Caring Unlimited
York County's Domestic Violence Program
P.O. Box 590 Sanford, Maine 04073
tel. 207.490.3227 fax 207.490.2186
caring-unlimited.org

COURT MONITORING PROJECT REPORT

By Sherry Edwards, Project Coordinator • March 1, 2010

COURT MONITORING—WHEN, WHERE, WHAT AND HOW

Caring Unlimited began a court monitoring project on July 1, 2009 to ascertain the degree to which the criminal justice system was prioritizing victim safety and abuser accountability in domestic violence cases.

Our project is structured after a national program called WATCH whose mission is "to make the justice system more effective and responsive in handling cases of violence against women and children, and to create a more informed and involved public." WATCH provides training and technical assistance to organizations who wish to monitor their local courts. Our project was developed after Sherry Edwards, Caring Unlimited's Community Response Program Coordinator, attended a WATCH workshop at the biennial national conference of the National Coalition Against Domestic Violence in Washington, DC in July 2008.

We began with six court monitors who had various levels of experience with the court system and with domestic abuse and sexual assault. Volunteers completed a training that included the dynamics of domestic violence, the court system, laws, criminal penalties and more. During the monitoring process volunteers sit in the courtroom to observe cases and complete standardized data collection forms noting their observations about each case. Over time volunteers have become more adept at noticing the finer nuances involved in resolving domestic abuse cases and their reporting has reflected this.

The project monitored cases in Biddeford District Court and York County Superior Court in Alfred. Court staff was welcoming to the presence of monitors, open to being observed and provided us with information about the system. Superior Court was chosen due to the high volume of domestic abuse cases that end up in that court as a result of either being charged as felonies or upon a defendant's request for a jury trial.

Every effort was made to have at least one monitor present each Tuesday in Biddeford and each Thursday in Alfred. This objective was not always achieved.

Because of varying levels of monitor experience at the outset and the inability to monitor every case that came before the court during the period, our data should be seen for what it is, the observations of lay people working to shed light on an extremely complex system.

AN UNDER-STAFFED, UNDER-RESOURCED SYSTEM

It should be noted that court monitoring coincided with drastic cuts in the District Attorney's Office budget and the loss of both court clerk and judicial time in York County. District Attorney's office cuts included the loss of the Victim Witness Advocate in Biddeford District Court. Although existing staff covered the Biddeford Court during trial days, monitors noticed a difference in coordination for victims and witnesses. One monitor observed witnesses who had been subpoenaed waiting in the courtroom, unaware that the case had been settled hours before. In one case, a victim who wanted to give an impact statement to the Judge waited downstairs for the case to be heard, only to have it heard and the Defendant sentenced without her input. Once this was discovered, the victim was allowed to read her statement to the Judge. The case, however, had already been adjudicated. We are pleased to note that a grant was secured to add a domestic violence Victim Witness Advocate in Biddeford.

KUDOS

- *To the **Saco Police Department** for instituting the use of ODARA, an actuarial risk assessment that has been used to argue for higher bail and greater bail restrictions for DV perpetrators, thus increasing victim/public safety.*
- *To **ADA John Burke** for advocating sanctions that centralize victim safety and for taking the lead in writing a Federal OVW grant that will bring the county close to $400,000 over the next two years. The grant funds a part time ADA in Biddeford and a full time ADA in Alfred, both dedicated to domestic violence cases, as well as very important policy development regarding the handling of these cases in the District Attorney's office.*
- *To **Judge Foster** in District Court for verbally holding abusers accountable by labeling their behavior as harmful to their families and expressing concern for victim's safety from the bench.*
- *To **Tammy Girard**, Saco Police Department Court Officer, for alerting us to important cases and strengthening collaborative efforts to link victims with the services that they require at the earliest point possible.*

DEFENDANT: BENJAMIN MEDINA

On 7/22/09 a warrant is issued by the Saco PD charging Mr. Medina with Domestic Violence (DV) assault after his ex-girlfriend reports an assault that had occurred the previous night when she told Mr. Medina that she no longer wanted to be in a relationship with him. Mr. Medina is not arrested until 8/29/09 because his whereabouts are unknown.

On 8/28 and 8/29 Mr. Medina sends 12 threatening text messages to the victim and a summons is written by Biddeford PD for DV Terrorizing. It is at this time that he is arrested on the previous DV assault. He is bailed out the same day with Bail Conditions that he not have any direct or indirect contact with the victim.

On 8/30 he sends the victim two more text messages.

On 8/31 the victim is granted a Temporary Protection from Abuse Order which also has a no contact provision

On 8/31 he posts derogatory comments about the victim on his Facebook page.

On 9/4 he sends her an email. He is charged with Violating Conditions of Release.

On 9/7 the victim receives three more texts.

On 9/8 victim receives a package from Medina that contains a 12-page letter in a notebook, a flower and a package of pens. He is arrested again and charged with DV Stalking and Violating Conditions of Release (VCR).

On 9/10 the victim and her friend each receive about twenty texts and phone calls from Medina asking the victim to drop charges.

On 9/14 Medina is arrested and again charged with VCR and DV Stalking. He is held without bail.

9/30 he sends the victim a six-page letter from jail urging her to drop charges in exchange for a ride on his snowboard and is charged with VCR, Violating a PFA, DV Stalking and Tampering with a Witness.

10/7 he sends the victim an 18-page letter from jail and is charged with VCR, DV Stalking and Violating a PFA. In the letters he expresses his undying love for the victim and also accuses her of causing his legal predicament.

On 10/14 Mr. Medina's attorney represents him in court on a motion to amend his bail to a lower amount that would enable him to be freed from jail.

At this time Assistant District Attorney Thaddeus West who is working this case in Superior Court and defense attorney John Scott Webb agree to resolve the case against Mr. Medina by dropping all charges except the four charges for Violating Conditions of Release. Mr. Medina is sentenced to 88 days in jail on the VCR charges AND is allowed to leave jail for two days to prior to beginning his sentence to "tie up loose ends".

Although the victim is an actively cooperating witness and working with the court's Victim Witness Advocates throughout her ordeal, neither the VWAs nor the victim are notified of the deal, precluding the victim from giving input prior to the plea agreement. The victim only discovers that the case has been resolved when she receives a call from the jail notifying her of Medina's release.

At this, the victim is terrified for her life as Mr. Medina's history demonstrates that he has no regard for the restraints placed on him by the criminal justice system.

During his two days off from jail to "tie up loose ends", Mr. Medina again contacts the victim, triumphantly announcing that all charges have been dropped. He is once again charged with Violating a Protective Order.

On 10/29 an advocate from Caring Unlimited accompanies the victim to meet with District Attorney Mark Lawrence to inform him of her fears and anger about how the case has been handled. The victim receives an apology from DA Lawrence but is upset when the abuser's behavior is described by him as "infatuation" and his numerous written violations of the no-contact provisions are referred to as "love letters".

"Does the District Attorney's Office want me dead?!"

—Medina's Victim on learning of his release

"I am glad you are watching or these guys could get away with doing whatever they want and no one would ever know."

—Comment to Court Monitor from member of the Bar

THE DATA

From July 1 through December 31, 2009 the Court Monitoring Project observed 76 cases in Biddeford District Court and 154 cases in Superior Court in Alfred.

In Biddeford the Defendants were charged with 131 domestic violence (DV) crimes. These charges were dismissed at a rate of 19.8% during plea agreements. The most serious crimes, usually DV Assault were dismissed at a rate of 9.3%. Cases were filed at a rate of 2.3%. Defendants pled or were found guilty of the most serious charge against them 44.1% of the time. Of the 76 cases we saw three trials and the rest were resolved via plea agreements.

In Alfred Superior Court Defendants were charged with a total of 316 domestic violence crimes. Charges were dismissed at a rate of 36.2%. The most serious crime was dismissed 23.2% of the time. Cases were filed at a rate of 8.6%. Defendants were found or pled guilty to the most serious charges 20.1% of the time.

A practice that was prevalent in Superior Court was the use of "drop down" charges. When this happens the District Attorneys office essentially dismisses the charge that law enforcement brought against a defendant and replaces that with a lesser charge. The most popular practice included dropping down a felony charge to a misdemeanor. Another frequently used tactic was to drop the language in the charge that refers to the crime being perpetrated on a family member. This means rather than charging a defendant with Domestic Violence Assault, for example, the charge would be dropped down to Simple Assault. This practice is advantageous to defendants because a conviction for Domestic Assault carries greater penalties than does a conviction for Simple Assault. For example, Federal law requires that a person convicted of DV Assault not be allowed to own firearms. Also, Maine law now has a provision that allows repeat domestic violence charges to be enhanced to felonies. Many defendants wish to both own a gun and not have a felony on their record.

Monitors witnessed no use of any type of drop down charges in Biddeford District Court.

There is no comparative data to report regarding sanctions between the two courts since felonies, which carry the more serious penalties, are not adjudicated in District Court.

The project noted that about two-thirds of the way through our observation period case filings, (when the DA's office, in exchange for the payment of a fee, agrees to set aside a case for a period of time and later dismiss the charge if the defendant is not detected to have committed another crime) no longer needed to come before a Judge and instead began being handled between the DA's office, the defense attorney and the clerks office. As a result, filings became virtually undetectable by monitors unless they were skilled enough to realize that no information about a particular case had been heard in the courtroom and were able to ask staff from either clerk's or DA's office what happened to the case. We are unsure what precipitated this change in practice.

The data clearly demonstrated that, as we had been told by attorneys to expect at the outset, Defendants experience less serious consequences in Superior Court than they do in Biddeford District Court.

MOTIONS TO AMEND BAIL

Court monitors recorded data regarding 68 motions to amend bail in both district and superior courts. Most often these requests were made by defendants wishing to have contact with the partners who they stood accused of harming. One request was to be able to move out of the area and one request was to be able to be in a bar, as this was the defendant's place of employment.

Of the requests for contact, all but two were for full contact, including the defendant being able to move back into previously shared housing. In every case requesting contact that monitors saw, the victim also expressed a desire for contact and joined with the defendant in his/her motion to the court. In some cases the Victim Witness Advocate spoke on behalf of the victim, seeming to advocate for the Judge to take the action requested by the victim, at times in direct opposition to the objection of the prosecutor. This seemed confusing to monitors as the VWA and the prosecutor both work for the District Attorney's office whose goal is the successful prosecution of cases.

In 68% of the cases in district court, the ADA objected to the relief sought by the defendant, often citing serious concerns about the safety of the victim based on the severity of the violence alleged, the history of the defendant and his/her perceived level of dangerousness in the future. Judges chose to allow some level of contact 44% of the time.

District Attorney Mark Lawrence has told us that the greatest barrier to successful prosecution of DV cases is lack of victim cooperation. In cases where no contact conditions are lifted, victim cooperation is all but precluded because abusers ability to reestablish control over their victims is naturally reestablished with contact. In the best case, it is highly unlikely that a couple can reunite and not discuss the case during the long period prior to trial. Amending bail to allow contact in cases where severe or repeated battering exists, can be dangerous to victims and their children. In these cases victims are operating from a place of dependence on the batterer which is often financial, emotional and psychological in nature. Allowing contact between an abuser and the victim in these cases virtually ensures that the abuse will continue.

A Few Words From The Defense

The following statements by defense attorneys were overheard in the courtroom and noted contemporaneously by Court Monitors.

Although these statements are not egregious, for the most part, they demonstrate a rather profound lack of understanding about the serious nature of domestic abuse and many missed opportunities to support behavioral change in perpetrators.

- "Don't worry, in Alfred [Superior Court] they are much more understanding and will see that your behavior was justified."
- "An attorney should be sued for malpractice if they don't move to have a DV case heard in Superior Court."
- "Seems like you might have an anger problem."
- "The whole reason you hit her again is because of your drinking."
- "This is what happens when you marry a woman 15 years younger than you."
- "You actually finished Batterer Intervention classes? Most guys think they are such a joke!"
- "If a woman gets on the stand and cries, she'll get whatever she wants."
- "Judge, this is how he grew up. He doesn't know any other way."
- "This Judge eats babies for breakfast. Too bad you got stuck with her!"

Court Security

The serious lack of adequate security in Maine's courts is a well-known problem caused by insufficient funding for the courts. Chief Justice Saufley, among others, have worked hard to bring awareness to the problem and Court monitors noticed that there was rarely security at the courts aside from a couple of court marshals, one of whom must stay with the presiding judge at all times.

In the beginning of the Court Monitoring Project at Biddeford District Court the Marshals would check the monitor's bags to be sure that there were no illegal items such as weapons. Once they got to recognize the monitors and the clipboards they carry, that practice all but stopped.

Monitors were never questioned by Marshals in Superior Court, nor were our bags ever checked. This was true of others in the gallery as well, leading one Court Monitor to note, "It occurs to me that anyone could walk into court with a weapon on almost any day, virtually undetected. I wonder how that reality affects victims when they have to be in court?"

On another occasion a Defense Attorney commented, "one of us is going to have to be killed before this issue is solved. Once someone dies in a courtroom they'll figure out how to fund court security."

Many defendants walked into the courtroom carrying bags that were never checked and proceeded to pull out snacks and drinks, iPods and cell phones which were used in the courtroom, often with the Judge on the bench. Most of the time this behavior went unchecked.

While it's true that eating and drinking in the court is not dangerous, it is a clear violation of posted rules and gives those who do it the impression that rules don't apply to them.

We were pleased to see that on a few more recent occasions there was thorough security screening in both district and superior courts, which included the practice of asking entrants to empty their pockets and walk through a metal detector.

A CONUNDRUM?

"Who am I to tell people how to live their lives? I just have to trust that the Victim Witness Advocates are advocating for what is in the best interest of the victim rather than simply what she wants."

—York County Judge

"My job is to advocate for what the victim wants, regardless of what my opinion may or may not be about whether I think that it's a safe choice."

—Victim Witness Advocate

Defendant: Michael Bouchard

Monitors first saw Mr. Bouchard in Biddeford District Court on 7/14/09. At the time he was in jail and was brought to the court in shackles by jail personnel to answer a charge of violating a protective order that his ex-partner (Victim 1) had gotten against him. That was not, however, the reason for his incarceration. He was in jail on a charge of domestic assault against Victim 2 that was charged as a felony due to the fact that, since 2003, he had three prior convictions for domestic violence related crimes.

While at court Mr. Bouchard repeatedly stood, jangling his chains and refusing to sit when directed by jail staff. At one point he told a guard to shut up after an attempt to redirect him.

More importantly, he spent much of his time in court focused on a very young woman in the gallery. He repeatedly and successfully attempted to get her attention, talked with her, beckoned her to write him letters while he was in jail and asked her to date him when he got out. He literally used his time in court to troll for his next victim and was not stopped.

He was observed in court three times by monitors and each time behaved in a similar fashion. Most of the time jail transport officers did little to try to control his behavior.

"I am concerned for the safety of those in the courtroom when I see that the guy who brings the prisoners is literally sleeping on the job!"

—Court Monitor Note

Interesting…..

We did not keep data on this particular aspect of the court system, yet Court Monitors noticed something of interest in both District and Superior Courts.

When judges and attorneys refer to male attorneys in the courtroom, whether they be Assistant District Attorneys or defense attorneys, they are routinely addressed as 'Attorney SoandSo'.

However, when referring to a female Assistant District Attorney or other female attorney in court, they are most often referred to by their first names.

The following quote, noted by a Court Monitor, is cited only as an example and is by no means an isolated case.

Judge when addressing ADA Christiansen, "Jessica, please ask ADA Burke to come into the courtroom."

This doesn't seem appropriate and makes it appear to observers that female attorneys are not regarded at the same level of professional status as their male colleagues.

A Call for Civility in the Courtroom

Although most of the interactions we observed between defense attorneys and district attorneys were civil and friendly, there were occasional notable exceptions.

For example, on one occasion a defense attorney requested that his case be heard early in the day due to a scheduling conflict. When his case was not heard on his timeline he became increasingly agitated and began pacing around the courtroom.

When the Assistant District Attorney came to inform him that they were ready to talk about his case, he exploded. He got in the ADA's face and began shouting and swearing at him. The ADA kept his cool and, much to his credit, never raised his voice.

A few minutes later when the Judge called the attorneys in to discuss the situation, the defense attorney told the Judge that he had been intimidated by the ADA, who had acted professionally. The only witnesses to this behavior were the two parties involved and two very astounded and frightened Court Monitors, leading one of them to note, "The only time I have ever been frightened by someone's behavior in the courtroom the person acting out was not a defendant but an angry defense attorney!"

It should be noted that the courthouse is a public place and this incident could have been witnessed by anyone including children who are often at court.

"The Clerks are so helpful to us and never mind that we ask questions. We should make them cookies!"

—Court Monitor Note

RECOMMENDATIONS FOR CHANGE

After a review of six months of court monitoring data the following recommendations regarding how the system might change to maximize abuser accountability as a means for increasing victim safety can be made. These are listed in no particular order.

1. Motions to Amend Bail should be carefully reviewed. In cases where there is repeat domestic violence or the reported violence is severe, for example any case that includes allegations of strangling (aka choking), motions to amend bail to allow full contact should be denied. We understand that financial concerns are often central to victims' requests for their abuser to return home and to that end we suggest exploration of a mechanism to provide for child support or spousal support during the pre-trail no contact period.
2. Risk assessment tools such as ODARA should be more widely used. We saw ODARA scores used by one ADA to help identify for judges who were the most dangerous offenders and which were most likely to reoffend. More law enforcement agencies and all DA's office staff and Judges should be trained in the use of this tool and it should be routinely used in the courtroom.
3. Work needs to be done to place less weight on the testimony of uncooperative victims. If all it takes for a case to not be prosecuted is the victim's lack of willing participation then abusers, who always have power over their victims, can easily continue their behavior unchecked. Abusers are empowered by lack of consequences and their behavior often escalates as a result. This does not bode well for victims safety. A look at best practices from other states is called for.
4. The role of the Victim Witness Advocates needs to be clarified. It became clear to us during the monitoring period that confusion exists among the players about what that role is. Statute lists the primary function of the Victim Witness Advocate to give advice to, counsel or assist victims or witnesses of crimes.
5. Prisoners brought from the jail need to be more closely supervised and kept under the control of the jail staff. Prisoners should not be allowed to communicate with people in the courtroom gallery as a de facto visit, to have them pass messages to those 'on the outside', to troll for a new girlfriend/victim, etc. These behaviors were observed each and every time monitors were present.
6. Policy should be developed regarding the use of drop down charges that carefully weighs the impact on victim safety. When an abuser learns that he/she will experience a minimal consequence for domestic violence crimes, he/she is empowered to reoffend, and often escalate the abuse leaving the victim at increased risk of serious harm.
7. Strong efforts should be made to institutionalize victim referrals to community-based victim advocates (e.g. Caring Unlimited). Victims are far more likely to feel able to cooperate throughout the long, frustrating and emotionally arduous process if they receive effective safety planning resources and supports along the way from an entity that does not appear to have a stake in the outcome of a trial.
8. Judges, District Attorneys staff and members of the private bar should all receive advanced training on the dynamics of domestic abuse. We saw many opportunities to provide helpful interventions that were missed due to inaccurate assumptions.
9. Best practices sentencing guidelines should be created to foster some sense of uniformity in sentencing for these crimes and to minimize the wildly different sentences defendants receive for similar crimes in different courts.
10. Men charged with their first crimes against an intimate partner should be mandated to complete a certified Batterers Intervention Program as part of their criminal penalty. Use of traditional counseling and anger management are ineffective interventions for battering. Couples counseling should never be used when domestic violence is a factor and victims requesting it should be educated about it's inappropriate application in cases where abuse exists.
11. A system should be developed to minimize how often victims are requested to appear unnecessarily. When victims experience repeated calls to court believing they are needed to testify and no trial happens they become emotionally depleted, frustrated with the process and are much less likely to remain engaged. (Maybe a pager system?)
12. Development of a process for closer collaboration and information sharing among all stakeholders to include regular, post-judgment case reviews could be helpful in increasing system effectiveness regarding offender accountability and by extension, victim safety.