

1992

## 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

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# 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

## **Cover Page Footnote**

The authors express great appreciation to Lynn Hecht Schafran, Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts at the NOW Legal Defense and Education Fund, who helped us, initially, to formulate this project, provided continuing advice and support throughout the process and gave us access to her phenomenal rolodex; Professor Elizabeth Schneider of Brooklyn Law School, who helped us structure our project, put us in contact with key players in the system and provided ongoing support; and all our survey respondents and interviewees, listed in Appendix D, who took time from their busy schedules to meet with us and provide us with valuable information.

# 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

*Sarah Eaton\* and Ariella Hyman\*\**

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## I. Introduction<sup>1</sup>

In May, 1984, New York Chief Judge Lawrence Cooke established the New York Task Force on Women in the Courts ("Task Force")<sup>2</sup> in response to requests from the New York State Association of Women Judges, the Women's Bar Association of the State of New York, and others. Chief Judge Cooke commissioned the Task Force to conduct a statewide study of New York's court system in order to locate and document bias in the treatment of women and to make recommendations for reform. Between May, 1984, and early 1986, the Task Force conducted an extensive investigation and analysis of gender bias in the New York courts. The results of the investigation were enumerated in the New York Task Force Report on Women in the Courts ("Task Force Report" or "Report"), which was submitted to Chief Judge Sol Wachtler in April, 1986.<sup>3</sup> In addition to a broader discussion of the problem of gender bias in the courts, the Task Force Report set forth numerous findings and recommendations regarding gender bias that occurs in specific substantive areas, such as domestic violence, rape, child custody, and economic rights.<sup>4</sup> The Task Force "concluded that gender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences."<sup>5</sup>

Shortly after the Task Force Report was issued, Chief Judge Wachtler appointed a committee to implement the Task Force's recommen-

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1. The authors express great appreciation to Lynn Hecht Schafran, Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts at the NOW Legal Defense and Education Fund, who helped us, initially, to formulate this project, provided continuing advice and support throughout the process and gave us access to her phenomenal rolodex; Professor Elizabeth Schneider of Brooklyn Law School, who helped us structure our project, put us in contact with key players in the system and provided ongoing support; and all our survey respondents and interviewees, listed in Appendix D, who took time from their busy schedules to meet with us and provide us with valuable information.

2. The New York Task Force on Women in the Courts was the second task force appointed by a state chief justice to investigate gender bias in a state court system and make recommendations for reform. The first such task force was set up in New Jersey. See Lynn Hecht Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 JUDICATURE 280 (1987). As of Spring, 1991, thirty-five states had similar task forces in some phase of foundation, data collection, or implementation of recommendations. See *Update: Gender Bias in the Courts*, TRIAL, July, 1991, at 112 (interview with Lynn Hecht Schafran). For an overview of the origins of the national gender bias task force movement and the judicial response, see Lynn Hecht Schafran, *Gender Bias in the Courts: An Emerging Focus for Judicial Reform*, 21 ARIZ. ST. L.J. 237 (1989).

3. The Task Force Report was later published in a New York legal journal. See *Report of the New York Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 1 (1986-1987) [hereinafter The Task Force Report]. For a detailed description of the Task Force's methodology, see The Task Force Report, at 18-25.

4. See generally *id.*

5. *Id.* at 17.

dations. The New York Judicial Committee on Women in the Courts ("Judicial Committee" or "Committee")<sup>6</sup> has undertaken considerable efforts to combat gender bias in the New York State courts. The Committee documented the steps it has taken over the past five years in four reports issued in 1987, 1988, 1989, and 1991.<sup>7</sup>

After reading the Task Force Report and the Judicial Committee reports, and after consulting with two experts in the field of gender bias in the courts,<sup>8</sup> we decided to conduct a five year follow-up evaluation of the status of the Task Force's recommendations.<sup>9</sup> While the Task Force made findings and recommendations that covered the entire State of New York and addressed many substantive areas involving gender bias, limited time and resources required us to narrow our research. We decided to focus on domestic violence cases in the New York City courts.<sup>10</sup>

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6. On October 17, 1990, Chief Judge Wachtler formally renamed this body from the Committee to Implement Recommendations of the New York State Task Force on Women in the Courts to the New York Judicial Committee on Women in the Courts. For the sake of clarity, this paper refers to the Committee throughout as the "Judicial Committee."

7. See UNIFIED COURT SYSTEM, OFFICE OF COURT ADMINISTRATION, REPORT OF THE COMMITTEE TO IMPLEMENT RECOMMENDATIONS OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS (Apr. 1987) [hereinafter 1987 REPORT]; UNIFIED COURT SYSTEM, OFFICE OF COURT ADMINISTRATION, SECOND REPORT OF THE COMMITTEE TO IMPLEMENT RECOMMENDATIONS OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS (May 1988) [hereinafter 1988 REPORT]; UNIFIED COURT SYSTEM, OFFICE OF COURT ADMINISTRATION, THIRD REPORT OF THE COMMITTEE TO IMPLEMENT RECOMMENDATIONS OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS (Oct. 1989) [hereinafter 1989 REPORT]; UNIFIED COURT SYSTEM, OFFICE OF COURT ADMINISTRATION, FIVE YEAR REPORT OF THE NEW YORK JUDICIAL COMMITTEE ON WOMEN IN THE COURTS (June 1991) [hereinafter 1991 REPORT]. The 1991 REPORT is being published in this issue of the *Fordham Urban Law Journal*. UNIFIED COURT SYSTEM OFFICE OF COURT ADMINISTRATION, FIVE YEAR REPORT OF THE NEW YORK JUDICIAL COMMITTEE ON WOMEN IN THE COURTS, 19 FORDHAM URB. L.J. 313 (1992).

8. We spoke with Lynn Hecht Schafran, who served as the principal advisor to the Task Force and co-author of the Report, and Professor Elizabeth Schneider, who testified before the Task Force and provided it with research assistance.

9. Schafran conducted a similar follow-up study of the situation in New Jersey five years after the New Jersey Task Force on Women in the Courts issued its report. See NORMA JULIET WIKLER & LYNN HECHT SCHAFRAN, LEARNING FROM THE NEW JERSEY SUPREME COURT TASK FORCE ON WOMEN IN THE COURTS: EVALUATION, RECOMMENDATIONS, AND IMPLICATIONS FOR OTHER STATES (Women Judges' Fund for Justice 1989).

10. Our use of the terms "domestic violence" and "battered women" should not imply that such terms are problem-free. To the contrary, we believe it is important to recognize that language formulations themselves may minimize, limit or categorize, in undesired ways, the experiences of women who are physically or psychologically abused by their partners, as well as the nature of the harm itself. For example, the term "domestic" may belittle the fact that violence against one's partner is as egregious as violence between strangers. Yet at the same time, abuse against women in the home should be

We gathered information in early 1991,<sup>11</sup> primarily through surveys of and interviews with various people in the New York City court system who do considerable work in the area of domestic violence. We spoke with battered women's advocates, judges, assistant district attorneys ("ADAs"), legislators, bar association members, judicial educators, police detectives, and others with expertise in our survey areas.<sup>12</sup> Our objective was to come up with our own findings and recommendations regarding the current status in New York City of the domestic violence findings and recommendations made by the Task Force in 1986.<sup>13</sup> On the other hand, we did not limit ourselves to the Task Force's findings and recommendations regarding domestic violence but rather encouraged the people we surveyed and interviewed to mention other problems facing battered women that the Report did not cover, as well as new problems that have arisen since the Report was issued in 1986.

We focused our research primarily on surveys and interviews in an effort to avoid duplicating the Judicial Committee's work. Our goal, as outsiders, was to conduct a neutral evaluation of the impact of the Task Force Report in the area of domestic violence and of the progress that has taken place since the Report's publication. We hoped to provide insight not only into the steps that should be taken next in New York City, but also into the most effective methods of implementing change.

This study has its limitations: our findings and recommendations are based primarily on opinions. Moreover, because we did not survey and interview all advocates, judges, ADAs and other important players working on domestic violence cases in New York City, we cannot and do not claim that our findings are conclusive. Further,

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recognized as a symptom of broader social inequalities, and treating it like stranger violence does not capture this larger context. Furthermore, the term "battered women" is troubling because it identifies women solely by their being beaten, and it seems to preclude psychological abuse.

We use the gender-specific term "battered women" not to deny that there are men who are significantly abused by their partners, but to recognize that domestic violence is a pervasive crime committed largely against women in our society. In addition, we use the term "victim/survivor" instead of "victim" to capture the fact that battered women are not only objects but also survivors of the abuse against them. Finally, we acknowledge the limits of other language that we utilize and advocate continuing efforts to search for new and better formulations.

11. It is important to note that because the treatment of domestic violence cases in the New York City courts is constantly changing, some of the data we report may be outdated.

12. See Appendix D (listing our survey respondents and interviewees).

13. For the Task Force's summary of its recommendations and findings regarding domestic violence cases, see The Task Force Report, *supra* note 3, at 47-50.

due to limited time and resources, we were not able to interview battered women themselves and others whose opinions are necessary for a complete and accurate assessment of these issues. However, we did select our survey respondents and interviewees for their experience and expertise in the field, and we believe that their opinions merit discussion. In sum, we view our research as a starting point for better funded, more extensive research in this area.

Part II first sets forth the methodology we used in conducting our research, followed by a summary of our findings. Next, we present our detailed evaluation of the current status of each of the Task Force's domestic violence findings and recommendations, together with our recommendations for future action. Part II concludes with our findings regarding problems not addressed in the Task Force Report and new problems facing battered women that have arisen subsequent to the Report's publication.

Part III evaluates the impact of the Task Force Report in bringing about change in New York City in the area of domestic violence. This section begins with a discussion of the Judicial Committee's work on domestic violence issues, focusing on its efforts regarding judicial and nonjudicial education. Next, Part III sets forth explanations of our survey respondents and interviewees as to the progress in this area, including their assessments of the impact of the Task Force Report and Judicial Committee follow-up work. We discuss several factors that we think may have contributed to or impeded the success of the Report and the Committee's work. Finally, Part IV concludes with some final recommendations for the future.

## II. Research - Methodology & Results

### A. Methodology

Our research tracked the Task Force's recommendations for court administration, district attorneys ("DAs"), legislators, bar associations, and judicial screening committees. The largest segment of our project focused on court administration because both the Task Force and the Judicial Committee emphasized this aspect of the system.<sup>14</sup>

We began our study by designing a survey for battered women's advocates to evaluate the current status of the Task Force's recommendations for court administration and DAs.<sup>15</sup> We compiled a list of battered women's advocates by word of mouth; each advocate we

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14. See generally The Task Force Report *supra* note 3, and Judicial Committee Reports, *supra* note 7.

15. See Appendix A.

contacted gave us the names of roughly four other advocates. We added advocates to our list until we began to hear the same names repeatedly. Having surveyed twenty-four advocates, many of whom do considerable work on domestic violence cases in the New York City courts, we believe that we have included a significant cross-section of the city's advocacy groups.<sup>16</sup>

Next, we created separate surveys for judges<sup>17</sup> and ADAs.<sup>18</sup> These surveys were designed to elicit judges' and ADAs' opinions about the status of the Task Force's recommendations for court administration and DAs. The surveys also explored the policies of judges and ADAs in the five boroughs of New York City. We surveyed the ADAs who direct the units that handle domestic violence cases in each borough and two other ADAs, one from Manhattan and one from Brooklyn, because they were particularly knowledgeable about our survey areas. We surveyed fifteen judges, including at least one family and one criminal court judge from each borough. We chose family and criminal court judges because the majority of domestic violence cases are heard in these courts. Except when there was no supervising judge (as in Staten Island Family Court) or when the supervising judge had been appointed recently (as in Queens Criminal Court), we surveyed the supervising judges in the family and criminal courts of the five boroughs.<sup>19</sup>

In addition to our three surveys, we contacted a group of miscellaneous individuals in order to fill certain gaps in our research. This group included members of legislative bodies, bar associations, and judicial screening committees. We also interviewed members of both the original Task Force on Women in the Courts and the Judicial Committee. Additionally, we contacted judicial educators within the Office of Court Administration ("OCA"), as well as directors at Vic-

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16. The people we surveyed include advocates from legal services organizations, public interest groups, victims assistance organizations, shelters, and solo practices. Some advocates have considerably more experience than others in certain areas; we attempted to weigh their responses accordingly. However, we acknowledge that this imbalance in expertise may have caused some distortions in our data.

17. See Appendix B.

18. See Appendix C.

19. With respect to the judges' surveys, we contacted the supervising judges instead of conducting a random survey because we thought that only those judges with the strongest beliefs about this topic would respond, an unrepresentative sample. We surveyed supervising judges based on the belief that they are somewhat in touch with the practices of the judges they oversee and would be qualified to provide us with an overview of these practices. In other words, we hoped that by surveying supervising judges we would, in effect, gain some comprehensive impressions of New York City family and criminal court judges.

tim Services Agency ("VSA"),<sup>20</sup> high-ranking officers in the police department, and others with expertise in our survey topics.<sup>21</sup>

In an effort to obtain candid responses, we assured confidentiality to those who requested it. In particular, we decided never to use the names of the advocates who provided us with considerable criticism of the system. We refer to judges by their courts (family or criminal) and boroughs, and although we sometimes cite the names of ADAs, we often refer only to their boroughs.

Finally, we decided not to present statistics along with our findings. Although we designed the battered women's advocates' survey in a combined multiple choice and open-ended question format, we found it impossible to present accurate or useful statistics because advocates often qualified their multiple choice answers. We therefore used the multiple choice answers to aid our assessment of the advocates' opinions rather than to produce statistics. Our ADAs' and judges' surveys included only open-ended questions, precluding any statistical data collection. We used this format because we believed that it would be the most efficient means of gaining useful information from these groups in a limited period of time.

## B. Summary of Our Findings

Our surveys and interviews revealed significant progress in a number of areas concerning domestic violence that were discussed in the Task Force Report. At the same time, however, all of the problems that the Task Force noted in the domestic violence context still seem to be problems to some degree in New York City. Significant work must be done in order to achieve full implementation of the Task Force's recommendations with respect to court administration, DAs, the legislature, bar associations, and judicial screening committees. In addition, we discovered numerous obstacles confronting battered women which either have existed for some time but were not addressed in the Task Force Report, or are relatively new problems which have arisen subsequent to the Report's publication.

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20. Victim Services Agency was established in 1978 as an independent, not-for-profit organization designed to reduce the trauma of crime victimization. VSA serves the community through institutions such as hospitals, housing projects, police precincts, schools, courts, and community offices. VSA's services include replacing broken locks, finding safe places to sleep, providing day care for children whose parents must be in court, assisting people in obtaining orders of protection, and providing short and long-term counseling as well as advocacy for victims. In late 1991, VSA was operating more than 60 programs assisting more than 140,000 people a year, including about 50,000 battered women and children.

21. See Appendix D.

By reporting the problems, both old and new, that we discovered in the course of our study, we do not intend to belittle the progress that has taken place in the past five years. Many people, including Judicial Committee members, bar association leaders, judges, ADAs, legislators, educators, and battered women and their advocates have undertaken enormous efforts and have brought about significant improvements in this area. We interpret our findings regarding the many ongoing problems to be a reflection of the enormous dimensions of the problem of gender bias in the courts. In light of this huge, persistent problem, more people must struggle for change, and increased resources are necessary to support and expand the various efforts already in progress.

### COURT ADMINISTRATION

There have been a number of improvements in the courts' administration of domestic violence cases. The results of our research indicate that judges' overall awareness of domestic violence issues has increased considerably, although this heightened awareness exists more among family court judges than criminal court judges.<sup>22</sup> There is less "victim blaming" that presumes battered women provoke the attacks against them.<sup>23</sup> Additionally, law enforcement officials and court personnel generally do not try to dissuade battered women from pursuing their claims, although the actions of these officials and personnel might, at times, have the effect of trivializing battered women's concerns.<sup>24</sup>

Two specific areas which were sources of considerable harm to battered women in the past now seem to be only minor areas of concern. First, although some domestic violence cases still are sent to mediation inappropriately, for the most part, mediation of such cases is a rare phenomenon.<sup>25</sup> Second, judges seldom grant mutual orders of protection without the proper filing of petitions by respondents, although there may be some remaining instances of this practice which should be explored.<sup>26</sup>

On the other hand, our research demonstrates that a considerable number of problems discussed by the Task Force still exist for battered women seeking judicial recourse. For instance, judges do not have an adequate understanding of the impact of adult domestic vio-

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22. See *infra* part II.C.1.

23. See *infra* part II.C.2.

24. See *infra* part II.C.7.

25. See *infra* part II.C.10.

26. See *infra* part II.C.12.

lence on children in the home,<sup>27</sup> and when making custody and visitation determinations, judges often fail to consider a batterer's violent conduct toward his partner and its detrimental effect on children.<sup>28</sup> Battered women continue to be discredited. Often, they are not considered credible unless they have visible injuries,<sup>29</sup> and they are doubted particularly when they petition for orders of protection while they have matrimonial cases pending.<sup>30</sup> The right of election to proceed in family or criminal court is not clearly explained to battered women. Inadequate or unclear information often results in inappropriate referral of victims/survivors from court to court.<sup>31</sup> Other persistent problems include the extreme shortage of legal services for battered women in New York City<sup>32</sup> and judges' inadequate understanding of issues of self-defense and justification as they pertain to battered women.<sup>33</sup>

A major problem area concerns remedies and enforcement. Orders directing batterers to vacate the home ("vacate orders") are underused remedies in both criminal and family courts.<sup>34</sup> Judges generally fail to enforce orders of protection adequately.<sup>35</sup> They rarely utilize jail as a sanction, except in what they perceive as extreme cases or upon multiple violations, and they often order less jail time for domestic violence than for comparable crimes.<sup>36</sup> Most judges do not encourage educational programs for batterers, in large part because such programs are of limited availability in New York City.<sup>37</sup> In all these areas, judges exercise a high degree of discretion, and the nature of that discretion varies widely from judge to judge.

There are several areas of relative concern. Judges sometimes are unaware that intimidation by respondents can act as a deterrent to claimants' proceeding with their cases.<sup>38</sup> Police and sometimes ADAs encourage battered women inappropriately to proceed in family rather than criminal court.<sup>39</sup> Additionally, judges are well informed about the law which addresses the appropriateness of

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27. See *infra* part II.C.1.

28. See *infra* part II.C.17.

29. See *infra* parts II.C.2, II.C.5.

30. See *infra* part II.C.3.

31. See *infra* part II.C.6. See also *infra* part II.D.7.

32. See *infra* part II.C.11a.

33. See *infra* part II.C.18.

34. See *infra* part II.C.13.

35. See *infra* part II.C.14.

36. See *infra* part II.C.15.

37. See *infra* part II.C.16.

38. See *infra* part II.C.8. See also *infra* part II.D.2.

39. See *infra* part II.C.9.



permitting advocates and others into the courtroom with battered women. However, battered women's family, friends, and advocates who are not from well-known organizations sometimes encounter access problems due to either judicial or court officer conduct.<sup>40</sup>

Two additional points about access to court relief deserve mention. Cases involving violations of orders of protection generally are not given preference in calendar scheduling. In family courts, statutorily mandated preferences are given priority. In criminal courts, all cases involving jail are priorities, and domestic violence offenses are not singled out among these.<sup>41</sup> Also, judges generally are not available to issue temporary orders of protection seven days per week, twenty-four hours per day, although availability varies depending on the type of case (i.e., family, summons or arrest) and by borough.<sup>42</sup>

### DISTRICT ATTORNEYS

Since the publication of the Task Force Report, there has been improvement in the way DAs' offices treat domestic violence cases, as well as increased awareness on the part of ADAs about domestic violence issues. For instance, ADAs in all the boroughs seem to request orders of protection as a matter of course when there is a prosecution pending or upon a conviction.<sup>43</sup> Furthermore, the DAs' offices in all the boroughs provide domestic violence training for their ADAs and support services for battered women, although the amount and nature of such training and services varies from unit to unit.<sup>44</sup>

In spite of these improvements, substantial problems still exist in DAs' offices' treatment of domestic violence cases. Although all five boroughs have special crimes units, at the time of our study, only Brooklyn had an office devoted exclusively to domestic violence cases, as recommended by the Task Force.<sup>45</sup> In addition, it appears that the training provided by the DAs' offices may be insufficient, resulting in ADAs who are not always adequately sensitized to the concerns of battered women.<sup>46</sup> Also, ADAs seem to undercharge domestic violence cases. However, it is unclear whether this is attributable to ADAs' reducing charges to increase their chances of winning, or to the fact that New York felony law establishes a high threshold of in-

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40. See *infra* part II.C.11.

41. See *infra* part II.C.4.

42. See *infra* part II.C.5.

43. See *infra* part II.C.22.

44. See *infra* parts II.C.20, II.C.21.

45. Subsequent to our research, the Manhattan DA's Office established a separate domestic violence unit as well. See *infra* part II.C.19.

46. See *infra* part II.C.20.

jury and does not consider repeat incidences of violence common to battering.<sup>47</sup> Furthermore, too much time passes before ADAs, except for those in the Bronx, make initial contact with battered women.<sup>48</sup> Finally, there is a wide variance among the DAs' offices in terms of their treatment of domestic violence cases.<sup>49</sup>

### LEGISLATION

There has been significant progress with respect to domestic violence legislation; however, substantial work remains to be done in this area as well. Certain New York State Assembly members have endeavored to implement the Task Force's recommendations for the legislature. These Assembly members, working with members of the Judicial Committee and other bill supporters, managed to enact the first two legislative proposals in the Task Force Report. The new laws bar mutual orders of protection, except where the respondent properly files an answer or counterclaim, and give judges discretion to order batterers into educational programs as a condition of adjournments in contemplation of dismissal.<sup>50</sup>

The Assembly has not implemented the Task Force's two other recommendations, which call for legislation requiring that battering be taken into account in custody and visitation decisions and providing for more supervised visitation.<sup>51</sup> Various legislative proposals incorporating these ideas have met with considerable opposition from fathers' rights groups and others. Finally, members of the Assembly have proposed many domestic violence bills not mentioned in the Task Force Report, few of which have had much success because of opposition within the Assembly and Senate bodies.

### BAR ASSOCIATIONS

Although a number of bar associations in New York set up committees to implement the recommendations of the Task Force, limited resources forced us to focus our interviews on the Association of the Bar of the City of New York ("City Bar"). Therefore, we made no finding as to whether the various other bar associations have complied with the Task Force Report.

The City Bar established its Committee on Women in the Courts in

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47. See *infra* part II.C.23a.

48. See *infra* part II.C.23b.

49. See *infra* part II.C.23c (providing a comparative assessment of the five DAs' offices from the perspectives of our survey respondents).

50. See *infra* part II.C.24. See also The Task Force Report, *supra* note 3, at 49.

51. See *infra* part II.C.24. See also The Task Force Report, *supra* note 3, at 49.

response to the Task Force Report. This committee was instructed to give priority to the Task Force's recommendations for bar associations. It has undertaken considerable efforts in this area, including hosting educational programs, supporting legislation, and seeking to increase the availability of pro bono counsel to represent battered women.

### JUDICIAL SCREENING COMMITTEES

We cannot adequately assess the progress that has occurred with respect to judicial screening committees because only one committee chair responded to our inquiries. Although we have no information about the judicial screening committees of other boroughs, the Bronx judicial screening committee appears to have received a copy of the Task Force Report and claims to consider domestic violence a serious problem. However, it is not clear whether the Bronx or the other boroughs' judicial screening committees have complied with the Task Force's recommendation that they provide all members with information about the nature of domestic violence.

### OTHER PROBLEMS FOR BATTERED WOMEN IN NEW YORK CITY COURTS

There are a number of problems that were not addressed specifically in the domestic violence section of the Task Force Report, but which presumably existed at the time of the Report's publication and which continue to present obstacles for battered women. For instance, the Task Force discussed generally the problem of racism and classism in the courts.<sup>52</sup> A significant number of our survey respondents, however, mentioned this problem in the particular context of domestic violence cases. They asserted that judges' actions often vary according to the race, color or class of parties in a domestic violence action, and that judges often are unaware of the racism experienced by battered women of color in the courts.<sup>53</sup>

Judges and ADAs are often frustrated when battered women do not follow through with their claims, and these frustrations frequently result in insensitivities.<sup>54</sup> In addition, ensuring the safety of battered women is not a sufficient priority of the court system.<sup>55</sup> There is also a frightening lack of support services and resources to meet the needs of battered women. Services that are in short supply include shelters,

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52. See The Task Force Report, *supra* note 3, at 121-23.

53. See *infra* part II.D.1.

54. See *infra* part II.D.2.

55. See *infra* part II.D.3.

medical care, support groups, supervised visitation programs, and court child-care facilities.<sup>56</sup> Furthermore, the court system does not seem to be sufficiently responsive to psychological abuse<sup>57</sup> or to the difficulties faced by battered immigrant women, such as language barriers, their reluctance to use the courts when they have undocumented status, and the use of the cultural defense to their detriment.<sup>58</sup> Additionally, the present right of election law is problematic for battered women because it requires them to choose between courts at an early point when they have little information about their options.<sup>59</sup> There were a variety of other problems raised by those we surveyed and interviewed, including the sense that current laws do not provide an adequate framework for treating domestic violence cases with the seriousness they deserve.<sup>60</sup>

### NEW PROBLEMS IN THE COURTS

Finally, there are several new problems confronting battered women that have arisen since the publication of the Task Force Report. These include a decrease in the resources available for battered women,<sup>61</sup> a recent complacency surrounding issues of domestic violence,<sup>62</sup> a decrease in the willingness of judges to grant vacate orders due to the New York City housing crisis,<sup>63</sup> and police policies that seem to be harming battered women.<sup>64</sup> Furthermore, certain new types of domestic violence cases have been appearing in the courts with increased frequency over the last few years. These include cases involving drug use, cases brought by mothers against their grown sons, and petitions filed by men.<sup>65</sup>

#### C. Analysis of the Current Status of the Task Force's Findings and Recommendations

In this section, we analyze all the specific areas discussed in the Task Force Report with respect to court administration, DAs, legislatures, bar associations, and judicial screening committees. For each topic, we set forth the Task Force's findings and recommendations

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56. *See infra* part II.D.4.

57. *See infra* part II.D.5.

58. *See infra* part II.D.6.

59. *See infra* part II.D.7. *See also infra* parts II.C.6, II.C.24.

60. *See infra* parts II.D.8, II.C.23a.

61. *See infra* part II.D.10.

62. *See infra* part II.D.11.

63. *See infra* part II.D.12.

64. *See infra* part II.D.14.

65. *See infra* part II.D.13.

and then present our evaluation of their current status, often beginning with a short summary paragraph of our findings. Each topic concludes with our recommendations for the future.

## COURT ADMINISTRATION

### 1. *Awareness of the Nature of Domestic Violence*

#### a. *Task Force Finding*

The Task Force found that “[j]udges and other professionals in the court system are too often under-informed about the nature of domestic violence and the characteristics of victims and offenders.”<sup>66</sup> For example, because they do not comprehend the psychology of battering and its effects on victims/survivors, judges and other court professionals often ask, “Why doesn’t she just leave?”<sup>67</sup> The Task Force found that this lack of understanding affects the quality of justice that battered women receive.<sup>68</sup>

#### b. *Task Force Recommendation*

The Task Force recommended that court administration “[t]ake necessary steps”<sup>69</sup> to assure that judges and other professionals in the court system are informed about the nature of domestic violence, the characteristics of victims/survivors and offenders, and the impact of adult domestic violence on children in the home.<sup>70</sup>

#### c. *Evaluation*

The battered women’s advocates and ADAs we surveyed were evenly split between those who thought that judges are well-informed about the nature of domestic violence, and those who believed that considerable work still needs to be done in this area. There was a widespread sense among advocates that judges need to be better informed about the impact of adult domestic violence on children in the home. In contrast to most advocates, the judges we surveyed were almost unanimous in asserting that there has been significant progress in judicial awareness of and sensitivity to domestic violence issues. Although many judges demonstrated sensitivity toward these issues, the responses of a few judges to our survey questions indicated a significant lack of understanding of the dynamics of domestic violence.

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66. See The Task Force Report, *supra* note 3, at 47.

67. See *id.* at 31-32 (quoting testimony).

68. See *id.* at 31.

69. See *id.* at 48.

70. See *id.*

Finally, a number of the people we surveyed reported that except in cases involving extreme injury, battered women receive better treatment in family than in criminal courts.

The majority of advocates said that it is "sometimes" the case that judges are sufficiently informed about issues surrounding domestic violence. Most thought that while there has been significant progress since the 1986 publication of the Task Force Report, many judges still do not adequately understand the nature of domestic violence. These advocates pointed out that even though some individual judges are well versed in issues surrounding abuse, the judiciary as a whole has not attained a desired level of understanding. One advocate said that some judges misuse the information they acquire and may even turn it against the victim/survivor. Another cautioned that although judges are more aware of domestic violence issues now, it is easiest for them to understand these issues in an economic framework; thus, for example, battered women who are financially independent have trouble evoking sympathy and understanding from judges who view them as especially capable of leaving their batterers. A few other advocates noted that judges seem better informed in this area than other professionals in the court system. Additionally, various advocates said that family court judges now issue orders of protection fairly regularly.<sup>71</sup> One Manhattan advocate even thought that "it is almost impossible not to get an order of protection," while another advocate explained that judges do not consider the issuance of such orders a "big deal" since the orders simply mandate batterers to follow the law. Finally, the most favorable evaluations of the judges in their borough came from Staten Island advocates.

Several advocates stressed the need for increased judicial awareness of the impact of adult domestic violence on children in the home, and of the connections between child abuse and adult domestic violence. These advocates further noted that because judges seem to have a better understanding of child abuse than of adult domestic violence, their rulings in child abuse and neglect proceedings often adversely affect

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71. While criminal court is open to a wide array of people seeking orders of protection, see N.Y. CRIM. PROC. LAW § 530.12 (McKinney 1984 & Supp. 1991), family court is limited to spouses or former spouses, parents and children, and "members of the same family or household," defined as people who are related, who are married or have been married, or who have a child in common. See N.Y. FAM. CT. ACT § 812(1) (McKinney 1983 & Supp. 1992). Orders of protection are also available in supreme court when a matrimonial case is pending. See N.Y. DOM. REL. LAW § 252 (McKinney 1986).

In addition to prohibiting "offensive conduct," orders of protection may include provisions, among others, requiring the abuser to vacate the home, to participate in educational programs, and to pay for the medical expenses that victims/survivors incur as a result of the abuse. See N.Y. FAM. CT. ACT § 842 (McKinney 1983 & Supp. 1992).

battered women. One advocate noted the lack of judicial sympathy for battered women who "allow" their children to be beaten, and she added that judges are more likely to remove abused children from the home than the perpetrator of the abuse.<sup>72</sup> On the other hand, some advocates claimed that judges are adequately informed about the impact of adult domestic violence on children in the home.

Similar to the advocates, ADAs fell into two camps: some perceived substantial progress in judges' handling of domestic violence cases; others claimed that while some individual judges have improved in this area, there has been no significant systemic change. The Staten Island DA's Office expressed the strongest sense of progress. Manhattan ADAs were split and one noted that although some judges are sensitive, others think these cases belong in family court. ADAs in Brooklyn and Queens complained that criminal court judges in their boroughs can be tough about granting protective orders.<sup>73</sup>

Almost all the judges we surveyed reported that judges have become increasingly familiar with and sensitized to domestic violence issues over the past five years. One criminal court judge explained that judges who used to treat domestic violence cases lightly, as "domestics," now take these cases more seriously because of their awareness of the risks of escalating and recurring violence. Judges in Staten Island Criminal and Family Courts noted that perhaps domestic violence cases are given better treatment in the courts of their borough than in those of other boroughs because Staten Island generally has the lightest and most manageable case load. A Bronx Family Court judge praised the clerks and "most" of the judges in that court for their increased sensitivity to these cases.

Some of our judicial respondents, however, qualified their responses. A few claimed that significant problems remain and that judges do not always use their increased knowledge in beneficial ways. Furthermore, a judge in Staten Island Family Court asserted that although judges are much more aware now of domestic violence issues, court personnel need more training in this area.

Additionally, during the course of our surveys, we received several

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72. See *infra* part II.C.17 (discussing judicial failure to take into account battering when making custody and visitation determinations).

73. According to ADAs in Brooklyn, orders of protection are normally issued from the date of arraignment until the first court date. However, when battered women attempt to renew their orders at the hearing, the judges often refuse to do so unless the women can show good cause to renew, which requires evidence of new violence since the arraignment.

Judges in Queens similarly "create many roadblocks" for women who request protective orders, according to ADAs in that borough. For example, some Queens judges never grant temporary orders of protection unless the batterer is present.

statements from judges that indicated their own lack of sensitivity to domestic violence issues. For example, one family court judge insisted that judges have always been aware of these issues — that there has never been a problem. This judge and a criminal court judge made statements implying that both the batterers and the battered women are at fault, i.e., that the parties should “work out their problems.” Such statements demonstrate a refusal to hold batterers strictly accountable for their behavior. Another judge thought that the curriculum at the annual judges’ seminar should include people on “both sides” of the domestic violence issue; however, he later admitted to uncertainty about whether there are two sides to this issue.

A number of advocates and family court judges asserted that battered women receive significantly better treatment in family court than they do in criminal court, at least in those instances where injuries are not extremely serious. A Queens Family Court judge summed up these sentiments in his comparison of the two courts: aside from instances of serious injury, criminal courts generally do not take domestic violence cases as seriously as do family courts. Criminal court judges often still think of domestic violence cases as mere family matters and focus on other cases that they perceive as more serious. Thus, in cases that do not involve significant harm, it is often in the battered woman’s best interest to go to family court, where the judges are better trained and sensitized to these issues. Other judges commented that petitioners will get more immediate order of protection relief in family court, that family court judges are more likely than criminal court judges to put protective order violators in jail, and that the family court system is more amenable to domestic violence cases.

Finally, a Judicial Committee member noted that judges could not have helped but become more aware of and sensitive to domestic violence concerns because of increased public attention to these issues as well as the emphasis that the Chief Judge has placed on the eradication of gender bias in the courts.<sup>74</sup>

*d. Recommendations for the Future*<sup>75</sup>

It appears that while certain individual judges have improved in

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74. The Judicial Committee has done considerable work in the area of judicial education. The steps it took as well as responses to the training programs it has implemented are discussed in part III.A.1. Additionally, part III.B. discusses survey respondents’ perceptions of the reasons for the progress they noted in their answers.

75. Our recommendations should be read with the understanding that they are based on our findings, which have their limitations. See *infra* part I. Due to these limitations and to our conception of this research as merely a starting point for more extensive study,



their understanding of domestic violence issues, others remain insensitive to the biases operating in their decisions. To effect systemic change, judicial education about gender bias must continue, focusing on creative ways to reach those judges who have not been moved by previous efforts. Additionally, training should emphasize the impact of adult domestic violence on children in the home, and should be geared more toward sensitizing criminal court judges.

## 2. *Discrediting Victims*

### a. *Task Force Finding*

The Task Force found that as a result of their inadequate understanding of domestic violence, judges and other professionals in the court system (including police) often discredit or blame battered women.<sup>76</sup> These professionals frequently presume that battered women provoke the attacks against them and do not believe the victims/survivors unless they have visible injuries.<sup>77</sup> The Task Force pointed out that this visible injury "requirement"<sup>78</sup> negatively impacts battered women by ignoring the harm caused by psychological abuse and threats, and by overlooking the fact that many physical injuries are not readily visible. Ironically, the mistrust of battered women conflicts with documented characteristics of these women, such as their tendency to minimize the seriousness of abuse.<sup>79</sup>

### b. *Task Force Recommendation*

For the Task Force Recommendation, see part II.C.1.b.

### c. *Evaluation*

Most of the advocates we surveyed thought that although judges sometimes presume that battered women provoke the attacks against them, this specific manifestation of "victim-blaming" is no longer a major problem. One advocate qualified this response by noting that there is still a tendency to call domestic violence a "fight" or "dispute," implying that both parties were involved in the wrongdoing.

The responses of advocates varied, however, on the issue of whether battered women are considered credible if they do not have visible injuries. Roughly half the advocates asserted that visible injuries are

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we decided to make our recommendations broad and general rather than to attempt to set forth more specific methods of implementation.

76. See The Task Force Report, *supra* note 3, at 32-33, 47.

77. See *id.*

78. See *id.* at 33.

79. See *id.*

often a prerequisite for battered woman to gain credibility. Some specified that visible injuries seem to be required for serious sanctions, such as jail,<sup>80</sup> but not necessarily for mere protective orders; however, it appears that the recent transformation in the civilian complaint process<sup>81</sup> has made it difficult for battered women even to obtain orders of protection when they do not have any visible injuries. One advocate noted that when there are no visible injuries or no tangible indicators of violence, such as emergency room records or orders of protection, the credibility of victims is greatly reduced. Another advocate was incensed by the fact that there is little remedy for psychological abuse in the courts.<sup>82</sup>

The other half of the advocates either disagreed that battered women's credibility depends on the presence of visible injuries, or perceived that this problem is diminishing. An advocate with considerable experience in Manhattan and the Bronx commented that there has been particular progress on this point in Manhattan, and she emphasized that many Manhattan judges are more sensitive to these issues than the judges of the Bronx.

#### *d. Recommendations for the Future*

We recommend education for judges, ADAs, police and other court personnel aimed at relieving battered women of the apparent visible injury "requirement" for gaining credibility. Course materials should stress the nature, incidence, and significance of psychological abuse,<sup>83</sup> discuss the adverse effects on women of color of visible injury standards,<sup>84</sup> and urge judges not to force battered women to meet a higher threshold of credibility than victims of other crimes.

### *3. False/Erroneous Presumptions*

#### *a. Task Force Finding*

The Task Force reported that some judges, attorneys and court personnel falsely presume that petitions for orders of protection filed while a matrimonial action is pending are "tactical" in nature. The Task Force pointed out that this presumption recognizes neither the

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80. *See infra* part II.C.15.

81. *See infra* part II.C.5.

82. *See infra* part II.D.5.

A Staten Island advocate noted that the visible injury "requirement" for credibility is a major problem, and she urged VSA to work with and train police on the nature of domestic violence in order to ensure that police will not fail to make arrests solely because there are no visible injuries.

83. *See infra* part II.D.5.

84. *See infra* part II.D.1.

legal disincentives to petitioning for protective orders for tactical purposes nor the fact that violence tends to escalate after divorce actions have been initiated.<sup>85</sup>

*b. Task Force Recommendation*

For the Task Force Recommendation, see part II.C.1.b.

*c. Evaluation*

Battered women's advocates asserted that work is needed in this area. They claimed that the presumption persists that battered women who file for protective orders in the course of matrimonial actions do so for tactical purposes; these advocates stressed that such a presumption is often unjustified and is difficult to overcome.<sup>86</sup>

Although a few advocates noted that judges always take orders of protection very seriously, and one commented on some progress in this area, most advocates thought that significant improvement is needed with respect to petitions for orders filed while matrimonial actions are pending. A Queens advocate explained that attorney's fees for divorce actions in supreme court<sup>87</sup> can be very expensive and that a way to cut expenses is to go *pro se*<sup>88</sup> to family court for a protective order. Judges, she continued, demonstrate a lack of understanding of this reality when they tell battered women to go to supreme court for their orders, and when they assume that battered women are in family court for tactical, and not economic, reasons. Another advocate commented that this false presumption arises particularly when the parties are middle class. One advocate said that judges are only suspicious when the battered woman involved is accompanied by a lawyer: when a petitioner appears *pro se*, judges often assume she is not sophisticated enough to undertake such tactics.

Although we did not survey ADAs on this point, one ADA commented that criminal court judges are often overskeptical of orders of protection when divorces are pending and thus may not order jail upon a violation.

A Brooklyn Family Court judge told us that, in fact, he believes that petitioners sometimes seek orders of protection for tactical pur-

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85. See The Task Force Report, *supra* note 3, at 39-40, 47.

86. This problem mainly arises when a battered woman whose matrimonial action is pending in supreme court files for a protective order in family court. Criminal courts are not as likely to confront this issue.

87. In the New York State court system, the supreme court is the trial court of general jurisdiction.

88. Litigants are *pro se* when they represent themselves in court, as opposed to retaining an attorney.

poses when a divorce on grounds of cruel and abusive treatment is pending in supreme court. He said that most family court judges are careful to inquire whether a matrimonial action is pending because of their skepticism as well as their sensitivity to the desire of supreme court judges to handle a whole case, instead of just a portion of one.

*d. Recommendations for the Future*

A study should be conducted to determine why various women with matrimonial actions pending in supreme court want to obtain their orders of protection in family court. Steps should then be taken to ensure that judges' knowledge and sensitivities accord with this reality.

### ACCESS TO THE COURTS

*4. Calendar Scheduling for Order of Protection Violations*

*a. Task Force Finding*

The Task Force made no specific finding regarding calendar scheduling.

*b. Task Force Recommendation*

The Task Force recommended that cases involving violations of orders of protection be given preference in calendar scheduling.<sup>89</sup>

*c. Evaluation*

The consensus among battered women's advocates was that protective order violation cases are not given calendar preference, although cases involving serious injury, arrest or bail may be expedited somewhat. Judges agreed with advocates on this point. Family court judges said that they hear statutorily mandated preference cases first, and criminal court judges said that all cases involving jail are priorities, regardless of the underlying crime.

Advocates noted that it is very rare for protective order violation cases to get preference in calendar scheduling. There are, however, certain exceptions: cases are expedited when a judge believes a battered woman to be severely injured or in extreme danger, when the alleged batterer is under arrest, or when bail is set. Several advocates noted that the preference given to protective order violation cases varies from judge to judge. One advocate strongly recommended a

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89. See The Task Force Report, *supra* note 3, at 48.

mandatory time limit before which protective order violation cases must be heard.

It appears that family court judges give first priority to the two categories of cases which have statutorily mandated preferences, child abuse and neglect, and juvenile delinquency proceedings.<sup>90</sup> A few family court judges said that they may give some preference to protective order violation cases involving jail or serious, visible injuries. The criminal court judges claimed that protective order violation cases are not given preference in calendar scheduling *per se*, but that calendar preferences are given in all cases involving jail. A Queens Criminal Court judge said that she gives priority to protective order violation cases if there are young children in court, if there is serious physical injury, or if police officers are present to testify (in order to save taxpayers' money). The Brooklyn Criminal Court judges pointed out that because that county has a special court part that deals with domestic violence cases (corresponding to the Brooklyn DA's special domestic violence unit), protective order violation cases are given favorable treatment in that borough.

We did not ask the ADAs we surveyed whether protective order violation cases are given calendar preference. However, one Manhattan ADA was troubled by the long period of time which passes before these cases are heard and recommended that judges prioritize them.

#### *d. Recommendations for the Future*

We urge the Judicial Committee to give meaning to the Task Force's use of the term "calendar preference." For instance, should there be a statutorily mandated preference for protective order violation cases similar to the preference required by statute in the child abuse context? Over what other types of cases should protective order violation cases be given preference? Should there be a time limit within which such cases must be heard? In the criminal sphere, should protective order violation cases involving potential jail sentences be heard sooner than other types of cases in which the defendant may be incarcerated?<sup>91</sup>

### *5. Availability of Judges to Issue Orders of Protection*

#### *a. Task Force Finding*

The Task Force made no particular analysis regarding the availability of judges to issue temporary orders of protection.

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90. See N.Y. FAM. CT. ACT § 117 (McKinney 1983 & Supp. 1992).

91. We do not have enough information to set forth specific recommendations in this area.

b. *Task Force Recommendation*

The Task Force recommended that judges be available to issue temporary orders of protection seven days per week and twenty-four hours per day.<sup>92</sup>

c. *Evaluation*

The following represents our understanding of the present limited availability of judges to issue protective orders.<sup>93</sup> Family courts in all the boroughs are open only five days per week and approximately seven hours per day to issue temporary orders of protection for battered women bringing family court actions. Furthermore, battered women are advised to arrive at family court in the morning, sometimes as early as 9 A.M., in order to ensure that they obtain protective orders that same day. Supreme courts are also open only five days per week and seven or eight hours per day to issue temporary orders to battered women who have matrimonial actions pending. Although criminal courts have long hours, a criminal case must be pending in order for a petitioner to receive a protective order. The procedures and court hours for obtaining orders of protection in arrest cases vary from borough to borough.<sup>94</sup>

Battered women may initiate criminal actions themselves when incidents of domestic violence do not lead to arrest. In order to bring such civilian-initiated complaints,<sup>95</sup> most battered women used to

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92. See The Task Force Report, *supra* note 3, at 49.

93. The information in this paragraph is an approximation only. It may not be fully accurate because we not only received contradictory information about the availability of judges to issue orders of protection, but this area is also somewhat in flux.

94. See 1991 REPORT, *supra* note 7, at 28 (setting forth some criminal court hours). The report also explains that when courts are closed, any judge may hear an *ex parte* application for an order of protection at any time. *Id.*

95. DAs generally prosecute criminal cases on behalf of the People of the State of New York. However, the New York City Criminal Court Act allows private individuals to initiate criminal actions. See N.Y. CITY CRIM. CT. ACT § 50 (McKinney 1989). Battered women often bring civilian complaints where there has been no arrest and where the relationship does not qualify for family court — i.e., where the parties have never been married and do not have a child in common. For family court eligibility, see N.Y. FAM. CT. ACT § 812 (McKinney 1983 & Supp. 1992). Presently, ADAs often prosecute the cases of domestic violence civilian complainants from Brooklyn, the Bronx, Queens and Staten Island. In contrast, the Manhattan DA's Office refuses to prosecute civilian-initiated complaints.

Some courts recently have held civilian-initiated complaints brought pursuant to section 50 of the New York Criminal Court Act to be unconstitutional violations of defendants' due process rights. See *People v. Jack Calderone*, N.Y.L.J., Aug. 6, 1991, at 23; *People v. Martine Benoit*, N.Y.L.J., Aug. 6, 1991, at 25. Other courts have upheld such civilian complaints. See, e.g., *People v. Van Sickel*, 13 N.Y.S.2d 61 (1963); *People v. Vial*, 132 Misc. 2d 5 (1986). At the time of this study, there had been no definitive

have to go to 346 Broadway in Manhattan.<sup>96</sup> Due to decentralization efforts, however, battered women have increasingly been able to seek relief in their own boroughs. Battered women from Manhattan, the Bronx, Brooklyn and Queens who bring civilian complaints currently are screened first by their borough's Court Dispute Referral Center ("CDRC").<sup>97</sup> CDRC hours are generally 9 A.M. to 1 P.M., five days per week. CDRCs determine whether cases are amenable for court intervention, mediation or other services, and assist or refer victims/survivors accordingly. Domestic violence civilian complainants in Staten Island are referred first to the CDRC, which determines whether their cases are appropriate for mediation. If their cases are not mediated, the battered women are referred to VSA, to an ADA or to some other service. The CDRC is open five days per week, seven hours per day, but battered women who want an ADA to assist them the same day with a "Part 7 Summons"<sup>98</sup> generally should arrive between 9 A.M. and 1 P.M.

At the time of our research, which was prior to the establishment of the CDRCs, Staten Island had a very different structure for handling domestic violence civilian complaints than did the other boroughs. Whereas battered women in the other boroughs could go to summons part and then appear before a judge to request an order of protection, battered women from Staten Island first would be subject to mediation screening. Staten Island advocates stated that the unique Staten Island structure did not benefit battered women because cases often were sent to mediation inappropriately and the system created obstacles for battered women seeking orders of protection. With the creation of the new CDRC system, however, the four other boroughs apparently have moved closer to Staten Island's system.

While the decentralization of the summons part system has im-

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statement about the constitutionality of civilian-initiated complaints in New York; therefore, the disposition of such complaints varied according to the viewpoint of the individual judge.

96. For a good resource on the situation for domestic violence civilian complainants before the recent changes, see REPORT OF THE TASK FORCE ON THE CIVILIAN-INITIATED COMPLAINT PROCESS IN THE NEW YORK CITY CRIMINAL COURT, FINDINGS AND RECOMMENDATIONS (June 1989). For a copy of this report, contact Hon. Richard T. Andrias, Chairman of the New York State Task Force on Processing Civilian Complaints by the New York City Criminal Court.

97. Implementation of the CDRC system began in the spring of 1991. The CDRCs for the Bronx, Brooklyn and Manhattan are located in their respective boroughs while that of Queens is in Manhattan until appropriate space can be arranged in Queens.

98. A Part 7 Summons involves a request that the alleged batterer appear in court for an order of protection hearing. We were told that until the hearing — which might occur approximately one week after the request is made — the battered woman is left without an order of protection.

proved the situation for many battered women by allowing them to seek orders of protection with less travelling and often with the assistance of ADAs, perhaps it has worsened the situation of many others. According to one CDRC director, the establishment of the CDRC system has strengthened the divide between domestic violence cases involving physical injuries and those characterized by verbal harassment, psychological abuse, or where there have been physical injuries but where the future physical threat is deemed small. In these latter cases, he explained, victims/survivors usually are not able to appear before judges for orders of protection as they had been previously. Instead, they are screened out by the CDRC or ADAs and then referred only to domestic violence services, if such services are available. This particular CDRC director stated that he wishes ADAs would take on more of these cases, but that unfortunately, domestic violence cases are considered undesirable. He emphasized the need for a change in attitude toward domestic violence cases as well as increased resources in this area.

Battered women's advocates claimed that judges are not available to issue orders of protection seven days per week and twenty-four hours per day. Several advocates expressed dismay at this lack of availability, or at the long waits battered women must endure before receiving their orders. One advocate claimed that long waits are particularly likely in Brooklyn and the Bronx. A Staten Island advocate said that it can take all day for a battered woman to receive an order of protection in family court, and a Manhattan advocate remarked that battered women sometimes cannot even obtain orders in family court on the same day that they go to court. One Brooklyn advocate stated that battered women in family court are "at the mercy of the petition room scheduling." Another advocate thought that family court should be open twenty-four hours per day, as night court exists for other types of cases.

A few judges explained that fiscal constraints account for the inability of courts to stay open longer hours to issue protective orders. While some judges thought they should be available around the clock to issue orders of protection, others emphasized the adequacy of present police and support services.<sup>99</sup>

#### *d. Recommendations for the Future*

The availability of judges to issue orders of protection should be expanded so that battered women can obtain immediate protection at

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99. The Judicial Committee has researched the availability of judges to issue orders of protection. See *infra* part III.A.2.



any time, and battered women should be assured that they can obtain orders on the same day that they go to court. Due to current financial constraints, it is necessary to explore creative means of satisfying the needs of battered women through existing services and resources. Additionally, the changes taking place in the civilian complaint process should be monitored and evaluated. This evaluation should consider whether battered women without serious physical injuries remain unable to obtain adequate redress. It also should address whether the hours of 9 A.M. to 1 P.M. are sufficient to satisfy the needs of civilian complainants. Expanding eligibility for family court and ensuring that police do not fail to arrest in the absence of visible injuries could further the needs of many battered women who presently are falling through the cracks.

## 6. *Referral from Court to Court*

### a. *Task Force Finding*

According to the Task Force Report, witnesses and survey respondents asserted that battered women frequently are "referred from court to court by police, court personnel and judges."<sup>100</sup>

### b. *Task Force Recommendation*

The Task Force made no specific recommendation on this point. However, it cautioned judges and other professionals in the court system against dissuading battered women from seeking relief in the courts. It also encouraged awareness of the powers of criminal courts to adjudicate domestic violence cases.<sup>101</sup>

### c. *Evaluation*<sup>102</sup>

The advocates we surveyed overwhelmingly believed that battered women are being referred inappropriately from court to court. They expressed concern that officials in the court system are failing to explain adequately to battered women their "right of election" to proceed in family or criminal court.<sup>103</sup>

Most advocates doubted that the right of election is explained to battered women in practice.<sup>104</sup> Many were very skeptical about

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100. See The Task Force Report, *supra* note 3, at 34.

101. See *id.* at 48.

102. See also *infra* parts II.C.7, II.C.9 (overlapping with this section).

103. New York State law provides that victims/survivors of family offenses can proceed either in criminal or family court, if they meet certain eligibility requirements. See N.Y. FAM. CT. ACT § 812 (McKinney 1983 & Supp. 1992); N.Y. CRIM. PROC. LAW § 530.11 (McKinney 1984 & Supp. 1991).

104. See *infra* part II.D.7. (discussing right of election law).

whether police routinely hand battered women “blue cards,” the papers which explain the option of proceeding either in family or criminal court. Other advocates commented that even if the cards are handed out, they are “overcomplicated” and difficult for many battered women to comprehend, especially when these women are in a time of great crisis. Various advocates said that police often encourage one court over another — usually family court — depending on their own assessments of a case. Others asserted that the police frequently give battered women misinformation about their options. Some noted that VSA and Corporation Counsel<sup>105</sup> try to ensure that the petitioners understand their options, but that these agencies cannot reach everyone. One Manhattan advocate thought that court personnel are not sufficiently educated about domestic violence and that clerks in the petition room might give battered women inappropriate information. Only two advocates thought that battered women are not referred inappropriately from court to court.<sup>106</sup>

*d. Recommendations for the Future*

Police and court personnel training should address the necessity of giving battered women neutral, accurate and clear information. The regularity with which police issue “blue cards” to battered women should be studied and the language on these cards should be simplified. Existing expertise on the composition of informational materials designed for individuals with varying degrees of education should be utilized to determine how most effectively to explain to battered women their options of proceeding either in family or criminal court. Finally, we recommend continued debate on the efficacy of the right of election law.

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105. Acting as the law department for the City of New York, Corporation Counsel handles the City’s legal problems. In family court, Corporation Counsel prosecutes juvenile delinquency cases (this accounts for about 85% of its work in family court), represents petitioners in child support actions, and, when appointed by individual judges, sometimes represents petitioners in family offense cases. When family court judges appoint counsel in domestic violence cases, they generally appoint lawyers from Corporation Counsel or from the 18-B panel. For a description of VSA, see *supra* note 20.

106. The comments of one Staten Island advocate who works on criminal cases are worthy of mention. She explained that Staten Island is different from other boroughs in certain respects, and that police often do not understand these differences. The result is the frequent provision of misinformation to petitioners. For example, police often incorrectly tell battered women that they can walk into Staten Island’s criminal court and obtain orders of protection. When there is no arrest, however, the battered women are referred to Staten Island’s Community Dispute Resolution Center for a determination of whether their cases are appropriate for mediation.

## 7. *Dissuasion from Pursuing Claims*

### a. *Task Force Finding*

The Task Force found that contrary to the statutory prohibition,<sup>107</sup> judges, court personnel and law enforcement officials dissuade battered women from pursuing their claims by trivializing and ignoring their concerns.<sup>108</sup> Several witnesses testified that attitudes in the courtroom, such as ridicule, belittling, and secondary victimization, cause battered women to drop their claims.<sup>109</sup>

### b. *Task Force Recommendation*

The Task Force recommended that judges and other court personnel be informed about the statutory prohibition against such dissuasion.<sup>110</sup>

### c. *Evaluation*<sup>111</sup>

Most of the battered women's advocates we surveyed did not consider dissuasion by law enforcement officials and court personnel a major problem or frequent occurrence. A number of advocates, however, did discuss some instances in which dissuasion occurs. We also got a sense from advocates that this problem varies somewhat among boroughs and between family and criminal courts. All of the judges claimed either that dissuasion by court personnel and judges is not at all a problem, or that there has been progress in this area. On the other hand, judges generally thought that the police need to improve their handling of domestic violence cases. The ADAs provided mixed reviews of the police and generally thought that court personnel had improved somewhat in their treatment of domestic violence cases.

Advocates stated that battered women sometimes are dissuaded from pursuing claims. Those who differentiated between police and court personnel tended to agree that battered women confront more dissuasion and trivialization from the police. Several advocates explained that although police arrest avoidance has been substantially curtailed, partly as a result of cases holding police officers liable for failure to arrest, police still do not arrest as often as they should. Other advocates commented that the level of seriousness with which

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107. See N.Y. FAM. CT. ACT § 812(3) (McKinney 1983 & Supp. 1992).

108. See The Task Force Report, *supra* note 3, at 47.

109. See *id.* at 36.

110. See *id.* at 48.

111. See also *infra* parts II.C.6, II.C.9 (overlapping somewhat with this section); *supra* part II.C.5 (discussing dissuasion experienced by domestic violence civilian complainants).

cases are treated depends on the individual officer, and that police practices vary according to precinct and borough and tend to be better in areas where battered women's advocacy centers have more clout.

Certain advocates qualified their more favorable responses about court personnel. One advocate noted that petition clerks sometimes inappropriately make judicial decisions, for instance by telling the complainant that she cannot proceed if the respondent is out of state. Another advocate commented that the general quality of interaction between court personnel and complainants, including long waits and minimal time for complainants to explain their situations, dissuades many victims/survivors. A Staten Island advocate suggested more sensitivity training for clerks, petition room workers, and record room workers. She said that family court is like a "meat-processing factory" and is "impersonal and demoralizing for victims." On the other hand, another advocate sensed that family court officers are more sensitized than their counterparts in criminal court.

Although we did not specifically ask the judges about dissuasion by law enforcement officials, a few implied that the police's handling of domestic violence cases may have the effect of dissuading battered women, while others noted significant improvement in police responses to domestic violence calls and an increase in arrests. The judges who were critical of police responses to domestic violence cases stated that police arrest too infrequently;<sup>112</sup> police sometimes avoid arrest by referring victims/survivors to family court to ask for protective orders against their batterers; police often encourage battered women to proceed in family court;<sup>113</sup> and finally, police need more ongoing gender bias and domestic violence training. On the other hand, all but one of the judges did not view dissuasion by court personnel and judges as a problem confronting battered women, and the one exception said that there has been progress in this area.

ADAs from Manhattan, Brooklyn, Staten Island, and the Bronx asserted that although some police have improved over the last five years in their treatment of domestic violence cases, others have not. An ADA from Queens thought that police handling of domestic violence cases has actually gotten worse, while a Manhattan ADA asserted that it has improved in the past five years. The most common positive comment made by ADAs about the police department was

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112. One judge noted that when police make arrests, judges take protective order violation cases more seriously.

113. See *infra* part II.C.9.

that the policy of mandatory arrest for protective order violations benefits battered women by limiting police discretion.

The ADAs generally responded more favorably to the treatment of domestic violence cases by court personnel. ADAs from Manhattan, the Bronx, and Queens thought that court personnel had improved in their attitudes toward these cases. On the other hand, a Brooklyn ADA stated that some court personnel have improved while others have not, and a Staten Island ADA stated that there has been no progress in the behavior of court personnel.

*d. Recommendations for the Future*

Continued training and policy-making should address ways in which the police trivialize battered women's concerns. The police should not refer alleged batterers to court to file petitions unless they have good cause to believe that the alleged batterers have been abused. Additionally, arrest policies should be monitored to ensure proper enforcement. Court personnel training should address inappropriate conduct as well as ways to improve the quality of interaction between court personnel and complainants.

*8. Batterer Intimidation*

*a. Task Force Finding*

The Task Force stated that although battered women sometimes fail to proceed with their claims due to respondent intimidation, judges rarely ask battered women who drop charges whether they have been coerced.<sup>114</sup> According to testimony cited in the Task Force Report, intimidation is often exacerbated in court waiting rooms which do not separate batterers and victims/survivors.<sup>115</sup>

*b. Task Force Recommendation*

For Task Force Recommendation, see part II.C.1.b.

*c. Evaluation*

The majority of advocates claimed that New York City judges today sometimes are aware that respondent intimidation can act as a deterrent to claimants' proceeding with their cases. The rest of the advocates were split. Advocates claiming that judges often are aware of the role of batterer coercion commented that judges inquire into the reasons why a claimant does not want to proceed with her case.

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114. See The Task Force Report, *supra* note 3, at 48.

115. See *id.* at 37.

Advocates claiming that such awareness is rare reported that judges do not seem to consider intimidation a problem, and that judges and ADAs demonstrate a lack of understanding of the reasons battered women drop charges and therefore blame these women for not proceeding with their cases.

Furthermore, during the course of our surveys, numerous respondents stated that judges, ADAs and police often express frustration because battered women frequently do not follow through with their claims.<sup>116</sup> This indicated to us a lack of awareness of the reasons battered women drop charges, and, in particular, of the role of respondent intimidation in deterring victims/survivors.

*d. Recommendations for the Future*

We recommend that judicial education on domestic violence specifically address the various reasons battered women often do not proceed with their claims. For example, battered women may drop their charges as a result of fear of retaliation by the batterer, economic dependence on the batterer, lack of social support, hostile or indifferent treatment by professionals in the court system, isolation, helplessness, and language and cultural barriers.

*9. Dissuasion from Seeking Criminal Court Relief*

*a. Task Force Finding*

In addition to its finding that battered women are dissuaded generally from pursuing their claims,<sup>117</sup> the Task Force found that court professionals and police downplay the fact that domestic violence is a crime and dissuade battered women from proceeding in criminal court in particular. This both hinders battered women's right to choose freely between criminal and family court and reinforces the message that courts do not take these claims seriously.<sup>118</sup>

*b. Task Force Recommendation*

The Task Force recommended that judges and other professionals gain familiarity with the powers of criminal courts in this area.<sup>119</sup>

*c. Evaluation*<sup>120</sup>

Most advocates thought that battered women sometimes still are

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116. See *infra* part II.D.2.

117. See *supra* part II.C.7.

118. See The Task Force Report, *supra* note 3, at 34.

119. See *id.* at 48.

120. See also *supra* parts II.C.6, II.C.7 (overlapping somewhat with this section);

dissuaded from proceeding in criminal court. Advocates did not blame judges, but claimed that ADAs and especially police were responsible for dissuasion, as were such problems as unclear information and lack of qualified translators. Judges insisted that judicial dissuasion is not a problem. They agreed with advocates that actions of police and ADAs might at times discourage battered women from proceeding in criminal court, although they remarked that there has been progress in this area. Although ADAs denied that they dissuade battered women from proceeding in criminal court, ADAs in Manhattan, the Bronx, and Queens said they sometimes encourage battered women to proceed in family instead of criminal court.<sup>121</sup>

Most advocates thought that although battered women are not directly dissuaded from proceeding in criminal court, the handling of their cases often has the effect of dissuasion. For instance, dissuasion can occur in the form of poor attitudes toward battered women, lack of qualified translators, unclear or incorrect information and length of process. Furthermore, one advocate stated that after battered women are dissuaded from proceeding in criminal court, they often are blamed for not following through with their claims. Another advocate added that battered women hardly need external dissuasion because their own fears and concerns serve as significant deterrents to their proceeding with their claims.

In spite of their perception that battered women are deterred from proceeding in criminal court, most advocates did not single out judicial dissuasion as a serious concern. However, one advocate said that although judges are allowed to transfer cases only from family to criminal court,<sup>122</sup> she knows of at least one criminal court judge who transferred a case inappropriately to family court. In contrast to their favorable responses about judges, several advocates asserted that some ADAs indirectly dissuade battered women from proceeding in crimi-

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*supra* part II.C.5 (discussing how the domestic violence civilian complaint process may, in effect, dissuade battered women from proceeding with their claims).

121. However, the practice of Manhattan ADAs might be changing since domestic violence cases are no longer processed by the Juvenile, Domestic Violence, and Child Abuse Unit as they were at the time of our survey. Domestic violence cases in Manhattan are now handled by a separate unit run by Elizabeth Loewy. Loewy stated that the ADAs in her unit sometimes encourage battered women to seek relief in criminal court, especially if they have visible injuries.

122. At any point before the conclusion of fact-finding, a family court judge may transfer a case to criminal court, but only with the consent of the petitioner and upon reasonable notice to the DA's office. This code section expands the time frame of the right of election and is designed to allow flexibility for particularly egregious cases. See N.Y. FAM. CT. ACT § 813 (McKinney 1983).

nal court by undercharging or reducing charges in domestic violence cases.

Advocates most often associated dissuasion from seeking criminal court relief with problems in the police handling of domestic violence cases. While some claimed that police often encourage family court, others said that police make their own judgments about the case and urge one forum or another accordingly, and still others discussed problems surrounding police issuance of "blue cards."<sup>123</sup> One advocate said that police send battered women to family court because, compared with murder and drug cases, officers view domestic violence as mere family arguments. This advocate also stated that police get angry when battered women do not pursue their criminal claims.

All of the judges surveyed asserted that they and other judges do not dissuade petitioners from seeking relief in criminal court. Some family court judges said that they themselves might suggest criminal court when they believe it is appropriate, i.e., when the injury is serious. Other judges theorized that dissuasion from criminal court might not be a bad idea since criminal courts do not take domestic violence cases as seriously as do family courts.<sup>124</sup> A few family court judges mentioned that ADAs and police sometimes dissuade victims/survivors from proceeding in criminal court. One Brooklyn judge stated that the police's "knee-jerk reaction" is to send domestic violence cases to family court. On the other hand, both a family and a criminal court judge noted that the police have improved by arresting more and dissuading less than in the past.

ADAs responded to the criticisms of battered women's advocates by denying that they dissuade battered women from proceeding in criminal court. For example, Mary O'Donaghue, chief of Manhattan's Juvenile, Domestic Violence and Child Abuse Unit,<sup>125</sup> pointed out that domestic violence is the only crime for which her unit has special counselors who spend much of their time encouraging battered women to pursue criminal prosecution.

Although ADAs asserted that they do not turn battered women away from criminal court, the special units in Manhattan, the Bronx and Queens sometimes send or encourage battered women to go to family court. ADAs in Manhattan and the Bronx suggest family court for battered women who are unsure about criminal prosecution

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123. See *supra* part II.C.6; *infra* part II.D.7.

124. See *supra* part II.C.1.

125. As noted in part II.C.19, the structure of the Manhattan DA's Office has changed since we conducted our survey. In particular, Mary O'Donaghue now heads a unit that handles only juvenile and child abuse cases. A new unit, handling only domestic violence cases has been established under Elizabeth Loewy's leadership.



yet want help, who want to continue their relationship with the batterer, who do not want the batterer to have a criminal record or to go to jail, where there is no history of abuse, or where there is no physical violence. Queens ADAs encourage family court "very rarely," i.e., only when battered women do not want to prosecute and family court appears to be the last chance of providing them with some protection. ADAs who encourage battered women to go to family court sometimes even escort these women directly to that court and help them file complaints.

When asked why they advocate family court for some battered women, the ADAs we surveyed pointed out that criminal prosecution is not appropriate for all domestic violence cases, particularly those cases without serious violence and in which the battered women do not want to prosecute. Also, two Manhattan ADAs remarked that family court is in some ways better for battered women than criminal court because family court involves summary proceedings while criminal courts invoke an array of constitutional protections for defendants. A Bronx ADA, however, pointed out that some criminal court judges take the position that protective order violations should be sent to family court not because the summary proceedings benefit battered women but rather because the criminal court judges do not want to deal with these cases.

Brooklyn and Staten Island ADAs said they never encourage battered women to proceed in family court but rather inform battered women of their right of election. Two Brooklyn ADAs expressed concern that the police were not providing battered women with the requisite information or were presenting it in such complicated terms that these women often fail to understand. Some ADAs urged reforms in the statutory right of election.<sup>126</sup>

#### *d. Recommendations for the Future*

ADA and police training should address the problem of indirect dissuasion of battered women from pursuing claims in criminal court. Furthermore, the official policies of ADAs and police should be revised so as to treat domestic violence cases more seriously — for instance, ADAs should not reduce charges as frequently as they do and police should attach as much importance to domestic violence as they do to other crimes. ADAs and police should take more time to explain to battered women their options clearly and neutrally.

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126. See *infra* part II.D.7.

## 10. Mediation

### a. Task Force Finding

The Task Force found that some courts refer domestic violence cases to mediation. It discussed the inappropriateness of this method of dispute resolution in the context of domestic violence. In order for mediation to produce a fair result, there must be equality of bargaining power between the parties, a factor that is clearly absent in cases of battering.<sup>127</sup>

### b. Task Force Recommendation

For the Task Force Recommendation, see part II.C.1.b.

### c. Evaluation

The most common response we received from advocates was that domestic violence cases in New York City usually are not sent to mediation. However, many advocates went on to qualify this response either by pointing to particular instances or places in which mediation does occur, or by claiming that mediation often occurs unofficially, or under a different guise. Similarly, while most judges said that domestic violence cases are not sent to mediation, several noted instances in which mediation does occur. Mediation practices seem to vary among the boroughs and between the family and criminal courts in each borough. Finally, we understand that some domestic violence cases are sent to mediation, particularly when there has been no serious physical abuse and when the battered woman expresses a strong interest in this process.

Several advocates stated that mediation is encouraged in particular situations.<sup>128</sup> Two advocates claimed that mediation often occurs when battered women go to summons part at 346 Broadway in Manhattan. One advocate remarked that mediation can occur in Bronx Criminal Court. A Bronx advocate claimed that mediation of domestic violence cases is "typical for single, unmarried women." A Staten Island advocate said that because there is no summons part in Staten Island, if a case is not appropriate for family court but involves no arrest, it can go to mediation.<sup>129</sup> Another explained that mediation

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127. See The Task Force Report, *supra* note 3, at 46, 48.

128. Since few advocates provided substantiation for their claims that mediation occurs under particular circumstances, we suggest that the instances discussed here be further researched.

129. Our survey results indicated that Staten Island was a particular problem area with respect to the mediation of domestic violence cases. However, after we conducted our surveys, Court Dispute Referral Centers were established for the other boroughs. This

“always” occurs on the adjournment date in Staten Island Family Court, unless there is no available mediator or the parties’ lawyers have reached a settlement. Two advocates remarked generally that cases which go through VSA rarely end up in mediation, whereas cases processed by the Institute for Mediation and Conflict Resolution (“IMCR”) sometimes are sent to mediation. Finally, two advocates said that Brooklyn Criminal Court judges will refer to mediation domestic violence cases involving little or no violence and requiring resolution of property disputes.

Several advocates claimed that mediation occurs under the guise of a different disposition. One such disposition, according to advocates, occurs when a law assistant or other liaison confers with the parties in the interest of disposing of or settling a case. Advocates pointed out that no admission is made on the record during such conferences, and that this practice occurs more frequently when the parties are *pro se*. Another quasi-mediation mentioned involves the situation where a judge, eager for settlement, inappropriately pressures the parties’ lawyers to “work it out.” However, coerced settlement should be distinguished from settlement that is completely voluntary and often produces beneficial results. Unfortunately, survey respondents sometimes spoke of mediation and coerced or voluntary settlement efforts under one breath, perhaps decreasing the accuracy of our assessments in this area.

While a small majority of the judges said that domestic violence cases are never sent to mediation, a significant number noted that mediation is utilized under some circumstances. Several judges stated that mediation screening occurs before the point when cases appear before them. A Staten Island Criminal Court judge said that domestic violence cases are mediated in his borough. He explained, however, that cases that come before a judge have already been deemed inappropriate for mediation. A Staten Island Family Court judge said that although there is no formal mediation in family court, two processes might occur after the battered woman receives a temporary protective order. A probation officer may sit down with the parties and recommend settlement or mental health workers may try to resolve issues through therapy.

A Bronx Criminal Court judge said that domestic violence cases are sent to mediation in his borough if both parties agree to mediate

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development apparently has decreased previous differences between Staten Island and the other boroughs with regard to civilian complaints. Presently it may be that all boroughs refer more civilian complaint cases to mediation, especially where there are no physical bruises. See *supra* part II.C.5.

and if no serious crime is involved.<sup>130</sup> A Queens Family Court judge said that after protective orders are granted and if the petitioner agrees, judges may refer parties to the Family Conflict Program in the probation department, which has marriage counseling services. A judge of the Queens Criminal Court said that there is no mediation in her court but that it is possible in Queens Family Court.

A Brooklyn Criminal Court judge and a Brooklyn Family Court judge asserted that domestic violence cases are not sent to mediation in that borough. However, another Brooklyn Family Court judge said that he sometimes refers willing parties to probation, which runs mediation and marriage counseling programs. He added that his decision whether or not to refer parties to probation does not necessarily rest on the level of violence in their relationship. For instance, he will refer to probation any cohabiting couples with children if they are willing to go. Both the Manhattan Family Court and Criminal Court supervising judges said that cases are not referred to mediation from their courts.<sup>131</sup>

We interviewed a few people involved with the provision of mediation services in New York City. Chris Whipple, who oversees the VSA mediation programs in New York City, said that VSA conducts mediation in Brooklyn and Queens. Whipple stated that since the "Guidelines for Dispute Resolution Centers Regarding Domestic Violence" were established,<sup>132</sup> it is very rare that cases involving domestic

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130. Unfortunately, we did not ask a Bronx Family Court judge about mediation in that court.

131. Judge Marjorie Fields, Supervising Judge of the Bronx Family Court and ex Co-Chair of the Governor's Commission on Domestic Violence, noted that custody and visitation issues are increasingly sent to mediation, and that an effective screening process is needed to ensure that cases involving domestic violence do not go to mediation. She added, however, that this is more of a problem in upstate New York than in New York City.

132. In December of 1983, the New York Community Dispute Resolution Centers Program, established in 1981 and contracting with the Unified Court System of the State of New York to provide dispute resolution services, created "Guidelines for Dispute Resolution Centers Regarding Domestic Violence." These guidelines include provisions requiring staff to be trained in domestic violence issues, terming domestic violence a non-negotiable issue, and mandating that "all domestic cases involving actually or potentially violent or imminently dangerous situations shall be referred to court or the appropriate agency for proper action." NEW YORK COMMUNITY DISPUTE RESOLUTION CENTERS PROGRAM, GUIDELINES FOR DISPUTE RESOLUTION CENTERS REGARDING DOMESTIC VIOLENCE at Guideline III.

If a complainant is interested in mediation services, the guidelines require the dispute resolution center to inform her about the remedial and non-punitive nature of mediation and the fact that it cannot provide her with protection. In the event that cases involving domestic violence are mediated, the center can in no way provide services that will excuse the violent behavior, staff are required to speak with the parties individually to obtain information, staff are required to make every effort to obtain the legal protections that are

violence are sent to the VSA-run mediation programs. He said that perhaps two to three domestic violence cases go to mediation each month, and only if no serious violence is involved and the battered woman expresses a strong preference for mediation services. His impression of IMCR, which conducts mediation in Manhattan and the Bronx, was the same as that of the advocate mentioned above, i.e., that more cases from IMCR than from VSA seem to go to mediation. Finally, he asserted that it would be difficult to attack the inappropriate use of mediation that sometimes still occurs because the directors of mediation programs always deny that cases are mediated in violation of the guidelines. He said that he would like advocates to bring to his attention domestic violence cases that are mediated.

We were unable to contact IMCR's director for an interview regarding that organization's mediation practices. We did, however, speak with an intake worker at IMCR who told us that Manhattan and Bronx cases involving domestic violence are referred to a domestic violence counselor for screening. If the relationship is deemed to involve abuse, the case will almost definitely go to court. Abuse cases usually come to IMCR after the battered women have been to family court or have initiated the civilian complaint process.<sup>133</sup> Another IMCR worker stated that the CRDCs sometimes inappropriately refer to IMCR cases involving actual or a serious potential for violence. She was skeptical about the recent changes in the civilian complaint system as it impacts on the mediation of domestic violence cases.

Finally, we spoke with a couple of workers at the Staten Island Community Dispute Resolution Center ("Center") who said that in cases involving violence, the Center will not mediate and instead explains to the battered women their option of proceeding in family or criminal court. In a criminal case in which there has been no arrest but where there are physical bruises, the battered woman is usually sent to VSA for counseling, and VSA decides in conjunction with the Center whether to send the woman to an ADA to obtain a Part 7 Summons.<sup>134</sup> If there are no physical bruises, however, most cases are mediated, although the victims/survivors are informed of their options to proceed in court. Apparently, Staten Island ADAs are reluctant to pursue cases where there are no physical bruises.

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available for the victim/survivor, and staff are never to discourage the victim/survivor from pursuing court or social service remedies. Finally, the dispute resolution centers must conduct follow-up services for cases involving domestic violence to ensure victims'/survivors' protection and access to legal and social services resources.

133. CDRCs now contract with IMCR and VSA for screening and mediation services.

134. See *supra* note 98.

*d. Recommendations for the Future*

We recommend examining and corroborating the accuracy of each of the statements of our survey respondents as to when domestic violence cases are sent to mediation and when mediation occurs under different guises. We also suggest studying the effectiveness of pre-court mediation screening and the procedures followed by the counseling programs to which judges refer parties. Where mediation is exercised in inappropriate circumstances, it should be eliminated. Additionally, steps should be taken to ensure that domestic violence civilian complainants without physical bruises are not being referred to mediation inappropriately. Finally, it would be beneficial to institute a reporting mechanism whereby advocates and others could complain of inappropriate uses of mediation and have their concerns addressed.

### ACCESS TO ADVOCATES AND COUNSEL

*11. Allowing Advocates, Family and Friends into Family Court Courtrooms*

*a. Task Force Finding*

The Task Force made no specific finding on this issue.

*b. Task Force Recommendation*

The recommendation of the Task Force was that judges and other professionals in the court system be made aware of section 838 of the Family Court Act, which addresses the appropriateness of allowing advocates and others into the courtroom with battered women.<sup>135</sup>

*c. Evaluation*

The Family Court Act suggests that, subject to judges' discretion, parties to family offenses are entitled to a "non-witness friend, relative, counselor or social worker present in the court room. . . ."<sup>136</sup> The majority of battered women's advocates and judges whom we surveyed thought that judges are reasonably informed about the appropriateness of permitting advocates and others into the courtroom with battered women. A significant number, however, asserted that those accompanying battered women who are not lawyers or advocates from well-known organizations sometimes encounter access problems. Judicial discretion as well as the behavior of court officers

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135. See The Task Force Report, *supra* note 3, at 48.

136. N.Y. FAM. CT. ACT § 838 (McKinney 1983).

apparently play a significant role in this area, especially with respect to courtroom access for friends and relatives.

No advocates claimed that it was a problem for lawyers or advocates from places such as VSA or Corporation Counsel to gain entrance into the courtroom, although one stated that advocates at times must inform judges about the law in this area. Several advocates noted problems for people other than lawyers or representatives from organizations such as VSA. For instance, one advocate mentioned that court officers block these people from entering the courtroom, and that petition clerks often do not let them in the petition room. Another complained that every so often judges refuse such friends, family or advocates entry into the courtroom. A Brooklyn advocate said that if you are not a lawyer, the judges in that borough will not allow you to speak. Friends of battered women who are not witnesses are particularly vulnerable to individual judges' discretion.

We asked the family court judges under what conditions they or the judges whom they supervise allow advocates and others to accompany domestic violence petitioners into the courtroom.<sup>137</sup> The judges agreed that advocates are welcome in the courtroom.<sup>138</sup> Their responses varied, however, with respect to friends and relatives of the victims/survivors. Four judges said they allow those accompanying battered women into the courtroom, except in extremely rare circumstances such as when an individual is personally provocative. Three other judges said they usually do not let friends and/or relatives into the courtroom.

A few judges agreed with advocates that court officer behavior often deters those accompanying battered women from entering the courtroom. A Queens Family Court judge remarked that the courtroom procedure intimidates many people, especially during intake. Court officers, he continued, often say, "You wait out, you come in." A Staten Island Family Court judge said that although court officers are trained to ask judges whether petitioners can bring friends into the courtroom, there is a constant turnover of court officer staff, requiring ongoing training.

Due to time and resource constraints, all of the advocates we formally surveyed were either lawyers or advocates from organizations such as VSA or Corporation Counsel. We did, however, call advocates from approximately five battered women's shelters around New

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137. This question does not apply to criminal court judges as criminal court proceedings are open to the public.

138. Unfortunately, we did not ask the judges to distinguish between advocates from organizations such as VSA and other advocates, such as shelter workers.

York City to ask about their experiences when accompanying battered women to court. Most claimed that they are rarely allowed in the courtroom; instead, they are told that because domestic violence is a private matter, they must stay in the waiting rooms. These advocates were not always aware that it might be an abuse of judicial discretion for judges to prevent them from entering the courtroom.<sup>139</sup>

*d. Recommendations for the Future*

We recommend that the legislature issue clear guidelines limiting judges' discretion by forbidding them to prevent friends, relatives and advocates from accompanying battered women into the courtroom except in extreme or necessary instances, i.e., where the person might provoke violence or is a witness. Advocates who are not from well-known organizations should always be admitted to the courtroom, and judges should always articulate well founded reasons for denying people access. Advocates at shelters who are unaware of battered women's rights in this area should have the law explained to them by experts in the field. Additionally, there must be ongoing training and clear rules for court officers so they will not intimidate people accompanying battered women from seeking access to the courtroom.

*11a. Availability of Counsel*

*a. Task Force Finding*

The Task Force found that even though indigent battered women are entitled to have counsel appointed on their behalf, the statutory requirement does not apply until after their first court appearance. The lack of assistance before or during the time battered women first appear before a judge leads to representation that is often inadequate.<sup>140</sup>

*b. Task Force Recommendation*

There was no specific recommendation about the availability of counsel.

*c. Evaluation*

Our surveys did not address the issue of availability of legal counsel for battered women. However, several advocates and judges commented that the lack of legal services for battered women is a serious problem in New York City.

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139. See *supra* text accompanying note 136.

140. See The Task Force Report, *supra* note 3, at 38.



A number of advocates pointed out that there is practically no *pro bono* representation available to battered women in family court, that legal services organizations allocate very limited resources to family law matters, and that competent, well-trained, and committed attorneys are needed in this area. One advocate from Queens said that very few legal services attorneys in that borough handle divorce cases, and those who do usually represent the respondent, who is perceived to be in the greatest need of immediate assistance. Another advocate said that only two organizations, Steps to End Family Violence ("STEPS")<sup>141</sup> and the NYU Criminal Defense Clinic,<sup>142</sup> regularly do self-defense work for battered women.<sup>143</sup> Furthermore, a few advocates asserted that many women do not have the money to pay for the legal services necessary to pursue their claims. Another advocate added that battered women are effectively denied access to the courts because of their financial situation, and that they have to beg for counsel fee awards.

A few judges also commented that the lack of legal representation for battered women is a serious problem. One judge said that counsel needs to be more readily available to battered women because currently, "no one goes out of their way to assign counsel to victims." Another judge thought that the lack of good lawyers available to represent battered women is the key issue that needs to be addressed in this area in the future.<sup>144</sup>

#### *d. Recommendations for the Future*

More funding is needed both for existing legal services programs for battered women and for the creation of new programs. Bar associations should further encourage attorneys to represent battered women on a *pro bono* basis and New York City law schools should develop and/or expand domestic violence clinical programs. We also

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141. STEPS focuses on the needs of battered women in the criminal justice system.

142. The NYU Criminal Defense Clinic specifically focuses on battered women's self-defense cases but does considerable defense work in other areas as well.

143. While these two groups are involved in most of the legal self-defense of battered women in New York City, many other groups work in this area, including the Cardozo Law Clinic and the Osborne Association. Furthermore, in October, 1991, after the completion of our study, the Pace University Battered Women's Justice Center was established. The Pace Center is a partnership between New York State and Pace University. It is directed by Michael Dowd, who has represented battered women accused of killing their batterers for the past twelve years, went to trial in the much-publicized Sarah Smith and Karen Straw cases, and acted as Director of Special Projects and Advocacy at the New York State Office for the Prevention of Domestic Violence between March and October, 1991.

144. See *infra* part III.B.2. (discussing Judicial Committee work in this area).

recommend that judges assign counsel to battered women more readily than is the current practice. Finally, efforts should be made to address the particular access barriers faced by non-English speaking women, women of color and undocumented immigrant women who are battered.

## MUTUAL ORDERS OF PROTECTION

### 12. *Mutual Orders Entered Without Filing of Petition*

#### a. *Task Force Finding*

The Task Force stated that "many family court judges routinely enter mutual orders of protection. . . upon the mere oral request of respondents or *sua sponte* without prior notice to petitioners and without an opportunity for rebuttal testimony by petitioners."<sup>145</sup> If the respondent has not filed a petition, mutual orders are dangerous for a variety of reasons. They create a presumption that both parties are equally responsible for the abuse. Furthermore, they discredit the claims of battered women in subsequent court proceedings. Finally, they often pressure police to choose between arresting both parties or doing nothing.<sup>146</sup>

#### b. *Task Force Recommendation*

The recommendations stressed the need to familiarize court professionals with the due process violations that result when courts enter mutual orders without the respondent's filing of a petition.<sup>147</sup> The Task Force also recommended that the legislature enact a statute prohibiting mutual orders except where respondents file and serve cross-complaints.<sup>148</sup>

#### c. *Evaluation*

In 1988, the mutual order legislation recommended by the Task Force was enacted, requiring answers or counterclaims from batterers as a precondition to judges' granting mutual orders of protection.<sup>149</sup> The vast majority of battered women's advocates said that today, mutual orders of protection issued without the proper filing of petitions by respondents is at most a rare phenomenon, and they agreed that

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145. See The Task Force Report, *supra* note 3, at 38.

146. See *id.* at 39.

147. See *id.* at 48.

148. See *id.* at 49. For a discussion of the Task Force's recommendations for the legislature, see *infra* part II.C.24.

149. See N.Y. FAM. CT. ACT §§ 828(1), 842 (McKinney 1983 & Supp. 1992). See also *infra* part II.C.24 (describing this legislation).

significant progress has taken place in this area. Several advocates, however, did note some remaining problem areas. Judges were even more insistent than advocates in their belief that the 1988 law prohibiting mutual orders upon the mere request of respondents or *sua sponte* has been adhered to completely.

Most advocates said either that the mutual order problem no longer occurs, or that it occurs only "occasionally." However, several advocates voiced criticism. One advocate noted that some judges are unaware of the 1988 law or tend to evade it when there are no advocates in the courtroom. One Brooklyn advocate claimed that she has seen this problem "frequently," and another said that mutual orders are still used inappropriately in Kings County Supreme Court because of the emphasis placed on reaching settlements in matrimonial actions. Several VSA advocates noted that mutual orders are still issued in criminal court, especially in civilian-initiated cases. A Staten Island advocate noted that judges in family court sometimes encourage parties to agree to mutual orders, or to accept mutual order settlements reached by the parties and a court liaison before entering the courtroom.

The judges we surveyed largely believed that there had been significant progress in this area, noting that they do not grant mutual orders without the proper filing of petitions. The Manhattan Family Court supervising judge called this "the biggest area of progress." A few Brooklyn and Queens Family Court judges said that mutual orders are granted occasionally when the respondent has filed the correct papers, for instance where there are two lawyers who agree to mutual orders after settlement negotiations. However, the Queens Family Court supervising judge postulated that mutual orders are unwise even under these circumstances, and a Bronx Criminal Court judge said that he refuses to grant mutual orders when attorneys request them. Two family court judges, one from Brooklyn and one from the Bronx, said that mutual orders still are granted inappropriately at the supreme court level.

#### *d. Recommendations for the Future*

Although the mutual order problem has diminished considerably, there are remaining issues which need to be addressed. For instance, there should be an investigation into the extent to which mutual orders are issued improperly in the supreme courts. Also, the problem areas discussed above — in Staten Island Family Court and Brooklyn's Family and Supreme Courts — should be examined. Furthermore, because a few survey respondents questioned the efficacy of

granting mutual orders under any circumstances, we recommend an exploration of whether limits should be placed on the granting of mutual orders even where the proper filing of petitions has occurred.

## REMEDIES AND ENFORCEMENT

### 13. *Vacate Orders*

#### a. *Task Force Finding*

The Task Force found that some judges refuse to order batterers out of family homes, forcing the battered women and their children to find shelter elsewhere.<sup>150</sup> Several Task Force survey respondents remarked that vacate orders are issued only when the judges perceive that there has been severe abuse.<sup>151</sup>

#### b. *Task Force Recommendation*

The Task Force recommended that judges become aware of the efficacy of ordering batterers out of the family home.<sup>152</sup>

#### c. *Evaluation*

According to battered women's advocates, there seems to have been no significant improvement in this area, and possibly even a recent decline, due to the effect of the New York City housing crisis on judicial rulings. There is apparently no set policy concerning when judges should issue vacate orders, and judicial actions in this area vary from judge to judge.

Virtually all of the advocates cited judicial inaction with respect to vacate orders as a serious problem for battered women in New York City. Even the advocates who did not think this was a major problem area said that battered women could obtain vacate orders only in the more extreme cases (i.e., severe injury, after an order of protection has been violated at least once, or where the absence of a vacate order definitely would place a child in a shelter) or in the "easier" ones (i.e., the batterer has already left the home).

Many advocates were incensed by judicial attitudes in this area. One said that judges rationalize their decisions not to grant vacate orders on due process grounds, failing to acknowledge that by not ordering batterers out, these due process violations occur *de facto* to the battered women who are forced out of their homes. Another advocate claimed that one often hears judges say that they "don't want

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150. See The Task Force Report, *supra* note 3, at 48.

151. See *id.* at 43-44.

152. See *id.* at 49.

to make batterers homeless," ignoring the serious problem of homelessness for battered women and their children. Yet another advocate complained that especially if the battered woman has money or can move in with her family, a judge will look to the batterer's economic hardship instead of acknowledging that the batterer violated the law and therefore, he should be the one forced to leave. Several advocates from all boroughs noted an increase in the difficulty of obtaining vacate orders in the last few years due to judicial rationalizations that such orders will make the batterers homeless, given the real estate crisis in New York City.<sup>153</sup> On the other hand, a few advocates claimed that judges are issuing more vacate orders now than they did previously but acknowledged the reality of the judicial rationalizations discussed by other advocates.

Factors that judges said they consider in issuing vacate orders varied depending upon the judge. For example, a Manhattan Family Court judge said she takes into account marital status, the length of time the batterer has been living in the house, the kind of assault, the effect on children, and whether the request was tactical in nature. She added that the housing crisis has not affected her actions. A Brooklyn Family Court judge claimed that he will issue a vacate order if a violation is found and both parties are before him. A Queens Family Court judge said that he will exclude the batterer from the home after the first violation, if the battered woman wants this action to be taken. However, he also noted that many people in Queens own homes jointly, and that it is more difficult to "throw out" a batterer who has property interests in his home. Another Queens Family Court judge remarked that judges are reluctant to issue vacate orders where the injury or circumstances do not seem severe, and that this is partly due to the housing situation in New York City.

A Staten Island Family Court judge claimed that if there is evidence of violence and if the battered woman wants a vacate order, he virtually always grants the order. A judge from the Staten Island Criminal Court said his personal policy is never to issue orders of protection unaccompanied by vacate orders, as such "non-vacate" or-

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153. See *infra* part II.D.12. We did not ask advocates to describe variances among boroughs. However, the Coalition of Battered Women's Advocates found that vacate orders are available for battered women in Brooklyn Criminal Court with some regularity, while they are rarely granted by Queens Criminal Court judges. See Coalition for Criminal Justice Reform for Battered Women, Working Paper on Domestic Violence and Criminal Justice, page 1.5 (November, 1990) (draft available from the Coalition at 666 Broadway, Suite 520, NY, NY 11012). The Coalition was recently renamed from the Coalition for Criminal Justice Reform for Battered Women to the Coalition of Battered Women's Advocates.

ders provide little added protection for the battered women since they merely reiterate that battering is a crime. Both the Staten Island Family and Criminal Court judges we surveyed said that in addition to issuing vacate orders when necessary, they limit the need for such orders by setting the adjournment date within a very short time period. These judges also pointed out that some of their colleagues do not issue vacate orders as frequently as they do.

Finally, a Queens Criminal Court judge utilizes "broad fact-finding" to decide whether to bar a batterer from the home and a Manhattan Criminal Court judge noted that ordering the batterer out of the home is usually a condition of bail.

#### *d. Recommendations for the Future*

We recommend clearer guidelines and less discretion for judges concerning the issuance of vacate orders. Judges should not be allowed to deny vacate order petitions based on unfair and improper justifications, such as the batterer's possible homelessness or his potential economic hardship. The use of such rationalizations must be understood to result in the same or more severe hardships for battered women than those that they are intended to prevent for the batterers. Such rationalizations also do not properly take account of the batterer's guilt.

### *14. Enforcement of Protective Orders*

#### *a. Task Force Finding*

The Task Force found that judges "too often fail to enforce orders of protection."<sup>154</sup> According to those who testified, judges are more likely to scold than to punish batterers who violate orders of protection.<sup>155</sup>

#### *b. Task Force Recommendation*

The Task Force recommended that judges be made aware of the effectiveness of jail sentences as well as educational programs and vacate orders for order of protection violators.<sup>156</sup>

#### *c. Evaluation*<sup>157</sup>

Battered women's advocates expressed great dissatisfaction with

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154. See The Task Force Report, *supra* note 3, at 48.

155. See *id.* at 44-45.

156. See *id.* at 49. See also parts II.C.13, II.C.15, II.C.16.

157. This section addresses enforcement generally, and should be read in conjunction with parts II.C.13, II.C.15, II.C.16 for more specific information on remedies.

judges' failure to enforce orders of protection adequately. ADAs from three boroughs agreed that judges do not sufficiently enforce orders of protection. From our survey of judges, it is our understanding that the nature of protective order enforcement varies depending on the philosophy of the particular judge and the circumstances of the case at hand.

The vast majority of advocates were concerned about the present judicial enforcement of orders of protection and wished that judges would take violations more seriously. As one advocate remarked, when judges do not enforce the law adequately, they do not send the message that battering is wrong. Most advocates described what currently takes place as follows. After the first violation, judges tend to reprimand the batterers or perhaps issue another order of protection or, if the battered woman is lucky, a vacate order. Instead of a separate contempt hearing, or a real sanction such as jail, judges give the batterers another chance. Subsequent violations, unless perceived as extremely severe, tend to be sanctioned nominally. One advocate described this as follows: "In essence, judges are negotiating with violators about sanctions." A few advocates noted that judicial enforcement varies considerably according to the individual judge, and that some judges are very good about strictly enforcing orders of protection. Another advocate recommended legislation requiring judges to try both the contempt and the underlying case.

ADAs varied in their assessment of whether judges treat protective order violations as seriously as other crimes. The Bronx ADAs were most critical of judges for failing to enforce orders of protection adequately, and they asserted that judges persist in treating domestic violence as less dangerous than street crimes. ADAs from Staten Island and Brooklyn were more optimistic, noting that judges do take these violation cases more seriously when the ADAs bring contempt charges and treat them as significant crimes, as they are increasingly doing. Queens is the only county that criminally prosecutes all order of protection violations, including those stemming from family court orders. However, the ADA we surveyed thought that as a result, it is more difficult for battered women to obtain protective orders in the first place in Queens. A Manhattan ADA defended the judges in her borough by stating that the lack of protective order enforcement should be considered in the context of an overcrowded court system in which many criminals demand judges' attention. She focused on efficiency concerns, pointing out that order of protection cases should be consolidated with the underlying battering cases instead of being

tried separately, particularly since it takes six months to get to trial in New York County.

Judges largely agreed that they have no set policy with respect to enforcement of order of protection cases. Rather, judges' actions often depend on the circumstances of each particular case. In addition, individual judges take different enforcement measures when confronting similar circumstances. For instance, given the same fact pattern, one judge might order jail after the first protective order violation, while another might not consider jail until the third violation.<sup>158</sup>

*d. Recommendations for the Future*

Judges uniformly must enforce orders of protection more stringently. We suggest that this enforcement be achieved through legislation, which may include the requirement that judges recognize the existence of two separate claims once protective orders are violated, i.e., the underlying case and the contempt action. Finally, we suggest exploring alternative remedy and enforcement mechanisms, such as combining jail with educational programs for batterers and broadening restitution for battered women.

15. *Jail Sentences*<sup>159</sup>

*a. Task Force Finding*

Task Force witnesses stated that judges rarely use incarceration as a sanction, reflecting their lack of awareness of the efficacy of jail sentences.<sup>160</sup>

*b. Task Force Recommendation*

The Task Force recommended that both family and criminal court judges become familiar with the appropriateness of sentencing order of protection violators to jail.<sup>161</sup>

*c. Evaluation*

A significant majority of the battered women's advocates stated that judges either are unaware of the appropriateness of jail sentences for protective order violators, or rarely use jail as a sanction. ADAs

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158. One advocate noted that the present lack of consistency and clarity is actually a new problem that has resulted in part from reform efforts: some judges have improved while others have not.

159. Although this is a subsection of our previous discussion of the enforcement of protective orders, we received enough comments on the imposition of jail sentences to warrant treating it as its own category.

160. See The Task Force Report, *supra* note 3, at 45.

161. See *id.* at 49.



in three boroughs asserted that judges tend to order less jail for domestic violence than for other crimes, while the other ADAs gave more positive reviews. Although the individual judges we surveyed seem to order jail under different conditions, most admitted that they do not jail first-time violators but do order jail in extreme cases or upon an additional violation.

Advocates largely agreed that judges rarely, if ever, use jail as a sanction for order of protection violators. Brooklyn advocates were perhaps the most adamant on this point. One stated that in her four years of advocating before family court, she has never seen protective order violators jailed. Another said that instead of ordering jail, judges punish violators by issuing new protective orders. Four advocates claimed that judges are aware of the appropriateness of jail as a sanction, but rarely utilize it, and that judges cite various factors as reasons for not ordering jail, including shortage of jail space and fear that the batterer will lose his job. One advocate claimed that she has heard judges say to battered women, "You don't really want him to go to jail." According to some advocates, judges do order jail after multiple and/or very serious violations.

ADAs in Staten Island, Queens and the Bronx reported that judges in their boroughs do not jail order of protection violators as frequently as they jail other criminals. A Bronx ADA was extremely critical of judges for failing to set bail when orders of protection are violated. The special prosecution unit in Queens expressed concern that judges seem reluctant both to issue orders of protection and to impose jail sentences. The Staten Island unit handling domestic violence cases asserted that although judges are becoming more aware of the possibility of jail for order of protection violators, they still tend to be more lenient on bail and sentencing in domestic violence than in other cases.

ADAs in Manhattan and Brooklyn gave mixed reviews of the judges in their boroughs with respect to the jailing of order of protection violators. A Manhattan ADA stated that criminal court judges are reluctant to punish order of protection violators who do not have criminal records because they do not want to jail or put such violators out of their homes and onto the streets. However, this ADA did point out that some Manhattan judges are better at enforcing orders of protection than others and that jail is more likely when there is a history of abuse. A member of the Brooklyn DA's Domestic Violence Unit said that when a batterer has a pattern of violating orders of protection, ADAs recommend jail and judges often are responsive. However, she went on to point out that some judges tend to be over-

skeptical of orders of protection issued when there are divorces pending<sup>162</sup> and thus may not order jail. Finally, in contrast to the criticisms of other ADAs, a Manhattan ADA expressed empathy for judges who are being pressured to incarcerate "all sorts" of defendants in the face of extremely overcrowded prisons.

Most of the family court judges said that they or the judges whom they supervise order jail either in extreme circumstances, such as clear violations and significant threats to battered women's safety, or upon the second violation. In the latter case, the judges sometimes impose a sentence upon the first violation and suspend execution of it. Two judges remarked that they do order jail upon the first violation, but that they are tougher than most other judges in this respect. Of the criminal court judges, three said that the judges in their borough set bail upon a violation. One judge, who said that he is considered tough, has a policy of ordering jail and setting high bail after one violation. Another said that judges may consider revoking bail if there are facts to support a violation.

#### *d. Recommendations for the Future*

We believe that jail should be ordered more frequently as a sanction for first-time order of protection violators. Given that there is great variety among judges, with "tougher" judges ordering jail upon the first violation and others using jail as a sanction only in extremely rare instances, we again suggest clear legislative guidelines that limit judicial discretion. Additionally, legislation should require criminal court judges to treat domestic violence as seriously as they do other comparable crimes when they are considering the use of jail as a sanction. Finally, judicial education should continue to focus on the escalating nature of domestic violence.

### *16. Educational Programs*

#### *a. Task Force Finding*

Although there was no explicit legal analysis of courts' ordering of educational programs for batterers, one witness quoted in the Task Force Report stated that judges rarely order rehabilitation programs for batterers.<sup>163</sup>

#### *b. Task Force Recommendation*

The Task Force recommended that judges be made aware of the

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162. See *supra* part II.C.3.

163. See The Task Force Report, *supra* note 3, at 44-45.

effectiveness of educational programs for batterers.<sup>164</sup>

c. *Evaluation*

After conducting our surveys and interviews, it became apparent to us that there are very few established educational programs for batterers in New York City. The existing programs have huge waiting lists and it is often impossible to gain admittance to them. From what we can gather, the major program for batterers is "Alternatives to Violence," which has chapters in Brooklyn and Staten Island.<sup>165</sup> Work is currently underway to establish a formal Alternatives to Violence program in Manhattan as well. The Alternatives to Violence program meets two hours per week for a total of thirteen to sixteen weeks. There is also a batterers' program at the Fordham Tremont Mental Health Center in the Bronx which will take referrals from any borough. It conducts a twelve week program which meets one and a half hours per week.<sup>166</sup>

The battered women's advocates were split in their answers to the question of whether judges encourage educational programs for batterers.<sup>167</sup> All but one of the family court judges said they rarely order educational programs for batterers, and most of the criminal court judges said they may make referrals under some circumstances. Some advocates and judges questioned the efficacy of batterer's programs, noting that they run for too short a time period and claiming that the programs may be focused in a way that excludes diverse racial and ethnic groups.

The advocates we surveyed complained of the severe lack of educational programs for batterers, the long waiting lines at existing programs, the fact that programs are much too short-term — a batterer who has acted one way his whole life cannot change within weeks or even months — and the scarcity of Asian bilingual educational or counseling programs for batterers. Several advocates claimed that attorneys rarely request such programs, due to all of the above problems. A couple of advocates noted that attorneys for batterers often ask judges to order some type of counseling as a "way out" of jail for their clients, especially in criminal court cases. One advocate

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164. *See id.* at 49.

165. Eligibility is not limited to residents of Brooklyn and Staten Island but people from other boroughs must travel there to receive treatment.

166. The Queens probation department used to run a batterers' program, but the program was closed down.

167. The reason for the inconsistencies in advocates' responses might be due to our failure to define educational programs, for instance to include only specialized programs for batterers and not other counseling programs.

was dismayed by the fact that even when judges order batterers to educational programs, they do not jail or otherwise punish those who fail to attend. Finally, an advocate asserted that supreme court judges order batterers to counseling programs less frequently than family and criminal court judges.

We received some borough-specific comments from advocates. For instance, one Brooklyn advocate said that in Brooklyn Criminal Court, batterers often are ordered to attend the Alternative to Violence Program if they qualify, or drug or alcohol rehabilitation programs. A couple of advocates who assist battered women in Brooklyn Family Court, however, said that judges in that court rarely, if ever, encourage batterers to enter educational programs. Staten Island advocates seemed to agree with one another that judges are open to, but may not themselves encourage, batterers to attend that borough's Alternative to Violence Program.<sup>168</sup>

With the exception of a Staten Island Family Court judge, all of the family court judges we surveyed stated that educational programs for batterers are not frequently utilized and that the availability of such programs is extremely limited. The Staten Island Family Court judge said that he tries to keep the Alternative to Violence Program in his borough full, and that he makes referrals depending both on VSA's input into the case and on whether the family is likely to get back together.

The criminal court judges, with the exception of one from the Bronx, seemed a bit more likely than the family court judges to refer batterers to educational programs. A Staten Island Criminal Court judge responded similarly to the Staten Island Family Court judge cited above. He also considers advice from VSA along with his sense of whether the relationship seems viable. A Brooklyn Criminal Court judge mentioned that batterers might be referred to the Alternatives to Violence Program or to the Brooklyn DA's Alcohol Program. A Criminal Court judge from Manhattan said that if the ADA on a case does not recommend jail, or if jail seems inappropriate, judges may order batterers to attend educational programs, although there is a severe shortage of such programs. Finally, a Queens Criminal Court judge commented that she favors educational programs for order of protection violators. She wishes such programs were more numerous and did not have such long waiting lists.

A few comments from individual judges are worthy of mention. In

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168. Queens advocates said that judges sometimes order batterers to attend the probation department's batterer's program. Since the time we conducted our surveys, however, that program has been terminated.

addition to pointing out the lack of state and local funding for educational programs, one family court judge thought that such programs may be neither appropriate nor efficacious. She summarized that these programs may allow judges to evade the responsibility of ordering jail, and that the programs themselves may be tailored to white middle-aged male batterers and therefore exclude different racial and ethnic groups. Another family court judge also had doubts about existing programs and emphasized the need for good behavioral modification programs to teach batterers different responses to stimuli. Finally, a criminal court judge suggested that there should be more feedback to judges concerning how particular batterers are doing in these programs.

*d. Recommendations for the Future*

We recommend further research into the efficacy of educational programs for batterers as well as how such programs can be improved. If batterers' programs are found to be beneficial, we recommend pushing for funding to increase their availability and to expand the duration of each session. In addition, alternative sources of funding should be explored; for example, a few advocates suggested that batterers pay for their own programs.<sup>169</sup> On the other hand, we do not think educational programs for batterers should be used as substitutes for findings of guilt and punishment, but only in conjunction with jail or some other significant sanction. Batterers' attorneys should not be able to request counseling for their clients as a "way out" of a jail sentence. Furthermore, judges should receive more feedback on the progress of the batterers whom they refer to programs. Finally, existing batterers' programs should be adjusted so that they reach more diverse racial, ethnic, socioeconomic and age groups.

*17. Custody and Visitation*

*a. Task Force Finding*

The Task Force found that judges frequently do not take battering into account when making custody and visitation determinations. This is due, at least in part, to their lack of appreciation of the extent to which children are harmed by witnessing or otherwise being exposed to the violence.<sup>170</sup> The detrimental effects on children caused

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169. One advocate suggested that batterers be fined for protective order violations and that the resulting money be used to fund educational programs. This scheme would provide financial backing for programs and might even encourage batterers to take the sessions more seriously.

170. See The Task Force Report, *supra* note 3, at 40-41.

by battering environments include severe psychological, somatic, and often physical harm. Furthermore, judges who do not consider domestic violence when making visitation determinations demonstrate a lack of seriousness about adult domestic violence, and their rulings endanger battered women.<sup>171</sup> As one person testified, when judges fail to award supervised visitation, battered women are placed in jeopardy of continued abuse.<sup>172</sup>

*b. Task Force Recommendation*

The Task Force recommended that legislation be enacted providing that abuse by one parent against the other should be considered as evidence of parental unfitness in custody determinations. The Task Force also urged that such evidence provide a basis for terminating visitation or requiring supervised visitation. Furthermore, this legislation was to permit visitation to occur in "supervised locations now utilized for children in placement. . . ."<sup>173</sup>

*c. Evaluation*<sup>174</sup>

The overwhelming majority of battered women's advocates we surveyed stated that judges often fail to consider a batterer's violent conduct towards his partner and its detrimental effect on children when making custody and visitation determinations.

Advocates largely believed that this is a serious problem area that needs attention. We heard comments such as, "This area sorely needs to be addressed," and, "This is where judges are the worst and where it's the most obvious that they don't get it."

A few advocates said that battered women have trouble obtaining and keeping custody of their children, and that judges view adult domestic violence and the interests of a child as unconnected. These advocates suggested legislation to establish a presumption of unfitness for the batterer parent.

Two Brooklyn advocates complained that when battered women go to family court for protective orders, judges often issue visitation orders allowing the batterer to spend time with the children. Another advocate was dismayed by the lack of supervised visitation programs in the city, and said that any existing programs have huge waiting lists. One advocate who works in both Manhattan and the Bronx

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171. *See id.* at 42-43.

172. *See id.* at 41.

173. *See id.* at 49. *See also infra* part II.C.24. (discussing the Task Force's recommendations for the legislature).

174. *See also infra* part II.C.1. (discussing the need for increased judicial awareness of the impact of adult domestic violence on children in the home).

claimed that this problem is especially bad in the Bronx, whereas the situation in Manhattan has improved somewhat. She added that family court judges are more sensitive to these issues than criminal court judges. On the other hand, three advocates did think that judges always consider the effects of adult domestic violence on children in custody and visitation determinations.

Although we did not survey judges on this question, one family court judge commented to us that courts have not considered seriously the interaction of domestic violence and custody and visitation issues, and that this area needs to be addressed more thoroughly.

*d. Recommendations for the Future*

As judicial failure to consider a batterer's violent conduct towards his partner and its detrimental effect on the children seems to be a major, persistent problem area, it should be emphasized in judicial training programs. Furthermore, forces must be mobilized to continue pushing for legislation that would presume the batterer parent unfit for custody and that would require supervised visitation where there is evidence of battering.<sup>175</sup> Finally, more funding is needed to support supervised visitation programs in New York City.

## SELF-DEFENSE

*18. Judges' Awareness*

*a. Task Force Finding*

The Task Force found that women who defend themselves against battering face compounded problems. A professor quoted in the Task Force Report addressed three kinds of gender discrimination experienced by women acting in self-defense: these women are discredited because of their failure to abide by the norms of "appropriate female behavior"; they are considered responsible for the violence instead of being seen as victims/survivors acting in self-defense; and they are blamed for not leaving the batterer in the face of ongoing violence.<sup>176</sup>

*b. Task Force Recommendation*

The Task Force recommended that judges and other professionals in the court system be made aware of the issues surrounding battered women's self-defense against the men who abuse them.<sup>177</sup>

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175. See also *infra* part II.C.24.

176. See The Task Force Report, *supra* note 3, at 46-47.

177. See *id.* at 49.

c. *Evaluation*

Many advocates and judges whom we surveyed did not think they were experienced enough with cases involving battered women's self-defense to answer our survey question in this area. Of those advocates who responded (a little over half), almost all thought that judges are not adequately informed about issues of self-defense and justification as they pertain to battered women. The four judges who responded claimed that such issues are considered seriously and that judges' awareness in this area has increased.<sup>178</sup>

Advocates elaborated that the lack of judicial understanding in this area is a serious problem, that more training is needed, that only a handful of judges are adequately informed about the issues, and that there is an extreme shortage of attorneys doing self-defense work. A few advocates asserted that in criminal court, judges sometimes are aware of these issues, but that in instances where battered women fight back in the civil sphere, it is rare that judges are adequately informed.

d. *Recommendations for the Future*

We recommend more training, for both criminal and civil judges, on issues of self-defense and justification as they pertain to battered women. More attorneys must be funded and encouraged to take on battered women's self-defense work.<sup>179</sup> Increased support services should be available for battered women from the moment they first appear in the process so as to prevent them from ending up in life threatening situations in which they have to resort to violence to defend themselves and their children.<sup>180</sup>

## DISTRICT ATTORNEYS<sup>181</sup>

19. *Prosecution Units*

a. *Task Force Finding*

The Task Force made no specific finding on the structure of the various DAs' offices for handling domestic violence cases.

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178. As homicide cases are often heard in supreme court, we regret that we had neither the time nor the resources to survey supreme court judges as well as more advocates who work in that court. Additionally, we regret that we did not press both family and criminal court judges to elaborate on their experiences with self-defense issues as they arise in these courts.

179. See *supra* part II.C.11a. for additional recommendations.

180. See also *infra* parts II.D.3, II.D.4.

181. This section describes many of the practices with respect to domestic violence cases of DAs' offices in the five boroughs. Some of the information presented below is



*b. Task Force Recommendation*

The Task Force recommended that DAs in jurisdictions with a sufficient volume of domestic violence cases establish special prosecution units for these cases.<sup>182</sup>

*c. Evaluation*

Although DAs' offices in each of the five boroughs of New York City have established special units that handle domestic violence cases, only Brooklyn, as of the time of our study, had a unit that dealt exclusively with these cases. Assuming that the Task Force recommendation intended that these "special" units be devoted solely to domestic violence cases, Brooklyn was the only borough in full compliance at the time. However, since we conducted our surveys and interviews in early 1991, Manhattan has joined Brooklyn in complying with the recommendation by establishing a separate unit that handles only domestic violence cases. The following discussion should be read with the understanding that the treatment of domestic violence cases by the Manhattan DA's Office may have changed and improved in the past months.

The Brooklyn Domestic Violence Unit, established in March, 1990, is headed by Bureau Chief Julie Martinez and includes approximately nine ADAs and six support staff who handle only adult domestic violence cases. The office defines domestic violence to include all cases in which the parties have lived together or have a child in common; thus, it encompasses abuse among married couples, unmarried individuals living together, and elderly people and their adult children. The ADAs in Brooklyn's Domestic Violence Unit handle only domestic violence cases but have rotated throughout the DA's office, working on a range of cases, for a year and a half prior to joining the unit.

The other four boroughs have prosecution units predating the Task Force Report<sup>183</sup> that are all designed to improve the treatment of

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likely to be outdated by the time this survey is published because the practices and policies of these offices are in constant flux.

182. See The Task Force Report, *supra* note 3, at 49.

183. Again, this should be read with the understanding that since the time of our research, the Manhattan office established a new, separate domestic violence unit.

The four units discussed here were established in or about (the change was often gradual) the following years and are headed by the following bureau chiefs: Bronx's Domestic Violence, Juvenile Offenders, and Sex Crimes Bureau, established in 1981 and currently headed by Nancy Borko; Manhattan's Juvenile, Domestic Violence, and Child Abuse Unit, initiated in 1982 and run by Mary O'Donoghue until the 1991 creation of a separate adult domestic violence unit, headed by Elizabeth Loewy; Staten Island's Sensitive Abuse and Assault Family Unit, established in 1984 and currently headed by Judy Waldman; and Queens' District Attorney's Office Special Victims Bureau, initiated in 1978 and run

cases involving "special victims."<sup>184</sup> The crimes that comprise these units include domestic violence, elderly abuse, child abuse, juvenile crimes, and sex crimes — only the Manhattan unit does not include sex crimes.<sup>185</sup> The units seek out ADAs who are interested in these areas and train them in the sensitivity and other skills necessary to work with such victims. The size of these bureaus ranges from about five ADAs in Staten Island to approximately fifty in Manhattan.

In spite of their common goals and structures, these four bureaus vary according to whether the ADAs handle only cases in the unit or other cases as well. In both Queens and the Bronx, ADAs handle cases in the special units exclusively. In Staten Island, ADAs mainly handle cases from the unit but also may work on other cases. Manhattan is the only borough which prevents ADAs from handling only cases in the special crimes unit and requires them to take about half their cases from a regular trial bureau.<sup>186</sup>

The ADAs we surveyed pointed out the pros and cons of specialization. When ADAs handle only domestic violence cases, they become more sensitized to the concerns of battered women and may gain more knowledge about the legal and strategic decisions that must be made in the course of representation. On the other hand, Manhattan forbids full specialization for fear that ADAs will "burn out" on domestic violence cases because such cases are so emotional. The Manhattan special unit believes that although prosecutors can become very frustrated when battered women refuse to cooperate, the frustration may dissipate somewhat if the ADAs work on other cases as well. Furthermore, the Queens DA's Office mentioned that special units can lead to "victim-hating." This phenomenon was attributed to the fact that the special crimes units are "always under-resourced and going against the tide" and that it is tempting for frustrated ADAs to take out their anger on victims, particularly when the victims are not willing to fight for themselves. The Queens special unit

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by Alice Vachss until November, 1991. The Queens' unit was run by acting director, Kathy Lomuscio, from November, 1991 until January, 1992 and was to have a new permanent director as of January, 1992.

184. Generally, when we use the term "victims," we refer either to victims of all crimes or to those of the special crimes that are grouped together with domestic violence in these DAs' units. When we refer to the victims of domestic violence, we use either of the terms "battered women" or "victims/survivors."

185. Furthermore, since March, 1991, the Manhattan office has formally separated child-related crimes from adult domestic violence. Mary O'Donaghue still runs the unit which is now titled "Child Abuse and Juvenile Crimes." Elizabeth Loewy heads the new Domestic Violence Unit which handles only cases of adult abuse.

186. This now applies both to ADAs working in the Child Abuse and Juvenile Crimes Unit and to those working in the Domestic Violence Unit.

emphasized that ADAs who work with battered women must overcome this tendency to hate the victims or they should be encouraged to move on to another job.

*d. Recommendations for the Future*

We recommend that all boroughs comply with the Task Force recommendation by creating units that handle only domestic violence cases. It is our understanding that the Task Force researched this topic and concluded that such specialization is necessary in order for domestic violence cases to obtain the serious attention that they require. On the other hand, research should be undertaken regarding the unfortunate phenomenon of victim-hating by ADAs within these specialized units. For example, is such ADA frustration better dissipated by less specialization or by further sensitivity training?

*20. Training*

*a. Task Force Finding*

The Task Force findings with respect to ADAs are included by implication in the findings and recommendations that address "other professionals in the court system."<sup>187</sup>

*b. Task Force Recommendation*

The Task Force recommended that ADAs receive training regarding the nature of domestic violence, the characteristics of its victims/survivors and offenders, and its impact on children in the home. The Task Force also suggested training in the particular areas recommended by the Task Force for judges and court personnel.<sup>188</sup>

*c. Evaluation*

For the most part, the battered women's advocates thought that ADAs are trained in the issues surrounding domestic violence sometimes adequately, at best.<sup>189</sup> The DAs' units handling domestic violence cases in the five boroughs all have special training for ADAs. Although the training programs of the five units include both orientation and periodic follow-ups, they vary in terms of style and frequency. Furthermore, the boroughs provide more training on child

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187. See Task Force Recommendations, *supra* parts II.C.1, II.C.2, II.C.6, II.C.9, II.C.12, and II.C.18.

188. See The Task Force Report, *supra* note 3, at 49.

189. Several advocates discussed variances among the boroughs in their handling of domestic violence cases. See *infra* part II.C.23c.

abuse than on adult domestic violence.<sup>190</sup>

Several themes came up in our discussions with a number of advocates. For example, advocates stated that ADAs are frequently frustrated with battered women for dropping charges.<sup>191</sup> Advocates recommended training to encourage ADAs to see domestic violence cases from the perspective of battered women and thus to view success in terms of the needs of these victims/survivors rather than in terms of winning cases.

Another theme involved advocates' sense that ADAs do not think of domestic violence as a "real" crime, like murder or drug trafficking. Advocates believed that ADAs working on domestic violence cases are not viewed with as much respect as those working on other cases. A third point raised by several advocates was that DAs' offices provide more training on issues of child abuse than on adult domestic violence, and that these offices view child abuse as a much more serious crime. This emphasis on child abuse over adult domestic violence, advocates noted, can have negative implications for battered women whose abusers are also accused of battering the children. Finally, a few advocates mentioned that although ADAs often are inadequately trained in the area of domestic violence, some ADAs think that they are well-informed and therefore resist additional training.

In each of the five boroughs, the units that handle domestic violence cases have special training for ADAs addressing domestic violence as well as the other areas, such as child abuse and sex crimes, that the units cover. The training generally includes an in-house orientation as well as some periodic, ongoing sessions. The units vary in terms of the follow-up training they provide. Some focus on periodic training, and others emphasize the importance of learning through practice or apprenticeship.

All of the units, and especially those in Brooklyn, the Bronx, and Queens, invite outside speakers to visit their bureaus periodically in order to sensitize and educate the ADAs. These speakers include experts from various segments of the domestic violence field including police, batterers' treatment programs, victim assistance programs, coalitions of concerned advocates, psychologists, and doctors.<sup>192</sup> Staten

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190. Brooklyn's Domestic Violence Unit handles only adult abuse cases so it is not included in this trend. Additionally, since the Manhattan office created a separate domestic violence unit after we conducted our study, we are unsure about the current training provided by that office.

191. See *infra* part II.D.2.

192. The following people, among others, have conducted such ADA training sessions: Detective Lydia Martinez from the New York Police Department; John Aponte from VSA's Alternatives to Violence program for batterers; other VSA representatives; and

Island finds it most beneficial to send its ADAs to outside training programs rather than to conduct its own formal education.

All of the units use materials to educate their ADAs. Manhattan and Brooklyn have in-house training materials. The Bronx has a whole library of materials. Queens and Staten Island have not prepared specific materials for training; instead, Alice Vachss herself conducts the training in Queens and sometimes prepares materials for specific sessions, and the ADAs in Staten Island receive materials during their outside training courses.

Finally, the bureau chiefs of all the units except Brooklyn and the new Manhattan bureau, which deal only with adult domestic violence, admitted that they have more training on child abuse than on adult battering. The chiefs concurred that this imbalance was necessary because child abuse requires more training than adult domestic violence. However, they differed in their analyses of what aspect of child abuse necessitates more education. Nancy Borko and Judy Waldman thought that ADAs need to learn unique skills in order to deal with child victims. Alice Vachss, on the other hand, emphasized that child abuse involves more technical legal issues than adult domestic violence, but that adult abuse requires more social science training.

#### *d. Recommendations for the Future*

Sensitivity training should be instituted to confront the problem of ADA frustrations with battered women for dropping charges.<sup>193</sup> DAs' offices should explore ways to ensure both that ADAs working on domestic violence cases are deemed as worthy as those working in other areas, and that domestic violence is viewed as just as "real" as other crimes. More training may be needed on adult domestic violence in relation to child abuse in order to prevent the detrimental consequences for battered women discussed by the advocates. Furthermore, certain units might need more ongoing domestic violence training for ADAs in order to bring them up to par with the other DAs' offices.<sup>194</sup> Finally, the DAs' offices might benefit from discussing with one another their experiences with different types of training methods.

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Mary Haviland, who used to head the Coalition for Criminal Justice Reform for Battered Women (which is now named the Coalition of Battered Women's Advocates).

193. See *infra* part II.D.2 (discussing such frustrations).

194. We are not prepared to suggest which units have the most developed training programs and which need to expand their programs because the responses we received in this survey area were somewhat ambiguous.

## 21. *Support Services*

### a. *Task Force Finding*

The Task Force made no specific assessment of the nature and scope of support services currently provided by DAs' offices.

### b. *Task Force Recommendation*

The recommendation of the Task Force concerning support services was that DAs' offices provide paralegal and social work support for battered women, or that they provide battered women with a link to existing community services to ensure that their social service and safety needs are being met.<sup>195</sup>

### c. *Evaluation*<sup>196</sup>

Each of the special victims units, except for the one in the Bronx, which relies completely on outside social work assistance, has at least one in-house social worker or counselor who provides various services to victims of all the crimes handled by the units. These social workers generally provide services which include coordinating outreach to victims, encouraging victims to prosecute, providing car services to help victims get to court, helping victims relocate,<sup>197</sup> and making referrals to other services. In addition to certain in-house referral services,<sup>198</sup> the special units rely, to varying degrees, on resources provided to the DAs' offices by organizations such as VSA, which operates citywide, and by various victims' assistance programs which are locally based.

The size and structure of the paralegal and social work support for victims varies among the five boroughs. Manhattan has perhaps the most resources, with an in-house staff that includes one full-time counselor who has provided social services since January, 1988, three full-time employees who counsel victims for the entire DA's office, and several paralegals. The Manhattan DA's Office also has a large Witness Aid Unit which provides support for victims and witnesses of all crimes.<sup>199</sup> However, the extensive services provided by the Man-

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195. See The Task Force Report, *supra* note 3, at 49.

196. See *infra* part II.D.4. (discussing survey respondents' complaints concerning insufficient resources at the DAs' offices).

197. Nancy Borko pointed out that victim/survivor relocation is a "terrible problem" in New York City because of the housing shortage.

198. For example, in making referrals, the social workers rely in Brooklyn upon specific referral pamphlets prepared by the unit and in Manhattan and Queens upon referral files.

199. Manhattan's new Domestic Violence Unit has this same structure for support services. In addition, Elizabeth Loewy, the new bureau chief, has asked her unit's full-

hattan DA's Office must be considered in the context of a borough that has more victims than any other borough.

Brooklyn and Staten Island each have one in-house social worker. The Brooklyn position, which was created in April, 1990, involves both counseling and advocacy components.<sup>200</sup> Staten Island's social worker doubles as a paralegal, filling a position that was created in 1989. Queens also has an in-house social worker position, but it has been unfilled since late 1990.<sup>201</sup> The Queens bureau currently has on staff a number of paralegals and a part-time counselor who is a priest<sup>202</sup> but who works without his clerical collar. The priest assists in counseling and referral for battered women when the violence is not serious and they do not want to press charges. Project Contact, a program sponsored by the Coalition of Battered Women's Advocates and the Queens' DA's Office, has provided numerous support services and referrals for Queens' victims/survivors of domestic violence since June 10, 1991.<sup>203</sup>

Finally, the Bronx special unit does not have an in-house social worker, but relies on the Crime-Victims Assistance Unit and VSA, which provide support for all victims who come to the Bronx DA's Office and which make referrals to various counseling agencies.

#### *d. Recommendations for the Future*

DAs' offices should examine their support services periodically to ensure that they are meeting the needs of battered women. Continuing consultations with outside experts and information sharing among the offices on the issue of provision of support services for battered women might prove very useful.

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time counselor to look into the possibility of establishing a counseling program for batterers in Manhattan.

200. Brooklyn also has a crime-victim counseling unit for supreme court cases. Unfortunately, this service is provided primarily to felony victims and most domestic violence cases are charged as misdemeanors. However, VSA provides counseling and other services to misdemeanor victims in Brooklyn.

201. Alice Vachss said that she originally interviewed almost fifty people for the job but could not find a social worker who was comfortable with the idea of prosecuting and incarcerating batterers.

202. Alice Vachss pointed out that a large portion of the population in Queens is Catholic.

203. The services provided by Project Contact vary depending on the individual case. However, they include the provision of information about the criminal justice system, crisis intervention, information and referrals to support services, support groups, and advocacy and translation. Project Contact currently has one paid staff member and it is recruiting volunteers.

## 22. *Orders of Protection*

### a. *Task Force Finding*

The Task Force made no specific finding regarding whether ADAs request orders of protection when necessary.

### b. *Task Force Recommendation*

The Task Force recommended that ADAs request protective orders when a prosecution is pending or upon a conviction.<sup>204</sup>

### c. *Evaluation*

Most of the battered women's advocates asserted that ADAs generally do request orders of protection when there is a prosecution pending or upon a conviction. This was not viewed by advocates as a major problem area. The bureau chiefs of the special victims units in the five boroughs confirmed that the ADAs working with them request orders of protection as a matter of course.

There were, however, several criticisms worthy of mention. A few advocates noted that ADAs are very reluctant to assist domestic violence civilian complainants in obtaining orders of protection if these complainants do not have physical bruises.<sup>205</sup> One Staten Island advocate asserted that ADAs there often fail to request orders, and she attributed this to carelessness. She said that VSA is constantly thinking of ways to remind ADAs to request orders. One Manhattan advocate said that sometimes ADAs mail orders to battered women instead of asking them to sit in the courtroom while the attorney obtains the order. Two advocates noted that although ADAs often request protective orders when a prosecution is pending or upon a conviction, they do not bring enough cases to these points.

ADAs in the five special victims units are instructed to request orders of protection in virtually every case. For example, Manhattan ADAs request protective orders in about ninety-eight percent of their cases; the other two percent, we were told, are unlikely to attain standard orders of protection because they involve batterers who are incarcerated or who have filed cross-complaints alleging that they are battered.<sup>206</sup> Apparently, these policies of always requesting orders of protection are long-standing and were adopted by the bureaus as soon

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204. See The Task Force Report, *supra* note 3, at 49.

205. This criticism was voiced by Court Dispute Referral Center directors and by Staten Island advocates. See also parts II.C.2, II.C.5.

206. The new Domestic Violence Bureau Chief, Elizabeth Loewy, stated that the ADAs in her unit always request orders of protection, especially when bail is low or is not set at all.



as they were allowed to do so in criminal court.<sup>207</sup>

*d. Recommendations for the Future*

Although ADAs generally request orders of protection where necessary, they should investigate the problem areas noted by the advocates. For instance, ADAs should ensure that battered women receive their orders in court, and should assist domestic violence civilian complainants in obtaining orders even if they have no physical injuries. Furthermore, Staten Island ADAs should ensure that they are not careless about requesting orders.<sup>208</sup>

*23. Other Assessments*

*a. & b. Task Force Finding and Recommendation*

The Task Force's assessment of the adequacy with which ADAs prosecute domestic violence cases is implied in its findings and recommendations with respect to the four specific areas discussed above.<sup>209</sup> However, because our surveys included broader questions concerning the adequacy of ADA prosecution, they evoked responses which do not fit precisely within the above areas. In Section 23a, we discuss assessments of ADAs' prosecution of domestic violence cases; in Section 23b, we try to approximate the time it takes before ADAs have their first contacts with battered women; and in Section 23c, we set forth comparative assessments of the DAs' offices of the five boroughs in terms of their handling of domestic violence cases.

*23a. Adequacy of Prosecution*

*c. Evaluation*

Although battered women's advocates were split on the question of whether ADAs adequately prosecute domestic violence cases, a slightly larger number of advocates had critical responses.<sup>210</sup> ADAs, in evaluating themselves, pointed to significant progress in their handling of domestic violence cases. In this section we focus particularly

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207. See N.Y. CRIM. PROC. LAW § 530.12 (McKinney 1984 & Supp. 1991) (providing for orders of protection in criminal court). This law was adopted in 1977.

208. Additionally, one advocate suggested that when criminal cases are at pretrial stages or subject to adjournments, protective orders should last for longer periods of time and complainants should not have to come each time the case is on the calendar to sit and wait for their orders.

209. See *supra* parts II.C.19-22.

210. We did not survey judges on the adequacy of ADAs' prosecution of domestic violence cases; however, one criminal court judge urged ADAs to take these cases more seriously, to strengthen their domestic violence bureaus, and to improve the quality of their advocacy.

on the possibility that ADAs undercharge domestic violence cases and on the question of whether the present assault and battery laws capture the seriousness of domestic violence crimes.

The advocates who voiced criticisms pointed out several problems with current prosecution practices. First, too much time passes before ADAs make contact with battered women.<sup>211</sup> Second, ADAs tend to reduce or minimize charges in domestic violence cases.<sup>212</sup> Third, the history of violence and the seriousness of the threats are not captured by the present laws and procedures.<sup>213</sup> Fourth, misdemeanors generally are not taken seriously by ADAs, and domestic violence cases too often tend to fall into the misdemeanor category.<sup>214</sup> Fifth, ADAs are interested in winning cases and domestic violence cases do not allow them to fulfill this goal. And sixth, "batterers get off with nothing."

Several survey respondents elaborated on their complaints that our criminal laws do not capture the seriousness of many domestic violence crimes. Advocates complained that New York State law does not adequately reflect the history and chronicity of battering, but rather is geared toward addressing isolated events. One Judicial Committee member suggested that sentencing should take into account the pattern and practice of violence over time. A VSA advocate

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211. See *supra* part II.C.23b.

212. One advocate was particularly critical of the Manhattan DA's Office for its reduction of charges. She gave the example of the Damian Pizarro case in which a battered woman ran away from her abuser, only to be kidnapped by him at knifepoint. For three days he beat, raped, sodomized, and starved her. After the abuser was arrested and charged with rape, kidnapping, and assault, the Chief of the Manhattan Sex Crimes Unit reduced the charges to assault in the 3rd degree, dismissing the rape and kidnapping felonies. See Bob Herbert, *Two bad cases, same bad result*, DAILY NEWS, March 31, 1988, at 12; Philip Russo, *Did she murder him, or was it self-defense?*, THE STATEN ISLAND ADVANCE, Feb. 28, 1988, at A6; Howard Manly, *Murder Trial Begins For Battered Woman*, NEWSDAY, March 21, 1988, at 2.

213. Additionally, one advocate complained about the fact that batterers' records are not kept for adjournment contemplating dismissal offenses where the cases have been dropped after a six month adjournment. If the same battered woman goes back to court because of another violent incident, there is no record of the past abuse.

A court may, with the consent of both parties, order that an action be "adjourned in contemplation of dismissal" upon or after arraignment in a local criminal court. Upon issuing such an order, which adjourns the action with "a view to ultimate dismissal . . . the court must release the defendant on his own recognizance." In conjunction with an adjournment in contemplation of dismissal, the court may issue a temporary order of protection. See N.Y. CRIM. PROC. LAW § 170.55 (McKinney 1982 & Supp. 1991).

If the prosecutor applies to the court within six months of the adjournment in contemplation of dismissal order, the court may restore the case to the calendar upon a determination that dismissal would not be in the interests of justice. If the case is not restored to the calendar within the six month period, it is deemed dismissed by the court. See *id.*

214. One advocate noted that ADAs sometimes use their discretion to characterize these cases as misdemeanors since misdemeanors are easier to win.

asserted that instead of creating a separate law for domestic violence, repeat instances of harm should be an aggravating factor for all crimes.

ADAs from all five boroughs thought that their offices had significantly improved their handling of domestic violence cases. Furthermore, ADAs in Staten Island, Manhattan, and the Bronx responded to the battered women's advocates' critiques in part by returning the criticisms. For instance, one ADA urged that battered women's advocates become more familiar with the law under which ADAs make their charging decisions, and especially with the fact that these cases must be treated like all other cases. This ADA also stressed that advocates should become more aware of the bind in which ADAs are placed when battered women refuse to go forward and press charges, as well as the ADA frustration that results from such hesitancy. She further mentioned that in the past ten years, outsiders have looked to ADAs handling domestic violence cases to provide social worker services that are not part of a lawyer's job; she said that she and other ADAs have agreed to perform these services up until a certain point, but that the demands placed on them have greatly exceeded their capacity. Another ADA mentioned that outsiders must come to understand the role that ADAs play in our criminal justice system; in particular, she stressed that ADAs prosecute on behalf of all the people of their county and not only individual victims.

We asked ADAs to respond to the claims of battered women's advocates that they undercharge domestic violence cases. ADAs from Manhattan, Brooklyn, the Bronx, and Staten Island emphasized that they treat domestic violence cases like all other cases for charging purposes.<sup>215</sup> The four boroughs use slightly different criteria in making the charging decision, but in general, they all consider: the seriousness of the injury, the probability of winning a case, the defendant's criminal record and history of abuse, and the willingness of the battered woman to press charges.

We also asked ADAs whether they would favor a separate statutory provision that might more effectively reflect the realities of domestic violence than do the current assault and battery statutes. The bureau chiefs from all the special units, except Mary O'Donaghue from Manhattan (who did not answer this question) and Alice Vachss from Queens, would not support separate domestic violence legislation. The Brooklyn, Bronx, and Staten Island chiefs emphasized the danger of further decriminalizing or devaluing domestic violence if it

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215. Alice Vachss of Queens did not answer this question; however, see below for her critique of the current system that treats domestic violence like all other crimes.

were tagged as a separate, women's crime. Nancy Borko of the Bronx also stressed the inevitable compromise that inheres in the legislative process — such give and take might lead to a redefinition of domestic violence, perhaps even one that further narrows the crime.

Several ADAs suggested that even if there is no separate law for domestic violence, the current criminal laws should be amended to take into account issues particular to this crime. A Manhattan ADA asserted that New York case law interprets the statutory definition of felony<sup>216</sup> so as to require too much physical injury. This ADA argued that the courts should lower the threshold required not only for domestic violence but for all felonies. A Brooklyn ADA suggested that legislation be enacted to allow all cases with ongoing patterns of abuse, or involving many arrests or misdemeanor charges, to rise to the felony level. This ADA also recommended both that domestic violence cases be labelled so they can be traced over time, and that dismissals of battering cases include explanations, so as to distinguish between the battered woman's refusal to prosecute and a case's lack of merit. The Staten Island chief found it troubling that current laws ignore the psychological injury suffered by battered women, injury which she feels is often worse than that caused by physical violence.

Although they did not favor a separate code section for domestic violence, the Brooklyn and Staten Island chiefs advocated reforms in sentencing law. Julie Martinez of Brooklyn suggested that assault convictions should lead to longer sentences, especially when compared with crimes such as robberies that do not result in harm to any individuals. Judy Waldman of Staten Island argued that sentencing laws are not flexible and creative enough, which may lead ADAs to undercharge and judges and juries to underconvict.

Queens Special Victims Bureau Chief Alice Vachss is the only ADA we surveyed who favored a separate law for domestic violence. Vachss stressed that current assault and battery laws are inadequate for charging domestic violence cases because they are designed for one-time stranger assaults and not for ongoing domestic violence. Unlike the other bureau chiefs, she stated that the advantages of a new law focusing on the issues particular to domestic violence, such as chronicity and dangerousness, would outweigh the danger of further marginalizing crimes against women.

Vachss emphasized that the problem with the current criminal system is that cases are valued in terms of their winning potential; thus,

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216. The New York Penal Code defines a felony as "an offense for which a sentence to a term of imprisonment in excess of one year may be imposed." See N.Y. PENAL LAW § 10.00 (McKinney 1988).

domestic violence cases are considered worthless because of the "overwhelming likelihood" that the battered women will not press charges.<sup>217</sup> In order to address these concerns, the Queens DA's Office has proposed legislation that would create a separate domestic violence section of the penal code.<sup>218</sup>

*d. Recommendations for the Future*

ADAs should take domestic violence cases more seriously: they should charge all cases that could be felonies as felonies and prosecute misdemeanors to the best of their abilities. In addition, the legislature should amend the state's assault and battery laws and/or DAs' offices should alter their procedures to ensure that the history, chronicity and other important characteristics of domestic violence crimes are given serious attention and weight.

*23b. First Contacts with Battered Women*

*c. Evaluation*

In light of advocates' significant concern that ADAs do not make

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217. Vachss further pointed out that this emphasis on winning even in the face of battered women's hesitancy to pursue their claims leads to considerable victim-blaming as well as a "tremendous" sympathy for batterers.

218. See Draft of Proposed Legislation Concerning Domestic Violence, submitted by John J. Santucci, District Attorney, Queens County, Article 121, Family Offenses (on file with Alice Vachss, Bureau Chief, Special Victims Bureau of the Queens District Attorney). The Queens proposal for a separate domestic violence crime defines family members as persons who are related by blood or marriage, who have children in common, or who have shared the same domicile for a period of six months or more. It then defines acts of violence and injuries in terms that focus on the particular nature of domestic violence as distinct from other crimes. (For example, acts of violence are defined to include assaults "by open hand, fist, foot, teeth, or any other body part" and injuries to include "black and blue marks; welt marks; a black eye; substantial soreness; a bite mark; a concussion; sutures; burns . . .") *Id.*

The legislation goes on to present three classes of domestic violence crimes. Domestic violence, which is classified as a Class A misdemeanor, would occur when one family member commits an act of violence against another "with an intent to cause injury." See *id.* § 121.05. Aggravated domestic violence, a Class E felony, would include acts of domestic violence committed by a person who has one of several characteristics, such as the following: he has previously committed a similar act, whether or not he was prosecuted or convicted; his act of violence was accompanied by significant threats; or he committed the violence in spite of an order of protection. See *id.* § 121.10 for these and other possible characteristics of batterers that would raise an assault from the misdemeanor of domestic violence to the felony of aggravated domestic violence. Finally, the proposed legislation defines extreme domestic violence, a Class C felony, to include a more considerable history of abuse, such as at least three assaults in three years, or an assault that leads to serious burns, or an act of restraining a family member for a period of more than two hours and committing violent acts, or an aggravated assault on a child under ten years old. See *id.* § 121.15.

initial contact with battered women quickly enough, we addressed this issue in our ADA survey.

ADAs in New York must contact felony victims within 120 hours of arrest in cases where the alleged assailant is incarcerated. This short deadline is imposed by the requirement that ADAs indict felonies within 120 hours of arrest or release from jail ("the 180-80 day").<sup>219</sup> Indicting domestic violence felonies usually requires a corroborating statement from the battered woman because there are often no other witnesses. Therefore, ADAs must contact battered women within the statutory period.

ADAs in Manhattan and Brooklyn asserted that they attempt to contact domestic violence felony victims/survivors by telephone within hours of the arrest.<sup>220</sup> However, many battered women do not have phones so ADAs must contact them through letter or subpoena, which can take the full statutory period. In cases of serious physical injury in Brooklyn, the 24-hour investigations bureau will immediately seek out the women in the hospital and obtain statements from the defendants. Alice Vachss of Queens believes that it is vital for ADAs to reach battered women during the immediate period between arrest and arraignment when they face considerable danger. In an effort to address this problem, her bureau is currently conducting a joint project with the Coalition of Battered Women's Advocates to establish a system whereby ADAs meet with victims/survivors before arraignment.

In misdemeanor cases, which include the majority of domestic violence matters, ADAs are not under the same 180-80 day deadline. It was difficult to ascertain how long it takes ADAs to make initial contact with misdemeanor victims/survivors since the answer seemed to depend on factors specific to individual cases as well as on practices particular to the different boroughs. It seems that ADAs do not have the time or resources to seek out misdemeanor victims who are not easy to locate. One Manhattan ADA recommended that to ease the process of locating battered women, police be required to give all victims/survivors a card with the ADAs' or Witness Aid's phone number on it, requesting battered women to call within a certain period of time.<sup>221</sup>

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219. See N.Y. CRIM. PROC. LAW § 180.80 (McKinney 1982 & Supp. 1991).

220. The Manhattan DA's Office has a new video screening device that allows ADAs to see victims while they interview them without making the victims come all the way down to the complaint room.

221. In the Manhattan DA's Office, which is not "vertical" with respect to misdemeanors, Witness Aid tries to track down such victims.

Prosecution units are "vertical" when one ADA stays with a case from intake at the

The Bronx is unique among the counties in requiring victims of all crimes to go to the complaint room.<sup>222</sup> This feature allows Bronx ADAs to contact battered women more quickly than is possible in other boroughs.

*d. Recommendations for the Future*

DAs' offices should examine ways to shorten the time it takes to contact battered women initially.

*23c. Comparing Boroughs*

*c. Evaluation*

We asked advocates and ADAs to give us their perceptions of how DAs' offices in the five boroughs compare with respect to adequacy of training and prosecution. From the advocates who thought they were knowledgeable enough to respond to this question — and it should be kept in mind that this was only about one third of all the advocates we surveyed — we received the following answers.

The most negative responses we received from advocates concerned the Manhattan DA's office. However, it is important to note that these criticisms may no longer apply given the recent establishment in Manhattan of a separate unit that handles only domestic violence cases. Three advocates were adamant in saying that Manhattan has "the worst [and] the least sophisticated" unit handling domestic violence cases. They continued that Manhattan ADAs are the most concerned with winning cases, thinking of themselves as the "creme de la creme" because of their success in "big" cases (such as homicide), while caring little about domestic violence cases and battered women's concerns. Advocates also stated that Manhattan ADAs are not amenable to assistance from battered women's advocates and that these ADAs have an extremely high dismissal rate. On the other hand, two advocates said that although there are serious problems in the Manhattan office's treatment of domestic violence cases, that office definitely is not the worst when compared to the other boroughs.

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complaint room until the case is disposed of through a plea or trial. When units are not vertical, as with Manhattan's misdemeanors, the ADA who initiates a case in the complaint room does not stay on the case. Instead, another ADA is later assigned to take over. Therefore, there is no ADA on the case to contact the victim shortly after the arrest. This problem is particularly acute in cities like New York where ADAs are overloaded with cases.

222. However, the Bronx DA's Office makes an exception to this requirement in cases involving exigent circumstances that prevent victims from going to the complaint room, as in cases where victims are hospitalized or cannot find a babysitter.

Finally, one advocate described Manhattan ADAs as "fairly good" with respect to domestic violence issues.

Most of the advocates who differentiated among boroughs praised the Bronx office as the best of the five. Two advocates thought that the Bronx ADAs were the best and most trained in domestic violence. A third advocate said that there are strong women attorneys in the Bronx office and that this office was among the best of the five boroughs. Another advocate claimed that the Bronx ADAs, along with those from Brooklyn and Queens, "really try hard."

The Brooklyn Domestic Violence Unit was average to above average. Two advocates complimented Brooklyn ADAs for their willingness to work with battered women's advocates to bring about improvements. Two other advocates said that Brooklyn ADAs "really try hard." Additionally, two advocates rated the Brooklyn Domestic Violence Unit as not the best, yet not the worst of the boroughs. A few advocates commented that as a result of the establishment of a special domestic violence bureau in Brooklyn, these cases are being taken more seriously in the Brooklyn Criminal Court than they had been previously.

The advocates who commented on this issue considered the Queens unit below average to average. One advocate complimented the head of the sex crimes unit, Alice Vachss, for her work but went on to say that unfortunately, Vachss does not have the power to sensitize all the ADAs working under her. While one advocate stated that the ADAs in the Queens office "really try hard," another said that the ADAs there are "horribly trained" and a third, that the Queens and Staten Island offices are the worst with respect to domestic violence cases. Another advocate said that she is only familiar with the work of two of the ADAs in the Queens unit, and that they are not sufficiently aware of domestic violence issues.

Unfortunately, most of the advocates we surveyed had little sense of the strengths and weaknesses of the Staten Island unit. Several advocates said that although they had no objective information, they assume that Staten Island is "years behind" the other boroughs. One Staten Island advocate spoke more favorably about her borough's office, and said that the ADAs in the special crimes unit are "very well-trained." She added, however, that often the ADAs outside the unit who get involved in parts of these cases are not sensitized and need more training.

We also asked the ADAs we surveyed to compare their units with those of other boroughs.<sup>223</sup> All the ADAs, except for Alice Vachss of

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223. Although we realized that such a question probably would not elicit negative



Queens, seemed very pleased with the progress that had been made in the area of domestic violence both by ADAs in their own borough and in other boroughs. Although the ADAs generally emphasized the progress that has been achieved citywide, each borough had a slightly different set of accomplishments about which to boast.

Julie Martinez of Brooklyn stressed that hers is the only borough that has a separate unit handling only domestic violence cases.<sup>224</sup> She stated that such a segregated unit is better than the multi-crime special units of the other boroughs because it allows ADAs to specialize in domestic violence cases. According to Martinez, specialization enables ADAs working on domestic violence cases to be less concerned about winning cases.<sup>225</sup>

Both Nancy Borko of the Bronx and a Brooklyn ADA pointed out that the Bronx unit has the best reputation for working together with advocacy groups. Borko also stated that the Bronx unit has the advantage of having three ADAs who handle only misdemeanor cases, allowing them to give full attention to these often neglected cases. These ADAs are able, for instance, to push for longer jail sentences and to explore alternative sentencing with judges (such as sending drug-addicted batterers to in-house treatment programs).<sup>226</sup>

Staten Island's Judy Waldman stated that it is hard to compare her unit with those of other boroughs because the Staten Island unit is so much smaller than the others. Waldman stated that because Staten Island is a community of less than half a million people, it has a sense of community that allows ADAs to monitor cases and to have more continuity with victims/survivors over time than is possible in the other four boroughs. Julie Martinez of Brooklyn agreed that the Staten Island DA's Office is organized and runs smoothly because it is so small.<sup>227</sup>

Mary O'Donaghue of Manhattan argued that it is hard to compare

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comments from most survey respondents about their own offices, we found ADAs' statements concerning what they perceived to be their offices' particular strong points to be a useful source of data. Additionally noteworthy is a Queens ADA's assertions regarding the drawbacks of her own office.

224. Again, our study was conducted before the Manhattan office established a separate domestic violence unit.

225. We asked all the bureau chiefs to comment on their offices' work in the policy-making arena. Martinez pointed out that her office does considerable work on legislative issues in the area of domestic violence. In particular, she is a member of the Coalition of Battered Women's Advocates, which focuses on broad policy concerns in this area.

226. Borko works with the New York State DA Association on legislative initiatives, including the decentralization of 346 Broadway, an end to the mediation of domestic violence cases, and a new statutory definition of the battered women's syndrome.

227. Like Nancy Borko, Waldman works with the New York State DA Association on new legislative proposals.

boroughs because, although they all are working on the same issues, each borough has different advantages and limitations. For example, she pointed out that the Bronx has an advantage over other boroughs in that all its complainants must go to the complaint room, making ADA contact with battered women relatively simple. She also stressed that the Manhattan courts have a huge problem of overcrowding that may not be as acute in other boroughs.<sup>228</sup>

Unlike the other bureau chiefs, Queens' Alice Vachss stated that all the DAs' offices have better structures than hers. Although she thought that the policies she has instituted in her unit are as good as or better than those of the other boroughs, Vachss regretted that the Queens DA's Office has the least resources with which to implement change. She also thought that her bureau could undertake more policy-related work.

*d. Recommendations for the Future*

The special units handling domestic violence cases in the five boroughs could benefit from more information sharing and coordination activities.<sup>229</sup> DAs' offices should be made aware of both the compliments and criticisms that they are given by advocates and other ADAs so that they can modify their programs accordingly and provide better services for battered women.

## THE LEGISLATURE

### 24. *The Legislature*

#### *a & b. Task Force Finding and Recommendation*

The Task Force made no specific findings regarding legislation. However, it did propose that the legislature enact the following statutes:<sup>230</sup>

- i. A prohibition against mutual orders of protection except where respondents file and serve cross-complaints specifically requesting such relief.

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228. O'Donoghue pointed out that in spite of the huge caseload, she and her Deputy Chief, Nancy Patterson, manage to participate in many domestic violence committees and task forces, including the Mayor's Task Force on Domestic Violence, the Inter-agency Task Force, and the City Council Committee.

Elizabeth Loewy, head of Manhattan's new domestic violence unit, also sits on many such task forces.

229. The Manhattan Domestic Violence Bureau Chief, Elizabeth Loewy, invited the bureau chiefs of the other four boroughs to come to Manhattan and discuss their different approaches early on in her new tenure. The chiefs agreed to conduct such meetings on a regular basis in the future.

230. See The Task Force Report, *supra* note 3, at 49.

- ii. A statute allowing case adjournments in contemplation of dismissal to be conditioned on the respondent's attendance at an educational program for batterers.
- iii. A provision that battering be considered evidence of parental unfitness in custody determinations and a basis for termination of visitation or a requirement of supervised visitation.<sup>231</sup>
- iv. A statute allowing visitation in cases of battering to occur in the supervised locations that are currently used for children in placement.<sup>232</sup>

c. *Evaluation*<sup>233</sup>

After receiving copies of the Task Force Report, certain New York State Assembly members took it upon themselves to work toward implementing the legislative recommendations. Some of the recommendations already were the subject of pending legislation.

The first two recommendations in the Task Force Report (i and ii above) were enacted in New York State in 1988. The first provision amends section 154b of the Family Court Act to require an answer or counterclaim for a judge to grant a mutual order of protection.<sup>234</sup> It took the legislature four sessions from the time the bill was introduced to enact this amendment. The sponsors initially attempted to outlaw all mutual orders of protection. However, in response to Senate demands, the sponsors finally agreed to allow courts to issue mutual orders when such orders are sought by respondents, but only if the due process counterclaim requirements are met.

The second piece of legislation enacted in response to the Task Force Report gives judges discretion to order batterers to educational programs as a condition of adjournment in contemplation of dismissal.<sup>235</sup> The bill originally required judges to order educational programs in adjournment in contemplation of dismissal cases; however, the scarcity of such programs in New York precluded such a strong mandate. Furthermore, advocates and legislative staff were concerned that because of the lack of educational programs, judges might

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231. *See also supra* part II.C.1 (discussing judicial awareness of the detrimental effect of adult domestic violence on children in the home and its impact on judges' custody and visitation rulings).

232. *Id.*

233. Our evaluation of the legislative response to the domestic violence recommendations of the Task Force Report stems exclusively from correspondence with Joan Byalin, counsel to the New York State Assembly Task Force on Women's Issues, and Deborah Vogel, Director of the Assembly Task Force.

234. *See* 1988 N.Y. Laws 706 (McKinney 1989). *See also* N.Y. FAM. CT. ACT §§ 828(1), 842 (McKinney 1983 & Supp. 1991).

235. *See* 1988 N.Y. Laws 39 (McKinney 1989).

send batterers to counseling, something they opposed. A group at the National Organization for Women opposed the bill because it believed that batterers should never be sent to educational programs instead of to jail, and it feared that expanding the educational option merely would provide an easy alternative for judges who were reluctant to incarcerate batterers. The legislation was finally enacted in its diluted, discretionary form. Helene Weinstein, Member of the New York State Assembly and Chair of the New York State Assembly Task Force on Women's Issues ("Assembly Task Force"), also managed to pass legislation in 1989 funding a three year pilot project to provide education programs designed to help batterers end their violent behavior.

The Task Force Report recommendations concerning custody and supervised visitation (see iii and iv above) have been the subject of proposed legislation for the past four sessions but have not been enacted into law. Under one bill, evidence of battering by one parent against the other would have created a presumption that placement with the batterer was not in the best interests of the child.<sup>236</sup> The bill also would have required the court to provide supervised visitation if unsupervised visits had the potential of harming either the child or the non-battering parent. A later version of this bill would have made domestic violence by one parent against the other merely a factor in granting custody rather than making it determinative.<sup>237</sup>

Neither of these approaches to the custody and visitation issues managed to gain Senate support. Custody in general is a subject of prime concern to both women's and father's rights groups in New York, leading to considerable debate and even heated battle; therefore, it has been difficult to pass any legislation affecting custody. In addition, women's groups and the Assembly Task Force on Women's Issues successfully opposed attempts to enact factors bills that would specify what constitutes the best interests of the child. The Assembly Task Force and the women's groups were concerned because the proposed factors bills did not specify factors that should not be considered by judges in custody determinations — so-called negative factors — such as the relative economic circumstances of the parents or the lifestyle of the mother. In this combative atmosphere surrounding the topic of custody in general, and factors legislation in particular, the proposed domestic violence legislation, which would have singled out one factor, i.e., battering, as more important than others, was rejected by the Senate.

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236. See Assembly 6095 (Weinstein, 1989).

237. See Assembly 4379 (Weinstein, 1991).

In addition to the legislation recommended by the Task Force, Assemblywoman Weinstein has pursued several other domestic violence issues in the past year. The Assembly passed a resolution encouraging New York's Governor to review the cases of women in state prisons for killing their abusers. Although the resolution has a Senate sponsor, it currently is being held up by the Senate leadership. Furthermore, because the resolution does not mandate any specific action, it is not clear what impact it will have on the Governor even if it is passed by both houses. On the other hand, the Assembly has made it clear to the Governor that it believes he should take action in this area and the resolution has attained considerable press coverage.

The Assembly Task Force on Women's Issues is currently in the drafting stage of two legislative proposals that are noteworthy. The first would expand or abolish the three day right of election for battered women.<sup>238</sup> The second proposal would establish the circumstances under which police officers must arrest, as well as those under which arrest is preferred in cases of family violence. The latter legislation also would require police agencies to develop written pro-arrest policies and to provide training to assist police departments in implementing these policies.<sup>239</sup> The Assembly Task Force staff anticipates complaints from law enforcement agencies, which are constantly being mandated to change or expand police response, but are given little training or assistance in carrying out mandates. Further complicating matters, domestic violence advocates already have expressed concern over using limited state funds for police training when New York is desperately in need of more shelter space for battered women.<sup>240</sup> The Assembly Task Force hopes to work together with both the police and advocates to create a successful statewide pro-arrest policy.

Several other bills in the area of domestic violence have been considered by the New York State Legislature in the past few years. Although Joan Byalin indicated that most of this proposed legislation

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238. In 1990, the legislature amended the right of election law such that Saturdays, Sundays, and holidays were exempted from the three day period in which victims/survivors had to choose between courts. *See* N.Y. FAM. CT. ACT § 812 (McKinney 1983 & Supp. 1992); N.Y. CRIM. PROC. LAW § 530.11 (McKinney 1984 & Supp. 1991). *See also infra* part II.C.6.; *supra* part II.D.7. (discussing right of election law).

239. The current proposal would designate the Division of Criminal Justice Services and the Office for the Prevention of Domestic Violence as the developers and providers of such training.

240. Deborah Vogel, Director of the Assembly Task Force on Women's Issues, mentioned that the Assembly Task Force tries to address domestic violence on many fronts - including supporting and expanding shelter and program services, developing batterers intervention programs and improving police policy through training - while most of the domestic violence advocates prefer to devote scarce resources specifically to victim services.

has had little or no success, we have listed a few of the bills in order to provide a sense of the range of issues that has been considered by the legislature as well as the considerable opposition that these proposals have faced:

- an expanded definition of family and household members who may file for orders of protection in family or criminal courts;<sup>241</sup>
- a requirement that police or peace officers serve summons and orders of protection in domestic violence cases, thereby removing prior police discretion;<sup>242</sup>
- an amendment to the Family Court Act to include temporary residence as an acceptable residence for purposes of filing for an order of protection;<sup>243</sup>
- a provision allowing family courts to include in orders of protection considerations other than physical safety, such as restraining the improper use of financial or other family resources;
- a prohibition on the diversion of domestic violence cases to mediation or dispute resolution services;
- a provision including order of protection violations in the crime of criminal contempt when the violation is itself a misdemeanor or felony;
- a requirement that prosecuting attorneys in family offense cases state the reason for agreeing to adjourn a case in contemplation of dismissal;
- a provision allowing a court to order a defendant convicted of a family offense (i) to participate in educational or counseling programs; (ii) to provide medical or health insurance to treat the victim's/survivor's injuries; and (iii) to pay restitution for the loss or damage caused by the offense;
- a requirement that the Commissioner of Education work in conjunction with the Office for the Prevention of Domestic Violence to develop a domestic violence prevention course for students in grades six through twelve.

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241. Assembly Bill 5950 was passed by the Assembly. However, prospects for Senate approval seem bleak in light of opposition to the inclusion of gay and lesbian couples within the definition of family and household members. *See supra* note 71 (discussing current eligibility requirements for seeking orders in family and criminal courts).

242. Several interviewees remarked that under the current discretionary practice, battered women often serve their abusers themselves. We were told this is especially true for civilian complainants.

243. This proposal was not even reintroduced in the legislature in 1991 because of fear among some legislators that such a provision would be used for forum shopping in divorce cases.

*d. Recommendations for the Future*

We recommend that further steps be taken to pursue the custody and visitation legislation recommended by the Task Force. If this is not politically feasible, legislation should be proposed that would at least make battering a factor that must be considered in a best interests custody determination. We also suggest continuing efforts to push for legislation such as that advocated by the New York State Assembly Task Force on Women's Issues, and we hope that some of the reform measures suggested in this paper will be considered. A declaration by the Judicial Committee in support of enacting certain legislation — along with the backing of the Chief Judge — would likely be valuable.

## BAR ASSOCIATIONS

*25. Bar Associations*

*a & b. Task Force Finding and Recommendation*

Although the Task Force provided no specific analysis of bar associations, it did recommend that they provide continuing legal education on domestic violence, including:<sup>244</sup>

- i. the same areas the Task Force recommended for judges and court personnel;<sup>245</sup>
- ii. the importance of lawyers' obtaining fully informed consent from clients before agreeing to a settlement involving a mutual order of protection;
- iii. the availability of particular resources within the community, and the need for support services generally for clients who are battered.

*c. Evaluation*

Various bar associations established special implementation committees in response to the Task Force Report. For example, the New York State Bar Association, the Women's Bar Association of the State of New York, and several county bar associations have established committees charged with implementing the recommendations of the Task Force Report.<sup>246</sup> In this section we will discuss responses from only a handful of people, all of whom are connected with the

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244. See The Task Force Report, *supra* note 3, at 49-50.

245. See *id.* at 48-49.

246. See Lynn Hecht Schafran, *Documenting Gender Bias in the Courts: The Task Force Approach*, 70 JUDICATURE 280, 281, 290 (1987). The New York State Bar Association was the first to set up such a special committee.

Association of the Bar of the City of New York ("City Bar"). Unfortunately, our research in the area of bar associations is far from complete because we were unable to obtain interviews with a wide variety of people associated with different bar associations.

The City Bar has undertaken various efforts in the area of domestic violence. These efforts range from the creation of a special committee to deal with issues surrounding women in the courts to hosting numerous training programs, supporting selected proposed legislation, and recruiting pro bono attorneys for battered women.<sup>247</sup> The City Bar members we interviewed emphasized that the organization's current president, Conrad Harper, is supportive of work designed to combat gender bias.

By committee resolution in August, 1986, the City Bar's executive committee authorized its president to appoint an Ad Hoc Committee on Women in the Courts ("Committee on Women in the Courts") that would "give priority to the recommendations contained in the Report of the New York Task Force on Women in the Courts . . . ."<sup>248</sup> Although the term of this ad hoc committee was to expire on August 31, 1989,<sup>249</sup> the committee continued and was deemed permanent in 1991.

Judge Betty Ellerin, New York Supreme Court Judge and the first chair of this Committee on Women in the Courts, pointed out that she and her colleagues not only used the recommendations of the Task Force Report as a blueprint for action, but also came up with ideas of their own. Of particular significance to battered women was the committee's meeting with court administrators and representatives from both the Manhattan DA's office and VSA to discuss the appropriate handling of domestic violence cases. The committee has also participated in various trainings, most often for nonjudicial court personnel. It has prepared a report for adoption by the City Bar recommending changes in the complicated right of election law to which battered women are subject, and it has co-sponsored a mock domestic violence trial. The Women in the Courts Committee has worked to make the police take domestic violence cases more seriously and has pushed for the decentralization of the civilian complaint system.

The Committee on Women in the Courts also has supported se-

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247. According to the 1991 REPORT, *supra* note 5, at 29-30, a subcommittee of the New York Women's Bar Association is also involved in arranging for lawyers to assist indigent domestic violence complainants, and the subcommittee has worked with the administrative judge of the New York Family Court on this matter.

248. See Association of the Bar of the City of New York, 1987-1988 Yearbook, at 73-74.

249. *Id.* at 74.



lected legislation concerning domestic violence. In particular, it backed the bill barring mutual orders of protection unless there was an answer or counterclaim which, as noted earlier, was adopted in 1988.<sup>250</sup> The committee recently has gone beyond the Task Force recommendations, supporting reforms in the right of election law<sup>251</sup> that would not require battered women to make an election between courts. On behalf of the City Bar, the Committee on Women in the Courts submitted a formal report to the legislature urging that legislation be passed allowing battered women to file in both criminal and family court at the same time. The committee also supported legislation to change the statutory definition of assault to reflect more accurately the situation of battering. One committee member noted that although it is not easy for legislative proposals to work their way up through the organization to attain final bar support, the City Bar is generally supportive of the committee's proposals.

In March, 1987, the Committee on Women in the Courts created a subcommittee to receive and process information regarding specific incidents of gender bias. The goal of this subcommittee is to examine all reports of gender bias incidents, to intervene informally in appropriate cases, and to accumulate and collate data concerning the extent to which gender bias still exists in the courts and in the legal profession.<sup>252</sup> Judge Ellerin noted that the hotline that had been established to receive complaints had generated some relevant information but not to the extent that had been hoped.

Finally, it is interesting to note that Fern Sussman, the Chief Administrative Officer of the Association of the Bar of the City of New York, stated that the City Bar has not undertaken its usual exhaustive work<sup>253</sup> in the area of domestic violence because of its perception that there is such a good state component in this area, i.e., the Governor's Commission on Domestic Violence ("Governor's Commission"), which is already generating such work. Bronx Family Court Super-

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250. See 1988 N.Y. Laws 706 (McKinney 1989). See also *supra* part II.C.24.

251. For the text of the right of election law, see N.Y. FAM. CT. ACT § 812 (McKinney 1983 & Supp. 1992); N.Y. CRIM. PROC. LAW § 530.11 (McKinney 1984 & Supp. 1991).

252. See Memorandum from Judge Betty Ellerin, Chair, to the Members of the Women in the Courts Committee, March 2, 1987. The memorandum sets forth the framework for the subcommittee's activities as follows: the identity of the person submitting information would be strictly confidential; efforts would be made to intervene informally and in a non-adversarial manner; if the subcommittee thought that formal action were necessary and if the person alleging the conduct consented, the subcommittee could refer matters to a relevant disciplinary body; and the subcommittee would periodically present compilations of information to the full Committee on Women in the Courts. See *id.*

253. In most areas, the City Bar undertakes substantial efforts, including detailed analyses and reports that document the problems at issue.

vising Judge Marjorie Fields, Co-Chair of the Governor's Commission on Domestic Violence from 1979 to 1989 and current Chair of the City Bar's Ad Hoc Committee on Women in the Courts,<sup>254</sup> pointed out that the Governor's Commission was terminated in 1989 when it was transformed into a state agency. However, in spite of fears that it would be defunded as a result of the budget crisis, the Commission has continued in existence as the New York State Office for the Prevention of Domestic Violence, an office within the executive branch. The Executive Director is Karla DiGiralamo, and she has a staff of approximately ten full-time employees.

*d. Recommendations for the Future*

All New York City bar associations should continue to work toward full compliance with the Task Force Report and they should undertake other efforts as well in the area of domestic violence. Encouraging attorneys to represent battered women on a pro bono basis is particularly important. A more thorough study than our own is necessary in order to determine what actions the various bar associations have taken in the domestic violence context, what has proven helpful, and what future steps are needed.

## JUDICIAL SCREENING COMMITTEES

*26. Judicial Screening Committees*

*a.&b. Task Force Finding and Recommendation*

The Task Force made no findings regarding judicial screening committees but did recommend that such committees provide information to all members about the nature of domestic violence, the characteristics of victims/survivors and offenders, and the impact of adult domestic violence on children in the home.<sup>255</sup>

*c. Evaluation*

We wrote to the chairs of the judicial screening committees in all five boroughs and asked them about the status of the Task Force recommendation in this area. In particular, we asked the committee chairs if and when they first were made aware of the Task Force Report. We also questioned whether they make the information on domestic violence suggested in the Report available to their members.

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254. The appointment of Judge Fields, a renowned expert in gender bias issues, as the new chair of the Committee on Women in the Courts was designed to send a clear message about the City Bar's interest and commitment to gender bias issues.

255. See The Task Force Report, *supra* note 3, at 50.

For committees that do provide such materials to their members, we asked for a description of the information disseminated; we also questioned whether the decision to disseminate that information was a result of the Task Force's recommendation. For the committees that do not provide such information, we asked the chairs to explain why they had not complied with the recommendation.

Unfortunately, we received only one response. Emanuel Kessler, Chair of the Judiciary Committee of the Bronx County Bar Association, reported that he and his committee members have all "independently read" the Task Force Report. In response to our question of whether his committee was in compliance with the recommendation, he asserted that "[t]he characteristics of domestic violence, its victims and its perpetrators come to the attention, directly and indirectly, of every attorney and judge with whom [he is] familiar. Each one treats the problem as the circumstances require, with compassion, understanding and hope." Kessler did not indicate whether his committee actively provides its members with information about domestic violence, and if so, what is the nature of that information.

#### *d. Recommendations for the Future*

We recommend follow-up research to determine whether and to what extent the judicial screening committees of each borough are complying with the Task Force's recommendation. If such research determines that the committees are not in full compliance, measures should be taken to encourage compliance.

### **D. Other Findings**

#### **PROBLEMS NOT SPECIFICALLY ADDRESSED BY THE TASK FORCE REPORT**

Although our study was modeled largely after the Task Force Report, we asked respondents whether there were additional issues of concern which were not specifically addressed by the survey. This allowed us to explore a number of comments made by advocates, judges, ADAs, and others which did not fit neatly under any of the particular problem areas discussed in the Task Force Report. These comments and responses, as well as our corresponding recommendations, are discussed below.

#### *1. Racism and Classism in the Courts*

The Task Force discussed the impact of race and economic status

on the credibility of women litigants in general.<sup>256</sup> It found that poor women and women of color encounter significant gender bias from judges, lawyers, and court personnel. The Task Force made a number of recommendations aimed at minimizing biased conduct toward women litigants of all races and classes.<sup>257</sup>

Although the Task Force did not address racism concerns in the particular context of domestic violence, we decided to ask our survey respondents about ways in which racism may be impacting domestic violence decisions. First, we inquired about judges' awareness of the problems of racism, asking specifically whether judges are informed adequately about the nature of the discrimination experienced by battered women of color in the courts. Two thirds of the advocates thought that at the very best, judges sometimes are aware of these issues. Many claimed that on a general level, judges are remarkably unaware of the racism in the court system.<sup>258</sup> One family court judge, however, remarked during the course of our survey that there is "pervasive racism" in the system.

We next asked the advocates whether judges' actions in domestic violence cases vary according to the race of the battered woman. Roughly half the advocates answered in the affirmative. One advocate said that judges tend to minimize abuse against women of color,<sup>259</sup> and noted further that although physical abuse is less visible on such women, judges nevertheless do not make the effort to look for evidence of abuse. Another claimed that bias against women of color is a significant problem, but stated that it is hard to address because it occurs subtly.

A number of advocates who commented on racism also discussed

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256. See The Task Force Report, *supra* note 3, at 121-23, 125. The Judicial Committee also has focused on racism in the courts; for example, the Five-Year Report discusses efforts to address racism in court personnel training sessions. See 1991 REPORT, *supra* note 7, at 16.

257. See *id.* at 125-26.

258. Cf. REPORT OF THE NEW YORK STATE JUDICIAL COMMISSION ON MINORITIES, Volume Five, at 28 (April, 1991) (reporting significant differences between the perceptions of white and black judges regarding the treatment of litigants in that minority judges perceived biased behavior much more frequently than white judges)(hereinafter MINORITY REPORT]. The MINORITY REPORT is being published in this issue of the *Fordham Urban Law Journal*. REPORT OF THE NEW YORK STATE TASK FORCE ON MINORITIES, 19 FORDHAM URB. L.J. 181 (1992).

The MINORITY REPORT defines "minority" to include Blacks, Native Americans, Asian Americans, and Hispanics. See *id.*, Volume One, at 2; 19 FORDHAM URB. L.J. at 187.

259. The MINORITY REPORT states that thirty percent of the litigators handling domestic violence cases believed that courts "often/very often" treat those cases involving white couples more seriously than comparable cases involving minority couples. See *Minority Report*, Volume One, at 48; 19 FORDHAM URB. L.J. at 231.

the problem of classism in the context of domestic violence cases. One advocate explained that since the domestic violence cases heard in family court usually involve poor individuals, judges and court personnel distance themselves from the problem, dismissing it as indigenous to individuals of a lower socioeconomic status. Others suggested that middle class batterers "get big breaks," either because judges are moved by the fact that such batterers often have no prior records or that they will be embarrassed at their jobs, or simply because these batterers can afford attorneys and therefore are more persuasive. Another advocate claimed that judges, out of a desire to save time or money, are "callous" about the option of appointing attorneys for poor petitioners.<sup>260</sup>

To curb these problems, training programs for judges, ADAs and court personnel should address issues of racism and classism, focusing specifically on how these factors operate in the domestic violence context.<sup>261</sup>

## 2. Frustrations of Representing Battered Women

A number of respondents from each of the surveyed categories stated that insensitivity often results from the frustrations of judges, ADAs, lawyers and police officers regarding the fact that many battered women do not follow through with their claims. Several respondents asserted that there is little understanding about the reasons battered women often do not proceed with their cases. The survey respondents suggested training for these actors as a means of improving their understanding of battered women and aiding them in controlling their frustrations.

One advocate asserted that there is tremendous anger among ADAs for battered women's dismissal rates. She said that ADAs do not look at the situation from the battered woman's perspective in an effort to understand the factors motivating her decisions. She added that it can be very legitimate for a battered woman to use DA services even though she might decide not to proceed with the prosecution. Another advocate thought that ADAs need to change their notion of success in the domestic violence context to something other than simply winning cases.

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260. On the other hand, the recently-issued *MINORITY REPORT* stated that judges, and particularly minority judges, largely are aware of the lack of representation for minority litigants in civil litigation. See *MINORITY REPORT*, Volume Five, at 62.

261. The *MINORITY REPORT* found that seventy-two percent of judges rated cross-cultural sensitivity training as important/very important. However, while sixty-eight percent of minority judges thought such training was "very important," only twenty-seven percent of white judges gave it this rating. See *id.*, Volume Four, at 131.

The actors in the judicial system lack knowledge and consensus about the reasons battered women often do not proceed with their claims. Most advocates thought that judges are sometimes unaware of respondent intimidation as a deterrent to claimants' proceeding with their cases.<sup>262</sup> Furthermore, several advocates believed that there is an insufficient understanding of intimidation caused by the judicial system and by battered women's feelings of isolation. One family court judge suggested that perhaps most petitioners do not appear for their hearings on permanent orders of protection because service of the summons and petition are effective in reducing the violence.

Several judges and ADAs expressed to us their own frustrations with battered women, and their statements often implied to us a need for more domestic violence training. For instance, one family court judge remarked that a number of judges have cynical attitudes toward battered women. He further presented his belief that petitioners drop charges either because the couples "reconcile" or because the petitioners obtained the temporary orders of protection in the first place only for the purpose of harassing the other party. His statement seems to indicate a lack of sensitivity and awareness concerning the immense difficulties confronting battered women.

Similarly, two ADAs made remarks that indicated their insensitivity toward battered women. One ADA pointed out that she views battered women as analogous to alcoholics who cannot be helped until they recognize that they have a problem. She further indicated that judges' frustration with battered women is a rational response to the "abuse" that judges receive from battered women who constantly drop charges after considerable resources have been invested in a case. Finally, this ADA expressed her own frustration with battered women who drop charges, emphasizing that battered women are "their own worst enemies" when they refuse to prosecute cases. Another ADA asserted that judges do not need training since the problem of insensitivity stems not from judges themselves but from their legitimate, "normal" reaction to battered women who frustrate them by constantly dropping charges in the middle of cases.

Judges, ADAs and police officers need a better understanding of the reasons battered women often drop charges.<sup>263</sup> This will reduce their frustrations with battered women and allow them to better evaluate the needs of the battered women they encounter. Attitudes to-

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262. See *infra* part II.C.8.

263. See *infra* part II.C.8 (providing examples of why battered women drop charges).

wards battered women such as those discussed above must be rectified.

### 3. *Safety for Battered Women*

Ensuring the safety of battered women was a concern of a number of people we surveyed. One advocate complained that safety is not built into the front of the system and that the protection of women is not taken seriously. She pointed out that if ensuring safety were more of a priority, there would not be as many battered women self-defense cases. Another advocate said that there is insufficient willingness to calculate how to make battered women safe and to “find and plug up the holes in the system.” Several advocates remarked that protective orders are too often issued as sole remedies and not in conjunction with other sanctions which might enhance the safety prospects of battered women.<sup>264</sup> Several others emphasized that there are too few shelters and safe residences for battered women, and that the abusive situation is often very acute by the time the battered woman comes to court, since court is frequently a last resort. A family court judge agreed that battered women’s safety needs are going unmet, and asserted that battered women often have trouble just getting to court. One advocate remarked that batterers who fear jail generally respect orders of protection; however, there are batterers who are deterred neither by orders nor by the threat of jail, and there is little safety provided for their victims/survivors. Along these lines, several advocates pointed out that battered women with orders of protection still are murdered.

Advocates also pointed out that there is poor monitoring of defendants during probationary periods, that ADAs do not inform battered women when batterers are being released from jail, and that victims/survivors frequently are left without orders of protection when they need them. One advocate asserted that when a batterer files a motion for a stay pending an appeal, the appellate division judge will grant it nine out of ten times. The judge’s considerations often include sympathy for the batterer — i.e., his inability to make a living and the humiliation he will endure if he goes to jail — as well as a belief that the batterer would, in effect, lose the ability to make an effective appeal if the stay were not granted. This advocate pointed out that these men, who are soon out on the street, are often furious at their victims/survivors, jeopardizing the battered women’s safety.

Particular concerns were voiced about the safety situation in Staten

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264. See also *supra* parts II.C.13-16 (discussing judicial remedies and enforcement of protective orders).

Island. One advocate who is not from that borough claimed that in Staten Island civilian complaint cases, battered women do not initially obtain a temporary order of protection, but rather a "request to appear." The advocate urged policy change, since these women are not protected between their first appearance and the return court date. A Staten Island advocate complained about the time lag in certain desk appearance cases between arrest and court appearance, during which there is no order of protection in place. Another asserted that when Staten Island arrest cases are arraigned in Brooklyn on a weekend, judges do not always issue temporary orders of protection. Further, even when judges do issue such orders, the orders are sometimes sent by mail to the battered women, who may not receive them or even know of their existence until after they expire. As a result, the battered women are unprotected for the critical days between the batterers' release and the Staten Island court appearance.

Our suggestions include increased funding for shelters and safe residences for battered women,<sup>265</sup> a requirement that ADAs inform battered women when batterers are released from jail, and more monitoring of batterers during probationary periods and when stays are granted pending appeal. In addition, orders of protection must be enforced vigorously and issued more frequently in conjunction with other sanctions,<sup>266</sup> and there must be continued examination of how orders of protection can be made more effective.<sup>267</sup> All instances in which there is a lag period before battered women who seek orders of protection actually receive them should be eliminated,<sup>268</sup> the availability of judges to issue orders of protection should be increased,<sup>269</sup> and the Staten Island safety concerns should be investigated. As several VSA advocates suggested, judges should be encouraged to extend temporary orders of protection *ex parte* more frequently when a respondent does not appear for a court date in order to ensure that battered women are not left vulnerable for months without orders of protection. Additionally, police should be required to serve summons and orders of protection in domestic violence cases so that the safety

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265. Shelters should be flexible as to income levels and length of stay, and should provide child care.

266. *See supra* parts II.C.13-16 (discussing judicial remedies and enforcement of protective orders).

267. *See infra* part II.D.8 (discussing VSA proposal to make protective orders more specific).

268. One advocate suggested that when criminal cases are at pretrial stages or are subject to adjournments, protective orders should last for longer periods of time so that complainants do not have to come to court each time the case is on the calendar to sit and wait for their orders.

269. *See supra* part II.C.5 (discussing current availability of judges).



of battered women is not further jeopardized.<sup>270</sup> Finally, whatever new safety measures are adopted, they must take into account the fact that batterers usually become furious when their victims/survivors are being protected.<sup>271</sup>

#### 4. *Lack of Support Services and Resources*

Perhaps the most common criticisms from those we surveyed concerned the lack of adequate support services for battered women and the scarcity of resources to improve the present predicament. One advocate argued that the lack of services reduces judges' options, preventing increased judicial awareness of the needs of battered women from being put to good use.

Advocates pointed to the scarcity of support groups, medical care, counselors, supervised visitation and other programs for battered women. A common complaint concerned the shortage of shelters and beds for battered women around the city. One advocate stated that there is an insufficient number of experienced, savvy and activist mental health workers in the field. Furthermore, from our interviews with VSA offices around New York City, it appears that such victim assistance offices are understaffed and overwhelmed by the demands of battered women.

A judge explained that because battered women are in crisis at their initial appearance, they often understandably process little of the information given them at that time. He said that these victims/survivors need service providers to explain their rights and options and to provide follow-up care. Several judges recommended expanding the types and hours of operation of various auxiliary services. One judge emphasized the need for more shelters for battered women. Two judges stressed the need for increased child-care facilities in the courts since the number of domestic violence cases being heard is increasing. One criminal court judge thought it was problematic that criminal court is not equipped to provide sufficient support services for battered women, and that victims/survivors are often frustrated by the criminal justice system because of the lack of services. A few judges remarked that there is not enough funding to keep courts open longer hours in order to be available for people seeking orders of protection. Others said that the needs of victims/survivors often go unmet be-

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270. A bill to this effect has met with little success in the New York State Legislature. See *supra* part II.C.24.

271. One advocate recommended exploring alternative protective order enforcement mechanisms and stressed the need for dialogue between alternative sentencing programs, advocates, batterer programs, probation departments, and others.

cause courts are inundated with cases and battered women usually have only two minutes before a judge.

Two of our survey respondents thought that DAs' offices need additional resources and better support systems to handle domestic violence cases. One advocate claimed that there are not enough ADAs in the units that handle domestic violence cases, that strong buddy systems must be developed (i.e., supervision of junior by senior ADAs), and that a structure is needed to anticipate appellate issues (i.e., having legal memos ready for various appeal scenarios). An ADA complained that there are not enough paralegals and support staff in the DAs' offices to handle these cases.<sup>272</sup>

It is clear that the lack of support services and resources for battered women is a critical problem requiring immediate attention. More funding must be allocated to meet these needs. One possible source of funding is the imposition of fines on batterers as a form of restitution for the harms caused to their victims/survivors.

##### 5. *Psychological Abuse*

Although the Task Force defined domestic violence as "the physical or psychological abuse of one family member by another,"<sup>273</sup> there seems to be a vast difference in the way physical and psychological abuse cases are handled by the courts, ADAs, mediators, and others. A few advocates, one ADA, and one judge asserted that the psychological abuse of women by men in our society is a serious and pervasive problem to which the system does not respond adequately. One advocate elaborated that there is no framework for dealing with psychological abuse because it is considered outside the parameters of the courts.<sup>274</sup> This advocate also remarked that "things get out of hand where physical and mental lines cross"; for instance, women considering whether to plead mental defect or self-defense for striking back at their batterers confront stereotypes regarding what is considered proper "female" behavior as opposed to intolerable "aggressive" behavior for women in our culture.

As the Task Force did not issue specific recommendations with respect to psychological abuse, our surveys, which were tailored to the Report, did not elicit sufficient responses concerning the treatment of psychological abuse cases by the courts. This is an important area for follow-up study. Additionally, we recommend increased emphasis on

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272. See *supra* part II.C.21. (discussing support services in DAs' offices).

273. See The Task Force Report, *supra* note 3, at 47.

274. She continued that even though one can receive a divorce based on grounds of cruelty, psychological abuse often is deemed insufficient to constitute that cruelty.

the topic of psychological abuse in training sessions for judges, police, ADAs, and other court professionals.

### 6. *Immigrant Women and Domestic Violence*

A few advocates discussed particular problems confronted by immigrant battered women in the court system. They said that the interrelation between immigrant status and domestic violence is not well understood. They explained, for instance, that immigrant women with conditional residency or undocumented status may be afraid, due to their status, to use the courts and various social service programs for protection. These women also face significant language barriers. The advocates discussed the lack of available, qualified court interpreters, especially for languages other than Spanish.

A few advocates discussed the problematic use in domestic violence cases of the cultural defense. They pointed to *People of the State of New York v. Dong Lu Chen*<sup>275</sup> as evidence of the harmful and biased use to which this defense can be put. In that case, a Chinese immigrant man was sentenced to a mere five years probation for bludgeoning his wife to death with a hammer. The judge was persuaded by the expert testimony of a Hunter College anthropologist that due to Chinese customs, a husband may reasonably be expected to become angered enough to kill his wife when he learns that she has been unfaithful. Pat Eng of the New York Asian Women's Center commented:

The use of cultural information in criminal trials should be introduced if the facts support it, but must be carefully examined for accuracy, relevance, and above all, to insure that it does not mask a bias against women. In a multicultural society such as ours, we have an obligation to protect women equally as [sic] men, while maintaining cultural sensitivity.

Because Gian Wan was a woman and because she was killed by her husband as opposed to a stranger, legal semantics were employed to mask the brutal reality of her death.<sup>276</sup>

Steps should be taken to ensure that the interrelation between im-

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275. Indictment Number 7774/1987. Sentencing took place in March, 1989 by Brooklyn Supreme Court Judge Edward K. Pincus.

276. Pat Eng, *Asians, Domestic Violence, and Criminal Justice*, ASIAN TIMES, Sept., 1989, at 1. For other interesting articles on this case, see Linda Anthony, *Women Discuss Protection for the Battered Following Controversial 'Cultural Defense' Verdict*, THE KOREA TIMES, July 14, 1989, at 2; Celestine Bohlen, *Holtzman May Appeal Probation For Immigrant in Wife's Slaying*, N.Y. TIMES, April 5, 1989, at B3; Alexis Jetter, *Fear Is Legacy Of Wife Killing In Chinatown: Battered Asians shocked by husband's probation*, NEWSDAY, November 26, 1989, at 4; Dick Polman, *After a killer eludes jail, a 'cultural defense' is on trial*, THE PHILADELPHIA INQUIRER, July 2, 1989, at 1.

migrant status and domestic violence is better understood<sup>277</sup> and that the needs of immigrant battered women are being addressed. Interpreters should be made more readily available in a wider variety of languages, as should translations of orders of protection. Pat Eng's words regarding the cultural defense, quoted above, should be heeded and the use of that defense in the domestic violence context must be monitored.

### 7. *Right of Election*<sup>278</sup>

Battered women in New York State are allowed to pursue their claims either in family or criminal court, subject to certain eligibility limitations.<sup>279</sup> They have three days, excluding Saturdays, Sundays and public holidays, in which to choose a jurisdiction.<sup>280</sup> Police and ADAs are required to inform battered women of these rights.<sup>281</sup>

Several people we surveyed expressed concern about the present right of election law. One advocate termed this law a "restriction of rights" which further complicates an already complex system. She pointed out that other states do not impose such restrictions on battered women. Another advocate urged that the time frame for the right of election be expanded up until trial. Several others claimed that three days is too short a time period in which to make a meaningful decision and that battered women should be allowed to pursue civil and criminal penalties simultaneously.

Several ADAs strongly recommended that battered women's right of election be extended beyond the current three-day period. A Bronx ADA noted that in practice, the right of election leads court personnel to send battered women back and forth between courts. She urged that the election period be expanded. An ADA from Manhattan advocated an expansion of the right to include the entire length of the trial so that if a battered woman decides to drop charges at any point,

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277. Legislation was recently enacted at the federal level that recognizes this connection. The United States Code requires married couples to petition the Immigration and Naturalization Service jointly after two years of conditional residency in order to attain permanent residence status for the immigrant spouse. The joint petition must convince the court that the marriage is bona fide and not a sham entered into solely for immigration purposes. However, the joint petition requirement can be waived if an alien spouse was battered by or the subject of extreme cruelty perpetrated by his or her spouse. 8 U.S.C. § 1186a (Supp. 1992).

278. See also *infra* parts II.C.6, II.C.24 and II.C.25.

279. See N.Y. FAM. CT. ACT § 812 (McKinney 1983 & Supp. 1992; N.Y. CRIM. PROC. LAW § 530.11 (McKinney 1984 & Supp. 1991)). See also *supra* note 67.

280. See N.Y. FAM. CT. ACT § 812(2)(e) (McKinney 1983 & Supp. 1992); N.Y. CRIM. PROC. LAW § 530.11 (McKinney 1984 & Supp. 1991).

281. See N.Y. FAM. CT. ACT § 812 (McKinney 1983 & Supp. 1992); N.Y. CRIM. PROC. LAW § 530.11 (McKinney 1984 & Supp. 1991).

the case can be referred to family court where the woman could receive some relief. A Brooklyn ADA pointed out that the current right of election law forces battered women to choose between courts at an early point when they usually do not have enough information to make this decision. She recommended that legislation be adopted either to abolish the right of election or to amend it so as to provide a mechanism for smoother transfer of cases between courts.

One Judicial Committee member expressed cynicism concerning the motivation underlying ADAs' advocacy of an expanded right of election for battered women. She suggested that police have improved in explaining the options to battered women, that more battered women are entering the criminal court system, and that ADAs want the time frame expanded so that they can send more battered women to family court.

On February 13, 1991, the Association of the Bar of the City of New York sponsored a forum on the three-day right of election law. The forum addressed problems with the law as well as proposals for change. It is our understanding that no specific agreement was reached at that forum, but rather that important issues were raised. We hope that debate will continue in this area, and that steps will be taken to ensure that battered women receive clearer information concerning their legal options.

#### 8. *Miscellaneous Other Problems*

Two family court judges thought that courts do not have sufficient authority and power to have a significant impact in domestic violence cases. One emphasized that orders of protection are merely pieces of paper declaring what the law already mandates, and that women who have these orders are still murdered.

These two judges also noted problems with existing laws.<sup>282</sup> One said that New York laws do not treat domestic violence with sufficient severity. The other noted that in light of a recent Court of Appeals decision declaring the harassment statute<sup>283</sup> unconstitutional for overbreadth,<sup>284</sup> fewer battered women will be entitled to relief. He ex-

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282. Although the Task Force found that "[t]he Family Court Act and the Criminal Procedure Law, by and large, provide an adequate framework for providing relief to victims of domestic violence," a number of our survey respondents and interviewees expressed dissatisfaction with the current laws. See The Task Force Report, *supra* note 3, at 47. See also *infra* part II.C.23a (discussing adequacy of present criminal laws with respect to domestic violence).

283. N.Y. PENAL LAW § 240.25(2) (McKinney 1989).

284. See *People v. Dietze*, 75 N.Y.2d 47, 550 N.Y.S.2d 595, 549 N.E.2d 1166 (1989) (holding unconstitutional for overbreadth under state and federal Constitutions a statute

plained that when there is no marked incident or clear threat that appears imminent of fruition, judges will be on tenuous grounds if they issue protective orders or jail sentences based on harassment.<sup>285</sup>

Judges mentioned several other problems. For instance, both a criminal and a family court judge stated that judges generally take domestic violence cases seriously, but that they have a passive role and cannot argue and prosecute cases. Therefore, the criminal court judge continued, it is up to ADAs in criminal court and Corporation Counsel and other advocates in family court to strengthen their advocacy efforts. Another judge, as well as several advocates, said that information is not being communicated adequately between different courts, and that sometimes conflicting orders of protection are issued by two courts.

One ADA from Brooklyn commented that there are unfortunate "turf conflicts" between VSA and battered women's advocacy groups. This ADA recommended that there be more coordination between DAs' offices, advocates, and VSA.

In addition, a Staten Island ADA pointed out that as more cases are prosecuted, battered women have begun to face unwanted publicity. This ADA urged that battered women's privacy rights and needs be protected.

Several VSA advocates noted that orders of protection are not specific enough. They recommended that legislation be adopted that would encourage or require judges to incorporate the following into protective orders: the specific behavior that is prohibited; a stipulation that the batterer stay away from the children; a prohibition of the conversion of resources; and a requirement that batterers provide payment for medical care and treatment and otherwise make restitution for loss or damage caused to battered women by the offenses.

### 9. *Police Policies and Attitudes*

The Task Force addressed law enforcement officials in its findings that these officials refer battered women from court to court, dissuade battered women from pursuing their claims by trivializing and ignoring their concerns, and dissuade them particularly from proceeding in criminal court.<sup>286</sup> In an effort to illuminate some of the general concerns expressed in our survey responses regarding these issues,<sup>287</sup> we

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prohibiting use of "abusive" language with intent to "harass" or "annoy" because it disallows a significant amount of protected expression).

285. This judge also said that the number of domestic violence harassment cases is rapidly growing, so this development is particularly harmful for battered women.

286. See The Task Force Report, *supra* note 3, at 34-35, 47.

287. See *supra* parts II.C.6, II.C.7, II.C.9.

spoke with two law enforcement officials.

Detective Lydia Martinez, a domestic violence specialist at the New York City Police Department, claimed that police now receive thirty-five hours of domestic violence training during their five and a half months at the police academy. This training is in the areas of law, social science, physical science and police science. She believes that there has been considerable progress in police handling of domestic violence cases since 1984.<sup>288</sup>

Regarding the right of election, Detective Martinez stated that police officers hand out blue cards ("Rights of Victims of Family Offenses") to battered women as required. Responding to the issue of police frustration with battered women who do not pursue their claims, Detective Martinez said that officers working on domestic violence cases inevitably encounter frustration since there is so much need and so few resources, as well as considerable denial of and ambivalence about the problem by the battered women.

In response to the question of what problems she still sees in police handling of domestic violence cases and in which areas further training is needed, Detective Martinez claimed that there is a societal need for a better understanding of domestic violence and that everyone would benefit from more information. According to Martinez, everyone should be aware that domestic violence is a crime, should learn how to problem-solve in nonviolent ways, and should realize that domestic violence is not something that happens only to "other people," but rather that many people — from all societal groups — experience it.

Detective Martinez recommended that people from the various agencies working in this area realize that they are on the same side of the fence and have similar concerns. According to Martinez, there is a greater need for empathy and understanding of one another's boundaries, and professional skirmishes (i.e., between advocates and police) should be avoided. Additionally, the police need the community (i.e., medical workers, people involved in education, clergy, etc. — "everyone") to take the position that domestic violence is unacceptable.<sup>289</sup>

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288. Around this time, she explained, several unprecedented decisions held police liable for failure to protect domestic violence victims/survivors. *See, e.g., Sorichetti v. City of New York*, 95 Misc. 2d 451, 408 N.Y.S.2d 219 (1978), *aff'd*, 68 A.D.2d 1020, 417 N.Y.S.2d 202 (1979), *aff'd*, 65 N.Y.2d 461, 492 N.Y.S.2d 591, 482 N.E.2d 591 (1985); *Thurmon v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984).

289. In response to the question of what problems she perceives in the treatment of domestic violence cases by ADAs, judges and court personnel, Martinez asserted that presently, the system is exhausting for battered women to navigate. She hopes that the

We also interviewed Detective Joe Ryan, who has twenty-two years of experience in the police department and who is an expert and sociologist on violence. Detective Ryan described three components of the domestic violence training provided to police officers: the law component addresses legal issues concerning domestic violence and family offenses; the "police science" segment includes police strategies, such as knowing how to document what one sees and what to do upon entering a home; and the social science component addresses the dynamics of domestic violence. Detective Ryan said that there has also been "in service" training on domestic violence each year since 1977, with the exception of 1987.

Regarding the right of election, Detective Ryan agreed with Detective Martinez that police do not encourage battered women to proceed either to family or to criminal court but rather they hand out blue cards and inform these women of their options. He said that the New York State Division of Criminal Justice Services designed the blue card and that the New York State Office for Family Services<sup>290</sup> was consulted on its format.

Detective Ryan explained that since the decision in *Bruno v. Codd*,<sup>291</sup> police must make arrests under the following four conditions: when there is probable cause that a felony was committed, even if the battered woman does not want the batterer arrested; when there is probable cause of a violation of an order of protection, also even if the battered woman prefers no arrest to take place; when a misde-

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system will be expedited and that the process for obtaining orders of protection will be facilitated. She also claimed that more advocates (providing both legal and emotional support) are needed to ease the process for victims/survivors.

290. He asserted that formerly, this was the Governor's Task Force on Domestic Violence.

291. 90 Misc.2d 1047, 396 N.Y.S.2d 974 (1977), *rev'd on other grounds*, 64 A.D.2d 582, 407 N.Y.S.2d 165 (1978), *aff'd*, 47 N.Y.2d 582, 419 N.Y.S.2d 901, 393 N.E.2d 901 (1979).

In *Bruno v. Codd*, battered wives alleged that the New York City Police Department's official policy of mediation and arrest avoidance, as well as its practice of failing to respond to calls for assistance in domestic violence cases, violated New York law. The Special Term found that "the police owe a duty of protection to battered wives, in the same manner they owe it to any citizen injured by another's assault. . . ." 90 Misc. 2d at 1050, 396 N.Y.S.2d at 977.

In a consent judgment in *Bruno v. Codd*, the New York City Police Department agreed, among other things, that police officers had a duty to respond to battered wives' calls for help, that they would make arrests in all cases alleging felonies or order of protection violations, and that they would remain at the scene of the alleged crime or order of protection violation temporarily to prevent further harm. See HON. MARJORY J. FIELDS, MUNICIPAL LIABILITY FOR POLICE FAILURE TO ARREST IN DOMESTIC VIOLENCE CASES 9 (N.Y. State Governor's Commission on Domestic Violence, Sept. 1987) (describing *Bruno v. Codd*).



measur other than a protective order violation has been committed in or out of the officer's presence, and the battered woman wants the police to arrest; and when a violation is committed in the presence of the officer and the battered woman agrees to the arrest. In the latter two cases, if the battered woman does not want the batterer arrested, the arrest decision is left to the officer's discretion.<sup>292</sup> Detective Ryan also claimed that police policy regarding arrest does not vary by borough or precinct.

The Task Force Report did not address police policies broadly or have a separate recommendation section for law enforcement officials. Perhaps a specific set of findings and recommendations for law enforcement officials would be useful, if such a study has not been undertaken recently. Additionally, a mechanism might be set up whereby advocates could report concerns about police handling of domestic violence cases. Additionally, although there seems to have been significant improvement in training programs for police, perhaps more emphasis could be placed on ensuring smooth implementation of new policies. Finally, cooperative efforts between advocacy groups and the police, such as VSA's Domestic Violence Prevention Program, might be encouraged.

### NEW PROBLEMS FOR BATTERED WOMEN

We asked those whom we surveyed and interviewed whether battered women have faced new problems since the publication of the Task Force Report in 1986. We categorized the responses of those who answered in the affirmative into the five sections below. Each section is followed by our recommendations.

#### 10. *Lack of Resources*

The problem of insufficient support services and resources discussed above has worsened significantly in the last five years. A few advocates and judges and one ADA asserted that a new problem facing battered women in New York City is a cutback in resources and funding. Several respondents stated that money for domestic violence services is not a funding priority. One advocate claimed that the current focus in New York City is on child abuse and street crimes rather than on domestic violence; another said that there is more grant money on the offender side of battering because it is perceived to be

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292. A police officer can arrest based on his or her own discretion if the officer has probable cause that violence may occur after he or she leaves the scene. For in-depth analysis of police rules, see POLICE DEPARTMENT, CITY OF NEW YORK, PATROL GUIDE: FAMILY OFFENSES/DOMESTIC VIOLENCE (Procedure No. 110-38 1989).

more glamorous. One family court judge specified that government services are closing down, leaving less money for shelters, for educational programs for batterers, and for legal services for battered women. She added that as hospital emergency rooms are closing, there is no place for many battered women to go for medical help, guidance and advice. She agreed with one advocate that the decrease in resources for family court is resulting in fewer judges, more crowded dockets, and less hearing time for cases. In addition, some petitioners are not being heard on the first day that they come to family court. One advocate perhaps captured a number of people's sentiments by saying that recent budget cuts are likely to result in a further deterioration of the situation for battered women in New York City.<sup>293</sup>

### *11. Recent Climate of Complacency*

A few advocates commented on a change of sentiment with respect to domestic violence in the last five years. One explained that concern about domestic violence peaked years ago — it was a “media event” — but that now we are in a “post-peak” era. Public attention has turned away from the problems faced by battered women at a time when there is much more work to be done. Another advocate added that battered women also are losing credibility due to their record of dropping charges.

A Judicial Committee member agreed with the advocates, stating that the issue of domestic violence was dramatic for a while, but that currently, it is “yesterday's news.” If nothing is “happening” in the eyes of the public and the media, people do not respond to a problem such as domestic violence. She added that even though people now are much more aware of the reality of domestic violence, they still are uncomfortable with it.

Perhaps increased funding and advocacy efforts should be geared toward broadening education and media outreach on domestic violence issues.

### *12. Housing Shortage*

Six advocates and one ADA discussed the detrimental effects of the New York City housing crisis on battered women. As the housing shortage gets worse, judges seem to be granting fewer vacate orders because they fear that these orders will make batterers homeless; at the same time, battered women cannot as easily leave the homes they share with the batterers because of the housing shortages.<sup>294</sup>

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293. See *supra* part II.D.4 (discussing our recommendations).

294. See *supra* part II.C.13 (discussing judicial issuance of vacate orders).

Several advocates stated that "homelessness has worked against battered women," and more specifically, that battered women's housing options have become more limited, that vacate orders are less likely to be issued, and that judges need to consider this topic more seriously. One advocate noted that a batterer must appear very unsympathetic for a judge to issue a vacate order. A few advocates were incensed by judges' use of the housing shortage as a justification for not issuing vacate orders, since the result is often that battered women and children become homeless. One advocate from Staten Island noted particular shelter shortages for battered women without children and for battered women who work. In acknowledging that the high cost of housing in New York City makes relocation very difficult, an ADA pointed out that shelters are not real options for battered women, but only short-term solutions.

To alleviate this problem, judges should be issued clear guidelines deterring them from relying on the batterer's potential homelessness as a basis for denying a vacate order at the expense of rendering a battered woman homeless or increasing her exposure to violence. Additionally, more emergency, transitional, and permanent shelter space for battered women and children should be financed, and these shelters should present options for battered women of different income levels and life situations.<sup>295</sup>

### 13. *New Types of Cases*

A few advocates and judges discussed certain types of domestic violence cases that have been appearing in the courts with increased frequency over the last several years. Perhaps the greatest increase has been with respect to cases involving drugs, and in particular, crack cocaine. One Brooklyn judge claimed that since 1985, substance abuse has been on the rise and is involved in at least seventy percent of domestic violence cases. A judge from Queens told us that crack has led to a big increase in domestic violence cases, and he suggested creating more dual-diagnosis programs to address this combination of domestic violence and drug use. A Staten Island advocate said that cases in family court have mushroomed partly because of crack, adding that people on crack lose all sense of humanity and do not care about whom they assault or kill. Another advocate urged that more cross-treatment programs be created for victims/survivors of domestic violence and for perpetrators who are also HIV-positive, addicted to drugs, or homeless.

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295. See also *supra* parts II.D.3, II.D.4.

Two advocates noted an increase within the last few years of petitions brought by parents, usually mothers, against their grown children, particularly sons. This trend might be related to the increase in domestic violence cases involving drugs, as these advocates noted that the children often have drug problems.

A few other types of cases seem to be on the rise. One Brooklyn judge said that more men are now filing petitions, usually when they find out that their partners are filing petitions against them. Word of mouth as well as police advice were cited as reasons for this increase, in addition to these men becoming more savvy and realizing that they can file petitions for free. This complicates things for judges, she noted, making it harder for them to assess credibility. Another judge said that there seem to be fewer cases involving physical violence, and more involving harassment and threats. Finally, one advocate said that although they are still very rare, more same-sex domestic violence cases are now going to court.<sup>296</sup>

The new types of domestic violence cases appearing in the courts should be monitored. Steps should be taken to study the relation between drug use and domestic violence and to develop dual-diagnosis programs. Furthermore, the possibility that men are now filing more petitions and the potential detrimental consequences of this development for battered women must be examined.

#### 14. *Police Policies*

Several people noted new problems facing battered women due to changes in police policy. For instance, a judge and an advocate said that the mandatory arrest policy has, at times, been carried out in a sloppy fashion, resulting in the arrest of battered women. Two advocates and one ADA thought that the switch in 1990 from New York City Police Commissioner Ward to Commissioner Brown was not advantageous for battered women. The ADA praised Commissioner Ward for setting forth clear and concrete goals with respect to domestic violence. The two advocates and the ADA agreed that Commissioner Brown makes less of an effort in the area of domestic violence than did Commissioner Ward. On the other hand, Detectives Joe Ryan and Lydia Martinez asserted that the police policies concerning domestic violence have not changed as a result of the switch in police commissioners.

As we did not gather sufficient substantiation of the points discussed here, it may be useful to look further into these potential areas

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296. These cases tend to go to criminal court because they usually do not involve the relationships required for family court eligibility.

of concern.<sup>297</sup>

### III. Evaluation of the Impact of the Task Force Report and Judicial Committee's Work in New York City

#### A. Work of the New York Judicial Committee on Women in the Courts with respect to Domestic Violence<sup>298</sup>

In the past five years, the New York Judicial Committee on Women in the Courts has taken numerous steps to implement the recommendations of the Task Force and to eradicate gender bias on a more general level.<sup>299</sup> It has adopted three major approaches: publicizing the commitment of the court's leadership to these issues; integrating change into the court system's routine policies; and encouraging local initiatives.<sup>300</sup> In addition to supporting the work of outside groups,<sup>301</sup> the Judicial Committee has initiated change on its own accord.

This section briefly describes some of the work of the Judicial Committee with respect to domestic violence. The description is gleaned from the Committee's four reports, as well as from responses to several of our interviews. We do not purport to touch on all of the efforts of the Judicial Committee in this area, but rather attempt to summarize some of its major work. After setting forth this brief description of the Judicial Committee's efforts regarding domestic violence, we present the opinions of our survey respondents regarding the progress that has occurred in the area of judicial education and training in the past five years. We focused our surveys on education because it was a major priority of the Judicial Committee.<sup>302</sup>

#### 1. Judicial and Nonjudicial Education & Training

When the Judicial Committee set to work in May, 1986, it decided to focus initially on the "areas to which it had the most direct access: the recommendations directed specifically to court administrators and judges."<sup>303</sup> Chief among these efforts has been the education and

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297. See *supra* part II.D.9 (discussing our recommendations).

298. The following discussion draws primarily from information provided in the four reports of the Committee to Implement Recommendations of the New York Task Force on Women in the Courts, which is now named the New York Judicial Committee on Women in the Courts. See 1987 REPORT, 1988 REPORT, 1989 REPORT and 1991 REPORT, *supra* note 7.

299. See generally 1991 REPORT, *supra* note 7.

300. *Id.* at 6-7.

301. *Id.* at 8.

302. The most recent report of the Judicial Committee states that "[e]ducation has always been at the top of [its] agenda." See *id.* at 9.

303. 1987 REPORT, *supra* note 7, at 3.

training of judges and nonjudicial staff. Since its formation, the Committee has devoted considerable attention and resources to developing judicial and nonjudicial education programs designed to sensitize judges and court administrators to issues of gender bias in judicial decisions and in the court system's treatment of women.

*a. Steps Taken*

There are several education programs for judges and court personnel in the New York State court system. Newly appointed and elected judges receive training at the new judge orientation program, which is administered each December. Sitting judges receive continuing education at the annual judicial seminar, which occurs for one week, twice each summer. Additionally, there is a town and village justice training program, as well as educational programs for nonjudicial employees.

Understanding the Judicial Committee's role in judicial education requires familiarity with the Office of Court Administration's ("OCA's") system for creating and updating the state's education programs for judges. New York State judges control their own curriculum for the annual judges' seminar through a series of curriculum committees composed of judges appointed to one-year terms by the Chief Administrator. Each committee focuses on a different area of the law, and two curriculum review committees assure that issues relating to gender and minority or ethnic concerns are addressed. After their first meeting each year, the committees communicate to OCA the issues they want included in that year's curriculum. OCA often compiles a shell curriculum, a rough outline of the proposed courses, and sends it to a set of bar associations and other committees and task forces around the state, asking them to suggest specific issues of concern to them. OCA passes the suggestions on to the curriculum committees, which decide whether to incorporate them.

The Judicial Committee focused its education efforts broadly. It sought to infuse gender bias education into the following programs: the annual judicial seminar, the new judge orientation program, the town and village justice training,<sup>304</sup> nonjudicial education and training programs, and other training within the court system.

In conjunction with OCA, the Judicial Committee encouraged the inclusion, in the curriculum of the annual judges' seminar and the new judge orientation program, of several courses that deal either ex-

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304. The following discussion considers only domestic violence education of judges and nonjudicial employees within the New York City courts - since there are no town and village justices in the city, their training will not be addressed.

clusively or at least partly with domestic violence issues.<sup>305</sup> More recently, the Judicial Committee and OCA have focused on integrating gender bias issues and materials into the various substantive law courses offered at these programs. This new strategy has the advantages of ensuring both that gender bias issues are discussed in the context of specific areas of the law, such as criminal, constitutional, or family law, and that all judges, not just those who sign up for gender bias training, receive some education in this area. According to the Committee, such an approach demonstrates that "the problem of gender bias . . . is inextricably bound up in the legal decision-making, administrative, and operational work of the court system."<sup>306</sup>

The Judicial Committee also made recommendations regarding the selection of judges for curriculum committees, and OCA created a special gender bias curriculum review committee composed of representatives of each of the curriculum committees.<sup>307</sup> During its third year, the Judicial Committee drafted a two-page memorandum for all OCA speakers that reminds them of the judiciary's "commitment to equality between the sexes" and includes "suggestions for eliminating dated and offensive terminology" from their presentations.<sup>308</sup> By 1989, the Committee was "satisfied that its participation in the development of each summer's judicial conference ha[d] become a regular, accepted part of the planning process."<sup>309</sup>

For years, OCA has sponsored annual seminars, that run for three to four days each year, for selected nonjudicial staff employed in the Unified Court System.<sup>310</sup> In 1986, OCA initiated a two-hour pilot session for City Court clerks to address issues raised by the Task Force Report.<sup>311</sup> This session was refined and adopted as a three-hour course, "Mission and Organization," that was provided for all

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305. For example, the 1986 annual judicial seminar included a mandatory, plenary session entitled "Courtroom Dynamics: Women and Justice." After a professional training component, the judges participated in small discussion groups that considered, among other things, the stereotyped perceptions of women as they affect domestic violence. *See* 1987 REPORT, *supra* note 7, at 7. In addition, the 1986 annual seminar included a three-hour segment devoted exclusively to domestic violence issues, including the psycho-social dynamics of wife abuse, the battered woman syndrome, and the effects of spousal abuse on children. *See id.* at 8. The 1986 New Judge Orientation program included a gender bias course entitled "Lessons from the Report of the New York Task Force on Women in the Courts." *See id.* at 9.

306. *See* 1988 REPORT, *supra* note 7, at 3.

307. *Id.* at 6.

308. *See* 1989 REPORT, *supra* note 7, at 3.

309. *Id.* at 6.

310. *See* 1987 REPORT, *supra* note 7, at 13.

311. *Id.* at 14.

nonjudicial personnel in 1987.<sup>312</sup> In addition, some court employees receive special training relating to gender bias issues that arise in the course of their work.<sup>313</sup> In 1986 and 1987, OCA instructed nonjudicial educators in gender-free writing and presentation of issues at the "Train-the-Trainers" program.<sup>314</sup> A Workforce Diversity Program given in 1990 trained employees about the influence of ethnicity, gender, and other cultural attributes on their perceptions of others and themselves.<sup>315</sup> Finally, components relevant to gender bias have been added to other training programs for employees within the court system.<sup>316</sup>

In addition to its considerable efforts in the area of judicial and nonjudicial education, the Judicial Committee focused on increasing the participation of women in planning and teaching courses for judges.<sup>317</sup> Finally, the Judicial Committee has worked to ensure that all progress with respect to education is institutionalized for the future.

#### *b. Responses to Judicial Education & Training*

We asked several people, including Helen Johnson, Director of Education & Training at OCA,<sup>318</sup> advocates, ADAs, and judges for their thoughts about current judicial education programs. Although OCA trains both judicial and nonjudicial employees in the court system, our surveys and interviews focused on the education of judges.<sup>319</sup>

Helen Johnson provided an extremely positive evaluation of current judicial education. She emphasized that judges regularly attend

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312. See 1988 REPORT, *supra* note 7, at 9.

313. See 1989 REPORT, *supra* note 7, at 9. For example, the Court Officer Academy has for several years provided training on family conflict resolution to each entering class of officers. At the September, 1987 training, New York Supreme Court Judge Ellerin and a battered woman made presentations about domestic violence. See 1987 REPORT, *supra* note 7, at 10.

314. See 1987 REPORT, *supra* note 7, at 15.

315. See 1991 REPORT, *supra* note 7, at 16.

316. *Id.* at 16.

317. See *id.* at 14.

318. Johnson's job includes three areas of responsibility: providing orientation and continuing legal education for approximately 1,200 state judges; providing orientation, testing, certification, and continuing legal education for approximately 2,400 town and village justices, fewer than 400 of whom are lawyers; and providing education and training for approximately 12,000 nonjudicial personnel within the court system. There are no Town and Village Justices in New York City, and therefore we did not interview Johnson with respect to her work in that area. Before being appointed to her current position, Johnson worked in the Bronx DA's Office for twenty years.

319. Although we did not ask about nonjudicial training, several survey respondents stated that there is a serious need for more sensitivity training for nonjudicial personnel in New York's family courts. See *supra* parts II.C.6, II.C.7.



general education programs as well as particular courses on gender bias issues. She noted that attendance at gender bias courses is especially high at the new judge orientation program which provides mandatory training, with no electives, for all new judges. However, Johnson conceded that judges at the annual judicial seminar, which runs on an elective system, are less likely to sign up for specific sensitivity programs than for courses dealing with traditional legal topics. Therefore, she strongly supports the Judicial Committee's recent focus on integrating gender bias issues into various substantive areas.<sup>320</sup>

Johnson said that the question of what methods of judicial education are most effective for gender bias and domestic violence matters is very current and controversial. Johnson believes that while straight lecturing is more appropriate for traditional legal topics, gender bias training requires additional techniques, such as literature readings, small group discussions, and films, in order to avoid preaching. She pointed out that OCA uses primarily the lecture format but that it has tried these other methods in the area of gender bias and domestic violence education.

We asked Johnson whether she knew of any concrete instances in which judicial education had impacted the results of particular cases. She responded that when some judges face gender bias issues for the first time in their cases, they call OCA for help. Her office sends these judges excerpts from its library of materials, which includes a video catalogue of all the courses that have been given since 1987.

Finally, Johnson asserted that she cannot think of any ongoing problems in the area of judicial education on gender bias and domestic violence issues. Her plans for the future envision no changes in the current process of curriculum selection. Johnson believes that OCA's system is extremely successful because it provides continuous feedback and development of the various curricula.

Although the battered women's advocates do not themselves attend judicial education seminars, several gave their impressions of such programs, stemming from their own observations and their discussions with judges. A number of advocates emphasized that from what they hear, not enough judges, and especially not enough of those who need such training, attend the annual seminar courses dealing with

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320. One person we interviewed stressed the need for interweaving gender bias issues into other courses by pointing to an example. She said that when the 1988 annual seminar presented a course devoted entirely to psychological theories about the battered women's syndrome, only twenty-four judges attended throughout the two weeks. The interviewee contrasted this poor attendance with the fact that two hundred judges attended a general course on criminal law into which OCA integrated gender bias issues in 1989.

domestic violence. These advocates asserted that because the most informed judges tend to attend the courses on gender bias, the teachers end up "preaching to the converted." Several advocates commented that despite education efforts and the heightened awareness of a number of individual judges, judges as a whole have not improved sufficiently in their treatment of domestic violence cases in the past five years.

The advocates offered some suggestions for improving judicial education courses. Several urged that domestic violence training be provided more frequently by experts in the field. They also suggested that such training be monitored to ensure that it is effectively implemented. Others stressed the need for more localized training that can address issues of local concern. Finally, advocates urged that training be made less rigid and preachy and thus more accessible to judges.<sup>321</sup>

The ADAs we surveyed also made suggestions for improving judicial education.<sup>322</sup> One ADA stressed that judges need more training because the one or two hours of domestic violence and gender bias courses at the annual judicial seminar apparently are not enough. While three ADAs urged that domestic violence training be mandatory to prevent judges from opting out of it, another ADA said that compulsory programs are not beneficial because judges resent being preached to and thus do not learn much at such sessions.

The elements of domestic violence that the ADAs thought should be stressed include: the fact that domestic violence is a crime that is no less serious than other crimes; the cycle of abuse and repentance; the reasons why confused and scared battered women might want to drop charges; the battered women's syndrome; and the real terror and human suffering that occurs in these cases.

Almost all the ADAs we surveyed emphasized that domestic violence issues cannot be taught in a traditional classroom setting. These ADAs made several proposals for training other than through the traditional lecture format: one pointed out that VSA has an excellent training film, involving a battered woman's 9-1-1 call and the police response to it, that helps to bring home the terror of domestic violence; another suggested that judges be required to imagine abusive relationships in their own lives as a means of making the issues more

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321. One Judicial Committee member stressed that OCA needs to use more creativity in its training programs. This member suggested that the annual seminar incorporate a mock domestic violence case into its training, a method that proved very successful at a recent City Bar-sponsored training program.

322. As was the case with the advocates, these suggestions are based on ADAs' individual perceptions of the need for reform rather than on first hand observations of the education programs.

real; and another advocated that trainers tell judges that they will be negatively perceived in the media if they act in a biased way. Other ADAs asserted that judges can only develop sensitivity skills in practice in the course of real cases. They suggested that attorneys make good arguments in their legal memos and in oral argument; that ADAs introduce the battered women's syndrome to judges in the course of trials; that judges be forced to have more contact with battered women and their suffering in the course of judicial proceedings; and that judicial administrators threaten judges' jobs if they take discriminatory actions.

Most of the judges we surveyed responded favorably to the training they receive at both the annual judges' seminar and the new judges' orientation program. Half of those we surveyed gave very positive reviews of the training. It is interesting to note that a higher proportion of family than of criminal court judges praised the education programs. Of the judges who favored the training, a Manhattan Family Court judge pointed out that a large effort has been made to infuse gender bias issues into all the programs, making every judge aware of how gender bias affects outcomes in cases. This judge deemed the sensitivity training effective and stated that it has evoked a generally positive response from judges. A Queens Family Court judge praised the role-plays conducted at the annual seminar as "enjoyable and valuable." Furthermore, a Bronx Family Court judge spoke favorably of the lectures given by experts in the field.

The other half of the judges we surveyed responded to the training with more ambivalence. Although some of these judges asserted that the training is generally good, all had some criticisms or suggestions for improvement. However, the recommendations of some judges seemed to contradict those of others. For example, a Manhattan Criminal Court judge recommended that gender bias seminars be held more frequently, with refresher courses provided on Saturdays during the year. In contrast, a Staten Island Family Court judge thought that training should not occur too often, and he stressed that judges get bored when the same programs are repeated year after year.

Of the four judges who discussed the issue of mandatory versus elective programs, three opposed mandatory training. Two of these judges thought that mandatory courses for sitting judges are problematic because they may lead to resentment, especially among judges who think they understand these issues or who do not hear many of these types of cases. The third judge believed that domestic violence courses should not be mandatory because this issue should not have preference over other very important issues. On the other hand, one

judge favored mandatory training, although he emphasized that it should occur only periodically.

A few judges urged that training be localized. These judges thought that the current training is too general in its focus and that judges would benefit more from programs concentrating on issues and problems specific to their geographic area. For example, one judge pointed out that small upstate towns have different problems than New York City, where there is a huge volume of cases, many of which involve drugs.

Some judges mentioned the training methods they prefer. These included films, role-plays, literature, and lectures by experts in the field. One judge mentioned that the Bronx Criminal Court judges had been "profoundly affected" by a lecture and slides about battered spouses presented several years ago by an expert in the field.

Several judges specified the subjects that need to be addressed in the training sessions. One judge emphasized that all matters should be included. Other judges mentioned the need to address the following issues: the claim that battered women use orders of protection as swords and not as shields; the dynamics of domestic violence, including the cycle of violence and the reason why some battered women seek to drop charges during the process; and the effects on children of witnessing violence in the home. Another judge emphasized that training should address the problem of judges treating "home terrorism as less serious than stranger crimes" because they are hardened by some of the extreme cases they see. However, this judge added that he was not sure if mere training could address such a deep-seated problem adequately.

Finally, a few judges pointed to the limits of judicial education as a tool for solving gender bias problems. One judge asserted that some of his colleagues "snicker" at the gender bias education. Another pointed out that although most judges attend the sessions and thus receive some information about gender bias, it is not clear whether they make good use of their new knowledge. According to this judge, "You can lead a horse to water, but you cannot make him drink." And, while one judge asserted that updated training should be provided to judges who have been in the system for a long time, another doubted whether gender bias education would ever get through to some older judges.

A Staten Island Family Court judge pointed out that although education has made judges more aware of issues surrounding domestic violence, staff members need much more training in this area, particularly given their constant turnover. He proposed that judges and staff

members meet once or twice each year to talk about sensitivity issues, and that court officers be retrained continually. This judge also encouraged training for other professionals in the field of domestic violence upon whom the courts must rely for help, such as mental health and probation officers.<sup>323</sup>

## 2. Other Judicial Committee Efforts

Our surveys focused on judicial education because it was a major focus of the Judicial Committee's work. However, it is important to note that the Committee has also undertaken significant endeavors in many other areas. While some of these initiatives addressed domestic violence issues in particular, others addressed gender bias in the courts more generally.

The following list, which is by no means complete, is designed to give the reader an idea of the considerable work and range of efforts undertaken by the Judicial Committee. The Committee has provided: research on the availability of judges to issue temporary orders of protection and on battered women's need for relief after family court hours;<sup>324</sup> advice about improving the handling of civilian complaints, seventy-five percent of which are domestic violence matters;<sup>325</sup> the creation of a form which battered women seeking orders of protection must complete before talking to petition clerks and which is designed to elicit more information for petitions about case histories, circumstances of abuse, and desired relief;<sup>326</sup> a new statement — in both Spanish and English — for the police to use when making personal

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323. VSA trains judges and court personnel, as well as ADAs and police all over the city. Recently, it has received funding from a private foundation for its proposal to train New York State criminal court judges in the area of domestic violence. According to the plan, VSA, along with a multi-disciplinary advisory board composed of judges, ADAs, and other criminal justice professionals, will develop a model two to three hour training program that will include both a manual focusing on programs and policies (such as mandatory prosecution and batterers services) and a bench guide outlining caselaw and statutory law. The curriculum will be tested at six sites, and each pilot session will train fifteen to twenty criminal judges. VSA will evaluate the effectiveness of its model training program in terms of both the number of judges who subsequently change their policies and practices and the extent to which OCA institutionalizes such changes.

324. See 1987 REPORT, *supra* note 7, at 27; 1988 REPORT, *supra* note 7, at 32.

325. See 1989 REPORT, *supra* note 7, at 18. This focus of the Report impacted the decision of the Deputy Chief Administrative Judge for the New York City courts and the Administrative Judge of New York City Criminal Courts to establish in 1988 a task force to investigate and evaluate the procedures by which civilian complaints were being handled. The task force produced a report on this issue in June, 1989, "recommending, among other things, that units be established in each borough to screen complaints and make immediate referrals of serious domestic violence complaints to local District Attorneys for prosecution." *Id.*

326. See 1988 REPORT, *supra* note 7, at 34.

service;<sup>327</sup> significant attempts to increase the availability of counsel for battered women;<sup>328</sup> work towards achieving greater hiring of female court employees, particularly in higher paying positions, and towards improving the conditions of their work;<sup>329</sup> educational efforts for the general public;<sup>330</sup> encouraging the creation of gender-neutral legal forms, statutes, and regulations;<sup>331</sup> and responding to gender bias complaints.<sup>332</sup> Additionally, in 1987 the Judicial Committee encouraged formation of local gender bias committees in courts across the state. These local committees often include both judges and non-judicial personnel. They were created in response to the need to tailor gender bias strategies and solutions to local conditions.<sup>333</sup>

Finally, it is important to note that the Judicial Committee's work has extended considerably beyond the recommendations set forth in the Task Force Report. The Judicial Committee used the recommendations as a starting point but has begun to address new problems that have arisen in the past five years as well. Such problems include the growing number of female defendants in New York's criminal courts and the complicated problems relating to drug-addicted women who bear children.<sup>334</sup>

#### **B. Reasons for Progress: Impact of the Task Force Report, Judicial Committee Work & Other Factors**

We asked our survey respondents and interviewees who believed that there has been some progress since the publication of the Task Force Report to comment on the reasons for such progress. We were interested in assessing the role of the Task Force Report in bringing about change in the handling of domestic violence cases.

The reason most often cited for progress was a developing public awareness of issues surrounding domestic violence. One judge noted that judicial improvement in this area has resulted gradually from a combination of growing public pressure and increasing requests by

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327. See 1988 REPORT, *supra* note 7, at 35.

328. See *id.* at 36; 1989 REPORT, *supra* note 7, at 16-17. Under Article 2 of the Family Court Act, petitioners and respondents of family offenses are entitled to court-appointed counsel if they are indigent. See N.Y. FAM. CT. ACT § 262 (McKinney 1983 & Supp. 1992).

329. See 1987 REPORT, *supra* note 7, at 17; 1988 REPORT, *supra* note 7, at 14; 1989 REPORT, *supra* note 7, at 19.

330. See 1989 REPORT, *supra* note 7, at 11.

331. See 1987 REPORT, *supra* note 7, at 35; 1988 REPORT, *supra* note 7, at 22; 1989 REPORT, *supra* note 7, at 24.

332. See 1988 REPORT, *supra* note 7, at 28.

333. See 1989 REPORT, *supra* note 7, at 16.

334. See 1991 REPORT, *supra* note 7, at 5.

women for orders of protection. Another judge emphasized that the social climate impacts the degree of seriousness with which judges treat violations of orders of protection; if the public considers domestic violence a serious offense, judges will not feel comfortable treating protective order violators with leniency. Several other judges and one ADA emphasized that general public education has led to increased sensitivity of judges and nonjudicial employees. Additionally, one judge noted that her younger colleagues are more sensitive than older judges simply because they have grown up in an era that increasingly treats gender bias issues as serious problems.

The people we surveyed and interviewed believed overwhelmingly that the Task Force Report and Judicial Committee follow-up work were part of this broader movement of public awareness that has contributed to change in the area of domestic violence. Though few improvements were attributed directly to the Report and Committee work,<sup>335</sup> various respondents and interviewees emphasized that these two elements have had a major role in creating an atmosphere in which change was possible.

When asked whether they could attribute particular areas of progress to the Task Force Report or Judicial Committee follow-up work, our survey respondents provided a variety of answers. The battered women's advocates we surveyed were evenly split between those who attributed specific progress to the Report and Judicial Committee work, those who thought the two were responsible for some progress, and those who believed the Report and Committee follow-up work have had virtually no impact in the area of domestic violence. Most of the judges thought that the Task Force Report and Committee work were partially responsible for improvement in the domestic violence context; however, two judges asserted that these efforts have had no impact while one claimed they were responsible for all the change in this area. One criminal court judge said that the Task Force Report was "not a hot topic of conversation" in Queens. None of the ADAs we surveyed attributed progress directly to the Task Force Report or Judicial Committee work.

Several of the people who thought that the Task Force Report and Judicial Committee follow-up work have affected the area of domestic violence commented further about the nature of this impact. One judge emphasized that the Report has had a major impact by chang-

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335. The improvement most often attributed directly to the Task Force Report was passage of the law prohibiting mutual orders of protection unless the respondent answers or brings a counterclaim. Although the Report was instrumental in attaining passage of this legislation, other groups also made substantial contributions to the process.

ing the problem of gender bias from a narrow women's issue to an issue for the whole judicial system. This judge also pointed out that the Report helped to legitimize specific issues, such as the importance of vacate orders, and that by documenting what experts in the domestic violence field had always known, it gave advocates something concrete and official to point to in their articles and briefs. A battered women's advocate also emphasized the legitimacy that the Task Force Report and Judicial Committee work provided for gender bias issues, particularly since this work has the imprimatur of the Chief Judge. Two judges commented that the Report and Judicial Committee work have increased judges' general awareness of these issues. One battered women's advocate pointed out that these efforts have forced the "unaware" to think about domestic violence for the first time. Several judges attributed judicial improvement to the annual judicial training seminars, which, partially due to Judicial Committee efforts, have recently integrated gender bias issues into the curriculum whenever practicable.<sup>336</sup> One survey respondent remarked that the Task Force Report and Committee work have made a "huge difference" both in the global sense of increasing awareness about problems in this area and in the more concrete sense of inspiring individual courts around the state to establish their own gender bias committees.

Helen Johnson, Director of Judicial Education at the Office of Court Administration, viewed the Task Force Report and Judicial Committee follow-up work as one part of a larger movement of sociological change that has contributed to progress in the area of gender bias and domestic violence cases in the New York courts. She emphasized that the Report has had an enormous impact on judicial education, especially in terms of OCA's recent focus on interweaving gender bias issues into many substantive legal courses. Johnson also stated that the Task Force Report and Judicial Committee work are responsible for her office's conscious effort to include gender bias issues in various education programs and to expand the definition of domestic violence to include issues such as elderly abuse.

We only asked our survey respondents and interviewees what progress they could attribute to the Task Force Report and Judicial Committee follow-up work; we did not ask them to specify the various factors which have contributed to progress in the area of domestic violence. However, a number of individuals mentioned factors that they thought were significant. For instance, several respondents emphasized that media publicity had contributed to progress in the area of domestic violence; movies, television, and newspaper articles that

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336. *See supra* part III.A.1.



publicize tragic cases have increased judges' and ADAs' awareness that domestic violence is a lethal crime.<sup>337</sup> However, one survey respondent cautioned that the media can also inhibit improvement. She argued that the way the media chooses to depict domestic violence can have the harmful effect of deterring women from seeking and/or obtaining help if they do not fit within the narrow, stereotypical image of battered women that the media portrays. This respondent also pointed out that media coverage of domestic violence has declined in light of the recent climate of complacency.<sup>338</sup>

Other factors that our survey respondents and interviewees thought have contributed to progress in the area of domestic violence include the efforts of advocates and experts in the field; the work of well-informed and determined judges; ADAs and other important players who have set out to effect change in this area; municipal lawsuits against the New York City police which have forced the police to take domestic violence cases more seriously; and various educational undertakings.

### C. Factors Contributing to and Impeding the Success of the Task Force Report and the Work of the Judicial Committee

It is clear that the existence of both the Task Force Report and the Judicial Committee are of monumental importance. Their contributions to the struggle for gender equality have been significant. At the same time, eliminating gender bias in domestic violence cases is an enormous undertaking and many of the problems discussed in the Task Force Report still appear to be problems today.<sup>339</sup> Below we examine several factors which might have contributed to the Task Force's and the Committee's influence, as well as some factors which possibly limited their reach.<sup>340</sup> Our purpose here is only to set forth some ideas for gender bias task forces and implementation committees

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337. Several of our survey respondents and interviewees stated that two cases in particular have had a considerable impact on various players in the New York City court system. See *In re Steinberg*, 528 N.Y.S.2d 375 (1988), 573 N.Y.S.2d 965 (1991); *Bruno v. Codd*, 90 Misc. 2d 1047, 396 N.Y.S.2d 974 (1977) *rev'd on other grounds*, 64 A.D.2d 582, 407 N.Y.S.2d 165 (1978), *aff'd* 47 N.Y.2d 582, 419 N.Y.S.2d 901, 393 N.E.2d 976 (1979). See also SAM EHRlich, LISA, HEDDA, AND JOEL: THE STEINBERG MURDER CASE (1989) (describing the circumstances surrounding the Steinberg case).

338. See *supra* part II.D.11.

339. See *supra* parts II.C.1-26 (analyzing status of the Task Force's findings and recommendations); parts II.D.1-14 (discussing other and new problems faced by battered women in the New York City court system).

340. We chose to discuss the particular factors listed in this section because they were mentioned by our survey respondents and interviewees. We do not intend this list to be exhaustive or limiting in any way. Nor do we wish to imply that the factors we chose to discuss are more important than any other set of factors.

to explore as they strive to effectuate their goals.<sup>341</sup>

1. *Imprimatur of the Chief Judge and a Broad Mandate*

On April 2, 1986, the New York Task Force on Women in the Courts submitted its report to Chief Judge Wachtler. On May 1, 1986, the Chief Judge created the Judicial Committee as a "standing and implementing arm of the court system to help us assess, monitor, and further sensitize ourselves" to the problems of gender bias in the courts.<sup>342</sup> Judge Wachtler gave the Committee a broad mandate — "as sweeping as the need warrants."<sup>343</sup> He said that the Committee would start with the Task Force Report, would report recommendations and progress to him, and "[would] reach out very specially to the court system's Personnel Director and to the education and judicial units and organizations, as well as [to] all judges, lawyers, bar leaders, law school deans and faculties, law enforcement agencies, and other public officials and community leaders who affect the operation of the courts."<sup>344</sup>

All of the Judicial Committee members with whom we spoke thought that the continuing support of Chief Judge Wachtler has been invaluable to effective progress in the area of gender bias in the courts. These individuals stated that the Chief Judge has declared publicly his intention to work to eliminate the problems addressed by the Task Force Report, that he has given backing and legitimacy to the Judicial Committee's efforts, and that the progress achieved thus far would have been impossible without his support. Administrative Judge of the New York City Family Courts and Judicial Committee Chair McDonald said that the Chief Judge is absolutely dedicated to the issue of fair treatment for women and that his support has been a major reason for positive developments in this area. One Judicial Committee member said that the existence of that Committee represents a major step forward and a statement of policy and legitimacy by the Chief Judge. She added that Chief Judge Wachtler communicates with the Administrative Judges about Committee concerns, "keeping them on their toes," and that he gives Committee members considerable autonomy. Another Judicial Committee member said that the Chief Judge treats the Task Force Report as a living document, not as "just another report," and that he actively encourages and supports

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341. We were not able to interview enough Judicial Committee members to merit any specific conclusions in this area.

342. See 1987 REPORT, *supra* note 7, app. B at 5.

343. See *id.* app. B at 6.

344. See *id.*

the Judicial Committee. Finally, one member commented that the Chief Judge's backing acts as an invaluable source of legitimacy for Committee members working to convince relevant players of the need to adopt certain policies.

A few members mentioned that the Chief Judge again demonstrated his full support when, on October 17, 1990, he gave the Judicial Committee its new name<sup>345</sup> and declared that the elimination of gender bias "is one of the most important enterprises the court system has undertaken in the past decade."<sup>346</sup>

## 2. *Office of Court Administration Support*

Related to the endorsement of the Chief Judge is the more general support provided by OCA. As one Judicial Committee member said, "If the Chief Judge is behind it, OCA will be behind it." The Chief Judge clearly mandated the backing of OCA's Office of Education and Training in his remarks when he created the Judicial Committee: "The educational and consciousness raising recommendations which pervade the report are singularly important and will be implemented immediately by substantial inclusion in all judicial and nonjudicial orientation and educational programs."<sup>347</sup> In addition, the fact that a number of past and present Committee members are OCA workers facilitates OCA support for Judicial Committee projects. Although Helen Johnson, Director of Judicial Education at OCA, was not on the original Task Force and is not on the Judicial Committee, she does attend the Committee meetings on judicial education and has considerable, ongoing contact with Administrative Judge McDonald, the Committee Chair.

Jill Goodman, the Judicial Committee's part-time staff member, remarked that OCA support has been crucial to the Committee's ability to carry out its goals. She stated that OCA's Office of Education and Training had to be a part of the Judicial Committee's effort to implement judicial education programs designed to combat gender bias in the courts. She further explained that, as a result of the Chief Judge's mandate for active OCA support of the Committee's efforts, such support is institutionalized and does not depend on the particular views about gender bias of present or future OCA employees. Similarly, Administrative Judge McDonald commented that OCA support has

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345. See Gary Spencer, *Wachtler Gives New Name, Mission to Panel on Women*, N.Y.L.J., Oct. 18, 1990, at 1.

346. *Id.*

347. See 1987 REPORT, *supra* note 7, app. B at 4.

enabled the Judicial Committee to address gender bias problems not only directly but also through institutionalized change.

### 3. *Public Appearances of Task Force and Judicial Committee Members*

A few interviewees asserted that the fact that the Task Force's endeavors constituted a very public process was instrumental to its impact. One Judicial Committee member said that the Task Force's public, state-wide hearings before the Report's publication were successful and fostered a great deal of visibility. In addition, the fact that the contents of the Report were quite startling to many drew attention to these issues. Furthermore, public events concerning the Task Force Report are ongoing. In April, 1991, for instance, the City Bar sponsored a symposium to celebrate the five year anniversary of the Task Force Report.<sup>348</sup>

In contrast, although some Judicial Committee members have speaking engagements or arrange public forums from time to time,<sup>349</sup> public appearances do not seem to be one of the Committee's major focuses. One member remarked that the Committee should undertake more public speaking. However, another interviewee pointed out that the Judicial Committee has not focused on public appearances because it is not concerned primarily with making a name for itself. This person emphasized that the Committee's major goal is effecting change regardless of whether that change is attributed directly to it.<sup>350</sup> Another Judicial Committee member noted that when Chief Judge Wachtler and Administrative Judge McDonald speak on any issue, they frequently discuss the Task Force Report and related gender bias matters.

In any event, it seems that it would be useful to explore whether or

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348. The speakers were Judge McDonald, Administrative Judge of the New York City Family Courts and Chair of the New York Judicial Committee on Women in the Courts; Judge Betty Ellerin, New York Supreme Court Justice, Appellate Division, First Department and First Chair of the Special Committee on Women in the Courts of the City Bar; Lenore Kramer, Past President of the New York State Trial Lawyers' Association; and Lynn Hecht Schafran, Director of the National Judicial Education Program to Promote Equality for Women and Men in the Courts at the NOW Legal Defense and Education Fund. The forum was moderated by Conrad Harper, President of the City Bar.

349. In 1989, the Judicial Committee "[e]xperiment[ed] with sponsoring its own public event" by "organiz[ing] a forum on domestic violence" that was presented both in New York City and in Buffalo. The forum involved a mock domestic violence trial. In New York City, the City Bar hosted the event with the following co-sponsors: the New York Women's Bar Association, the New York County Lawyers' Association, and the New York State Bar Association. See 1991 REPORT, *supra* note 7, at 17.

350. For example, one could read the recently issued report on civilian complaints, see *supra* note 96, without knowing that the Judicial Committee undertook work in this area.

not a greater emphasis on public speaking would contribute significantly to the achievement of Judicial Committee goals.

#### 4. *Distribution of Task Force Materials*

In our attempt to assess the impact of the Task Force Report, we thought it would be important to find out whether judges and others have received copies of the Report, and if possible, to determine how many of them actually read the Report. It is our understanding that all judges received the Summary Report originally and did not receive the full Report until about a year later when it was published in the *Fordham Urban Law Journal*.<sup>351</sup> OCA bought enough copies from the journal to distribute the Task Force Report to all judges, as well as to selected individuals around the country including the Justices of the United States Supreme Court, together with a cover letter from Chief Judge Wachtler. We also understand that new judges receive copies of the Report and that copies also are available at both the annual judicial seminar and the new judge orientation program.

All but one of the judges we surveyed said they received copies of the Task Force Report and believed that other judges had obtained copies as well. Some judges thought that their colleagues had read the Report while others had no idea if anyone else had read it.

All of the ADAs we surveyed said they had read the Task Force Report. Our understanding is that ADAs do not receive copies of the Report unless they request them.

Joan Byalin, counsel to the New York State Assembly Task Force on Women's Issues, reported that her office received a copy of the Task Force Report which was mailed to members of the legislature, including Assemblywoman Weinstein, the Task Force's Chair. Byalin pointed out that her office makes "constant use of [the Report] in debate, in formulating legislation, [and] in backing up [its] positions." The Assembly Task Force also has received the Committee's follow-up reports, but has found them to be "less helpful."

We do not know whether judicial screening committee members have received and read copies of the Task Force Report due to the fact that we received only one response from the chairs of these committees.<sup>352</sup>

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351. OCA did send full versions of the Task Force Report originally to a select group of judges who were serving on task forces or who had other roles that made the Report particularly relevant to their work. OCA apparently did not send the full Report to all judges until it was published in the *Fordham Urban Law Journal* because of financial constraints. See *Report of the Task Force on Women in the Courts*, 15 FORDHAM URB. L.J. 1 (1986-87).

352. See *supra* part II.C.26.

One Judicial Committee member pointed out that the *New York Law Journal* published a summary of the Task Force Report, and that this gave the Report wide distribution.<sup>353</sup> She also said that the Task Force Report became a "sexy issue" and that this helped to "spread the word." The special bar committees that were established to address the Report's findings and recommendations helped with further distribution.

Finally, Administrative Judge McDonald said that the Task Force Report has been distributed to judges, bar associations, law schools, DAs' offices, and to various other individuals. She added, however, that "the distribution of the Report is the least of it" because ongoing publicizing of the Report and of gender bias concerns occurs during training sessions and during her and the Chief Judge's speaking engagements.

One interviewee was disappointed that most judges did not receive the full Task Force Report until almost a year after the summary version was disseminated. She believed that many judges read the summary version as if it were the full Report and thus dismissed the Task Force's findings as conclusory, not giving them the attention they deserved. Her comment at least raises the question of whether greater or more creative dissemination efforts could have effected broader policy change.

##### 5. *Assistance of Domestic Violence Experts*

The Task Force and the Judicial Committee have benefitted from the assistance of outside advocates and others with expertise in the area of domestic violence. Judge Marjorie Fields, for example, has been an important expert and consultant who has made significant contributions. The Judicial Committee consults outside experts from time to time, often to aid in the planning of conferences. Additionally, Administrative Judge McDonald asserted that the Committee is always working with other institutions and encouraging dialogue between organizations (e.g., government and advocacy groups). Continuing consultation with domestic violence experts is undoubtedly an invaluable element of efforts to effectuate change for battered women.

##### 6. *Composition of the Judicial Committee*

The present eleven-person Judicial Committee includes sitting judges, executive assistants to the deputy chief administrative judges of both the upstate and New York City courts, the OCA director of

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353. See *Summary of Report by New York Task Force on Women in the Courts*, N.Y.L.J., April 23, 1986, at 17.

the office of EEO, OCA's general counsel, the Executive Secretary of the Association of the Bar of the City of New York, and a past member of the Assembly. One issue we are interested in is the extent to which the composition of an implementation committee's members can contribute to its success or limit its reach. We are curious, for instance, whether the Judicial Committee could be taking even greater strides if it were more broadly based; for example, the Committee might include members with links to the police, DAs' offices, academics, or other important players. On the other hand, perhaps the present composition of the Judicial Committee together with the creation of localized committees is a positive model for effectuating change in this area.

Some interviewees commented that the Judicial Committee consists mostly of people from within the court system. Two interviewees thought that it would be better to have a more diverse or broadly based committee. A Judicial Committee member claimed that she would like to have seen on the Committee some people from the academic world who are skilled in the particular areas being addressed. She agreed with several others, however, that it is better not to have ADAs on the Judicial Committee, and she informed us that ADAs and some other players already are called on for advice when needed. On the other hand, one interviewee complimented the "ingenious design" of the Judicial Committee and another thought that it represents a significant cross-section of the players in this field. These respondents pointed out that the Committee includes members such as Fern Sussman, the Executive Secretary of the City Bar, and May Newburger, a retired member of the New York State Assembly. One Judicial Committee member said that the Committee's composition and its close connection to OCA have been crucial to its ability to effect change. Both she and another member said that the fact that the Committee is somewhat of an "in-house" body allows it to have a substantial effect on training within the court system. Additionally, as an "inside group," it is not as threatening to judges as would be a committee composed of independent outside monitors.

Several interviewees suggested that the localized committee system stems from the Judicial Committee's sense that many problems can be addressed most effectively at the local level. Since the Committee deals with many different constituencies which have extremely diverse problems, concerns and needs, small local committees may be a very effective means of monitoring the conduct of judges and other players. Administrative Judge McDonald envisions much future progress on a decentralized basis. She stated that much of the work that could be

accomplished centrally has already been done, although a number of system-wide efforts are ongoing. Certain problems defy state-wide solutions and should be addressed in the context of local conditions. Another Committee member added that the local gender bias committees have the moral force and affirmative backing of the Chief Judge and that this will aid considerably in their success. Two members who did not favor having ADAs on the Judicial Committee pointed out that the local committees may have ADAs and other players on them, or at least may have close contact with such players, allowing the local committees to confront relevant regional concerns. As one member said, maybe the local committees will end up adding a broader perspective and thereby complement the Committee's membership. A final advantage of such a system is that a significant number of judges we surveyed seemed to favor localized training programs which would focus more on their region's particular problems and needs.

As the local committees are a relatively recent phenomenon, monitoring their success will be an important area of follow-up study. Additionally, a comparative study of implementation committee membership in different states would be useful. Different models and staffing have likely permitted different focuses and ranges of progress.

### *7. Focus of Judicial Committee Efforts*

Related to the composition of its members is the question of how the Judicial Committee has chosen to expend its resources and to gear its efforts. As we have seen, the Committee has done tremendous work in the area of judicial education, and although it also has accomplished significant work in other areas, education appears to have been a major focus. One Judicial Committee member explained that the Committee saw its mission as a somewhat internal one — that is, concentrated within the court system. She thought that the Judicial Committee has done wonderful work, but that it would be beneficial to focus more on the interconnections between the several branches of government. For instance, she suggested that the Committee might work more closely with the legislature. Another interviewee agreed and stated that the Judicial Committee should reach out more to both legislators and ADAs. One interviewee even suggested that the Committee develop a lobbying arm to work for legislative change. A battered women's advocate perhaps shed some light on this issue when she stated that the Task Force Report itself was "lacking in the statutory realm" and that it was unimaginative about legislative alternatives.



Two people we interviewed pointed out that the Judicial Committee's focus has broadened over time. Although it might have begun by implementing specific Task Force recommendations, the Judicial Committee has always had the broader mandate to eliminate gender bias in the courts wherever it may be.<sup>354</sup>

#### 8. *Limited Resources*

Perhaps the biggest problem confronting the Judicial Committee is that of limited resources. Our interviewees commented that this is a "terrible problem," that every big project has a price tag, that the funding situation is particularly hard during the current economic crisis, and that the Committee always could use more resources.

Presently the Judicial Committee has one staff member, Jill Goodman, who works four days a week. She has access to secretaries, law assistants and court facilities. One Judicial Committee member told us that it is not easy to accomplish the Committee's goals without the help of a big staff, and that limited resources set the parameters in which the Committee can function. Jill Goodman said that her frustration is not so much with the limited funding available to the Committee, but rather with the fact that resources are sorely needed for the courts in general and that social programs are painfully underfunded.

Another constraint on resources is the lack of data collection processes to facilitate investigation and evaluation. One advocate complained that there is no adequate method of data collection in New York regarding domestic violence cases. For instance, she remarked that it would be helpful to know the number of protective order violators who are being punished. Administrative Judge McDonald said that the Judicial Committee has had neither the time nor the resources for data development and research. One Committee member said that the Judicial Committee did not see itself as a vehicle for collecting huge amounts of data and that it did not have the staff for such an undertaking. Another said that given funding priorities, money for data collection does not seem to be a viable option.

Several people also mentioned the Judicial Committee's desire for funding for research projects in this area and the corresponding constraints imposed by the limited availability of resources.

#### 9. *Planning for Implementation*

The Task Force ceased to exist after publishing its Report. Subse-

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354. See *supra* part III.C.1.

quently, the Judicial Committee was established to address the Report's findings and recommendations. We wondered whether it would make a difference for implementation committees to be formed and to begin their work before the dissolution of the corresponding task forces. This method might allow for advantageous continuity in that people closely in touch with the Task Force's work could guide the transitional period.

Although one interviewee deemed the cessation of the Task Force and the subsequent creation of the Judicial Committee a "disjunction," a few others did not think it had been a problem. A Task Force member stated that she was rather exhausted after the Task Force completed its work and would not have wanted to be involved with the Committee's work. She also said that the Task Force and the Judicial Committee have different roles — the former concentrating on discovery, and the latter on enforcement — minimizing the need for continuity. One of our interviewees, who was on both the Task Force and the Judicial Committee, asserted that because the Task Force Report is very clear and Administrative Judge McDonald is an excellent Judicial Committee chairperson, the transition has been smooth in spite of the lack of substantial continuity.

Here again it would be useful to compare the practices of other states to determine whether benefits might be realized from some sort of overlap in timing, membership, or function of task forces and implementation committees.

#### 10. *Format of Task Force Report*

Another important area of study is whether the level of detail of a task force's findings and recommendations has any substantial effect on implementation. This might involve a comparative analysis, as different state reports go into varying levels of detail and complexity.<sup>355</sup> One Judicial Committee member with whom we spoke asserted that detail is not as significant as the ability of a committee to focus on the important recommendations, which, she claimed, the Judicial Committee has done. She did not think that task force reports have to "spoon-feed" implementation committees. An advocate noted that regardless of what problems are addressed by task force reports, the reports can only be as effective as the committees chosen to implement them. On the other hand, it still seems worth exploring whether

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355. The findings and recommendations of the Massachusetts Gender Bias Task Force Report, for instance, go into considerably more detail than do those of New York. See generally SUPREME JUDICIAL COURT, GENDER BIAS STUDY OF THE COURT SYSTEM OF MASSACHUSETTS (1989).

a more detailed and complex analysis can have a positive impact on implementation efforts.

### 11. *Deep-Set Attitudes*

A Judicial Committee member strongly believed that one significant impediment to further progress in this area is the mindset of some judges who have been sitting on the bench for years. It is very difficult or even impossible, she claimed, to change the thoughts and actions of some judges. She said that sensitivity training must begin early on in the legal career, particularly at the law school level. Law schools must, for instance, incorporate issues of domestic violence into many of their basic courses, rather than just in a course "out in left field" on gender bias.<sup>356</sup>

Another Judicial Committee member agreed that it is hard to train the minds and hearts of judges, court personnel, and many others who are molded by years of social prejudice. She added that the problem of deep-set attitudes confronts the entire movement for gender equality, not just the Judicial Committee's work.

## IV. Conclusion

Our research results indicate that despite significant progress, all of the problems that the Task Force noted in 1986 remain problems to some degree today. The Task Force's recommendations with respect to court administration, DAs, the legislature, bar associations and judicial screening committees have not been fully implemented. For instance, although judges' overall awareness of domestic violence issues has increased, judges do not enforce orders of protection adequately and they often doubt the credibility of battered women seeking such orders when these women have no visible injuries or have matrimonial actions pending. Similarly, while ADAs' treatment of domestic violence cases has improved somewhat over the years, ADAs appear to undercharge these cases. The first two legislative proposals set forth by the Task Force have been implemented, whereas two other proposals, which would require judges to take battering into account when making custody and visitation determinations and would provide for more supervised visitation, have met with little success.

Our survey respondents and interviewees also pointed to various obstacles confronting battered women that were not addressed in the Task Force Report's domestic violence section. These problems in-

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356. See generally Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87 (1988) (discussing gender bias education in law schools).

clude: the manifestation of frustrations toward battered women for not following through with their claims; an extreme shortage of support services for battered women; particular difficulties facing battered immigrant women; problems with the current right of election law; and the emergence of new types of domestic violence cases. These and other problems are significant impediments to the ability of battered women to attain justice in the New York City court system.

We recommend education as a method of influencing the behavior of judges, court personnel, ADAs, and police. For example, we recommend that judicial education programs address the nature and incidence of psychological abuse as well as the impact of racism and classism on judicial decision-making. We recommend that court personnel, ADA, and police training stress the importance of providing battered women with neutral and clear information concerning their legal options and of taking care not to dissuade these women from pursuing their claims. In addition to educational proposals, we suggest legislation as a means of addressing the problems confronting battered women. We recommend, for instance, that the legislature enact clear guidelines that would limit judicial discretion in the ordering of jail for protective order violators and in the issuance of vacate orders. Other recommendations focus on further steps that might be taken by the Judicial Committee, bar associations, and judicial screening committees, and highlight areas in which additional research would be valuable. Moreover, given current budget constraints, we suggest creative planning and cooperative endeavors whenever possible.

We view our research as a starting point for more work in this area. We have set forth some preliminary findings that we hope will form the basis for a more in-depth investigation into the problem areas we identify. We believe that follow-up work is crucial, both on the issues we discuss concerning the Task Force's 1986 findings and recommendations on domestic violence that are still problems today, and on the other and new problems that we discovered in the course of our 1991 investigation. We hope that the specific recommendations that we set forth at the end of our analyses will inspire future efforts in the field.

Furthermore, we hope that subsequent research will attain a more precise picture of the situation for battered women in the New York City courts. Such a picture would require interviews with some of the people whom we were unable to contact within our short investigatory period. Follow-up efforts should focus on both judicial screening committees and a range of bar associations to determine whether they are complying with the recommendations of the Task Force Report.

Future researchers should interview the administrative judges who are beginning to set up local gender bias committees in response to the prompting of the Chief Judge and the Judicial Committee. We have received indications that these local committees may be the focus of future gender bias work in New York. Other research should include surveys of both supreme court judges, who tend to hear the domestic violence cases of wealthier families, and battered women themselves, whose experiences and views are invaluable to an accurate assessment of this topic.

Finally, a comparative study of task forces and implementation committees in different states would be most useful in future attempts to build on the gender bias efforts taking place in New York. As a starting point, researchers could use our analysis of the factors that may have contributed to or impeded the success of the work of the New York Task Force and the Judicial Committee.

Considerable progress has taken place in the treatment of domestic violence cases in the New York City courts since the Task Force published its findings in 1986. Many people have devoted substantial time and effort to effect change in this area, and their significant accomplishments should be recognized and lauded. Eliminating gender bias in the handling of domestic violence cases, however, is an enormous undertaking, and substantial work remains to be done.

## Appendix A

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## PRELIMINARY QUESTIONS.

1. Name:

Phone:

Address:

2. Job Title:

a. Brief Description of job responsibilities, including any work in the area of domestic violence and in the courts:

b. How long have you done this job? How long have you worked in or around the New York City courts?

c. What courts do you work in? (family, criminal, other)

d. In which buroughs have you been in (or around) court?  
Manhattan, Brooklyn, Queens, Bronx, Staten Island?

3. Have you been active in any way with the New York Task Force on Women and the Courts or the Committee to Implement the recommendations of the New York Task Force?

yes\_\_\_ no\_\_\_ If yes, in what capacity?

a. If no, had you heard of the New York Task Force on Women and the Courts before you heard from us? yes\_\_\_ no\_\_\_

b. Had you read a copy of the Report? yes\_\_\_ no\_\_\_

c. Have you now read the Findings and Recommendations re/ Domestic Violence? yes\_\_\_ no\_\_\_

## INTRODUCTION TO THIS SURVEY.

We will ask you three types of questions:

1. What changes have there been regarding gender bias in domestic violence cases in the New York City Courts since the 1986 Task Force Report on Women in the Courts?

2. Which changes, if any, can you attribute to the Task Force Report?

3. Can you identify any new problems in this area?

We will begin by asking you a set of specific questions that must be answered with one of five standard responses. We will conclude with a few open-ended questions. Feel free, however, to comment more fully on any of the specific questions. (When necessary, please continue your answers on the backs of pages or attach additional sheets)

Try to answer these questions based on your own personal knowledge. If you are reporting based on conversations with other people, please make that clear.

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 Finally, if you feel it is appropriate, please distinguish in your answers between criminal and family courts, and among the five buroughs of New York City.

**PART I. THE FOLLOWING STATEMENTS ARE TO BE ANSWERED WITH ONE OF THE FOLLOWING RESPONSES:**

ALWAYS TRUE (AT)    OFTEN TRUE (OT)    SOMETIMES TRUE (ST)  
 RARELY TRUE (RT)    NEVER TRUE (NT)    NO ANSWER (NA)

**Nature of domestic violence**

1. Judges and other professionals in the court system are adequately informed about:
  - a. the nature of domestic violence (ie. the characteristics of victims and offenders and the battered woman syndrome);
  - b. the impact of adult domestic violence on children in the home.
2. Domestic violence victims are
  - a. presumed to have provoked the attack and
  - b. are not considered credible unless they have visible injuries.
3. Judges falsely presume that petitions for orders of protection filed by women during the course of a matrimonial action are "tactical" in nature.

**Access to the Courts**

4. Violation of protective order cases are given preference in calendar scheduling.
5. In practice, judges can be reached to issue temporary orders of protection 7 days a week and 24 hours a day.
6. Victims are referred inappropriately from court to court by police and court personnel.
7. Law enforcement officials and court personnel dissuade domestic violence victims from pursuing their claims by trivializing and ignoring their concerns.
8. Judges are aware that women who fail to proceed with their claims are sometimes deterred by the respondent's intimidation or coercion.
9. Domestic violence victims are dissuaded from proceeding in criminal court by: (a) judges, (b) court personnel (ie. DAs, clerks), and (c) law enforcement officials (ie. police).

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10. Courts refer domestic violence cases to mediation. (If you wish, distinguish between boroughs).

**Role of Advocates**

11. Judges and other professionals in the family court system are adequately informed about the appropriateness of permitting advocates and others to accompany domestic violence victims into the courtroom.

**Mutual Orders of Protection**

12. The problem of judges issuing mutual orders of protection upon the mere request of respondents (or *sua sponte*) has been eliminated by the 1988 law prohibiting such orders in these instances.

**Remedies and Enforcement**

13. Judges are unwilling to remove batterers from their family homes, forcing the mothers and children to live in shelters.

14. Judges fail to enforce orders of protection.

15. Judges are aware of the appropriateness of jail sentences for protective order violators.

16. Judges encourage educational programs for respondents found to have been violent toward members of their families.

17. Judges making custody and visitation determinations fail to consider a batterer's violent conduct towards his partner and its well documented detrimental effect on children.

**Discrimination Against Women of Color**

18. Judges are adequately informed about the nature of the discrimination experienced by women of color in the courts.

19. The actions of judges in domestic violence cases vary according to the race or the color of the victim.

**Self-Defense**

20. Judges are adequately informed about issues of self-defense and justification as they pertain to battered women.

**District Attorneys**

21. District attorneys ("DAs") are adequately trained as to the nature of domestic violence, the characteristics of victims and offenders, and the impact of adult domestic violence on children in the home.



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22. DAs adequately prosecute domestic violence cases.

23. DAs fail to request orders of protection when there is a prosecution pending or upon a conviction.

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**PART II. OPEN ENDED QUESTIONS. (Answer on back or add paper).**

1. Are there issues that we did not address that you feel are of primary concern to you and the domestic violence victims with whom you work?

a. Are there any new problems that have arisen?

2. Based on your experience with domestic violence cases in the New York State courts:

a. Can you identify areas of progress since 1986, when the New York Task Force Report on Women and the Courts was published?

b. Can you attribute any of these changes to the Task Force Report?

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**PART III. CLOSING.**

1. Are there other people whom you think we should interview?  
Judges:

Battered women's advocates:

Prosecutors:

Anyone else:

2. Do you know of any transcripts, incident reports, or decisions that document any of the points you have made that you can send to us? (Please describe or attach these documents).

Please mail your responses and any additional comments or questions to: Ariella Hyman and Sarah Eaton  
10 Eliot Street #2  
Somerville, MA 02143  
(617) 666 - 9889

During the month of January, we can be reached at:

Ariella Hyman: (212) 749 - 3391

Sarah Eaton: (212) 289 - 5639

THANK YOU VERY MUCH!

**Appendix B****Supervising Judge Survey****I. Background**

1. Name:  
Address:  
Phone:
2. Job Title:
  - a. Dates in this capacity:
3. Previous judicial experience:
4. Do you hear domestic violence cases? If so, how often?
5. Describe your functions as supervising judge.
  - a. Specifically, how are you made aware of gender bias complaints or problems in the courts of your bureau?
  - b. What do you do when such complaints or problems are brought to your attention?

**II. In your capacity as supervising & as sitting judge:**

1. What is the general nature of the complaints you receive with respect to domestic violence cases?
  - a. What are the most common problems that arise? or
  - b. If you have received no such complaints, what do you perceive as the major problems in the area of domestic violence in the courts?
2. We will now go over task force recommendations for court administration to get your sense of their status. We are interested in finding out which problems persist, and in which areas there has been progress. Where do things stand with respect to the following recommendations (a through d):
  - a. Judges and court personnel should gain more familiarity with the nature of domestic violence, characteristics of victims and offenders and the impact of adult domestic violence on children in the home.
  - b. Judges and court personnel should become more familiar with the statutory prohibition against dissuading domestic violence victims from seeking relief.
  - c. (For criminal court judges) Judges and court personnel should gain more familiarity with issues of self-defense as they pertain to women who kill men who have abused them.

## Appendix B

- d. Judges should be available to issue temporary restraining orders 7 days a week, 24 hours a day.
  - e. Do you think that the 1988 law prohibiting mutual orders of protection upon the mere request of respondents or sua sponte has been adhered to both in letter and in spirit?
    - i. Do you differentiate between advocates and other people?
  - f. Under what circumstances do you (and the judges you supervise) allow advocates and others to accompany domestic violence victims into the courtroom?
    - i. Do you differentiate between advocates and other people?
  - g. Under what circumstances, if any, do domestic violence victims have their cases sent to mediation?
  - h. How do you (and the judges you supervise) enforce orders of protection?
    - i. Under what circumstances do you order the batterer to vacate the family home?
    - ii. Under what circumstances do you order jail?
    - iii. Under what circumstances do you encourage educational programs for batterers?
  - i. Do you give violation of protective order cases preference in calendar scheduling?
  - j. Under what circumstances, if any, do you dissuade victims from proceeding in criminal court?
    - i. (For family court judges) Are judges adequately knowledgeable about the powers of local criminal courts in cases of domestic violence and harassment?
3. For progress areas, how influential was the task force report?
  4. For recommendations that weren't implemented, why not?
  5. Are there new problems for domestic violence victims that have arisen since this report was published?
  6. Are there any other problems faced by domestic violence victims in the courts that we did not yet touch on?
  7. What recommendations for the future do you have?

**Appendix B****III. In your role as a judge, generally:**

1. The implementation committee has sought to educate judges as to the nature of domestic violence through the following programs: Annual Judges Seminar; New Judge Orientation Program; Town & Village Justice Training.
  - a. What is your sense of the effectiveness of these forums for such training?
  - b. How can they be made more effective?
2. Do you think that most judges have received copies of the task force report?
  - a. If so, when?
  - b. Do you think many have read it?

**IV. Conclusion**

Is there anything we did not touch on that you think would be of use to us in our project?

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Please mail your survey answers to:

Sarah Eaton & Ariella Hyman  
10 Eliot Street #2  
Somerville, MA 02143

If you have any questions, feel free to call us at:  
(617) 666-9889

Thank You Very Much for Your Time!

## Appendix C

District Attorney Survey

Date:  
County:  
Attorney:  
Address:  
Tele:

Brief description of job responsibilities, including work in area of domestic violence:

Before you heard from us, had you heard of the 1986 N.Y. Task Force Report on Women in the Courts? If so, have you read a copy?

Note: In this survey, we are primarily interested in the status of the task force recommendations with respect to domestic violence, and to what extent any progress over the last 5 years can be attributed to that report.

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1. Does your office have a domestic violence prosecution unit?

If yes, please describe it (ie. # and type of staff, methods of operation). When was it established? Was the decision to establish or broaden it influenced by the 1986 task force report recommendation?

If no, how are domestic violence cases handled? Why hasn't such a unit been established? Is your office aware of the task force report recommendation?

For both: Do the attorney's handling domestic violence cases have cases and responsibilities in other areas as well, or is domestic violence their main focus?

2. Does your office provide special training for those assigned to domestic violence cases? (ie. on the nature of domestic violence, the characteristics of victims and offenders, and the impact of adult domestic violence on children in the home?)

If yes, please describe the training program. Can we have copies of your training materials? When was such training implemented? Was the task force recommendation to implement training influential in your office's decision to institute or broaden your program?

If no, why not? Is your office aware of the task force recommendation to establish such training?

(For both: Does your office provide more training on child abuse than on domestic violence? If so, why?)

3. Does your office provide for paralegal and social work support

### Appendix C

for domestic violence victims, or provide victims with a link to existing services in the community to assure that their safety and social service needs are met?

If yes, please describe nature of services and when put in place. Can we have a copy of your referral lists or any other materials you have pertaining to support services? Have such services been implemented/broadened as a result of the task force report recommendation in this area?

If no, why not? Is your office aware of the task force report recommendation in this area?

4. Do attorneys in your office working on domestic violence cases request orders of protection when there is a prosecution pending or upon a conviction?

If yes, is this a new policy? Was it adopted as a result of the task force recommendation?

If no/sometimes, why not always? Is your office aware of the task force report recommendation in this area?

5. Are there situations in which your office encourages battered women to proceed in family court rather than in criminal court? If yes, in what instances and for what reasons? How often?

6. How do you decide whether to charge a domestic violence case as a felony or as a misdemeanor?

a. Do you think the law makes you characterize certain domestic violence cases as misdemeanors that you would like to see prosecuted as felonies--> Is there a need for statutory change? For a separate law pertaining to domestic violence?

b. The sense we get from battered women's advocates is that many cases that should be brought as felonies are brought as misdemeanors? How would you respond to this?

7. How soon after the battering incident are you in contact with the victim?

8. In your experience, has there been progress in the last 5 years in the way domestic violence cases are treated by:

a. judges; b. court personnel; c. district attorneys in your county; d. law enforcement officials?

If yes, describe the nature of the progress and your sense of the reason for such progress.

9. Do you think that at present the same above players are

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adequately responsive to criminal prosecution of domestic violence cases? If no, please tell us about particular problem areas. Are there any new problems for victims that have arisen?

10. In your experience, do judges often fail to adequately enforce orders of protection? Are violators of such orders dealt with by the courts appropriately or inadequately? Explain.

a. Are judges aware of the appropriateness of jail sentences for violators of orders of protection? Do judges order such sentences? Has there been any progress in this area in the last 5 years?

11. What suggestions do you have for making judges and court personnel more responsive to domestic violence cases? If you think they could benefit from training in this area, what specific aspects of domestic violence do you believe should be stressed?

12. Does your office try to affect policy change concerning problems that persist?

13. Are there issues that we did not address that you feel are of primary concern to you and the domestic violence victims with whom you work?

**Appendix D****Survey Respondents/Interviewees and Their Affiliations***Battered Women's Advocates:*

Joyce Klemperer - Coalition for Criminal Justice Reform for Battered Women  
Lydia Colon - Victim Services Agency, Manhattan  
Suzanne Colt - Corporation Counsel, Manhattan  
Betty Levinson - Private Attorney  
Phyllis Gelman - Private Attorney  
Charlotte Smith - Urban Women's Retreat  
Kris Miccio - Sanctuary for Families  
Gina Kuyers - Witness Aid  
Anne Paille - Aegis  
Clark Richardson - Corporation Counsel, Bronx  
Florence Roberts - Brooklyn Legal Services  
Martha Raimon - Brooklyn Legal Services  
Jean Olsen - Victim Services Agency, Brooklyn  
Anne McGlinchey - Victim Services Agency, Brooklyn  
Sue Bryant - CUNY Clinic  
Nancy Shea - Victim Services Agency, Queens  
Kim Gazda - Victim Services Agency, Queens  
Barbara Crawford - Private Attorney  
Carol Weinman - Victim Services Agency, Staten Island  
Maurene Italiano - Victim Services Agency, Staten Island  
Barbara Chang - New York Asian Women's Center  
Mary Haviland - Formerly with Coalition for Criminal Justice Reform for Battered Women  
Sister Mary Nerny - STEPS to End Family Violence  
Laurie Woods - National Center on Women & Family Law

*Family Court Judges:*

Hon. Judith Sheindlin - Manhattan Family Court Supervising Judge  
Hon. Joseph Esquirol - Brooklyn Family Court Supervising Judge  
Hon. Joyce Sparrow - Brooklyn Family Court Judge  
Hon. Marjorie Fields - Bronx Family Court Supervising Judge  
Hon. Michael Ambrosio - Queens Family Court Supervising Judge  
Hon. Robert Clark - Queens Family Court Judge  
Hon. Carmine Cognetta - Staten Island Family Court Judge



*Criminal Court Judges:*

Hon. Charles Solomon - Manhattan Criminal Court Supervising Judge  
Hon. Judy Harris Kluger - Manhattan Criminal Court Deputy Supervising Judge  
Hon. William Miller - Brooklyn Criminal Court Supervising Judge  
Hon. Micki Scherer - Brooklyn Criminal Court Judge of Arraignments Citywide  
Hon. Eugene Schwartzwald - Brooklyn Criminal Court Judge of Domestic Violence Part  
Hon. Harold Enten - Bronx Criminal Court Supervising Judge  
Hon. Sherry Roman - Queens Criminal Court Judge  
Hon. Michael Brennan - Staten Island Criminal Court Judge

*Assistant District Attorneys:*

Mary O'Donoghue - Manhattan, Bureau Chief, Child Abuse and Juvenile Crimes Unit  
Elizabeth Loewy - Manhattan, Bureau Chief, Domestic Violence Unit  
Karen Lipson - Manhattan, ADA  
Julie Martinez - Brooklyn, Bureau Chief, Domestic Violence Unit  
Marcia Sells - Brooklyn, Former ADA  
Nancy Borko - Bronx, Bureau Chief, Domestic Violence, Juvenile Offenders and Sex Crimes Bureau  
Alice Vachss - Queens, Bureau Chief, Special Victims Bureau  
Judy Waldman - Staten Island, Bureau Chief, Sensitive Abuse and Assault Family Unit

*Legislative-Related:*

Joan Byalin - Counsel, New York Assembly Task Force on Women's Issues  
Deborah Vogel - Director, New York Assembly Task Force on Women's Issues

*Association of the Bar of the City of New York - Members:*

Hon. Betty Ellerin - First Chair of Special Committee on Women in the Courts  
Hon. Marjorie Fields - Current Chair of Special Committee on Women in the Courts  
Fern Sussman - Chief Administrative Officer of the Bar  
Hon. Joyce Sparrow - Bar member

*Judicial Screening Committee Chairs:*

Emanuel Kessler - Bronx, Chair

*New York Task Force on Women in the Courts - Members:*

Fern Sussman

Hon. Sybil Kooper

*Task Force Advisors:*

Lynn Hecht Schafran - Attorney, NOW LDEF, and Director,  
National Judicial Education Program to Promote Equality for  
Women and Men in the Courts

Hon. Marjorie Fields

*New York Judicial Committee on Women in the Courts -  
Members and Staff:*

Hon. Kathryn McDonald - Chair

Fern Sussman

Hon. Betty Ellerin

May Newburger - Former Member, New York State Assembly

Jill Goodman - Staff Member

*Office of Court Administration:*

Helen Johnson - Director of Judicial Education

*Police Officers, New York Police Department:*

Detective Joe Ryan

Detective Lydia Martinez

*Victim Services Agency:*

Susan Herman - Head of Domestic Violence Operations Citywide

*Mediation and Civilian Complaint Process:*

Chris Whipple - Victim Services Agency

Intake Worker - Institute for Mediation and Conflict Resolution

Intake Workers - Staten Island Community Dispute Resolution  
Center

Directors - Court Dispute Referral Centers

*Educational Programs for Batterers:*

Directors - Alternatives to Violence

Employee - Fordham Tremont Mental Health Center