

ENSURING VICTIM SAFETY AND ABUSER ACCOUNTABILITY:
REFORMS AND REVISIONS IN NEW YORK COURTS'
RESPONSE TO DOMESTIC VIOLENCE

*Jonathan Lippman**

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* Chief Judge of the State of New York and Chief Judge of the Court of Appeals (2009–present). Special thanks to Mindy Jeng for her assistance in documenting the remarkable changes in the treatment of domestic violence by New York courts over the course of two decades and to Liberty Aldrich for her expertise and insight into this challenging field.

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I. INTRODUCTION

The violent murder of Galina Komar by her abusive ex-boyfriend on February 12, 1996 grabbed the attention of New Yorkers and made domestic violence a front-page issue.¹ Ms. Komar, a Russian immigrant who lived in Brooklyn, endured over a year of abuse at the hands of her boyfriend, Benito Oliver.² Throughout the course of their relationship, Mr. Oliver repeatedly punched Ms. Komar, threatened her, and slammed her into walls.³ On one particular occasion, he hit her on the head with a pipe so hard that it opened a gash that required twenty-two stitches to close.⁴ Though Ms. Komar had twice been sent to the hospital by her boyfriend's beatings, the charges against Mr. Oliver were never more serious than misdemeanors, as felony assaults required more serious injuries, such as broken bones.⁵ One night, after Mr. Oliver held a knife to her throat, threatened to kill her, and forced her to have sex, Ms. Komar called the police, and Mr. Oliver was arrested on misdemeanor assault charges.⁶ While he was held over a forty-one day period, Mr. Oliver's prosecution was the subject of thirteen hearings in front of five different judges, eight different prosecutors, and three different defense lawyers.⁷ Though Mr. Oliver was a four-time felon and Ms. Komar had two orders of protection filed against him, the judge modified the bail terms and allowed for Mr. Oliver's release.⁸ Three weeks after his release, Mr. Oliver went to the car dealership where Ms. Komar worked, shot her in the head, and then

¹ Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 YALE L. & POL'Y REV. 125, 140 & n.62 (2004); Matthew Purdy & Don Van Natta Jr., *Before the Murder, A Judicial Journey*, N.Y. TIMES, Mar. 14, 1996, at B1; Press Release, N.Y.C. Press Office, Mayor Giuliani Honors the Memory of Domestic Violence Victim Galina Komar (Feb. 19, 1997), available at <http://www.nyc.gov/html/om/html/97/sp093-97.html>.

² Purdy & Van Natta Jr., *supra* note 1, at B1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; see Kaye, *supra* note 1, at 140.

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killed himself.⁹

Ms. Komar's violent death raised awareness in New York City and throughout the state regarding the problem of domestic violence. Ms. Komar's murder highlighted the shortcomings within the court system with regard to how domestic violence cases were handled. Judges and court personnel were not adequately trained in domestic violence issues and often harbored negative and sexist preconceived notions about victims. In both criminal and family courts, structural and procedural impediments to safeguarding families from domestic violence were widespread.

Since then, New York courts have come a long way in changing the way domestic violence cases are handled. Legislative activity and changes in court administration have been effective in addressing some of the obstacles faced by litigants as they navigate the court system.

Educational programs have informed judges and court personnel about the myriad of issues surrounding domestic violence so that courts are better able to address and mitigate problems. While a lot has been accomplished, still more needs to be done to address the shortage of legal services for victims of domestic violence. There are a growing number of people who cannot afford legal services, yet public interest legal service providers must turn away the vast majority of people seeking help, creating a justice gap.¹⁰ To stop the widening of this gap, state government, non-profit groups, bar associations, and the legal community at large must work together to set new standards for the provision of civil legal services in New York and around the country.

II. CHANGES TO THE NEW YORK CRIMINAL COURT SYSTEM OVER TIME HAVE IMPROVED OUTCOMES FOR VICTIMS OF DOMESTIC VIOLENCE

A. In the past, antiquated views of women and domestic violence impeded the prosecution of abusers.

For many years, domestic violence was considered a "private matter" and a subject inappropriate for the public courts.¹¹ New

⁹ Purdy & Van Natta Jr., *supra* note 1, at B1.

¹⁰ Mosi Secret, *Judge Details a Rule Requiring Pro Bono Work by Aspiring Lawyers*, N.Y. TIMES, Sept. 20, 2012, at A25 (stating that the Legal Aid Society turns away eight of every nine people seeking help).

¹¹ Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case*

York police officers were not required to, and often explicitly instructed not to, arrest individuals who committed domestic violence felonies, violated stay-away orders of protection, or committed family offenses in violation of an order of protection.¹² Victims of domestic violence were encouraged to attend counseling with their abusers instead of bringing a claim against them or assisting in their prosecution.¹³ Victims also were not offered services after a domestic violence incident or assistance in leaving an abuser.¹⁴

Victims received little help from prosecutors, even when a criminal case was being brought against their abuser.¹⁵ Prosecutors often felt that there was “little incentive . . . to pursue domestic violence cases, which were traditionally low-prestige and unlikely to have a high conviction rate.”¹⁶ Prosecutors lamented that victims often did not follow through with pressing charges and generally concluded that it was not worth additional resources to charge cases.¹⁷ Moreover, the percentage of domestic violence incidents resulting in an arrest was low, and the dismissal rate of cases was high.¹⁸ “[P]rosecutors would drop charges in anywhere from 50% to 80% of cases . . . [because] the ‘victim request[ed] it, refuse[d] to testify, recant[ed], or fail[ed] to appear in court.’”¹⁹ Only a tiny “number of domestic violence incidents to which police responded ever made it to court at all.”²⁰

Additionally, “[j]udges and other professionals in the court system [were] . . . underinformed about the nature of domestic violence and

for a Problem Solving Approach, 27 W. ST. U. L. REV. 1, 1 (2000); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1662; see N.Y. CRIM. PROC. LAW § 530.11(1) (McKinney 2013); Family Protection and Domestic Violence Intervention Act of 1994, ch. 222, § 1, 1994 N.Y. Laws 2704–05.

¹² Sack, *supra* note 11, at 1662. *But see* Julie A. Domonkos, *The Evolution of the Justice System’s Response to Domestic Violence in New York State*, in *LAWYER’S MANUAL ON DOMESTIC VIOLENCE: REPRESENTING THE VICTIM* 1, 2 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 5th ed. 2006), available at <http://www.courts.state.ny.us/ip/womeninthecourts/DV-Lawyers-Manual-Book.pdf> (noting a change in 1994 which required arrests for such crimes).

¹³ SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* 162 (1982).

¹⁴ Sack, *supra* note 11, at 1662–63.

¹⁵ *See id.* at 1664–65.

¹⁶ *Id.* at 1665.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1664 (quoting Angela Corsilles, Note, *No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?*, 63 *FORDHAM L. REV.* 853, 857 (1994)).

²⁰ Sack, *supra* note 11, at 1665.

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the characteristics of victims and offenders,” as well as the unique difficulties facing domestic violence victims.²¹ Many believed that women could tolerate being battered and could not understand why they would not leave their abusers.²² And since police, court personnel, and judges often presumed that victims provoked beatings and abuse, hostile attitudes towards victims in court were common. The *1986 Report of the New York Task Force on Women in the Courts* made the observation that women were “treated dismissively, like burdensome children, or disrespectfully, like sexual objects.”²³ Judge Amy Juviler of New York City Criminal Court testified in 1985 that court personnel reacted in one of two ways after learning that a victim failed to follow through with proceedings in family court or criminal court: court officials either believed that the minor intercession of the court resolved the problem or they felt that the woman who reconciled with her abuser was not worthy of respect because she did not respect herself.²⁴ Judges lacked awareness that a victim’s decision not to pursue prosecution involved many complicating factors, such as psychological and physical intimidation, and emotional and financial dependence on her abuser.²⁵

In general, judges rarely or never jailed abusers for violating an order of protection, except for cases where the abuse was extreme or where multiple violations occurred.²⁶ Perhaps most troubling, a victim’s husband often was punished more leniently than a stranger committing a similar offense.²⁷ Judges also were not cognizant of the gravity of the crimes committed as a result of domestic violence²⁸ and did not have an adequate “understanding of issues of self-defense and justification as . . . [related] to battered women.”²⁹ It was not until the early 1980s that battered women’s syndrome was seen as a valid defense, when “Francine Hughes, a battered

²¹ *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 11, 47 (1987).

²² *Id.* at 32 (citing NEW YORK CITY TASK FORCE ON WOMEN IN THE COURTS PUBLIC HEARING 155–56 (1985) (testimony of Barbara Bartoletti)).

²³ *Report of the New York Task Force on Women in the Courts*, *supra* note 21, at 27.

²⁴ *Id.* at 36–37.

²⁵ *See id.* at 37.

²⁶ Sarah Eaton & Ariella Hyman, *The Domestic Violence Component of the New York Task Force Report on Women in the Courts: An Evaluation and Assessment of New York City Courts*, 19 FORDHAM URB. L.J. 391, 404 (1992).

²⁷ FRAN REITER ET AL., COMM’N ON THE STATUS OF WOMEN, REPORT ON DOMESTIC VIOLENCE IN NEW YORK CITY: LISTENING WITH THE THIRD EAR 63–64 (2d ed. 1996); Eaton & Hyman, *supra* note 26, at 504.

²⁸ *See REITER ET AL.*, *supra* note 27, at 66.

²⁹ Eaton & Hyman, *supra* note 26, at 404 (footnote omitted).

woman who killed her abusive husband, was acquitted . . . [by] plead[ing] temporary insanity.”³⁰

B. Logistical and procedural obstacles in criminal court also prevented litigants from accessing justice.

Victims who received little or no support from the police, prosecutors, and judges also found themselves stymied by the criminal court system and its inadequate treatment of domestic violence cases. Prior to 1994, victims were limited to pursuing a claim against their abuser either in family court or in criminal court “within 72 hours after an act of domestic violence.”³¹ Once a victim decided to pursue her case in family court, the abuser could be subject to an order of protection but would no longer be subject to criminal punishment for his actions, as the district attorney’s office would be unable to prosecute the crime.³² Victims, therefore, were forced to choose one legal recourse and forgo another at a time when they were most likely unprepared, uninformed, and in crisis.³³ “The process for civilians . . . to initiate criminal complaints was [also so] convoluted, [it] discourage[d] all but the most determined litigants.”³⁴ In New York City, the complaint process required complainants to go “back and forth between a . . . summons part in lower Manhattan and the courts and police stations in their own boroughs,” necessitating as many as ten different trips.³⁵ The court system put the onus of prosecution on the victim, instead of transferring the prosecutorial functions to the local district attorneys’ offices.³⁶ As a result, victims of domestic violence were forced to proceed in criminal court on their own.³⁷ Furthermore, long delays and adjournments within the criminal court system also restricted victims’ access to justice. “Cases involving violations of

³⁰ Michael Dowd, *Battered Women: A Perspective on Injustice*, 1 CARDOZO WOMEN’S L.J. 1, 39 (1993).

³¹ Domonkos, *supra* note 12, at 1–2.

³² Jan Hoffman, *Domestic-Abuse Law: An Accuser’s Painful Choice*, N.Y. TIMES, May 7, 1993, at B16.

³³ *Id.*

³⁴ The Judicial Committee on Women in the Courts, *Five Year Report of the New York Judicial Committee on Women in the Courts*, 19 FORDHAM URB. L.J. 313, 331 (1992) [hereinafter *Five Year Report*].

³⁵ *Id.*; see N.Y. STATE TASK FORCE ON PROCESSING CIVILIAN COMPLAINTS BY THE NEW YORK CITY CRIMINAL COURT, REPORT ON THE TASK FORCE ON THE CIVILIAN-INITIATED COMPLAINT PROCESS IN THE NEW YORK CITY CRIMINAL COURT: FINDINGS AND RECOMMENDATIONS 24 (1989) [hereinafter CIVILIAN COMPLAINTS].

³⁶ The Judicial Committee on Women in the Courts, *supra* note 34, at 332.

³⁷ *Id.*

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orders of protection [were] not given preference in calendar scheduling,³⁸ as more serious cases involving jail time were prioritized in criminal court.³⁹ Many courtrooms were also designed in a manner that was not friendly to victims because batterers and victims were required to enter and exit through the same doors, making victims more vulnerable to intimidation and coercion.⁴⁰

C. Mandatory arrest policies, a statewide domestic violence registry, and other reforms were implemented to aid law enforcement and prosecutors.

Events like the highly publicized death of Ms. Komar, pressure from advocates for battered women, and study findings from other jurisdictions put a spotlight on domestic violence issues and galvanized policymakers to initiate a wave of change.⁴¹ In the late 1970s, twelve battered wives brought an action, *Bruno v. Codd*, seeking declaratory and injunctive relief against the New York City Police Department, the Probation Department, and the New York City Family Court for failing to enforce state laws, failing to arrest their abusive husbands, discouraging applications for protective orders, and making it difficult to access a family court judge.⁴² The affidavits of the battered wives highlighted how the police repeatedly told victims that they could not act unless there was a valid order of protection in place or unless their husbands used a weapon to beat them.⁴³ In one instance, a battered wife was attacked and gouged with a straight razor, but the police told her there was nothing they could do and referred her to family court.⁴⁴ Another victim had her arm sprained by her husband's attack, yet the police officer failed to make an arrest after she requested it.⁴⁵ *Bruno v. Codd* was eventually resolved by a consent decree with the New York City Police Department where the police agreed to make changes in its policies to improve its domestic violence call response

³⁸ Eaton & Hyman, *supra* note 26, at 405.

³⁹ *Id.*

⁴⁰ KERRY HEALEY ET AL., U.S. DEP'T OF JUSTICE, NAT'L INST. FOR JUSTICE, BATTERER INTERVENTION: PROGRAM APPROACHES AND CRIMINAL JUSTICE STRATEGIES 88–89 (1998), available at <https://www.ncjrs.gov/pdffiles/168638.pdf>.

⁴¹ See Press Release, N.Y.C. Mayor's Office, *supra* note 1; Sack, *supra* note 12, at 1669–70.

⁴² *Bruno v. Codd*, 407 N.Y.S.2d 165, 167 (App. Div. 1st Dep't 1978) (Murphy, P.J., dissenting), *aff'd*, 393 N.E.2d 976 (N.Y. 1979).

⁴³ *Bruno v. Codd*, 396 N.Y.S.2d 974, 976, 977 (Sup. Ct. 1977), *rev'd*, 407 N.Y.S.2d 165 (App. Div. 1st Dep't 1978), *aff'd*, 393 N.E.2d 976 (N.Y. 1979).

⁴⁴ *Id.* at 976.

⁴⁵ *Id.* at 977.

times and arrest rates.⁴⁶

The *Bruno v. Codd* consent decree paved the way for future changes to police policies. In 1994, the New York Legislature passed the Family Protection and Domestic Violence Intervention Act,⁴⁷ which implemented a mandatory arrest rule in New York for domestic violence misdemeanors unless the victim requested otherwise.⁴⁸ The law required police officers to arrest the abuser without attempting to “reconcile the parties or mediate.”⁴⁹ Police officers were no longer allowed to ask the victim whether she sought the arrest of her abuser.⁵⁰ The mandatory arrest provision was further updated in 1997 to require police officers to arrest the primary physical aggressor, rather than arresting both parties in a domestic dispute if both alleged or showed signs of injury.⁵¹ Police would consider factors such as prior history of domestic violence, the comparative extent of injuries, and whether a party acted in defense in determining which one acted as the primary aggressor.⁵² Although some battered women advocates and scholars have decried mandatory arrest policies, there still remains broad support for the state’s expanded police powers.⁵³ In fact, the 1994 federal Violence Against Women Act (VAWA) required states to implement mandatory arrest or pro-arrest policies in order to receive federal funding for domestic violence programs.⁵⁴ There has also been further corroboration that mandatory arrest policies have worked. In the six-year period after mandatory arrest policies were put in place, felony domestic arrests in New York City increased by 33%, misdemeanor arrests increased by 114%, and arrests based upon violations of orders of protection increased by 76%.⁵⁵

⁴⁶ Sack, *supra* note 12, at 1667 n.51 (citation omitted).

⁴⁷ Family Protection and Domestic Violence Intervention Act of 1994, ch. 222, 1994 N.Y. Laws 2704. Instrumental to the passage of the Act were the efforts of sponsor Assemblywoman Helene Weinstein, the current chair of the New York Assembly Judiciary Committee. See *Assemblywoman Helene Weinstein, Biography*, N.Y. STATE ASSEMBLY, <http://assembly.state.ny.us/mem/Helene-E-Weinstein/bio> (last visited Apr. 7, 2013).

⁴⁸ N.Y. CRIM. PROC. LAW § 140.10(4)(c) (McKinney 2013).

⁴⁹ *Id.* § 140.10(4); Family Protection and Domestic Violence Intervention Act of 1994, ch. 222, § 8, 1994 N.Y. Laws 2704, 2706; Act of July 6, 1994, ch. 224, 1994 N.Y. Laws 2726.

⁵⁰ Domonkos, *supra* note 12, at 2.

⁵¹ *Id.* at 3.

⁵² CRIM. PROC. LAW § 140.10(4)(c); N.Y. Bill Jacket, 1997 S.B. 5791, 220th Leg. Reg. Sess. (1997), ch. 4, at 5; Domonkos, *supra* note 12, at 3.

⁵³ Deborah Epstein, *Procedural Justice: Tempering the State’s Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1856 (2002).

⁵⁴ *Id.* VAWA “created a new federal civil rights remedy for victims of gender-based crimes and instituted new penalties for interstate crimes of domestic violence.” Domonkos, *supra* note 12, at 2.

⁵⁵ Sack, *supra* note 11, at 1672.

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Another significant change originating from the Family Protection and Domestic Violence Intervention Act was the establishment and maintenance of a statewide-computerized registry of all orders of protection.⁵⁶ The registry enabled police and judges to more swiftly and easily determine whether an order had been violated and whether there was a pattern of domestic violence.⁵⁷ The legislation also created a police form called “Domestic Incident Report[s],” which allowed the police to better report and track incidents.⁵⁸ The establishment of the Domestic Incident Report and the registry for reports allowed New York to take a “giant step” forward “in documenting the incidence of domestic violence.”⁵⁹ The 1994 Act permitted orders of protection to be put in place for up to three years if the court found the existence of aggravating circumstances⁶⁰ and also mandated training for state police in the investigation of and intervention in family offenses.⁶¹

New York State updated the registry by creating a Domestic Incident Report Repository in 2011, which allows law enforcement officials to search for information on incidents of domestic violence across jurisdictions and regardless of which police agency responded to a call or filed the report.⁶² The Repository gives law enforcement and other authorized users the ability to search for domestic incident reports filed by the agencies in the fifty-seven counties outside of New York City,⁶³ improving both victim and officer safety. Police dispatchers are able to use the information to advise responding officers on how best to handle a call for help.⁶⁴ The Repository is also a vital tool for prosecutors, as a search within the database can unveil a pattern of behavior that would have

⁵⁶ N.Y. EXEC. LAW § 221-a(1) (McKinney 2013); Family Protection and Domestic Violence Intervention Act of 1994, ch. 222, § 50, 1994 N.Y. Laws 2704, 2718.

⁵⁷ Domanos, *supra* note 12, at 2.

⁵⁸ *See id.*

⁵⁹ N.Y. STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, NEW YORK STATE’S RESPONSE TO DOMESTIC VIOLENCE: SYSTEMS AND SERVICES MAKING A DIFFERENCE 5 (2006), available at http://opdv.ny.gov/whatisdv/about_dv/nyresponse/nysdv.pdf [hereinafter RESPONSE TO DOMESTIC VIOLENCE].

⁶⁰ Family Protection and Domestic Violence Intervention Act of 1994, ch. 222 § 22, 1994 N.Y. Laws 2710. *But see* N.Y. FAM. CT. ACT § 842 (McKinney 2013) (extending the time to five years).

⁶¹ N.Y. EXEC. LAW § 840(2)(f) (McKinney 2013); Family Protection and Domestic Violence Intervention Act of 1994, ch. 222, § 28, 1994 N.Y. Laws 2713.

⁶² Press Release, N.Y. State Div. of Criminal Justice Servs., New York State Launches Domestic Incident Report (DIR) Repository (Dec. 14, 2011), available at http://www.criminaljustice.ny.gov/pio/press_releases/2011-12-14_pressrelease.html.

⁶³ *Id.*

⁶⁴ *Id.*

previously gone undetected,⁶⁵ which allows prosecutors to build stronger cases resulting in stiffer penalties for abusers.⁶⁶ The Repository also aids in the supervision of offenders on parole and probation, which better protects domestic violence survivors and their communities.⁶⁷

Furthermore, steps have also been taken by the New York State Division of Criminal Justice Services to integrate domestic violence initiatives into their crime reduction strategy. Operation IMPACT promotes information sharing among law enforcement agencies, intelligence-based policing, and the involvement of community organizations to reduce the incidence of domestic violence.⁶⁸ Crime analysis centers automate and scan domestic incident reports in order to identify repeat offenders.⁶⁹ For example, the Erie Crime Analysis Center has automated and scanned reports from the years 2008, 2009, and 2010.⁷⁰ Once a repeat offender is arrested, information such as “criminal history, criminal incident reports, probation-parole information, domestic incident reports, and warrant history [are all] sent to the Erie County District Attorney’s Domestic Offender Section.”⁷¹ The information allows judges to see a complete picture of the offender before setting bail.⁷²

An Operation IMPACT program run by the Niagara Falls Police Department has also made great strides by taking a closer look at domestic related assaults and establishing Domestic Violence Intervention Teams (DVIT).⁷³ The DVIT consists of specially trained domestic violence investigators and victim advocates from the police department, the district attorney’s office, the probation and sheriff’s office.⁷⁴ The teams take a more aggressive approach to the domestic violence problem by enabling investigators to follow-up with victims and enforce orders of protection and domestic violence-related warrants.⁷⁵

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Operation IMPACT*, N.Y. STATE DIVISION CRIM. JUST. SERVICES, <http://www.criminaljustice.ny.gov/crimnet/ojsa/impact/index.htm> (last visited Mar. 4, 2013). Operation IMPACT also applies to other crimes besides incidents of domestic violence. *See id.*

⁶⁹ *See* Press Release, N.Y. State Div. of Criminal Justice Servs., *supra* note 62.

⁷⁰ *See* N.Y. STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE, DOMESTIC VIOLENCE ANNUAL REPORT 2010, at 14 (2010) [hereinafter 2010 DV ANNUAL REPORT].

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 15.

⁷⁴ *Id.*

⁷⁵ *Id.*

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Prosecutors have also employed new strategies and tactics to generate positive outcomes for victims of domestic violence. Certain jurisdictions such as Manhattan, Queens, Brooklyn, and Staten Island adopted no-drop prosecution policies in domestic violence cases, meaning that almost all domestic violence cases were prosecuted even if the victim did not want the district attorney to pursue the case.⁷⁶ Under a no-drop policy, the district attorney's office keeps more cases active, and the prosecutors will spend time encouraging the victim to cooperate and to take advantage of services such as counseling and housing assistance.⁷⁷ If the victim is uncooperative, the prosecutor may rely on the victim's signed statement on a Domestic Incident Report, statements made on 911 calls, photographs, police testimony, and medical evidence, all which may be admissible through hearsay exceptions.⁷⁸ No-drop policies benefit victims by reducing the chance that an offender would intimidate the victim, since it is the prosecutor who controls whether a criminal case progresses, and not the victim.⁷⁹ As an additional benefit, the assistant district attorneys in no-drop jurisdictions are able to monitor a large number of offenders, since virtually all of them are involved in ongoing prosecutions.⁸⁰ A policy of prosecuting and sentencing domestic violence offenders signals to the community and to offenders that the criminal justice system takes domestic abuse seriously and will intervene to stop it.⁸¹

D. The creation of specialized domestic violence courts brings families with overlapping criminal and family court cases before the same judge.

In addition to legislative mandates, internal policy changes have affected the way domestic violence cases are handled by law enforcement and prosecutors. In 1996, the judicial branch of New

⁷⁶ RICHARD R. PETERSON, N.Y.C. CRIMINAL JUSTICE AGENCY, INC., COMBATING DOMESTIC VIOLENCE IN NEW YORK CITY: A STUDY OF DV CASES IN THE CRIMINAL COURTS 4 (2003), available at <http://www.nycja.org/research/reports/ressum43.pdf>.

⁷⁷ *Id.*

⁷⁸ *See id.*

⁷⁹ *See id.*

⁸⁰ *See id.*

⁸¹ *Id.* at 26. However, no-drop policies do reduce conviction rates because resources are diluted across numerous domestic violence cases, many of which may be meritless. Statistics from 1998 reveal that domestic violence cases in no-drop districts had dismissal rates of 59% (Brooklyn) and 54% (Manhattan), while the percentage of dismissals in the Bronx, where there is not a no-drop policy, is much lower at 29%. *Id.* at 12 fig.3. The conviction rate in the Bronx is only 53%, compared to the domestic violence conviction rates in Brooklyn and Manhattan of 17% and 28%, respectively. *Id.*

York, helmed by then Chief Judge Judith Kaye, instituted a wide array of reforms with the implementation of specialized domestic violence (DV) problem-solving courts.⁸² These courts were customized to handle criminal cases involving intimate partner violence,⁸³ and were instituted with the three goals of promoting victim safety, increasing defendant accountability, and encouraging better coordination among institutions in the criminal justice system already dealing with domestic violence.⁸⁴ Leaders within the court system realized that courts could not do justice in domestic violence cases unless judges “received training from experts about the nature of domestic violence,” its effect on the victims, and how to hold abusers accountable.⁸⁵ The creation of the DV courts was made possible by the modeling of specialized DV courts by the Center for Court Innovation, the court system’s research and development arm, and by the leadership of the Honorable John Leventhal of the Brooklyn Felony Domestic Violence Court.⁸⁶ These customized courts equipped to handle DV cases were able to discredit “[e]xcuses for battering such as substance abuse or anger management problems.”⁸⁷ The specialized courts were also more aware that batterer intervention programs did not necessarily “change” the batterers and did not make victims safe.⁸⁸

The DV courts were “created in local criminal courts to handle misdemeanors and violations” of orders of protection, as well as in superior courts to handle felonies.⁸⁹ The DV courts continue to operate today and feature a single presiding judge trained in issues

⁸² Jonathan Lippman, *Chief Judge Judith S. Kaye: A Visionary Third Branch Leader*, 84 N.Y.U. L. REV. 655, 658 & n.10 (2009). See generally ROBERT V. WOLF ET AL., CTR. FOR COURT INNOVATION PLANNING A DOMESTIC VIOLENCE COURT: THE NEW YORK STATE EXPERIENCE 1 (2004), available at http://www.courtinnovation.org/_uploads/documents/dvplanningdiary.pdf (discussing the development of domestic violence courts in New York).

⁸³ JUDY HARRIS KLUGER, NEW YORK STATE PROBLEM-SOLVING COURTS: FIVE-YEAR REPORT 1 (2008).

⁸⁴ Kaye & Knipps, *supra* note 11, at 6–7.

⁸⁵ Domonkos, *supra* note 12, at 4.

⁸⁶ See *Judge John Leventhal, Brooklyn Felony Domestic Violence Court*, CENTER FOR CT. INNOVATION, <http://www.courtinnovation.org/research/judge-john-leventhal-brooklyn-felony-domestic-violence-court> (last visited Mar. 1, 2013). For a thorough discussion on the implementation of the felony DV courts, see LISA NEWMARK ET AL., SPECIALIZED FELONY DOMESTIC VIOLENCE COURTS: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE 1 (2001), available at <http://www.courtinnovation.org/sites/default/files/documents/SpecializedFelonyDomesticViolenceCourts.pdf>.

⁸⁷ Domonkos, *supra* note 12, at 4.

⁸⁸ *Id.* (internal quotation marks omitted).

⁸⁹ KLUGER, *supra* note 83, at 1.

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common to domestic violence cases.⁹⁰ Defendants sentenced to probation are strictly monitored by trained probation officers, and those out on bail are required to appear regularly before judges who check on their status.⁹¹ Court staff members called Resource Coordinators gather information from outside agencies such as victim services and treatment programs to allow the judges to have a complete picture before making decisions in domestic violence cases.⁹² These specialized DV courts have increased defendant accountability with documented improvements in expedited processing of cases and improved monitoring of offenders.⁹³

The next iteration of the specialized DV courts resulted in the development of the Integrated Domestic Violence (IDV) courts. The IDV courts were created in 2001 and initiated a one-family, one-judge model.⁹⁴ Prior to the creation of IDV courts, cases were heard in separate criminal, matrimonial, and family courts before a series of different judges in various buildings.⁹⁵ The separate courts were often in different parts of a county and required families to navigate a complicated court structure.⁹⁶ Now, IDV courts allow for one-stop shopping for services to victims and families and refer adult and child victims to supportive services, while holding offenders accountable by sending them to mandated programs.⁹⁷

The goal of the IDV courts is to simplify the court structure so

⁹⁰ *Id.*

⁹¹ Kaye & Knipps, *supra* note 11, at 7.

⁹² *Id.* at 8.

⁹³ RICHARD R. PETERSON, N.Y.C. CRIMINAL JUSTICE AGENCY, INC., MANHATTAN'S SPECIALIZED DOMESTIC VIOLENCE COURT 6 (2004), *available at* <http://www.cjareports.org/reports/brief7.pdf>. In Manhattan's specialized DV court, "the average time between arraignment and disposition declined between 1998 and 2001." *Id.* Plea bargains were reached more expeditiously and efficiently. *Id.* Expedited processing allowed the courts to enroll batterers in intervention and drug and alcohol treatment programs more quickly. *Id.* More conditional discharge sentences were meted out under the specialized DV courts, indicating that there is now more monitoring of batterers even after their cases are disposed. *Id.* at 7.

⁹⁴ KLUGER, *supra* note 83, at 3. Judge Daniel J. Angiolillo presided over the first IDV court in New York in Westchester County. *Pace Women's Justice Center Hosts Seminar on Mediating Domestic Violence*, WHITE PLAINS CITIZENET REP. (Oct. 19, 2004), <http://www.whiteplainscnr.com/modules.php?name=News&file=print&sid=2989>. Judge Angiolillo, along with Judge George B. Ceresia Jr. and the late Judge Ruth Levine Sussman, were pioneers in the implementation of IDV courts and paved the way for its future success. *See generally* John Caher, *Domestic Violence Project Falls Short of Integrated Courts*, FUND FOR MODERN COURTS (June 5, 2002), <http://www.moderncourts.org/News/Forums/0602a.html> (noting that the three justices were presiding over the IDV Courts in 2002).

⁹⁵ KLUGER, *supra* note 83, at 3.

⁹⁶ *Id.*

⁹⁷ *Integrated Domestic Violence Courts: Key Principles*, CENTER FOR CT. INNOVATION 1-2 http://www.courtinnovation.org/sites/default/files/documents/IDV_FACT_SHEET.pdf (last visited Apr. 13, 2013) [hereinafter *IDV Courts*].

that the system can better and more holistically serve the victims of domestic violence.⁹⁸ These courts address “multiple criminal, family, and matrimonial disputes for families where domestic violence is an underlying issue.”⁹⁹ In order

[t]o be eligible for IDV court, a family must have a criminal domestic violence case as well as a family court case, a matrimonial case, or both, where at least one of the defendant and complaining witness to the criminal case is also a party to the family or matrimonial case.¹⁰⁰

The IDV courts provide ongoing judicial monitoring of offenders and also work closely with community agencies that provide mental health and substance abuse services to victims and offenders.¹⁰¹ The IDV courts intentionally require offenders to make frequent court appearances to improve accountability and to generate increased coordination and communication between the court and service providers.¹⁰² The courts also coordinate with victim advocates and outside agencies and services facilitating communication and lending support to victims and their families.¹⁰³

Having one judge hear their case helps families to obtain more positive results by “ensur[ing] consistency in judicial orders and allow[ing] the court to better respond to the particularities of a family’s situation.”¹⁰⁴ The judges of the IDV courts receive special training in areas of the law and on domestic violence issues.¹⁰⁵ The training allows IDV judges to communicate with other judges on issues of strategy and implementation.¹⁰⁶ The training also aids the judges and their court staff “to handle related legal matters more consistently, comprehensively, [and] efficiently.”¹⁰⁷ IDV courts attempt to calendar a family’s criminal, family, and matrimonial cases on one day if feasible, in order to reduce the number of court appearances litigants need to make as their cases progress.¹⁰⁸ The Center for Court Innovation conducted a study of IDV courts in Erie and Bronx County and concluded that “litigants make significantly

⁹⁸ See KLUGER, *supra* note 83, at 3.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See *IDV Courts*, *supra* note 97, at 2.

¹⁰² *Id.*

¹⁰³ KLUGER, *supra* note 83, at 3.

¹⁰⁴ *Id.* at 5.

¹⁰⁵ *IDV Courts*, *supra* note 97, at 2.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ KLUGER, *supra* note 83, at 5.

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fewer trips to court than they would” have if they did not hear their cases in IDV court.¹⁰⁹

Former Chief Judge Kaye further expanded the geographic reach of problem-solving courts during her tenure by announcing the creation of the Deputy Chief Administrative Judge for Court Operations and Planning (DCAJ) and appointing Judge Judy Harris Kluger to head the office in 2003.¹¹⁰ What started out as two IDV courts serving 141 families in 2001,¹¹¹ has grown to 46 IDV courts around the state, with 17,300 new cases by 2010.¹¹² In 2011, the IDV Courts around New York State served over 3000 families and handled over 16,000 new cases.¹¹³ Additionally, “[t]he 40 Domestic Violence Courts heard 32,983 new cases in 2011.”¹¹⁴

Youthful Offender Domestic Violence Courts (YODV) are another specialized, problem-solving court that are innovative tools in the fight against domestic violence. These courts were “[l]aunched in late 2003 . . . to address exclusively misdemeanor domestic violence cases among teenagers between the ages of 16 and 19.”¹¹⁵ The YODV courts address violent tendencies in teens early on, before behavior becomes entrenched in their domestic relationships.¹¹⁶ Though “women between the ages of 16 and 24 experience the highest rate of domestic violence and sexual assault” among all age groups, little had been done before 2003 to address the problem.¹¹⁷ The YODV courts adapt the DV court model to the circumstances of teen defendants, and the “staff [of the YODV courts] are equipped to address the unique needs [of] teen complainants.”¹¹⁸ Furthermore, the YODV court “link[s] victims to . . . specialized services, [such as] a free 12-week program” for batterers.¹¹⁹ YODV courts currently operate in Brooklyn, the Bronx, and Yonkers.¹²⁰

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at ii.

¹¹¹ *Id.* at 5.

¹¹² 2010 DV ANNUAL REPORT, *supra* note 70, at 13.

¹¹³ Gwen J. Wright, *New York State Domestic Violence Dashboard Project: 2011 Data*, N.Y. ST. OFF. FOR THE PREVENTION OF DOMESTIC VIOLENCE (2012), <http://opdv.ny.gov/statistics/nydata/2011/index.html>.

¹¹⁴ *Id.*

¹¹⁵ *Youth Domestic Violence Court*, CENTER FOR CT. INNOVATION, <http://www.courtinnovation.org/project/youth-domestic-violence-court> (last visited Mar. 3, 2013).

¹¹⁶ *See id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ 2010 DV ANNUAL REPORT, *supra* note 70, at 13.

E. The success of specialized DV courts and other reforms are documented by encouraging statistical trends from the criminal courts.

While efficiency of court administration and the efficacy of reforms can be difficult to measure in cases of domestic violence, much of the data coming from the criminal courts regarding the volume and outcome of cases signals that the specialized courts have produced promising outcomes for victims and the community.¹²¹

For example, the percentage of dismissals and adjournments in contemplation of dismissal (ACD) out of all domestic violence dispositions in New York County Criminal Court has declined from a little over 70% to 61% of all dispositions between 2007 to 2012.¹²² While previously there was no improvement in the percentage of dismissals in Manhattan Criminal Court from 1998 to 2001, the current declining trend of dismissals indicates that victims may be more willing to cooperate with the prosecution in bringing cases against their abusers or that law enforcement and prosecutors are focusing more resources on cases with strong evidence.¹²³

There also has been an upward trend in the percentage of pleas and convictions out of all domestic violence dispositions in New York County Criminal Court, with the percentage increasing from 20.7% to 30%.¹²⁴

¹²¹ Robyn Mazur & Liberty Aldrich, *What Makes a Domestic Violence Court Work? Lessons from New York*, 42 JUDGES' J. 5, 6 (2003).

¹²² See *infra* Figure 1.

¹²³ PETERSON, *supra* note 93, at 3.

¹²⁴ See *infra* Figure 2.

FIGURE 1: NEW YORK COUNTY-PERCENTAGE OF PLEAS AND CONVICTIONS OUT OF ALL DOMESTIC VIOLENCE DISPOSITIONS IN CRIMINAL COURT

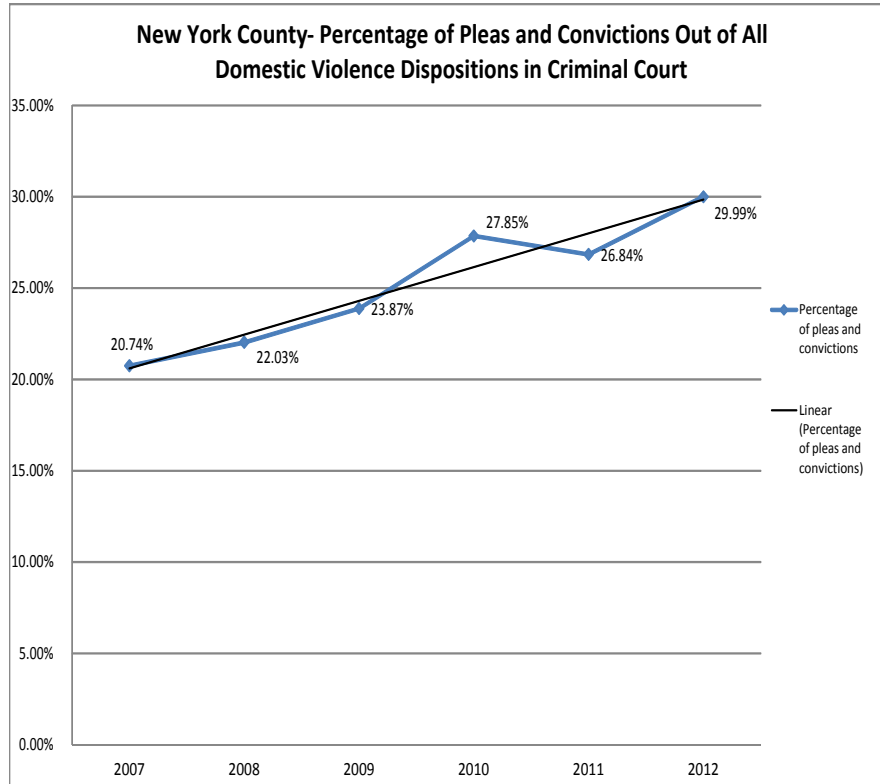
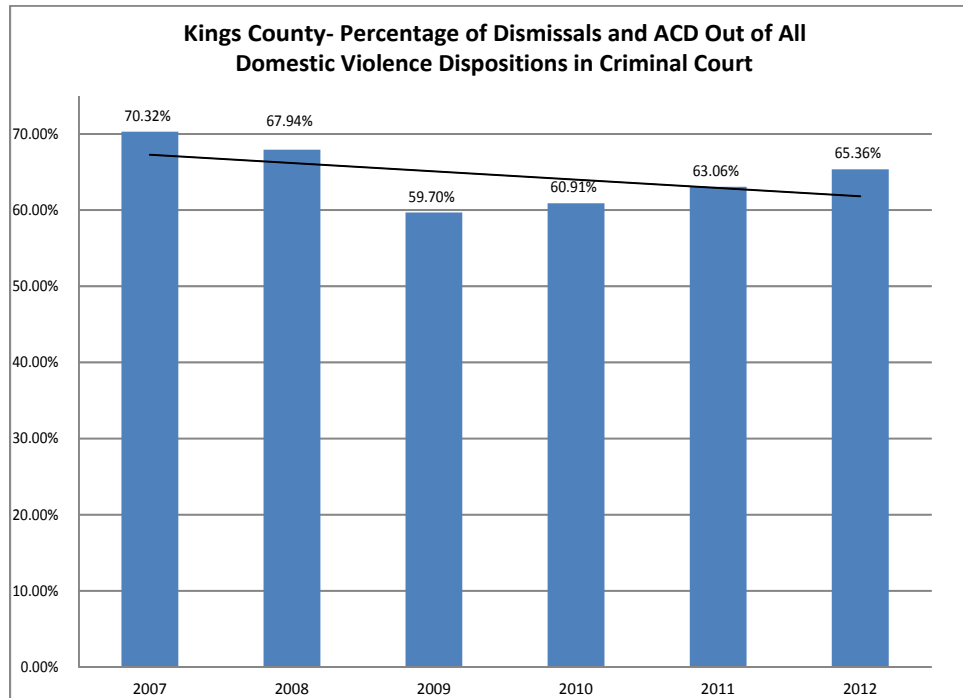


FIGURE 2: KINGS COUNTY-PERCENTAGE OF DISMISSALS AND ACD OUT OF ALL DOMESTIC VIOLENCE DISPOSITIONS IN CRIMINAL COURT



The percentage of dismissals and ACDs in criminal courts in Kings County has also decreased from 2007 to 2012, but at a less steady pace,¹²⁵ while the percentage of pleas and convictions has increased dramatically, by almost 10 percentage points over six years.¹²⁶ While the combined dismissal and ACD rates are still high compared to the statistics for non-DV cases, part of this may be because defendants in DV cases have less serious criminal histories compared to defendants in non-DV cases.¹²⁷ There are also mandatory arrest policies and no-drop prosecution policies for DV

¹²⁵ *Id.* The percentage of dismissals and adjournments in contemplation of dismissal from 2007 to 2012 were respectively, 70.3%, 67.9%, 59.7%, 60.9%, 63.1%, and 65.4%. *Id.*

¹²⁶ *Id.* The percentage of pleas and convictions from 2007 to 2012 were respectively, 18.7%, 22.1%, 30.7%, 29.8%, 28.2%, and 27.1%. Other encouraging statistical trends include a reduction in probation violation rates in Kings County between 1997 and 2000. NEWMARK ET AL., *supra* note 86, at 69, 76.

¹²⁷ RICHARD PETERSON, N.Y.C. CRIMINAL JUSTICE AGENCY, INC., COMBATING DOMESTIC VIOLENCE IN NEW YORK CITY, 2001, at 2, 3 (2003), available at <http://www.cjareports.org/reports/brief4.pdf>.

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cases in Manhattan, which also contribute to a higher dismissal rate.¹²⁸ Still, the statistical difference between dismissals in DV and non-DV cases demonstrates that there is room for improvement in encouraging and supporting victims so that they are willing to testify and cooperate in the prosecution of their batterers.

III. INNOVATIVE SOLUTIONS IN THE FAMILY COURTS HAVE INCREASED ACCESS TO JUSTICE FOR DOMESTIC VIOLENCE VICTIMS

A. *Historically, obstacles in family court prevented victims of domestic violence from obtaining relief.*

Victims of domestic violence also faced barriers to accessing justice from the family courts. Often, “judges, attorneys, and court personnel erroneously presume[d] that petitions for orders of protection filed by women during the course of a matrimonial action [were] ‘tactical’ in nature.”¹²⁹ Judges and attorneys failed to understand that violence was “particularly likely to occur after a divorce action ha[d] been commenced.”¹³⁰ Certain judges in the matrimonial part required the existence of “visible physical injuries” on the victim “before granting an order of protection.”¹³¹ A survey conducted in 1985 showed that about 40% of attorneys felt that judges in family courts and criminal courts asked why petitioners had no visible physical injuries either “sometimes” or “often.”¹³² The prevailing opinion from judges was that “women’s testimony [was] not credible unless corroborated by” visible proof, like “a bruise, a laceration, or a black eye.”¹³³ Judges particularly doubted a woman’s version of events when the woman petitioned for an order of protection while she had a matrimonial case pending.¹³⁴

Additionally, in the past, many family court judges ordered mediation, even though experts agreed that violence in the family destroyed the power balance that was necessary for a successful mediation.¹³⁵ Some judges were also unwilling to remove a batterer from the home, which often forced mothers and children to live in

¹²⁸ *Id.* at 3–4.

¹²⁹ *Report of the New York Task Force on Women in the Courts*, *supra* note 21, at 39–40, 47.

¹³⁰ *Id.* at 47.

¹³¹ *Id.* at 33.

¹³² *Id.* at 33 & n.54.

¹³³ *Id.* at 33.

¹³⁴ Eaton & Hyman, *supra* note 26, at 404.

¹³⁵ *Report of the New York Task Force on Women in the Courts*, *supra* note 21, at 46.

shelters.¹³⁶ Vacate orders that directed batterers to leave the family home were underused by judges in both criminal and family courts.¹³⁷ More disturbingly, many judges considered it a compromise of impartiality to learn more about domestic violence and to apply the specialized knowledge to the cases before them despite the pervasive lack of information in family court.¹³⁸

In addition to the erroneous presumptions that plagued the family court in the past, many victims of domestic violence also confronted institutional and logistical barriers to obtaining relief.¹³⁹ Victims lacked information regarding where they could go to receive temporary orders of protection.¹⁴⁰ Though the Family Court Act section 161(c) allowed any judge to hear an *ex parte* application for an order of protection when family courts were closed,¹⁴¹ victims lacked knowledge regarding where to access available services. Families found it difficult to navigate a complicated court structure, particularly New York City litigants.¹⁴² Historically, there was also a pronounced shortage of legal services for battered women.¹⁴³ While pro bono counsel provided some relief to victims of domestic violence, other individuals and resources were needed to help usher litigants through the system, to assist in filling out paperwork, and to instruct litigants on procedures.¹⁴⁴

Furthermore, family court resources were available to only a limited group of litigants in the past. State law only allowed married and divorced couples, relatives, or people with children in common to obtain an order of protection in family court.¹⁴⁵ While the criminal courts were open to a much broader range of litigants, many victims did not pursue their claims because they did not want to prosecute their abusers or because they recognized that criminal courts did not take domestic violence as seriously as family courts.¹⁴⁶ There was a perception that criminal court judges

¹³⁶ SCHECHTER, *supra* note 12, at 162–63.

¹³⁷ Eaton & Hyman, *supra* note 26, at 404.

¹³⁸ Domonkos, *supra* note 12, at 3–4.

¹³⁹ See *Five Year Report*, *supra* note 34, at 331.

¹⁴⁰ See *id.*

¹⁴¹ See N.Y. FAM. CT. ACT § 161(c) (McKinney 2013) (authorizing any magistrate to act as a family court judge under certain circumstances).

¹⁴² See *Five Year Report*, *supra* note 34, at 331 (finding that New York City residents needed assistance “navigating the labyrinth of court procedures”).

¹⁴³ Eaton & Hyman, *supra* note 25, at 404.

¹⁴⁴ *Five Year Report*, *supra* note 34, at 331.

¹⁴⁵ N.Y. CRIM. PROC. LAW § 530.12 (McKinney 2013); N.Y. FAM. CT. ACT § 812(1) (McKinney 2013).

¹⁴⁶ Eaton & Hyman, *supra* note 26, at 412.

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thought of domestic violence cases as mere family matters and focused on the cases that they saw as more serious.¹⁴⁷

B. Legislative changes and the strengthening of civil protective orders have aided in combating domestic violence.

In 1962, legislation gave family court exclusive original jurisdiction over crimes amounting to assault or disorderly conduct perpetrated against family members.¹⁴⁸ Civil protective orders met the needs of victims who did not desire to secure a criminal conviction, but rather were seeking practical help.¹⁴⁹ The implementation of civil protective orders was a response by lawmakers to the dearth of remedies available to victims of family violence from the criminal courts.¹⁵⁰ Presently, civil orders of protection provide an immediate safeguard against further violence and send a message to the abuser that the courts will protect victims and hold abusers accountable.¹⁵¹ Civil protective orders also empower victims and prevent abusers from keeping the abuse hidden.¹⁵² New York was at the forefront of the issue and one of the first states to offer civil protective orders for domestic violence,¹⁵³ and the orders remain a vital tool for victims and advocates today.

The 1994 Family Protection and Domestic Violence Intervention Act produced a plethora of positive developments for victims of domestic violence in the family courts. The Act eliminated the rule which limited victims to choosing between pursuing a claim in “Family Court or Criminal Court within 72 hours” after an act of abuse.¹⁵⁴ The Act also created concurrent jurisdiction between the family and criminal courts so that victims would have access to both courts. Victims could proceed in either family court or criminal Court without referral, and an arrest was not required for commencing either proceeding.¹⁵⁵ The state legislature made

¹⁴⁷ *Id.*

¹⁴⁸ Merrill Sobie, *Practice Commentaries, Concurrent Jurisdiction*, in N.Y. FAM. CT. ACT § 812 (McKinney 2013).

¹⁴⁹ *Montalvo v. Montalvo*, 286 N.Y.S.2d 605, 609 (Fam. Ct. 1968) (quoting FAM. CT. ACT § 811).

¹⁵⁰ Kellie K. Player, *Expanding Protective Order Coverage*, 43 ST. MARY’S L.J. 579, 584 (2012).

¹⁵¹ *Id.* at 590–91.

¹⁵² *Id.* at 591–92.

¹⁵³ *See id.* at 584; Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL’Y REV. 93, 98–99 (2005).

¹⁵⁴ *Domonkos*, *supra* note 12, at 2.

¹⁵⁵ *See* Family Protection and Domestic Violence Intervention Act of 1994, ch. 222, § 10, 1994 N.Y. Laws 2704, 2707 (enacted as amended at N.Y. FAM. CT. ACT § 812(3) (McKinney

further updates in 1996, by expanding the definition of the crime of criminal contempt, as to encompass violations of orders of protection.¹⁵⁶ The law was updated so that a defendant would be guilty of an E felony if he or she violated an order of protection by stalking, harassing, or menacing a victim.¹⁵⁷

More recently, in 2003, the maximum length that orders of protection can be granted in family court was expanded “from 1 to 2 years, and from 3 to 5 [years] if aggravating circumstances exist.”¹⁵⁸ Furthermore, the Expanded Access to Family Court Act opened New York family courts to unmarried couples, teens, and victims of violence in same-sex relationships in 2008.¹⁵⁹ Unmarried, childless couples can now obtain orders of protection in family court without having to file criminal charges.¹⁶⁰ Since family court is more accessible to litigants without legal representation compared to criminal court, the landmark legislation expanded access to justice for many previously excluded groups.¹⁶¹

C. The implementation of Family Justice Centers and expanded access to civil legal services provide increased support to domestic violence victims.

In addition to legislative efforts, the court system has also endeavored to improve and streamline the process for domestic violence litigants in family courts. While he was Chief Administrative Judge from 1987 to 1989, the Honorable Albert Rosenblatt directed administrative judges to review the accessibility of courts for orders of protection and to expand judicial access.¹⁶² Administrative judges also oversaw the development of a special

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¹⁵⁶ RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 14; *see also* Act of July 29, 1996, ch. 353, 1996 N.Y. Laws 2636 (expanding penalties for violating an order of protection).

¹⁵⁷ RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 14; *see also* Act of July 29, 1996, ch. 353, 1996 N.Y. Laws 2636.

¹⁵⁸ RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 16; *see also* Act of Sept. 22, 2003, ch. 579, 2003 N.Y. Laws 3228.

¹⁵⁹ Lela Gray, Comment, *Municipal Accountability in Domestic Violence: A Promising New Case*, 4 ALB. GOV'T L. REV. 362, 381 (2011).

¹⁶⁰ *See* FAM. CT. ACT § 812(1)(e); Eileen Swan, *Review of Expanded Access Two Years Later*, OFF. OF THE PREVENTION OF DOMESTIC VIOLENCE, <http://www.opdv.ny.gov/law/expandedaccess/year2review.html> (last visited Apr. 3, 2013).

¹⁶¹ *See, e.g., Fair Access to Family Court—One Year Later*, SANCTUARY FOR FAMILIES, http://www.sanctuaryforfamilies.org/index.php?option=com_content&task=view&id=543&Itemid=135 (last visited Apr. 3, 2013).

¹⁶² Albert M. Rosenblatt, *Women in the Courts A Historical Perspective*, N.Y.L.J., Nov. 1, 1988, at 6.

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simplified form to be filled out by prospective family offense petitioners.¹⁶³ The form was designed to help improve the complaint process, and experienced clerks were trained in its usage to help litigants.¹⁶⁴ While the examples of how the family court has improved its handling of domestic violence cases are many and varied, I will highlight two examples: Family Justice Centers and access to civil legal services.

In 2003, the U.S. Department of Justice created the Family Justice Center Initiative, and New York State was awarded two grants to create Family Justice Centers in Brooklyn and in Buffalo.¹⁶⁵ Family Justice Centers enable victims to speak to prosecutors and law enforcement officers, speak with trained counselors, apply for housing and financial assistance, and address immigration issues, all in a one-stop shop where childcare is provided.¹⁶⁶ The Family Justice Centers also provide services for elderly or disabled victims, language interpretation, and chaplains.¹⁶⁷ The Brooklyn Family Justice Center houses the entire Domestic Violence Bureau of the Kings County District Attorney's Office and is supported by nine government agencies, twenty-five community-based organizations, six faith-based organizations, and five universities.¹⁶⁸ The Family Justice Center of Erie County located in Buffalo also brought together thirty-two partner agencies to provide a safe haven for victims of domestic violence.¹⁶⁹ Two more Family Justice Centers in Queens and the Bronx opened in 2008 and 2010, respectively, and have increased the effectiveness of legal service delivery to domestic violence victims.¹⁷⁰

Though the lack of legal services for poor, battered women has plagued our state in the past,¹⁷¹ strides are being made to alleviate the dearth of qualified attorneys trained to deal with domestic

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 40. The efforts and support of District Attorney of Kings County Charles Hynes and Mayor Michael Bloomberg were critical in bringing the Family Justice Center to Brooklyn. *Charles Hynes, Biography*, FORDHAM L. F. ON L., CULTURE & SOC'Y, <http://www.forumonlawcultureandsociety.org/biography/charles-j-hynes> (last visited Apr. 11, 2013).

¹⁶⁶ RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 40.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See *New York City Family Justice Center Initiative*, MAYOR'S OFF. TO COMBAT DOMESTIC VIOLENCE, http://www.nyc.gov/html/ocdv/downloads/pdf/FJC_FunderBrochure.pdf (last visited Apr. 3, 2013).

¹⁷¹ Domonkos, *supra* note 12, at 6.

violence cases.¹⁷² While the current laws do not entitle indigent litigants to counsel in matrimonial or child support cases,¹⁷³ a trained attorney can be key in a victim's attempts to navigate through the court system to achieve a positive result.¹⁷⁴ Charles Hynes, the District Attorney for Kings County, and Kathleen B. Hogan, the District Attorney for Warren County, testified at the Civil Legal Services Task Force hearing that the lack of available civil legal assistance undermines comprehensive assistance for victims of crime, particularly survivors of domestic violence.¹⁷⁵ Currently, New York provides a patchwork of civil legal services to assist domestic violence victims. Some providers offer civil legal services regardless of income,¹⁷⁶ while others, such as Legal Aid, are restricted to indigent clients.¹⁷⁷ The state provides limited funding to a small number of domestic violence programs and legal programs to assist domestic violence victims.¹⁷⁸ Law school domestic violence clinics and pro bono attorneys are another key source of needed help.¹⁷⁹

My current initiative to expand civil legal services in New York by increasing funding to legal service providers throughout the state and to require fifty hours of pro bono service for new lawyers goes to address the marked justice gap between the availability of civil legal services and the need.¹⁸⁰ However, it is evident that additional funding and resources are needed. Both litigants and advocates testified at the 2012 Hearings on Civil Legal Services about the impressive efforts to try to address the access-to-justice gap in the field of domestic violence cases, but that nevertheless, a

¹⁷² See RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 38.

¹⁷³ Domonkos, *supra* note 12, at 6; see RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 38.

¹⁷⁴ See RESPONSE TO DOMESTIC VIOLENCE, *supra* note 59, at 38.

¹⁷⁵ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 10 (2010) [hereinafter CIVIL LEGAL SERVICES IN NEW YORK 2010].

¹⁷⁶ See, e.g., *Low-Income Listings*, GAY ALLIANCE, <http://www.gayalliance.org/directory/community-organizations-groups-and-activities/low-income-resources.html> (last visited Apr. 11, 2013) (listing legal service providers, such as the Sylvia Rivera Law Project, which offer services free of charge).

¹⁷⁷ See CIVIL LEGAL SERVICES IN NEW YORK 2010, *supra* note 175, at 38.

¹⁷⁸ See *id.*

¹⁷⁹ Jonathan Lippman, Chief Justice, N.Y. Court of Appeals, Remarks on Law Day 2012 (May 1, 2012) [hereinafter Lippman Law Day Remarks].

For a detailed account of the first domestic violence law seminar in the United States and the establishment of a domestic violence clinic at Albany Law School, see Melissa L. Breger & Mary A. Lynch, *First Domestic Violence Law Seminar Taught in a United States Law School: The Legacy of Professor Katheryn D. Katz*, 77 ALB. L. REV. (forthcoming 2014).

¹⁸⁰ Lippman Law Day Remarks, *supra* note 179.

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shortfall exists.¹⁸¹ In 2011, Navigant Consulting reported that investing in civil legal services to prevent domestic violence in New York State could achieve \$85 million in savings in the costs otherwise incurred to assist survivors of domestic violence.¹⁸² The 2010 Report to the Chief Judge from the Task Force on Civil Legal Services also cited a study from Wisconsin which calculated that protecting a family from domestic violence provided savings in terms of medical care costs, lost wages, counseling, the cost of police resources, and incarceration of abusers, with savings totaling \$3400 per family.¹⁸³ This surely is a worthwhile investment in terms of lives saved and improved and generates an additional benefit for the state fiscal environment. Professor Catherine Cerulli, from the Department of Psychiatry at the University of Rochester, posited that providing families access to lawyers trained in intimate partner violence could aid in ameliorating health and mental health consequences and reducing the amount of violence children are exposed to.¹⁸⁴ She stated at the 2010 Civil Legal Services Hearing that “[a]t some point if we don’t offer civil legal services, we will pay . . . [with] increased homicides, increased healthcare costs, increased incarceration for perpetrators, . . . and the impact on children will be immeasurable in terms of dollars.”¹⁸⁵

IV. CONCLUSION

Both the criminal courts and family courts have come a long way in changing long-standing attitudes of domestic violence, implementing mandatory procedures, collaborating with community stakeholders and service providers, and harnessing technology to stop the violence against victims and to prevent batterers from escaping the consequences of their actions.

The ultimate goal in all of our efforts is to prevent tragic outcomes like the case of Galina Komar and to see more positive results, like the case of one domestic violence survivor, Yulia

¹⁸¹ See CIVIL LEGAL SERVICES IN NEW YORK 2010, *supra* note 175, at 7.

¹⁸² *Id.* at 2, 18.

¹⁸³ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVS. IN N.Y., REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 25 (2012) [hereinafter CIVIL LEGAL SERVICES IN NEW YORK 2012].

¹⁸⁴ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, APPENDICES TO THE REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, THE CHIEF JUDGE’S HEARINGS ON CIVIL LEGAL SERVICES, FOURTH DEPARTMENT 80 (Sept. 29, 2010) [hereinafter MINUTES FROM FOURTH DEPARTMENT, Sept. 29, 2010].

¹⁸⁵ CIVIL LEGAL SERVICES IN NEW YORK 2012, *supra* note 183, at 33 (quoting MINUTES FROM FOURTH DEPARTMENT, Sept. 29, 2010, *supra* note 184, at 83).

Abayeva. Ms. Abayeva shared her story with me at the Civil Legal Services Hearing before the First Department in 2010. Ms. Abayeva, an immigrant from Uzbekistan, was beaten severely by her husband for the smallest missteps, such as breathing too loudly or failing to clean a messy apartment.¹⁸⁶ At one point, Ms. Abayeva was beaten so badly that she spent two weeks in the hospital.¹⁸⁷ Ms. Abayeva's husband put on a special pair of shoes to kick Ms. Abayeva and would beat her on speakerphone to extort money from her parents in Uzbekistan.¹⁸⁸ To escape the violence, Ms. Abayeva spent cold nights sleeping outside in Time Square and in Brighton Beach.¹⁸⁹ Ms. Abayeva attempted to file an order of protection in 2005 but was too frightened to show up in court.¹⁹⁰ She was alone and lacked support and knowledge about her rights.¹⁹¹ Ms. Abayeva was also fearful for her life because she knew her husband had connections to organized crime.¹⁹²

Though Ms. Abayeva and her daughter had already escaped her violent home, her husband was able to track her down at the airport when Ms. Abayeva's parents visited from Uzbekistan.¹⁹³ Her husband went to the police, lied about her behavior, and Ms. Abayeva ended up spending time in jail because of her husband's accusations.¹⁹⁴ Those developments spurred Ms. Abayeva to reach out to the Jewish Community Center, who in turn, connected her to New York Legal Assistance Group (NYLAG).¹⁹⁵ NYLAG explained to Ms. Abayeva what she needed to do, translated her Russian documents into English, and helped her prepare a criminal case against her husband. NYLAG also prepared Ms. Abayeva's custody case so she would have full custody of her daughter and receive child support from her abusive husband.¹⁹⁶

Ms. Abayeva's story is one where the system worked and where she was able to find safety for her and her child.¹⁹⁷ With a more

¹⁸⁶ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, APPENDICES TO THE REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, THE CHIEF JUDGE'S HEARINGS ON CIVIL LEGAL SERVICES, FIRST DEPARTMENT 115–16 (Sept. 28, 2010).

¹⁸⁷ *Id.* at 115.

¹⁸⁸ *Id.* at 115–16.

¹⁸⁹ *Id.* at 116–17.

¹⁹⁰ *Id.* at 117.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 117–18.

¹⁹⁴ *Id.* at 118.

¹⁹⁵ *Id.*

¹⁹⁶ *See id.* at 118, 119.

¹⁹⁷ *See id.* at 120.

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accessible court system and appropriate legal assistance, it is my hope that more survivors will transition to independence from their abusers and to build a safe and stable future for themselves and their children.¹⁹⁸

¹⁹⁸ THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, APPENDICES TO THE REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, SECOND DEPARTMENT HEARING, STATEMENTS OF TESTIFYING WITNESSES 6-7 (Oct. 7, 2010).