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## SUMMARY

In 1997, officials in rural Clinton County, NY instituted a program to enhance the criminal justice response to domestic violence, establishing a DV case coordinator in the district attorney's office and a special DV unit at the probation department. There were also attempts to coordinate victim services with prosecution plans.

The authors conducted a process evaluation of this set of initiatives beginning in the summer of 1999. Our primary research questions involved the small-town and rural character of the county; our intent was to document the difficulties and successes of domestic violence programs. Because the numbers of cases is so small—100-150 prosecutions per year—the bulk of our data, from a variety of sources, is qualitative and ethnographic.

Our complete final report provides details on our observations; this summary examines the major findings and overall analyses. The most innovative piece of Clinton County's programs is the specialized domestic violence unit of the probation department. Our analysis shows that putting abusers on probation can provide to victims the time they need to make choices about their lives in relative safety. Also, probation can provide the time law-enforcement agencies need to build a stronger case to put in front of reluctant judges, again time in which the victim may be relatively safer.

In our overall analysis of these programs, two issues emerge. First is the tension between what victims want and say they need, and the requirements of the system. When measuring the "success" of a program, the definition depends on whose view is being taken. Sometimes when the prosecution "wins" a case, the victim considers it a loss—sending her abuser to prison may not be in her best interests. On the other hand, sometimes when the victim gets what she wants and the abuser remains in the community, any larger societal "message" about the seriousness of domestic violence may be lost. This constant tension complicates efforts by knowledgeable agency workers to do the right thing, and complicates efforts to evaluate programs—when does a program "work"?

Second is the difficulty of institutionalizing social change. The criminal justice system's response to DV has, historically, been indifference. Recent attention to the system has resulted in more focused, intensive intervention, at least in some places. Overall, however, the society and the CJS remain less than intensive. If programs depend on the passion of individual incumbents and are not made part of the ordinary, everyday workings of criminal justice agencies, the programs remain fragile. In Clinton County, the programs still *do* depend on the energy of specific individuals; as those individuals move on, the programs may simply die. Some of this is due to the small-town-ness of the county—there are very few individuals involved in these programs, so the loss of any of them can constitute a mortal setback.

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## **Background**

Clinton County is the most northeastern county of New York, on the Canadian and Vermont borders. The area has not shared in the economic upswing of the mid-1990s. The county is largely rural, with just one small city, Plattsburgh, in which most social and other services are concentrated. Of the approximately 80,000 people in the county (77 per square mile), only about 20,000 live within the City of Plattsburgh, and another 15,000 within the surrounding Town of Plattsburgh. Well over half of the population lives at some distance from service agencies, some perhaps two-hours drive even in decent weather—and the weather is often not at all decent. There is little public transportation available within the City and Town, and none outside. The poverty rate is 15.2%.

Scattered through the county are *nineteen* misdemeanor criminal courts. Only in the City of Plattsburgh does the misdemeanor court meet every day. Town justice courts are held once or twice a week, or once a month for the smaller towns, in front of elected, part-time magistrates, most of whom had no legal training before their election and only 2 weeks worth after. Felonies are heard in County Court, centralized in the City of Plattsburgh. Like many rural areas, violent crime by strangers is relatively infrequent, though violent crime by intimates is not rare at all.

Here in the North Country, domestic violence has received significant attention from the CJS largely due to the efforts of two women. The elected District Attorney established a countywide domestic violence taskforce in 1993. She has actively prosecuted DV cases throughout her tenure.

The former Director of Probation & Alternatives to Incarceration was similarly interested in DV issues. She obtained a federal grant to encourage arrest policies. Working with the DA and the local non-profit advocacy agency, she established a Domestic Violence Reduction Team (DART), and it is that program that we evaluate. The team consists of:

- A Domestic Violence Case Coordinator in the District Attorney's Office
- A Domestic Violence Taskforce Coordinator (housed at Probation)
- Two Probation Officers dedicated to a DV case-load
- A Legal Advocate in STOP Domestic Violence (local non-profit)

DART members meet weekly to coordinate responses to specific cases. Additionally, the grant funds conferences and trainings: DART has provided DV training to the several police agencies in the county; has taken local judges and magistrates to conferences throughout the country; and has been a source of information about DV for all agencies in the county.

## **Methods (highlights)**

Our data are primarily qualitative, including participant-observation of DART and observation of the various courts. We have interviewed 24 female victims, whose names were furnished by DART members. We collected details on case files from both the district attorney and the department of probation. We examined Domestic Incident Reports from all police agencies in Clinton County.

## **The Utility of Probation in DV Cases**

Again, the most innovative aspect of the Clinton County project is the intensive probation supervision of DV offenders. An offering of probation, instead of jail, is seemingly much more acceptable to offenders and counsel, judges and victims. Thus, instead of pursuing a trial and jail sentence for abusers, often a plea bargain is made for this supervision.

While the abuser may still abuse while on probation, the probation officers in the DV unit are much more likely than other POs to "violate" men for continuing violence. That is, the DV POs are careful to document victim safety concerns and file motions with the court to have probation revoked and the offender sentenced to jail for probation violation. The following case is illustrative.

James beat Mandy regularly, but was charming and convinced family, police, and judges that everything could be explained by Mandy's odd behavior, not his violence. Finally, Mandy convinced a magistrate that she was in danger—and she definitely was. James was soon arrested and tried on a felony.

James was convicted of a felony, though he still swears he is innocent. He argues, in fact, that Mandy was out of control that night and he was restraining her, just trying to keep her from hurting herself. At sentencing, James was able to call many, many character witnesses, who all testified to what a swell guy he was and how crazy Mandy was. The judge, perhaps because of the parade of upstanding citizens on James' side, was reluctant to sentence him to prison or even jail. Instead, he was sentenced to five years of probation.

Under probation supervision, James continued to protest his innocence. He also continued to stalk Mandy even though he found another girlfriend, Laurie. Laurie knew about Mandy's accusations of long-standing abuse, but believed James that Mandy was insane. James was eventually arrested for assaulting Laurie. Laurie's story was much the same as Mandy's. This time, though, the grand jury failed to indict James for Laurie's assault, and he was released. (Grand Jury proceedings are sealed; we do not know why there was no indictment.) Both Mandy and Laurie went into hiding.

Probation officers agreed with the victims that James was, indeed, a danger to Laurie and to Mandy, past, present, and future. They (and the District Attorney's office) felt that James ought to be in prison for his behavior. The probation officer filed a petition with the court alleging that James had violated the terms and conditions of his

probation—one of which was to refrain from violent behavior—because of the assault on Laurie. Though the grand jury failed to indict James on the assault charges against Laurie, the judge found him guilty of violating his probation; probation was revoked; prison time was the sentence.

Note again that the probation term was issued for James' assault on Mandy; it was revoked for James' assault on Laurie which otherwise would have gone unpunished. The CJS had been unsuccessful in incarcerating James in the first assault (against Mandy) *and* in the second assault (against Laurie). It was his having been placed on probation, and the filing of the VOP, that allowed the system finally to imprison a dangerous abuser.

In other cases, probation gives offenders the chance to change, which is what many victims want. When he does not change, but continues the abuse on probation, sometimes she is convinced that jail is more appropriate and then cooperates in that endeavor.

Sometimes, even, abusers do take the opportunity to change their behavior under supervision. Sometimes, though not often, the very real threat of jail does act as sufficient incentive to stop the violence.

### ***Women's Individual Needs vs. "Justice for All"***

One of the reasons for mandatory arrest laws and no-drop prosecution policies is that victims are often in no position to speak for themselves, living in fear of the abuser. A powerful agent (the state) is able to do what a victim needs, without the arrest and prosecution being designated her choice and her "fault". These policies have allowed many women space and time to finally escape from violence. However, this also means that any specific victim's wishes may be disregarded.

In Clinton County, the case of "Selena" and "Joe" illustrates. The couple has been together for many years and for each the other is the light of their life. When Joe drinks, he often becomes violent and was arrested under New York State's mandatory arrest policy. Joe pled guilty to a misdemeanor charge of assault. An order of protection was issued requiring no contact with Selena. Later, Selena requested the order be modified to "refrain from". This type of order would allow contact, even co-habitation, but should Joe threaten Selena or become violent again, the existence of the order would allow arrest without evidence of further assault and could be used to send Joe to jail. Selena wanted a continued relationship with Joe, but without the violence. This is what many, many women desire, of course.

Members of DART recommended to the judge that the order remain "no contact" and the judge agreed. Selena's request to modify the order and bring Joe back into her life and home was denied *in her own interest*, as interpreted by the criminal justice system. Not agreeing that this was in her best interest, Selena invited Joe to dinner; Joe accepted and thus violated the order of protection. And indeed, there was an incident at

dinner—Joe threw a bottle at Selena. The police arrested him again, probation was revoked, and Joe was sentenced to a year in jail. The crime for which he was sentenced was not assault but contempt of court for violating the “no contact” order.

Two things are true here: Selena is safe from Joe’s violence for the period he is in jail; and she is angry at the system. In her estimation, she is worse off without Joe than with him. In her estimation, his violence was treatable and manageable without the long jail sentence. Attending the batterers’ intervention program and probation supervision was sufficient to keep the violence under control, even if not altogether eliminated. She is clear that once Joe is out of jail, she will not use the criminal justice system again in trying to deal with Joe’s violence. If Selena is correct about her own situation, she has thus lost the only tools she had for managing the violence, and in the long term, she is in greater danger than she was before state intervention.

While mandatory arrest and no-drop prosecution policies are sometimes problematic for individual women—who decides what is best for this woman?—there is also a tension between what is best for individual cases and what is best for the overall movement towards gender justice. Stark (1996) makes the case that mandatory arrest policies do “work” because they demonstrate to society that battering is wrong and punishable. Whether or not the policies work to reduce recidivism in specific batterers, these policies do serve to openly withdraw the consent of the criminal justice system for wife abuse.

In Clinton County, “Dora”, who uses a wheelchair, is dependent on “Sam” both economically and physically, since they live in a second-story apartment. She was literally helpless when he tore the phone out of the wall, assaulted her, and refused to carry her downstairs for several days afterward. When Sam was arrested, he pled guilty to misdemeanor charges of unlawful imprisonment and was placed on probation. And there was a “no-contact” order of protection issued. Very soon, Dora returned to court to seek a modification in the order to allow contact.

The judge was not pleased with her request, but recognized the predicament Dora was in. He ordered advocates to arrange for Dora to be visited every day to verify that the phone was in good working condition and that there were no signs of assault. Sam remains under probation supervision and must finish the batterers’ program. Dora is safer than she was, with both Sam’s probation and her visitors, and she continues to have Sam’s support.

Yet, in this case Sam does get away with abuse. His punishment is minor for a serious crime, and Dora remains in some danger. There is not much here in the way of profound social messages against violence. However, sending that message in this case would have meant extraordinary difficulty for Dora’s daily life. She, like Selena with Joe, wanted a relationship with Sam but without violence. She believes she has gotten what she needs, and is not concerned about not having sent that message to society.

## ***Institutionalizing Change***

Any social movement, large or small, is faced with the problem of institutionalizing social change. The energy required to effect change is enormous and, so it seems, eventually unsustainable. And change is not safe until it is woven into the fabric of society, until it is firmly institutionalized.

In the beginnings of DART in Clinton County, there was an unusual collection of feminists in high places and other officials willing to sign on to innovative anti-violence programs. The director of probation and the elected district attorney were both strong women interested in addressing domestic violence as a community problem. And they were able to attract high-energy people to key positions in the newly forming Taskforce on Domestic Violence. The earliest members of DART were all dedicated to the issue and eager in their roles.

However, the feminist director of probation has left the county for a statewide position. The new director is supportive of the program since it already exists, but not as keen to innovate. There is also the strong possibility that the current DA will not be elected again. A more traditional politician will likely be much less willing to have a DV case coordinator with such influence. Further, several early DART players have left. The replacements are competent, to be sure, but not all share the fervor of the original team.

Innovations like these programs, though, must be able to survive "mere" competence, must survive a loss of revolutionary zeal. At this point in time, the programs cannot survive; they are not a firm enough part of the judicial system. The programs, of course, have enemies—many defense attorneys are openly hostile to the programs. The primary danger, though, is business-as-usual, usual before the added attention to domestic violence. Without the fire and zeal, agencies and people in them easily slip back to a less aggressive response.

For example, in one town court, a matter had been before a magistrate several times without disposition. The Assistant District Attorney assigned to that town court had missed the last appearance. This is not so unusual—no town court is attended by an ADA every time it meets. The judge threatened that if the ADA was not present the next time, he would dismiss the case. This case was a brutal assault and would likely have been charged as a felony and moved to county court after the preliminary hearing in town court. In this instance, the District Attorney herself appeared in court, but this is a highly unusual event. More often, cases are dismissed—business as usual.

Such high levels of attention cannot be sustained by a few individuals. Again, changes must become part of ordinary activity, must be institutionalized. In this county, the innovations and changes have *not* been so routinized. There is already much lost because of budget issues, and more is likely to be lost because of personnel changes.

## Summary

Promising features of DART include (especially) intensive probation supervision, and coordination between prosecution, probation, and advocacy agencies. Difficulties in implementation include the tension between victim empowerment and system needs; and the difficulty and importance of routinizing and institutionalizing innovations.

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