

Chapter 7

Gender Issues in Problem-Solving Courts

Anna Williams Shavers

Introduction

Gender-based violence is one of the most extreme and pervasive forms of discrimination, severely impairing and nullifying the enforcement of women's rights [and there is a] strong connection between the problems of discrimination and violence against women.¹

Professors Barbara Babb and Nancy Wolff describe, endorse, and make a compelling case for the use of unified family court systems (UFCs) and specialty problem-solving court systems (PSCs) respectively, to handle family law cases that include allegations of domestic violence. This comment briefly explores their recommendations and examines the unique aspects of gender issues and domestic violence cases in the context of Therapeutic Jurisprudence² and problem-solving courts. *Domestic Violence and the Legal System* is a brief examination of the history of addressing domestic violence in the legal system. Here I start with the discussion of a recent much publicized domestic violence case that was heard by the Supreme Court. In *Proposals for Specialty Family Law Courts and Domestic Violence Courts*, I discuss the Babb and Wolff proposals in the context of the basic arguments for including

Cline Williams Professor of Citizenship Law, University of Nebraska College of Law. This comment is based upon remarks made at the Problem-Solving Courts Symposium, January 2010, at the University of Nebraska, Lincoln, Nebraska, in response to the presentations by Barbara Babb and Nancy Wolff.

¹ Jessica Lenahan (Gonzalez) et al. v. United States, Case 12.626, Report No. 80/11, Inter-Am. C.H.R., Para. 110 (July 21, 2011) (released publicly on August 17, 2011) [Lenahan Final Report].

² See David B. Wexler & Bruce J. Winick, *Law in a therapeutic key: developments in therapeutic jurisprudence* (1996).

A. W. Shavers (✉)

University of Nebraska–Lincoln College of Law, Lincoln, NE, USA
e-mail: ashavers@unl.edu

Therapeutic Jurisprudence in the legal system. Finally, I end in *Proceed with Caution in the Use of Special Courts for Domestic Violence Matters* with a cautionary note based upon the unique issues involved with domestic violence cases.

Domestic Violence and the Legal System

Jessica Gonzales was in divorce proceedings with her estranged husband, Simon Gonzales, in Douglas County, Colorado, in 1999.³ In connection with the proceedings, she obtained a temporary restraining order (TRO). The TRO ordered Simon Gonzales not to molest or disturb the peace of Jessica or the three children, three girls (ages 10, 9, and 7 years), of the marriage. The TRO was subsequently made permanent, but it allowed Simon some “parenting time” with the girls even though he had a history of suicidal threats and attempts as well as abusive erratic behavior. Colorado’s mandatory enforcement law requires police officers to use “every reasonable means” to enforce restraining orders.⁴ The brutal and tragic facts of what happened to this family are the subject matter of *Town of Castle Rock v. Gonzales*,⁵ which was decided by the Supreme Court in June 2005.

In June 1999, Simon abducted the three girls while they were apparently riding their bicycles near their home. That evening for approximately 5 hours, Jessica attempted to obtain help from the police in having her daughters returned to her. Despite showing the police the restraining order, making numerous telephone calls to the police, and informing the police of the location where Simon was likely holding the girls, she ultimately had to go to the police station before the officers actually took an incident report from her. A little over 3 hours later, at about 3:20 A.M. Simon Gonzales drove to the police station, got out of his truck, and opened fire on the station with a semiautomatic handgun. He was shot dead by police officers on the scene. The three girls (ages 10, 9 and 7 years), were found by the police in the cab of Simon’s truck, where apparently they had been murdered by Simon earlier that evening. Simon Gonzales had purchased his gun earlier that evening, shortly after he abducted the three girls.⁶ Jessica filed a lawsuit against the City of Castle

³ The Gonzales’ divorce proceeding was apparently filed in district court in Castle Rock, Colorado, where at that time, the district court was a court of general jurisdiction that handled family law cases. Colorado decided not to adopt the unified family court, but some areas of the state have established family courts. See Nancy Thoennes, Family Court Pilot in Colorado’s 17th Judicial District. Denver, Colorado: Center for Policy Research (2001), <http://www.centerforpolicyresearch.org/Publications/tabid/233/id/468/Default.aspx>.

⁴ See Colo. Rev. Stat. §§ 18-6-803.5(3) (a).

⁵ *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

⁶ These facts are based upon the description of the facts in *Town of Castle Rock v. Gonzales*. The facts were never fully developed because the case was dismissed before trial. There is some dispute of the facts. See *Jessica Gonzales v. United States*, Petition No. 1490–05, IACHR Report No. 52/07, OEA/Ser.L.V/II.128, doc. 19, Para. 1 (July 24, 2007) [Gonzales, admissibility report].

Rock, Colorado, and three police officers, alleging that they violated her constitutional rights when they did not enforce the restraining order.⁷ The Supreme Court ultimately dismissed Jessica's case and held that there was no basis in law to uphold her claims against either the individual police officers involved or the town of Castle Rock, Colorado, because she did not have an enforceable property interest in the restraining order.⁸ The majority concluded that the government had not created a property interest protected under the Fourteenth Amendment when it issued a restraining order. Therefore, there was no property right that had been violated.

This decision reminds us that domestic violence has historically gone unprotected. Domestic violence and many issues that disproportionately affect women were viewed as belonging to the private sphere of our lives and are matters that the public sphere cannot and perhaps should not adequately address. The public sphere includes the court system that is used to punish and provide relief. Historically, domestic violence was a private matter, unworthy of relief from the courts or of proper police protection. Social as well as legal support for victims was virtually nonexistent. Even after the recognition of domestic violence as a crime, the legal system has struggled with developing an appropriate method for handling these disputes.⁹ One reform that has been recognized nationwide is mandatory arrest laws for protective order violations.¹⁰ As it has been noted, however, "[w]hen protective orders have been available, their enforcement has been weak."¹¹ The *Gonzales* case supports this conclusion and presents a crucial question: what is the responsibility of the legal system and law enforcement in particular, when a victim has accessed the court system and is determined to be in need of protection?

In December 2005, after her case was dismissed by the U.S. Supreme Court, Jessica submitted her petition to the Inter-American Commission on Human Rights

⁷ Jessica Gonzales filed a claim under 42 U.S.C. § 1983, which provides a remedy for deprivation of rights secured by the Constitution of the United States when that deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory. . . ." She claimed that her procedural due process rights under the Due Process Clause of the Fourteenth Amendment were violated when the police failed to provide protection pursuant to a validly obtained protective order. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 754 (2005)

⁸ Section 1983 authorizes a cause of action for the violation of any constitutional right, including substantive due process and equal protection violations. *See, e.g.,* *Deshaney v. Winnebago Cty. Soc. Servs. Dept.*, 489 U.S. 189 (1989) (failure to provide petitioner with adequate protection against his father's violence did not violate his rights under the substantive component of the Due Process Clause).

⁹ *See generally*, Karen Czapanskiy, *Domestic Violence, the Family and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 *Fam. L. Q.* 247 (1993).

¹⁰ *See* Arthur L. Rizer III, *Mandatory Arrest: Do We Need to Take a Closer Look?*, 36 *UWLA L. Rev.* 1, 9 (2005) (noting that 15 states that have enacted mandatory arrest statutes and 24 states that have enacted a mandatory arrest statute requiring arrest when a protective order has been violated).

¹¹ Randal B. Fritzler & Leonore M. J. Simon, *Creating a Domestic Violence Court: Combat in the Trenches*, 37 *CT. REV.* 28, 29 (2000)

(IACHR)¹² to try and obtain an answer to this question.¹³ She asserted that the U.S. Supreme Court and the Castle Rock Police Department violated her human rights. She first appeared before the Commission in March 2007 on a hearing regarding the admissibility of the matter before the IACHR. After having determined that the matter was admissible¹⁴ and considering the position of the Petitioner and the response of the State and the United States, the IACHR issued its final report in *Jessica Lenahan (Gonzales) v. United States of America*, concluding that the United States violated her human rights and those of her children.¹⁵

In its report on admissibility, the IACHR acknowledged the history of the treatment of domestic violence in the U.S. court system and the allegations in the petition that:

[P]olice authorities engage in a systematic and widespread practice of treating domestic violence as a low-priority crime, *belonging to the private sphere*, as a result of discriminatory stereotypes about the victims. These stereotypes influence negatively the police response to the implementation of restraining orders. The failures in the police response affect women disproportionately since they constitute the majority of victims of domestic violence. The deficiencies in the state response allegedly have a particularly alarming effect on women that pertain to racial and ethnic minorities, and lower-income groups.¹⁶

The *Gonzales* case and the IACHR report emphasizes the fact that domestic violence continues to be a serious problem in the U.S.¹⁷ as it is around the world.¹⁸ Domestic violence is generally defined to occur among cohabitants or former cohabitants and the cases can either be felonies or misdemeanors. It includes sexual abuse; emotional

¹² The Inter-American Commission of Human Rights (IACHR) is the principal body of the inter-American system charged with human rights protection. The commission investigates petitions of alleged violations of human rights by the member nations of the Organization of American States (OAS). The United States is one of the 35 members of OAS.

¹³ See *Gonzales*, admissibility report, *supra* note 6 at Para. 1.

¹⁴ *Gonzales*, admissibility report, *supra* note 6 at Para. 1. doc. 22, rev. 1 (2007).

¹⁵ *Lenahan Final Report*, *supra* note 1.

¹⁶ *Jessica Gonzales v. United States*, Petition No. 1490-05, IACHR Report No. 52/07, OEA/Ser.L.V/II.128, *Gonzales*, admissibility report, *supra* note 6 at doc.19, Para. 58] (rejecting the U.S. position that the OAS American Declaration on the Rights and Duties of Man did not impose positive governmental obligations).

¹⁷ See, e.g., Michael Rand and Callie Rennison, "How Much Violence Against Women Is There?" in *Violence Against Women and Family Violence: Developments in Research, Practice, and Policy*, Edited by Bonnie S. Fisher U.S. Department of Justice: National Institute of Justice. (2004) NCJ 199701 at I-1-5 (noting that in 1998, about 1 million violent crimes were committed against persons by their current or former spouses, boyfriends, or girlfriends; violent crimes included murder, rape, sexual assault, robbery, aggravated assault, and simple assault); National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States 1-4* (2003), available at http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf; Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Study 9-11* (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

¹⁸ See United Nations Centre for Social Development and Humanitarian Affairs, *Violence Against Women in the Family*, U.N. Doc. ST/CSDHA/2 (1989).

abuse; physical behavior involving infrequent slaps, pushes, grabs, or shoves to frequent and severe life-threatening assaults; and threat of violence. Intimate partner violence is committed primarily against women.¹⁹ Women are at an increased risk of harm shortly after separation from an abusive partner.²⁰ Often children are abducted as a means for the offender to gain control over the victim.²¹ Nearly one in four adult women is a victim of domestic violence in her lifetime.²² The IACHR noted that the Petitioner stated that “in the United States between one and five million women suffer nonfatal violence at the hands of an intimate partner each year,”²³ and “[t]he United States Government characterizes the problem as ‘acute’ and ‘significant,’ and acknowledges that there were at least 3.5 million incidents of domestic violence in a four-year period, contemporary with the facts pertaining to this case.”²⁴ While all domestic violence cases or incidents will not have the same tragic end as the *Gonzales* case, there is this possibility. As the IACHR further noted, “women were still very unlikely to gain protection in the United States because of law enforcement’s widespread under-enforcement of domestic violence laws.”²⁵ All of the possible consequences need to be considered when trying to decide an appropriate method to address and respond to domestic violence situations presented to the court either between two intimate partners or in connection with abuse in a broader family unit.

¹⁹ U.S. Department of Justice, Bureau of Justice Statistics, Family Violence Statistics, Mathew Durose and Others (June 2005).

²⁰ Ronet Bachman and Linda E. Salzman, L., Bureau of Justice Statistics, Violence Against Women: Estimates From the Redesigned Survey 1 (January 2000); *See generally*, Barbara J. Hart, Minnesota Center Against Violence and Abuse, *Battered Women and the Criminal Justice System* (1992), <http://www.mincava.umn.edu/documents/hart/hart.html>.

²¹ *See generally*, Barbara J. Hart, Minnesota Center Against Violence and Abuse, *Parental Abduction and Domestic Violence* (1992), <http://www.mincava.umn.edu/documents/hart/hart.html>.

²² See The Centers for Disease Control and Prevention and The National Institute of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence*, July 2000. The Commonwealth Fund, *Health Concerns Across a Woman’s Lifespan: 1998 Survey of Women’s Health*, 1999.

²³ Lenahan Final Report, *supra* note 1, Para. 93, *citing* Petitioners’ petition dated December 27, 2005 and Final Observations Regarding the Merits of the Case submitted by the petitioners, March 24, 2008, *citing* statistics from Center for Disease Control and Prevention, *Costs of Intimate Partner Violence against Women in the United States* 18 (2003) (estimating 5.3 million intimate partner assaults against women in the United States each year); Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Extent, Nature and Consequences of Intimate Partner Violence*, July 2000.

²⁴ *Id.* Para. 94 *citing* U.S. Response to the Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, September 22, 2006, p. 12.

²⁵ *Id.* Para. 96 *citing* as an example *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984).

Proposals for Specialty Family Law Courts and Domestic Violence Courts

The movement for court reform as well as the 1970s feminist movement goal to increase the awareness of the subordination of women and to improve all facets of women's lives drew attention to the handling of domestic violence cases in court as well as by law enforcement officers. Actions of abusers came to be defined as crimes and support was provided to victims in various forms including the availability of restraining orders. This was a convergence of social and legal strategies that eventually led to consideration of the need to apply principles of Therapeutic Jurisprudence to family law matters generally and domestic violence more specifically.

Specialty/Specialized and Therapeutic Courts

UFCs and other therapeutic courts are often discussed under the general category of "problem-solving" courts.²⁶ These courts are typically seen as using unconventional action-oriented methods in the way the legal system handles offenders.²⁷ Although drug treatment courts began appearing in the 1980s, the drug treatment court established in Dade County, Florida, is often cited as the first modern "problem-solving court."²⁸ While the early drug treatment courts can be viewed as a tool of judicial efficiency designed to handle the load of drug offense cases appearing on the courts' dockets, the modern drug treatment courts focused on the therapeutic aspects of the drug offender. The perceived success of drug treatment courts²⁹ has led to the creation of and advocacy for a number of other "problem-solving courts,"³⁰ including

²⁶ See generally, Richard Boldt & Jana Singer, *Juristocracy in the Trenches: Problem-Solving Judges and Therapeutic Jurisprudence in Drug Treatment Courts and Unified Family Courts*, 65 Md. L. Rev. 82, 83 (2006); James L. Nolan, Jr., *Redefining Criminal Courts: Problem-Solving and the Meaning of Justice*, 40 Am. Crim. L. Rev. 1541, 1541 (2003) ("problem-solving courts 'involve principles and methods grounded in Therapeutic Jurisprudence'").

²⁷ See, e.g., Boldt and Singer, *supra* note 26 at 83 ("[T]he judges who serve on these 'problem-solving' courts have largely repudiated the classical virtues of restraint, disinterest, and modesty, replacing these features of the traditional judicial role with bold, engaged, action-oriented norms." quoting Mary Ann Glendon, *A Nation Under Lawyers* 4–5 (1994)).

²⁸ Boldt and Singer, *supra* note 26 at 84.

²⁹ See generally, Boldt and Singer, *supra* note 26 at 83.

³⁰ See *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* (Bruce J. Winick & David B. Wexler eds., 2003) [hereinafter *Judging in a Therapeutic Key*] and David B. Wexler & Bruce J. Winick, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (1996) [hereinafter *Law in a Therapeutic Key*].

mental health courts,³¹ domestic violence courts,³² veterans' courts,³³ and community courts.³⁴ These developments tend to occur in existing courts with specialized dockets or when there is a realization that specialized dockets should be created. It is reported that by 2007, over 2,500 problem-solving courts existed in the U.S.³⁵ A major influence on the creation of these courts has been the development of the concept of "Therapeutic Jurisprudence" (TJ), which was originated by David Wexler and Bruce Winick.³⁶ Bruce Winick describes Therapeutic Jurisprudence as "the study of law's healing potential. TJ originated as a means to assess the impact of the legal system on mentally disabled individuals."³⁷ As Robert Schopp has noted, TJ was originally proposed "as a research agenda intended to broaden a recurring pattern of relatively narrow discussion in mental health law scholarship."³⁸ TJ recognizes that the application of law and the agents of the legal system to an individual can have either therapeutic or counter-therapeutic consequences and questions whether such rules, procedures, and roles can or should be reshaped so as to enhance their therapeutic potential, while not subordinating due process principles. TJ reforms generally envision the judge as performing a therapeutic function.

Wexler and Winick have offered this definition of TJ in its broader application to law and its healing potential:

Therapeutic jurisprudence is the "study of the role of the law as a therapeutic agent." It focuses on the law's impact on emotional life and on psychological well-being. These are areas that have not received very much attention in the law until now. Therapeutic jurisprudence focuses our attention on this previously underappreciated aspect, humanizing the law and concerning itself with the human, emotional, psychological side of law and the legal process. Basically, therapeutic jurisprudence is a perspective that regards the law as a social force that produces behaviors and consequences. Sometimes these consequences fall within the realm of what

³¹ See generally, Sarah L. Miller & Abigail M. Perelman, *Mental Health Courts: An Overview and Redefinition of Tasks and Goals*, 33 *Law & Psychol. Rev.* 113, 113 (2009).

³² See generally, Hon. Catherine Shaffer, *Therapeutic Domestic Violence Courts: An Efficient Approach to Adjudication?*, 27 *Seattle U. L. Rev.* 981 (2004).

³³ See generally, Hon. Robert T. Russell, *Veterans Treatment Courts Developing Throughout the Nation*, in *Future Trends in State Courts* (2009) <http://www.vis-res.com/pdf/Trends2009.pdf>.

³⁴ See generally, Thomas J. Scheff, *Community Conferences: Shame and Anger in Therapeutic Jurisprudence*, 67 *Rev. Jur. U.P.R.* 95 (1998).

³⁵ Robert V. Wolf, "Principles of Problem-Solving Justice" (Center for Court Innovation, n.d.), <http://www.courtinnovation.org/topic/problem-solving-justice>.

³⁶ See David Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (1990); Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 30 *Fordham Urb. L.J.* 1055 (2003). See generally, Winick and Wexler, *Judging in a Therapeutic Key*, *supra* note 30 (collection of essays and edited versions of republished articles in the area).

³⁷ Bruce Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 *UMKC L. Rev.* 33 (2000) [hereinafter *Applying the Law*] citing David B. Wexler & Bruce J. Winick, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (1996); Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 *Psychol. Pub. Pol'y & L.* 184 (1997).

³⁸ Schopp, Robert F., "Integrating Restorative Justice And Therapeutic Jurisprudence," 67 *Revista Jurídica Universidad de Puerto Rico* 665 (1990) citing David Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* 3–22 (1998).

we call therapeutic; other times antitherapeutic consequences are produced. Therapeutic jurisprudence wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected.³⁹

Problem-solving courts utilize TJ principles and focus on having a positive outcome on the offender in lieu of or in addition to punishment. In order to accomplish these goals, judges and other court personnel must often assume nontraditional, less adversarial based roles. One commentator summarizes the goals of the early problem-solving courts: “At their core was the idea that it was no longer enough just to arrest, process, and adjudicate an offender, but law enforcement officers, prosecutors, judges, and probation officers also needed to try to reduce recidivism, improve public confidence in justice, and prevent crime down the road.”⁴⁰

Richard Boldt and Jana Singer have described the successful use of TJ principles in drug treatment courts to produce desired “behaviors and consequences” as including four key components: “the referral of defendants to substance abuse treatment facilities in the community; the use of the threat of traditional criminal penalties as leverage to retain defendants in treatment; judicial monitoring of defendants’ progress in treatment through the use of regular urinalysis testing and periodic ‘status hearings’ in open court; and the imposition of increasingly severe ‘graduated sanctions,’ in instances of noncompliance with the treatment regime, and graduated rewards for successes.”⁴¹ A recent report of the National Drug Court Institute concludes that the success of drug courts is closely correlated with the extent to which the program adhered to the core ingredients identified in the “10 Key Components” drafted by drug court professionals in 1996.⁴² Is it possible to develop similar standards for courts handling domestic violence matters? If not, should we have domestic violence courts?

Specialty Courts and Domestic Violence

In the past two decades, there has been a trend toward establishing UFCs and domestic violence specialty courts. They have taken various forms.⁴³ UFCs can be all encompassing and are sometimes referred to as Integrated Domestic Violence

³⁹ David B. Wexler & Bruce J. Winick, *Law in Therapeutic Key: Developments in Therapeutic Jurisprudence* xvii (1996).

⁴⁰ Wolf, *supra* note 5 at 1.

⁴¹ Boldt and Singer, *supra* note 26 at 84–85 (2006), citing Steven Belenko, Research on Drug Courts 6–7 (1998) and Drug Court Standards Committee, National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components* (1997) (listing 10 key components).

⁴² West Huddleston & Douglas B. Marlowe, *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Court Programs in the United States* 14–15, National Drug Court Institute and United States Department of Justice Bureau of Justice Assistance, (July 2011).

⁴³ See generally, Emily Sack, *Creating a Domestic Violence Court: Guidelines and Best Practices* 2, Family Violence Prevention Fund (2002).

("IDV") courts if domestic violence is present in the family. IDVs typically use the "one-family-one judge" model and have one judge assigned to handle all criminal and civil matters relating to a family.⁴⁴ There are some specialized domestic violence courts that exist outside of the UFCs. These would typically be criminal domestic violence courts.⁴⁵ The varied treatment of domestic violence in family law specialty courts suggests that it is not yet possible to develop a structure for guiding principles or key components involved in the utilization of Therapeutic Jurisprudence in domestic violence cases.

Barbara Babb in her article, "Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach,"⁴⁶ is a strong advocate for UFCs as specialty problem-solving courts.⁴⁷ She includes domestic violence matters in the list of disputes that can be handled in UFCs. Nancy Wolff focuses specifically on domestic violence courts in her article, "Domestic violence courts: The case of Lady Justice meets the Serpents of the Caduceus: Has the lady's each yielded promise or peril?"⁴⁸ In each case, the task presented is to make the case that the treatment of domestic violence cases is appropriate for the application of Therapeutic Jurisprudence in a specialty court.⁴⁹

The endorsement of UFCs is based upon the need to resolve disputes that involve families and may benefit from a holistic approach rather than a traditional adversarial one. This has been made possible in part by the development of modern doctrines in family law matters such as no-fault divorces and various court-approved shared custody arrangements. As one commentator had noted, a unified family court goes

⁴⁴ See, e.g., Problem-Solving Courts, New York (described as handling all criminal, family and matrimonial matters with domestic violence being the threshold requirement for entry into the IDV). https://www.nycourts.gov/courts/problem_solving/idv/home.shtml; Unified Family Court Pilot Project (seeking the adoption of authorizing legislation by the Tennessee legislature) <http://www.shelbycountychildren.org/what-we-do/initiatives/unified-family-court.html>.

⁴⁵ See Anne H. Geraghty & Wallace J. Mlyniec, *Tempering Enthusiasm with Caution*, 40 FAM. CT. R. 435, 437 (2002).

⁴⁶ Barbara Babb, *Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach*, in Wiener, R., & Brank, E. (eds.) *Problem Solving Courts: Social Science and Legal Perspectives*, Springer, 2012 [hereinafter *Unified Family Courts*]. Citations herein are based on a draft copy of the article.

⁴⁷ See also Barbara A. Babb, University of Baltimore Law School, Remarks at the Eleventh Annual Symposium on Contemporary Urban Challenges (March 1, 2002), *Problem Solving Courts: From Adversarial Litigation to Innovative Jurisprudence*, 29 FORDHAM URB. L.J. 1929, 1944 (2002); Barbara A. Babb, *Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, 32 FAM. L.Q. 31, 35–36 (1998) (discussing the historical development of family courts).

⁴⁸ Nancy Wolff, *Domestic violence courts: The case of Lady Justice meets the Serpents of the Caduceus: Has the lady's reach yielded promise or peril?* In Wiener, R., & Brank, E. (eds.) *Problem-Solving Courts: Social Science and Legal Perspectives*, Springer, 2012. Citations herein are based on a draft copy of the article.

⁴⁹ Bruce Winick has argued that specialty courts are better-suited to handle domestic violence cases than conventional courts if they are properly structured. See Winick, *Applying the Law*, *supra* note 37.

beyond dispute resolution, but should fulfill both the social and legal needs of families, including providing families with the skills necessary to avoid the need for legal intervention in the future.⁵⁰ The American Bar Association (ABA) has played a leading role in the creation and strengthening of unified family courts.⁵¹ A 1993 ABA report stated: “We need to reorganize the way courts work with families and children so that judges and court personnel can give each child’s case the attention it demands. . . .”⁵² One recommendation of the report was that all matters involving families and children should be consolidated into a unified one court system with a one-judge–one-family concept. A unified family court has been defined as a single court system with specially trained judges that address legal, social, and emotional issues in a holistic way with linkage to social services and resources from a case management team, to provide a user-friendly environment that addresses the needs of families in a comprehensive manner.⁵³ These courts typically have jurisdiction over domestic violence cases.⁵⁴ Some of the courts either do not exercise jurisdiction over criminal domestic abuse matters or exercise jurisdiction only over misdemeanors.⁵⁵

Babb does not single out domestic violence as a special case for justifying the use of specialty courts nor does she suggest its exclusion; rather, she includes it in a list of difficult issues that family court judges must confront in UFCs when fashioning effective therapeutic outcomes for families. This list includes “domestic violence, mental illness, [and] substance abuse.”⁵⁶

As Babb and others have recognized, the increasing number of family law cases and the complexity of family structure and legal issues have driven the need for family law court reform.⁵⁷ The establishment of UFCs is intended to address some of these challenges. Social science research supports this development and the use

⁵⁰ Paul A. Williams, *A Unified Family Court for Missouri*, 63 *Umkc L. Rev.* 383, 396–97 (1994).

⁵¹ See Adopted Resolution 117 (Coalition for Justice; Committee on State Justice Initiatives) August 2001 http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html. See generally, Herbert Belgrad, *An Introduction to Unified Family Courts from the American Bar Association’s Perspective*, 37 *Fam. L.Q.* 329, 329 (2003) (describing the American Bar Association’s endorsement UFCs).adopted resolution 117 August 2001.

⁵² ABA, *America’s children at risk: a national agenda for legal action* 53, 54 (1993).

⁵³ See generally, Symposium, *What Works and What Does Not*, 29 *Fordham Urb. L.J.* 1929, 1944 (2002); ABA, *America’s Children at Risk: A National Agenda for Legal Action*. 53, 54 (1993).

⁵⁴ See generally, Andrew Schepard & James W. Bozzomo, *Efficiency, Therapeutic Justice, Mediation and Evaluation: Reflections on a Survey of Unified Family Courts*, 37 *Fam. L.Q.* 333, 335 (2003) (reporting that 94 % of the jurisdictions in their survey had jurisdiction over domestic violence cases).

⁵⁵ *Id.* at 344.

⁵⁶ Babb, *Unified Family Courts*, *supra* note 46 at 17.

⁵⁷ See Babb, *Unified Family Courts*, *supra* note 46 at 2. See also Deborah J. Chase, *Pro Se Justice And Unified Family Courts*, 37 *Fam. L.Q.* 403 (2003); Barbara A. Babb & Judith D. Moran, *Substance Abuse, Families, and Unified Family Courts: The Creation of a Caring Justice System*, 3 *J. Health Care L. & Pol’y* 1 (1999); Jessica Pearson, *Court Services: Meeting the Needs of Twenty-First Century Families*, 33 *Fam. L.Q.* 617 (1999).

of Therapeutic Jurisprudence. The research emphasizes the need for effective social service interventions in family law matters.⁵⁸ Thus, as Babb has suggested, the judges can make multidisciplinary decisions informed by court support staff with backgrounds in mental health and social work.⁵⁹ These decisions include legal and nonlegal matters. Babb's development of an ecological approach to family law matters based upon the social science research of Urie Bronfenbrenner,⁶⁰ "the ecology of human development," helps demonstrate that the establishment of UFCs with their underlying Therapeutic Jurisprudence basis is supported by social science research and reinforces the idea that the handling of all cases involving children and families is appropriate. This ecological approach provides a research paradigm, which offers to those involved with UFCs "an analytical tool to account for the many factors affecting parties' lives."⁶¹ This approach requires consideration of the total environment of the family and the competing influences on their lives.⁶² This analysis leads to the conclusion that UFCs must have comprehensive subject matter jurisdiction. As noted above, this includes domestic violence cases. She does, however, recognize that there is disagreement over the inclusion of criminal matters, such as child abuse and domestic violence in the jurisdiction of UFCs.⁶³ By remarking that the aim of the all-inclusive IDVs is to "protect and assist victims" as well as "to promote defendant accountability,"⁶⁴ she seems to conclude that UFCs can adequately handle domestic violence matters and in fact that this may result in a positive outcome in an ecological approach to the family. For example, elsewhere, she has noted that the ecological holistic approach has led some jurisdictions to include domestic violence as a factor in deciding child custody issues.⁶⁵

There are some extremely positive and compelling reasons for establishing UFCs, but few that deal specifically with the question of whether the holistic approach is

⁵⁸ See generally, Nancy Ver Steegh, *Book Review, The Unfinished Business of Modern Court Reform: Reflections on Children, Courts, and Custody* by Andrew I. Shepard, 38 Fam. L.Q. 449 (2004); Catherine J. Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 Fam. L.Q. 3, 7 (1998).

⁵⁹ See Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. Cal. L. Rev. 469, 475 (1998) (describing a multidisciplinary team approach to family law decision-making).

⁶⁰ Urie Bronfenbrenner, *The Ecology Of Human Development* (1979).

⁶¹ Babb, *Unified Family Courts*, *supra* note 46 at 7.

⁶² *Id.* at 11–14.

⁶³ *Id.* at 19 *citing* Sanford N. Katz & Jeffrey A. Kuhn, *Recommendations for a Model Family Court 8–9* (1991) (due process and other concerns regarding the treatment of the offender) and Linda Szymanski, Theresa Homisak, & E. Hunter Hurst, III, *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction over the Family 8–9* (1993) (noting significant concerns unless confined to misdemeanors).

⁶⁴ *Id.* at 20 *citing* Judith S. Kaye, *Delivering Justice Today: A Problem-Solving Approach*, 22 Yale L. & Pol'y Rev. 125, 143 (2004).

⁶⁵ See Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 Ind. L.J. 775, 787 n. 76 (1997) *citing* Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 Hofstra L. Rev. 1295, 1308–09 (1993).

appropriate for cases involving domestic abuse allegations. Most family law matters will not involve domestic violence, and the families may benefit greatly from the use of UFCs. It may be necessary, however, to consider whether domestic violence cases should be screened out or assigned to a different path. This may be necessary to protect the victim as well as preserve the offender's due process rights.

As Robert W. Wolf has noted, in a study published by the Center for Court Innovation, the subject matter of problem-solving courts often have different goals for success or rehabilitation. As he notes, drug courts focus on the offender and may view a successful outcome as rehabilitation of the offender, whereas domestic violence courts must view a success as having dual goals: a need to hold offenders accountable while keeping victims safe.⁶⁶ There is not only a need to recognize the difference in the various types of problem-solving courts but also a need to question whether certain types of problems are suitable for these methods. While it can be argued that like drug courts, "detering recidivism" in domestic violence cases is an extremely important goal, and the two goals in domestic violence can be accommodated by viewing a lack of recidivism as an indicator of victim safety, thus achieving the desired therapeutic outcome,⁶⁷ this approach could lead to the victim perceiving the focus of the process to be on the offender. In addition, unlike domestic violence offenders, in drug courts, the offender is typically nonviolent.

Nancy Wolff tackles the issue of Therapeutic Jurisprudence and domestic violence in problem-solving courts head-on.⁶⁸ She first describes the creation of state and local responses to domestic violence in the 1970s, which included law enforcement training as well as legislation that criminalized domestic violence and in some cases mandated prosecution. Sentences often included treatment for the batterers.⁶⁹ Then she focuses on the creation of specialized domestic violence courts. By 2009, there were over 200 specialized courts.⁷⁰ These courts attempted to address accountability for the offenders as well as protection for the victims. A primary goal was to include punishment as a means of holding the offender accountable. She concludes that although these specialized courts are often categorized as problem-solving courts, they are mistakenly included alongside drug courts and mental health courts that usually have as their goal the decriminalization of the offender's behavior.⁷¹ Therefore, she asserts that "[i]n theory and practice, domestic violence courts focus primarily on victim safety and, as such, appeal to principles of restorative justice, the need to repair or heal the victim rather than principles of Therapeutic Jurisprudence, the need to treat the offender."⁷² She argues that domestic violence courts should embrace

⁶⁶ Wolf, *supra* note 35 at 2.

⁶⁷ See generally, Melissa Labriola, Sarah Bradley, Chris S. O'Sullivan, Michael Rempel, Samantha Moore, A National Portrait of Domestic Violence Courts 80. Report submitted to the National Institute of Justice, New York, NY: Center for Court Innovation (2009).

⁶⁸ Wolff, *supra* note 48.

⁶⁹ *Id.* at 4.

⁷⁰ *Id.* at 5 *citing* Labriola, Bradley, O'Sullivan, Rempel, & Moore, *supra* note 67.

⁷¹ *Id.* at 6.

⁷² *Id.* at 6 (citations omitted).

Therapeutic Jurisprudence principles to address the situation of both the offender and the victim. Her arguments in support of this position, although in different words, closely parallel those of Babb with respect to the need to rely on social science research and ecological theory to develop a holistic approach to address intimate partner violence. Wolff also opposes a fragmented court system to deal with domestic matters and concludes that such a system “is liability for the victim and an asset for the batterer.”⁷³ She argues that the ineffectiveness of domestic violence courts can be attributed in large part to their failure to appropriately apply Therapeutic Jurisprudence. The concentration only on the batterer for therapeutic intervention is driven by the dichotomization of domestic violence into the batterer (man) harming the victim (woman). This view has developed, she asserts, because of the assumptions that domestic violence derives from the patriarchal subordination of women: “(1) batterer behavior is caused by socio-cultural factors that condition men to use their power against and over women; (2) batterers bear the full responsibility for domestic violence; (3) any remedial or rehabilitative intervention should focus on the batterer; (4) all batterers are equal in motivation, pathology, and behavior; and (5) batterers are rational decision-makers and will stop behaviors in which their costs exceed their benefits.”⁷⁴ Arguably then, if adhering to the premise of Winick and Wexler that the “people appearing in problem-solving courts . . . are there because they have problems that they have not recognized or had the ability to deal with effectively,”⁷⁵ in domestic violence courts, this would include both the offender and the victim.

The use of specialty courts in domestic violence matters differs from drug courts or mental health courts because it is not only the accused or perpetrator who must be the focus of the court in determining the appropriate contours of therapeutic responses. The determination of appropriate therapeutic responses or interventions must also focus on the victim and often the children of the relationship. Wolff suggests that this means that the court must focus on the dysfunction within the family unit and not just the offender. This could reveal that the principals in the relationship, both the offender-man and the victim-woman, may have “behaviors that contribute to [the] dynamic elements” of the domestic violence incidence.⁷⁶ Further, such an approach can take account of the fact that victims seek help to stop the violence but not necessarily to end the relationship. Wolff cautions that court personnel will need to have sufficient training to use gender-sensitive approaches and develop therapeutic responses that focus on both parties.

Wolff’s approach holds much merit, but without the necessary training and consideration of all relevant factors in the relationship, the courts may develop remedies that have a detrimental effect on the victim. For example, if an offender is offered a diversion program, and the victim is offered counseling, the victim may view the process as failing to meet her needs, i.e., to see the offender punished, thus having a

⁷³ *Id.* at 9.

⁷⁴ *Id.* at 12.

⁷⁵ Winick and Wexler, *Judging in a Therapeutic Key*, *supra* note 30 at 8.

⁷⁶ Wolff, *supra* note 48 at 19.

therapeutic effect for the offender and an antitherapeutic effect for the victim. Wolff outlines a strategy to avoid such results. This strategy includes (1) holistic therapeutic orientation for the principals and their children, (2) an assessment of the family unit and profiling of the principals, (3) targeted interventions for the principals, and (4) coordinated and continuous intervention to develop and sustain the appropriate balance of treatment.⁷⁷ Wolff concludes by suggesting a research agenda to explore the effectiveness of domestic violence courts.

The use of Therapeutic Jurisprudence in domestic violence cases as urged by Babb and Wolff presents a number of questions that they recognize, but remain to be explored. One primary basis for these questions is how the appropriate balance can be achieved between “principles of restorative justice, the need to repair or heal the victim . . . principles of therapeutic jurisprudence, the need to treat the offender”⁷⁸ and principles of retributive justice, the need for punishment of the offender. In the next section, I explore issues raised in trying to achieve this balance.

Proceed with Caution in the Use of Special Courts for Domestic Violence Matters

If it is a basic feature of problem-solving courts that “people appearing in problem-solving courts . . . are there because they have problems that they have not recognized or had the ability to deal with effectively,”⁷⁹ is it appropriate to label the victim in intimate partner violence, most often a woman, as a person having a problem that can be addressed by Therapeutic Jurisprudence? Drug courts and mental health courts would seem to dictate no as the answer. The conduct of the offender in those courts, may have affected others, but those affected are not the subject of the therapeutic actions and typically had no prior relationship with the nonviolent offender.⁸⁰ The question here is what type of problem is Therapeutic Jurisprudence best at addressing.

Professors Babb and Wolff make a strong case for including domestic violence issues in unified family courts and specialty domestic violence courts. I simply want to join with others in advising that this be approached with extreme caution and reflection.⁸¹ As Bruce Winick cautioned, TJ is appropriate “when consistent with other important legal values.”⁸²

The historical gendered exclusion of domestic violence cases from the legal system raises a question as to whether the legal system has sufficiently evolved to deal

⁷⁷ *Id.* at 25–28.

⁷⁸ *Id.* at 6 (citations omitted).

⁷⁹ Winick and Wexler, Judging in a Therapeutic Key, *supra* note 30 at 8.

⁸⁰ See generally, Julie Stubbs, *Domestic Violence and Women’s Safety: Feminist Challenges to Restorative Justice*, in *Restorative Justice and Family Violence*, 42, 43 (Heather Strang & John Braithwaite eds., 2002).

⁸¹ See, e.g., Geraghty & Mlyniec, *supra* note 45.

⁸² Winick, *Applying the Law*, *supra* note 37 at 33.

with both the offender and victim on an equal basis. The argument by some commentators that domestic violence is unsuitable for restorative justice practices because of the inherent power imbalances and ongoing entanglements of domestic relationships⁸³ also seems applicable to special courts that apply Therapeutic Jurisprudence to victims.⁸⁴ This is especially true if the court seeks “reconciliation rather than punishment, healing rather than retribution.”⁸⁵ Julia Weber, for example, recognizes that “the danger lies in the possible minimization of the need for a strong law enforcement response in domestic violence cases.”⁸⁶ As she puts it, the question for domestic violence courts is, “Does a therapeutic approach hold perpetrators accountable for violent crimes?”⁸⁷ There are some aspects of “blaming the victim” in approaches that would make both parties equally responsible for the domestic violence incidence. In its development of standards to address the treatment of the offender in family violence cases, the National Council of Juvenile and Family Court Judges included as possible unsuitable approaches “those which orient themselves toward the couple before dealing with the offender’s criminal behavior” and those which may “put the victim at substantial risk of revictimization.”⁸⁸ Weber also notes that if domestic violence courts require victims who come to court seeking protection to participate in [therapeutic] programs, they run the risk of triggering the “unintended effect of reinforcing the batterer’s belief that the victim is responsible for the violence and that his role is relatively inconsequential, or that if they are both ordered into counseling, they are equally culpable.”⁸⁹ There has been some opposition by courts to including domestic violence criminal cases in the UFC because it has the effect of essentially decriminalizing violent criminal actions.⁹⁰ The fear that a rehabilitative model will

⁸³ See, e.g., Katherine Van Wormer, *Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective*, 54 Soc. Work 107 (2009).

⁸⁴ See, e.g., John E. Cummings, *Comment, The Cost of Crazy: How Therapeutic Jurisprudence and Mental Health Courts Lower Incarceration Costs, Reduce Recidivism, and Improve Public Safety*, 56 Loy. L. Rev. 279, 281 (2010) (noting that although problem-solving courts have their origins in therapeutic jurisprudence, all problem-solving courts are rooted in the legal theories of therapeutic jurisprudence and restorative justice).

⁸⁵ *Id.*

⁸⁶ Julia Weber, *Domestic Violence Courts: Components and Considerations*, 2 J. Ctr. Fams. Child & Cts., 23, 27 (2000).

⁸⁷ *Id.* at 34.

⁸⁸ National Council of Juvenile and Family Court Judges, *Family Violence: Improving Court Practice* 49 (1990).

⁸⁹ Weber, *supra* note 86 at 32.

⁹⁰ See generally, Nancy Thoennes, *Integrated Approaches to Manage Multi-Case Families in the Justice System V*: Center for Police Research (2007) (e.g., Maricopa County); Susan Keilitz, *Specialization of Domestic Violence Case Management in the Courts: A National Survey*, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice (2004) *citing* Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 Yale J.L. & Feminism 3 (1999).

result in leniency being shown to the offender has caused domestic violence advocates to reject that approach.⁹¹ The UFC would need extremely qualified personnel to assess the voluntariness of the victim when selecting the option of utilizing available services to keep the family together and not pursue criminal charges against the offender.

One restorative justice practice that has been strongly endorsed for use in UFCs is mediation. Mediation has been called a vital function of a UFC.⁹² Although some scholars and advocates have endorsed the use of mediation even in cases of domestic violence, many others continue to argue against the use of mediation and other alternative dispute techniques when domestic violence is involved in a family law matter.⁹³ Babb has noted elsewhere that “judges must understand the social science research documenting the coercive and antitherapeutic nature of alternative dispute resolution techniques in some circumstances, such as actions involving victims of domestic violence and their abusers.”⁹⁴

Justice Stevens in his dissent in *Town of Castle Rock v. Gonzales*,⁹⁵ commented on an experiment by the Minneapolis, Minnesota police department in which randomly assigned domestic violence offenders were handled by using one of three different responses: (1) arresting the offender, (2) mediating the dispute, or (3) requiring the offender to leave the house for 8 hours. The study concluded that mediating the dispute or requiring the offender to leave for 8 hours were both less effective means of reducing domestic violence recidivism than arresting the offender.⁹⁶

As Deborah Chase has cautioned with respect to problem-solving courts generally, “the vulnerability of these courts to well-intended disregard of the legal rights of the litigants must be acknowledged and clearly identified.”⁹⁷ Along these lines,

⁹¹ See, e.g., Geraghty & Mlyniec, *supra* note 45 at 443 citing Victor Eugene Flango, Creating Family Friendly Courts: Lessons from Two Oregon Counties, 34 FAM. L.Q. 115, 120 (Spring 2000).

⁹² See Shepard & Bozzomo, *supra* note 54 at 345.

⁹³ See generally, Nancy Ver Steegh, Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence, 9 WM. & MARY J. WOMEN & L. 145, 147 n.2 (2003) (“Compare Carrie-Anne Tondo, et al., Mediation Trends, 39 Fam. Ct. Rev. 431 (2001) (arguing that mediation is never appropriate), with Penelope E. Bryan, Reclaiming Professionalism: The Lawyer’s Role in Divorce Mediation, 28 Fam. L. Q. 177, 203–05 (1994)”); Aimee Davis, *Mediating Cases Involving Domestic Violence: Solution or Setback?*, 8 Cardozo J. Conflict Resol. 253, 268 (2006); Leigh Goodmark, *Law is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 11 (2004); Laurie S. Kohn, *What’s So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 Seton Hall L. Rev. 517, 527 (2010); Tom Lininger, *Bearing the Cross*, 74 Fordham L. Rev. 1353, 1361 (2005).

⁹⁴ Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 Ind. L.J. 775, 803 n.179 (1997).

⁹⁵ 545 U.S. 748, 772.

⁹⁶ *Id.* at 780 n.8 citing Sack, Battered Women and the State: The Struggle for the Future of Domestic Violence Policy, 2004 Wis. L. Rev. 1657.

⁹⁷ Deborah J. Chase, *Pro Se Justice And Unified Family Courts*, 37 FAM. L.Q. 403 (2003) citing Anne H. Geraghty & Wallace J. Mlyniec, *Unified Family Courts: Tempering Enthusiasm with Caution*, 40 FAM. CT. R. 435 (2002).

commentators have also argued that the rights of offenders as well as victims may be compromised. These arguments are largely based upon a possible denial of due process⁹⁸ and the need to preserve the rights of offenders. This has been addressed in part by some courts that require domestic violence cases which proceed to trial to be placed on the criminal court calendar.⁹⁹ More generally, some have argued that handing domestic violence either in a UFC or a specialized court should be discouraged because of the benefits of a pluralist court system.¹⁰⁰ The *Gonzales* case makes it clear there remains a need for law reform and otherwise determine how best to handle domestic violence issues. It does not yet appear that the case has been made for the uniform adoption of domestic violence problem-solving courts as currently proposed.¹⁰¹

Along with the research that Nancy Wolff suggests is necessary, empirical legal research is needed to evaluate the establishment of problem-solving courts for domestic violence cases. Are the victims experiencing more safety? Does a power imbalance continue to exist? How can we determine whether the use of various Therapeutic Jurisprudence techniques is effective?¹⁰²

Although the IACHR decision in the *Gonzales* case is nonbinding, some guidance may be found in the IACHR ruling which sets forth comprehensive recommendations for changes to U.S. law and policy pertaining to domestic violence. They include the recommendation that the United States:

[C]ontinue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.¹⁰³

In view of the fact that it was the result of feminist efforts that domestic violence claims became recognized in the courts and law enforcement systems, perhaps one

⁹⁸ See, e.g., Gloria Danziger, *Delinquency Jurisdiction in a Unified Family Court: Balancing Intervention, Prevention, and Adjudication*, 37 FAM. L.Q. 381, 394–397 (2003) (discussing the role of the judge and due process in unified family court) citing Anne H. Geraghty & Wallace J. Mlyniec, *Unified Family Courts: Tempering Enthusiasm with Caution*, 40 FAM. CT. REV. 435, 437 (2002).

⁹⁹ See, e.g., Minnesota Judicial Branch, Fourth District, *Problem-Solving & Specialty Courts, Domestic Violence Court*, <http://www.mncourts.gov/district/4/?page=2004>.

¹⁰⁰ See generally, Elizabeth L. MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism*, 20 Tex. J. Women & L. 95 (2010–2011); Tamar M. Meekins, *Specialized Justice: "The Over-Emergence of Specialty Courts and the Threat of a New Criminal Defense Paradigm"*, 40 Suffolk U. L. Rev. 1, 6–7(2006).

¹⁰¹ See generally, Samantha Moore, *Two decades of specialized domestic violence courts: A review of the literature 2*, New York, NY: Center for Court Innovation (November 2009) (noting that domestic violence courts lack an established set of principles).

¹⁰² See e.g., Steve Leben, *Book Review*, 26 Justice System Journal 109 (reviewing *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*, Bruce J. Winick and David B. Wexler., eds. (2003)) (noting that the book lacks "data to support the effectiveness of TJ over alternative procedures and concepts, as well as discussion of several conceptual challenges to TJ"). Available at http://www.ncsconline.org/wc/publications/kis_prosoljudgingjsjv26no1.pdf.

¹⁰³ Lenahan Final Report, *supra* note 1 at Para. 201.

of the most essential questions for assessing the effectiveness of problem-solving courts to address domestic violence is to view it from a feminist perspective and as Katherine Bartlett suggests: “Ask the woman question.” As she describes it, “[i]n law, asking the woman question means examining how the law fails to take into account the experiences and values that seem more typical of women than of men, for whatever reason, or how existing legal standards and concepts might disadvantage women.”¹⁰⁴ Therefore, as we assess the Babb and Wolff proposals, we must ask and assess whether the use of Therapeutic Jurisprudence to structure unified family courts or special domestic violence courts disadvantage women in their attempts to obtain justice.

¹⁰⁴ Katharine T. Bartlett, *Feminist Legal Methods*, 103 *Harv. L. Rev.* 829, 837 (1990). *See also* Katharine T. Bartlett, *Gender and Law: Theory, Doctrine, Commentary* 634 (1993) (a feminist analysis “take[s] greater account of how legal rules often invisibly represent the partial perspectives of those who are dominant in society and ignore the perspectives of others”).