

ATTORNEY ATTITUDES TOWARD LAW ENFORCEMENT'S ROLE IN FAMILY VIOLENCE POLICY

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Family Violence is a national problem which has received significant media attention. Domestic disturbance calls fail to fit the traditional criminal categories studied in either police training or criminal justice scholarship. Family violence has long been considered a family problem, not criminal activity.

It is also a problem addressed by a complicated legal mechanism. Attorneys are critical actors in the legal process because they often represent the victims and help the victims obtain the protective order. There is often interaction between attorneys and law officers. Attorneys are in a unique position to assess the process and the role of police. Although lawyers are critical actors in the process, their attitudes have seldom been solicited. This research presents the views of practicing Texas attorneys on issues surrounding the problem of family violence and the role of law enforcement officers.

Historically, the legal system has shown an unwillingness to deal effectively with the problems of domestic violence due to the belief that family disputes should be settled outside the courtroom. The legal system tends to reinforce conservative/traditional family roles. This viewpoint preserves the status quo and keeps families under one roof but down plays or ignores the danger to the victim. (Mass. Coalition for Battered Women's Service Groups, 1981, p. 44).

Often attorneys are hesitant to prosecute domestic assault cases because participants are unreliable. The victim may press charges but later back out for emotional or economic reasons. Judges face court dockets that are already over crowded and may believe that the dispute is not properly within the court's jurisdiction (Shupe, Stacey and Hazelwood, 1987, p. 127). In addition, police are often reluctant enforcers.

The Texas Family Code

Protective orders are the legal documents which mandate law enforcement intervention. They are designed to provide the victim immediate protection from further abuse. The protective order process begins with the filing of an application for a protective order with the clerk of the court in the county where the applicant resides or where an individual alleged to have committed family violence resides. Several elements of the Texas family code that deal with the protective orders are relevant in the day-to-day activities of an officer. Chapter 71 deals with protective orders for the family or household members where a divorce petition has not been filed. "Family violence" is defined as the intentional use or threat of physical force by a member of a family or household against another member of that family or household. Chapter 3 specifies the special circumstances associated with the dissolution of a marriage. And, Chapter 11 of the Texas Family Code provides for temporary orders governing possession, access to, and support of children. Given the pivotal role of the protective order it would be interesting to learn lawyers' attitudes toward the effectiveness of the instrument and the enforcement process.¹

¹Senate Committee on Human Resources. *Safe at Home. Breaking the Cycle of Violence in Texas Families*. (Austin, TX: TDHR, 1982)p. 29. E. J. Patterson. "How the Legal System Responds to Battered Women." D.M. Moore (Ed.) *Battered Women* (Beverly Hills: Sage, 1979)p. 83.

The Sample

In order to understand the lawyer's perspective on the policy surrounding family violence, questionnaires were sent to a systematic sample of attorneys who were members of the Family Law Section of the Texas State Bar Association (300). A total of 127 were returned. Seventy-five percent of the lawyers were between the ages of 30 and 49. Almost 80 percent were male and over 90 percent were Anglo. In general, the respondents had significant experience, thirty-four percent had over 15 years as licensed attorneys and under 10 percent had less than 5 years of experience. They also generally came from larger communities. Over half came from cities over 500,000. Dallas and Harris counties were most frequently represented.

Effectiveness of Current Laws

The respondents had considerable experience with the protective order (See Table 1). Over 96 percent of the respondents indicated that they had used a temporary order in the Family Code to protect against potential or alleged spousal or child abuse. Most had experience with more than one Chapter. The attorneys indicated the Protective order was an effective tool to deter family violence (80.3% indicated it was effective). Although they found the protective order an effective tool, the attorneys were unclear about the effectiveness of the process to enforce the order. Only 22 percent found the process effective. Almost 60 percent had no opinion on the matter.

As a rule, individuals who return questionnaires seldom add written comments. This questionnaire proved to be an exception. Eighty-three percent of the respondents volunteered (often extensive) comments. The comments revealed that the attorneys had strong feelings about this issue and that they felt frustrated by the many problems that threaten the lives and safety of their clients.

Almost all respondents who checked "yes" to the effectiveness of the protective order, qualified the "yes" with a comment. For example, several respondents indicated that the protective order was helpful if the abuser was "rational," "mild mannered" or for "certain types of individuals". If not, "criminal charges work better". Others qualified their answer with concern about the delivery process. They work if there is a "quick hearing" or if the deputy sheriff who delivers the paper has a proper "manner". Another indicated that the protective order is effective if the couple is apart. "If they are together it will not prevent violence." Finally, a large group indicated a general uneasiness. It works, but "not nearly as much as I wish it would" or it is not really useful as "a practical matter".

TABLE 1
Effectiveness and use of Current Laws

Percent of respondents who have used temporary orders	
Used at least one type of temporary order	96.7%
Chapter 3 (dissolution of marriage)	62.2%
Chapter 11 (children)	66.1%
Chapter 71 (divorce petition filed)	41.7%
Sample size 127	
Effectiveness of protective order (percent in agreement)	
Protective Order deter family violence	80.3

The respondents were in overwhelming agreement (96.1 percent) that the judges were cooperative in granting the protective order. (See Table 2). While they found the judges

See page 13

ATTORNEY ATTITUDES TOWARD LAW ENFORCEMENT'S ROLE IN FAMILY VIOLENCE POLICY

Continued from page 12

cooperative, they express reservations about the method to deliver the protective order. Only 38.6 percent maintained that the method was effective. Many commented that they had to do it themselves.

There was considerable negativity or ambivalence about the role of the law enforcement officials. Only 22 percent felt that the process to enforce the protective order was effective. They indicated that officers "were hesitant to get involved"; "they will not intervene in family squabbles"; "as always, police hesitate to get involved in a domestic situation".

The respondents appeared to be unimpressed with the cooperativeness and effectiveness of law officers. Only about half believed them to be cooperative. And, 45.7 percent maintained that the police were ineffective in enforcing the protective order. On this question there were few attorney comments. Most were of the yes, but, nature, "they are cooperative but still attempt to be peacemakers rather than take firm action".

TABLE 2
Effectiveness of Courts and Law Enforcement

Effectiveness of Courts	(Percent in agreement)
Local judges cooperative in granting Protective Orders	96.1
Courts have method to deliver copies of Protective Orders to local police.* Sample size 127	38.6
Effectiveness of law enforcement	(Percent in agreement)
Effective process to enforce Protective Orders* Sample size 127	22.0
Local law enforcement are cooperative in enforcing the protective order	52.8
Local Law enforcement personnel are ineffective in enforcing protective orders Sample size 127	45.7%

The ability to resolve disputes quickly can be imperative in cases of domestic violence. A tense family crisis can quickly escalate to a brutal beating and possibly death. Questions were asked about the timeliness of judicial resolution in Table 3. Again, there was diversity of opinion. The modal response supported change. For example, about half believed that the

* For this question 46.5 percent of the respondents indicated "no opinion."

* indicates a large proportion of the sample registered a "no Opinion" response instead of a "no"

legal and judicial system should be expedited and simplified. The remaining respondents were fairly evenly divided between no change and no opinion. Approximately 42 percent indicated that time frames should be written into the code for the protective order and fifty-five percent maintained that the legal system should monitor family violence cases to ensure rapid resolution.

Comments reflected the Catch-22 nature of time limits. For example, one attorney commented "Why should protective orders ever expire—i.e.—don't hit your wife until one year from now." Others maintained "If by expire you mean the order is only good for 10 days... Why tell the enemy that?"; "I don't want someone who is under order to know when it ends."

The attorneys were unenthusiastic about the use of mandatory counseling as an approach to solve the problem. Only 27.6 percent supported its use. The comments reflected a cynical attitude about the effectiveness of mandatory counseling. "Forced counseling does not work"; "Unless some method for handling this on a volunteer, no compensation required, after hours basis, I don't believe this is workable."; "Counseling is worthless unless the parties (both) desire it."; "yes, but what of those who can't afford it?"

The attorneys were also unenthusiastic about referring the offender to possible criminal charges. Only 26.8 percent supported this idea. Almost half would like to see the judiciary or state bar conduct an evaluation of the judiciary's family violence decisions and their enforcement. The remaining attorneys were split evenly between no opinion and not supporting an evaluation.

TABLE 3
Judicial System Issues

Time Issues	(Percent in agreement)
Legal and judicial system should expedite and simplify procedures	46.9
Time frames need to be written into code for Protective Orders	41.7
Legal system should monitor family violence cases to ensure rapid resolution. Sample size 127	55.1
Simultaneous Referral Mechanism	(Percent Distribution)
Mandatory family counseling.	27.6
Refer to county attorney for possible criminal charges. Sample size 127	26.8
Evaluation	(Percent in agreement)
Judicial system or state bar conduct evaluation of judiciary's family violence decisions and their enforcement. Sample size 127	48.8

The respondents were also asked questions about the importance of family violence law education. In general, the respondents were strongly supportive of educational efforts. Almost 90 percent supported public service announcements in local media. Further, there was strong support for education among professionals in education (81.9 percent), law enforcement (97.6 percent) and within the judicial system (74.8 percent). There was less enthusiasm about introducing these concepts into the elementary curriculum (44.1 percent). On the other

See page 14

ATTORNEY ATTITUDES TOWARD LAW ENFORCEMENT'S ROLE IN FAMILY VIOLENCE POLICY

Continued from page 13

hand, support was higher for its inclusion in junior high and high school curriculum (63.8 percent). The comments reinforced the survey results. "We strongly need to educate law enforcement personnel as to their duty and citizens as to their rights."

TABLE 4
Education or Training

General Public	(Percent in agreement)
Public service announcements in local media about family violence laws	89.8
Students	(Percent in agreement)
Family violence laws part of elementary curriculum.	44.1
Family violence laws part of junior high and high school curriculum	63.8
Professionals	(Percent in agreement)
Faculty and staff of local schools receive training in family violence laws	81.9
Law enforcement personnel should receive training in family violence law	97.6
Judicial system personnel should receive training to increase knowledge and understanding of the judicial responses to family violence	74.8

Sample size 127

Conclusion

The results of this study suggest that Texas attorneys are deeply moved by the problem of family violence. They also have strong opinions about the legal process designed to prevent further violence. They supported the use of the protective order but expressed strong reservations about its implementation. They were particularly concerned about the effectiveness of the law officers.

These findings support the larger literature which suggest that police view domestic violence as a private, family matter. Law officers have reservations about intervention. This unwillingness to get involved, translates, for the attorneys, into problems which include concern for their clients' life.

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