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While the economy does not go around moralizing, the economy also turned out not to be very interested in justice or doing unto others or helping the needy or healing the sick or catching the crooks or educating the young or saving the sinners or any of the other myriad interests that had so engaged the establishment. The economy is only interested in whether you can pay your way or not. The economy does not care about polluted air or streams or ground water or living to a ripe, old age. The economy is not interested in doing anything about the plight of anyone but, for the past eight years, we have all been obsessed with doing something about the economy.

So far it is no contest between those who would do something about the economy and the economy. The economy is a run away winner. And what does that have to do with juvenile violence? Maybe nothing, but much of today's youthful violence does appear to be about BMWs, fancy clothes, expensive jewelry, electronic gadgets, and other ultimate material pursuits that a healthy economy would assure for everyone. Or would it? I think not. What we call the economy is not like Huey P. Long's plan for a chicken in every pot. The economy doesn't require full bellies and healthy babies and loving parents, it only requires that you pay your way.

My next column, written with the help of the National Juvenile Court Data Archive and the staff at the National Center for Juvenile Justice, will explore some of the changes in the attributes of young people who commit homicide as well as the juvenile justice system's response to such young people.

While on the subject of the National Juvenile Court Data Archive, with each passing day the value of the Archive becomes more and more apparent. It is a priceless resource and a lasting tribute to the wisdom and vision of those who staffed the National Institute for Juvenile Justice and Delinquency Prevention in the early days of the Office of Juvenile Justice and Delinquency Prevention. Dr. James Howell, among others, was instrumental in giving life and dimension to that vision. The Office of Juvenile Justice continues to support the Archive in what has to be one of the more successful public private partnerships ever initiated.

Coordinating Family Violence Cases: A Suggested Approach

Excerpt from article
by Catherine F. Klein

"Judges play a crucial role in shaping a community's overall response to domestic violence. Members of the judiciary can wield tremendous power as system advocates, by proposing changes in legislation and helping to educate the public about the criminal nature of domestic violence. They can also encourage improvements in police and prosecutor policy and court data collection and record keeping."

Gail A. Goolkasian, "Confronting Domestic Violence: The Role of the Criminal Court Judges," National Institute of Justice Research in Brief, November 1986, p.4.

I. Introduction

The immediate need to focus on coordinating court responses to family violence follows directly from increased judicial intervention of the courts in the basic fabric of family life. In the last two or three decades significant legislation involving families has been enacted. All jurisdictions, for example, now permit domestic violence victims to seek civil protection or restraining orders.² Mandatory and pro-arrest laws and policies have led to increased arrests and prosecutions.³ Mandatory child abuse reporting requirements have led to a vast increase in the number of child abuse cases in the court system.

Moreover, multiple cases involving the same family have become more common. Researchers have identified a significant risk of finding both spouse abuse and child abuse in the same family. This increases the likelihood that several cases involving a single family will be pending in different parts of the court system. However, spouse abuse and child abuse cases appear to be rarely, if ever, coordinated in an effective way.⁴

Civil cases involving domestic violence also overlap with criminal. Most jurisdictions permit domestic

violence victims to pursue simultaneously both criminal and civil relief.⁵ Yet, the judge in one case may not have current information about the status of the other, or may not even know of its existence.

Furthermore, issues raised or resolved in family violence litigation may be pertinent to other agencies such as child protective services agencies, social service workers, probation and parole officers, or victim advocates.⁶

Past efforts to change community perceptions of and response to domestic violence have frequently concentrated on the criminal justice system.⁷ To be responsive and accountable to domestic violence victims and to the variety of their needs and experiences, the civil, family and juvenile courts must be integrated into the intervention plan.

The challenge to court coordination organizers is to find the right balance between the civil and criminal systems and their respective potentials for protecting women and children from further family violence.

II. Existing Problems in Today's Court System

In most jurisdictions clerks do not check to see if related family cases have been filed,⁸ the parties themselves are under no obligation to tell,⁹ and the court computer systems are incompatible with other relevant courts and community agencies in the same jurisdiction. One problem that results is the issuance and existence of conflicting orders relating to the obligations and responsibilities of the same family.¹⁰ Lack of coordination often results in the loss of relevant information about a violent family's history.

There are many issues and barriers to accomplish the goal of creating a coordinated court response to family violence. The following is a list of some of the most significant aspects of this topic.

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- Multiple proceedings in separate courts or divisions that do not necessarily have any formal relationship or responsibility to one another.¹¹
- Lack of protocols or agreements about what should be shared or how to do it.
- Mistrust, territorialism, different philosophies and focus of different aspects of system.
- Lack of identified person or office having responsibility to set up, facilitate and monitor such a system.
- Lack of system to identify and flag family violence cases.
- Lack of research and analysis about constitutional, due process and statutory concerns about what information can be shared and with whom.¹²
- Lack of clear goals for coordinated information sharing, and ethical concerns involving the conflicting roles and confidentiality and reporting requirement of the various court related agencies.¹³
- Lack of information about how the various components to the community's response to family violence operate and a lack of a forum to acquire this information.
- Lack of knowledge about the dynamics of domestic violence and lack of training about it on a system-wide basis.

III. The Challenge: How to Move Toward Responsible Coordinated Court Intervention

A. **Groundwork: A Unified Vision of a Coordinated Court and Community Response**

Many courts and communities have had significant successes and have valuable lessons to share. Although no one community or individual had any easy answers or simple solutions, many people did have strong ideas about context and direction for any attempt at improving our court response to family violence. The ideas and recommendations presented in Part IV of this report reflect the hard work, progress and mistakes of many communities.

Efforts to coordinate and improve intervention necessarily involve challenging and changing the existing systems. However, reform should never end up being a goal in and of itself. In addition to other legitimate goals that a court might have such a desire to avoid duplication of judicial efforts, and to handle cases efficiently, all family violence coordination innovations should also be formulated, implemented, evaluated, and reevaluated, in light of the following fundamentally essential goals: 1. maximize the safety and protection for and responsiveness to domestic violence victims and their children; 2. hold the offender accountable for the violence; and 3. challenge and change the underlying societal supports of family violence.¹⁴

The promise of improved and coordinated court response is change: change in a community's willingness to act against violence, in its understanding of battering and why it occurs, and in the protection available to domestic violence victims. The flip side of the promise however, is intervention that discounts or denies the lives or experiences of the very people it is responding to and protecting. When this focus is absent, the intervention itself can become abusive and isolating.

B. **Reported Concerns of Domestic Violence Advocates about Coordination Efforts**

1. The Process Must Involve Broad-Based Community Participation

Domestic Violence advocates reported that coordination plans can easily develop out of context, in isolation from victims of domestic violence, their experience, and their needs. Battered women and their children must be the reference point. Many jurisdictions have learned that it is easy for an intervention project to take shape without the presence of battered women. Many have learned the hard lesson that it becomes very difficult to build in that participation later.¹⁵

2. Remain Clear About The Goals of The Intervention

It is critical that court coordination organizers be clear about their goals. Success should not be narrowly defined by the numbers of new laws or rules, or by how many of the court related agencies are hooked into the same computer system. Nor is success merely the number of increasing arrest and prosecution rates. Success should always be measured by the degree to which court and community coordination efforts maximize protection for domestic violence victims, hold offenders accountable, and challenge the societal supports for violence.

3. Be On Guard Against Forms of Gender Bias and Victim Blaming.

Within the last decade, the court system itself has acknowledged that gender bias in the courts is a pervasive, but often subtle, subliminal problem. One aspect of reported gender bias is wide-spread victim-blaming tendencies in domestic violence cases. These feelings may be generated from genuine fear and concern. It is often difficult to control feelings of frustration, anger and blame when a woman returns to an abusive partner. Everyone who is working with victims of family violence must be continually sensitive to these issues.

IV. Recommendations About Ways to Eliminate Traditional Barriers to Court Coordination

These suggestions are all concrete, even common sense ideas. Yet, they are still the exception rather than the rule in most of our communities.

1. Create a Family Violence Coordinating Council.

Our strong recommendation is that a council be formed before court coordination rules or policies are formulated. Judges and court administrators should play a leadership role in organizing and coordinating such a council.¹⁶ Jurisdictions that have created such a broad-based council have found them to be absolutely essential to effective court reform. Many stated that their council was the single most significant achievement to date in their jurisdiction because

it was the forum that made any change possible.¹⁷

2. Make All Family Violence Cases Visible in The System.

Unless courts identify and systematically categorize family violence cases there can be no effective coordination plan. Flagging is essential for all aspects of coordination including: information sharing, consolidation, enforcement, and monitoring and data collection. Moreover, this identification effort should be system-wide, beginning with law enforcement and continuing through to probation and correction departments.¹⁸

3. Invest In Compatible Computer Systems For All Courts And Agencies - Statewide

Having the same or at least compatible computer systems that were all hooked up to one another should make coordinated information sharing, monitoring and data collecting in family violence cases much more likely to occur. Immediate implementation of this suggestion may not be possible due to the expense involved in investing in new computer systems. However, this should become an identified long-range goal, which then can be systematically implemented by all the necessary entities.

4. Have Clear, Consistent, System-Wide Goals

The community change that coordinated intervention efforts undertake involves many systems and individuals with very different perspectives on family violence. Whatever particular other goals a court and community defines for itself, they should always include the over arching goals of: maximizing protection for domestic violence victim; holding the abuser accountable for the violence; and challenging the societal supports for violence.

5. Develop Written Protocols, Guidelines and Policies for All Courts and Agencies

Each court and each court related agency should develop written policies which reflect the joint goals of the court and community. A written policy is useful for setting the standard of conduct to which an individual or agency will then be held accountable. Baltimore City has published its joint policies in a single publication. This strategy can be extremely useful to help educate the members of the relevant agencies and the general public.¹⁹

6. Build Monitoring and Accountability Into The Plan From the Beginning

It is critical to establish a solid baseline of information from the beginning before new policies are implemented. Then cases and families need to be tracked through the system to test whether new policies or practices are effective. The actual experience of victims of domestic violence needs to be discovered and made a central focus of measures of accountability.

7. Provide Victim Advocates Throughout the Criminal and Civil Courts

Advocates can play a key role in coordinating the court's response to family violence. In Connecticut,²⁰ and other jurisdictions, it is the victim advocate who gathers and coordinates the sharing of appropriate information with the court and other systems. Because of the likelihood that the same family violence victims will be involved in civil, juvenile or family court proceedings, each jurisdiction needs to develop victim advocates in all courts and divisions in order to facilitate coordination.²¹

8. Have a Paid Staff Person As Coordinator

Several jurisdictions have had successful experiences with staffing a system coordinator position within the court. This person could help solve the day to day glitches that are inevitable in the effort to better coordinate the court's response to family violence.

9. Each Jurisdiction Should Take A Systematic Look at All Laws Relating to Family Violence

In most jurisdictions, laws relating to various forms of family violence are found in many different statutes, codes and rules, involving criminal statutes, child abuse legislation, adult protective services laws, civil protection order statutes, evidence codes, divorce and custody statutes. Moreover, different ethical mandates apply to relevant professionals such as child protective service workers and lawyers regarding reporting responsibilities and protecting client confidences. One practical step each jurisdiction should take is to systematically collect and review all of these laws.

10. Require Domestic Violence Training for All Judges and Relevant Court Personnel

Most people, including judges, lack sufficient knowledge and understanding about the dynamics of family violence. Without this understanding, judges are at great risk of issuing ineffective court orders in family violence cases, even if the system is "coordinated." Training on family violence therefore should be required for all judges, civil, criminal, family or juvenile, who are responsible for hearing family violence cases. Unless all judges participate in such training, intra-court or inter-court coordination is likely to be counterproductive and may in fact result in further injury to the victims of family violence.²²

11. Each Jurisdiction Should Develop a Practical List of Questions To Ask And Issues To Address

The courts of each jurisdiction, as part of a system-wide effort of the local Family Violence Coordinating Council, should gather information on the following topics relating to the court system. This information should be the basis of each court and the community's plan for improved coordination.

Continued Next Page

V Conclusion

Judges have a critical role to play in improving and coordinating the response to family violence. There is a general consensus that our court and court related systems would be more effective and efficient if the system was coordinated.²³

There can be no coordinated product without each community becoming involved in an on-going process. Furthermore, the coordination solutions that work well in one community might not work in another. Thus each court system must move forward slowly and cautiously lest it further endanger already vulnerable family members by its "reforms."²⁴

Coordinated court and community intervention challenges that the isolation that is a central experience in the lives of victims of family violence. Through the coordinated intervention, the court and its related systems (criminal justice, legal and social service), together with victims of domestic violence and their advocates, develop strategies, policies, and procedures which focus on the violence and establish ways in which the court and community will take responsibility to end the violence.

Judges in all branches of our court system must be involved. Only through this process can there be any hope of a better, less violent future.

ENDNOTES

- 1 Director, Family Abuse Project, Columbus School of Law, Catholic University of America and consulting attorney to the American Bar Association's Center on Children and the Law.
- 2 See Finn, P. & Colson, S., *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, National Institute of Justice, U.S. Department of Justice, Washington, D.C. (1990).
- 3 The following states currently have some form of mandatory arrest law: Connecticut, Hawaii, Iowa, Maine, Missouri, Nevada, New Jersey, Oregon, Rhode Island, South Dakota, Utah, Washington, Wisconsin and the District of Columbia.
- 4 Some important work is beginning to be done in this area. The National Woman Abuse Prevention Project has sponsored several publications, see, e.g., *Effective Advocacy with Child Protective Services: A Guide For Battered Women's Programs and Child Maltreatment and Women Abuse: A Guide For Child Protective Services Intervention*. In Maryland, children's and women's advocates have been working together for the past year and have recently published some joint recommendations. See *Broken Bodies/Broken Spirits* (1991). This group has recommended formation of an on-going group, the Maryland Alliance Against Family Violence, which is charged with implementing the recommendations.
- 5 See Finn & Colson, *supra* note 1. New York is a notable exception and a party must elect between civil and criminal remedies.
- 6 For an example of one jurisdiction's innovations to coordinating juvenile and family court cases in the area of child abuse, see *Local Rules of Santa Clara County Superior Court*. These rules do attempt to provide guidance regarding a limited exchange of information on child abuse cases between different courts and different agencies. See also Edwards, L., *The Relationship of Family and Juvenile Courts in Child Abuse Cases*, 27 *Santa Clara L. Rev.* 201 (1987).
- 7 See Goolkasian, G.A., *Confronting Domestic Violence: The Role of Criminal Court Judges*, National Institute of Justice: Research in Brief, Washington, D.C. (1986).
- 8 For an example of a statute requiring clerks to notify other parties and consolidate the case with other appropriate family cases, see D.C. Code Ann. § 16-1004. It should be noted, however, that in practice, this is rarely, if ever, done.
- 9 California Child Victim Judicial Advisory Committee Report at p. 48 makes the following recommendation: Courts should not adopt rules requiring parties to legal proceedings concerning the care, custody, or control of a child to inform the court of other legal proceedings concerning the child as soon as these proceedings come to their attention. The Uniform Child Custody Jurisdiction Act, now adopted in all states, has a similar requirement. This could be adapted and broadened to include a duty to disclose any related family matter.
- 10 12. Interviews with Alana Bowman, Supervising Deputy City Attorney, Domestic Violence Prosecution Unit; Gil Pincus, Chair, Legal Committee of the Los Angeles County Domestic Violence Task Force.
- 11 For a comprehensive discussion of the variety of court structures that exist nationally, see Rubin, H.T. & Gallas, G., *Child and Family Legal Proceedings: Court Structure, Status and Rules*, published in Hofford, M., *Families in Court*, National Council of Juvenile and Family Court Judges (1989).
- 12 For an analysis of these issues, see Guggenheim, M., *Constitutional and Due Process Concerns: Juvenile and Family Courts of the Future* Published in Hofford, M., *Families in Court*, National Council of Juvenile and Family Court Judges (1989).
- 13 For a discussion of the ethical dilemmas in the family court and the social service system, see Koh Peters, J., Jose and Sarah's Story: *The Usefulness of Roleplay In An Ethically Based Evaluation Of The Present And Future Family Court*, published in Hofford, M., *Families in*

Court, National Council of Juvenile and Family Court Judges (1989).

14 See Sandusky, J., *Challenge and Change: Organizing Domestic Intervention Projects*, an excellent manual that is available from the Wisconsin Coalition Against Domestic Violence. This manual develops many of the issues discussed in this paper as it examines in detail the experience of one model family violence intervention project in La Crosse, Wisconsin.

15 The Connecticut Coalition Against Domestic Violence and the state domestic violence task force took steps to eliminate this request for this information on the court forms. Not all attempts at formalized information sharing have served the interest of domestic violence victims. In Connecticut, for example, domestic violence victims were required on the court forms to inform the civil court of the existence of a criminal court protection order at the time of filing for a civil restraining order. Domestic violence advocates discovered that many civil judges were refusing to issue civil orders, giving as their rationale that such orders were duplicative even though under Connecticut's law, a person may simultaneously pursue both criminal and civil remedies.

16 For example, Judge Stephen B. Herrell organized and helped sustain such a council in Multnomah County, Oregon. Judge Mary Ellen Rinehart, of the District Court of Baltimore, is co-chair of the Baltimore City Domestic Violence Coordinating Committee.

17 For example, interviews with Anne Menard, Connecticut, Tracy Brown and Jan Jackson, Baltimore, Maryland, Alana Bowman, Los Angeles, California.

18 One idea Connecticut is considering is to add "FV" to the end of all relevant cases' docket numbers. Baltimore has experimented with placing a special identifying sticker on domestic violence case jackets.

19 See Baltimore City, *Domestic Violence Policies and Procedures*, published by the Mayor's office in 1989. This includes policies relating to police, commissioners, pretrial services, prosecutors, clerks, judges, domestic and juvenile masters, and parole and probation.

20 Connecticut's Family Violence Prevention and Response Act requires creation of a statewide system of Family Violence Intervention Units that include a shelter based victim advocate. In Duluth, Minnesota the advocates address both criminal and civil cases, whereas in other places such as Los Angeles, because of limited resources or placement in the prosecutor's office, there are only criminal court advocates.

21 Several states have passed legislation creating a statutorily protected confidentiality privilege for domestic violence advocates. See, e.g., Pennsylvania's law found at 23 Pa.C.S.A. § 6116 (1990). Several domestic violence advocates recommended that other jurisdictions should enact similar laws.

22 Mandatory judicial training in the area of domestic violence is currently required in Massachusetts and Texas. National judicial training curriculums are being developed that should assist each jurisdiction in developing effective domestic violence training. See *Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases*, The Family Violence Prevention Fund, San Francisco, California (1991). This organization is currently developing a similar model for civil court judges.

23 See, e.g., Attorney General's Task Force on Family Violence: Final Report, Department of Justice, Washington, D.C. (1984); California Attorney General's Office, California Child Victim Witness Judicial Advisory Committee: Final Report (1988); Hofford, M. ed., *Families in Court*, National Council of Juvenile and Family Court Judges (1989).

24 Interviews with: Barbara J. Hart, Pennsylvania Coalition Against Domestic Violence; Ellen Pence, Domestic Abuse Intervention Project, Duluth, Minnesota; Anne Menard, Connecticut Coalition Against Domestic Violence; Kathleen Krenek, Wisconsin Coalition Against Domestic Violence; Janet Carter, San Francisco Family Violence Prevention Fund; Susan Schechter, M.S.W. One example of unexpected and unintended results is the high rate of "dual arrests" many jurisdictions have experienced after passage of mandatory arrest statutes.

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