

BRIDGING THEORY AND PRACTICE: A ROUNDTABLE ON COURT RESPONSES TO DOMESTIC VIOLENCE

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In November 2006, the Center for Court Innovation brought together 20 national experts for a daylong roundtable devoted to exploring how courts should respond to domestic violence, particularly in those cases where incarceration is not a realistic option due to the facts of the case or the severity of the behavior. Participants included judges, prosecutors, defense counsel, victim advocates and researchers from around the country. Brooklyn Law School professor Elizabeth Schneider served as moderator.

The roundtable grew out of a Center for Court Innovation study finding that domestic violence offenders who were randomly assigned to a batterer program were just as likely to re-offend as those not assigned to a program.¹ In light of these findings, the Center convened this diverse group of experts in an attempt to bridge theory and practice and consider what concrete steps courts might take to intervene in low-level domestic violence cases more effectively. Participants were asked

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1. MELISSA LABRIOLA ET AL., TESTING THE EFFECTIVENESS OF BATTERER PROGRAMS AND JUDICIAL MONITORING: RESULTS FROM A RANDOMIZED TRIAL (2005), [www.http://www.courtinnovation.org/_uploads/dopuments/battererprogrameffectiveness.pdf](http://www.courtinnovation.org/_uploads/dopuments/battererprogrameffectiveness.pdf).

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to consider current court responses to the problem and to brainstorm new approaches as well as new avenues for research.

Current Justice System Responses to Domestic Violence

As an introduction to the roundtable discussion, it is useful to review the relevant literature about batterer programs, judicial monitoring, intensive probation, domestic violence courts, and enhanced victim advocacy. Following this review is an edited transcript of the roundtable discussion.

The past two decades have been a period of great experimentation and innovation in court systems nationwide.

Batterer Programs

Since the late 1970s, a growing number of courts have come to rely on batterer programs as their sanction of choice in domestic violence cases, especially when the legal issues in a case preclude the imposition of jail.² Some support these programs in the hopes that they will rehabilitate offenders and prevent further re-offending. However, the main findings from the Center for Court Innovation's randomized trial in the Bronx are consistent with those of three other recent trials, none of which found that mandating offenders to a batterer program produced lower rates of re-abuse.³ Moreover, the research literature has also yielded little support for the rehabilitative effectiveness of one over another specific type of batterer program model, including cognitive-behavioral, psychodynamic, or couples counseling.⁴

2. See, e.g., Juliet B. Austin & Juergen Dankwort, *Standards for Batterer Programs: A Review and Analysis*, 14 J. INTERPERSONAL VIOLENCE 152 (1999); Carann S. Feazell et al., *Services for Men Who Batter: Implications for Programs and Policies*, 33 FAM. REL. 217 (1984); Edward W. Gondolf, *Batterer Intervention: What We Know and Need to Know*, 12 J. INTERPERSONAL VIOLENCE 83 (1997).

3. ROBERT C. DAVIS ET AL., DOES BATTERER TREATMENT REDUCE VIOLENCE? A RANDOMIZED EXPERIMENT IN BROOKLYN (2000), <http://www.ncjrs.gov/pdffiles1/nij/grants/180772.pdf>; Franklyn W. Dunford, *The San Diego Navy Experiment: An Assessment of Interventions for Men Who Assault Their Wives*, 68 J. CONSULTING & CLINICAL PSYCHOL. 468 (2000); Lynette R. Feder & Laura Dugan, *A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward County Experiment*, 19 JUST. Q. 343 (2002).

4. Larry Bennett & Oliver Williams, *Controversies and Recent Studies of Batterer Intervention Program Effectiveness*, NAT'L ONLINE RESOURCE CENTER ON VIOLENCE AGAINST WOMEN, http://new.vawnet.org/category/Main_Doc.php?docid=373; AMANDA B. CISSNER & NORA K. PUFFETT, DO BATTERER PROGRAM LENGTH OR

Others, skeptical of the therapeutic value of batterer programs, embrace them in the belief that they can provide a viable punitive option to hold domestic violence offenders accountable for their violent behavior.⁵ Batterer programs may well have potential in this regard, although here too the existing evidence is mixed. Several studies suggest that while many courts seek to use batterer programs to hold offenders accountable, most courts do not consistently impose further sanctions on those who are noncompliant.⁶

Interestingly, the Center for Court Innovation study did find that a batterer program mandate had a beneficial impact on victim satisfaction;⁷ however, in the absence of a reduction in re-abuse, this finding is difficult to interpret. It may indicate that victims whose partners are mandated to a program think that their partners will change; alternatively, it is equally plausible that the victims recognize that the batterer program does not make them safer but want the offenders punished appropriately by having to attend it as an added sentencing requirement. Indeed, nearly half (49 percent) of the victims who were *dissatisfied* with the sentence expressed that their dissatisfaction arose because the sentence was not severe enough. (The remaining 51 percent offered a number of reasons for their dissatisfaction.)

APPROACH AFFECT COMPLETION OR RE-ARREST RATES? (2006), http://www.courtinnovation.org/_uploads/documents/IDCC_DCAP%20final.pdf.

5. PHYLLIS FRANK, WHY THE N.Y. MODEL FOR BATTERER PROGRAMS DOES NOT TREAT, FIX, CURE, REHABILITATE OR OTHERWISE GET INDIVIDUAL MEN TO STOP ABUSING WOMEN (2006), <http://www.nymbp.org/principles.htm>; ELLEN L. PENCE & CORAL McDONNELL, *Developing Policies and Protocols, in* COORDINATED COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FROM DULUTH AND BEYOND (ELLEN L. PENCE & CORAL McDONNELL eds., 1999).

6. J.C. BABCOCK & R. STEINER, *The Relationship Between Treatment, Incarceration and Recidivism of Battering: A Program Evaluation of Seattle's Coordinated Community Response to Domestic Violence*, 13 J. FAM. PSYCHOL. 46 (1999); ELAINE M. HOWLE, BATTERER INTERVENTION PROGRAMS: COUNTY PROBATION DEPARTMENTS COULD IMPROVE THEIR COMPLIANCE WITH STATE LAW, BUT PROGRESS IN BATTERER ACCOUNTABILITY ALSO DEPENDS ON THE COURTS (2006), <http://www.bsa.ca.gov/pdfs/reports/2005-130.pdf>; MELISSA LABRIOLA ET AL., COURT RESPONSES TO BATTERER PROGRAM NONCOMPLIANCE: A NATIONAL PERSPECTIVE (2007), http://www.courtinnovation.org/_uploads/documents/Court_Responses_March2007.pdf.

7. Labriola, *supra* note 6.

Judicial Monitoring

Judicial monitoring involves having domestic violence offenders return to court regularly to verify their compliance with program mandates, restraining orders or other court-imposed conditions. In theory, such monitoring enables the judge to respond swiftly and consistently in cases of noncompliance and reinforce that the court takes domestic violence seriously.

Although judicial monitoring has proven highly effective with drug offenders,⁸ there is little research examining the effectiveness of judicial monitoring with respect to domestic violence offenders. Perhaps the most suggestive study focused on four specialized domestic violence courts in San Diego that included judicial monitoring components.⁹ The study reported two central findings when comparing the periods before and after implementation of the domestic violence courts. First, after implementation, there was increased attendance at required program sessions and an increased ability to detect and respond to violations of court orders; and second, the re-arrest rate within one year of the initial arrest dropped from 21 percent to 14 percent. The authors attribute but cannot conclusively link these positive findings to the domestic violence court practice of requiring offenders to attend post-dispositional hearings for compliance monitoring.

Three other studies also suggest that judicial monitoring may have positive effects, although none comprise a rigorous, carefully controlled test. One points to the role of mandatory compliance hearings in producing increased batterer program completion rates.¹⁰ In this study, conducted at the Pittsburgh (Pa.) Domestic Violence Court, batterer program completion rates were assessed before and after the court introduced a

8. ADELE HARRELL ET AL., FINDINGS FROM THE EVALUATION OF THE D.C. SUPERIOR COURT DRUG INTERVENTION PROGRAM (1998), <http://www.urban.org/url.cfm?ID=407783>; Douglas B. Marlowe et al., *Are Judicial Status Hearings A Key Component Of Drug Court? During-Treatment Data From A Randomized Trial*, 30 CRIM. JUST. & BEHAV. 141 (2003).

9. DOMESTIC VIOLENCE COURT: EVALUATION REPORT FOR THE SAN DIEGO COUNTY DOMESTIC VIOLENCE COURTS. SAN DIEGO, CA: SUPERIOR COURT SPECIAL PROJECTS UNIT (2000).

10. EDWARD W. GONDOLF, THE IMPACT OF MANDATORY COURT REVIEW ON BATTERER PROGRAM COMPLIANCE: AN EVALUATION OF THE PITTSBURGH MUNICIPAL COURTS AND DOMESTIC VIOLENCE ABUSE COUNSELING CENTER (DACC), (1998), <http://www.mincava.umn.edu/documents/gondolf/pccd/pccd.html>.

mandatory court appearance 30 days post-sentence. The program completion rate rose from just under half to 65 percent. As with the San Diego study, it is unclear whether other simultaneous changes may have contributed to the improved compliance outcomes. Also, this study only reports a clear effect on program completion rates, not on re-offending.

Another study suggested that longer periods of court control may lead to lower re-offending rates.¹¹ And yet another study found that offenders whose cases took longer to dispose—signifying a greater number of pre-disposition court appearances—had a significantly lower re-arrest rate.¹²

While these studies all suggest that judicial monitoring makes a difference, a recent quasi-experiment conducted at the Bronx (N.Y.) Misdemeanor Domestic Violence Court found that ongoing judicial monitoring did not reduce recidivism.¹³ Although the monitoring examined in this study was not ideal (there was a lack of clear, immediate and consistently applied consequences in response to noncompliance), the Bronx study offers a cautionary note and suggests that there is a need for more research on monitoring.

Intensive Probation Monitoring

Intensive probation can also be used to monitor compliance and increase offender accountability. Probation officers can enforce court orders, review offender compliance with court-mandated programs and order additional sanctions when offenders are found noncompliant. Faye Taxman, professor of criminology and criminal justice, has argued that surveillance alone is not enough and that probation supervision must be accompanied by evidence-based therapeutic practices that engage offenders in a process of change and consistently apply sanctions in response to noncompliance.¹⁴

11. Davis, *supra* note 3.

12. RICHARD R. PETERSON & JO DIXON, EXAMINING PROSECUTORIAL DISCRETION IN DOMESTIC VIOLENCE CASES, Presented at the Annual Meeting of the American Society of Criminology (Nov. 2005).

13. Michael Rempel, et al., *Does Judicial Monitoring Deter Domestic Violence Recidivism?: Results of a Quasi-Experimental Comparison in the Bronx*, 14 VIOLENCE AGAINST WOMEN 185 (2008).

14. Faye S. Taxman, *Supervision – Exploring the Dimensions of Effectiveness*, 66 FED. PROBATION 14 (2002).

Findings concerning the effectiveness of probation supervision are inconclusive.¹⁵ A recently published study evaluating the effectiveness of a specialized domestic violence probation unit in Rhode Island found that it produced significantly lower rates of re-offending compared with probationers receiving traditional supervision.¹⁶ This effect, however, appeared only among “low risk” offenders with less extensive criminal records.

An Urban Institute study of a judicial oversight project in Milwaukee found that one effect of heightened monitoring was a dramatic increase in probation revocations and a reduced re-arrest rate.¹⁷ The authors, however, link the lower rate of arrest to the higher rates of probation revocation and re-incarceration, which led the offenders to have less of an opportunity to commit a new offense.

Court Collaboration with Victim Advocates

Since the term “advocacy” can encompass many activities, undertaken at both systematic and individual levels, it is often unclear what is meant by domestic violence victim advocacy.¹⁸ Margaret Bell and Lisa Goodman tell us that, “At its best, advocacy for battered women in the justice system consists of four overlapping components: (a) assistance in planning for safety, (b) provision of emotional support, (c) provision of information about and access to community resources and (d) provision of information about and accompaniment through the legal process.”¹⁹

15. Lawrence W. Sherman et al., *PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING?* (1998), <http://www.ncjrs.gov/works/>; Joan Peter-silia, *A Decade of Experimenting With Intermediate Sanctions: What Have We Learned?* 23 *PERSPECTIVES* 39 (1999); Doris Layton Mackenzie, *Evidence-Based Corrections: Identifying What Works*, 46 *CRIME & DELINQ.* 457 (2000).

16. Andrew R. Klein and Ann Crowe, *Findings From an Outcome Examination of Rhode Island's Specialized Domestic Violence Probation Supervision Program: Do Specialized Supervision Programs of Batterers Reduce Reabuse?* 14 *VIOLENCE AGAINST WOMEN* 226 (2008).

17. ADELE HARRELL ET AL., *EVALUATION OF MILWAUKEE'S JUDICIAL OVERSIGHT DEMONSTRATION* (2006), <http://www.urban.org/url.cfm?ID=411315>.

18. CAROL BOHMER ET AL., *VICTIM ADVOCACY SERVICES IN URBAN PROGRAMS: A DESCRIPTION BY STAFF AND CLIENTS OF SERVICE PROVISIONS AND GAPS*, (2000), <http://www.ncjrs.gov/pdffiles1/nij/grants/182368.pdf>.

19. Margaret E. Bell & Lisa A. Goodman, *Supporting Battered Women Involved with the Court System: An Evaluation of a Law School-Based Advocacy Program*, 7 *VIOLENCE AGAINST WOMEN* 1377, 1381 (2001).

Research indicates that most victims appreciate the support and assistance of advocates, particularly in helping them to navigate the court process.²⁰ It may also boost their opinion of the larger system or at least their willingness to participate in it. In one study, three-quarters of the domestic violence victims who had received advocacy services indicated that it had increased the likelihood that they would report future violence. In a study of the Quincy (Mass.) Domestic Violence Court, victims reported high levels of satisfaction with advocates, yet wondered if the advocate's role was really just to get information for the prosecution.²¹

There have been a few evaluations of the long-term impact of victim advocacy. Studies have found that: two years post-intervention, victims who worked with advocates experienced less violence, depression, fear and anxiety than those who had not; and, that shelter-based advocates and legal advocates have positive effects, particularly in supporting victims in leaving their batterers.²² Clearly, this represents a promising area for future practice and research; courts and prosecutors may be in a unique position to link victims with advocates due to the direct contact with victims that often arises in conjunction with a criminal court case.

Specialized Domestic Violence Courts

Many of the practices discussed above are employed in specialized domestic violence courts. A domestic violence court hears exclusively domestic violence cases, with screening mechanisms established by the prosecutor or court clerks to identify eligible cases.²³ In 2000, there were over 150 such courts nation-

20. Alisa Smith, *Domestic Violence Laws: The Voices of Battered Women*, 16 VIOLENCE AND VICTIMS 91 (2001).

21. EVE BUZAWA ET AL., RESPONSE TO DOMESTIC VIOLENCE IN A PRO-ACTIVE SETTING (1999), <http://www.ncjrs.gov/pdffiles1/nij/grants/181428.pdf>.

22. Bell, *supra* note 19; Lianne V. Davis & Meera Srinivasan, *Listening to the Voices of Battered Women: What Helps Them Escape Violence*, 10 AFFILIA 49 (1995); EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988).

23. Robyn Mazur & Liberty Aldrich, *What Makes A Domestic Violence Court Work? Lessons From New York*, 42 JUDGES' J. 5 (2003); EMILY SACK, CREATING A DOMESTIC VIOLENCE COURT: GUIDELINES AND BEST PRACTICES (2002); Julia Weber, *Domestic Violence Courts: Components and Considerations*, 3 J. CENTER FOR FAMILIES, CHILDREN & CTS. 23 (2000).

wide.²⁴ Today there are many more. Most domestic violence courts share two key goals: improving defendant accountability and enhancing victim services.

There have been few rigorous evaluations of domestic violence courts, but much of what does exist has been encouraging. More than conventional courts, domestic violence courts have succeeded in linking complainants to advocacy and services.²⁵ Domestic violence courts are perceived by complainants as producing fairer outcomes and as being generally more satisfactory than conventional courts.²⁶

Interestingly, while complainants appear to be satisfied overall, the research literature suggests that satisfaction hinges not only on the outcome of the case, but on a broad range of factors, including the complainant's perception of having been treated fairly, personal motivation to end the relationship, and even the criminal history of the offender.²⁷ This implies that the court experience itself is only a small percentage of the complainant's total experience with the case.

The introduction of a domestic violence court has also been found to result in significant reductions in case dismissal rates,²⁸ to increase the pursuit of cases with lower charges, to increase the percentage of defendants mandated to batterer programs and to increase the frequency and regularity of judicial

24. SUSAN L. KEILITZ, SPECIALIZATION OF DOMESTIC VIOLENCE CASE MANAGEMENT IN THE COURTS: A NATIONAL SURVEY (2000), <http://www.ncjrs.gov/pdffiles1/nij/grants/186192.pdf>.

25. Harrell, *supra* note 17; KRIS R. HENNING & LISA M. KLESGES, EVALUATION OF THE SHELBY COUNTY DOMESTIC VIOLENCE COURT: FINAL REPORT, SHELBY COUNTY, TN (1999) (unpublished manuscript, on file with author); LISA NEWMARK ET AL., SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTING AND IMPACT FROM THE KINGS COUNTY EXPERIENCE (2001), http://www.courtinnovation.org/_uploads/documents/SpecializedFelonyDomesticViolenceCourts.pdf.

26. DEBORAH A. ECKBERG & MARCHY R. PODKOPACZ, DOMESTIC VIOLENCE COURT IN MINNEAPOLIS: THREE LEVELS OF ANALYSIS, Presented at the Annual Conference of the American Society of Criminology (May 2002); Angela R. Gover et al., *Combating Domestic Violence: Findings From an Evaluation of a Local Domestic Violence Court*, 3 CRIMINOLOGY & PUB. POL'Y 109 (2003); GERALD T. HOTALING & EVE S. BUZAWA, VICTIM SATISFACTION WITH CRIMINAL JUSTICE CASE PROCESSING IN A MODEL COURT SETTING (2003), <http://www.ncjrs.gov/pdffiles1/nij/grants/195668.pdf>.

27. Henning, *supra* note 25; Hotaling *supra* note 26.

28. Robert C. Davis et al., *Increasing Convictions in Domestic Violence Cases: A Field Test in Milwaukee*, 22 JUST. Sys. J. 62 (2001); Harrell, *supra* note 17; Henning, *supra* note 25; Newmark, *supra* note 25.

monitoring,²⁹ as well as to increase the incidence of jail sentences.³⁰

The impact on re-offending, however, remains ambiguous. Three studies found no effect on re-offending.³¹ One of these studies suggested that the lack of an effect might have been partially attributable to the court's increased knowledge of defendant behavior, which made it more likely that the court would learn of re-offending.³² Three other studies found small to significant reductions in re-offending.³³ A seventh study found that the domestic violence court produced a reduction in re-offending, not because the offenders were less likely to commit new crimes when the opportunity arose to do so, but because the offenders were more likely to be in jail on probation revocations.³⁴ These different results may reflect differences in the effectiveness of the various domestic violence courts that have been studied or may simply reflect inconsistencies in the research methodologies used to date.

The Roundtable

Given the complexity of domestic violence, both as a family and legal problem, it is not surprising that the conversation that took place over six hours in the Center for Court Innovation's Manhattan offices in November 2006 was wide-ranging. Batterer programs were the starting point for the discussion. Many participants questioned the primary purpose of batterer programs: are they meant to be rehabilitative and change the behavior of individual offenders or are they mechanisms for holding the offenders accountable? Even if batterer programs do not reduce recidivism or protect victims, can it be argued

29. Harrell, *supra* note 17; Newmark, *supra* note 25.

30. Jane E. Ursel & Steve Brickey, *The Potential of Legal Reform Reconsidered: An Examination of Manitoba's Zero Tolerance Policy on Family Violence*, in *POST-CRITICAL CRIMINOLOGY* 56 (T.O'Reilly-Flemming ed., 1996).

31. ADELE HARRELL ET AL., FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION (2007), <http://www.urban.org/url.cfm?ID=411498>; Henning, *supra* note 25; Newmark, *supra* note 25.

32. HARRELL ET AL., *supra* note 31.

33. Gover et al., *supra* note 26; HARRELL ET AL., *supra* note 31; SAN DIEGO, CA: SUPERIOR COURT, *supra* note 9.

34. Harrell, *supra* note 17.

that they send an important larger message (both to victims and the larger society) that all abuse has consequences?

Participants discussed at length whether domestic violence courts and batterer programs have a role to play in re-setting social norms around domestic violence. As Andrew Klein analogized, “An alcoholic will continue to drive drunk, but drunk driving laws created a whole different social norm about drinking in this country.” Phyllis Frank argued that conducting “research on what makes people change behavior leaves us with defining domestic violence as a behavior that can be treated and for which we can look to therapy.” Instead, she said, “the challenge for us is to think: how do you do massive social change?” Consultant Mary Haviland countered that “the only way that we’re really going to have an effect on the issue is if we’re changing men,” and Liberty Aldrich acknowledged the reality that court cases involve specific people, saying that “we still have to operate on the individual level.”

These and similar tensions informed much of the day’s conversation. While some felt, like Haviland, that the justice system should focus on men and their behavior, Michael Rempel held up the drug court model as an example that productively combines accountability with treatment. Others felt that resources should be directed to victims instead, even exclusively. One re-occurring theme or issue throughout the day was the role of the victim and how she could be more engaged and empowered by the court system. Participants discussed how much attention and how many resources should be directed at victims as opposed to, or instead of, the offenders. Some felt that funneling resources to victims should be a more significant focus. Some suggested making offenders more directly accountable to victims, while others lamented the victims’ frequent willingness to stay with their abusers, and wondered if focusing attention on victims’ mindsets instead of batterers’ would make more sense, or if there was a way to not only better enforce orders of protection but to mandate the separation of the two parties altogether.

Participants looked closely at the effectiveness of the tools currently available to courts for responding to low-level domestic violence offenders: probation, judicial monitoring, pretrial monitoring and victim-centered responses. And while Lynette

Feder argued for more rigorous research and evidence-based practices, the Honorable Timothy P. Lawliss pointed out that “Monday morning I have to decide something and I can’t wait for these studies.”

Participants then moved to brainstorming about new solutions, including community service as a sentencing option and electronic monitoring devices to keep the offenders away from the victims. Despite these new ideas and the growing evidence that batterer programs do not reduce recidivism, most participants were not ready to do away with batterer programs and other existing methods of punishment. More robust monitoring, it was argued, could make a significant difference. The impression held by some was that compliance with programs was not taken seriously by justice officials, and that a shift in cultural attitudes could help offenders take their mandates more seriously as well.

Almost everyone at the table agreed that new research was necessary to produce a more rigorous understanding of what works and what does not. The day ended with a vigorous discussion of what a research agenda might look like as practitioners, activists and researchers move forward in a collaborative attempt to intervene more effectively in domestic violence cases.

Why Do We Use Batterer Programs?

SCHNEIDER: I think that there has been a need for people over the last 30 years to believe that batterer intervention programs make a difference. We’re now confronting the limitations of that belief.

HARRELL: I think we have to back up a minute if we’re going to be serious about batterer treatment. Smoking and drug abuse treatment literature only began to make breakthroughs when it started really pinpointing what leads to changed behavior. If we’re serious about looking at batterer treatment, we have to ask what we can do to make batterers want to change.

FRANK: The whole idea of figuring out how to do research on what makes people change their behavior assumes that domestic violence is a behavior that can be treated through

therapy. Some of us believe that domestic violence is rooted historically in a sexist culture. Men believe they can control the lives of women in the privacy of intimate relationships. If we assume that there is not a treatment for men who feel entitled to control women, it would have us asking different kinds of questions. Could we start thinking outside this box and come up with something else? If we compare sexism to racism and the way that racism has been built into the structure of every institution in the United States, the challenge becomes how do we change those institutions? How do we challenge people to make massive change?

KLEIN: I think courts do help set norms. Drunk driving laws created a whole different social norm about drinking in this country. Batterer programs may not protect the individual victim, but they can have a larger effect.

SCHNEIDER: Domestic violence advocates have talked about the parallel to drunk driving for a long time. Though many deaths still result from drunk driving, over the last two decades it has become a social norm to talk about designated drivers, to be aware of drunk driving, to question someone who's been drinking and plans to drive. I don't think we've had that same kind of norm shifting around domestic violence.

HARRELL: I wonder about the decline we've seen in domestic homicide, if there isn't some relationship to norm shifting.

ALDRICH: Although I agree with all of the social change theory, as courts we're responding to individual cases. I don't think I'm comfortable saying that we should give up on thinking on the individual level. We have to operate on the individual level.

HAVILAND: I think people who are doing this work are at an interesting crossroads. For a long time many advocates did not work with men at all; they saw it as pulling resources away from women's groups. I think that is really starting to change. The only way that we're really going to have an effect on this issue is if we're changing men and attitudes toward women.

Is Probation the Answer?

LEIDHOLDT: I think that probation is a very valuable tool in the arsenal. I have represented hundreds of perpetrators and/or accused perpetrators as well as hundreds of victims, and I think probation can make a big difference if the judge clearly and emphatically points out the consequences of violating the terms of probation.

SCHNEIDER: Here's something I just want to throw in. You know, whatever the problems are with batterer intervention programs, they at least do have some kind of agenda. Relying on individual probation officers to get involved with both the batterer and the woman requires a level of sensitivity and knowledge about domestic violence that does not come easily.

MOSLEY: In my experience, it makes a big difference who the probation officer assigned to the court is. I used to get complaints from victims that the probation officers would treat them unfairly, and that they did not feel safe to communicate freely about what was happening in the house. The victims viewed the officers as an arm of the criminal justice system, as coming from the judge, and there was a lot of confusion. We in the court were making all these promises, but when things were actually happening at home, victims were afraid to report them.

LEIDHOLDT: It's a little bit like child welfare administration. We see instances where case workers can be responsive to the needs of victims and can assist victims in achieving safety, but we also see instances where it can be a tool of the state in its most authoritarian and irrational guise. I do believe that probation can be a viable tool, but it has to be backed up by a certain philosophy. Batterers believe the judge is in control. They don't respect the victim, but they do respect the judge, and they can respect the probation officer as well. But the probation officer has to be trained and screened and monitored.

MOSLEY: What about clearance checks of probation officers? What about somebody in the administration of probation doing compliance checks?

KLEIN: One problem is that we are dealing with this whole misdemeanor population that may be too dangerous to remain on probation. One thing all the studies show is that non-completers of programs are much more likely to offend again than those who complete. So probation violators give us

an excuse to put offenders in jail that we don't have otherwise. Probation can be a dynamic risk screening instrument and we don't use it enough. In Milwaukee, the recidivism was less for those in a program because half of them had their probation revoked. You don't have to wait for him to do it again to realize he is serious.

What Role Does Judicial Monitoring Play?

REMPEL: In our study in the Bronx we found that the nature of the monitoring was weak so it didn't offer a real test of the efficacy of monitoring. So in thinking about future directions, we would like to identify a place where there is a rigorous approach to monitoring, where there are consistent consequences for noncompliance and the monitoring is frequent and intensive. In the drug court model, monitoring typically is every week at the beginning of participation.

LEVENTHAL: In my felony court I bring back offenders every couple of months, after they've been convicted and are out of jail on probation. I also bring back parolees. Within a month of their release they come back in front of me. I go over conditions of parole, I talk about responsibility and at the end I tell them that I'm still watching them.

FRANK: The problem is that I think maybe 10 percent of judges are acting in ways that are ethical and reasonable and sound. We decided five years ago to change the meaning of the word "outcome" in a batterer program. Rather than counting how many men got "fixed," we started counting what the judge did when the men didn't comply with the order. We checked in regularly until final adjudication. The judges began doing more because we were asking what happened.

LEIDHOLDT: I totally agree. At Sanctuary for Families we have aggressively targeted bad judges and gotten rid of two of them. I think as a movement we have to. With some judges training doesn't make a difference. I don't know that we have, as a movement, really addressed this problem.

FEDER: As a researcher, if I could come into a jurisdiction with a great judge and great judicial monitoring and do an experimental design, that would be extremely useful. If we were able to show that, yes, Judge Leventhal spent 25 percent more time on his cases, but in return Judge Leventhal had a lower

recidivism rate, which then reduced the cost to taxpayers. . .that is what they are doing now in the prevention literature. Really good prevention programs cost a lot, but to the extent that they save a lot down the long run they are very cost effective.

REMPEL: I think we need to give ourselves testable hypotheses to begin to talk about the role of the judges. I wonder if we could really write down what good judicial practices are because I don't believe that we have evidence-based judicial practices now.

LAWLISS: It's hard to say what judicial action works or doesn't work because we don't have the data now to even say what they are doing. So how can we say the judge is a good judge or a bad judge because he does A versus B when we don't have that information?

Could Increased Use of Pretrial Monitoring Improve Outcomes?

BUZAWA: I think that we are often negligent before defendants even get to court. What may be helpful is if they automatically put in a restraining order, so that monitoring could begin right at the time of arrest, prior to trial.

LUCIBELLO: In New York there is very little use made of pretrial release conditions and it's usually not until the disposition stage that there is any sort of meaningful constraint put on the defendant and his ability to exert control and authority over the victim. I think we would have enormous defense bar uproar should we try to institute pretrial release conditions.

MOSLEY: Before the hurricane in New Orleans, they had a very interesting pretrial diversion model. Because they have a lengthy period of time between a complaint and the actual filing of the charges, they traditionally engage in pretrial probation with all types of conditions.

ALDRICH: In many cases, pretrial sanctions tend to end up being alternatives not to incarceration but to prosecution.

REMPEL: There is research that actually indicates that pretrial monitoring may be effective in terms of reducing early noncompliance. So I think it is something that is definitely worth considering in connection with the early frontloading of services to the victim.

Is There Any Role for Treatment?

KLEIN: Although you are not supposed to be talking about drugs and alcohol, the problems are almost always related to drugs and alcohol. Too often we think that either you go to a batterer program or go into treatment. God forbid you go into two different programs at once.

ALDRICH: I think many practitioners feel that there are some batterers who have serious mental health issues that contribute to their criminal behavior. I really think it is important to distinguish between thinking about batterer programs as treatment of offenders and using therapeutic interventions, like mental health counseling or drug treatment, with certain subsets of offenders.

SCHNEIDER: I have serious questions about whether or not we can identify meaningful sub-categories, which we may not want to do. When we have a culture in which violence against women is promoted and learned from childhood, trying to distinguish the abuse we are talking about from other types of abuse or other contributing factors becomes very difficult.

AUCHTER: I think we are dancing around two issues: the extent to which we want our response to be punitive and the extent we really want change in behavior—and you can't do that by whipping people.

What Alternatives are There?

HAVILAND: I think we could look at community service and some of the issues around bail and detention. I think batterer programs have sort of taken up that space.

REMPEL: Community service isn't going to involve the amount of resources that some other things will because it's already in place. You could also build in a monitoring component by having offenders do a day of community service per month over six months or something like that. There would be some questions though about whether you would put domestic violence offenders on a work crew with someone who had engaged in low-level theft.

SCHNEIDER: What I like about this idea is that I think that community service makes the point that battering harms the community.

DYER: I work at a woman's shelter one night a week and spend a lot of time talking with victims. As a result, we require on all of our probation and deferred sentences that offenders pay child support. If the offender is indigent, he has to do community service. And if he has money, he has to make a donation to the woman's shelter. Depending on his resources, it can be as much as \$5,000 or as little as a hundred dollars. I also think we sorely need civil legal assistance for victims. That is the thing we are missing the most in Texas. Right now the best advice I can give to most victims is sell all you have and borrow all you can and that is pathetic.

HARRELL: I have actually been wondering if there was any way to give that money to the victim in terms of compensation or to empower her by having some financial resources that he would ordinarily be paying for the batterer program.

LAWLISS: Why couldn't we award the women for pain and suffering? This could involve a tremendous amount of money and inflict far more pain than incarceration. It could be above and beyond child support. Yes, many domestic violence offenders don't have a lot of funds, but if you garnish their wages for the next five years that may have a larger deterrent effect. My problem with the batterer programs is that I don't think the abuser's problem is sensitivity. I think that this is the way he's figured out how to succeed in the world and we are not going to get him to change his behavior until the cost benefit analysis in his mind changes. We do this by making the cost greater than the benefit. I think this is part of what we did with DWI and why we have had the society change. I am trying to inflict more negative consequences on batterers, and money is something everyone cares about.

KLEIN: Here's my fantasy. In Massachusetts you don't graduate high school unless you get a certain score. If batterer programs are going to teach these men something then you should have pre-tests and post-tests and if they haven't learned anything let's flunk them. We also have some other tools that we don't use. I just did a book on enforcement of the federal firearms prohibition. There are big signs in West Virginia that say "beat a woman, lose your gun." Probation in Maricopa County, Arizona, has a wonderful unit that goes out and tries to

disarm probationers. Very effective. Do you want a dangerous person to have a gun?

AUCHTER: I just want to throw out the idea of the motivational interview, which is something they do in Canada. I spoke with a number of people a year or so ago who would sit down with a guy, who wasn't even court referred yet and begin an interview process that led them to that first stage of acceptance. What that whole process involved I am not sure.

DYER: Some of the people in Dallas are using monitor devices that go off when a batterer gets near a victim. Some of the victims don't want them, but they are being used. Officers are often able to arrest the defendant before violence has occurred because he has violated the stay away order.

FEDER: I get very nervous about electronic monitoring for him. Some women want him back, you know. What if we changed our focus and instead gave women mobile stress alarms? If at any point her situation becomes dangerous, she could hit that and they would send a police car immediately.

BELKNAP: In Boulder, abusers were assigned to go one evening and listen to a panel of survivors speak. At one I saw a young woman speak whose father abused her mother really badly. At another a woman whose sister and her children were killed by her sister's husband told her story. And these guys have to sit there and listen to it.

How Can Courts Better Respond to Victims?

LUCIBELLO: We have found that the earlier an advocate talks to a victim after an arrest has taken place, the more positive the prosecutorial results. In New York State, it should happen within 24 hours of arrest.

WILLIAMS: There are women who are going to go back to the batterer and batterer intervention sometimes gives women hope that I don't want them to have. Whether she has left and come back or stayed all along, there are women who remain for 30 years in relationships with men who are violent. What do we do about that?

DYER: Victims beg us to send the men to programs. Maybe he's already gone through counseling or other interventions. We know everything is a process and this is one of the steps they can check off.

ALDRICH: The victims we have interviewed liked the fact that the offenders were sentenced to a batterer program. It has no impact on their safety, but maybe it has an impact on their future interactions with the criminal justice system.

WILLIAMS: We want more reporting of domestic violence and for victims to have confidence in coming to court. Victims don't just say, "I am going to leave him now." It might take a while before a victim is ready to leave and the research shows that the longer the supervision of the court the better off they are.

HAVILAND: The court experience is usually not at all cathartic for the victim because she doesn't have any impact on the process. Batterer programs might be the only concentrated time when batterers get lectured on the effects of what they are doing. The outside culture is promoting violence against women and this one hour a week for 26 weeks straight might be the only time in which the victim's view of the world is validated.

SCHNEIDER: We have extremely little research on that and it is incredibly important. What research we have suggests that survivors do feel legitimized by being in court situations where a person in authority—frequently, but not always, another man—is saying to him, "This is wrong."

BELKNAP: One thing I have been grappling with in the last seven years is the aspect of intimate partner abuse that is controlling and psychological and emotionally damaging. A lot of these abusers learn they are not going to get arrested for this kind of abuse, which isn't physical. I don't know what you do about that part. I think it's such a huge part of these women's victimization and I am increasingly concerned about how we even address it.

LAWLISS: I would like to say at least one politically incorrect thing. For violence to occur both people have to be in the same place at the same time. Some instances of violence are caused by one person making a decision to track down the other person wherever they are, but other times people voluntarily get together and then the act of violence occurs. All outside parties might wish that the victim would decide to stay away from the perpetrator, but the victim doesn't make that decision. Couldn't we develop a program that would help educate the

victim to see the negative consequences of her decision? That is not to say she is causing the violence, but if there is an order of protection and she chooses to cohabitately voluntarily, then obviously that is going to increase the likelihood of violence.

WILLIAMS: To me, the biggest thing that I have learned in the years I've spent in the field is that it's not so clear to us what victims actually want. I think it's important to shape our responses around that rather than just what we professionals think.

FEDER: I'm going to really make it messy now. There is a study called the Cambridge Somerville Youth Study, where this medical doctor in the 1920s actually came up with the idea that if we could only take boys from really bad neighborhoods and bad home environments and give them intensive case management, someone who is like a big brother to them and help not just the boy but the family and run interference with the schools, it would make a difference. And so they randomly assigned some boys to case management and did not assign other boys. They followed them up six years later and found no difference. Forty-two years later they found that in almost every category the men who had the case managers/big brothers did worse, whether you looked at the rate of suicide, alcohol, drug use, physical health, psychiatric hospitalization or unemployment. And here's the point that I come to. In the 42 year follow-up when the researcher asked these individuals so do you think your case manager/big brother made a difference, almost all of them thought it was the best thing that ever happened to them. So sometimes we have our own anecdotal experiences, but we may not be able to generalize them. We are not the best judges of what works and doesn't.

LEIDHOLDT: What victims may want while they are in an abusive situation may differ radically from what they really want or need. It's a process. When you have kids with somebody or you have been economically dependent, kept from getting an education or having a job, you're going to need some pretty heavy duty supports in order to leave.

FEDER: The only point I was trying to make is that just taking what the victim says is not enough.

SCHNEIDER: I think really what you're saying is that from an empirical standpoint, what the victims may say they want and what impact it actually has may be different.

HARRELL: One of the most difficult problems I come across is how different the perspective of an advocate can be from the perspective of the victim. I think it's one of unresolved problems in this field and deserves more study.

BUZAWA: Experience shows that many women choose to stay with their abusers. But we have to consider: we live in a world that is still very scathing to single women and many women are making a decision between the lesser of two very significant evils. It's often not about love, but about survival, maintaining the family.

What Interaction Should Probation Have with Victims?

WILLIAMS: I think it would be great if probation officers and battered women could communicate with one another about what is going on. There is a parole organization that has done some great things in terms of interacting with the victim early on and asking what she would like to see happen. We had one battered woman who talked about how she and her husband went to the parole officer and in front of the officer she said to him, "Go ahead and say what you said to me a little while ago." One of the things that she reported was that it was important to have somebody who had some authority and could offer some consequences there.

KLEIN: The good news in the Rhode Island study is that the victims who were contacted by probation were three times more likely to call the police when the batterer violated the no contact order. And so, in fact, my lesson from this is that if you have limited probation resources forget about the guys, concentrate on the victims. Contact the victims. That seems to make a big difference.

HARRELL: We also found that victims really liked probation contact. So I am wondering if we should forget batterer programs and instead work with probation agencies to have that lifeline to victims. If something goes wrong they know they can get help immediately and maybe not even have to call the police and go through all of that. Maybe forgetting batterer programs and strengthening the victim's ability to use the sys-

tem would facilitate progress. Maybe if you are not going to change this behavior you can at least give her a way to get out.

What Should Researchers Look at Next?

SCHNEIDER: I just want to highlight the value of having activists and researchers and people who work on the ground all sitting together. It made me think about how I did a study on domestic violence 15 years ago and how one of the things that came up was the sense that activists were not necessarily shaping research agendas and researchers were not necessarily involved in activist work. One of the things I would like to have us think about is a research agenda that might take into account these two orientations.

LUCIBELLO: I think it would be worth looking at whether or not providing wraparound services to victims improves criminal prosecutorial results because in Brooklyn we sense that people are getting many, many more services, but we don't necessarily sense that these services improve their cooperation with the criminal case.

LEIDHOLDT: I think we need to think about success in terms of three factors. One certainly is recidivism and the offender's attitudes. One is whether or not the victim would feel comfortable accessing the justice system again and the extent to which the victims' civil rights are being protected in the court context. And finally, the impact we're making on community perceptions and norms. I think we have to look at all of these factors.

WILLIAMS: I think we need to rely on both quantitative and qualitative research. There are a range of things that we need to look at to understand why men behave the way they do and what things will motivate them. I have seen many men who have multiple women, different children with different women. There are a lot of questions about trauma, the violence they grew up with in their environment that becomes how they start to see the world. I think a lot of questions come up when you are dealing with batterers.

LAWLISS: I would like to see us think about every conceivable thing we could do to a batterer under the law and not try to prejudge what we think would be successful and come up with a laundry list of what could be done and create experi-

mental programs. I also wonder sometimes if we are in the wrong courtroom. The criminal justice system is much more limited than the family court system.

FEDER: The problem in many, many jurisdictions is that you can't be experimental.

When I go to individuals in the court system—and this is true in criminal justice on the whole—and say I really want to do an experimental study, because that is the way we find out what works and what doesn't work, they say to me we can't do that. The Supreme Court has already put out a long, long monograph saying that experimental studies are fine by us, but people are afraid to look at that. I want to say right now from my perspective we are experimenting all the time. The judges and the prosecutors who go to a conference and hear something that works and then implement it are experimenting. It's just not a controlled experiment which means we are not learning from it.

LAWLISS: I totally agree. The difference, though, is that Monday morning I have to decide something and I can't wait for these studies. If I hear a good idea, I want to start implementing it because I have human beings in front of me and I want to give it a try.

FEDER: Here's the thing we have to change your mind about. You have got to recognize that untested programs may actually do more harm than good. I could give you a pill and say give this to men to stop the battering, but in fact, it increases battering. You really need to do these things under controlled circumstances. Yes, you need to do something on Monday. So Monday you will continue doing what you've always done. But can't we get grant money so that I can come in and starting a month from Monday—after we come up with a program, a protocol, and a formal study—to test this out? We don't know that it's going to work, but it's the first step.

ALDRICH: I think we need to drastically improve the courts system's ability to collect data. Even if you did know what worked, you couldn't build accountability without having a way to track outcomes and violations.

FRANK: The study that I threw out earlier is to assess what the judge and what the court do when a man is ordered into a batterer program and doesn't comply. Does the community become contemptuous of the whole criminal justice process

if he gets ordered to a program and then nothing happens when he doesn't go?

LUCIBELLO: I think we have to take baby steps and I think the first step might be to capture what is happening. I don't think we know what happens when violations of compliance occur.

FEDER: I'm tired of all this money being spent to take a picture of what we have now. If we keep on doing what we have always done why are we so surprised that we keep on getting what we have always gotten? We need to think about reform as experiments, small things that are attached to theories explaining why it might make a difference. See if it works. If it works in this one jurisdiction replicate it.

SCHNEIDER: I think the central question is: can courts make a difference? That is where we started. If so, what pieces of the court experience can make a difference? What does that mean in terms of a research agenda? It seems to me that we are assuming we can make a difference. There are now more than a hundred law schools around the country that have domestic violence programs or clinical programs. There is a whole generation of lawyers taking part in these programs. I would like to think that has made a difference. I would like to think there are more people out there who are listening to battered women. We certainly have a huge amount of people who are trying to intervene and I like to think it makes a difference. I have to think that having more conversations like this one that bring so much experience and expertise together will help us develop research projects and activism projects that can make a difference.

