these issues help the victim prepare the appropriate paperwork and bring it directly to the judge for consideration.

However, coordination of services is complicated by the victim advocate structure. The City of Vancouver contracts for high-quality victim services from the YWCA domestic violence program. This program makes recommendations to the court about protection orders and offender release from jail. Cases involving persons living outside the city limits or cases involving felonies utilize one county victim advocate, whose role is to ensure the victim is available and prepared to testify in court. Unfortunately, the county advocate neither addresses victim needs nor provides information to the court.

At such time as the offender admits culpability or is convicted, the offender is sentenced to probation. The domestic violence court orders convicted defendants into state-mandated domestic violence treatment at the time of sentencing. The court integrates alcohol and drug treatment services with domestic violence treatment where appropriate. The court has begun to address the issue of economic support for victims and children by including specific provisions in the sentence orders. In 1999 the court began issuing temporary child support orders in both civil and criminal cases where the parties have minor children in common. To ascertain compliance with court orders, the court schedules periodic reviews. If violations are found, the court imposes immediate, graduated sanctions that include more frequent reviews, electronic home confinement, work crews, alternative community service, more restrictive terms of probation, more intensive treatment, or actual jail time. High fines are usually not imposed because they may reduce the funds and support available to victims. The domestic violence court has two years jurisdiction in all misdemeanor domestic violence cases, and jurisdiction in civil

Implementation of the court has resulted in "one stop shopping" for victims.

84. See e.g., Stephanie Thomson, *Special Clark County Court, Cited as One of Best in U.S., Strives to Give Victims Better Protection*, COLUMBIAN, Oct. 24, 1999, at A1 (devoting entire section in the local newspaper to various favorable articles about the domestic violence court); Brian Willoughby, *YWCA Praises Court, Still Sees Work To Be Done*, COLUMBIAN, Oct. 24, 1999, at A7 (interviewing the director of the YWCA domestic violence program in Vancouver who praises the workings of the court and the fact that all domestic violence cases are heard by one judge); Stephanie Thomson, *One-Judge System for Domestic Violence Cases Wins Praise*, COLUMBIAN, Oct. 24, 1999, at A8 (noting that having one judge specialize in domestic violence cases insures consistency across cases).

85. Despite county budget problems, the County Commission has been careful to maintain the District Court funding. This budget stability did not occur by chance. District Court judges made presentations to the County Commission explaining the benefits of a domestic violence court. Consequently, implementation of

the court occurred without additional outside funding.

86. The idea of reducing fragmentation of the court system and avoiding the issuance of conflicting orders affecting a family is not new. Advocates of unified family courts point to the fragmented, inefficient, and overlapping system of adjudicating family law cases in the majority of states that creates negative or antitherapeutic consequences for litigants experiencing multiple family law problems. See Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 469, 490-91 (1998). Among other similarities to the Vancouver Domestic Violence Court, Professor Babb's advocacy of unified family courts suggest that judicial specialization in family law provides an efficient manner to resolve complex matters. *Id.* at 500-03. The Vancouver Domestic Violence Court has attracted positive attention of the legislature and the judiciary of Washington and may ultimately be a step in the direction of a unified family court.

A number of unintended consequences occurred.

protection order cases is for as long as is necessary.

Although past research has been critical of the practice of charging the majority of domestic violence cases as misdemeanors,⁸⁷ this is an advantage in the Clark County Domestic

Violence Court because the judge has much more discretion in sentencing of misdemeanors than superior court judges have in sentencing felonies under the sentencing guidelines. Moreover, in Clark County, domestic violence cases charged as felonies are more likely to be diverted, plea bargained, or dismissed because of the focus on what are believed to be more serious crimes such as robbery. The coordination of criminal remedies with civil protection orders in the domestic violence court, moreover, increases the safety of the victim.

VII. UNINTENDED CONSEQUENCES OF THE DOMESTIC VIOLENCE COURT

As a result of the implementation of the domestic violence court a number of unintended consequences occurred. The referrals we have received from child protective services are an example. They have encouraged complaining parents to file civil domestic violence protection orders against their spouses on behalf of an allegedly abused minor child. This has created a crisis in the provision of guardians ad-litem for juveniles. Ultimately, the court plans to use the domestic violence court to identify high-risk children, and provide them and their families with services.⁸⁸ Until we implement that component, we will continue to accept referrals from child protective services and afford them what limited protection is available.

Urgent security problems created by the addition of larger and highly emotionally charged civil and criminal domestic violence dockets are a second unintended consequence. Incidents inside and outside the courtroom have increased. The resulting increase in cases also reduced the number of personnel available to transport offenders to other courts.

A third unintended consequence is the failure of the court to provide a collective solution to the scheduling problems created by the new court. Lack of flexibility in scheduling and management of cases results in limited times during the day when domestic violence matters can be scheduled. Judges failed to recognize the amount of time that is necessary to consider all the complex issues involved in domestic violence cases and the frequent reviews. This caused the domestic violence dockets to run over into other scheduled court proceedings, increasing resentment over the "inefficiency" of the new court. Some of the dockets conflicted with other court matters and constitutionally required hearings.

The fourth unintended consequence was the zeal with which the state prosecutor and city attorney's office went for-

ward in trials without direct participation by the victims. Although Washington evidentiary law restricts the admission of victims' out-of-court statements, recent rulings have provided opportunities to try more cases without the victim testifying in court. At least six such cases have been successfully prosecuted in Clark County to date. In addition, convictions have been obtained in several cases where the victim has recanted her original allegations. Nevertheless, there also have been some acquittals under this system. It is an open question to what extent such prosecutions are therapeutic for the victim.

VIII. CONCLUSION

National and local statistics indicate that domestic violence creates a need for legal and social services among many women in violent relationships. The practice of mixing domestic violence cases in courts that consider other crimes has resulted in the dismissal of the majority of domestic violence cases. Principles of therapeutic jurisprudence, preventive law, and restorative justice suggest that the legal system can anticipate, terminate, and prevent violence toward women by utilizing a proactive, specialized domestic violence court that coordinates services with other legal agencies, treatment providers, and victim advocacy groups.

The domestic violence court has been the catalyst for new ideas in dealing with problems in our community. Most recently, the Superior Court has begun the development of a family court center that would incorporate not only domestic violence court but also dissolution actions and other family-related actions. In addition, the Clark County Department of Community Services and Corrections joined with the District Court to establish a mental health court. This project hopes to remove barriers that prevent the court from identifying and addressing unique needs of the mentally ill offender. Also, a drug court is now being implemented that began with a pilot program in District Court called "substance abuse court," which shares a common philosophy with drug courts. Lastly, the District Court has begun development of a "teen traffic court" in cooperation with the "legal magnet" program at a local Vancouver high school that has an academic program for high-school students interested in legal careers. High-school students who are cited for minor traffic infractions may request to have their ticket transferred to the high school traffic court for adjudication.

These projects incorporate, wherever possible, principles of therapeutic jurisprudence, preventive law, and restorative justice first pioneered locally in the domestic violence court setting. It is clear that the collaborative domestic violence court development process has facilitated a closer working relationship between the Clark County judiciary and the community to resolve numerous problems shared by other jurisdictions.

It has become clear—in the process of creating the domes-

87. Many police departments unofficially downgrade domestic violence cases to misdemeanor assaults even though they would otherwise fit the textbook definition of a felonious assault. PATRICK A. LANGAN & CHRISTOPHER A. INNES, BUREAU OF JUSTICE STATISTICS, PREVENTING DOMESTIC VIOLENCE AGAINST WOMEN 1-2

(1986).

88. See Leonore M.J. Simon, *How a Specialized Domestic Violence Court Can Be Used to Achieve Therapeutic Interventions in the Lives of Children of Violent Families*. Manuscript on file with the second author.

tic violence court as well as subsequent court reforms—that the failure of the criminal justice system to address effectively domestic violence cases is due, in part, to our strict adversarial system and the way our judiciary has processed these cases in the past. The adversarial system may be better suited to litigating with crimes between strangers and certain other issues brought before our court system. We suggest, however, that it may be less effective when dealing with crimes between intimate partners, family law issues, “victimless crimes” such as drug use, and other specific categories where the adversarial approach may actually exacerbate the problems. Thus, in addition to the problem of competition for scarce resources for domestic violence cases, we see a problem in the way in which the resources are applied (or the failure to apply appropriate resources) to the problem. In contrast to the adversarial system’s procedural and other goals that relate to the offender, therapeutic jurisprudence, preventive law, and restorative justice allow more focus on making victims whole again.

The creation and implementation of the Vancouver Domestic Violence Court was a joint effort between the judiciary and the community. The essential ingredients consisted of one judge in a position to exercise leadership and committed to change, a relatively cooperative judiciary, and the input and support of key stakeholders from various community agencies that included legal actors, treatment providers, victim advocates, and academic support. The lessons learned from this process, however, include the fact that creating change in the American court system is difficult. In attempting to create a domestic violence court, one should not underestimate the obstacles and the potential opposition from individuals within and outside the court. In particular, the lesson learned from the Vancouver Domestic Violence Court is to gently resist initial judicial opposition or reluctance to change. As colleagues become more aware of the benefits of the new court, they will be won over. Resistance can also be countered by actively courting the community to generate the needed political support. In turn, a successfully implemented domestic violence court can effect changes in how seriously the community treats domestic violence.⁸⁹ Once a new court is established, it

requires continual revision and adaptation of procedures to accommodate court users and legal actors in each jurisdiction. Once change is successfully wrought in one part of the legal system, the remaining components will be less resistant to change.



Randal B. Fritzler is a district judge in Vancouver, Washington. He conducted a private litigation practice in Vancouver until his election to the Clark County District Court bench in November 1986. In 1997, he began organization of the Clark County Domestic Violence Court, serving as its judge through 1999. He was honored as the “Outstanding Judge of 1998” by the Washington State Misdemeanant Corrections Association. In 1999, he was selected to chair the American Judges Association Therapeutic Jurisprudence Committee. Judge Fritzler is currently organizing a specialized mental health court and promoting innovative concepts for processing the court caseload.



Leonore M.J. Simon is an associate professor and chair of the Department of Criminal Justice and Criminology at East Tennessee State University. She received her J.D. from Case Western Reserve University Law School in 1978, practiced criminal law for five years, and obtained a Ph.D. in clinical psychology from the University of Arizona in 1991. Her research and teaching interests include violent offenders, sex offenders and legislation targeting them, assessment and treatment of personality disorders, offenders, and victims, violence against women, specialized courts, therapeutic jurisprudence, and measurement of crime.

89. See Stephanie Thomson, *One-Judge System for Domestic Violence Cases Wins Praise*, COLUMBIAN, Oct. 24, 1999, at A8.

American Judges Association - Annual Meeting and Educational Conference September 10-15, 2000 Kansas City, Missouri

This year’s AJA annual meeting will be held September 10-15 in Kansas City. The meeting consists of an educational conference plus AJA business meetings, which include a general assembly for all AJA members and meetings of the AJA Executive Committee, Board of Governors, and other committees. For the budget-minded attendee, the educational programs all take place in a three-day period. A tentative schedule for the conference is found at page 53 of this issue. More information can be found by checking the AJA’s general Web site (<http://aja.ncsc.dni.us>) or by checking the special AJA Conference 2000 Web site (<http://www.law.umkc.edu/aja>).