

**ANNA MOSCOWITZ KROSS AND THE HOME TERM  
PART: A SECOND LOOK AT THE NATION’S FIRST  
CRIMINAL DOMESTIC VIOLENCE COURT**

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“It all started as an experiment in 1946, when the volume of family disputes for the entire city was handled . . . in the District [M]agistrates courts in the usual run-of-the-mill fashion. What we sought was to remove the rigid formalism of court room atmosphere and procedure and to individualize, in so far as possible, the cases that were brought before us. . . . to mend broken lives.”<sup>1</sup>

I. INTRODUCTION

Many proclaim that criminal domestic violence courts –

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\*Copyright © 2007, 2008 Mae C. Quinn. Associate Professor of Law, University of Tennessee College of Law. This paper is dedicated to Dr. Helen K. Golden, daughter of Anna Moscowitz Kross, who has kindly supported and encouraged my research and writing about her mother. Words cannot express my gratitude for her warmth and generosity in welcoming me into her life and into the life of her family. Many thanks also to Professor Tracy Thomas, Associate Dean Elizabeth Reilly, and the University of Akron School of Law for sponsoring the New Face of Women’s Legal History Conference in October 2007, at which I delivered remarks relating to this article, and to Rosemary Burr, Mary Pat Byrn, Jennifer Hendricks, Amy Hess, and William Montross for their comments on an earlier draft. My continuing gratitude to the American Jewish Archives at Hebrew Union College, which maintains Kross’s papers.

1. Anna M. Kross, *A Love Seat in Court*, LOOK MAG., March 1, 1950, at 2 (on file with author).

specialized court parts that focus on intimate violence cases and utilize a particularized approach in such prosecutions to prevent further violence – are a recent innovation within our criminal justice system. Most observers point to the Quincy District Court in Massachusetts, which opened in 1987, as the first venue in this country to offer specialized processing of criminal domestic abuse prosecutions.<sup>2</sup> In the two decades since the Quincy court opened its doors, other jurisdictions have developed similar models using similar specialized approaches.<sup>3</sup>

A growing body of literature lauds the “innovative,” coordinated approaches employed by these courts, including no-drop prosecution policies to protect complaining witnesses and court-ordered batterer intervention programs for those accused of violence.<sup>4</sup> These practices

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2. ROBERT V. WOLF, CALIFORNIA’S COLLABORATIVE JUSTICE COURTS: BUILDING A PROBLEM-SOLVING JUDICIARY 15 (2005), available at [http://www.courtinnovation.org/\\_uploads/documents/CA%20Story\\_1.pdf](http://www.courtinnovation.org/_uploads/documents/CA%20Story_1.pdf) (“The first domestic violence court was launched in Quincy, Massachusetts, in 1987.”); GREG BERMAN & JOHN FEINBLATT, JUDGES AND PROBLEM-SOLVING COURTS 8 (2002), available at [http://www.courtinnovation.org/\\_uploads/documents/JudgesProblemSolvingCourts1.pdf](http://www.courtinnovation.org/_uploads/documents/JudgesProblemSolvingCourts1.pdf) (“The first domestic violence court was launched in Quincy, Massachusetts, in 1987.”); see also Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U.L. REV. 329 (1994); Jennifer Thompson, Note, *Who’s Afraid of Judicial Activism? Reconceptualizing A Traditional Paradigm in the Context of Specialized Domestic Violence Programs*, 56 MAINE L. REV. 407, 415-420 (2004) (offering a history of domestic violence policies and indicating that until the 1970s and 1980s intimate violence was not prosecuted criminally but was seen as a private matter between family members).

3. See generally RONALD SHELTON, THE CURRENT STATE OF DOMESTIC VIOLENCE COURTS IN THE UNITED STATES 2007, available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/famct&CISOPTR=173> (cataloguing the emergence and spread of domestic violence courts throughout the United States over the last two decades and describing this as a recent phenomenon); Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1298-1309 (2000) (discussing the rise in popularity of domestic violence courts following the creation of the Quincy Court); see also Laylan Copelin, *New Court Dedicated to Family Violence*, AUSTIN AM. STATESMAN, Jan. 4, 1999, at B1 (describing Austin, Texas’s first criminal domestic violence court); *Domestic Violence Court A Solid Recommendation*, THE JACKSON SUN, Nov. 13, 2007 (calling for the creation of a domestic violence court in Jackson, Tennessee). Judge Shelton suggests that modern “feminization” of the bench may have paved the way to acceptance of specialized domestic violence courts. SHELTON, *supra*, at 8. Cf. Mae C. Quinn, *Revisiting Anna Moscovitz Kross’s Critique of the New York City Women’s Court: The Problem of Solving the “Problem” of Prostitution with Specialized Criminal Courts*, 33 FORDHAM URB. L. J. 665, 681-82 n.86 (2006) [hereinafter Quinn, *Revisiting*] (discussing “feminization” of the bench in the 1930s in conjunction with the Women’s Court movement).

4. See generally SHELTON, *supra* note 3, at 8-10; ROBERT V. WOLF, LIBERTY ALDRICH & SAMANTHA MOORE, PLANNING A DOMESTIC VIOLENCE COURT: THE NEW YORK STATE EXPERIENCE 18 (2004), available at [http://www.courtinnovation.org/\\_uploads/documents/dvplanningdiary.pdf](http://www.courtinnovation.org/_uploads/documents/dvplanningdiary.pdf); Robin Mazur & Liberty Aldrich, *What Makes a Domestic Violence Court Work? Lessons from New York*, 42 JUDGES’ J. 5, 6 (2003), available at <http://www.mncourts.gov/?page=1737> (“Domestic violence court is designed to

and policies grow from the assumption that domestic violence crimes are different from others, presenting a particular dynamic between abuser and victim that requires a unique kind of case processing.<sup>5</sup> Accused abusers present a future danger and are in need of punishment and monitoring; alleged victims are vulnerable and in need of ongoing protection from defendant abuse and control.<sup>6</sup>

Court planners in New York assert that its first criminal domestic violence court was established in 1996.<sup>7</sup> Located in Brooklyn, that institution has been described as a leader in the domestic violence court movement for its consistent use of these innovative approaches and its development of a “dedicated court team.”<sup>8</sup> The team, including “judge, attorneys, victim advocates and a resource coordinator—ensures that

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address traditional problems of domestic violence, such as low reports, withdrawn charges, threats to victim, lack of defendant accountability, and high recidivism, by intense judicial scrutiny of the defendant and close cooperation between the judiciary and social services.”); Municipal Court of Seattle webpage, available at <http://www.seattle.gov/courts/prob/dvprob.htm> (last visited Jan. 20, 2008) (describing the domestic violence court’s policies, including that “[i]n many cases, the City will prosecute a case even if the victim refuses to testify”).

5. SHELTON, *supra* note 3, at 5-11 (describing the evolution of current domestic violence policies based upon an evolving understanding of violence between intimates); WOLF, ALDRICH & MOORE, *supra* note 4, at 3-4 (describing underlying assumptions between defendants and complaining witnesses in domestic abuse cases). According to New York State Chief Judge Judith Kaye, “[b]ecause of their intimate bond with the victim, perpetrators of domestic violence present a particularly high risk of continuing, even escalating the violence against the complainant as they seek further control over her choices and actions.” *Id.* at 4. See also NATIONAL INSTITUTE OF JUSTICE, DO BATTERER INTERVENTION PROGRAMS WORK? TWO STUDIES 2 (2003), available at <http://www.ncjrs.gov/pdffiles1/nij/200331.pdf> (discussing the use by victims’ advocates of the “power and control wheel” theory to understand family violence, which assumes that the accused wants to control his partner’s behaviors and that “changing this dynamic is key to changing their behavior”).

6. SHELTON, *supra* note 3, at 8-10 (“Domestic violence courts . . . focus primarily on the victim rather than the offender. The initial focus is on the safety of the battered women and any children that are involved. The court also focuses on the accountability of the offender for his own misconduct rather than exploring the etiology of that conduct.”); Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Call for a Problem-Solving Approach*, 27 W. ST. U. L. REV. 1, 6-7 (1999-2000) (calling for reforms in processing of criminal domestic violence matters to take account of the “special characteristics” of such cases including complainants who have safety concerns and defendants who need close judicial monitoring even before a finding of guilt); see also Debra Raye Hayes Ogden, *Prosecuting Domestic Violence Crimes: Effectively Using Rule 404(b) to Hold Batterers Accountable for Repeated Abuse*, 34 GONZ. L. REV. 361, 364 (1998) (indicating that all men who abuse do so as a means of controlling their victims and that such conduct is a learned behavior, not a feature of any illness).

7. Mazur & Aldrich, *supra* note 4, at 6 (“The first domestic violence court in the state opened in Brooklyn in 1996 . . . .”); WOLF, ALDRICH & MOORE, *supra* note 4 (chronicling the creation of domestic violence courts in New York, starting with the “inception” of the first such court in 1996).

8. WOLF, ALDRICH & MOORE, *supra* note 4, at 5 (“[D]efendant accountability and victim safety’ has become the mantra of New York’s domestic violence courts . . .”).

defendants are carefully monitored, victims have access to comprehensive services and the judges have the information they need to make quick and effective decisions.”<sup>9</sup>

These contemporary accounts of judicial innovation fail to acknowledge, however, that a somewhat similar experiment in specially adjudicating domestic violence prosecutions was undertaken more than fifty years ago in New York. In 1946, Judge Anna Moscowitz Kross established New York State’s first criminal domestic violence court within New York City’s Magistrates’ Court system.<sup>10</sup> The Home Term Part, as Kross’s court was called, was a groundbreaking experiment in criminal justice that sought to employ a particularized approach in domestic violence cases to address charges of assault, harassment, disorderly conduct and other abuses. Nevertheless, Kross, one of New York’s first women judges, and her early attempts at judicial innovation like the Home Term Part, have been largely forgotten by legal historians and court reformers alike.<sup>11</sup>

This paper seeks to inform current conversations about dedicated domestic violence courts by shedding light on Kross’s remarkable early efforts to treat domestic violence prosecutions differently from other criminal matters and handle them in a designated court part. The story of Kross’s Home Term Part – the first specialized criminal domestic violence court in New York and perhaps the United States—is an important chapter in the history of intimate violence policies in this country. Recognition of Home Term is crucial to any complete account and understanding of our criminal justice system’s renewed efforts at judicial innovation through specialized “problem-solving” courts. And although many practices of Home Term would be viewed as objectionable by modern standards, examining Home Term may also

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9. See The Center for Court Innovation – Brooklyn Domestic Violence Court webpage, <http://www.courtinnovation.org/index.cfm?fuseaction=page.viewPage&PageID=599> (last visited Nov. 29, 2007); see also Mazur & Aldrich, *supra* note 4, at 7-8; WOLF, ALDRICH & MOORE, *supra* note 4.

10. Shirley F. Mehl, *Judge Anna Kross and the Home Term Court*, 36 WOMEN LAW. J. 7 (1950).

11. This paper is the second in a series of works that seek to fill this void and shed greater light on Kross’s remarkable life and career. See Quinn, *Revisiting*, *supra* note 3; see also Mae C. Quinn, *Anna Moscowitz Kross and the Original Problem-Solving Court: Lessons to Learn from a Lifetime of Judicial Innovation* (in progress; on file with author); Mae C. Quinn, *Lady Vols Call the Shots in Full-Court Press: Judge Anna Moscowitz Kross and Her All-Woman Auxiliary of Criminal Court Case Workers* (in progress; on file with author) [hereinafter Quinn, *Lady Vols*]; MAE C. QUINN, ANNA MOSCOWITZ KROSS: A BIOGRAPHY (in progress; on file with author).

provide important insights for contemporary court reformers as they consider the future of domestic violence prosecutions.

## II. KROSS'S EARLY WOMEN'S RIGHTS WORK

Anna Moscovitz Kross, a poor Russian immigrant who grew up in tenement apartments in Manhattan's Lower East Side, was among the first women graduates of New York University Law School, receiving her first law degree in 1910.<sup>12</sup> Even as a youth, Kross was concerned with women's rights issues and the interests of the disempowered.<sup>13</sup> Perhaps her earliest and best known advocacy work involved her campaign against the Women's Court, a specialized part of the Magistrates' Court system<sup>14</sup> that handled prostitution cases and had become known over the years for ineffectiveness, injustice, and corruption.<sup>15</sup>

As a law student, Kross and others monitored the court's practices, which included inviting spectators to attend the female-only evening sessions to observe defendants as they were paraded before the court.<sup>16</sup> As a young lawyer she encouraged volunteer lawyers to join her in providing representation for alleged sex workers, some falsely accused by vice officers, who could not otherwise afford counsel.<sup>17</sup> She went on to become Chair of the Legal Committee of the Forum of the Church of the Ascension, an organization that offered free legal counsel to women in the Night Court.<sup>18</sup> In 1915, Kross, only in her mid-twenties, was

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12. Quinn, *Revisiting*, *supra* note 3, at 669-70; *see also* *Salute to Judge Kross*, N.Y. TIMES, June 13, 1950, at 26 (describing Kross's upbringing in the tenements of New York); *Embattled City Aide: Anna Moscovitz Kross*, N.Y. TIMES, May 2, 1958, at 16 (recounting that as a law student Kross spent much of her time advocating women's suffrage and assisting women in the Women's Night Court).

13. Quinn, *Revisiting*, *supra* note 3, at 670; *see also* Leah N. Neurer, *New York Woman Judge Attained High Goal Through Sacrifice, Struggle and Determination*, 25 WOMEN LAW. J. 52, 52 (1938-39) (lauding Kross's work as a teenager teaching immigrants to read English).

14. The Magistrates' Court system was a police court in New York City that handled a variety of matters, including adjudication of low-level criminal charges. *See* Anna M. Kross & Harold M. Grossman, *Magistrates' Courts of the City of New York: History and Organization*, 7 BROOK. L. REV. 133, 133 (1937-38).

15. *See generally* Quinn, *Revisiting*, *supra* note 3.

16. Actively involved with various New York City women's groups, Kross assisted with their court monitoring work and also worked with the Prison Committee of the Church of the Ascension to provide reentry services for discharged women prisoners. Quinn, *Revisiting*, *supra* note 3, at 677-81; *see also* *Embattled City Aide: Anna Moscovitz Kross*, *supra* note 12, at 16.

17. Quinn, *Revisiting*, *supra* note 3 at 678-80.

18. *Id.* at 679-80; *see also* Martin Panzer, *A Real American and A Real Jewess: The Story of Magistrate Anna Moscovitz Kross Who Is Being Boomed for the State Supreme Court*, THE AM.

named as one of only a few “New York City women who . . . made a success at their chosen profession” of law.<sup>19</sup>

In the years that followed, Kross became increasingly involved in public and political life, in part through her participation in Democratic Party women’s groups.<sup>20</sup> She also became more vocal in her criticism of the Women’s Court, which she believed entrapped many innocent women, unfairly punished conduct that was really a social problem, and failed to meaningfully address the issues that contributed to prostitution.<sup>21</sup> The criminal court system, she believed, was too narrowly focused on the law and not sufficiently interested in social science or discovering the causes of problems presented.<sup>22</sup>

In 1918, Kross, taken on as a political “protégé” of Democratic Governor Alfred E. Smith,<sup>23</sup> was appointed as the City’s first woman Assistant Corporation Counsel.<sup>24</sup> In the Corporation Counsel’s office Kross handled family law matters on behalf of the City and conducted a study of the courts’ handling of domestic violence matters in New York.<sup>25</sup>

Around the same time, Kross’s former law school colleague and fellow Women’s Court volunteer lawyer, Jean Norris, was appointed to the Magistrates’ Court bench.<sup>26</sup> The first woman to hold that post,

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HEBREW, Sept. 30, 1938, at 6; Howard Whitman, *Annie, The Poor Man’s Judge*, COLLIERS, Mar. 1, 1947; see also JOHN M. MURTAGH & SARA HARRIS, *CAST THE FIRST STONE* 224 (1957).

19. Quinn, *Revisiting*, *supra* note 3, at 679; see also Jean H. Norris, *The Women Lawyers’ Association*, 4 WOMEN’S LAW. J. 28, 28 (1915).

20. See *New Plea for Steilow: Appelbaum Tells Humanitarian Cult of Commutation Request*, N.Y. TIMES, Oct. 18, 1916, at 22 (indicating that Kross was Chairperson of both the Legal Committee of the Church of the Ascension and the New York City Federation of Women’s Clubs); *School for Women Voters to Open*, N.Y. TIMES, Sept. 16, 1923, at XX2 (discussing Kross’s involvement in the Women’s Democratic Club).

21. Quinn, *Revisiting*, *supra* note 3, at 679-80; see also, e.g., Anna Moscovitz, *The Night Court for Women in New York City*, 5 WOMEN LAWYERS’ J. 9 (1915); John M. Murtagh, *Problems and Treatment of Prostitution*, 23 CORRECTION 3, 3 (1958) (discussing Kross’s public letter to Mayor John Purroy Mitchel criticizing the Women’s Court).

22. Quinn, *Revisiting*, *supra* note 3, at 679-80; see also Moscovitz, *supra* note 21, at 9.

23. Quinn, *Revisiting*, *supra* note 3, at 682, n.88 and accompanying text; see also Panzer, *supra* note 18, at 10; *Democratic Women Win Two Places on the Party “Big Four,”* N.Y. TIMES, Feb. 26, 1920, at 1 (discussing Kross’s involvement in the Democratic Party and ties to Governor Smith). Smith was first elected governor in 1918 and reelected to three additional terms. See generally CHRISTOPHER FINAN, *ALFRED E. SMITH: THE HAPPY WARRIOR* (2002).

24. Quinn, *Revisiting*, *supra* note 3, at 682; see also Kross Biography of Dec. 1964, 5-8 (on file with New York Corrections History Society).

25. Quinn, *Revisiting*, *supra* note 3, at 682, n.90; see also Kross Biography, *supra* note 24.

26. Quinn, *Revisiting*, *supra* note 3, at 681; *Mrs. Jean H. Norris Appointed to Bench: First Woman Magistrate to be Named in This State Nominated by Mayor*, N.Y. TIMES, Oct. 28, 1919, at 4 [hereinafter *Mrs. Jean H. Norris Appointed to Bench*; see also Ida White Parker, *Justice is Truth in*

Norris was assigned to the Women's Court.<sup>27</sup> Her tenure was cut short, however, by her apparent involvement in the very improprieties and corruption she and Kross had fought so hard to prevent years earlier.<sup>28</sup> Following a scandalous, high profile investigation, in 1931 she was removed from the bench.<sup>29</sup>

After much discussion about who should replace Norris, on his last day in office Mayor John P. O'Brien appointed Kross as the second woman to serve in New York City's Magistrates' Court.<sup>30</sup> Sworn in on January 1, 1934 along with the City's new mayor and another of her law school classmates, Fiorello LaGuardia,<sup>31</sup> Kross thus began the next important phase of her career—judicial innovation.

### III. KROSS'S COURT REFORM AND JUDICIAL INNOVATION EFFORTS

From the beginning of her tenure Kross sought to revamp the Magistrates' court system, which she continued to believe was ill-equipped to deal with social problems presented in the form of criminal

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*Action*, THE BUS. WOMAN 8-9, 76 (1923) (describing Norris as a "woman who has climbed successfully to the top in the legal profession").

27. Quinn, *Revisiting*, *supra* note 3, at 681; *Mrs. Jean H. Norris Appointed to Bench*, *supra* note 26, at 4; *see also* Parker, *supra* note 26, at 8-9.

28. Quinn, *Revisited*, *supra* note 3, at 678-79, n.62, 684, n.103.

29. Norris was removed in 1931 because of her alleged misconduct in handling prostitution cases in the Women's Court. *Mrs. Norris Fights to Appeal Removal*, N.Y. TIMES, Aug. 28, 1931, at 2 (reporting that Norris was removed from the bench on June 25, 1931). She, along with other judges, lawyers, and bondsmen, was accused of various improprieties including delivering unfounded convictions and accepting bribes. SAMUEL SEABURY, IN THE MATTER OF THE INVESTIGATION OF THE MAGISTRATES' COURT IN THE FIRST JUDICIAL DEPARTMENT AND THE MAGISTRATES THEREOF, AND OF ATTORNEYS-AT-LAW PRACTICING IN SAID COURT (1932) (Seabury authored a two hundred and fifty-six page report outlining the various facets of his investigation of the Magistrates' Courts and the evidence uncovered, including improprieties on the part of Norris).

30. Whitman, *supra* note 18, at 46, 49; *see also O'Brien Gives Jobs to 3 on Last Day*, N.Y. TIMES, Dec. 31, 1933, at 8 (noting that Kross, who was chair of O'Brien's women's campaign committee during the last election, was a surprise appointment over a Tammany Hall favorite and LaGuardia supporter); *New Magistrates Assigned*, N.Y. TIMES, Jan. 3, 1934, at 2 (noting that Mayor O'Brien appointed Kross to the Magistrates' Court shortly before he left office).

31. Moscowitz and LaGuardia received Bachelor of Laws degrees from New York University Law School in 1910. *See* New York University, Seventy-Eighth Commencement Program, June 8, 1910, at 11 (on file with N.Y.U. Archives); *see also Women's Bar Backs Mrs. Kross For State Supreme Court*, TELEGRAM, Sept. 14, 1938 ("Kross recalls that [LaGuardia] was one of the few male students sympathetic to the idea of women's suffrage; that he joined a women's suffrage collegiate chapter which she formed with the late Inez Milholland."). Kross received her L.L.M. the following year. *See* New York University, Seventy-Ninth Commencement Program, June 7, 1911, at 10 (on file with N.Y.U. Archives).

allegations.<sup>32</sup> One of her first actions was to call for closure of the Women's Court, the very Part to which she had been assigned.<sup>33</sup>

Following her many public statements against the Women's Court, Mayor LaGuardia finally called upon Kross to formally propose an alternative for handling prostitution matters.<sup>34</sup> In 1935, she responded with a substantial report outlining her recommendations, including abolition of the Women's Court.<sup>35</sup> She argued that the problems of sex workers needed to be handled using the wisdom of the new "scientific age" and that a "medical-social" approach to prostitution was superior to a criminal approach.<sup>36</sup> Thus she urged creation of a more informal "sociological court" tribunal outside of the criminal court system staffed by a physician, psychiatrist, and lawyer where "[e]ach individual will be considered as a whole person" so that a meaningful plan of rehabilitation could be developed and effectuated.<sup>37</sup>

Although Mayor LaGuardia did not adopt Kross's call to dismantle the Women's Court, he did heed some of her concerns.<sup>38</sup> Thus, Kross was permitted to undertake various projects within the Magistrates' Court system that focused on social science-based interventions over strict adherence to criminal law and procedures.<sup>39</sup> The first such experiment was Kross's Magistrates' Court Social Services Bureau.<sup>40</sup>

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32. Anna M. Kross & Harold M. Grossman, *Magistrates' Courts of the City of New York: Suggested Improvements*, 7 BROOK. L. REV. 411, 432 (1938) ("The only way to improve the courts is to adapt their organization and procedure to the social needs of the times.").

33. *Mrs. Kross Scores Vice Case Methods*, N.Y. TIMES, Jan. 14, 1934, at 24; Whitman, *supra* note 18, at 49.

34. Quinn, *Revisiting*, *supra* note 3, at 686-87; *see also* Denis Tilden Lynch, *Woman in State Supreme Court: Advocates Point to Mrs. Kross*, N.Y. HERALD TRIB., Aug. 28, 1938.

35. Anna Moscowitz Kross, Report on Prostitution and the Women's Court (1935) (unpublished report) (on file with author); *see also* Quinn, *Revisiting*, *supra* note 3, at 686-87; *Mrs. Kross Favors Social War on Vice*, N.Y. TIMES, Mar. 9, 1935, at 2.

36. Quinn, *Revisiting*, *supra* note 3, at 687-88; *see also* Lynch, *supra* note 34.

37. Quinn, *Revisiting*, *supra* note 3, at 687-88; Kross, *supra* note 35; *Mrs. Kross Favors Social War on Vice*, N.Y. TIMES, Mar. 9, 1935, at 2; Zelda Popkin, *Sociological Court Urged for Women*, N.Y. TIMES, Nov. 25, 1934, at SS2.

38. Thus began a rocky working relationship between LaGuardia and Kross, which deteriorated over time. Quinn, *Revisiting*, *supra* note 3, at 688-91; *see also* CHARLES GARRETT, *THE LAGUARDIA YEARS, MACHINE AND REFORM POLITICS IN NEW YORK CITY* 161 (1961) (recounting Kross's criticism of LaGuardia's crack down on alleged gamblers and sometimes "lawless law enforcement" used in gambling raids); Anna Moscowitz Kross, Paper by Magistrate Kross Presented to the Regional Conference on Social Hygiene 6 (Feb. 5, 1941) (on file with author).

39. Quinn, *Revisiting*, *supra* note 3, at 690;

40. Quinn, *Revisiting*, *supra* note 3, at 690; A.Y. Yeghenian, Synopsis of History and Progress, Magistrates' Court Social Service Bureau, 1935 to date, (Oct. 1, 1940) (describing the group's work from its creation in 1935).

The Bureau was largely a volunteer group developed in 1935 as an adjunct to the formal Probation Department to provide social services and other assistance to Magistrates' Court defendants even before they were found guilty or sentenced by the court.<sup>41</sup>

In 1936 Kross went on to create the Wayward Minors' Part for girls, which dealt with the cases of young women who ordinarily would have been processed in the adult Women's Court Part.<sup>42</sup> A sort of alternative to the alternative court, the Wayward Minors' Part relaxed legal standards to use a carrot and stick approach towards rehabilitation in an attempt to reform young women seen as "sex delinquents."<sup>43</sup>

In the Wayward Minor's Part, young women were warned they would be formally prosecuted and face the possibility of a criminal record and jail time if they did not agree to participate in a rehabilitative program developed with the assistance of the Social Services Bureau and Probation Department.<sup>44</sup> The plans of rehabilitation sometimes included placement outside of the home in hospitals or reformatories; defendants were required to return to court for status hearings so the judge could personally monitor progress.<sup>45</sup>

Prior to the status hearings, Kross conferred with the court's probation officers and social workers to determine how the young women were doing with treatment.<sup>46</sup> Defendants who were viewed as successful in their rehabilitative efforts were rewarded with no formal finding of guilt and often dismissal of the charges.<sup>47</sup> Those who did not comply or appeared to have "no prospect of an adjustment pursuant to the plans suggested" could be brought to trial, adjudicated a wayward minor, and immediately sentenced to an institution.<sup>48</sup> Kross

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41. Quinn, *Revisiting*, *supra* note 3, at 690, n.145; Kross & Grossman, *supra* note 32, at 450-54 ("Its purpose is to do something about the tens of thousands of cases which present, not criminal, but social problems. In appropriate cases it supplements, in a scientific manner, the kindly advice of well-meaning judges who must form their conclusions as to underlying social difficulties from the hurried presentation of strictly legal evidence in the courtroom."); Anna M. Kross, *Hypocrisy Scored in Penal Methods*, N.Y. TIMES, Dec. 12, 1937, at 5 (describing the actions taken by the Social Services Bureau for defendants before any formal adjudication is entered); *see also* Quinn, *Lady Vols*, *supra* note 11.

42. Quinn, *Revisiting*, *supra* note 3, at 690; *see also* ANNA M. KROSS, U.S. WORKS PROGRESS ADMIN., PROCEDURES FOR DEALING WITH WAYWARD MINORS IN NEW YORK CITY 23-26 (1936).

43. Kross & Grossman, *supra* note 32, at 441.

44. *Id.*

45. KROSS, *supra* note 42, at 14-15, 30-31.

46. *Id.*

47. Kross & Grossman, *supra* note 32, at 439-41.

48. KROSS, *supra* note 42, at 18. Kross conceded that "[t]he[se] expedients are legal, perhaps, but only because the defendant, the district attorney and the complaining witnesses consent to them." Kross & Grossman, *supra* note 32, at 439; *Salute to Judge Kross*, *supra* note 12, at 26.

passionately believed that the innovations of the Wayward Minors' Part were a preferred alternative to standard case processing and worthy of replication.<sup>49</sup>

#### IV. KROSS'S HOME TERM PART: THE NATION'S FIRST CRIMINAL DOMESTIC VIOLENCE COURT

After a decade of working the Wayward Minors' Court, Kross expanded her experimentation efforts.<sup>50</sup> In 1946, with the support of Chief Magistrate Judge Edgar Bromberger, she developed another specialty venue within the Magistrates' Court system—the Home Term Court Part – to handle non-felony domestic violence prosecutions.<sup>51</sup>

Rather than simply focus on the conviction and sentence of alleged abusers, Kross sought to use the social-scientific, interventionist approach in misdemeanor and other non-felony family violence matters before the Home Term to determine the root cause of the family discord and help resolve it.<sup>52</sup> In announcing the opening of Kross's new experimental court to the press, Chief Magistrate Bromberger explained:

The aim of the new court[] . . . is to attempt to settle without legal "formalism," which . . . aggravates such matters, fundamental family difficulties that comprise more than 10,000 of the cases now handled annually by the Magistrates' Courts.

'It has long been apparent to the magistrates . . . that a mere narrow,

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49. Kross, *supra* note 41, at 5 (describing the success of the Wayward Minors' Court in recognizing that the defendants before it were "girls with problems and not problem girls"); Kross & Grossman, *supra* note 32, at 430 (portraying Kross's establishment of the specialized Wayward Minors' Part as a positive development because the court "seek[s] scientific differentiation of treatment for the persons who appear therein, on a sound crime prevention theory"); John M. Murtaugh, *Functions of the Magistrates' Courts*, BAR BULL., March 1953, at 176 (on file with N.Y. City Hall Library) ("The Girls' Term . . . [b]y an individualized approach to their problems, it seeks to keep these young women away from the prostitutes with whom they formerly had contact in Women's Court. The basic philosophy of the court is that it is more important to adjust than to adjudicate . . . Its progressive objectives and accomplishments are measured in terms of adjustment and self-esteem for many girls and their families.").

50. Kross, *supra* note 41, at 5; Kross & Grossman, *supra* note 32, at 430.

51. *New Courts to Sit in Home Disputes*, N.Y. TIMES, March 18, 1946, at 23 (announcing that Chief Magistrate Bromberger and Kross worked together on developing the Home Term Court); *New Marital Court Has Home Setting*, N.Y. TIMES, April 30, 1946, at 23 (Kross's appointment to the Home Term by Bromberger).

52. *New Marital Court*, *supra* note 51, at 23 ("The court will seek to discover fundamental causes for the difference between the couple and attempt to apply a solution that will preserve the home and assure a proper atmosphere for the children."); *Salute to Judge Kross*, *supra* note 12, at 26 (describing Kross's innovation in using social work and psychiatric services in conjunction with her court parts, including the Home Term).

legal adjudication of the immediate marital episode causing an arrest or the issuance of a summons in the Magistrates Courts actually settles nothing of the fundamental family difficulty. On the contrary, a hearing or trial in open court, with the couple testifying against each other – many times in the presence of neighbors – actually provides additional hazard to future family tranquility and adds a further disturbing factor to the already muddled family condition.<sup>53</sup>

Thus, the goal of Kross's Home Term Part was to try to help domestic partners address problems with practical, workable solutions, with the understanding that most couples wanted to try to stay together.<sup>54</sup> When children were in the home, the goal of intervention and reconciliation became even more central to the court's work.<sup>55</sup>

Kross and Bromberger had concluded that the prior practice of merely "[p]unishing the offenders was no solution; the same ones popped up on the calendar again and again."<sup>56</sup> For them it appeared there was often "more than met the eye and mind in the constant repetition of tales of drunkenness, mistreatment and violence" that made their way to the Magistrates' Court.<sup>57</sup> Indeed, with the volume of such cases rising as World War II drew to an end,<sup>58</sup> Kross and others believed that otherwise loving partners might be faltering under the strain of returning home to face economic hardship, housing problems, or other difficulties.<sup>59</sup> In addition, many couples who had wed in haste before the war had not spent much time talking about the logistics and

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53. *New Courts to Sit in Home Disputes*, *supra* note 51, at 23.

54. RICHARD MAISEL & JUNE CHRIST, *FAMILIES IN CONFLICT* 17-18 (New York University Research Center for Human Relations 1954) (published as "an exploratory study of the progress and the needs of the Home Term Court and the Home Advisory Council").

55. *New Marital Court*, *supra* note 51, at 23; *see also* MAISEL & CHRIST, *supra* note 54, at 8 ("When children are not involved the judge will not press too hard for social services and the case may well end in an agreement to separate. If there are children, the pressure is strong to keep the marriage together.").

56. Willella De Campi & May Okon, *Home Term Court Makes a Home*, *DAILY NEWS*, July 9, 1950, at 5.

57. *Id.*

58. *See New Marital Court*, *supra* note 51, at 23 (describing "post-war tension difficulties" that seemed to affect some couples who would be seen by the Home Term Court); De Campi & Okon, *supra* note 56, at 5 ("The idea for this experimental domestic relations court grew out of the appalling upsurge of disrupted-family cases that began overcrowding the regular court calendars during the war."); *see also Flaws in System of Home Life Seen*, *N.Y. TIMES*, Mar. 18, 1944, at 10 (reporting on a forum held to consider "[w]artime strains on American family life").

59. Editorial, *Topics of the Times*, *N.Y. TIMES*, May 1, 1946, at 24 ("[O]ne current reason for the dissolution of families is the inability to find housing . . . it is easy to understand how the strain of living in inadequate quarters, or in the makeshift home with relatives of the wife or husband would generate unhappiness.").

practicalities of cohabitating.<sup>60</sup> To Kross, the philosophy of attempting to offer help to relationships and families that might otherwise be salvageable was developed in light of the concerns of the day and as a considered approach to a particular problem in certain domestic abuse cases.<sup>61</sup>

In order to facilitate treatment and conciliation, Home Term proceedings were conducted not inside an impersonal courtroom but within a comfortable complex at 300 Mulberry Street in Manhattan.<sup>62</sup> Modeled to look like a modest apartment maintained by a family with an income of \$4,000 a year,<sup>63</sup> the complex included a living room, dining room, kitchen and children's nursery decorated with donations from various businesses and organizations.<sup>64</sup> According to Kross, one of the most important furnishings in the complex was a "cheery" red love seat positioned in the court's reception room where couples were often asked to sit and talk.<sup>65</sup> She explained the couch "is symbolic of our great aim. Two people must sit close together on it. This is exactly what we are trying to do – to bring together those broken apart."<sup>66</sup>

Despite the seemingly casual approach to domestic abuse cases, Kross took the work of Home Term very seriously and believed the

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60. Kross, *supra* note 1 (describing "[a] hasty marriage followed by an almost immediate separation" as a contributing factor in many cases where an "ex-GI" is charged with drunkenness, disorderly conduct, assault or other misconduct in the home).

61. *Id.*; see also Charles F. Murphy, Letter to the Editor, *Saving the Family*, N.Y. TIMES, Jan. 20, 1952, at SM6. Thus, contrary to claims of many modern court reformers and domestic violence victims' advocates, family violence had been prosecuted and handled as a criminal matter at least to some degree prior to the 1940's, and the change to a different model in New York City was not a function of indifference. See, e.g., Mazur & Aldrich, *supra* note 4, at 5 ("The 1990's witnessed a sea of change in the criminal justice response to domestic violence. For centuries, domestic violence had been perceived as a private affair – a personal matter between disputants. Courts did not handle domestic violence cases in large part because domestic or family violence was not illegal."); Thompson, *supra* note 2, at 417 (suggesting the private nature of family violence resulted in it being ignored by the criminal justice system until the 1970s and 1980s).

62. *New Courts to Sit in Home Disputes*, *supra* note 51, at 23; DORRIS CLARKE & ALICE W. FIELD, HOME TERM: A SOCIALIZED COURT FOR FAMILY PROBLEMS IN THE NEW YORK CITY MAGISTRATES' COURT SYSTEM 26 (1948).

63. De Campi & Okon, *supra* note 56, at 4; CLARKE & FIELD, *supra* note 62.

64. De Campi & Okon, *supra* note 56, at 4. Even the Metropolitan Museum of Art placed paintings on loan with the Court to add to the comfortable surroundings for litigants. *Id.* So impressive was the décor that Better Homes and Gardens apparently ran a story on the Home Term Court entitled, "Are Nice Things Necessary," focusing on Kross's decision to use "attractive surroundings" in the court complex to encourage good feelings and good conduct. William C. Nau, *Reviews of Professional Periodicals*, 15 FED. PROBATION 49, 52 (1951).

65. Kross, *supra* note 1.

66. *Id.*

court – the first in New York and likely the entire country<sup>67</sup>—could play an important role in improving society.<sup>68</sup> Not only was it developed as a place to resolve disputes, but as a cutting-edge social science “laboratory” to study and treat family and individual problems.<sup>69</sup> She hoped to share results with others<sup>70</sup> and replicate the Home Term project throughout the city and beyond.<sup>71</sup> Indeed, after two years in operation, the Home Term produced and disseminated a brochure – HOME TERM: A SOCIALIZED COURT FOR FAMILY PROBLEMS IN THE NEW YORK CITY MAGISTRATES’ COURT SYSTEM—to describe the court’s day-to-day operations, share its developing expertise, and provide a blueprint for other jurisdictions considering such a model.<sup>72</sup>

As with the Wayward Minors’ Court, Kross developed a private organization to assist with the work of the Home Term Court. This group, dubbed the Home Advisory Council, consisted of representatives from religious and benevolent organizations like the Jewish Family Service, Catholic Charities, and the Lutheran Welfare Council, as well as lay volunteers.<sup>73</sup> Although an independent non-profit organization,

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67. CLARKE & FIELD, *supra* note 62, at 3 (1948) (“At its inception Home Term was an experimental project, no similar court being in existence so far as was known.”). Although “specialized” courts had been developed in other parts of the country to deal with criminal cases growing out of family matters, they appeared to focus on failure to support and neglect by parents rather than domestic violence allegations. See MICHAEL WILLRICH, CITY OF COURTS 153 (2002).

68. Gertrude Samuels, *Court of First Resort for the Family*, N.Y. TIMES, Jan. 6, 1952, SM20, SM41 (“To Judge Kross, the Home Term is but the pre-cursor of a still grander design,” including the modernization of courts and their reliance on the science of human relationships rather than law alone).

69. Memorandum from Anna M. Kross to Foundation, Experiment in the Home Term Court 2 (1949) (on file with author) [hereinafter Memorandum to Foundation] (seeking financial support for Home Term Court from foundations and referring to Home Term as a “laboratory for further study in the solution of family problems”).

70. CLARKE & FIELD, *supra* note 62, at 8 (describing Home Term as a “research center” for “extensive study of families and their problems” where “socio-legal” testing can take place and “new procedures and techniques may be tried and new facilities promoted”); Memorandum to Foundation, *supra* note 69, at 2 (“One of the objectives of the Home Term Court is to serve as a model which could be implemented in any part of the United States.”).

71. *New Courts to Sit in Home Disputes*, *supra* note 51, at 23 (announcing that Home Term Courts eventually would be set up in all New York City boroughs but Richmond); see also Quinn, *Lady Vols*, *supra* note 11.

72. CLARKE & FIELD, *supra* note 62, at 1 (Edgar Bromberger writes in his foreword: “Home Term is visited almost daily by professional social workers, sociologists, educators, psychiatrists, students, legislators and Judges from all parts of the United States and foreign countries interested in the various phases of the Court’s activities.”).

73. MAISEL & CHRIST, *supra* note 54; CLARKE & FIELD, *supra* note 62, at 23; see also Memorandum, *An Appeal in Behalf of the Home Term Advisory Council of New York – The Voluntary Auxiliary of the Family Offenses Part of the Family Court of New York City* (unpublished

the Home Advisory Council was considered an “adjunct” of Home Term, maintained office space there, and had a dual role – both to develop cooperation between the court and private social services and to provide direct case work services to those who came to the court.<sup>74</sup> In its case work function the group advanced the court’s goal of providing assistance to families in conflict rather than employing a merely punitive approach in domestic abuse cases.<sup>75</sup>

A case generally made its way to Home Term when one domestic partner alleged assault, harassment, disorderly conduct or other non-felony wrongdoing on the part of another domestic partner.<sup>76</sup> Most charges were brought by wives against husbands.<sup>77</sup> However, a number of complaints involved non-married couples and disputes among other family members.<sup>78</sup> Although some matters were initiated by a defendant’s arrest, the majority began by way of summons following complaint.<sup>79</sup> The arrest numbers were low, in part, because police usually restricted such intervention to instances where “the individual’s presence [was] a serious hazard to the family and his immediate removal from the home [was] necessary.”<sup>80</sup> Instead, upon responding to investigate family disputes, officers referred complainants to Home Term Court to initiate proceedings there.<sup>81</sup>

Once a complaint reached Home Term, the relevant parties were summoned to court and the case was assigned to a representative of the Court’s probation department for a lengthy intake interview.<sup>82</sup> Both

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and undated memo among Kross’s papers at the American Jewish Archives, on file with author [hereinafter *Memorandum Appeal*].

74. CLARKE & FIELD *supra* note 62, at 23; *see also* MAISEL & CHRIST, *supra* note 54, at 1.

75. Memorandum of Anna M. Kross, The Origin and History of the Home Advisory and Service Council of New York, Inc. (on file with American Jewish Archives) [hereinafter *Memorandum on Origin*]; *see also Home Court Aided By Social Agencies*, N.Y. TIMES, May 8, 1946, at 27 (“advisory council representing all faiths is set up to work out domestic problems”); *New Court to Run on \$50,000 Budget*, N.Y. TIMES, May 15, 1946, at 18 (describing the limited finances of Home Term and its reliance on volunteers to help in family rehabilitative efforts).

76. CLARKE & FIELD, *supra* note 62, at 11. Nearly 90% of the cases involved allegations of third-degree assault, a misdemeanor, or disorderly conduct, an offense considered less serious than a misdemeanor. MAISEL & CHRIST, *supra* note 54, at 19.

77. CLARKE & FIELD, *supra* note 62, at 9 (“The majority of families appearing at Home Term present problems between husbands and wives but a large number of cases also result from difficulties between parents and children over 16 years of age.”).

78. *Id.* at 9 (noting that siblings, divorced couples, and those in “common-law relationship[s]” also received assistance from the court).

79. *Id.* at 13.

80. *Id.*

81. *Id.*

82. CLARKE & FIELD, *supra* note 62, at 16

parties were questioned by an intake officer to learn as much as possible about the specific allegation as well as the circumstances of the parties.<sup>83</sup> The intake officer's "function [was] to analyze the problem and offer guidance, as well as to interpret the Court's procedures and services in light of the family situation."<sup>84</sup>

In discussing the "problem and possible methods of solution" available through Home Term,<sup>85</sup> the intake officer seldom recommended trial and formal adjudication. Rather, the parties – both defendant and complainant—were usually asked to participate in voluntary pre-trial rehabilitative "adjustment" services for an indefinite period of time before any formal adjudication would be made.<sup>86</sup> Because the court did not have the power to issue formal orders of protection,<sup>87</sup> it sometimes also recommended a voluntary "cooling off" period of separation.<sup>88</sup> If the parties agreed to these various arrangements, no appearance before the judge was necessary. Rather, Judge Kross merely signed off on the necessary referral paperwork after consulting with the intake officer and served as an "authoritarian" figure available in the background to ensure compliance with the plan.<sup>89</sup>

Even in cases where the parties requested an immediate hearing,

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83. *Id.*

84. *Id.*

85. MAISEL & CHRIST, *supra* note 54, at 9.

86. *Id.* at 10 (describing the possible case paths and social services available through the court).

87. CLARKE & FIELD, *supra* note 62, at 11 (explaining that Family Court and not the Magistrates' Court had the power to issue orders of protection and that Home Term was without authority to order defendants out of the family home); *see also* WALTER GELLHORN, JACOB D. HYMAN & SIDNEY H. ASCH, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY 235 (Assoc. of the Bar of the City of N.Y. 1954).

It is an ironical fact that the Home Term Court, which is concerned primarily with cases of family violence is unable, after proven violence in a criminal-type action, to grant an Order of Protection to an assaulted family, but the Family Court, which is concerned primarily with non-support and is non-criminal in nature, can give such paper protection. *Id.* (quoting a legal aid lawyer).

88. GELLHORN, HYMAN & ASCH, *supra* note 87, at 237-38 (explaining that "restor[ing] the integrity of the home" was the preferred resolution in family violence cases); CLARKE & FIELD, *supra* note 62, at 6 ("Although the philosophy of Home Term is based on a presumption in favor of keeping the family united and intact, when study shows this not to be in the best interest of the family group, other steps are taken."); *see also* Samuels, *supra* note 68, at 40 (discussing the "cooling off" periods that were sometimes employed by the court).

89. MAISEL & CHRIST, *supra* note 54, at 9; *see also* Samuels, *supra* note 68, at 20 (Home Term "aimed to use modern social case-work methods, supported by the authority of the court – but preferably without resort to formal court action."). Over time other magistrates also were assigned to Home Term Court, but Judge Kross continued as the lead judicial officer. GELLHORN, HYMAN & ASCH, *supra* note 87, at 220.

Judge Kross pressed the parties to agree to a period of informal supervision first.<sup>90</sup> After allowing both sides to address the charges and air their concerns, Kross generally convinced them it was in their interest to adjourn the case for purposes of an informal period of supervision before formal resolution of the charges.

In this way the court used a “carrot and stick” approach to prevent further discord or violence in the home.<sup>91</sup> Successful adjustment generally resulted in case closure without formal adjudication of guilt.<sup>92</sup> Resistance on the part of the parties or failure to follow through with informal case work requirements led to a hearing and the possibility of the defendant’s conviction and incarceration.<sup>93</sup> However, Kross did not give up easily on families and often worked with them over long periods of time to effectuate change.<sup>94</sup> Imprisonment was used sparingly as an intervention of last resort, for instance “when the family require[d] immediate protection from continued violent and intolerable abuse. . . .”<sup>95</sup>

These processes were considered a “marked departure from legal formalism” as they offered “a flexible, informal, and socialized procedure with emphasis on the family’s general welfare rather than

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90. MAISEL & CHRIST, *supra* note 54, at 7-9.

91. *See* Kross & Grossman, *supra* note 32 and accompanying text.

92. CLARKE & FIELD, *supra* note 62, at 19-20.

93. *Id.* at 25.

Where the Social Services Unit has been unsuccessful in its efforts at helping the family, the case is returned to the Court for other action. It may, then, be reassigned to the Probation Staff or a formal court hearing may be held for the purpose of effecting a final disposition.

*Id.*

94. *Id.* (“When a case is referred to the Social Services Unit by Home Term the Court usually retains jurisdiction until a satisfactory adjustment of the problem has been made.”); *Lawyers Play 2d Fiddle*, NEW YORK POST, May 1, 1946, at 8 (“One of the Court’s functions will be to follow up its cases to see that settlements are complied with. Such a case was that of the drunkard who, after his wife brought him to court, was referred to Alcoholics Anonymous, reformed, and returned home, but is still required to report regularly.”).

95. CLARKE & FIELD, *supra* note 62, at 6. In addition, if the Court believed a complainant was in danger of future bodily harm, the case was immediately sent to the Court of Special Sessions for formal prosecution. MAISEL & CHRIST, *supra* note 54, at 7. In the Court of Special Sessions, a superior court to the Magistrates’ Court, a defendant had the right to formal presentment of the charges and jury trial. *See* Mehl, *supra* note 10, at 7; *see also* Kross & Grossman, *supra* note 32, at 306 (describing the work and jurisdiction of New York’s Magistrates’ Courts and comparing it to the work and jurisdiction of New York’s Court of Special Sessions). Felony-level abuse matters were also handled outside of Home Term and, in Kross’s view, warranted standard criminal court treatment. *New Courts to Sit in Home Disputes*, *supra* note 51, at 23 (“The Chief Magistrate emphasized that the plan is not operative in felony cases ‘or those of a serious nature indicating a criminal tendency on the part of the defendant,’ which will go to Felony Court as before.”).

rigid interpretation of the law.”<sup>96</sup> Kross believed it was important to use the moment of criminal court contact as an opportunity to reach and treat entire families which might not otherwise seek assistance.<sup>97</sup>

Although the kinds of services offered by the court varied somewhat over time,<sup>98</sup> pre-trial adjustment generally involved some form of informal case work and marital counseling.<sup>99</sup> Because of the limited resources of the Court and its probation department, and the failure of many litigants to follow through with referral appointments,<sup>100</sup> lay volunteer counselors working with the Home Advisory Council often were the ones to provide direct services to, and supervision of, the families.<sup>101</sup> While most Home Term litigants were poor,<sup>102</sup> its volunteers were largely recruited from Kross's own social circle.<sup>103</sup> Kross sought to tap the resources of “mature women” whose own children had already left home and whose “native endowment” for family life would allow them to serve as role models in addition to counselors.<sup>104</sup> The group ultimately included “wives of physicians, lawyers, . . . business[men], newspaper and social work executives,” as well as widows.<sup>105</sup>

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96. CLARKE & FIELD, *supra* note 62, at 6.

97. *Id.* at 6-7; Memorandum on Origin, *supra* note 75, at 2.

98. See Memorandum on Origin, *supra* note 75, at 2 (noting that a “child-parent relations clinic” had been operated by the court for a period of time); CLARKE & FIELD, *supra* note 62, at 6-7.

99. CLARKE & FIELD, *supra* note 62, at 23.

100. Memorandum on Origin, *supra* note 75, at 4.

101. CLARKE & FIELD, *supra* note 62, at 18; see also Memorandum to Foundation, *supra* note 69, at 2 (describing the development of the Social Services Unit of the Home Advisory Council); Memorandum *Appeal*, *supra* note 73, at 2-5 (explaining that because of the inadequacy of the Court's official probation staff, counseling and supervision needs were augmented by the Home Advisory Council and its lay volunteers).

102. MAISEL & CHRIST, *supra* note 54, at 14. Notably, “non-white groups” and Catholics, generally seen as members of “the city's lower income strata,” were also disproportionately represented among the families seen by the court. *Id.* For instance, although only 9.5% of New Yorkers in 1954 were African-American, for that same year 50.7% Home Term cases involved African-American families. *Id.*

103. Memorandum on Origin, *supra* note 75, at 5 (“It was agreed that there should be no widespread public appeal for such individuals since there would very likely be a response from the most undesirable type – those who delight in the chance of telling others what to do.”).

104. *Id.* The court in several respects attempted to provide models for families to emulate. In particular, the court was focused on helping women become better wives and mothers and set the right tone in the home. One article explained that the spotless and organized Home Term quarters and nursery were intended to inspire the wives to keep their own homes similarly. Samuels, *supra* note 68, at 40 (“By indirection, the court is inviting them to copy.”).

105. Memorandum on Origin, *supra* note 75, at 7; see also *Family: 4 Upstate Counties to Get Volunteer Counselors Under Ford Grant*, N.Y. LAW JOURNAL, Mar. 13, 1968 (“Since 1946 the Home Advisory Council has recruited women with college background and family life experience as volunteers to help New York City courts with family counseling and referral services. The

The counselors met with their clients for sessions at the court complex and sometimes conducted further investigations.<sup>106</sup> Visiting the parties at their home, interviewing other family members, and even gathering information from teachers of the parties' children were well within the scope of the actions taken by the lay counselors and official probation officers alike.<sup>107</sup> The counselors maintained records of their work with the family. The court was kept abreast of problems that arose and remained ready to immediately intervene to address them.<sup>108</sup>

Beyond ordinary case work and counseling services, some Court clients were referred to Home Term's in-house Alcoholism Clinic, also overseen by the Home Advisory Council, to receive "medical and psychological treatment."<sup>109</sup> Yet others might be sent to the Home Term Psychiatric Unit after intake for study and a more "satisfactory understanding of [their] problems."<sup>110</sup> The Psychiatric Unit was run by a psychiatrist "on loan" from Bellevue Hospital.<sup>111</sup> In a good many cases, involuntary hospital commitment followed such referrals, which Kross believed demonstrated the effectiveness of the Unit.<sup>112</sup>

As noted, deferral of prosecution for monitoring and services required the agreement of both the defendant and the complainant. The Court's efforts did not, however, target the accused alone. Rather, the Court was concerned with the totality of the circumstances that preceded the conflict and believed that both family partners usually contributed in

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volunteers, most of whose husbands are professional or business executives, are given a year's training by professional social workers before they are assigned actual cases.").

106. CLARKE & FIELD, *supra* note 62, at 16.

107. CLARKE & FIELD, *supra* note 62, at 7-25. The HOME TERM pamphlet offered a sample letter to other court planners which informed school officials that a child's parents had sought court assistance because of familial difficulties and requested the student's behavioral, "scholastic, attendance, and mental testing records" to help the court better understand the family's problems. *Id.* at 8. The letter did ask, however, that the school consider the letter a "confidential inquiry." *Id.*

108. MAISEL & CHRIST, *supra* note 54, at 9; *see also* Samuels, *supra* note at 68, at 20.

109. MAISEL & CHRIST, *supra* note 54, at 12-13; *see also* *Alcoholics' Clinic for Court Formed*, N.Y. TIMES, Dec. 16, 1952, at FB64 (announcing the addition of an on-site alcohol abuse clinic to the list of services offered by Home Term).

110. CLARKE & FIELD, *supra* note 62, at 19, 22-23.

111. *Id.* at 17, 22.

112. *Id.* at 22.

The effectiveness of the Court's medical screening is shown by a study of the cases committed to Bellevue following medical examination by the Court Psychiatrist. This reveals a comparatively high rate of placement in state mental hospitals from Bellevue of cases which might not have been detected at the Court level without psychiatric screening.

*Id.*

some way to the marital breakdown.<sup>113</sup> Thus, in most instances the alleged victim also was asked to participate in programming. In this way, from intake onward, the court sought “to show each partner his share in the problem” and take steps to resolve it to keep the family together.<sup>114</sup>

One news story provided an example of a wife who might be seen as contributing to discord and violence in the home by the Home Term Court:

Often husbands and wives are totally unaware of the reasons for their difficulties. A man may come home drunk and beat his wife, and to the untrained observer he may be completely at fault, the wife guiltless. But the skilled investigator sometimes finds there is a subtle antagonism of long standing that leads to violence.<sup>115</sup>

A study of the Court described another situation where the wife was seen as part of the problem as it related to abuse at the hands of a husband who used alcohol to excess:

The themes of conflict vary. . . . Outstanding among them is the husband's addiction to drink. The Court, however, has learned to regard some forms of drinking as the symptom rather than the cause of the family conflict. Take a typical case: the husband is a steady worker and a week-end drinker. Indeed, he often offers his steady work history of proof that he is not an alcoholic. In explaining his weekend bouts he describes his wife as a poor housekeeper and a woman from whom he gets little warmth, if any, and much nagging. He gives the impression that there is no common interest between them and no sexual attraction left. Often this type of drinking begins just after a child is born. Apparently the wife then withdraws from the husband. Since she does not go out with him, he goes by himself and drinks to pass the time. The assault occurs as a rule when he returns, drunk, and she starts nagging.<sup>116</sup>

In such cases, Home Term's intake officer might begin familial intervention by instructing the “wife not to berate her husband while he

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113. *Id.* at 6 (“Home Term consider[ed] the offense in relation to the total personalities and situations of the individuals, as well as the physical, medical and social needs of their family groups.”).

114. MAISEL & CHRIST, *supra* note 54, at 10. Indeed, reviewers of Home Term offered their opinion that for its litigants “unconscious motivation must have worked in favor of selecting complementary neuroses in partners.” *Id.* at 23.

115. De Campi & Okon, *supra* note 56, at 5.

116. MAISEL & CHRIST, *supra* note 54, at 22.

is drunk.”<sup>117</sup> And while the husband might be referred to the Court’s Alcoholism Clinic for substance abuse treatment, the wife would also receive some kind of “specialized professional help” to address her alleged issues.<sup>118</sup>

This approach both surprised and troubled some complaining witnesses who had expected Home Term to automatically align with them against their husbands.<sup>119</sup> Although most complaining witnesses did not want to end their marriages or jail their spouses, some wanted the Court to act as a “trump card” to help exert control over a range of behaviors on the part of husbands.<sup>120</sup> The Court viewed these women as unduly concerned with vengeance and retribution, and sought to redirect them towards amelioration and a way of thinking that would purportedly assist in successful conciliation – the outcome most of the women said they wanted.<sup>121</sup> On the other hand, defendants were said to be pleased with the Court’s approach which gave them a voice, held wives accountable for some problems in the home, and allowed long-standing conflicts to be aired and addressed behind closed doors with a counselor rather than in an open courtroom.<sup>122</sup>

Beyond this, Kross claimed that Home Term often discovered that it was “the accuser [who was] the offender, not the accused.”<sup>123</sup> To demonstrate this phenomenon, she pointed to the case of a mother who came to court to file a complaint against her eldest son for assault.<sup>124</sup> The mother went on to claim that the rest of her five children had turned against her as well.<sup>125</sup> At times during the intake interview, the Probation Officer found the woman incoherent and difficult to follow.<sup>126</sup> The Officer also learned from the eldest son that his mother had had a nervous breakdown in the past and that after the recent death of his

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117. *Id.* at 10.

118. De Campi & Okon, *supra* note 56, at 5.

119. MAISEL & CHRIST, *supra* note 54, at 18 (explaining that many wives were “surprised when [their] own conduct [was] questioned”).

120. *Id.* at 17-18.

121. *Id.*; *see also* Memorandum on Origin, *supra* note 75, at 1 (“Treating family cases as criminal cases had proved to offer no real protection to society and to aggravate the basic family conflict.” Thus, in Home Term such matters were dealt with “on an ameliorative rather than punitive basis.”); Kross, *supra* note 1, at 3 (“Here we are not entirely interested in guilt or punishment. We want to find out what is causing the break in a family and what will hold the group together.”).

122. MAISEL & CHRIST, *supra* note 54, at 17.

123. Kross, *supra* note 1, at 3.

124. CLARKE & FIELD, *supra* note 62, at 17-19; *see also* Mehl, *supra* note 10, at 8-9.

125. CLARKE & FIELD, *supra* note 62, at 17-19.

126. *Id.*

father the family unit had devolved further.<sup>127</sup> Working only part time, the mother needed to rely on her adult children to help pay rent and support the younger siblings, which often caused friction.<sup>128</sup> The intake interviewer referred the son and mother to the Court Psychiatrist for assessment.<sup>129</sup> The Psychiatrist then met with the intake interviewer and Judge Kross, who all agreed the mother should be committed to Bellevue Hospital for further study.<sup>130</sup> Although the siblings initially were resistant to the idea, the Court and its staff helped convince them to file a complaint against the mother.<sup>131</sup> With this, the summons against the son was dismissed and the mother was institutionalized.<sup>132</sup>

Remarkably, nearly all of Home Term's work took place without the involvement of attorneys. Most of the individuals before the court were unable to afford private counsel.<sup>133</sup> As the Court was established before *Gideon v. Wainwright* and *Argersinger v. Hamlin*, defendants did not have a constitutional right to counsel.<sup>134</sup> Although free counsel was provided for some non-felony prosecutions by the Legal Aid Society and other groups in New York City,<sup>135</sup> Home Term generally convinced its

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127. *Id.*

128. *Id.*

129. *Id.*

130. CLARKE & FIELD, *supra* note 62, at 17-19.

131. *Id.*

132. *Id.* This was not the only case where a mother was institutionalized after seeking assistance from the court in dealing with her children. In at least one other instance a mother asked the court for help because her son was not attending school, running away from home, and striking her. Kross, *supra* note 1, at 3-4. Kross explained:

Instead of the son being sent to an institution, we at last persuaded the mother to go to a psychiatric hospital for examination and treatment. This case presents the whole crux of our problem. So often the people who come before us need to be examined for nerves and general health. Many definitely require psychiatric treatment.

*Id.*

133. MAISEL & CHRIST, *supra* note 54, at 8 ("[M]ost of the Court's clientele are financially not in a position to avail themselves of personal legal advice.").

134. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Argersinger v. Hamlin*, 407 U.S. 25 (1972). Historically, however, New York provided a greater right to counsel for defendants than required under federal law. See Peter J. Galie, *State Constitutional Guarantees and Protection of Defendants' Rights: The Case of New York 1960-1978*, 28 BUFF. L. REV. 157, 178 (1978-79). Indeed, indigent persons accused of misdemeanors in New York were entitled to free counsel as of 1965. See *People v. Witski*, 207 N.E.2d 358, 360 (N.Y. 1965); see also N.Y. County Law § 722, Article 18-B (McKinney 1965).

135. Kross & Grossman, *supra* note 32, at 429, 433 (describing the lack of adequate representation for indigent persons charged with crimes in the Magistrates' Court); see also LEE SILVERSTEIN, *DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS* 123-135 (1965) (noting the problem across the United States of lack of appointed counsel for persons charged with misdemeanors and minor offenses); HARRISON TWEED, *THE LEGAL AID SOCIETY*

litigants that traditional legal representation was not necessary.<sup>136</sup> When lawyers did appear in court, the Judge and Home Term's staff usually persuaded them to waive clients' rights for purposes of informal adjustment, suggesting they play a helpful role in resolving the parties' differences.<sup>137</sup> With this non-adversarial, problem-solving orientation, Home Term established a "new conception of the lawyer's function."<sup>138</sup>

Although Judge Kross's Home Term had many supporters,<sup>139</sup> it also drew a great deal of criticism over the years.<sup>140</sup> Some disapproval came from within the ranks of the judiciary, which found Home Term's courtroom operations—including its informality and rejection of judicial robes and benches—to be distasteful and disrespectful of standards employed for decades in courts across the country.<sup>141</sup>

Other commentators, like legal scholar and sociologist Paul Tappan, found the idea of using the authority of criminal courts to attempt to address "social" issues highly problematic.<sup>142</sup> For instance, although seductive in its alleged novelty and concern for litigant well-being, the "treatment without trial" approach opened the door to judges exercising a great deal of control over litigants' lives and imposing personal morality and conduct standards.<sup>143</sup> Without any check on

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NEW YORK CITY: 1876-1951 82-100 (1954) (chronicling the provision of legal representation for the indigents in criminal cases in New York City).

136. See *Lawyers Play 2d Fiddle*, *supra* note 94, at 8; MAISEL & CHRIST, *supra* note 54, at 8 ("The judges at Home Term tend to use lawyers mainly for clarifying the goals and hopes of their clients; that is, as additional resources for helping to mend family conflict rather than as representatives of one side in the conflict.")

137. *Lawyers Play 2d Fiddle*, *supra* note 94, at 8 ("In several cases, the lawyers brought along by complainants and defendants were asked to step aside to allow the court's social workers to have first try at ironing out the disagreements."); CLARKE & FIELD, *supra* note 62, at 20 (explaining that consent is obtained from counsel prior to the intake interview and that "except in special instances [attorneys] are not present when their clients are interviewed by the Probation Staff"); Samuels, *supra* note 68, at 20 ("The lawyers, who asked to see the judge in advance of their clients, are agreed that both need psychiatric help.")

138. MAISEL & CHRIST, *supra* note 54, at 8.

139. See, e.g., *Salute to Judge Kross*, *supra* note 12, at 12 (recounting that the Home Term Part was "recently lauded by the State Probation Commission as a model which should be applied throughout the state"). Murtaugh, *supra* note 49, at 175 (a variety of complementary statements about Home Term by John Murtaugh, the Chief Magistrate Judge who replaced Judge Bromberger).

140. Samuels, *supra* note 68, at 41 ("Not all who have watched Home Term grow approve the idea.")

141. *Id.* at 41 ("Some judges object to the 'untidy' appearance of the court.")

142. See Paul W. Tappan, *Treatment Without Trial*, 24 SOC. FORCES 306 (1945-1946) [hereinafter Tappan, *Treatment*]; PAUL W. TAPPAN, DELINQUENT GIRLS IN COURT 175-209 (1947); CONTEMPORARY CORRECTION 10-13 (Paul Tappan, ed. 1951); see also COMMUNITY SERVICE SOCIETY OF NEW YORK, A NEW PATTERN FOR FAMILY JUSTICE (1954); GELLHORN, HYMAN & ASCH, *supra* note 87.

143. Tappan, *Treatment*, *supra* note 142, at 309.

Home Term's discretion or its informal procedures, "individuals innocent of any serious wrongdoing or real law violation" could be "subject to the rather crude tools of correctional treatment" used by the court.<sup>144</sup> Tappan worried about the increased focus on "mental pathology" and labeling of so many alleged offenders as sick and in need of treatment and cure.<sup>145</sup>

Other social service agencies and experts warned there was "[s]trong doubt . . . that the Magistrates' Courts constitute[d] the appropriate judicial setting for expansion into what is essentially a non-criminal field of dealing with the maladjustments of youths and families."<sup>146</sup> For them, Home Term appeared to suffer from a "confusion of purpose, jurisdiction and procedure" that often confounded litigants, duplicated civil court efforts, and used scarce resources inefficiently.<sup>147</sup>

Because of concerns about waste and disorganization in New York courts, attorney Harrison Tweed was appointed by Governor Dewey to head up a commission to review court operations and make suggestions for improvement.<sup>148</sup> Looking at issues of cost, delay, duplication of services, and problems of procedure and practice, Tweed initially called for sweeping change within the courts.<sup>149</sup> Although there was resistance to some of Tweed's initial proposals resulting in final recommendations that were less comprehensive,<sup>150</sup> others continued to press for significant changes to New York's family court system.<sup>151</sup>

Professor Walter Gellhorn of Columbia Law School became one of the champions of this cause. In 1954 he published a book-length study of the various courts in New York City, in which he lauded

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144. *Id.*; COMMUNITY SERVICE SOCIETY OF NEW YORK, *supra* note 142, at 16-17.

145. CONTEMPORARY CORRECTION, *supra* note 142, at 10-13.

146. COMMUNITY SERVICE SOCIETY OF NEW YORK, *supra* note 142.

147. *Id.* at 18, 40.

148. See Barry Mahoney, *The Administration of Justice and Court Reform*, 31 PROC. OF THE ACAD. OF POL. SCI. 58, 59 (1974); see also Geoffrey C. Hazard, Jr., *Book Review of New York Civil Practice by Jack B. Weinstein, Harold L. Korn and Arthur R. Miller*, 78 HARV. L. REV. 1305, 1306 (1965).

[T]he Temporary Commission on the Courts under the chairmanship of Harrison Tweed . . . , the product of the then generally rising anxiety over the efficacy of the judicial establishment, was supposed to look at the administration of justice in New York and to make recommendations for its improvement.

*Id.*

149. Mahoney, *supra* note 148, at 59-60; Hazard, *supra* note 148, at 1306-07.

150. Mahoney, *supra* note 148, at 59-60; Hazard, *supra* note 148, at 1306-07.

151. COMMUNITY SERVICE SOCIETY OF NEW YORK, *supra* note 142, at 38-39; see also GELLHORN, HYMAN & ASCH, *supra* note 87, at 217-38.

Kross's "indefatigable zeal" and "skill at improvisation," which had resulted in the establishment and continuation of Home Term within the criminal court system for nearly a decade.<sup>152</sup> Despite his admiration for her work, however, on behalf of the Bar of the City of New York he called for amendment to New York's constitution to permit state court reorganization generally and unification of all domestic relations related courts more specifically – including Home Term.<sup>153</sup>

Interestingly, as Gellhorn was about to complete his study, Kross was appointed to serve as Commissioner of the New York City Department of Corrections.<sup>154</sup> Thus she left her post as Magistrates' Court judge. Nevertheless, having always believed that the family conflicts addressed by Home Term should have been handled outside of standard criminal prosecution processes,<sup>155</sup> Kross was generally supportive of Gellhorn's proposals.<sup>156</sup> In 1961, constitutional and statutory amendments resulted in restructuring of New York state's court system.<sup>157</sup> This included merger of the City's Magistrate Court system with the Court of Special Sessions to form a new city-wide court with

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152. GELLHORN, HYMAN & ASCH, *supra* note 87, at 234.

153. *Id.* at 238.

154. See Quinn, *Revisiting*, *supra* note 3, at n.161 and accompanying text. Indeed, in his study Gellhorn noted Kross's departure from the bench during this period. GELLHORN, HYMAN & ASCH, *supra* note 87, at 220 n.\*.

155. Memorandum on Origin, *supra* note 75, at 1 ("Treating family cases as criminal cases had proved to offer no real protection to society and to aggravate the basic family conflict."); *Topics of the Times*, *supra* note 59, at 24 (describing Home Term as a pre-divorce court); De Campi & Okon, *supra* note 56, at 5 (noting that Judge Kross brought to Home Term "a strong humanitarian sense and a conviction that family difficulties should be dealt with from a social instead of a criminal viewpoint").

156. Kross & Grossman, *supra* note 32, at 421-422 (1938); see also *Magistrate Urges Family Law Study: Mrs. Kross Calls on Women's Bar Groups to Seek New Procedures for Courts*, N.Y. TIMES, May 18, 1952, at 45 (Kross recommended "formation of a joint committee of the women's bar associations of the city to make a more intensive study of family problems in the courts of different jurisdictions, to develop new procedures aimed at solution of the problems."). In a letter to Rev. Robert W. Searle, Kross's confidante and Executive Director of the Home Advisory Council, she expressed her approval of Gellhorn's study and proposals for court reform. See Letter from Dr. Robert Searle to Anna M. Kross (Aug. 8, 1953) (on file with author); see Letter from Anna M. Kross to Dr. Robert Searle (Aug. 12, 1953) (on file with author).

157. AARON D. SAMUELS, *NEW YORK FAMILY COURT LAW AND PRACTICE* 6-11 (1964).

In 1962, as one of the measures submitted under the substantially amended and revised judiciary article of the State Constitution, the new Family Court Act was proposed by the Joint Legislative Committee on Court Reorganization, . . . The new statewide Family Court was based on the judicial article of the State Constitution (Article VI), as that article had been extensively revised and amended in adoption by the People in 1961.

*Id.*

jurisdiction over non-felony criminal offenses.<sup>158</sup> An expanded state-wide family court system also was established.<sup>159</sup> Thus, in 1962 Kross's Home Term Part was abolished and non-felony domestic violence matters were reassigned to the reformulated family court system and its new Civil Family Offenses Part.<sup>160</sup>

#### V. LOOKING BACK AT HOME TERM AS WE LOOK AHEAD: THE FUTURE OF DOMESTIC VIOLENCE PROSECUTIONS

In many significant ways, Kross's Home Term—a specialized criminal court part that handled domestic violence prosecutions in a differentiated and particularized manner with a view towards preventing further violence—presents remarkable similarities to today's criminal domestic violence courts. Its establishment of a “dedicated court team” including judges, specially trained social services staff, and lawyers presents striking parallels to modern specialized domestic violence court practices.<sup>161</sup>

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158. See Quinn, *Revisiting*, *supra* note 3, at n.166 and accompanying text; see generally Robert E. Allard & Fred Breen, *Court Reorganization Reform – 1962*, 46 JUDICATURE 110, 113 (1962).

159. SAMUELS, *supra* note 157, at 7-10 (“[T]he courts which [the Family Court] immediately succeeded, the powers, case load and, for the most part, the personnel of which were transferred to it to establish the new court on September 1, 1962, . . . These include the Children's Courts, Domestic Relations Court of the City of New York, Girls' Term Court of the City of New York, Home Term Court of the Magistrates' Courts of the City of New York, Court of Special Sessions of the City of New York (paternity cases), Surrogates and County Courts (adoptions).”).

159. *Id.* at 7-10.

160. *Id.* at 41-42. Under the new Family Court Act:

A new concept of ‘family offenses,’ including assaults and disorderly conduct suffered by wives and others at the hands of members of their own families (Family Court Act, sec. 811), which will hereafter treat in civil proceeding such offenses formerly requiring criminal complaint (*id.*), underlies the vesting in the Family Court of exclusive original jurisdiction “over any proceedings concerning acts which would constitute disorderly conduct or an assault between spouses or between parent and child or between members of the same family or household.” (*Id.*, sec. 812). . . . It is found that most of these situations require help rather than punishment, and even where they were formerly cognizable in criminal courts, as in the Home Term of the former New York City Magistrates' Courts, psychiatric and alcoholism clinics were the principle resort rather than criminal punishment. So, it has been determined, civil rather than criminal procedure is required. . . . Allowance is made for those cases in which what may be deemed a really criminal situation may appear [and the] court in its discretion, may transfer any of its proceedings to the appropriate criminal court.

*Id.* Interestingly, Kross's Home Advisory Council was kept in place and adopted as an official feature of the new Family Offenses Part. See *An Appeal in Behalf of The Home Advisory Council of New York – The Volunteer Auxiliary of the Family Offenses Part of the Family Court of New York City* 1 (1963); *4 Upstate Counties Get Volunteer Counselors Under Ford Grant*, *supra* note 105.

161. Mazur & Aldrich, *supra* note 4, at 6 (“The first domestic violence court in the state opened in Brooklyn in 1996, handling felony-level domestic violence cases. The model was

On the other hand, Home Term's stated goals of attempting to solve underlying problems and issues that contributed to discord in relationships reflects a fundamentally different orientation than the one seen in contemporary domestic violence courts. As noted, today's domestic violence courts focus almost exclusively on victim safety and defendant accountability.<sup>162</sup> For instance, modern courts may order defendants to participate in lengthy batterer intervention counseling programs as part of their standardized approach to intimate violence prosecutions.<sup>163</sup> However, they are not particularly interested in offering help to alleged offenders.<sup>164</sup> Indeed, batterer intervention programs are known to be largely ineffectual as a method of treatment.<sup>165</sup> Attendance

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designed to overturn the 'business as usual' approach to domestic violence. The court featured a single presiding judge, a fixed prosecutorial team, and enhanced staffing to monitor defendant compliance and provide assistance to victims.").

162. See GREG BERMAN & JOHN FEINBLATT, *GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE* 158-59 ("The primary objective of most domestic violence courts is enhancement of victim safety. Other outcome measures include reducing recidivism, improved monitoring and accountability for defendants, improved case processing efficiency, and better coordination among all of the players involved in domestic-violence cases."); see also *id.* at 160, n.22 (batterers programs seen as a "sanction" for alleged offenders); Mazur & Aldrich, *supra* note 4, at 7-9 (defining the core principles underlying domestic violence courts as victim services, judicial monitoring, accountability, and coordinated community response).

163. NATIONAL INSTITUTE OF JUSTICE, *supra* note 5 (describing the 26-week counseling program required of many defendants in New York); see also BERMAN & FEINBLATT, *supra* note 162, at 160, n.22. While practicing as a public defender in New York City, this author had many clients ordered into such 26-week programs. In addition to causing many of my clients to miss time from work in order to attend the sessions, the court's orders often required them to pay for such services. It appeared to me that these financial burdens often worked to hurt my clients' partners and their children in the long run by redirecting resources that would have otherwise been available to them. In addition, several batterer programs in New York City were found to be problematic in other ways. Mazur and Aldrich, *supra* note 4, at 9 ("One batterers intervention program in Brooklyn, not accustomed to being accountable to the court, reported as a matter of course that all offenders sentenced to the program were in compliance even if they were not. When the court realized this, it stopped referring defendants to this program."); see also Sarah Goodyear, *Rehab Madness*, THE VILLAGE VOICE, Feb. 13, 2001 (highlighting a case where a counselor for men convicted of domestic violence shot his domestic partner).

164. NATIONAL INSTITUTE OF JUSTICE, *supra* note 5. Akin to Kross's approach to such matters, a more "controversial intervention is couples therapy, which views men and women as equally responsible for creating disturbances in the relationship." *Id.* Currently, however, this approach "is widely criticized for assigning the victim a share of the blame for the continuation of violence." *Id.*

165. *Id.* (A New York Study showed that "Batterer intervention programs do not change batterers' attitudes and may have only minor effects on behavior; a "Florida study found no significant differences between those who had treatment and those who did not as to whether they battered again or their attitudes towards domestic violence."); see also Berman & Feinblatt, *supra* note 162, at 160-161 (acknowledging that there is very little research to suggest that batterer programs actually change defendant behaviors; court monitoring is likely to have more of an impact on recidivism).

at batterers' programs is simply a means of keeping tabs on defendants and sanctioning them.<sup>166</sup> This arrangement renders today's domestic violence parts outliers in the modern criminal specialty court movement, which generally encourages rehabilitation and therapeutic outcomes for defendants.<sup>167</sup> Interestingly then, contemporary domestic violence venues – purportedly “problem solving courts”—seem less concerned with trying to solve the problems of their litigants than Kross's Home Term Part of six decades ago.

This is not to say that all of Home Term's methods should be celebrated or replicated. In aggressively promoting heteronormative, white, upper-and middle-class family values, as well as traditional conceptions of women as wives, mothers, and homemakers through criminal court processes, many of the features of Home Term likely would be seen as problematic by modern feminists and others.<sup>168</sup>

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166. Mazur & Aldrich, *supra* note 4, at 41.

The primary 'service' offered to defendants is batterers programs. But in New York [] batterers programs are used by domestic violence courts primarily as a monitoring tool rather than a therapeutic device. This approach is based on the research about batterers programs, which is extremely mixed. It is unclear whether these programs have any impact at all in deterring further violence.

*Id.*

167. Mazur & Aldrich, *supra* note 4, at 41 (“There are substantial differences between domestic violence courts and other problem-solving courts . . . domestic violence courts are not targeted at ‘rehabilitating’ defendants. Indeed, services are offered primarily to help victims achieve independence.”).

168. See, e.g., Laura Rosenbury, *Friends With Benefits*, 106 MICH. L. REV. 189, 194 (2007) (recounting critiques of traditional, gendered conceptions of husbands and wives that existed in the law prior to the 1970's); Chrys Ingraham, *The Heterosexual Imaginary: Feminist Sociology and Theories of Gender*, in MATERIALIST FEMINISM 275, 283 (Rosemary Hennessy & Chrys Ingraham eds., 1997).

[H]eterosexual imaginary is that way of thinking which conceals the operation of heterosexuality in structuring gender and closes off any critical analysis of heterosexuality as an organizing institution . . . . [I]t naturalizes the regulation of sexuality though the institution of marriage and state domestic-relations laws . . . [and] these laws and public policies use marriage as the primary requirement for social and economic benefits rather than distributing resources on some other basis.

*Id.*; Barbara Omolade, *The Unbroken Circle: A Historical Study of Black Single Mothers and Their Families*, in AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY 171 (Martha Albertson Fineman & Nancy Sweet Thomadsen, eds., 1991) (“Because racism permeates and transcends all social relationships, economic and political arrangements such as slavery, segregation, and desegregation have not operated in the public arena alone, but have seeped into the private arenas of sexuality, marriage, and family, and the personal lives of Blacks and whites, men and women.”); Ann Willard, *Cultural Scripts for Mothering*, in MAPPING THE MORAL DOMAIN 225 (Carol Gilligan et al., eds., 1988) (“Conflicting views of what women ‘ought’ to do permeate the media, the child development literature, and the emerging literature on adult development. These views are embodied in ‘cultural scripts’ for motherhood, messages from the culture about the ‘right way’ to be a mother.”).

Similarly, in many instances Home Term's inherent and intense focus on preserving the family unit resulted in unfortunate and unfounded victim-blaming and women being encouraged to remain against their wishes in difficult, if not dangerous, situations.<sup>169</sup> Like many modern problem-solving courts, such as those focused on drug-treatment and mental-health issues, Home Term's relaxed procedural rules, "teamwork" approach for lawyers, and non-adversarial processes would also raise serious concerns for the defense bar and civil libertarians.<sup>170</sup>

Despite these serious shortcomings, largely a function of the norms and restrictions of the day, some of Home Term's practices raise interesting questions for today's legal scholars, practitioners, and court planners, and may serve as a useful point of departure for further discussion and reflection. Compared to today's domestic violence courts with their binary approach to family problems and myopic focus on intervening to rescue victims and control defendants, Home Term may suggest a more nuanced understanding and approach to social, personal, relational, and familial dynamics.<sup>171</sup> For instance, by respecting the desires of women who wished to stay with their partners or withdraw criminal charges, it appears Home Term sought to honor and preserve their personal autonomy.<sup>172</sup> In developing individualized case work

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169. See Kristen Bumiller, *Fallen Angels: The Representation of Violence Against Women in Legal Culture*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* 95, 97 (Martha Albertson Fineman & Nancy Sweet Thomadsen, eds., 1991) ("[W]hen the claim that a woman has been sexually assaulted is made, it is often based upon her blamelessness in contributing to her own harm . . . [this] claim to innocence is not easily made, for the shadow of guilt lingers (as with the defendant.)"); Doug A. Timmer & William H. Norman, *The Ideology of Victim Precipitation*, 9 *CRIM. JUST. REV.* 63 (1984) ("[V]ictim precipitation explanation functions as an ideology which blames the victim and diverts attention from the structural causes of crime.").

170. See, e.g., Mae C. Quinn, *An RSVP to Professor David Wexler's Warm TJ Invitation: Unable to Join You, Already (Somewhat Similarly) Engaged*, 48 *B.C. L. REV.* 539, 552 (2007); Quinn, *Revisiting*, *supra* note 3; Mae C. Quinn, *Whose Team Am I On Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 *N.Y.U. REV. OF L. & SOC. CHANGE* 37 (2000-2001).

171. See Aya Gruber, *The Feminist War on Crime*, 92 *IOWA L. REV.* 741, 801-820 (2007) ("Accepting such binary characterizations of abusers and victims dispels the government and society's responsibility for creating the conditions precedent to domestic abuse."); Deborah Sontag, *Fierce Entanglements*, *N.Y. TIMES*, Nov. 17, 2002, at 11 ("[T]he criminal justice system is a blunt club for a problem as psychologically dark, emotionally tangled and intimate as domestic violence" and "the reality is that abused women often make calculated decisions to stay with their partners."); see also Mae C. Quinn, *Finding Power Fighting Power (or The Perpetual Motion Machine)* (work in progress; on file with author).

172. G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 *HOUS. L. REV.* 237, 243 (2005) (mandatory arrest policies and "the decision to sacrifice autonomy" are "based on flawed conceptions of will and resistance, as well as faulty ideas concerning the curative power of state

plans rather than standard case resolutions for all matters, the stated concerns and wishes of those involved were considered and respected in a way that they are not in many modern family violence courts.<sup>173</sup> And by taking into account various factors that might help explain improper conduct on the part of alleged batterers,<sup>174</sup> Home Term avoided a “one-size-fits-all approach” that seems to permeate today’s domestic violence courts and contemporary attempts to explain violence between intimates.<sup>175</sup>

By recognizing the complexity of human relations and life more generally, guilt and future dangerousness of all men was not presumed in Home Term,<sup>176</sup> nor helplessness on the part of women systemically

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intervention”); Donna Coker, *Enhancing Autonomy for Battered Women: Lessons From Navajo Peacemaking*, 47 UCLA L. REV. 1 (1999); Erin Han, Note, *Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases*, 23 B.C. THIRD WORLD L.J. 159 (2003) (criticizing mandatory arrest and no-drop policies for disrespecting victim choices and autonomy); see also Radha Iyengar, Op-Ed., *The Protection Battered Spouses Don’t Need*, N.Y. TIMES, Aug. 7, 2007, at A19 (Harvard health policy researcher found that in states with mandatory arrest policies, homicides are about 50% higher than in states without such policies).

173. See BERMAN & FEINBLATT, *supra* note 162, at 160, n.22 (noting that nearly 80% of alleged offenders in domestic violence courts who receive some kind of mandate are required to participate in a batterer intervention program and that Florida requires participation in such programs as a matter of law for alleged abusers).

174. Indeed, as soldiers return from serving in the Middle East and are not provided by the military with sufficient mental health and other services, our courts may be confronting some of the same difficult issues Kross faced at the end of World War II. See Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES, Jan. 13, 2008.

The New York Times found 121 cases in which veterans of Iraq and Afghanistan committed a killing in this country, or were charged with one, after their return from war. In many of those cases, combat trauma and the stress of deployment – along with alcohol abuse, family discord and other attendant problems – appear to have set the stage for a tragedy that was part destruction, part self-destruction. . . . About a third of the victims were spouses, girlfriends or children or other relatives. . . .

*Id.*; see also Ogden, *supra* note 6, at 364 (acknowledging that 85% of those believed to be batterers lived in violent homes as children, with many suffering physical or mental abuse themselves); JAMES GILLIGAN, REFLECTIONS ON A NATIONAL EPIDEMIC: VIOLENCE 191 (1997).

You cannot work for one day with the violent people who fill our prisons and mental hospitals for the criminally insane without being forcibly and constantly reminded of the extreme poverty and discrimination that characterize their lives. . . . Any approach to a theory of violence needs to begin with a look at the structural violence in this country.

*Id.*

175. See NATIONAL INSTITUTE OF JUSTICE, *supra* note 5. (“The models that underlie batterer intervention programs may need improvement. New approaches based on research into the causes of battering and batterer profiles may be more productive than a one-size-fits-all approach.”).

176. See BERMAN & FEINBLATT, *supra* note 162, at 103 (explaining that in the Brooklyn Domestic Violence Court “[d]efendants would be required to participate in batterer intervention programs as a condition of bail”).

assumed.<sup>177</sup> By taking a second look at Home Term – what appears to be the nation’s first criminal domestic violence court – modern court reformers may learn not only that their innovations are not so new, but that there are important insights to gain from the past as we attempt to address domestic violence in the future.

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177. See Gruber, *supra* note 171, at 801-20 (lamenting essentialist assumptions underlying many modern domestic violence prevention approaches).