
Specialized Criminal Domestic Violence Courts

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Author's Note

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Introduction

The National Center for State Courts surveyed courts by mail in 1998 and received approximately 200 responses indicating that the court had some type of specialized procedures for domestic violence

cases¹. This article provides a basic overview of issues involved in the specialization of criminal domestic courts. To provide a framework for the study of these types of courts, this paper profiles the criminal domestic violence courts of Seattle, Washington, Sacramento, California, and Vancouver, Washington². These three courts are representative of four basic models for specialization.

Basic Models of Specialization

Model One: Pretrial Conferences Only

Example: Municipal DV Pretrial Court, Seattle, Washington

A "pretrial conference" is the court appearance where the prosecutor and defense attorney (or defendant) attempt to plea-bargain a case before setting it for trial³. Some courts choose to specialize by having all pretrial conferences involving domestic violence crimes put on a separate court calendar. Other court appearances, such as arraignment and trial, are handled on the same calendar as any other crime.

Crimes without an act of violence to a person (such as theft), or without an easily identifiable "victim" (such as driving without a valid driver's license), are relatively straightforward to resolve. In contrast, domestic violence cases often require more time to negotiate than other crimes due to many factors: victim concerns⁴, batterer intervention programs⁵, consequences of a conviction on immigration status⁶ and firearm possession⁷, to name only a few. In addition, domestic violence cases may require the physical presence of many more people than are required for other crimes: the victim, a victim advocate and/or witness assistant⁸, additional court security personnel due to the heightened possibility of violence by the parties, and court services (probation) officers to provide sentencing reports on recommendations for jail time, batterer intervention programs, substance abuse treatment and contact with the victim.

¹The survey conducted by National Center for State Courts was funded by a grant from the National Institute of Justice. A formal report is still forthcoming.

²As confirmed by the National Center for State Courts survey, there are numerous courts nationwide that may provide useful models for courts considering specialization. The Dade County Court in Miami, Florida, the Felony Domestic Violence Court in Brooklyn, New York, and the Washington D.C. court system are all under study.

³The steps of the criminal process are usually: arrest, charging by complaint, arraignment, pretrial conference, trial and sentencing. Typically, a criminal case begins when the domestic abuser is arrested and the prosecutor prepares a formal charging document known as a "complaint" that outlines the specific criminal charges. The first court appearance for the abuser is called the "arraignment," where the abuser is given an opportunity to plead guilty or not guilty. If the abuser (known as a "defendant" in criminal proceedings) pleads not guilty, the next court appearance is the pretrial conference.

⁴Victim concerns can include a desire for restitution for medical bills or damage to property, the regulation of future contact with the batterer, and a preference for certain sentencing options such as the amount of jail time that a batterer receives for the crime, if any.

⁵The term "batterer intervention" is used to describe domestic violence programs for batterers. "Intervention" is used rather than the term "treatment" to recognize that battering is willful behavior and not a sickness which requires "treatment."

⁶For many years, only felonies were deportable offenses, but now it is possible for persons convicted of misdemeanor domestic assault to be deported as well. See 8 U.S.C. 1227-1229.

⁷It is now a federal offense to possess a firearm if a person has been convicted of domestic assault. 18 U.S.C. 922(g)(9).

⁸The term "witness assistant" will be used to distinguish people who work for the prosecutor directly from those who work for an independent advocacy organization. This is not meant to diminish the value or role of either witness assistants or advocates.

Thus, courts such as the Municipal Court of Seattle, Washington elected to provide a special pretrial conference calendar for misdemeanor domestic violence cases. This allows the Domestic Violence Unit of the Seattle City Attorney's Office to schedule court appearances efficiently and to coordinate the use of witness assistants in the courtroom. Specialized pretrial calendars may make it easier for the victim to locate the courtroom and attend the pretrial conference if the victim wishes to do so.

From the court's perspective, a separate domestic violence pretrial conference calendar is the easiest type of court specialization. Unlike court appearances such as arraignments where the court must process all the arrested persons in a fixed time period, pretrial conferences can be scheduled to fit the court's staffing needs. During the time period from arraignment to pretrial conference, domestic violence cases can be easily separated from regular cases and receive the special processing required (such as attempting to contact the victims if this is handled by court services). A pretrial conference calendar happens in a fixed period of time (usually a morning or afternoon), unlike a trial or evidentiary hearing⁹ which may last many days. Thus, all three courts surveyed in this paper have at least separate domestic violence pretrial conference calendars as a minimum degree of specialization.

Profile: Municipal Court of Seattle, Washington

The Municipal Court provides a pretrial conference calendar for misdemeanor and gross misdemeanor domestic abuse cases¹⁰.

Population: City of Seattle - 516,000

Court caseload: All crimes: in 1996, there were almost 19,000 non-traffic misdemeanors filed, 422 jury trials and 70,000 magistrate hearings. Domestic violence cases: in 1997, there were 5,359 domestic violence reports were received and 2,592 cases were charged. In 1998, there were 5,252 reports received and 3,536 cases were charged. In a typical month the Seattle City Attorney's Domestic Violence Unit will try between 10-15 jury trials.

Number of judges: In theory, three primary judges handle the domestic violence pretrial conference calendars. In practice, pro tem judges are sometimes assigned to hear domestic violence pretrial conferences as well.

Number of court personnel: 210 full-time, 30 part-time employees

Budget: in 1996, \$15,757,000 for entire Municipal Court

⁹An evidentiary hearing is a hearing where witnesses appear and evidence is received by the court (there is no jury present). There is a direct examination of the witness by the party offering the evidence and then the other party may cross-examine the witness. In domestic abuse prosecutions, there are often evidentiary hearings prior to trial to determine the admissibility of 911 tapes and victim statements made to the police, for example. If the court rules that the evidence is inadmissible, the prosecutor may lower the charge in a plea bargain offer, or dismiss the case altogether because it will be difficult to win at trial without the evidence.

¹⁰View the Municipal Court of Seattle website at <http://www.cityofseattle.net/courts/house.htm> [<http://www.cityofseattle.net/courts/house.htm>].

Jurisdiction: Municipal Court hears misdemeanor (90 days and/or \$1,000 fine) and gross misdemeanor (one year in jail and/or \$5,000 fine) cases involving adult offenders. Civil orders for protection are heard in District Court and felony offenses are heard in Superior Court.

How the Court is specialized: Misdemeanor domestic violence pretrials are handled on a court calendar that is separate from other misdemeanor offenses. The practical effect is that most pretrial conferences are generally heard by one of three judges who are assigned to those calendars, providing greater consistency for the processing of those cases.

The Seattle City Attorney's Office has a Domestic Violence Unit. DV prosecutors determine whether a domestic violence case is filed and provide bail and sentencing recommendations. Witness assistants contact victims and provide recommendations on bail.

Two DV attorneys and two witness assistants are present at the pretrial conference. One attorney serves as the "inside prosecutor," who remains in the courtroom and makes the court appearance. The other prosecutor serves as the negotiator, receiving input from the witness assistant and striking plea bargains with defense attorneys. There is an effort to keep the case with the same attorney, but it is possible that different attorneys from the DV Unit may handle the case at arraignment, pretrial conference and trial. The witness assistant generally remains the same.

The Municipal Court also has a weekly "review calendar," where domestic violence probation revocation, treatment status of DV offenders, and lifting of "no contact" order requests are heard by one of the DV pretrial conference calendar judges.

The court specialization only applies to cases at pretrial conference. If a DV case is set for trial, it will go to the Master Calendar, and may be assigned to any judge on the bench for trial.

Calendar: In-custody arraignments for all misdemeanor cases (DV or non-DV) are heard seven days a week. Any judge or prosecutor may handle the appearance. The Municipal Court calendars special domestic violence pretrials all day on Monday and also Tuesday night at the jail. One of two judges typically hears the DV pretrial conferences. On Wednesdays the "review calendar" is held. The court hears DV cases concerning probation revocation, status of treatment for the DV offender, and requests by the victim for a lifting of the "no contact" order. The DV pretrial conference judge handles this calendar.

Cases set for trial go to the Master Calendar on Tuesday through Friday, where the case is assigned for trial to any judge on the bench. There are usually up to 25 DV cases for trial each week, divided among the three DV Unit prosecutors assigned to trial rotation. Only six courtrooms are available for the trial of ALL misdemeanors each week, so DV cases are competing for judge assignment against all other misdemeanors.

Prosecutor's Office: Seattle City Attorney's Domestic Violence Unit

History of the DV Prosecutor Unit: In 1978 the unit began as the Family Violence Project and consisted solely of advocates working for the prosecutor's office. At that time, any prosecutor could

be assigned a DV case. In 1994, the unit combined advocates and prosecutors and a prosecutor was placed in charge of the unit.

Prosecutor Jurisdiction: This office handles misdemeanor and gross misdemeanor offenses (felony domestic violence crimes are handled by the King County Prosecutor's Office, which also has a specialized domestic violence unit). Most prosecutions occur under the City of Seattle Municipal Code, which mostly mirror state statutes. City prosecutors are specially deputized State attorneys so that they can prosecute under state statutes if desired.

Model Two: All Non-Evidentiary Appearances

Example: Domestic Violence Home Court, Sacramento, California

Some courts, such as the Sacramento, California Domestic Violence Home Court hear all non-evidentiary appearances for felony and misdemeanor domestic violence cases. Non-evidentiary appearances require legal decisions to be made by the court after arguments by opposing counsel and do not require witnesses to testify, thus they are much easier to schedule in a fixed time period. Non-evidentiary appearances can include arraignment (where the court determines the custody and bail status of the defendant), pretrial conferences (where the attorneys attempt to plea-bargain a resolution to the case without a trial), taking of a guilty plea and sentencing ¹¹.

Profile: Domestic Violence Home Court of Sacramento, CA

Description: In July 1997, the Domestic Violence Home Court began hearing all non-evidentiary matters for all felony and misdemeanor domestic violence cases ¹².

Population: City of Sacramento - almost 1.2 million (including fifth largest immigrant population in nation)

Domestic Violence Home Court created: July 1, 1997

Court caseload: In first nine months of specialized court operation, 3,225 cases referred for prosecution.

Number of judges: One primary judge handles the Domestic Violence Home Court. A second judge serves as the "back up" judge.

Jurisdiction: The Domestic Violence Home Court can hear both misdemeanor and felony criminal matters.

¹¹Depending on the jurisdiction and the specific facts of a given case, it is possible that a sentencing hearing may require witnesses. Usually, though, a sentencing hearing consists of attorney arguments, input on appropriate sentencing considerations from a probation officer, and unsworn statements by defendant and victim if either desires to address the court directly.

¹²View the Sacramento Domestic Violence Home Court website at <http://www.da.saccounty.net/dv/index.htm> [<http://www.da.saccounty.net/dv/index.htm>]

How the Court is specialized: All non-evidentiary hearings on criminal domestic violence are held in the Domestic Violence Home Court before one of two judges assigned to the court. This includes sentencing after a plea bargain (even if on the day of trial) and mandatory status reviews of defendant participation in batterer intervention programs. Only preliminary hearings and trial (which require the taking of evidence) are held outside of the DV Home Court.

Calendar: A typical day in the Home Court is the following schedule:

- 8:30 am Superior Court Reviews (pretrial conferences)
- 10:30 am Sentencing
- 1:30 pm Arraignment
- 2:30 pm Trial Status Conferences

Superior Court Reviews (SCR) are held Monday through Thursday and are the appearance where the vast majority of domestic violence cases are resolved within 30 days of the initial charge. If the case is not resolved, a misdemeanor case will be set immediately for trial, but a felony case will be set for a preliminary hearing.

Prosecutor's Office: Sacramento District Attorney's Office Domestic Violence Unit

History of the DV Prosecutor Unit: The current Domestic Violence Unit of the Sacramento District Attorney's Office began at the same time as the Domestic Violence Home Court.

Prosecutor Organization: There is one full-time supervisor, an assigned intake attorney who charges the cases, two lead attorneys (who handle 50% of the Superior Court Review appearances) and one attorney for Superior Court Review (who handles the other 50% of these appearances). There are also generally five trial attorneys, one prosecutor assigned to stalking cases, and one "threat management" prosecutor to handle Order for Protection cases and stalking overflow.

Prosecutor Caseload: On a typical day, the prosecutor will handle 30-40 cases at SCR. If a case is not resolved at SCR, the supervising attorney reviews the case and assigns it to one of the five DV trial attorneys to handle the case from preliminary hearing through trial. The trial attorneys typically carry a caseload of 18-24 cases.

Witness Assistants: The prosecutor's office employs four witness assistants (called advocates) who appear in arraignment and SCR. Witness assistants only appear at felony preliminary hearings if the case is a serious one¹³.

Model Three: All Appearances in Specialized Court

Example: Clark County District Court, Vancouver, WA

¹³The Domestic Violence Unit of the Sacramento District Attorney's Office has applied for a grant to fund more witness assistants so that the witness assistants can accompany victims to more court appearances.

Some criminal courts such as the Clark County District Court in Vancouver, WA, choose to specialize so that every appearance of a criminal domestic abuse case is held in one court from arraignment to trial and sentencing. As only the judges of the specialized court handle domestic abuse cases (in Vancouver, it is just one judge), this type of court promotes consistency of case disposition and expertise in domestic abuse on the part of the judges. This type of court requires extensive resources and a community considering this type of court must ensure that the court system (from probation officers to court clerks to judges) is prepared to adjust existing resources accordingly. The profile of Clark County District Court in Vancouver, WA, an example of both models three and four, follows the description of model four.

Model Four: Combined Criminal and Civil Jurisdiction

Example: Clark County District Court, Vancouver, WA

Much of the court system's involvement in the problem of domestic abuse takes place in family court and is a civil process, not a criminal one¹⁴. Family court¹⁵ is the forum for seeking divorce, determinations of child custody, and Orders for Protection (OFP). An Order for Protection is a civil order issued by a court upon the request of a petitioner which restrains the respondent from committing certain acts, such as having contact with or assaulting the petitioner. (These orders have different names in different states, e.g. temporary restraining orders or protective orders, and different remedies are available in different states.) A violation of an OFP is a criminal act¹⁶.

To obtain an OFP, the petitioner must prove that the respondent has committed an act of domestic abuse. The respondent may admit the abuse, or, if the respondent denies the abuse, the court may require an evidentiary hearing to determine if the abuse took place. Generally, counsel represents neither the petitioner nor respondent¹⁷. After a domestic assault occurs, the victim often seeks an OFP in family court at the same time that a criminal charge is pending. This means that the court system is responding to the same act of domestic abuse in two forums: the family court and the criminal court. It is possible for the family court and the criminal court to issue conflicting orders

¹⁴A civil case is one where a private party brings a legal action against another party. In criminal cases, it is always the State bringing charges against the defendant. This distinction is frequently confused by both attorneys and lay people, and it is common to hear "the victim pressed charges" when speaking of domestic abuse. In fact, only the prosecutor can press charges in a criminal case.

¹⁵The term "family court" is used generically here to refer to the court where marital dissolutions, child custody issues and other issues involving the breakdown of a family unit are heard. In some jurisdictions, Orders for Protections may be obtained in courts other than or in addition to the family court. In Washington State, for example, Orders for Protection can be sought in District Court, Municipal Court and any section of the Superior Court.

¹⁶A violation of an Order for Protection can be both a civil violation known as contempt of court and a criminal act. If the petitioner wants to pursue the violation as a civil matter in family court, the petitioner must bring a motion before that court. Regardless of whether the matter is pursued civilly, the prosecutor (not the petitioner) decides if criminal charges are brought in criminal court.

¹⁷Whether the petitioner or respondent is represented by counsel varies according to the jurisdiction. Judith Shoshana, Director of the Seattle City Attorney's Domestic Violence Unit noted that in Seattle, many respondents were represented in OFP evidentiary hearings, while petitioners would usually not have counsel. In contrast, her experience in Denver, Colorado, was that the Colorado Women's Bar Association frequently provided pro bono (free) attorneys for petitioners. Shoshana letter to author (Aug. 13, 1999).

about the respondent/defendant's permissible degree of contact with the petitioner/victim or regarding custody of the children ¹⁸ .

Information about the same event from the same parties may be presented very differently in the context of an OFP hearing or a criminal court appearance. In a criminal case, the prosecutor usually provides the judge with the defendant's history. In a civil case like an OFP hearing, the respondent's criminal history might not be routinely provided to the judge. At an arraignment in a criminal case, the defendant has usually been arrested recently, and his/her demeanor may reflect the belligerence and level of intoxication/use of illegal drugs that was present during the abuse. In contrast, an OFP hearing is usually held days to weeks after the assault.

Some courts such as the Clark County Domestic Violence Court in Vancouver, WA, elect to combine civil and criminal jurisdiction in a single domestic violence court ¹⁹ . The same court hears petitions for Orders for Protection and all appearances for misdemeanor criminal domestic abuse cases. This ensures that the judge is well informed about the entire situation and provides consistency in the court's orders ²⁰ .

The decision to combine civil and criminal jurisdiction in a single specialized domestic violence court is even more complex than the decision to create a specialized domestic violence criminal court. It has been only recently that domestic violence has been taken seriously as a criminal offense and not treated as "just a family matter." Combining jurisdiction in one court may encourage judges and prosecutors to focus on considerations inappropriate to their decision making in criminal cases. For example, judges, defendants and victims may all put pressure on a prosecutor to minimize or cease a criminal prosecution based on the defendant's willingness to pay child support or alimony ²¹ .

Defendants have a Fifth Amendment right to remain silent in criminal proceedings and are usually represented by counsel. In contrast, parties in civil proceedings have no right to remain silent and the parties often do not have attorneys ²² . Thus, combined civil/criminal jurisdiction may increase

¹⁸Depending on the jurisdiction, there may be other courts that could issue conflicting orders as well. Many states have separate juvenile courts for child neglect cases and juvenile delinquency cases; where the batterer is a father who hits both the mother and the children, it is possible that the criminal court, family court and juvenile court could all issue conflicting orders on child custody and visitation.

¹⁹The Domestic Violence Division of the Eleventh Judicial Circuit of Florida in Miami is another example of a combined civil and criminal jurisdiction court. For more information, write the court at Domestic Violence Division, Richard E. Gerstein Building, 1351 N.W. 12th Street, Miami, Florida 33125. The main phone is (305) 375-5278. View the court's website at http://www.jud11.flcourts.org/programs_and_services/domestic_violence_overview.htm [http://www.jud11.flcourts.org/programs_and_services/domestic_violence_overview.htm].

²⁰Of course, combined jurisdiction could exist in civil courts. The District Court in Sacramento, instead of giving civil jurisdiction to the criminal domestic violence court, allows the family court to modify "stay away" originally issued in criminal court. This practice helps alleviate the caseload pressure in criminal court.

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²²Judge Fritzler of the Clark County Domestic Violence Court in Vancouver, Washington believes that in a consolidated civil/criminal domestic violence court, legal representation should be provided for the defendant at both civil and criminal appearances. Telephone interview with Judge Fritzler (Jan. 30, 1999) [hereinafter "Fritzler interview"].

the possibility that a defendant's Fifth Amendment right to remain silent will be violated because defendants often address the court directly about the domestic abuse incident.

The problem of the defendant's Fifth Amendment right to remain silent can be addressed in several ways. For example, in Minnesota there is a statute that forbids the use of a respondent's OFP testimony in a criminal proceeding: Minn. Stat. 518B.01, subd. 15. However, there is still the potential problem of a judge who heard the defendant's admissions in an OFP context making decisions in the criminal proceeding based on any of those admissions.

Perhaps of even greater concern (from a prosecutorial perspective) is the possibility of the **petitioner's** OFP testimony being used against her/him in the criminal proceeding. In some jurisdictions²³ the criminal defense attorney may represent the defendant/respondent in the criminal matter and at the OFP hearing. Because the prosecutor represents the State, not the victim, prosecutors do not appear on behalf of the victim at OFP hearings. This means that when the petitioner/victim provides testimony at the OFP hearing, the criminal defense attorney has the opportunity to cross-examine the victim without the prosecutor present. The victim's testimony at the OFP hearing may damage chances for a successful criminal prosecution because it will often provide impeachment material to be used when the victim testifies again in the criminal trial.

Although this practice does not raise constitutional concerns, it is still problematic for successful prosecution if a victim is cross-examined by the defense attorney in the OFP hearing while the prosecutor is not present. Combined civil/criminal courts may encourage the use of OFP hearings as a forum to cross-examine the victim²⁴.

Despite the potential problems of combined civil/criminal courts, Judge Fritzler of the Clark County Domestic Violence Court stated that combining the civil and criminal jurisdictions into one court was the "best single thing" about the creation of the court²⁵. Because of the combined jurisdiction, court orders about the contact by the defendant with the victim no longer conflict and there is coordination between victim advocates and batterer intervention program providers. Court Services Supervisor Chuck Bristol noted that the combined jurisdiction of the Clark County Domestic Violence Court helped "eliminate the manipulation" of the system by defendants²⁶.

Profile: Clark County District Court, Vancouver, WA

Description: The Superior Court agreed to give jurisdiction over civil protection orders to the District Court judge. Thus, the same District Court judge hears domestic violence criminal arraignments, pretrial conferences, sentencing, and civil order for protection matters.

²³In Hennepin County, Minnesota, the author is aware of public defenders choosing to represent their criminal clients in the civil OFP hearings.

²⁴Judge Fritzler of the Clark County Domestic Violence Court acknowledged the potential problem, but noted that he has handled over a 1,000 OFP hearings and has not yet had a defense attorney cross-examine the victim in the OFP hearing and then use it in the criminal proceeding. He reported that in over 90 percent of the OFP cases neither party has a lawyer, and the lawyers present in the other cases are family law attorneys, not criminal attorneys. Also, Judge Fritzler does not encourage cross-examination in his OFP hearings. Fritzler e-mail to author (Aug. 4, 1999).

²⁵Fritzler interview

²⁶Telephone interview with Chuck Bristol (Mar. 9, 1999) [hereinafter "Bristol interview"].

Specialty Domestic Violence District Court created: 1998

Population: Clark County - 321,000, including Vancouver (population 128,000)

Court caseload: In 1997, 1,627 misdemeanor domestic violence cases filed, and almost 1,200 civil domestic violence protection orders filed.

Jurisdiction: Superior Court is the court of general jurisdiction and District Court has concurrent jurisdiction for misdemeanors and gross misdemeanors. District Court conducts felony preliminary hearings.

Calendar: Court personnel code the twenty-three types of domestic violence charges under Washington law. All criminal and civil domestic violence matters are available in the court file at first appearance.

- "Out of custody" domestic violence arraignments at 8:30 a.m. and "in custody" arraignments at 1 p.m. daily.
- Pretrial hearings and compliance reviews heard at 9:30 on Wednesdays.
- Domestic violence sentencing and show cause hearings at 9:30 on Thursdays.
- Temporary civil protection orders heard every day in morning and afternoon.
- Permanent civil orders heard Wednesday at 1:30.
- Jury trials are held Monday, Tuesday and Friday.

Probation: Probation officers are present at first appearance and attempt to contact the victim. If the defendant pleads guilty at first appearance, the probation officer is available to give an oral pre-sentence recommendation. Most defendants are placed on intensive supervision.

Victim Advocates: The City of Vancouver contracts through an independent agency, which provides services to victims and makes recommendations to the court concerning protection orders and release from jail. The County employs one witness assistant, as staff in the prosecutor's office, whose primary function is to ensure that witnesses are available to testify. The County employee does not provide information to the court.

Reactions of Witness Assistants and Advocates to Specialized Courts

Each of the three specialized domestic violence courts profiled in this article have incorporated victim advocacy and witness assistance into the court's structure. Stephanie Avalon, a resource specialist for the Battered Women's Justice Project, contacted advocates and witness assistants from the three communities during the summer and fall of 1999 and asked them their perspective on the specialized courts. This section contains her summaries of those phone interviews.

Seattle Municipal DV Pretrial Court

Seattle's model is striking because of the number of witness assistants they employ and the close way they work with the prosecutors. Establishing the pretrial calendar facilitated the advocacy already being provided. Witness assistants have a strong role within the Domestic Violence Unit of the prosecutor's office, contacting victims and assisting prosecutors with case decisions.

Kristin Pugh has been working for the Seattle Prosecutor's DV Unit for about 3 years. She says the specialized calendar works very well for advocates, witness assistants, and victims because it makes it possible to have meetings with prosecutors ahead of the pretrial calendar, which would be harder to manage if pretrials were randomly scheduled. She believes the intense involvement helps to offset the tendency of overworked prosecutors to dispose of cases too readily. Without this assistance, the prosecutor would have much less information on which to base decisions.

At arraignment, witness assistants contact victims, convey information to prosecutors, and assist in making charging as well as bail decisions. Each witness assistant usually carries a caseload of about 50 cases at any given time. They continue to work with the victims they were assigned at arraignment. They make follow up calls to the victim and meet with the prosecutor prior to the pretrial. At pretrial, 2 witness assistants and 2 prosecutors cover the calendar. One team meets outside the courtroom to negotiate while another pair handles cases as they are called in court.

Witness assistants' files contain all the history of a particular defendant while prosecutors carry files of the particular incident. Information provided by witness assistants puts the individual cases in a larger context, allowing the court to see the pattern of abuse. This is particularly useful when a victim comes to court to request that a no contact order be dropped. Procedure requires that the witness assistant and victim sign a form requesting the dropping of the no contact order. If the prosecution team believes the no contact order should remain in force, the victim and witness assistant address the court. Depending on what the victim tells the judge, the witness assistant might point out the history of assaults, the level of injuries, or escalating control tactics as arguments in favor of keeping the no contact order. Kristin says that victims do not seem offended by this process because the specific information usually makes a reasonable and understandable argument.

Witness assistants can offer no confidentiality to victims because they work for the prosecutor. Kristin thinks this is only a problem if it is not made clear at the outset. Also, prosecutor based witness assistants cannot work with women charged with crimes, though they may have information about the history of abuse that could effect the charging decision. No clearly established referral system has been established to refer women charged to community based advocacy programs.

No community advocates typically work in the municipal court. Kristin speculates that they are serving different populations. She works with many Spanish speaking, low-income people who seem reluctant to use shelter and support group services, she says. Community based advocates work more in the civil arena. An advocate from a community-based program agreed that the population served was probably different, but also felt confident that victims were being well served by the witness assistants in the Domestic Violence Unit. With limited resources, community programs

do not want to duplicate services. When victims are arrested and the prosecutor's staff cannot provide advocacy, the community programs will, she said.

Sacramento Home Court

Carole Taverna works for the Sacramento District Attorney's Office as a witness assistant (called victim/witness advocates in this court). She described how the Home Court works, how cases are assigned, and the responsibilities of witness assistants from the prosecutor's office. A deputy district attorney evaluates all the incoming cases, judges whether they will be charged and decides whether the charge will be felony or misdemeanor. Frequently, the intake deputy notes concerns requiring immediate attention. A special form was developed to advise witness assistants of those concerns. Prior to every court meeting, witness assistants attempt to contact the victim to provide support and gather additional information regarding her medical condition, what she might want from prosecution, whether substance abuse is an issue, and any additional information regarding history of abuse that could be relevant to the case. The information gathered is written up and provided to attorneys prior to the court hearings. Witness assistants are present in the Home Court to assist victims. Prior to establishing the Home Court, neither witness assistants nor advocates were always present in the court to convey their victims' interests. This alone is a large improvement for victim services.

An unanticipated problem arose in the Home Court when verbal no contact orders were issued, but victims were not always informed and enforcement was problematic. A procedure was established which provided that no contact orders were documented on a form which provides a copy for the court, the defendant, the victim and the prosecutor's file. The copy for the victim is usually provided in the mail. Now that a written record is provided, no contact orders are enforceable and violations do constitute a new criminal offense.

The primary advocacy program for battered women in Sacramento is W.E.A.V.E. Debbie Jacobson, Inter-Tribal Council of California, worked as a W.E.A.V.E. advocate for a number of years. She was involved in establishing DVERT, a program which pairs advocates with police officers to work on high risk cases, usually doing follow up work. In that capacity she was often in the Sacramento Home Court and able to observe what was happening. Debbie Jacobson believes community-based advocates should have been involved in the planning process to include battered women's interests that might conflict with the criminal justice system's agenda.

She named the number one benefit of the court to be offender accountability. With one judge hearing all the cases, the offender become familiar to the court. Carole Taverna agreed that the consistency of one judge seeing all the defendants is the best feature of the Home Court. With the calendar covering felony and misdemeanor, out of custody and in custody, offenders see and hear all types of cases. First time offenders can benefit by hearing a felony case sentenced and knowing that domestic violence will be treated seriously. The down side is that they also observe cases that aren't handled well.

The biggest pitfall in Sacramento, according to Debbie, has been that organizing the domestic violence calendar enabled the defense bar to strategize, too. Public defenders use plea bargaining time

to access victims. They also began sending investigators out within a short time of arrest to speak to victims before the DA's office got a chance to reach them. Debbie felt that public defenders encouraged victims to come to the first hearing and primed them to say they weren't afraid. Prior to the formation of the Home Court, Debbie says the defense office did not have a uniform response and couldn't use investigators the same way. Cases were scattered throughout the court system, making an organized response difficult for everyone. So, while the Home Court enabled better prosecution strategies, it also facilitated the development of new defense tactics.

Witness assistants employed by the prosecutor's office provide advocacy. Debbie's opinion is that there is a role conflict which impedes the witness assistant's ability to effectively advocate for individual women and for system change. Carol Taverna described the duties of witness assistants. Besides being present in the Home Court, witness assistants accompany women to subsequent court hearings, and will assist them with victim-impact statements. In addition, witness assistants from the prosecutor's office hold a daily restraining order class to assist women in the filing of civil restraining orders. She says they work closely with W.E.A.V.E., which also attends the classes, and W.E.A.V.E. advocates are expected to go to the civil hearings with women who want advocates for that purpose.

Annette Lamber, an advocate currently employed with W.E.A.V.E. reiterated the benefit of a single judge handling the domestic violence caseload. The judge often recognizes offenders who re-offend with new victims. Annette thinks the Home Court is important because domestic violence is a different kind of crime calling for different responses. She believes victims are getting their needs better addressed because advocates are available in the court.

Vancouver Washington Domestic Violence Court

Shirl Zent is the coordinator of legal advocacy for the Safe Choice Domestic Violence Program, a program of the YWCA in Vancouver, WA. Shirl has been involved with the entire process leading to the domestic violence court, starting with the domestic violence task force which was established 8 or 9 years ago as part of a community commitment to address domestic violence more effectively. The task force was in place examining problems in the system for about 5 years before the domestic violence court was even suggested. After they decided to establish the court it took about a year and a half to get it set up. First the Protection Order court was moved from Superior Court to District Court, then the Domestic Violence misdemeanor docket was established. Now, they are involved in problem-solving issues that come up.

Shirl believes input from all related agencies possible is critical to the success of a dedicated court. Their task force included law enforcement, corrections, jail personnel, treatment agencies, social services, prosecution, (city and county) and advocates. Judges from district court and from superior court met with the task force at least once but did not attend regularly. The Washington State University provided an instructor and some students who helped with some of the paperwork and details of committee work. Defense attorneys were invited to participate, but did not really get involved.

Evaluations from battered women themselves have not been sought formally in any of these specialized courts. However, informal feedback from women Shirl has worked with over the years has

been positive, she says. The system is more user friendly now and victims report the process is easier to use and they are feeling heard. For example, a problem developed regarding requests from women to dismiss the "no contact" orders issued when criminal charges were pressed. In a neighboring county, victims are told they must attend a 6-hour class before a no contact order can be dropped. Shirl thought this was inappropriate and burdensome for women. Shirl was being inundated with requests from women who wished no contacts dropped. She brought the problem to the attention of the prosecutor who informed the judge. When they met, a policy was established that no contact orders would not be dropped unless the victim also wanted them dropped and not until the defendant had completed his probationary requirements and requested a hearing before the judge. This has been working quite well, Shirl says. A few women who have had unusual circumstances have gotten no contact orders dropped with Shirl intervening on their behalf to the judge.

Shirl believes the success of their domestic violence court rests with the leadership of their judge. He has been very receptive, listened to problems, and included advocates in everything. That judge will rotate out in the next few months but the incoming judge is also very interested in the domestic violence issue. Shirl believes the leadership shown thus far has gotten the court off to a very successful start and improved communication with the rest of the bench. She is pleased with the strong, working relationship that has been established between herself and the judge and other court personnel.

Issues involved in Specialization

Advantages of Specialization

1. **Accessibility for Victim** The more specialized a court is, the easier it generally is for a victim to access the System. A specialized criminal court may mean the same courtroom for all appearances, making it easier for the victim to find the courtroom. It means that key personnel such as the judge who sets release and sentencing conditions, the probation officer who makes release and sentencing recommendations, the witness assistant and/or victim advocate and prosecutor are often available in one courtroom. Rather than the victim having to hunt for each office and service during a time of crisis, the services and appropriate personnel are connected to one forum to which the victim can be directed.

2. **Expertise**

Criminal justice personnel working in the area of domestic violence need expertise in the dynamics of family violence to understand the frequency of victim recantation and the potential lethality involved in the cases. In courts without specialization, judges often rotate through the criminal calendars, and may not have enough experience or training in domestic violence to accurately assess the cases before them. Judges may also be unfamiliar with the manipulative behavior of domestic violence offenders or the intense emotions displayed by domestic violence victims. Specialization allows judges to learn the unique characteristics of domestic violence and the resources available, promoting a more informed judicial response to the problem.

Domestic violence cases often require a specialized knowledge of the law. Many jurisdictions have statutes or case law unique to domestic violence. Judges must have knowledge of the law pertaining to the admissibility of acts of past domestic violence by the defendant and the victim's out-of-court statements about the abuse, as well as special factors the court can consider in making custody and bail determinations in domestic violence cases. Court specialization promotes expertise in the law and the prompt, appropriate decision by the judge.

Court specialization often promotes expertise in all court personnel, not just judges. Probation officers, like judges and attorneys, may be unaccustomed to perpetrator and victim behaviors, and increased specialization may provide a context for appropriate release and sentencing recommendations. Court clerks assigned to a specialized court will also be more familiar with the dynamics involved and often be able to provide better referrals to victim resources. Court security personnel may be more alert to the potential for violence and the need to safeguard the victim in a specialized domestic violence criminal court.

3. Accountability

a. For Defendants

As Chuck Bristol, Court Services Supervisor for the Clark County Domestic Violence Court explained it, the advantage to a specialized court is that "one judge sees all domestic violence offenders, rather than one offender having the opportunity to give six different versions to six different judges."²⁷ Every judge (or probation officer) who sees an offender for the first time may give the offender the benefit of the doubt in release or sentencing conditions. Specialization increases the likelihood that a repeat offender will see the same judge and court personnel again-and that the offender will be less able to "downplay" or minimize the continuing violence.

b. For Criminal Justice System Personnel

Robert Morgester, Lead Deputy District Attorney of the Sacramento City Attorney's Domestic Violence Unit, noted that the process of "consolidating in one court" all non-evidentiary hearings for domestic violence cases meant that the "problems [in the system] became glaringly apparent" and the attitude became, "let's solve them."²⁸ Specializing the court meant increased awareness of the functions of different players in the criminal justice system and a commitment to address any lapse in services.

Accountability depends on strong lines of communication. For example, in the creation of both the Vancouver, Washington and Sacramento, California domestic violence courts, the process of bringing all the players to the table unearthed problems in the communication between batterer intervention program providers and the court system. Discrepancies existed

²⁷Bristol interview

²⁸Telephone interview with Robert Morgester (Dec.10, 1998) [hereinafter "Morgester interview"].

between the perception by victim advocates and batterer program providers as to the reoccurrence of violence. In Vancouver, there are automatic court reviews of offender progress which the offender must attend at 60 days, 120 days and six months after sentencing. This practice has helped define expectations for the amount and type of documentation provided by the batterer program on the offender's progress (or lack thereof). These regular reviews have increased the accountability of the batterer programs.

For their part, batterer program providers got to voice their preference that the court provide the offender with specific instructions, rather than just referring the defendant to probation with a blanket order to follow probation's instructions. Thus, the specialization of the court increased communication between actors in the system and thus helped define standards to which the various parties would be held.

In addition, specialization increases visibility of the specific people involved in the various roles. Instead of a generic judge or prosecutor or victim advocate, the parties interact with each other routinely, typically creating strong relationships. If there is a problem with judicial or prosecutorial attitudes toward domestic violence, it will be harder to conceal. This, in turn, increases accountability.

4. Consistency in Case Handling

If the specialized court has both criminal jurisdiction and civil jurisdiction over the granting of civil Orders for Protection, that will remove the potential for courts to issue conflicting orders on the permissible degree of contact of the perpetrator with the victim. A specialized court typically means a limited number of judges who can draw on their expertise in domestic violence and render consistent decisions in factually similar cases. Victims can be given accurate information on possible judicial responses to the situation. Consistent sentencing policies mean that offenders can expect to receive increased penalties for increased violence, rather than hoping for the "luck of the draw" in appearing before random judges.

5. Timely Response

Specialized courts control the scheduling of domestic violence cases and thus control the time frame for prosecution of cases. Generally, the quicker the batterer is brought to trial, the more effective the prosecution is. Chuck Bristol, Court Services Supervisor for Clark County District Court, explained that the "closer you put the consequences to the act, the more they're [the batterers] willing to buy into treatment."²⁹ The quicker the criminal penalties follow the criminal act, the more the batterer and victim will perceive that there are consequences for the domestic violence.

²⁹Bristol interview

Victims are generally most willing to provide a complete and accurate report of the violence immediately after the assault. The longer the length of time from the assault to the day of trial, the longer the batterer has to intimidate or "sweet talk" the victim into changing her/his story. Specialized criminal courts can help speed the time to bring a case to trial and thus reduce the possibility of victim recantation.

Perpetrators of domestic violence frequently re-offend or violate "no contact" orders while awaiting trial. Specialized judges, probation officers and prosecutors make it easier for victims and victim advocates to get information to the appropriate personnel so that prompt action can be taken.

6. Message to Community

The mere fact that a court is specialized in the area of domestic violence can send a strong message to the community that the court takes domestic violence seriously. Clark County Corrections Counselor Beth Sharpe noted that "just the talk heard in the jail, now clients [defendants] are saying that the state can file charges even without the victim's cooperation and they know if they get a conviction that they will go on probation and get treatment."³⁰

Disadvantages of Specialization

1. "All the Eggs in One Basket"

Consistency in a specialized criminal court is not a virtue if the personnel in a court make consistently bad decisions. Judicial tyranny or lack of competence is a much greater threat in any kind of specialized court than in a system where judges handle all kinds of cases on a frequent rotation. One commentator on specialized civil domestic violence courts explained, "The most notable [risk] is the 'all the eggs in one basket' conundrum: if the court is created and it doesn't work well, battered women have nowhere else to turn for legal protection."³¹

The problem of "all the eggs in one basket" exists well beyond the initial creation of the court. A court may start out well staffed and with excellent judicial leadership, but increasing caseloads or the departure of dedicated judges may lead to a malfunctioning specialized court.

2. Perceived Bias

The criminal defense bar may perceive that increased attention to domestic violence in the form of a specialized court will lead to increased jail time and penalties for defendants. There may be a perception that court specialization means that judges have become advocates for women and are no longer impartial arbiters of the law. As Assistant City Attorney Denice Biros of

³⁰Telephone interview with Beth Sharpe (Mar. 17, 1999) [hereinafter "Sharpe interview"].

³¹Mithra Merryman, *Specialized Domestic Violence Courts: A New Means to Address an Age Old Problem*, paper on file with the Battered Women's Justice Project, at 8.

Vancouver, Washington, put it: "the defense bar perceives that the judge will hammer every defendant."³²

Judge Fritzler of the Clark County Domestic Violence Court noted that judicial rules in the State of Washington prohibit judges from becoming a member of DWI or domestic violence task forces because it gives the appearance of judge bias. He chose to attend some meetings as an observer, not a member or participant. These sorts of rules and the perception of bias may hamper a judge's ability to organize and participate in the creation of a specialized court.

3. Increased Workload

Domestic violence cases, with the difficult dynamics of the relationships involved, the possibility of further violence, and the need for careful decisions regarding release and sentencing conditions, are very resource and labor intensive cases. Robert Morgester of the Sacramento District Attorney's Office explained that the creation of the Domestic Violence Home Court is "killing the court staff" because the increased workload can literally mean few if any breaks during the day. This type of regimen can be hard on judges, but it is brutal for court clerks who typically have hours of paper work to complete even after the judge leaves the bench.

Even judges and court personnel who do not handle domestic violence can be affected by the staffing of a specialized domestic violence court. Charlene Hiss, the District Court Administrator for Clark County in Vancouver, Washington, explained that it was difficult just to find a court-staffing schedule to which all the judges would agree³³. The Clark County District Court had a five-week criminal arraignment rotation for each of the five judges on the court. His attempted to schedule a four-week rotation schedule to allow Judge Fritzler to sit on the new domestic violence court. The other judges refused to accept the new schedule, and so Judge Fritzler is doing his share of the five-week rotation plus all of the domestic violence court.

Specialized domestic violence courts often mean the increased use of supervised probation³⁴ for domestic violence offenders. Chuck Bristol, Court Services Supervisor for Clark County District Court, noted that there had been over a 140% increase in supervised cases over the year and a half the domestic violence court had been in existence. There has been no increase in the probation staff to handle the additional work.

Specialized criminal domestic violence courts often mean additional court appearances to monitor the defendant's progress in batterer intervention programs. This may require the presence of prosecutors, defense attorneys and probation officers. The Sacramento Domestic Violence Home Court originally required offenders to appear in court to prove compliance with batterer intervention programs, but the time required for the court appearance and the extra paperwork

³²Telephone interview with Denice Biros (Mar. 12, 1999) [hereinafter "Biros interview"].

³³Telephone interview with Charlene Hiss (Feb. 5, 1999).

³⁴"Bench probation" or "compliance monitoring" is the type of probation where the court sets sentencing conditions and the offender must simply sign up for batterer intervention programs by a certain deadline. The probation officer may only be aware of the offender if the probation officer receives notification that the offender has failed to complete treatment. In contrast, "supervised probation" means the probation officer will have regularly scheduled contacts with the defendant.

that generated for the court clerks became unmanageable. The court is exploring the option of having probation officers ensure compliance so that court clerks do not have to handle the paperwork at the multiple court appearances.

4. **High burnout**

As Sacramento prosecutor Robert Morgester explained, "No judge wants to do Domestic Violence Home Court-more things can go wrong than can go right."³⁵ Because of the high stakes involved in even misdemeanor domestic violence cases and the extreme workload, burnout is a very real problem for all court personnel.

Domestic violence cases are intensely emotional and can lead to great frustration for prosecutors, judges and probation officers. One prosecutor explained it as, "it's very hard to deal with individuals who don't want to help themselves."³⁶ Prosecutors can lose sight of the fact that dealing with the criminal process is just a small piece of what the victim must cope with because of the violence in the victim's life. Domestic violence can lead to homelessness, unemployment, medical care and child care issues, all of which are beyond the expertise and duty of a prosecutor.

One way to deal with prosecutorial burnout is to limit victim contact by having witness assistants communicate with the victims. Dealing with a victim takes a lot of time and patience, and witness assistants are often trained counselors with (hopefully) expertise in assessing the level of lethality potential and connecting victims with appropriate resources.

Judith Shoshana, Director of the Seattle City Attorney's Domestic Violence Unit, noted that prosecutors on the specialized team tend to "max out" at two years³⁷. In Sacramento the average duration for prosecutors in the domestic violence unit is also two years. By extension, a fixed rotation period for judges, court clerks and probation officers should minimize the burn out factor. The period of rotation should allow the system to capitalize on the person's expertise gained through experience in the court for as long as possible while at the same time moving the person out of the specialized court before burnout affects the level of service.

Issues in the Creation of Specialized Domestic Violence Courts

Definition of "Domestic Violence"

The federal legal definition of "domestic violence" differs from many state definitions, which may differ from the definition in a municipal ordinance. Some prosecutor's offices may restrict the

³⁵Morgester interview.

³⁶Of course, this quote may reveal more about prosecutorial attitudes than it does about domestic abuse victims. Victims may face further violence for assisting with prosecution; thus, "refusal" to "cooperate" may be the best way a victim can protect and help herself.

³⁷Telephone interview with Judith Shoshana (Dec. 8, 1998).

definition for their domestic violence team to limit the number of cases a team has to handle, or it may expand the definition to ensure advocacy services for vulnerable victims. For example, many legal definitions of "domestic violence" include parties who have lived together, but many prosecutor's offices will give cases involving roommates with no romantic attachment to the regular trial team, not the domestic violence team. Prosecutors can also influence "domestic violence" dockets by not charging domestic assault and charging regular assault, trespass, robbery or some sort of other crime instead.

Child abuse and sexual abuse are often crimes prosecuted by attorneys in specialized units. Separating "child abuse" from "domestic violence" may obscure the reality of the family violence and cause duplicative or conflicting court orders (such as the child abuser who is also a domestic abuser being ordered by one court to take parenting classes in order to reunite with the child, while being ordered by another court to stay away from the child).

Courts may also limit the number of domestic violence cases by defining the definition of "domestic violence" more narrowly than the pertinent statute allows. The courts may follow the lead of the prosecutor's office in determining what cases are placed on the domestic violence calendar.

Any community considering a specialized criminal domestic violence court should consider whether the existing legal definition of a "domestic" relationship is too restrictive or expansive to be practical. The community must consider whether the definition of a "domestic" relationship should include:

1. Spouses and former spouses
2. Persons living together or have resided together in the past
3. Persons who have a child in common, including gay and lesbian parenting couples and cases where the woman is pregnant but the child has not been born
4. Persons related by blood or adoption, including parent-child, siblings, half-siblings and stepsiblings.
5. Gay and lesbian relationships
6. Persons involved in a significant sexual or romantic relationship³⁸

Bringing the Players to the Table

Prosecutor Denice Biros of Vancouver, Washington noted that creation of a specialized domestic violence court is a "difficult process and what's really important is the cooperation of all the different agencies."³⁹ Judge Fritzler, the major force behind the creation of the Vancouver domestic violence

³⁸Factors to determine if a relationship is a "significant" sexual or romantic one could include length of time of the relationship, type of relationship, frequency of interaction between the parties and, if the relationship has terminated, length of time since the termination. See Minn. Stat. 518B.01, subd. 2 (definitions).

³⁹Biros interview.

court, explained that popular support, while essential, cannot sustain reform alone. It is a complicated process that can only be successful if all the essential participants and service providers are included in the process. All these participants must buy into the basic principles and concepts... [of a] dedicated domestic violence court.⁴⁰

Corrections Counselor Beth Sharpe of Clark County District Court noted the need in the planning process to "talk to rank and file people." She cautioned that it is "easy to make decisions at the top without understanding what will happen in day to day reality."⁴¹

The challenge in beginning the process of creating a specialized domestic violence court is bringing together a group that includes the key players without it being too big to be unmanageable. The most important player is often the judiciary, because the court cannot specialize without the court itself deciding to do so.

Prior to 1998, the Clark County District Court in Vancouver, Washington had no specialization of any kind. Judge Fritzler envisioned a specialized domestic violence court with combined civil and criminal jurisdiction. With the help of a university professor to organize meetings for interested parties every two weeks for six months, Judge Fritzler had a domestic violence court up and running within a year and a half despite the reluctance of his fellow judges. Judge Fritzler described the purpose of the meetings as, "I wanted input, I wanted everybody to have their say."⁴²

Any community considering creating a specialized criminal domestic violence court should consider ways to seek input from the following people:

- Judges
- Court Administrative personnel
- Court reporters
- Law clerks
- Prosecutors
- Misdemeanor
- Felony
- Federal
- Public Defenders

⁴⁰Hon. Randal B. Fritzler, Overcoming Organizational Differences in the Creation of a Domestic Violence Court: A Judicial Perspective," paper first presented at the 50th Annual Meeting of the American Society of Criminology, Washington D.C., November 11-14, 1998, at 12-13 [hereinafter "Fritzler paper"].

⁴¹Sharpe interview.

⁴²Fritzler interview.

- Private criminal defense attorneys
- Police
- Sheriff
- Jail personnel
- Civil process servers
- Probation
- Treatment providers
- Government Officials
- City
- County
- State
- Federal
- Advocacy Community
- Survivors of Domestic Violence
- Communities of People of Color
- Non-English speaking communities
- Religious communities
- Gay and Lesbian communities
- Educational community
- Medical community

Funding

The creation of the Sacramento Domestic Violence Home Court was made possible by a Violence Against Women Act (VAWA) grant in the amount of \$939,020 in 1997. The Sacramento court applied for additional federal funding in 1998 of \$2,100, 678 to continue the work of the court and provide for additional prosecutor, public defender, probation and court staff.

In contrast, the Clark County Domestic Violence Court experience proved it was "possible to create a major innovative progressive court project within the existing structure of the court without extensive additional funding or outside sources of money."⁴³ After the court was up and running the decision came to apply for a VAWA grant. The problem, according to Judge Fritzler, was that "everybody wanted a piece of it," including the sheriff's department, victim advocates of the YWCA, and treatment providers. Despite the difficulty of reaching consensus on the most pressing and necessary services needed, the grant request was submitted and is awaiting review.

Judge Fritzler stressed the importance of providing detailed "state of the court" reports to the county board to ensure consistent funding. Presentations by judges and court staff to the County Commissioners provided an important picture of the anticipated benefits of a specialized domestic violence court. The Superior Court has recently appropriated ten million dollars to construct a family court center that would provide increased security measures, child care, and meeting rooms for victims' advocates. Judge Fritzler fears that this appropriation is not enough to fund all the services desired.

Jurisdiction

1. Civil and Criminal

The Clark County Domestic Violence Court hears both criminal misdemeanor domestic violence and petitions for Orders for Protection. This combined jurisdiction required the Superior Court to allow the District Court jurisdiction over the civil OFPs, matters previously heard only in Superior Court. Communities considering specialization should consider whether civil and criminal jurisdiction can and should be shared between two different court systems.

As discussed previously in this paper, combined jurisdiction may lead to increased pressure on the court and prosecutor to reduce or eliminate criminal consequences if the defendant cooperates in the divorce proceeding. In addition, combined jurisdiction may increase the possibility of a defendant's Fifth Amendment right being violated if s/he testifies at the civil proceedings, or it may increase the possibility of a victim being cross-examined by the criminal defense attorney.

The advantage of combined jurisdiction is that it reduces or eliminates the possibility of conflicting terms in OFPs and criminal "no contact" orders." As it is easier for the abuser to manipulate the court system when the abuser appears in front of multiple judges, combined jurisdiction may minimize this possibility.

2. Misdemeanor and felony

Many jurisdictions such as Seattle, Washington have separate courts and prosecuting authorities depending on whether the crime is a felony or misdemeanor⁴⁴. The Municipal Court of Seattle has a specialized domestic violence pretrial calendar for misdemeanor domestic violence cases,

⁴³Fritzler paper at 35.

⁴⁴The geographic location is also relevant to the determination of jurisdiction. For example, the King County's Prosecutor's Office primarily prosecutes felonies, but also prosecutes misdemeanor crimes that occur on state property.

while felony domestic violence offenses are heard in Superior Court. The Seattle City Attorney's Domestic Violence Unit prosecutes misdemeanor cases. Court and prosecutor specialization occurs most often at the misdemeanor level because there are virtually always many more misdemeanor domestic violence cases in a jurisdiction than felony cases.

In contrast, the Domestic Violence Home Court for Sacramento County in California hears both misdemeanors and felonies, and the Domestic Violence Unit of the Sacramento District Attorney's Office prosecutes both levels of crime. Combining felony and misdemeanor jurisdiction may encourage both the court and the prosecutors to take all domestic violence seriously, rather than dismissing misdemeanor domestic violence as "just a misdemeanor." Effective intervention in domestic violence requires innovative approaches, and communities considering a specialized domestic violence court might consider the possibility of combining court and prosecutorial jurisdiction for misdemeanor and felony crimes.

The biggest roadblock to combining jurisdiction is that it may take an actual change in the state law to allow it to happen. Both courts and prosecutor's offices guard their jurisdictions jealously, and any attempt to combine jurisdiction may be perceived as a loss of power and/or an undesired increase in workload. Some prosecutor's offices aggressively prosecute domestic violence while others may not; combining jurisdiction in one office may simply lead to less aggressive prosecution.

3. Selecting Judges and Prosecutors

a. Judge acceptable to prosecution and defense

Because both prosecutors and defense attorneys can remove a judge without a stated reason once in a criminal proceeding, it is important that any judge on a domestic violence court be acceptable to both sides. Otherwise, one side could routinely file an affidavit of prejudice on the judge, disrupting the smooth operation of the court. Another option is to have a designated second (or even third) judge; thus, if one side filed on the judge, all parties would know who the alternate judge would be.

b. Prosecutors

All three prosecutor offices in the jurisdictions surveyed for this paper took volunteers for their specialized domestic violence units. This helps ensure that the units self-select prosecutors that have some degree of victim sensitivity.

The Sacramento District Attorney's Office requires a prosecutor to have some experience in a "victim-sensitive" area (sex crimes or domestic violence) to be eligible for promotion to the highest attorney level⁴⁵. This helps ensure that the prosecutors in these units receive some professional status and that sex crimes and domestic violence are not just dismissed as

⁴⁵The highest attorney level in the Sacramento District Attorney's Office is Attorney Five, an appointed position that starts at \$86,000/year.

"women's issues." On the other hand, this promotional requirement may mean that prosecutors will request the sex crimes and domestic violence units simply to fulfill the requirement. These prosecutors may not have a high degree of understanding of the complex dynamics of family violence, or the desire to learn those dynamics.

It is worth noting that prior to the creation of the new Domestic Violence Unit in Sacramento, all the attorneys handling domestic violence cases in the old Domestic Violence Unit were women⁴⁶. Now the supervisor and two lead attorneys are male, as are approximately half of the other attorneys in the unit (the current District Attorney is a woman). The influx of money, resources, status and promotional opportunities into a specialized prosecutor unit or court may affect the gender balance in the unit⁴⁷.

Experience

As a general estimate, one prosecutor stated that 80% of victims recant or minimize the assault at some point in the criminal justice process. Often, prosecutors will dismiss a case upon the recantation of a victim. In the Sacramento District Attorney's Domestic Violence Unit, prosecutors must have tried over ten jury trials before coming to the unit. The theory is that experienced trial attorneys are better able to try a case without a victim. Before the Domestic Violence Unit and Domestic Violence Home Court, the average number of domestic violence trials was twenty-one per year. In 1997 there was only one misdemeanor domestic violence jury trial. In 1998 the Domestic Violence Unit tried over thirty jury trials, including ten misdemeanor cases and four cases without a victim.

Physical Facilities

Domestic violence cases involve not only increased personnel such as probation officers and witness assistants and/or victim advocates, but defendants and victims often have children, family and friends accompany them to court. This requires a courtroom with adequate space. Increased courtroom security is necessary to ensure that victims are not contacted by the defendant in the courtroom as well as walking to and from the courtroom. Ideally, the court provides a separate waiting area for victims. Finally, the large number of defendants typically in custody may require a large holding facility in the courtroom, as well as additional jailers to move the defendant to and from court.

⁴⁶The concept of a Domestic Violence Prosecution Unit prior to 1997 for the Sacramento District Attorney's Office is somewhat misleading: in 1995, the unit only kept 13% of domestic violence cases, and the other 87% were handled by attorneys on the regular felony trial teams.

⁴⁷The author is not suggesting that it is preferable to have one gender prosecuting domestic violence over another. Domestic violence is often viewed as a "woman's issue," and the criminal justice system is just as prone as the larger community to undervalue work by and for women. It will be interesting to watch how the availability of grant money and increased attention to domestic violence affect staffing patterns in the criminal justice system.

Probation

Court services (probation) officers may perform a variety of functions, including making a lethality assessment for the case, making victim contact by phone or in court, and providing recommendations for release and sentencing conditions. Both the Vancouver, Washington and the Sacramento, California Domestic Violence Courts require automatic court appearances by defendants to check on the status of their participation in batterer intervention programs. Out of court, probation officers may be required to monitor defendants on supervised or intensive probation, meeting with the defendant on weekly or monthly schedules to monitor progress.

Opposition to Specialized Court

1. Judicial opposition

Judges may be opposed to the creation of a specialized criminal domestic violence courts. Judge Randal Fritzler of the Clark County Domestic Violence Court explained: Elected judges seem to believe they have a mandate from the people and a right to conduct their court as if it were their own little kingdom. This individualistic predisposition, when combined with the desire to protect and maintain their own self-contained courtroom, creates resistance to change. Many judges also fear that any change which expands the duties of judges will substantially increase their workload. These factors, together with everything else which normally create resistance to change (including jealousy, fear of the unknown and concern that another judge may obtain some political advantage) make it perilous to embark upon a major court project⁴⁸.

Typically, chief judges may have the authority to handle administrative decisions for the court, but not to supervise or order other judges to do things. Major decisions such as adopting and implementing a specialized court system require the majority approval of the other judges even if the chief judge supports the project. When judges are resistant to change, the best incentive may be positive publicity by external agencies such as victim advocacy groups for judges who focus on and support court improvements for domestic violence.

2. Opposition by Criminal Defense Bar

Criminal defense attorneys may perceive a specialized criminal domestic violence court as biased against defendants and therefore may work against the creation of such a court. Defendants may file an affidavit of prejudice on a judge, meaning that the defendant may exercise his/her right to remove a judge without a stated reason once during the course of a criminal proceeding. Defense attorneys will advise their clients to exercise this right if the defense attorney perceives bias on the part of the judge. If defendants filed routinely on the judges in a specialized domestic violence court, it would seriously impair the smooth operation of the court. Thus, the defense bar has a strong bargaining chip in the operation of any criminal court.

⁴⁸Fritzler paper at 11-12.

One way to counter the perception of bias in a specialized criminal domestic violence court is to include public defenders and members of the private criminal defense bar in the creation of the specialized court from the beginning. Although public defenders were "reluctant" to assist in the creation of the Clark County Domestic Violence Court, it did give them an opportunity to voice any misgivings about the court's creation and operation. To date, the defense attorneys in all three courts surveyed in this paper have not abused the right to remove the judge.

3. Opposition by Prosecutors

Opposition by prosecutors may not appear as outright hostility because no prosecutor wants to look "soft" on domestic violence. Instead, prosecutorial opposition to a specialized domestic violence court may surface in the adoption of office policies at odds with the goals of a specialized court. For example, while the Clark County Domestic Violence Court was being created, the "prosecuting attorney's office selected late 1997 to revive its previously abandoned 'domestic violence diversion program.'" ⁴⁹ The problem with the diversion program was that it sent the message that some domestic violence is not serious, reduced certainty of punishment for batterers, and removed a significant number of cases from the criminal process. It is important to uncover prosecutorial opposition early in the process so that there can be complete buy-in by the prosecutor in the specialized domestic violence court.

4. Opposition by Communities of Color

Depending on the composition and history of the community, any "get tough" policy on the part of the criminal justice system can be perceived to unfairly target communities of color. Specialization of criminal domestic violence courts may be viewed as part of a "get tough" movement. It is important that community dialogue not pit fairness to men of color against the safety of women; both values can be served by a specialized criminal domestic violence court that provides accessibility to the victim and attention to the constitutional rights of the defendant.

Measurement of outcome

Any community considering the specialization of a criminal domestic violence court must determine what a "successful" court would look like and how a "successful" court would be measured. Speedy disposition of cases, judges able to make decisions based on law specific to domestic violence cases, consistency of sentencing, victim satisfaction with court experience, escalating punishment for escalating violence and reduced recidivism are all possible desired outcomes.

The Sacramento Domestic Violence Home Court is seeking to measure outcomes by having probation officers use an automated data collection form from the California State Department of Public Health to track defendant completion of batterer intervention programs. Public Health departments

⁴⁹Fritzler paper at 17.

and local colleges and universities are good places for a court to seek help with the measurement of outcomes and project evaluations.

Conclusion

As Judge Fritzler of the Clark County District Court stated, "there's no silver bullet to solve [the] problem" of domestic violence. The Clark County Domestic Violence Court was up and running in one and a half years; the fact that this is possible does not mean it is always desirable. Specialized criminal domestic violence courts are one possible step for a community to take, but there should not be a rush to judgment. Every community must weigh its own history, resources and desired outcome to determine if a specialized criminal domestic violence court is appropriate. In the end, it may be the dialogue to consider the possibility of a special court that might prove to be the most valuable tool of all, as each part of the community seeks to articulate a shared vision of justice.