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AN ANALYSIS OF THE NEW YORK COUNTY
FAMILY COURT WORKGROUP AND ITS IMPACT
ON THE IMPLEMENTATION OF THE
NEW YORK STATE FAMILY
PROTECTION AND DOMESTIC VIOLENCE
INTERVENTION ACT OF 1994

by

EDWINA G. RICHARDSON-THOMAS

A dissertation submitted to the Graduate Faculty
in Criminal Justice in partial fulfillment of the
requirements for the degree of Doctor of Philosophy,
The City University of New York

2002

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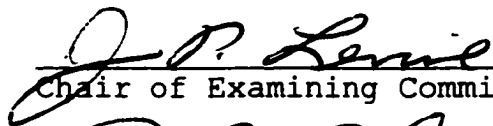
EDWINA G. RICHARDSON-THOMAS

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Abstract

AN ANALYSIS OF THE NEW YORK COUNTY FAMILY COURT WORKGROUP
AND ITS IMPACT ON THE IMPLEMENTATION OF THE NEW YORK STATE
FAMILY PROTECTION AND DOMESTIC VIOLENCE INTERVENTION
ACT OF 1994

by

Edwina G. Richardson-Thomas

Adviser: Professor James Levine

This dissertation evaluated five hypotheses to see their effect, if any, on the proper implementation of a new law, the Family Protection and Domestic Violence Intervention Act of 1994. It found that: 1) the dispositional outcomes in family court domestic violence cases did not change despite the existence of stronger potential penalties in the new law; 2) the mediating practices and culture of the family court, where the attorneys, judges, and court attorneys worked together toward the common goal of smoothly and efficiently processing cases, did appear to contribute to similar dispositional outcomes not containing the heightened remedies available under the new law; 3) the desire to expeditiously dispose of cases, while very strong, did not appear to impact on the content of the dispositional orders after the new law; 4) the judges' different political ideologies and different attitudes concerning how these cases should be processed and handled before them had no

impact on case outcomes, however the judges' ideologies and beliefs concerning the worth and value of the newly available various heightened remedies were dispositive as to whether they were utilized; and 5) although specialized legal advocacy groups made important contributions to the protection of domestic violence victims, they were not observed obtaining any stronger case outcomes through their advocacy efforts.

This study utilized the multi-method approach of qualitative semi-structured interviewing of key informants, naturalistic observation of the New York County family court setting, and review of statistical data maintained on family offense proceeding case filings in New York County family court from the middle to late 1990s for analysis. Triangulation was used in this study to achieve a broader perspective, as well as to enhance its validity and reliability. The following research was also conducted: review of relevant scholarly literature, including courtroom workgroup studies, implementation studies, and criminal justice system policy reform studies; review of the history and development of domestic violence law; and an analysis of the new law itself.

The study concludes with a discussion of policy recommendations for better implementation of the law.

Dedication

This project is dedicated to the four corners of my world: The two terrific Shirleys God has blessed me with - my ever-supportive mother and my awe-inspiring daughter, my faithful husband Philip, and my tireless sister-friend Angela. Your love, patience, and understanding have made the impossible real. This project is also dedicated to my miracle in progress, who has somehow managed to be unaffected by the excitement and havoc created by this project. I cannot wait to meet you.

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Chapter One

Preview of Dissertation

The problem of violence perpetrated by men against women with whom they have intimate relationships is complex and yet to be adequately addressed by the legal system. It is not easy to determine the appropriate legal response to domestic violence. A number of methods to protect women have been implemented in different components of the civil and criminal justice systems.

One method that has been in place for a number of years permits a battered woman to commence a family court civil proceeding seeking a restraining order against the man who abuses her. Restraining orders, also referred to as orders of protection, are intended to protect victims of domestic violence from future abuse. Battered women's advocates, in addition to criticizing the lack of protection afforded to domestic violence victims by the criminal justice system, also argue that women seeking relief from domestic abuse in the civil courts are not protected because the process for obtaining orders of protection is ineffective.

Reforms have been enacted seeking to address these concerns. Specifically, the State of New York recently passed the Family Protection and Domestic Violence Intervention Act of 1994, legislation with the goal of strengthening a woman's ability to use the family court as well as the criminal court to obtain protection from an abusive partner.

This law, however, was adopted in the absence of empirical knowledge and data about how the courts, which will implement it, actually operate. Before one can determine the effectiveness of this new approach to combating domestic violence, the initial inquiry must focus on whether the new approach itself was implemented effectively. This study seeks to analyze the family court processes and practices, and how they effect the implementation and success of this newly adopted domestic violence reform legislation.

Court studies can be very useful in evaluating the success of popular reform measures, and in generating methods of improving court performance. This study, in particular, will examine how the New York County family

court courtroom workgroup, charged with the responsibility for processing domestic violence cases, influences the actual implementation of this new law and policy, which effects whether the results sought by the new law and policy are realized.

It is expected that since these major reform initiatives were instituted without considering the existing practices, attitudes, beliefs, and values of the courtroom workgroup, and its resulting culture, there will be insignificant changes in the strength of dispositional orders issued pursuant to the new law.

This study will contribute to our knowledge of the policy process, and enhance policy analysis in the area of judicial responses to domestic violence. The goals of policy analysis are to integrate evidence adduced from research studies, and recommend the best courses of action to cope with specific problems. Moreover, when policy changes are made, it is important to use new information to assess their impact. It is expected that the results of this study will provide information on actual court operations in the area of domestic violence litigation.

This study will be useful in generating methods of improving court performance, and evaluating the likelihood of success of court reform measures.

This study will also contribute to our knowledge of how judicial administration policies and practices work. It will serve to provide further insight into battered women's experiences with one of the social institutions charged with the responsibility of assisting domestic violence victims.

Chapter Two

The History of Family Court and Domestic Violence Laws

The Family Court

New York State formally established juvenile courts in 1921. The focus of the juvenile court at that time was limited to child abuse and neglect proceedings, and juvenile delinquency matters. In 1962, the New York State family court was given jurisdiction over most legal matters affecting families and children. Currently, the New York State family court addresses domestic violence family offense proceedings, paternity proceedings, child custody and visitation proceedings, guardianship proceedings, spousal and child support proceedings, child protective proceedings (child abuse and neglect matters), foster care proceedings, termination of parental rights proceedings, adoption proceedings, juvenile delinquency matters, and proceedings involving minor persons in need of supervision (PINS).

The New York State family court has concurrent jurisdiction with criminal court in domestic violence

family offense proceedings, and with surrogate's court regarding adoption and termination of parental rights proceedings. However, the New York State supreme court maintains exclusive jurisdiction over divorce, separation, and annulment cases.

There are currently five family courts in New York City, one in each county, and fifty-nine in the counties outside New York City.

Scope of the Problem

Domestic violence is generally defined as physical abuse of a partner in an intimate relationship. The nature of the relationship between the victim and abuser is not the only factor that distinguishes domestic violence from stranger assaults. Domestic violence is unique in that it encompasses a continuum of coercive behaviors, including physical, sexual, emotional, and economic abuses, often escalating in frequency and severity over time (Carter, Heisler, & Lemon, 1991). Domestic violence perpetrated by men against women in their lives is a prevalent phenomenon in America. Assaults against women are a social problem of vast proportions with roots in the society's traditional

views and attitudes about women, and their role in intimate relationships with men. Over one-third of the incidents of domestic violence involve severe injuries received from assaults (Gelles & Straus, 1988). Levels of so-called "minor" violence are also high. A study by Feld & Straus (1989) indicated that half of American couples have experienced at least one incident of assault between partners during the course of a marriage. In one Harris poll, ten percent of the surveyed couples reported an incident of domestic violence during the preceding year (Gelles & Straus, 1986). The National Family Violence Resurvey found that almost forty percent of violent incidents towards wives inflicted by husbands involved punching, kicking, biting, beatings, and attacks with weapons such as guns and knives (Gelles & Straus, 1988). Over one half of the women killed in America between 1980 and 1984 were killed by a husband, ex-husband, common law husband, or boyfriend (Carmody & Williams, 1987). Although it is difficult to calculate the level of serious violence occurring within intimate relationships, it is surely quite high. Additionally, women also engage in acts of domestic

violence against men, although such incidents are much less common (Bograd, 1988).

The extent of domestic violence in New York State and New York City is similar, affecting women of all ages, races, and socio-economic level. Indeed, a recent study conducted by the New York City Health Department found that more women were killed by husbands or boyfriends than were killed during the course of robberies, sexual assaults, drug violence, or random attacks (Belluck, 1997). According to a 1989 report published by David Rottman, director of the Court Statistics Project of the National Center for State Courts, filings of domestic violence cases in New York State family courts averaged between 33,000 and 37,000 yearly. By 1993, in New York City alone, 19,765 family offense petitions were filed. Recent statistics indicate that there has been a significant increase in family offense domestic violence petition filings in both New York State and New York City. In 1998 there were 59,958 family offense petitions filed statewide, and 27,068 in New York City (1998 Report of the Chief Administrative Judge of the Courts of the State of New York). Since many

women never seek legal remedies, this represents the tip of the iceberg.

While current statistics show that the number of reports of domestic violence have risen dramatically (Pleck, 1987), there is no indication that the actual incidences of such violence is increasing, but rather, it appears that society has only recently identified such situations as a social problem warranting extensive public attention. For example, a great deal of media attention has been given to the death of Nicole Brown Simpson, former wife of celebrity O.J. Simpson, who although acquitted of her murder in 1995, clearly engaged in abusive behavior. Additionally, in New York City, much publicity surrounded Judge Lorin Duckman's 1996 decision to grant pre-trial release to a man who subsequently killed his former girlfriend. The domestic violence aspect of these cases has broadened the public discourse on this issue. It is also noteworthy that reports of domestic violence incidents were rising at a time where general crime reports were decreasing nationwide.

The Development of Domestic Violence Laws

Although statutes prohibiting wife beating have been in existence since 1641, historically, enforcement of these laws has been virtually nil (Pleck, 1987, p. 21). The women's movement in the United States has been credited with bringing public attention to the problem of battering (Crites & Hepperle, 1987; Pleck, 1987). This has had a profound impact on the development of domestic violence legislation, case law, and public policy. An effective grassroots level campaign by feminist organizations resulted in an increase in battered women's shelters, safe houses, domestic violence hotlines, and other services. The movement against domestic violence reached New York State in the early 1970s as an outgrowth of many community based women's groups meetings in all parts of the State. In 1975, the first major conference on local domestic violence issues was held in New York by an organization called the Abused Women's Aid in Crisis (AWAIC). It served to force the criminal justice system, as well as the public at large, to pay attention to domestic violence, which was, until very recently, considered solely a private issue.

Despite acknowledgment that the problem of women battering should be addressed by the criminal justice system and criminalized by legislatures, until quite recently, the institutional response to this serious social problem has been limited. Men have beaten their wives for centuries without realistic threat of punishment. Although laws permitting husbands to "chastise" their wives are no longer with us, the underlying spirit of such laws has appeared to linger. On the other hand, the compelling tragedy of domestic violence has prompted the state to become more actively and intrusively involved in what has been traditionally perceived as family business.

The major players within the criminal justice system have denied the seriousness of women battering, especially when it occurred in the context of marriage. Arrests and full criminal prosecution for assaults occurring within intimate relationships, was traditionally discouraged. Criminal prosecution in domestic abuse cases rarely resulted in conviction or serious criminal sanctions. However, there has recently been significant attention paid to the police response to domestic violence. Policy

changes, such as mandatory arrest laws, have stemmed from the results of experiments conducted to determine if arrests deter future acts of family violence (Sherman & Berk, 1983). In fact, because of the prevalence and life threatening nature of domestic violence, all fifty states have now passed civil or criminal statutes to protect battered women. Since penal sanctions have been seen as relatively inconsequential, alternative use of civil remedies available in the family courts, such as the issuance of restraining orders of protection, have become incorporated into the framework of the criminal justice system.

An order of protection is a court order limiting the contact an offender may have within the victim's sphere of activity. A violation of an order of protection is considered both a civil and criminal act of contempt of court.

Generally, a civil court order of protection, issued by family court, prohibits the offender from assaulting, harassing, menacing or recklessly endangering the petitioner. The order of protection might also contain a

directive for the offender to stay away from the petitioner, and it can exclude the offender from the household. Ideally, obtaining an order of protection is a first step in ending violence in the petitioner's life. The order of protection restricts a batterer's ability to have contact with, and control over, the domestic violence victim.

Family court civil order of protection cases differ from criminal domestic violence cases in two significant ways. First, the proceedings are civil in nature, with the burden of proof required to prevail being proof by a "preponderance of the evidence", a much lower threshold than the proof "beyond a reasonable doubt" standard employed in criminal prosecutions. Second, the focus of family court civil order of protection proceedings is to protect victims from experiencing further violence, which differs from the criminal court's traditional focus upon punishment for past wrongdoing.

The Family Court Act of 1962 and its Later Amendments

Article 8 of the New York State Family Court Act establishes civil proceedings to address the social problem

of domestic violence. Although family court has jurisdiction only over civil matters, an order of protection is granted when there is an allegation of criminal activity under New York State's penal code.

The provisions regarding family violence of the New York State Family Court Act, enacted in 1962, were intended to treat and preserve the family unit. At the time, this was believed to be an appropriate institutional response to domestic violence. The provisions contained in the law regarding family violence were specifically implemented to de-criminalize family violence. The family courts were given exclusive jurisdiction over acts constituting disorderly conduct or assault between spouses (Fam. Ct. Act 812, repealed 1975). Indeed, criminal courts were required to transfer such cases to family court for determination (Fam. Ct. Act 813, repealed 1975). Criminal courts were only permitted to address domestic assault cases if such matters were transferred by family court to the criminal court, a process that occurred in only two percent of all cases (Besharov, 1996, p.177). A battered wife seeking legal relief faced a system whose concern was her family's

stability, not her personal safety. It appears that, in its attempt to preserve the family unit by removing family violence from the domain of the criminal court system, the legislature became an unwitting partner in the perpetuation of violence against women.

In the mid 1970s, the inadequacies of the provisions of the New York State Family Court Act in providing meaningful protection to women victims of domestic violence became highly publicized. Civil interventions predicated upon the idea of resolving disputes were found to be ineffective in dealing with family violence. The first major lawsuit on this issue was a class action lawsuit brought by twelve married battered women, who claimed that the New York City police department and the state family court system failed to enforce existing laws against domestic violence (Bruno v. Codd, 1976). An out-of-court resolution of this case established the responsibility of the police and the courts to provide protection to battered women. The consent decree issued in this case created the first police policy on domestic violence, and mandated training of the entire police department. In 1977, a

series of New York State legislative hearings were held, the theme of which was "The Battered Spouse: Has the System Failed?" These hearings also served to highlight the weaknesses in the State's response to domestic violence.

As a result of these and other events which put domestic violence on the state's policy agenda, the Family Court Act was amended in 1977 to give the victim a say in the choice of venue, criminal prosecution or family court civil remedies. Theoretically, a woman was permitted to choose either family court or criminal court as the forum in which to proceed, and the woman's decision became irrevocable 72 hours after filing a petition in either forum. The reason this right to elect a forum was only a theoretical right, however, was that it remained within the sole discretion of the prosecutor to prosecute criminal domestic violence complaints in criminal court.

The then newly amended Family Court Act's purpose was to "stop the violence, end the family disruption and obtain protection" as opposed to its former mandate which was "not punishment, but practical help" for female victims of domestic violence (Fam. Ct. Act, 812(2)(b) 1977, repealed

1994). The law was also amended to include a provision specifically prohibiting family court officials from discouraging or preventing any person who wished to file a petition from having access to the court for that purpose. Although the legislative changes in the 1970s did strengthen the family court's power to issue and enforce orders of protection, and provide other remedies to address domestic violence, the law was highly criticized because it required a choice between criminal prosecution, and civil court protective remedies.

The New York State Family Protection and Domestic Violence Intervention Act of 1994

With the rising recognition of domestic violence as a national problem, in 1994 the New York State Family Court Act was once again amended. In passing the new domestic violence law, the New York State Legislature made the following findings:

Domestic violence affects people from every race, religion, ethnic, educational and socio-economic group. It is the single major cause of injury to women. More women are hurt from being beaten than are

injured in auto accidents, muggings and rapes combined...what was once considered a private matter has come to be more correctly regarded as criminal behavior ... Therefore, the legislature finds and determines that it is necessary to strengthen materially New York's statutes by providing for immediate deterrent action by law enforcement officials and members of the judiciary, by increasing penalties for acts of violence within the household ... to assure clear and certain standards of protection for New York's families consistent with the interests and standards of fairness and substantial justice. (L. 1994, ch. 222 section 1 (eff. 1/1/95))

The New York State Family Protection and Domestic Violence Intervention Act of 1994 significantly modified the statutory scheme for the issuance of orders of protection in family offense cases. Effective January 1, 1995, battered women no longer had to choose between family court protection and criminal court prosecution. Court cases could be brought in both forums simultaneously. The new legislation required the chief administrator of the

state court to promulgate rules to facilitate record sharing between criminal courts and family courts. In addition, the law provided for the development and implementation of a state wide computerized registry of all orders of protection and outstanding warrants.

This system, now in place, contains information on all active orders of protection and related warrants issued in criminal court family offense, supreme court matrimonial, and family court family offense cases. This registry provides law enforcement agencies and the courts with ready access to critical information.

The new law also expands the definition of a family offense to include stalking. The definition of a family court family offense now includes disorderly conduct, harassment in the first and second degrees, aggravated harassment in the second degree, menacing in the second and third degrees, reckless endangerment, attempted assault, and assaults in the second and third degrees.

In order to proceed in family court, the law requires that the parties must be married or have children together, regardless of whether they have ever cohabitated.

Cohabitants who do not have children in common must still seek relief only from criminal court.

Additionally, the new law has modified the preliminary procedures in family court family offense matters. If aggravating circumstances are alleged, provisions have been made for immediate arrest and bail in the family court system. Factors constituting aggravated circumstances include physical injury to the petitioner, a history of repeated violations of prior orders of protection, the exposure of the family to risk of future physical injury, or other behavior constituting an immediate and ongoing danger to the household.

When a petitioner appears in family court seeking an order of protection, he or she can receive an immediate temporary ex-parte order of protection without the respondent's presence, if good cause is shown. Ex-parte orders are rare in other types of cases because, by definition, they are given when the person subject to be bound by the provisions of the order is not present to first argue against the order being issued by the court. Ex-parte orders are therefore generally seen as contrary to

notions of fair play, where a court first hears from both sides before entering an order. A temporary order of protection may contain the same provisions as a final order of protection issued after a trial.

Since the mid-1970s, permissible dispositions in family court family offense proceedings have included:

a. dismissal for failure to prove the allegations of the petition; b. suspension of judgment for a period not to exceed six months; c. placing the respondent on probation for a period up to one year and requiring the respondent to participate in an educational program; and d. granting an order of protection which may set forth conditions of behavior to be observed for a period of up to one year. The order of protection may include a provision for the respondent to stay away from the home, the petitioner or any child involved.

Under the new Family Protection and Domestic Violence Intervention Act of 1994, however, these dispositional alternatives have been expanded to provide that the respondent may be placed on probation and required to attend a "batterer's educational program designed to help

end violent behavior, which may include referral to drug and alcohol counseling" (Fam. Ct. Act 841(c), 2000). The respondent may also be ordered to pay restitution to the petitioner up to \$10,000.00 (Fam. Ct. Act 841(e), 2000). If aggravated circumstances are found to exist, the family court is now empowered to issue a three-year order of protection, as opposed to the traditional one-year order.

If an order of protection is violated, the family court may retain the matter to determine the violation issues in a contempt-of-court proceeding, retain the matter and treat the new allegations as a new family offense, or transfer the alleged violation to the district attorney for criminal prosecution. Contempt proceedings can be held simultaneously in both family court and criminal court. If a respondent is found to be in contempt of court, he or she can be incarcerated for up to six months.

The New York County Family Court Setting: Roles of the Various Participants

New York County family court, like any other court, can be viewed as both an organization and a community.

Courtrooms are small but complex organizations.

Family court domestic violence family offense case outcomes are not the result of singular efforts by judges or attorneys for either party, but rather are the product of interactions among all the professionals and parties involved. It has been argued that those who wish to understand the court disposition process must first recognize the importance of studying courts as organizations. Courtrooms are similar to other organizations in that they are labor-intensive groups staffed by professionals to provide services to members of society. Most people found in the courtroom work at specialized functions within the organization. The courtroom thus functions as a result of an organized network of relationships with all the major participants acting and reacting to the others in the network.

Major participants in the family court community include the clerks who draft petitions for the women seeking orders of protection. Clerks are New York State government employees. Their role in family court domestic violence family offense matters includes interviewing the petitioners, documenting pertinent information, and giving

advice to litigants regarding their rights and options. After a petition room clerk drafts the family offense petition, the petition is sent to the intake courtroom for further proceedings.

Court officers are also major participants in the family court community. Like clerks, they are state government employees. Once a petition is sent by the clerk's office to the intake courtroom, the court officer decides the order in which cases are to be presented to the judge for consideration. The court officer also provides the parties with basic information about the court process.

When the case is ready to be heard by the family court judge, the court officer tells the petitioner to enter the courtroom, and swears in the petitioner as a witness. At this point, the family court judge will briefly question the petitioner as to the truth of the allegations contained in the petition drafted by the clerk, and usually issues an ex-parte temporary order of protection. The petitioner is then given a future court date, and is sent to another clerk's office for instructions on the manner in which the respondent must be officially notified of the proceedings.

The police are required to assist the petitioner in having the court papers served upon the respondent, if necessary.

On the next court date, if the respondent has been properly notified of the court proceedings, and appears in court, the family court judge may assign attorneys to represent both parties. The court officer usually selects the attorneys who will be assigned to the case. Some family court judges make an inquiry of the parties' finances and ability to afford to hire an attorney prior to assigning counsel free of charge. The attorneys who are assigned to represent indigent litigants in family court matters are part of a panel created pursuant to Article 18-B of the County law, which governs all five counties of New York City, and are referred to as "18-B attorneys". 18-B attorneys are experienced in all aspects of the practice of family law, and are expected to represent indigent litigants in family court proceedings.

After an 18-B attorney is assigned in a family court domestic violence case, the attorney usually talks briefly to his or her new client, and then to the opposing counsel, in an attempt to resolve the dispute. If the case cannot

be resolved at this point, it is then adjourned to another date for trial. The temporary order of protection, which was previously issued by the family court intake judge on the initial appearance date, usually remains in effect pending trial. Some family court judges conduct immediate hearings on issues requiring expeditious determination, such as whether the respondent will be excluded from the household pending the disposition of the case.

Sometimes, a court attorney will also become involved in a family court family offense case. A court attorney is a law clerk employed by New York State, and assigned to work for a particular family court judge. The court attorney acts as the family court judge's legal assistant. The role of the court attorney in many domestic violence family offense cases is to act as a mediator between the parties, and attempt to work out a settlement of the matter on consent of both parties and their respective attorneys. If the attorneys are able to reach an agreement of the domestic violence dispute, the settlement will be presented to the judge. If the judge approves of the terms of the settlement agreement, it will be read into the court

record, and issued as an official court order.

The court attorney will often also be involved in proceedings when there are no attorneys representing the parties in a case. If there is no resolution of the domestic violence dispute with the aid of the court attorney, the case can go to trial on that date, or on another date. If there is a resolution in the case, the judge will usually explain the ramifications of the agreement, and any orders agreed to will be issued by the court.

Some family court judges do not use their court attorneys to mediate these matters, but instead handle all matters themselves. In these circumstances, the family court judge may attempt to resolve the dispute, or conduct a trial of contested issues. The trial may occur immediately, or be put off for a future court appearance date.

Studying the Impact of Family Law Reforms

This study examines the influence of the family court courtroom workgroup on the strength of dispositional orders issued in New York County family offense proceedings in the

post-1994 domestic violence reform era. The question this study seeks to address is whether the new reform measures actually result in stronger dispositional outcomes in these cases. It is hypothesized that despite the new law, dispositional outcomes in the post-reform era are similar to those issued in the pre-reform era.

The dependent variable in this study is the strength of the dispositional orders granted in family offense proceedings. The primary independent variable to be considered in this study is the strength or weakness of laws seeking to provide victim protection in family offense proceedings.

Other intervening independent variables are to be considered as well. One is the desire of courtroom workgroup members to dispose of cases expeditiously. The different court professionals involved in these matters have a variety of independent reasons for seeking expeditious disposal of cases. These goals may interfere with the stated goals of the new law. Judges and their court attorney law clerks, for example, may seek expeditious disposal of cases to meet existing "standards

and goals" rules, which encourage family court judges to dispose of cases swiftly. Attorneys for both the petitioner, who seeks an order of protection, and the respondent, defending against allegations of domestic violence, may also rely on swift case disposition for income-generating reasons. Court officers may seek to dispose of cases quickly to keep their courtroom calendars moving smoothly.

Another intervening variable, which may impact upon the strength of dispositional orders issued in family court family offense proceedings involves the individual attributes, characteristics, and ideologies of the courtroom personnel. Some family court judges are perceived as being strongly "anti-domestic violence", and are believed to grant stronger dispositional orders than others. This may also impact on the strength of the dispositional orders issued in these matters.

Additionally, the presence or absence of organized legal groups to represent battered women, and those accused of committing acts constituting a family offense, may impact upon the strength of dispositional orders granted in

these proceedings. Unlike the situation in criminal courts, where there is an organized district attorney's office prosecuting offenses, as well as an organized defense bar such as the Legal Aid Society, the attorneys who represent most litigants in family court are assigned counsel panel attorneys. The assigned counsel panel attorneys in New York State, or "18-B attorneys" as they are often referred, are independent private attorneys who regularly represent indigent litigants in family court matters. Family court judges, court officers, or both, select attorneys to represent litigants. At the close of a court assignment to represent an indigent family court litigant, the assigned counsel attorney submits a bill to the local government for payment at an established rate, as of 2002 it is \$40.00 per hour for work conducted in court, and \$25.00 per hour for out of court work. The same attorneys who represent victims are also routinely assigned to represent respondents who are accused of committing acts of domestic violence in other cases. Individual litigants also, of course, have the option of hiring private counsel, if they can afford to do so.

There are also a few small organizations in New York City specializing in the representation of battered women in family court. Sanctuary for Families' Center for Battered Women's Legal Services and New Horizons, formerly known as the Victim Services Agency, represent a small percentage of family court domestic violence petitioners. There are currently no special organizations in existence to represent male respondents in these proceedings. It is hypothesized that dispositional outcomes in cases involving attorneys from organizations designed to represent battered women might indeed be significantly stronger than outcomes in other similar situations.

The goal of this research project is to describe and analyze what actually occurs in family court domestic violence proceedings, in contrast to what the process is expected to entail. The family court family offense order of protection process, as conceptualized, will be evaluated in light of what truly goes on in court.

This study will not address the impact of court processes on the level of domestic violence occurring in intimate relationships. It will also not address litigant

satisfaction with the court process. This study will, however, specifically address the relationship between the institutional practices of the family court and the substantive orders granted in these matters.

Chapter Three

Survey of the Literature

Overview of Literature Review

There has recently been a great deal of scholarly work conducted in the general area of domestic violence. There have been over five hundred doctoral dissertations published on the subject of domestic violence in the last twenty years. Numerous books and articles have also been written on the subject. Much of the scholarly work in this area focuses upon psychological issues regarding male batterers. There is also a great deal of data gathered on the victimization of battered women. Most of the scholarship in this area views domestic violence from a clinical psychological perspective. The issue is often analyzed in terms of its pathological overtones, or it is viewed as a health problem.

Police discretion in response to domestic violence has been the major focal point of the criminal justice perspective on this issue. Police intervention can fairly be considered the primary public policy against domestic violence. Scientific analysis of the methods of policing

domestic violence has also grown significantly in recent years. Indeed, in 1983, a landmark police experiment was conducted to determine if arrest deters future acts of domestic violence (Sherman & Berk, 1983). This original Minneapolis experiment was replicated six times in different jurisdictions, with varying results (Sherman, 1992). These studies have had an enormous impact on police procedures nationally in domestic violence cases. Although not actually recommended by the directors of the studies, some jurisdictions have responded with mandatory arrest statutes. These studies have influenced police policies and practices throughout the United States, and in several other countries as well (Sherman, 1992, p. xi). While there has been some experimental research on the efficacy of arrest in domestic assault cases, the appropriate police response remains unresolved.

Additionally, without minimizing the importance of the contributions of the social scientists in this area, very little analysis of the institutional response of the courts to the problems associated with domestic violence has been conducted. Concededly, the criminal court response to

domestic violence is difficult to study because the criminal court process usually categorizes crimes by the nature of the offense, not the relationship of the participants. There have also been few empirical studies of the prosecutorial component of the criminal justice system response to domestic violence. It appears, however, that the studies conducted establish that stranger assaults more often resulted in criminal conviction than in those cases where the victim knew the offender (Ferraro & Boychuck, 1992).

Similarly, few empirical studies of the effectiveness of civil court protective orders in domestic assault cases have been conducted. One study found that while civil protective orders did not affect emotional and verbal abuse, it did reduce episodes of non-severe violence (Grau, Fagan, & Wexler, 1984). These studies also support the proposition that severely battered women are not protected by orders of protection. Indeed, Chaudhuri and Daly (1992, p. 227) found that some women were beaten because they obtained civil protective orders, suggesting that such attempts at self-protection can backfire.

One must keep in mind, however, that civil protective orders, as well as other interventions, may have beneficial effects other than preventing future violence. Talking to sympathetic clerks, attorneys, or judges, may reinforce the idea that battering is unacceptable behavior, which in itself may benefit victims of domestic violence.

Scholarly Literature: Courtroom Workgroup Studies

Organizations have been defined as the planned coordination of the collective activities of groups of people who function on a continuous basis and, through division of labor, seek to meet common goals or objectives (Robbins, 1983). Organization theory studies the structure and design of organizations. Courtrooms are small but complex organizations. Outcomes are not the result of singular efforts by prosecutors, defense counsel, the parties, or even judges; they are the product of interactions among all the participants.

It has been argued that those who wish to understand the court disposition process must first recognize the importance of studying courts as organizations. Courtrooms are similar to other

organizations in that they are labor-intensive groups, staffed by professionals, to provide services to members of society. Most people found in the courtroom work at specialized functions within the organization. The courtroom functions as a result of an organized network of relationships, with all major participants acting and reacting to others in the network.

In his early studies, Blumberg (1979) suggested that criminal courts acted as organizational and communication systems where attorneys, judges, clerks, and others had distinct structural interactions and relationships, which remained relatively stable over time. According to Blumberg (1979), constitutional ideology historically promoted the concept that due process could only be arrived at through formal adversarial proceedings bound by strict rules of evidence and procedures. A bureaucratic system where the focus shifted to the goals and objectives of the court organization itself, as opposed to individual rights and liberties of the defendants, replaced this. While a criminal court's stated organizational goal may be to achieve justice and uphold the rule of law, in reality,

courts are bureaucratic organizations with an occupational structure that is committed to the priorities of efficiency, maximum production, and career enhancement (Blumberg, 1979, p. 206).

It has been argued that parallels exist between the operations of criminal courts, and those of other goal oriented organizational collectives. Nardulli (1978), and Eisenstein and Jacob (1977), utilized the organizational paradigm for assessing courtroom proceedings and dispositions in criminal courts. Eisenstein and Jacob (1977, p. 12) asserted that the paradigm used for studying criminal courts could also be applied to civil courts. This research project will apply that organizational theory approach as a framework for studying the processes associated with issuing family court orders of protection.

There are a number of characteristics commonly found in courtroom workgroups, which are similar to that of other organizations (Eisenstein & Jacob, 1977, p.20). First is the existence of authority relationships. In court, the judge is the formal leader. Most decisions made in court require some sort of judicial approval. Judicial

decisions, for example, affect the flow of cases. The judge also governs courtroom conduct.

The second characteristic commonly found among organized workgroups is the presence of influence relationships, which have the power to modify the authority relationship. Although judges are the formal leaders in the courtroom, they have limited authority within the courtroom workgroup. This is because judges do not have control over the hiring and firing of the other courtroom workgroup members, as authority figures have in other types of organized workgroups. Additionally, judges generally do not have budgetary control over the courtroom. The influence of the other workgroup members also impacts upon and limits the power of the judge. Clerks have scheduling power, for example, while prosecutors control the criminal charges filed, and even criminal defendants can influence the other members of the courtroom workgroup by demanding speedy jury trials.

A third similarity between courts and other organizations, is that they are held together by common goals. The collective efforts of judges, prosecutors, and

defense attorneys, in pursuing their common interests, have important consequences for the processing of cases.

Peripheral players in the family court courtroom system, such as petition clerks, court officers, and court attorneys, also have goals in common with the primary courtroom workgroup members. The common goals of courtroom members are to dispense justice, however that may be defined, and to expeditiously dispose of cases.

Another similarity between courts and other organized workgroups is their specialized roles, as expressed by the variety of work techniques used when engaging in the tasks before them. The basic work techniques used in the courtroom include adversarial proceedings, negotiations, and unilateral decisions. Adversarial proceedings are only one of the courtroom techniques, which result in dispositional orders. It is important to note when studying court processes that what goes on in the actual courtroom cannot be separated from what goes on in conference rooms, judicial chambers, and the corridors of court houses, where major activity also occurs. In attempting to explain court outcomes for individual

litigants, it is important to consider the complex set of social interactions among members of the courtroom workgroup, which culminate in the production of various types of dispositions. The interactions of the courtroom workgroup play an essential role in the formation of court dispositions.

Finally, in courts, as in other organizations, the degree of stability and familiarity among workers varies. Familiarity and stability are important in the context of the courtroom workgroup, as they impact upon the manner in which the workgroup functions. All courts have courtroom workgroups, and each operates differently, depending upon court type and locale. However, courtroom workgroups with members who are familiar to each other, are better able to negotiate, and are less reliant upon formalities than are those where there is less familiarity. As in other organizations, informal procedures are used to process work in courts. The more familiarity within a workgroup, the less overt conflict exists (Eisenstein & Jacob, 1977).

According to Nardulli (1978), three important factors must be considered in analyzing court proceedings from an

organizational perspective. The first is the analysis of the common interests shared by the major courtroom players. The informal cooperative relations of the major courtroom players, (also referred to as the courtroom workgroup), even if they are adversaries, are molded by their mutual interests. The need to expeditiously dispose of cases is one such common interest that has been identified as remaining constant throughout different jurisdictions.

The second consideration in analyzing court proceedings utilizing the organizational approach is the exogenous factors that impact upon these proceedings. Such elements of the "task environment" include external monitors of the courtroom, police, legislatures, prison authorities, the news media, forces of due process, and appellate court review.

The third and final factor to be considered is the courtroom setting itself. The physical plant and available labor force must be evaluated. The institutional setting is an important consideration for organizational theorists (Nardulli, 1978).

The above three factors are important for assessing how members of the courtroom workgroup utilize the work techniques of adversarial proceedings, negotiations, and unilateral decision-making, which result in the particular dispositions of cases.

Additionally, incentive structures for producing certain types of dispositions exist within the courtroom workgroup. Reform proposals that do not acknowledge the effect of incentives and disincentives in the dispositional process are likely to fail. An important goal of the courtroom workgroup is the need to expeditiously dispose of cases, and those attorneys who work faster receive financial rewards. Specifically, most judges favorably view attorneys who are known to negotiate speedy settlements in family offense cases without the need of a trial. It is the favored attorney who is more likely to receive income-generating assignments from judges than the other attorneys who are likely to advocate more zealously for their client's interests, but whose tactics may result in court delay. An attorney representing a domestic violence victim who negotiates such settlements in family

offense cases, may not be getting the most possible protection for his or her client. Conversely, attorneys with reputations for prolonging cases by demanding trials, are perceived negatively by other members of the courtroom workgroup, and may receive fewer court appointed assignments in these cases.

Courts, as social institutions, reflect and determine dominant social values. It has been argued that only the least severe and least demanding dispositions are given to women who seek relief from domestic violence in family courts. Some feminists argue that this is no accident, claiming that such court leniency towards male batterers is an expression of gender privilege rooted in the structure of the social order (Ferraro, 1995). Cassocks-Andreacchi (1991) theorized that there is a "structural denial" of the plight of battered women by the institutions contained within the criminal justice system. She asserts that effective policies and laws are critical to combat this structural denial. She further argues that the law is a major vehicle for structural change, but that the current workings of the judiciary keep domestic violence victims

powerless. Cassocks-Andreacchi concludes that the inadequate response of the courts reflects that domestic violence is tolerated by the legal system, and condoned by the state (Cassocks-Andreacchi, 1991, p. 233).

Some scholars have argued that women receive disadvantageous treatment by judges when they are litigants in the judicial process. The New York Task Force on Women and the Courts has concluded, for example, that "gender bias against women litigants...is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity" (Task Force Report, 1986, p. 17). The instant study, while not geared toward assessing gender bias, should shed light on the actual practices of family court domestic violence proceedings, and assist in a determination of whether these criticisms are valid. Whether there is institutional discrimination resulting from the very working of the process will be assessed.

It is also noteworthy that a significant percentage of women who seek assistance from family court are members of minority groups. The problems associated with poor

treatment of women, if it exists in the family court setting, must be compounded when a woman is a member of a racial or ethnic minority, and is also from a lower socioeconomic status. The membership in two subordinate groups may result in unique problems and experiences within the court system.

Scholarly Literature: Implementation Studies

It is difficult to design effective public policy, and even more problematic to implement it in a way that is satisfactory to the intended policy beneficiaries. A single government strategy will often involve complex interrelated actions of different levels of government agencies, professional associations, interest groups, and client populations. Even if policy is well drafted, there is no guarantee that it will be well executed, because of the often unpredictable and unavoidable problems of underperformance, delay, and escalating costs. This has become known in the field of public policy as the "implementation problem" (Bardach, 1977). The implementation process, which describes how a particular legislative act is actually placed in effect, is an assembly process of

strategic interaction among numerous special interests, all pursuing their own goals, which might not be compatible with the goals of the policy as written.

According to Bardach, in most situations where new law is implemented, one would ideally expect to find some or all of the following numerous and diverse program elements:

- administrative and financial accountability mechanisms;
- the willing participation of presumptive beneficiaries or clients;
- private providers of goods and services;
- professional service workers;
- clearances by elected officials;
- innovations in the realm of program conception and design;
- sources of funds;
- troubleshooters, who iron out difficulties and assist in coordinating the more routine activities of the assembly process; and
- political support, that sustains and protects the assembly process (Bardach, 1977, p. 36).

The difficulty inherent in the implementation process is that these elements are often in the hands of many different independent parties, or are completely absent. The way these independent parties are able to induce others to work in their interests is through bargaining and the use of persuasion. This results in problems of accountability and control, because individuals involved in the actual implementation of the new policy are using discretion to translate the policy mandate (Anderson, 1990, p. 173).

According to Bardach, the implementation process is "(1) a process of assembling the elements required to produce a program outcome, and (2) the playing of a number of loosely interrelated games whereby these elements are withheld from or delivered to the program assembly process on particular terms" (1977, p. 58). These "games" have an adverse impact on the process of law implementation. Possible adverse effects include the deflection of policy goals stipulated in the mandate, and resistance to explicit and institutionalized efforts to control behavior administratively.

These adverse effects are seemingly operative in the implementation of family court domestic violence reforms. The deflection of goals can occur if the stated goals are ambiguous as written, or if they have been based on a weak consensus. A policy mandate may exist as a result of strong pressure upon the government to "do something" about an urgent social problem. This is clearly the case in the area of domestic violence, where the family courts were historically criticized for not effectively addressing the problem. The policy mandates involved in domestic violence legislative reforms might have been speedily implemented in an attempt to address a burning social issue, although no one is yet quite sure what family court institutional response is appropriate. No one can dispute that the policy mandate to make family courts more responsive to the problems associated with domestic violence was a reaction to a serious social ill. However, the manner in which the New York State legislature chose to address this problem is itself, problematic.

Tokenism and massive resistance to reforms may account for some of the dilemmas associated with program

implementation. Introducing new concepts to an existing staff can create polarization and staff tensions, and a threat to independence, and authority. It should be noted that even when government sponsored reforms involve the delivery of services by professionals such as lawyers and judges, these professionals, just like others, get caught up in many implementation games that are adverse to program performance, in the interests of program clientele (Brewer & deLeon, 1983, p. 283).

Every system allows for some discretion on the part of its participants. While discretion is a legitimate part of public administration, there is no way to gain the virtues of discretion without suffering from the problems associated with it as well. In terms of judicial discretion, what may be seen in this study is that the absence of substantial higher court guidance in the area of domestic violence litigation is a possible contributor to implementation problems. If there is little guidance by the appellate courts, there will be virtually no legal precedents upon which the lower courts can rely, making the

implementation process of the legislative reforms even more murky (Anderson, 1990, p. 77).

Scholarly Literature: Criminal Justice System Policy Reform Studies

Feeley (1983) has conducted extensive research on criminal justice policy reform in general, with a particular focus on reforms implemented regarding courts. Feeley has studied a number of implemented court reforms, including speedy trial rules, sentencing reform, bail reform, and pre-trial diversion, and analyzed why these reform efforts failed. According to Feeley, reforms do not work, in part, because courts are fragmented in organization, operations and goals. They are arenas where a range of competing and conflicting interests collide, and compete for attention. According to Feeley, many reforms fail because there are problems with the implementation and evaluation of criminal justice policy. Routinization and duplication of reforms often occurs before a measure is effectively studied. There is also a tendency to exaggerate and prematurely promote ideas.

Feeley stressed that those whose job it was to implement new laws, often subverted them. For example, in

studying criminal sentencing reform, Feeley noted that judges often subverted new mandatory sentencing laws by dismissing charges, and substituting lesser offenses. Feeley argued that despite the implementation of new laws, actual courtroom practices often remained the same. Feeley found that the systematic tendency to retain the status quo within criminal justice system organizations impeded courtroom reform. Feeley also criticized the absence of appropriate reform evaluations prior to the expansion and duplication of these reforms.

However, not all criminal justice system reform measures result in implementation failures. Federal sentencing guidelines, which went into effect in 1987, provide an example of a successfully implemented reform measure. Although there has been a great deal of controversy and criticism of prescriptive sentencing guidelines, such laws have been associated with an increase in sentencing severity, as well as enhanced uniformity in sentencing, consistent with the guidelines' intent (Tonry, 1987). California's plea bargaining reform measures provide another example of a successfully implemented

criminal justice reform. This reform measure has resulted in longer prison sentences for convicts, as intended (McCoy, 1993).

Literature Summary

This study seeks to analyze the implementation of the new domestic violence law, and its impact on the dispositional outcomes of family court family offense proceedings. In order to assess whether stronger dispositional alternatives have resulted in significant changes in long established court processes, it is necessary to analyze the New York County family court system from different perspectives. Courtroom workgroup theory will assist us in understanding the motivating forces behind the family court processes from an organizational perspective. Implementation theory assists by educating us as to the series of interactions that result in law and policy being enacted, and the extent to which they are truly utilized for positive change. Criminal justice system policy reform studies further assist us in analyzing the new family court domestic violence initiative, by providing tools to assess how

policy reforms are instituted within the criminal justice system.

Chapter Four

Theory and Hypothesis

The Independent Variable: The Toughness of Domestic Violence Law

On June 30, 1994, New York State Governor Mario Cuomo signed into law the Family Protection and Domestic Violence Intervention Act of 1994 [Laws of 1994, ch. 222, 224]. This new law sought to considerably modify family court domestic violence practice. This study seeks to assess the impact of this law on the strength of dispositional orders issued in New York County domestic violence family offense proceedings.

One major change created by this new law was the eradication of the much criticized "72 hour right of election". Prior to the implementation of the new law, battered women seeking court relief for domestic violence incidents were required to choose whether to prosecute in criminal court, or family court, within 72 hours of initiating a case in either court. Under the new law, however, domestic violence cases can be heard simultaneously in both criminal court and family court,

without restrictions.

Another significant change resulting from the new law is that the chief administrator of the courts is required to promulgate court rules to facilitate record sharing between criminal and family courts. In addition, the law established a state wide computerized registry of all orders of protection. This registry contains data on all active orders of protection and related warrants issued in criminal court, matrimonial court, and family court family offense proceedings. The registry provides both law enforcement and the courts with immediate access to information regarding the history, contents, and conditions contained in orders of protection. The registry further maintains data regarding the status of arrest warrants.

The new law also expanded the offenses listed as family offenses to include stalking and criminal contempt offenses. Acts of menacing in the second degree, and harassment in the first and second degrees, were also added to the previously existing family offense definitions. Additionally, the law now prohibits harassment by telephone and mail. Moreover, the new law significantly increased

the potential criminal consequences for violations of family court, criminal court, and supreme court matrimonial orders of protection issued in divorce proceedings. Family offenses under the new law include disorderly conduct, harassment in the first and second degrees, aggravated harassment in the second degree, menacing in the second and third degrees, reckless endangerment, attempted assault, and assaults in the second and third degrees. The new law further provides that a family court judge may issue an order of protection restricting the use of firearms.

Preliminary procedures in family court have also been modified under the new law. If a family court judge finds that there are aggravating circumstances, a warrant can be issued. Furthermore, a judge can issue an order providing for immediate arrest and bail in the family court system. Factors constituting aggravated circumstances include, physical injury to the petitioner, a history of repeated violations of prior orders of protection, the exposure of the family to risk of future physical injury, or other behavior that the judge believes constitutes an immediate and ongoing danger to the household.

The new law also imposes mandatory and presumptive arrest provisions. Police officers are now required to make arrests if there is reasonable cause to believe that a felony, other than fourth degree grand larceny, has been committed against a family member. Police officers are also required to make arrests in cases where an order of protection has been violated. A presumption favoring arrest also exists in misdemeanor family offense cases.

When a petitioner appears in family court seeking an order of protection, he or she can receive an immediate temporary ex-parte order of protection, if good cause is shown. Ex-parte means that the person, against whom the order of protection is issued, is not present in court at the time the application for the order of protection is granted. A temporary order of protection may contain the same provisions as a final order of protection that is issued after a trial. Since the mid 1970s, permissible final dispositional options in family offense proceedings have included, dismissal for failure to prove the allegations of the petition, suspension of judgment for a period not to exceed six months, placing the respondent on

probation for a period up to one year, requiring the respondent to participate in an educational program, and issuing an order of protection which may set forth conditions of behavior to be observed for a period of up to one year.

The order of protection may include a provision for the respondent to stay away from the home, the petitioner, or any child involved.

However, under the 1994 law, judicial options for dispositional orders have been significantly expanded to provide that the respondent may be placed on probation, and required to attend a "batterer's educational program designed to help end violent behavior, which may include referral to drug and alcohol counseling" (Fam. Ct. Act 841(c), 1996). It should be noted that a batterer's educational program is not psychological therapy, rather, it is an educational program intended to make clear to the batterer the unlawfulness and consequences of abusive behavior. The respondent may also be ordered to pay restitution to the petitioner of up to \$10,000.00, and reimburse the petitioner for medical expenses.

Additionally, under the new law, after the court makes a finding that a respondent committed a family offense, an order of protection can now be issued for up to three years, as opposed to the previous one year maximum.

If an order of protection is violated, the family court may: retain the matter to determine the violation issues in a contempt proceeding; retain the matter and treat the allegations as a new family offense petition; or transfer the proceedings to the district attorney for criminal prosecution. Contempt proceedings can now also be held simultaneously in both family court and criminal court, and if a respondent is found in contempt of court for violating an order of protection, he or she can be incarcerated for up to six months.

The Dependent Variable: The Toughness of Family Court
Family Offense Dispositional Orders

The New York State legislature has implemented new legislation, with the goal of strengthening a woman's ability to use the court system to obtain protection from an abusive partner. This study seeks to assess whether the new law has indeed resulted in a significant change in the

strength of the dispositional orders issued in family court family offense proceedings.

Prior to the implementation of the new law, the most common dispositional order issued in a family court family offense proceeding was a standard order of protection with the "usual" terms and conditions. This standard order prohibited the respondent from committing acts constituting a family offense. In most instances, this order was issued as a result of a negotiated settlement where the respondent would, without admitting any wrongdoing, consent to an order of protection being issued for a period of one year, during which time he would refrain from committing acts which constitute a family offense. Sometimes the order would also include a provision that the respondent stay away from the petitioner, move out of the household, or both.

Under the new law, the dispositional penalties for committing a family offense have been expanded. Orders of protection can now last for up to three years, as opposed to one year. Family court judges are now empowered to issue bail orders upon a preliminary request for an order

of protection. Respondents can be ordered to attend batterers' educational programs to specifically address domestic violence. The family court judge can impose an order requiring monetary restitution of up to \$10,000 dollars, and reimbursement to the petitioner for medical expenses. These harsher civil dispositional penalties did not exist prior to the change in law. However, the mere presence of stronger dispositional remedy options does not guarantee that they will indeed be utilized. Other factors contribute to decision making in family court family offense proceedings.

The stronger types of dispositional orders issued in family court family offense cases are those that impact upon the lives of offenders. These include orders excluding respondents from the petitioners' homes, even where the victims are not the leaseholders or owners of the homes, orders requiring respondents to attend batterers' educational programs or substance abuse programs, orders requiring the payment of restitution, orders reimbursing petitioners for medical expenses, and orders lasting for three year periods, as opposed to standard one year orders

of protection that are typically granted in these cases. The most severe of the possible dispositional penalties in these cases is incarceration for up to six months for a willful violation of an existing order of protection.

The weaker dispositional orders include those dismissing the petition, suspending judgment for a period of up to one year, or granting the standard order of protection with the "usual" terms and conditions, which prohibits the respondent from engaging in disorderly conduct, and from assaulting, harassing, menacing or recklessly endangering the petitioner. The standard order of protection is considered to be an order of the least substantive value because it prohibits the respondent from doing what we are technically already prohibited from doing anyway - breaking the law.

Hypothesis

With the passage of the new domestic violence law, as well as the rising recognition of domestic violence as a national epidemic, one might expect a trend towards the granting of stronger orders of protection. However, the hypothesis of this study is that despite the new law, the

dispositional orders issued in these cases remain similar to what they were prior to the implementation of the new domestic violence law. It is suggested that stronger available remedies will remain underutilized. While individual members of the courtroom workgroup might report that they frown upon domestic violence, the dispositional outcomes of these cases are not expected to reflect these attitudes. Instead, it is expected that despite the modification of the law, the courtroom workgroup will continue to process these cases in a manner that promotes mediation of family disputes. This is expected to result in the issuance of protective orders with minimal potential for restraining the behavior of the abuser and protecting the victim. If only the least severe remedies continue to be imposed against offenders, then the legislative reforms will have little substantive impact. It is hypothesized that the dispositional orders issued after the passage of the new law will be similar to the orders that were imposed prior to the legislative reforms, because these reforms did not take into consideration the influence of the courtroom workgroup, and the institutional interests in processing

cases in family court family offense cases.

It is expected that despite the major innovations contained in new domestic violence legislation, the family court response will be to conduct "business as usual", and issue the same standard orders that had been issued prior to the implementation of the new legislation. There are many reasons why dispositional outcomes might remain the same despite major legislative changes. Court reform proposals are often adopted in the absence of empirical knowledge of how courts actually operate. The structure and culture of the existing family court courtroom workgroup, charged with the responsibility for processing domestic violence family offense matters, will, of course, influence the actual implementation of this new law and policy.

The independent variable considered in this study is the existence of new stronger dispositional alternative remedies available to judges who decide the strength of dispositional orders granted in domestic violence family offense matters. Other intervening significant factors are expected to impact upon the strength of dispositional

outcomes in family court domestic violence family offense matters (the dependent variables).

One major factor that is expected to militate against the utilization of the new stronger dispositional remedies available in these cases is the desire of the courtroom workgroup members to expeditiously dispose of family court domestic violence family offense cases. The various family court professionals involved with domestic violence matters have a variety of independent reasons for seeking expeditious disposal of cases. These goals may interfere with the stated goals of the new law. Judges, and their law clerks, seek expeditious disposal of cases because of existing "standards and goals" rules, which reflect time limits within which a judge is expected to dispose of a particular type of case. Attorneys for both the domestic violence victim (petitioner), and the alleged batterer (respondent), are reported to often rely upon swift case disposition as an income generating mechanism. Court officers may also seek to dispose of cases quickly to keep their calendars moving.

Another intervening variable, which may impact upon

the strength of dispositional orders issued in family offense proceedings, is the ideology of the courtroom workgroup members. Some family court judges are described as strongly "anti-domestic violence" and are reported to grant stronger dispositional orders than others.

Additionally, the presence or absence of organized legal groups to represent battered women, and those accused of committing family offenses, may impact upon the strength of dispositional orders granted in these proceedings. Unlike criminal courts, where there are organized government officials prosecuting offenses, as well as an organized defense bar such as the Legal Aid Society, the attorneys who represent most litigants in family court are members of the assigned counsel panel. Members of the New York State assigned counsel panel, or "18-B attorneys", as they are often referred, are private attorneys who regularly represent indigent litigants in family court matters. These attorneys are selected by individual family court judges, or by court officers, to represent litigants. They are independent contractors who represent indigent litigants in these matters. At the conclusion of a case,

they submit a bill to the local government for payment at an established rate of pay. As of 2002, the rate is \$40.00 per hour for work conducted in court, and \$25.00 per hour for out-of-court work. The same attorneys who represent domestic violence victims are also routinely assigned to represent those accused of committing acts of domestic violence in other cases.

Individual litigants have the option of hiring private counsel if they can afford to do so. There are also a few small legal services organizations in New York City that function as interest groups specializing in representing battered women in family court. Sanctuary for Families' Center for Battered Women's Legal Services and Safe Horizons, formerly known as the Victim Services Agency, were observed to represent only a small percentage of family court petitioners during the course of this study. The presence of domestic violence legal specialists to represent petitioners is also expected to impact upon the quality of the dispositional orders granted in these cases.

The goal of this research project is to analyze what actually occurs in New York County family court, in

contrast to what the process is expected to entail. The order of protection process, as conceptualized, was evaluated in light of what truly went on in family court. Specifically analyzed will be the relationship between the institutional practices of the New York County family court, and how orders of protection are issued.

Chapter Five

Research and Methods

Research Design

This study seeks to answer the following five questions.

1. Did a domestic violence law with stronger potential dispositional penalties result in stronger dispositional outcomes in family court family offense cases?

2. Did the mediating practices and culture of the courtroom workgroup result in similar dispositional outcomes regardless of the strength or weakness of the existing domestic violence law?

3. Did the desire of the members of the courtroom workgroup to expeditiously dispose of cases foster retention of the status quo in dispositional orders, regardless of the strength or weakness of the existing domestic violence law?

4. Did judicial ideologies and attributes influence the dispositional outcomes in family offense cases, irrespective of the strength or weakness of existing domestic violence law?

5. Did the presence of specialized legal advocacy groups result in stronger dispositional outcomes than those in cases where there was no such group participation?

In addressing these questions this study had two major format purposes, basic research and summative evaluation. Basic research is designed to contribute to fundamental knowledge and theory in a particular area (Patton, 1990, p. 152). This study is considered basic research, in that its purpose is to contribute to the fundamental courtroom workgroup organizational knowledge and theory. This court study seeks to contribute to the existing understanding of how courts, as social institutions, actually function in the area of domestic violence litigation. This study also falls into the realm of basic research, because it will enhance our knowledge of policy processes of judicial responses to issues of domestic violence.

The present study also can be considered an example of summative evaluation research, a form of inquiry designed to determine social program effectiveness. Summative evaluation research is utilized to determine whether

innovative policies actually fulfill their quest to effect social change (Patton, 1990, p. 155). In enacting the Family Protection and Domestic Violence Intervention Act of 1994, the New York State legislature's purpose was to provide domestic violence victims with increased and ready access to the justice system, and to provide heightened protection by enhancing penalties, and enlarging access to the courts. A summative evaluation makes empirical judgments about the success of these missions.

Ethnographic Methodology

Qualitative ethnographic research methods have been employed in this study. Field research in the family court was the primary method utilized to assess whether the new domestic violence law affected the strength of dispositional orders issued in family offense proceedings. Naturalistic inquiry was conducted to ascertain the manner in which the New York County family court family offense process occurred. Qualitative data was obtained by use of semi-structured specialized interviewing of both major and minor participants in the family offense proceeding process, as well as by the use of field observation. This

study utilized the multi-method approach of qualitative semi-structured interviewing, a naturalistic observation approach, and reviewed the statistical data maintained on family offense proceeding case filings in New York County family court for analysis. As this study is fundamentally a qualitative research project, there are some limitations inherent in the process. However, the use of triangulation assists in achieving a broader perspective, as well as enhancing the study's validity and reliability.

Individual face-to-face interviews were conducted with nine New York County family court judges, sixteen private and agency attorneys, four court attorney judicial assistants, six court officers, and four clerks, regarding their beliefs and perceptions of any changes in practice in the post-reform era, as compared with the practices prior to the implementation of the new law. In addition to the interview process, approximately two hundred and fifty hours of observation of New York County family court family offense proceedings, was conducted in this study. The data obtained from the interviews and observation were content analyzed, to identify patterns of experience and change as

reported by the professional participants in the family court family offense process, as well as those observed by the evaluator.

The responses provided by the judges regarding their own behavior, were compared and contrasted to responses on judicial behavior provided by other key informants, which was also compared and contrasted to direct observations made by the evaluator during the course of this study. The same process was utilized to arrive at the findings confirming or disconfirming the five hypotheses as they related to the other courtroom workgroup members studied. This triangulation of data obtained from a variety of sources, ensured that conclusions could be solidly drawn regarding each of the five hypotheses.

Ethnographic data was also gathered on the environmental and contextual factors involving the family court workgroup practices from these semi-structured personal interviews and observation. The aim was to obtain as much relevant information as possible concerning the courtroom workgroup nature, character, and the consequences of its actions upon the environment and personal inter-

relationships within the workgroup. Clerks, court officers, court attorney judicial assistants, attorneys, and judges were the primary parties studied. They were questioned about their own roles, the roles of others in the courtroom workgroup, their perception of the process which resulted in family court orders of protection before, and after, the new legislation became effective, as well as their beliefs regarding the factors impacting upon the strength of the particular orders issued. They were also asked to rank other courtroom workgroup members regarding their legal ability, trustworthiness, and quality of relationships. Topics addressed during these interviews included case flow, assignment processes, and office systems. (Appendix A)

This study examined the behavior and the influence of the courtroom workgroup on court proceedings, and how its practices affected judicial decisions. The process by which requests for assistance in domestic violence matters in the family court are granted, involves far more than a mere presentation of facts to a judge who issues appropriate judicial relief after a trial on the merits.

Other significant factors are also at play. It is hypothesized that institutional factors mold the actual process of obtaining protection in family court, giving it a shape remotely different from the ideal images of adversary based litigation. These practices may well have hindered battered women who sought court protection from obtaining all that they were entitled to under the circumstances.

One cannot reasonably study courts, and limit oneself solely to an assessment of dispositional outcomes. According to Nardulli, Eisenstein and Flemming (1988), such a narrow look at courts would be the equivalent of studying Congress solely by looking at votes cast regarding certain measures. What is called for here is a process study. A process study examines, monitors, and analyzes, the stages and facets of a program's implementation. A process study involves the empirical identification and measurement of what has occurred. It is important to conduct a process study if one seeks to understand and assess impact findings. Before one can come to conclusions about why something is or is not working, it is important to know

what exactly took place. Without such monitoring, there is danger of engaging in "black box" research, where one is unable to determine which, if any, intervention policies have an effect (Rossi & Freeman, 1993, p. 167).

In addition to the qualitative naturalistic inquiry conducted by way of interviewing and observation, a review of existing statistics maintained by the Office of Court Administration on the family court family offense case filings, provided insight into the processing of these matters.

Participants, Interview Setting, and Process

Purposive judgmental sampling (Maxfield & Babbie, 1995, p. 206) was used to identify subjects who could provide relevant information about the functioning of the courtroom workgroup. All nine judges presiding in the court at the time of the study were interviewed regarding their practices and beliefs regarding family offense cases both before, and after, the implementation of the new law. In addition, fourteen attorneys who regularly represented clients in family offense proceedings were interviewed, as well as two who rarely appeared in such cases. The

attorney interviews included assigned counsel 18-B attorneys, attorneys from Sanctuary for Families Center for Battered Women's Legal Services, attorneys from New Horizons, formerly known as the Victim Services Agency, and private attorneys, all of whom represented clients in New York County family court. All interviews were conducted in the New York County family court building, located at 60 Lafayette Street, New York, New York 10013.

Observation

Field research was also conducted to establish the impact, if any, of the New York County family court courtroom workgroup's functioning and activities upon the strength of dispositional orders issued in family offense proceedings. Through non-participant observation, one can assess the importance of expeditious caseload disposal, as well as other suspected contributing factors to members of the courtroom workgroup. Non-interventionist observation is most appropriate to obtain information about physical and social settings, behavior, and events, as they occur in their natural setting. Observation of the New York County family court courtroom workgroup resulted in detailed

descriptions of activities, actions, interpersonal interactions, and organizational processes that resulted in a variety of outcomes in family offense proceedings.

There are four established roles usually used by field researchers engaged in observation. They are: 1. the complete participant; 2. the participant-as-observer; 3. the observer as participant; and 4. the complete observer (Gold, 1958). The role the evaluator played in conducting this research project can most accurately be described as that of a former participant-as-observer. Prior to, and during this research study, the author was an active member of the New York County family court assigned counsel panel (18-B panel), representing indigent litigants in New York County family court. In preparation for this study, for the three years immediately preceding the completion of the research project, the author deliberately refrained from representing litigants in family offense proceedings, as well as any other proceedings with domestic violence allegations.

Direct observation is one means of gathering data when conducting a process study. It permits the researcher to

witness the connections, correlations, and causes, as they unfold. Personal observation of family court proceedings in general, as well as domestic violence family offense cases in particular, was necessary for this study. Such observation enabled the evaluator to gain a general understanding of the workings of the courthouse community. A full understanding of the courthouse community was critical in providing the link between the environment and case outcomes. Extensive observation of the courthouse community was useful in capturing fundamental aspects of the practices of the New York County family court courtroom workgroup actors, who were tied together by a variety of interdependencies, and who shared a common workplace. Since the evaluator was a familiar fixture in the New York County family court for the ten years immediately preceding this study, the likelihood of negative observer effects that often occurs in ethnographic studies, was minimized.

Interpreting Interviews and Observation

The qualitative inquiry conducted in this study resulted in the collection of data that had to be assessed, analyzed, and interpreted, to identify patterns of

significance. Both case analysis and cross-case analysis were utilized to analyze the interview and observation data in this study (Patton, 1990, p. 376). In addition to presenting descriptions of interviews and observations conducted, observed patterns in responses of the courtroom workgroup members were also identified, and will be presented in future chapters in the context of the five research questions this study seeks to address, so as to provide the analysis of the varying perspectives of the different courtroom workgroup players on the central issues of this study.

The interview guide provides a descriptive analytical framework from which the data collected in this study can be analyzed. The coding process in this study was conducted on the interview guide itself, which was enlarged, and duplicated with enhanced spacing between the questions, to enable the evaluator to record data directly onto the guide. Data labeling, indexing, and classification were also conducted on the interview guide. Evaluator observations were documented on the interview guide as well. (Appendix A) The data collected from the

interviews and observation were organized to describe the processes of communication, decision making, and socialization of those integral to New York County family court family offense functioning. The data collected from interviews and observation was further organized to assess the participants' responses to the new legislative initiatives in family offense proceedings.

By use of naturalistic observation, open-ended interviewing, and an inductive approach using the organizational theory as a substantive framework, this study seeks to contribute to the scholarly understanding of the dynamics of courthouse processes, and to the judicial response to domestic violence. This study seeks to enhance our knowledge regarding the implementation of legal reforms in the area of domestic violence. It will also provide indirect insight into battered women's experiences with the judicial system. It is expected that this study will provide useful information to both policy makers and court practitioners regarding domestic violence litigation.

Chapter Six

Findings: The Role and Impact of Assigned Counsel Attorneys

The Role of Assigned Counsel Attorneys

Article 18-B of the county law, which governs the five counties of New York City, provides for the availability of a panel of attorneys to represent indigent litigants in family court matters. Assigned counsel panel members, often referred to as "18-B attorneys", are experienced in all aspects of the practice of family law. They are independent contractors who provide legal representation to indigent family court litigants, and submit a bill to the City of New York for their services at the completion of a case. Assigned counsel panel attorneys are generally highly experienced attorneys whose qualifications are approved by the Appellate Division Advisory Committee to the Family Court. Assigned counsel panel attorneys, as of 2002, were paid \$40.00 hourly for court appearances, and \$25.00 hourly for trial preparation conducted outside of court appearances.

At the time the research for this study was conducted, there was, (and continues to be at the time of this

writing), a crisis in legal representation for all indigent litigants in New York State family courts. There is a significant shortage of assigned counsel panel attorneys available to represent indigent litigants in family court matters. This attorney shortage is seen by most to be a direct result of the comparatively low rate of compensation such attorneys receive. The New York State assigned counsel panel attorney compensation rate ranks 49th among the 50 states. As New York State's chief administrative judge, Jonathan Lippman, told the New York State legislature on February 25, 2002:

The situation has devolved from dismal to disastrous, with the assigned counsel system virtually hemorrhaging lawyers willing to work for the 1986 rates of \$40 per hour in court and \$25 per hour out of court... we just cannot continue at those rates or there will be no one left on the panels. (Caher, 2002, p.1)

In a recent decision issued in a class-action lawsuit challenging New York City's policy to prosecute domestic violence victims for child neglect, federal court judge

Jack Weinstein went so far as to call the appointed counsel system in family court "largely a sham". The women have rights, he said, but they are left to assert them with lawyers who do not investigate their cases, or even confer with them. Judge Weinstein declared unconstitutional the low payment rates paid to lawyers appointed to poor domestic violence victims facing loss of their children in family court. (Glaberson, 2002, p. B3)

At the time of this study, there are fewer than thirty-five full-time active members of the New York County family court assigned counsel panel. These attorneys are responsible for providing legal representation to indigent litigants appearing in New York County family court, as well as appearing on behalf of indigent children as law guardians in family court matters. In addition to representing litigants in family court domestic violence family offense cases, these attorneys are also responsible for providing legal representation in family court cases involving juvenile delinquency, foster care review proceedings, persons in need of supervision (PINS cases), termination of parental rights proceedings, child abuse and

neglect cases, paternity, child support, and child custody and visitation matters.

Generally, two attorneys are expected to be scheduled daily for family court "intake" in New York County family court. An intake attorney on duty is obligated to accept all new court appointments presented in court on that date. Either the family court judge directly, or the court officer indirectly, assigns cases to the attorney. In practice, however, due to the shortage, there were many court days when no attorneys were actually scheduled for intake.

On occasion, the family court intake judges instructed court officers to find the assigned counsel panel intake person of the day, and assign cases to that person. More often, however, the judges permitted the court officers to determine which attorney to assign to the cases scheduled to be heard in family court. If the intake attorney was engaged in other matters, there was no intake attorney scheduled for that day, or if the judge or court officer did not wish to assign a case to the scheduled intake attorney, another attorney would be selected and assigned

to the matter.

Some family court judges did not wish to have certain assigned counsel panel attorneys appear before them in their courtroom. This was because certain assigned counsel panel attorneys were perceived by some family court judges as being insensitive to certain types of clients and issues. Other family court judges found certain assigned counsel panel attorneys incompetent, or not sufficiently experienced to handle more complex matters. Although all assigned counsel panel attorneys were deemed qualified by the Appellate Division of the State of New York as proficient in family court matters, some attorneys were believed by judges to be ineffective. On occasion, judges were observed to refuse to assign cases to attorneys they described as troublesome. Judges reported that some attorneys routinely caused the court and clients to suffer unnecessary problems and delay. These attorneys may have, instead, simply been acting zealously on behalf of their clients, but they did not further the particular judge's need to expeditiously handle domestic violence family offense matters, and so were not selected for assignments.

It is notable that attorneys are not assigned to assist litigants in drafting family offense petitions, which not only initiate the court proceedings, but also limit the scope of protection litigants receive in court. The usual course of events involved a petitioner appearing in New York County family court seeking an order of protection. A clerk, not an attorney, helped the petitioner complete paperwork. This clerk took a summary of the petitioner's complaint, and drafted the petition, which the petitioner was then required to sign. The petitioner then appeared before the family court intake judge. The petitioner was told to raise his or her right hand and was officially sworn in by the court officer. After the family court intake judge asked a few preliminary questions, he or she decided whether or not to issue a temporary order of protection. If granted, this temporary order of protection remained in effect until the next court date. In most instances, the judges did issue temporary orders of protection, although the specific provisions contained in the order varied. The petitioner was then instructed by personnel in the clerk's office of the

procedures necessary to legally notify the respondent of the court proceedings, and have him served with the necessary court papers. Attorneys were usually not assigned to represent either party until the respondent appeared in court on a future court date to contest the matter. After the respondent appeared in court, the family court judge made a determination of whether counsel was to be appointed to the parties.

Legally significant issues arose in many family court domestic violence family offense cases on the date an attorney was first assigned to represent the petitioner. If the matter was not settled, a hearing was immediately held on that same day to determine if the respondent was to be excluded from the household. Often, however, the assigned counsel panel attorney did not have sufficient time to fully interview the new client before being compelled to participate in a hearing addressing major issues. Indeed, most family court buildings did not even have sufficient facilities to accommodate confidential interviews. At the time of this study, New York County family court had three small interview rooms available to

attorneys. At one time during the course of this study, one of the interview rooms was adjacent to another with a large hole in the adjoining wall. The wall remained in this condition for over one year. Because of this unfortunate situation, many attorney-client contacts occurred in the halls and stairways of the family court building.

After any preliminary hearings or applications were made to the court, the case was then usually adjourned for a settlement conference or for the trial of the matter. It was expected that the assigned counsel panel attorney would meet with his or her client before the trial date, and adequately prepare for the matter by conducting legal research, as well as investigating the issues involved in the particular case.

The respondent was also often assigned an attorney to represent him on the date of his first court appearance. Similar to the situation of a petitioner, critical issues were often addressed during the court appearance when the attorney was initially assigned. In one observed case, for example, a temporary order of protection was issued

excluding the respondent from the home, and the respondent sought immediate permission to be permitted back into the home. After a short hearing on the matter the case was adjourned to another date for further proceedings, with the order of exclusion remaining in effect. The attorney assigned to represent the respondent was expected to meet with him prior to the next court date, and to prepare to defend him against the allegations contained in the family offense petition.

Clearly, having effective assistance of counsel is critical for both the petitioner and respondent at the outset of proceedings. Both the petitioner and respondent require effective counsel to advocate for their interests.

Evaluator's Observations

The evaluator had the opportunity to participate in numerous family court domestic violence family offense matters, both during a one-year tenure as the first staff attorney for Sanctuary for Families Center for Battered Women's Legal Services in 1991, as well as during subsequent participation as an "18-B attorney" member of the assigned counsel panel in New York County family court.

While an assigned counsel "18-B attorney" from 1992 to 1997, the author represented petitioners seeking orders of protection, as well as respondents defending themselves against allegations of domestic violence. Since commencing this project in 1997, however, the evaluator deliberately refrained from accepting assignments in cases involving domestic violence. The evaluator's role intentionally changed from participant in these activities, to former-participant observer. Since commencing this project in 1997, the evaluator remained an active assigned counsel panel attorney in other family court matters, and practiced law in the New York County family court full-time, until July 2001, when the evaluator was appointed as a court-attorney referee in child protective proceedings in Queens County family court.

Part of the "data base" of this study was the evaluator's own experiences in family court. The evaluator had the opportunity to observe well over a thousand domestic violence family offense trials and settlements during ten years as a family court practitioner. Proceedings were observed both before and after the

implementation of the Family Protection and Domestic Violence Intervention Act of 1994.

The quality of representation provided by assigned counsel panel attorneys varied tremendously. There were attorneys who were extremely diligent, interviewed their clients comprehensively, conducted thorough investigation and legal research, subpoenaed relevant medical records and witnesses, and zealously advocated for their clients' interests. There were also other attorneys, however, who seemed uninterested in their clients' cases, rarely spoke to their clients to prepare for court appearances, failed to return their clients' phone calls, and simply appeared in court to "wing it". The findings of this study reflect that the majority of assigned counsel panel attorneys fell somewhere in between these two scenarios. Most assigned counsel panel attorneys scheduled interviews with their clients prior to the trial date, and were prepared for court appearances. Many assigned counsel panel attorneys reported that they would have liked to do more for their clients, but were simply overburdened and overwhelmed with high caseloads and a significant lack of support services.

All assigned counsel panel attorneys knew that significant changes in the domestic violence law and practice had recently been made. Some, however, were unaware of the specific changes in the law, and made no effort to read the law and learn how it might impact on their practice. Some assigned counsel panel attorneys who represented petitioners seeking orders of protection were not familiar with the specific expansion of remedies and options this new law provided. These provisions included the power of the family court to require that the respondent post bail, issue arrest warrants, grant interim orders of child support, grant requests for three-year orders of protection, issue dispositional orders that the respondent enter a batterer's educational program or drug treatment program, provide medical care reimbursement to petitioners, and grant requests for restitution up to \$10,000. Even those who were aware of these changes requested these remedies infrequently. Most cases were processed just as they had been before the major changes in the law in this area. This appeared to be in some part due to ignorance of the existence of enhanced dispositional

alternatives, and in other part due to the tendency for the attorneys to continue to practice law in the same manner as they had done traditionally. Attorneys favored maintaining the status quo in these cases rather than making significant changes in their practices and procedures. Most assigned counsel panel attorneys did not actively seek three-year orders of protection, or any other special orders in these cases.

Most assigned counsel panel attorneys reported that they disliked representing respondents in family offense domestic violence cases. This was not because of a particular distaste for people accused of engaging in acts of domestic violence. As a whole, family court assigned counsel panel attorneys are similar to criminal defense attorneys in that they frequently represent people accused of committing unpleasant acts of child abuse, and also represent juveniles accused of engaging in criminal activity. The reason assigned counsel panel attorneys often shunned representing men accused of engaging in acts of domestic violence, was their belief that there was little they could effectively do to defend against these

cases in the climate at the time, which was believed to favor domestic violence victims.

Ironically, many assigned counsel panel attorneys similarly avoided representing petitioners in these cases as well. Petitioners in family offense proceedings were perceived as being difficult clients. Assigned attorneys often reported that domestic violence victims failed to understand the limits of the law in these cases, and expected the courts to solve all their personal problems. Assigned attorneys reported that petitioners frequently appeared in court accompanied by non-attorney domestic violence advocates. The assigned counsel panel attorneys reported that these advocates often interfered with their ability to fully explain the legal process to their clients. Some assigned counsel panel attorneys complained that they struggled with these advocates to privately interview their own clients, without the advocates being present. This caused attorneys to frequently complain about conflicts regarding confidentiality and attorney-client privilege.

An example of a family court case observed while

conducting this study, typical both in the manner it was conducted, and in its resolution, involved a matter where attorneys were assigned to represent both the petitioner and the respondent. Both attorneys had over fifteen years experience as members of the assigned counsel panel. Both attorneys were highly regarded by other members of the courtroom workgroup. The case observed involved a contested family offense matter where a husband was accused of hitting his wife during a dispute. The husband denied ever touching his wife in a violent manner, and asserted that she commenced the action because she wished to have him out of their apartment. Both attorneys were familiar with the new domestic violence law. None of the new statutory provisions were made use of in this case. Though both attorneys were quite experienced, neither one took a particularly active role in the proceedings. Although, during the hearing, clearly objectionable questions were asked by the attorneys and answered by the witnesses, neither attorney lodged objections. The case concluded with the judge granting the petitioner-wife an order of protection with the "usual" terms and conditions. To the

petitioner's apparent dismay, the judge did not exclude her husband from the household. When her attorney objected to this, the judge reminded him that such an order of exclusion was reserved for the more "serious" cases in family court. The judge suggested the wife go to housing court, or deal with the issue of marital property in the context of a divorce proceeding in supreme court.

The petitioner's attorney made no effort whatsoever to present to the judge arguments regarding the new law and policy reform that had been enacted. Again, this failure was not atypical in cases observed post the changes to the law and policy.

Observation by Court Professionals

Specialized victim advocates, including personnel from Sanctuary for Families Center For Battered Women's Legal Services and Safe Horizons, formerly known as the Victim Services Agency, were interviewed and observed for this project. These domestic violence specialists believed that the overall quality of assigned counsel panel representation was inadequate. They reported that this was due to a combination of factors. First, they asserted that

many assigned counsel panel attorneys simply did not care sufficiently about their clients and cases to zealously advocate for them in family court domestic violence family offense cases. Further, they believed that even those assigned counsel panel attorneys who did care about their cases, were limited in their ability to zealously advocate because of their lack of support services, such as paralegal staff, investigators, and social workers, who were available to agencies specializing in domestic violence cases. These specialized domestic violence attorneys advocated for an increase in the rates paid for assigned counsel panel attorneys, arguing that the caliber of legal representation would inevitably increase if attorneys were adequately paid for their services. Domestic violence legal advocates also believed that assigned counsel panel attorneys were uneducated regarding the new domestic violence law, and felt that this negatively impacted on the level of representation that petitioners received.

Overall, judges believed that the quality of assigned counsel panel attorney representation varied. All judges

admitted to having "favorite" attorneys they preferred to assign to domestic violence cases, and indeed, actively sought them out. Some judges admitted that there were assigned counsel panel attorneys they refused to assign to cases because they feared the quality of representation would be inadequate. Some judges were observed to commend the work of some assigned counsel panel attorneys, and routinely assigned them to domestic violence cases because of the sensitive issues involved. No judge would admit to refusing to assign cases to an attorney based on the attorney's zealous advocacy practices, which could slow down the pace of court proceedings. This practice, was, however reported by assigned counsel panel attorneys, and observed by the evaluator.

The Relationship Between The Strength of Dispositional Alternatives and the Strength of Dispositional Outcomes

The first question this study seeks to answer is whether a law with stronger dispositional penalties resulted in stronger dispositional outcomes in family court family offense cases. As it regards the role of assigned counsel panel attorneys in advocating for dispositional

outcomes when they represented petitioners, the presence of the new law alone, did not result in the attorneys seeking stronger dispositions. Judges have the authority to issue some of the stronger dispositional remedies of their own accord, while others were only granted if the petitioner specifically requested them. Family court judges, of their own accord, have the power to grant pre-trial orders requiring that respondents post bail, issue arrest warrants, make interim child support orders, and mandate that respondents enter into treatment programs. The petitioner must specifically request the other newly available remedies in the petition, including requests for three-year orders of protection, reimbursement for medical expenses, and restitution orders. Assigned counsel panel attorneys, however, rarely requested any of these remedies. This was in some part due to a failure of assigned counsel panel attorneys to recognize that these remedies were available for their clients. Additionally, judges rarely decided to issue remedies stronger than those asked for by the attorneys appearing before them.

Courtroom Workgroup Impact on the Strength of Dispositional Outcomes

The second hypothesis assessed in this study is whether the mediating practices and culture of the courtroom workgroup result in traditional dispositional outcomes, despite the existence of new law, which permits stronger dispositional outcomes. This, in some ways, appeared to be the case.

There were, most certainly, family court courtroom workgroups observed in New York County family court. The courthouse regulars included the judges, clerks, court officers, court attorneys, and the attorneys frequently appearing to represent litigants in family court matters.

Assigned counsel panel 18-B "regular" attorneys were present most days in court. Also part of this workgroup, were the specialized victim attorneys who, although they regularly appeared in family court matters, were deemed by all courthouse "regulars" to be outsiders in the normal process of family court cases.

As it relates to the assigned counsel panel attorneys in family court matters, even those attorneys who were

respected as the most diligent and knowledgeable attorneys in the court, failed to seek stronger dispositional outcomes in most family offense cases. It did not appear that the assigned counsel panel attorneys refrained from seeking stronger dispositions out of fear of alienating the judges, for the most part, but rather, the attorneys reported that they felt that many of the heightened remedies contained in the new law did not apply to the standard family offense cases they handled. For example, when attorneys, as part of the courtroom workgroup, negotiated settlements where respondents consented to orders of protection with the "usual" terms and conditions, but without admission to engaging in wrongdoing, there would be no order mandating the respondent enter a batterer's educational program. By its very nature, negotiated settlements often mediated against the use of the new remedies.

Heavy Caseload Impact on the Strength of Dispositional Outcomes

The third hypothesis addresses the desire of the courtroom workgroup members to expeditiously dispose of

cases and its impact on the actual outcomes of dispositional orders. The New York County family court is a highly burdened courthouse. The number of cases processed has increased tremendously over the years without a relative increase in support personnel. Domestic violence family offense matters represented approximately 9% of the cases handled by the family court. In 1993, 19,765 family offense petitions were filed in New York City. Recent statistics reflect a significant increase in family offense domestic violence petition filings in both New York State, and in New York City. In 1998, there were 59,958 family offense petitions filed statewide, and 27,068 filed in New York City. The number of cases of all types filed in New York City's family courts in 1998 total 231,670. (1998 Report of the Chief Administrative Judge of the Courts of the State of New York)

There is a great deal of pressure imposed upon the family court to process cases expeditiously. Generally, most domestic violence family offense cases are perceived by family court courtroom workgroups as fairly routine. There is a petitioner making allegations, and a respondent

disputing her claims. Most domestic violence family offense trials simply involve the testimony of these two parties. Medical records and police reports, if available, are offered into evidence. It is then up to the judge to determine issues of credibility. If the judge finds the petitioner to be credible, he or she issues a final order of protection. The standard one-year orders of protection most commonly issued before the new legislation, are also those most commonly issued after the new legislation, despite the fact that the legislation significantly expands the possible scope of such orders. The standard order of protection merely prohibits respondents from assaulting, harassing, menacing, or recklessly endangering petitioners, something that they are already prohibited from doing through the criminal law. Orders of protection sometimes contain provisions for respondents to stay away from petitioners. Orders, at times, also exclude the offender from the household. If the judge finds the petitioner to be incredible, or believes that the allegations do not rise to the level of activity necessary to legally sustain a finding that a family offense occurred, the petition is

dismissed.

Depending upon which judge handles the dispute, a trial like this could take as little as five minutes, or take as long as several months to complete. Other factors impact upon the length of time family offense trials take to complete, such as witness and attorney availability, and the number of cases scheduled on the court docket for a particular day.

During the years of observation for this study, most assigned counsel panel attorneys in New York County family court had unusually high caseloads. Most attorneys complained that they had many more cases than they could comfortably handle. This was because there were simply not enough attorneys on the assigned counsel panel available to take new cases, and there was daily pressure in the New York County family court for the assigned counsel panel attorneys to take on even more cases, pressure to which the attorneys regularly succumbed. The attorneys were aware that if the cases weren't assigned to attorneys, the litigants' opportunities for justice, and to be heard, could be significantly delayed. Many assigned counsel

attorneys stated that they felt they had a moral duty to accept additional case assignments, in spite of their already overwhelming caseloads.

Daily, judges and court personnel approached attorneys who were not scheduled for intake, to take on new cases. Attorneys with high caseloads often had many more cases on their daily court calendars than they could possibly substantively address. Often, cases would not go forward, even if the attorneys and litigants were actually ready for trial, and cases would be adjourned for another day. Because the court calendars were so full, the next adjourned date in family offense proceedings was usually six to eight weeks away. In some cases, domestic violence family offense hearings were adjourned for three months or more. Delay potentially placed domestic violence victims at risk of harm. Usually the relief obtained in the initial temporary order of protection remained in effect while the case was pending. If the respondent was not excluded from the home, and the petitioner had left her home because she feared the respondent, she would be compelled to continue to remain out of her home until the

next court date. The reverse was also true. A respondent excluded from his home based upon allegations of domestic violence, often spent months out of his home without having a hearing to defend against the domestic violence allegations. In some instances, temporary orders of protection lasted close to the one-year period that a final standard order of protection lasts. Clearly, the extremely busy nature of the family court practice impacted upon the quality of dispositional orders, and the quality of the legal representation provided to indigent litigants in family court generally. As the chief administrative judge in New York State, Jonathan Lippman, told the New York State legislature on February 25, 2002:

"There is chaos, there are delays, there are adjournments... Family Court judges are walking the halls looking for people to take cases... People have been bending over backwards and doing somersaults to try to cover cases, but it is an impossible situation." (Caher, 2002, p. 1)

A related issue regarding heavy caseloads maintained by assigned counsel panel attorneys, is that they are not

permitted to obtain compensation for work conducted on a case until after the case is completed. Judges and other court personnel expressed the belief that some assigned counsel panel attorneys attempted to end domestic violence family offense cases quickly, to assure steady payment. One member of the assigned counsel panel interviewed even admitted that this was his practice in these cases. This attorney reported taking extra time to counsel his clients to refrain from going to trial, and to instead try to settle the matter quickly. The attorney reported that speedy disposition of these cases served the best interests of his clients. The other assigned counsel panel attorneys denied that the desire for expeditious monetary compensation fueled their practices in these cases. However, some attorneys did admit that they preferred taking these cases as assignments, because family offense proceedings generally ended quicker than other types of cases in family court.

For instance, it was not uncommon for a family court case involving the termination of a parent's parental rights to take well over two years from initial assignment

to end. This was rarely the case in family offense domestic violence cases, because there were usually only two attorneys appearing in these cases, unlike other family court cases where four or more attorneys were routinely involved in the proceedings. This enabled the court officers to more easily gather the limited participants in family offense cases, and to proceed when the judge was available. Additionally, these cases tended to end more quickly than other types of family court proceedings, because the issues were relatively straightforward, and fact-based. The judge simply made credibility assessments on limited allegations. Furthermore, most of these cases were either settled pursuant to negotiation by the attorneys themselves, or were subject to hearings, which took a relatively short period of time to conduct.

According to Nardulli (1978), one of the important factors to be considered in analyzing court proceedings from an organizational perspective is the common interest shared by the major courtroom players. One such interest that has been identified as remaining constant throughout different jurisdictions is the need to expeditiously

dispose of cases. Although their reasons may differ, all members of the courtroom workgroup sought to expeditiously dispose of cases. Indeed, most judges looked favorably upon assigned counsel panel attorneys who disposed of cases quickly, without need of a trial. While attorneys representing domestic violence victims who expeditiously negotiated such settlements in family offense cases may not have been getting the most possible protection for his or her clients, it was the favored attorneys who were more likely to receive future income generating assignments from judges, rather than more zealous attorneys, whose practices resulted in court delay. Conversely, attorneys with reputations for prolonging cases by demanding trials, were perceived negatively by the other members of the courtroom workgroup, and appeared to receive fewer court appointed assignments in these cases.

Summary of Findings: The Impact of Assigned Counsel on the Implementation of New Domestic Violence Law

In summary, assigned counsel panel attorneys faced numerous obstacles to effectively representing clients in family court matters. These obstacles included low rates

of compensation, not being assigned to cases until after the petitions had already been drafted, inability to conduct comprehensive interviews prior to being compelled to take significant action in cases, lack of appropriate interview space, and lack of support services. In addition to these family court institutional deficiencies, other factors impeded the assigned counsel panel attorneys' ability to effectively advocate on behalf of their clients in domestic violence matters. These factors include lack of comprehensive knowledge of the new domestic violence law, the general desire to continue advocating as they had done in the past, and the belief that their actions had no significant impact on the dispositional outcomes in family offense cases. Consequently, these significant impediments affected the ability of assigned counsel panel attorneys to zealously represent their clients' interests in family offense cases.

Chapter Seven

Findings: The Role and Impact of Private Attorneys and Specialized Victim Attorneys

The Role of Private Attorneys

The evaluator's years of observation revealed that private attorneys played a limited, but distinct, role in prosecuting and defending domestic violence family offense matters in New York County family court. Those who could afford to hire an attorney often hired a private practitioner to represent him or her in family court family offense proceedings. The quality of representation provided by these attorneys varied in the same manner as it did for assigned counsel panel attorneys. Some privately retained attorneys used the financial resources available to them to vigorously represent their clients. Others clearly had no knowledge of the law in this area, and were ineffective in representing their clients. Similar to the situation involving assigned counsel panel attorneys, the majority of private practitioners fell somewhere between these two scenarios.

Most New York County family court judges appeared to

have more patience with, and gave preferential treatment to privately retained attorneys when they appeared in court in domestic violence family offense cases. There were both advantages and disadvantages to being an "outsider" member of the family court courtroom workgroup. One of the benefits of being an "outsider" was that privately retained counsel were often treated by the judges, and other court personnel, with more respect than that which was accorded to the courthouse "regulars". Efforts were made to ensure that private counsel did not have to wait long for their cases to be heard. Long-term "regular" family court courtroom workgroup members, however, had the benefit of familiarity with the judges and the court process. The apparent preferential treatment was perhaps a result of the judges and other courtroom personnel recognizing, and appreciating, the fact that the litigant was actually paying for the appearance of the attorney. Courtroom personnel tended to be more polite to privately retained attorneys, and also accommodated their schedules. There was a clear class-based distinction that predominated in this respect. If a litigant was perceived as being able to

afford to hire an attorney, he or she was treated better in family court.

It became clear, however, that some privately retained practitioners were unfamiliar with family court procedures, and in particular, were unaware of the dynamics of the new domestic violence law. One observed family offense hearing illustrated this practice clearly. The parties involved appeared to be financially wealthy. They both retained private counsel. The dispute between the husband and wife appeared to be related to some business enterprise. Both attorneys focused more on business matters than on the allegations of domestic violence. The husband was alleged to have beaten his wife at their place of business. Neither privately retained attorney was well versed in the family court laws regarding domestic violence. They certainly were not familiar with the new law, which permitted one to seek relief both in criminal court, and family court, simultaneously. The judge took an active role in the proceedings, and ultimately protected the rights of the petitioner, by educating her attorney in open court about the law in this area.

Privately retained attorneys who were unfamiliar with the specifics of the domestic violence law, and family court practices, clearly did not produce better results for their clients, than did family court courthouse "regulars", who were often better versed in both the law, and practice.

The Role of Specialized Victim Attorneys

There were also specialized victim attorneys representing some female petitioners in New York County family court family offense proceedings. Of the existing organizations, those specifically studied include Safe Horizons, formerly known as the Victims' Services Agency, Sanctuary for Families Center for Battered Women's Legal Services, and the New York Legal Assistance Program. These organizations all worked in family court on behalf of battered women in custody and visitation matters, child abuse and neglect matters, as well as in domestic violence family offense proceedings. Domestic violence victim attorneys played a limited, but distinct, and important, role in domestic violence family offense proceedings.

These organizations were highly specialized, and trained their staff to deal with issues of domestic

violence. They had access to social service and administrative resources, unavailable to the average assigned counsel panel attorney. They were well versed in the applicable law in the area, including the reforms enacted in 1994, and consistently demonstrated vigorous advocacy for their clients.

These attorneys, for example, were able to draft family offense petitions in a manner that protected the petitioners' rights in these cases to the fullest extent possible. In this way, petitioners represented by these attorneys were off to a better start than were those petitioners without such representation, who were required to rely solely upon the petition clerk, who often failed to include critical information in the drafted family offense petition. This was observed to result in a substantive loss of rights for some petitioners. Even if specialized domestic violence victim attorneys were retained after the petitions were drafted, they routinely sought to amend family offense petitions to conform to the necessary legal standards required to sustain causes of action.

The presence of specialized domestic violence victim

attorneys was limited. Because of funding constraints, the staffing of these organizations was relatively small. They provided intensive services, but represented relatively few petitioners.

Personal observation of the practices of specialized domestic violence victim attorneys revealed that they had expertise in the law of domestic violence. However, this expertise did not result in better dispositions for their clients seeking family court protection, even though they routinely sought stronger dispositional remedies. This is partly because their legal skills varied, in spite of the fact that all domestic violence victim attorneys were experts in domestic violence law. Some domestic violence victim attorneys, for example, were excellent trial attorneys, and adept at negotiating settlements in cases, while others, although knowledgeable, did not display adequate trial and negotiation skills. This worked to the detriment of their clientele.

Most family court judges, and all assigned counsel panel attorneys, freely provided their opinions on the representation offered by these groups, along with

anecdotal references to their experiences trying cases in which these advocates participated. Whether deserved or not, specialized domestic violence victim attorneys had a negative reputation in New York County family court circles. Judges, clerks, court officers, court attorneys, and assigned counsel panel attorneys, generally believed that these advocates were extremists in policy, and in practice. While most family court professionals agreed that domestic violence was an issue that needed to be seriously addressed by family court, most family court personnel reported that these specialized domestic violence victim attorneys went too far in their methods of advocacy. There was a conviction that these groups incorrectly believed that all females who filed family offense petitions were severely battered, and that all male respondents accused of engaging in domestic violence were, in fact, dangerous and brutal batterers.

New York County family court courtroom workgroup members reported that domestic violence victim attorneys often conducted unnecessary motion practice in these cases that delayed court processes. For example, when

specialized victim attorneys were retained after a petition had already been filed, they routinely made a motion before the family court judge to amend the petition to contain new allegations, or sought stronger dispositional outcomes. This was viewed by the courtroom workgroup as unnecessarily creating additional work for all others involved in the system, even though it is clear that these attorneys were seeking to implement the new law and policy enacted by the New York State legislature. The specialized domestic violence victim attorneys defended this practice as a necessary means of protecting their clients' rights. If a petition was not properly drafted, the court could not address all pertinent issues.

Specialized domestic violence victim attorneys were further criticized for conducting trials in cases where settlement was possible without the need for a trial. Specialized domestic violence victim attorneys often refused to settle cases even when respondents offered to consent to an order of protection under the terms and conditions sought by the petitioner. Courtroom personnel viewed this as an unnecessary tactic contributing to court

delays. The specialized domestic violence victim attorneys defended this practice, by asserting that it was necessary to have a legal finding of domestic violence, as opposed to consent by the respondent to an order of protection without admission of wrongdoing. According to these practitioners, a court ruling that the respondent engaged in wrongdoing was necessary to assist the client in possible future matrimonial, or other types of litigation. It is undetermined whether the advocates are correct on this issue, as the success of domestic violence victims in future court proceedings is beyond the scope of this study.

Private Attorneys and Specialized Victim Attorneys: the Relationship Between the Strength of Dispositional Alternatives and the Strength of Dispositional Outcomes

It was the evaluator's informed opinion at the outset of this study that there would be no significant changes in substantive dispositions after the implementation of the new law strengthening the dispositional alternatives in family offense cases. The evaluator's observations of specialized victim attorney success in this regard were mixed, because of their widely varying advocacy skills.

Furthermore, relatively few cases were observed where specialized victim advocates sought enhanced dispositional orders under the new law. In none of the cases observed did the court actually grant enhanced dispositional orders under the new law.

However, from the perspective of specialized attorneys themselves, they reported that there was indeed a significant change in the quality of dispositional orders they obtained since this new law came into effect.

According to a supervising attorney in the family law unit at the New York Legal Assistance Program, in most cases where specialized attorneys requested special dispositions such as three-year orders of protection, and had a good faith basis for seeking such relief, they were successful. However, other remedies, newly available to the courts in domestic violence family offense cases, such as financial restitution, medical care reimbursement, and child support, were not being ordered by the family court judges, even when sought by these practitioners.

It is questionable if the mere presence of a specialized victims attorney in a family court domestic

violence family offense case impacted upon the strength of dispositional orders. In reality, these organizations did have an impact on family court procedures. The primary victim specialists in this area include Sanctuary for Families Center for Battered Women's Legal Service and Safe Horizons, formerly known as the Victim Services Agency, and the New York Legal Assistance Program. The names of these agencies alone alerted the family court, and others, that specialists were involved. One attorney was observed to object in court to a Victim Services Agency attorney placing her appearance on the court record, as it would be considered evidence that her client was indeed a "victim" of domestic violence. While the family court judge overruled this objection, it did suggest the potential impact the mere appearance of attorneys from these organizations had in these matters.

Besides the impact of name recognition on the process of obtaining relief in family court domestic violence family offense cases, domestic violence victim attorneys claimed there were differences between the dispositional outcomes they received, as compared to those reported by

assigned counsel panel attorneys interviewed for this study. Few of the assigned counsel panel attorneys interviewed and observed for this study, reported family court judges issuing three-year orders of protection as a result of contested domestic violence family offense cases. Few of the assigned counsel panel attorneys interviewed and observed, requested any of the other special new provisions contained in the statute. These included orders for financial restitution, reimbursement for medical care, child support, and orders mandating participation in a drug program, or a batterer's educational program. Assigned counsel panel attorneys reported that on the rare occasions when such relief was sought, judges denied the application.

To the contrary, all specialized victim attorneys interviewed for this study reported the ability to obtain three-year orders of protection with relative ease, once there was a good-faith basis for seeking such relief. However, they were unable to calculate how frequently they sought three-year orders of protection. Domestic violence attorneys conceded that New York County family court judges generally refused to grant the more controversial orders

such as probation, financial restitution, or mandated participation in batterer's educational programs.

Summary of Findings: The Impact of Private and Specialized Victim Attorneys on the Implementation of New Domestic Violence Law

The law as amended provided stronger dispositional alternatives to judges in family court domestic violence family offense cases. However, this was significant only to the extent that privately retained attorneys were sufficiently knowledgeable about the law, and willing to seek such relief. While specialized domestic violence victim attorneys were clearly knowledgeable about the law, their actual impact was minimized by their inconsistent trial skills, poor reputation in the family court community, and the relatively small amount of cases they handled.

Chapter Eight

The Role and Impact of the Judge

Judges are perceived by the public to be the most important person in the court. They are responsible for ensuring that the system runs fairly. In contested matters, it is the judge who is the neutral arbiter of the claims made by the opposing litigants. After a full and fair factual hearing on the merits, it is the judge (sometimes in conjunction with a jury), who has the power to make a determination of what decision is just under the circumstances.

The role of the judge in family court matters, where there are no juries, is more varied than simply presiding over trials. The judge becomes an active participant in the domestic violence family offense case soon after the petition is initiated. Once a litigant appears in the family court building seeking an order of protection, he or she fills out forms, and the clerk then drafts a petition to be presented to the family court judge for consideration. If a litigant retains private counsel, or is represented by a specialized domestic violence victim

organization, the attorney usually drafts the petition. On the same day, the litigant-petitioner appears before the family court judge, who reviews the petition, asks the petitioner a few clarifying questions, and then usually issues a temporary order of protection.

This first appearance before a family court judge is critical. The judge makes an initial determination of whether the respondent is to be excluded from the household until the next court date. Under the new family court domestic violence law enacted in 1994, bail, and temporary child support orders, could also be issued at this first ex-parte appearance before the judge. The judge considers the seriousness of the domestic violence allegations, and other factors, such as whether any children are involved in the matter. The family court judge issues what is known as "process", which means that the judge grants whatever temporary relief he or she deems appropriate, and then adjourns the case to another day for the respondent to be officially served with notice of the proceedings, and the date to appear in court. If there are young children in the household, the family court judge often orders an

investigation by child welfare authorities. The family court judge is also responsible for assigning attorneys to represent litigants who cannot afford to hire private counsel to represent them.

During the evaluator's years of observation, many family court judges actively participated in negotiations with the attorneys in these cases to determine if a case could be settled expeditiously without need for a full trial. Other family court judges did not negotiate with attorneys, but rather adjourned cases to a future date for a fact-finding hearing. If a case was settled after negotiation, and no trial was to be held, the terms of the settlement agreement were placed on the record officially. The judge was required to inform the parties of their right to a trial, and to explain that by settling the case, they were giving up their right to a trial on the allegations contained in the petition. This process where the judge explains to the participants the rights of the parties, prior to accepting a settlement of the case, is referred to as "allocution".

The most frequent settlement of domestic violence

family offense cases, involves granting an order of protection upon consent of the respondent, without his having to admit to any actual wrongdoing. Family court judges explain to the litigants that the order of protection granted upon consent has the same effect as an order of protection granted after a trial, and must be obeyed as an official court order. Judges also explain the terms and conditions contained in the specific order of protection that is granted.

If a case is not settled after negotiation, the matter is then scheduled for a fact-finding hearing. In cases where the parties are represented by counsel, a fact-finding hearing consists of the petitioner first presenting her case. Usually, the petitioner takes the witness stand, and her attorney presents her testimony via direct examination. The petitioner is required to establish by testimony, or other competent and relevant evidence, that domestic violence occurred. The respondent's attorney is then given an opportunity to conduct cross-examination, by questioning the petitioner, and challenging her allegations of domestic violence. After this cross-examination, the

petitioner's attorney presents other witnesses, and evidence, if any, to support the claim of domestic violence. Once the petitioner completes her case, the respondent then presents witnesses, and other evidence, if any, to defend against the domestic violence allegations.

If the parties do not have attorneys, the family court judge conducts his or her own inquiry of the allegations by questioning first the petitioner, then the respondent. At this hearing, the judge decides issues of credibility, and either dismisses the petition, or grants an order of protection, with specific terms and conditions.

Article 8 of the Family Court Act, which establishes procedures for domestic violence family offense proceedings, requires that two separate hearings be held. The first hearing is called a fact-finding hearing. The purpose of the fact-finding hearing is to establish whether acts of domestic violence actually occurred. If the court finds that a family offense has occurred, a dispositional hearing is to be held to determine the appropriate order to be issued in the matter. In the overwhelming majority of the cases observed for this study, these two hearings were

consolidated. At the completion of consolidated hearings, family court judges make both factual determinations as to whether acts constituting a family offense have been proven, and dispositional determinations to issue specific court orders.

The Mayor appoints New York City family court judges for ten-year terms of service. At the conclusion of the initial term, family court judges may be re-appointed for additional ten-year terms. The family court judges observed in this study varied considerably in terms of background, ideology, and style of administering court procedures. Despite this, however, there was little actual difference in decision-making, and case outcomes.

Two of the nine family court judges observed in New York County family court, judges A and B, were perceived by members of the New York County family courtroom workgroup, as being aligned with the women petitioners who sought orders of protection. None of the seven remaining judges had a reputation for being aligned with the male respondents accused of domestic violence. Rather, the remaining judges were generally perceived to treat domestic

violence cases seriously, and make fair determinations based upon the individual merits of the cases before them. All family court judges in this study appeared to have changed their attitudes regarding domestic violence since the implementation of the new law.

There has been a noteworthy recent change in New York City family court procedures. Traditionally, each family court judge handled all the different types of cases heard in the family court. New York City family court judges during the latter course of this study, however, began to specialize in the types of cases handled. This specialization resulted in a situation where some of the family court judges ceased to handle domestic violence family offense cases beyond the initial intake process. The possible impact of this change is not evaluated in this study though, because most of the data collected for this study was obtained prior to this significant change.

Covered in this study, however, is a description of the setting, and approach, each of the observed judges took in arriving at domestic violence family offense dispositional outcomes. Each judge's behavior was also

observed to see if it sheds light on the hypotheses considered.

Judge A

Judge A was known as a "no-nonsense", but fair judge. At the time of this study, judge A began to specialize in juvenile delinquency cases. However, judge A was observed to continue to handle domestic violence cases from time to time. Prior to her specialization in juvenile delinquency cases, and prior to conducting this study, the evaluator had the opportunity to litigate domestic violence family offense cases before judge A for approximately five years. The evaluator also observed numerous family offense proceedings in her part over the years. All parties interviewed for this study were familiar with Judge A's courtroom practices, and procedures, in domestic violence family offense cases.

Judge A was one of the two family court judges studied who was perceived by other courtroom personnel as being aligned with women who sought orders of protection. Judge A had a well-deserved reputation for being very tough on men accused of engaging in domestic violence. When there

was a factual dispute, she usually found the petitioner (female) to be credible, and the respondent (male), to lack credibility. She readily issued orders of protection.

When the Family Protection and Domestic Violence Intervention Act of 1994 was implemented, judge A freely found aggravating circumstances in cases, and granted three-year orders of protection. Immediately after the change in law in this area, judge A utilized the new remedies available by issuing arrest warrants, and bail orders, at preliminary stages of cases.

Judge A clearly believed that the courts played an important role in addressing the issue of domestic violence, and used her judicial powers accordingly. While judge A had no trouble accepting negotiated settlements to avoid hearings in these cases, she also did not hesitate to conduct full hearings as well. She gave both sides an opportunity to fully litigate these issues and did not push for settlements. Those interviewed for this study noted that there appeared to be no difference in the case outcomes from cases settled in judge A's courtroom, as opposed to cases where there were full factual hearings on

the merits. In other words, judge A did not appear to punish litigants, or their attorneys, when they decided to have hearings in domestic violence family offense cases.

Judge A was often curt, and expressed little patience for unprepared attorneys. She was also short-tempered with litigants when she believed they were lying. However, unlike other judges observed, she did not engage in "victim blaming", and expressed an understanding of the sociological dimensions of domestic violence. Despite this, she frequently expressed concern, and frustration, when petitioners appeared before her seeking to drop cases involving serious domestic violence allegations.

Judge A freely assigned attorneys to represent both petitioners and respondents in domestic violence family offense cases. Judge A stated that she believed that the court process was expedited if all parties were represented as early in the proceedings as possible. Judge A, like all family court judges, felt the pressure of high caseloads, and sometimes revealed a bad temper when cases moved slowly. However, she treated domestic violence cases quite seriously.

Despite her reputation as being pro-petitioner in domestic violence order of protection cases, for the most part, judge A's decisions and orders turned out to be of the type one would expect from the other family court judges. She was initially noted as being one of the few family court judges in New York County willing to utilize the innovative provisions of the new law. However, these actions occurred immediately after the new law was implemented. As time progressed, she used these provisions substantially less often than she did initially.

Judge A occasionally had her court attorney settle cases, and conduct conferences with attorneys in appropriate cases. Judge A expressed dissatisfaction with the quality of the petitions drafted by the petition room clerks, both in her court rulings, and during the interview process for this study. She asserted that in some cases, she was unable to fashion appropriate relief because the petitions lacked specificity.

Judge A did not appear to favor private attorneys over assigned counsel panel attorneys in these cases. All attorneys reported that they were provided with a fair

opportunity to present their claims in her courtroom.

Judge A did, however, tend to have more patience than other family court judges with specialized victim attorneys such as those who worked for Sanctuary for Families Center for Battered Women's Legal Services and Safe Horizons, formerly known as the Victim Services Agency. Unlike the other judges observed, judge A never criticized the specialized attorneys about their litigation tactics. Judge A reported that she believed that specialized victim attorneys provided a necessary service to the courts, by representing petitioners in difficult cases.

Judge A appeared to give her court officers more power than did other family court judges, and this had consequences for the attorneys, and litigants, appearing before her. The court officers assigned to judge A during this study, for example, always decided which assigned counsel panel attorneys would be assigned to cases in judge A's courtroom. They organized the case scheduling for the day, and presented the cases to the judge at their discretion. If the court officers assigned to judge A were angry with an attorney, or litigant, they directly informed

the attorney, or the litigant, that their case would be the last one heard on that day, and they clearly had the power to make that happen. The court officers assigned to judge A were also observed, on occasion, to be rude to litigants, and attorneys. This was surprising since judge A was observed to have quite a forceful personality. One would have expected her to exert more control over the workers in her courtroom.

Judge A stated that she approved of the changes in the domestic violence law, which expanded the authority of the judges to issue stronger dispositional orders. She was the first to implement these changes by (initially, at least) routinely ordering that bail be set at the initial ex-parte court appearance, and by issuing arrest warrants. At first, she was also observed to grant three-year orders of protection with some frequency. Judge A was also the only judge to routinely hold a separate dispositional hearing after making a finding that a family offense has been committed, rather than consolidating the two hearings. She, unlike the other judges, routinely ordered the probation department to conduct investigations, and to

prepare reports for the court's consideration. Prior to the implementation of the new law, she also considered creative remedies in domestic violence cases.

The first hypothesis considers whether domestic violence laws, with stronger potential dispositional penalties, result in stronger dispositional outcomes in family court family offense cases. As it regards the remedies ordered by judge A, this was somewhat true. Judge A was the first to attempt to utilize the new law, and issued orders accordingly. She was known to make use of the provision for granting three-year orders of protection. She was the first to issue ex-parte bail orders, and arrest warrants, prior to the respondent being notified of the court proceedings. However, she did this immediately after the new law was implemented, and was reported to use these remedies much less frequently since that time. It is also noteworthy that judge A issued creative dispositional orders, requested probation reports, and held separate dispositional hearings, prior to the implementation of the new law. Judge A used her judicial powers to make strong dispositional orders without need of the new law.

The second hypothesis studied, is whether the mediating practices and culture of the courtroom workgroup, result in similar dispositional outcomes regardless of the strength or weakness of the existing domestic violence law. This was also somewhat true as it applies to judge A. The courtroom workgroup in judge A's courtroom consisted of the judge, her court attorney, and the attorneys who regularly appeared before her. Many cases were settled with an agreed upon order of protection with the "usual" terms and conditions issued by judge A. These settlements often came as a result of negotiation between the opposing attorneys, with the assistance of the court attorney, while on other occasions judge A herself conducted settlement conferences with the attorneys. The courtroom workgroup in judge A's courtroom often worked together towards obtaining the common goal of smoothly processing cases. When judge A approved settlements in family offense cases, the orders of protection issued did not include any of the enhanced remedies available under the new law. In cases where judge A made a family offense finding after a contested hearing, judge A, on occasion, issued enhanced dispositional orders

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requiring respondents to enter educational programs for domestic violence offenders.

The third hypothesis is whether the desire of the members of the courtroom workgroup to expeditiously dispose of cases, serves to retain the status quo with respect to the types of dispositional orders issued, regardless of the strength or weakness of the existing domestic violence law. It does not appear that caseload pressures directly impacted on the quality of dispositional orders issued by judge A. All courtroom workgroup members felt the pressure to expeditiously dispose of cases. A focus upon "standards and goals" is the method by which the family court administrators keep judges aware of the expected time within which judges are expected to dispose of cases. Judge A, as well as all of the other observed judges, was noted to be short-tempered with attorneys, and very reluctant to grant requests for adjournments in cases which exceeded "standards and goals" time-frames. Despite this, the rush to dispose of cases did not seem to actually affect the quality of dispositional remedies ordered.

The fourth question studied is whether judicial

ideologies and attributes dictate the dispositional outcomes in domestic violence family offense cases, irrespective of the strength or weakness of existing domestic violence laws. This appeared to be true as it regards judge A. Judge A was by far the judge most willing to reveal her personal opinions regarding the issue of domestic violence to those around her. She clearly expressed intolerance for any sort of verbal, sexual, or physical violence, in intimate relationships. While this may have influenced her credibility assessments of the litigants who appeared before her, judge A, however, by no means granted orders of protection in all cases. She was observed to find some women petitioners mendacious, and opportunistic, in filing petitions for orders of protection, and she did not automatically exclude men from the household after finding that domestic violence occurred. Despite her strongly voiced ideologies and attributes, she was perceived overall as a judge who decided each case on its individual merits.

Despite the fact that judge A was reputed to be harsh to male respondent litigants in cases involving domestic

violence, over the course of time, judge A generally issued the same types of dispositional orders as did the other New York County family court judges. Her traditional disposition in domestic violence family offense cases was a one-year order of protection with the "usual" terms and conditions, which was an order simply prohibiting the respondent from engaging in acts of disorderly conduct, assault, harassment, menacing, or reckless endangerment, against the petitioner. While judge A was ready to utilize the new remedies available at the outset, she soon went back to the traditional practice of granting standard orders of protection. Judge A reported that the overwhelming majority of cases over which she presided, warranted only the standard order of protection, as an appropriate disposition. Her belief that the heightened relief available under the new law was inapplicable to most cases she handled, was certainly an attribute impacting upon the strength of her dispositional orders.

The final hypothesis presented is whether the presence of specialized domestic violence legal advocacy groups resulted in stronger dispositional outcomes, than in cases

where there was no such participation. They did, to a certain extent, as it regards judge A. Specialized legal advocacy groups routinely sought heightened forms of relief permissible under the new law in the petitions they presented to the court. The family offense petitions filed in cases without such specialized help, limited the family court judge's ability to issue orders. Judges are generally only able to grant special relief if it is requested in the petition. According to judge A, specialized victim attorneys drafted better petitions, and presented their cases in a manner that permitted her to grant the stronger dispositional outcomes permitted under the new law. Conversely, the petitions drafted by the petition room clerks rarely contained requests for special relief. Clearly, specialized victim attorneys influenced the remedies issued by judge A.

Judge B

Judge B consistently dealt with domestic violence family offense cases throughout the time frame covered in this study. He declared domestic violence to be his area of interest, and focus of specialization. Judge B was the

second New York County family court judge studied who had a reputation for being aligned with women who sought orders of protection. While he was not thought to be unduly sympathetic towards the women involved in these cases, he was perceived as having a clear bias against male respondents. He was reputed to routinely deny the rights of male respondents, by not assigning attorneys to represent them, and by not allowing the presentation of an adequate defense to the allegations lodged. Those interviewed for this study believed that, for some reason, he wished to gain a reputation for being tough on perpetrators of domestic violence. It is ironic, but true that many of the specialized victim attorneys interviewed for this study reported that they were "turned off" by the way judge B handled these cases. Even though it benefited their clients to appear in front of a judge like this, they found it unacceptable that the judge trampled on the rights of the male litigants.

Section 262 (a) (i) of The Family Court Act provides that both the petitioner, and the respondent, have the right to have effective, competent, counsel appointed to

represent them in domestic violence family offense cases, if they are financially unable to obtain the same. Most family court judges routinely assign counsel to both the petitioner, and to the respondent, after inquiring if they are able to afford to hire attorneys. Judge B, instead, was observed telling the litigants in family offense cases that they had the right to adjourn the proceedings to "go out and hire an attorney". Judge B did not usually inform the litigants of their right to have free legal counsel assigned to represent them if they were indigent. Some litigants were observed asking judge B to assign counsel to represent them in family offense proceedings. The judge was very strict in terms of what he considered sufficient indigence for purposes of assigning counsel in these cases. Basically, judge B found that most working people could indeed afford to hire an attorney. One interviewed assigned counsel attorney reported that he observed judge B tell a respondent who was employed as a Burger King restaurant cashier, that he earned too much money for a free attorney, and needed to hire one.

Judge B was known to, on occasion, use some of the

stronger provisions of the family court domestic violence law, such as bail orders, pre-hearing detention, and warrants, against respondents in these cases. He usually conducted very short hearings in order of protection cases. Family court observers referred to these as "mini-hearings". Judge B often commented that he didn't know why these cases took so long to complete in other family court courtrooms. Judge B's "mini hearings" usually simply involved the judge asking both sides to tell their story. He often interrupted the parties, and in a suggestive way, obtained only the information he wanted. Many litigants, both male, and female, left his courtroom clearly frustrated by the process. Even when attorneys appeared in court representing both parties, judge B conducted these hearings in the same manner. Judge B usually initiated the questioning, and greatly limited the participation of the attorneys.

Judge B appeared to be quick to grant petitioners orders of protection. Assigned counsel panel attorneys, representing domestic violence victims seeking relief in family court, reported that they felt there was no need for

their presence, because judge B acted as the woman's representative.

Many attorneys objected to judge B's brisk style. While he readily gave most petitioners orders of protection, he was also quick to dismiss cases he felt were without merit. In one observed case, judge B dismissed the matter after holding a "mini-hearing". The woman petitioner in this case had no legal representation, and the male respondent had privately retained counsel. In this matter, the woman spoke no English, and relied on a certified court interpreter for assistance. The petitioner testified to many acts of horrendous physical, and sexual violence, inflicted on her by her mate. Judge B's stated reason for dismissing her family offense case, was that she testified about incidents not asserted in her petition. Instead of continuing her temporary order of protection, and adjourning the matter so that she could seek to file an amended petition, or a new petition regarding these incidents, judge B instead informed the woman that she should consult an attorney who could draft an appropriate new petition for her. This appeared to be an unfair

result, and manner in which to proceed. There was an obvious language barrier, which contributed to the woman's failure to understand that her allegations were not properly before the court. In addition, family court is supposed to be "user friendly" to pro-se litigants who appear without benefit of counsel. By dismissing this case under these circumstances, judge B was in no way acting in accordance with his reputation for being favorably inclined towards women petitioners in domestic violence cases.

Judge B has been observed conducting a number of these so-called "mini hearings". In one observed matter, no attorneys were present. After hearing a few comments from the petitioner who was seeking an order of protection, the judge went straight into his cross-examination style of questioning the respondent. The entire process took less than ten minutes. Without an apparent basis, or explanation to the parties, judge B issued a three-year order of protection, one of the stronger new dispositional remedies available in these cases following the enactment of the new law. In another matter where no attorneys were present, judge B heard the testimony of the petitioner

seeking an order of protection. Judge B cut her off in the middle of her testimony, explaining that he had heard enough. Judge B then permitted the respondent only a few minutes to tell his side of the story, before finding him incredible, and issuing a one-year order of protection.

In another case where the male respondent had no attorney, and the female petitioner did, for some reason unknown to this, and to other observers, judge B found the petitioner to be incredible. Judge B dismissed the case, without even permitting the petitioner's attorney to ask any questions of the respondent who had testified. The petitioner's assigned counsel panel attorney was outraged at being prohibited from participating in the proceedings, and vowed to appeal, even though appeals are rarely taken in these cases.

Even when private counsel represented both parties, judge B rarely allotted more than fifteen minutes for the completion of an entire hearing. He guided the questioning process, and ruled based upon his credibility assessments.

The first hypothesis examines whether a domestic violence law, with stronger potential dispositional

penalties, results in stronger dispositional outcomes in family court family offense cases. Similar to the situation with judge A, this hypothesis is somewhat true, as it regards judge B. Judge B reported that he found the new provision for three-year orders of protection appropriate in many cases. He was observed issuing three-year orders of protection. However, judge B rarely utilized any of the other new remedies available such as restitution, and temporary orders of child support, although on a few occasions, judge B was observed to issue temporary orders of support, when asked to do so by privately retained counsel, and specialized victim advocates. In each of these cases, he immediately ordered the attorney to file a traditional petition for child support, to be heard before the family court hearing examiners.

The second question here is whether the mediating practices, and culture, of the courtroom workgroup result in similar dispositional outcomes regardless of the strength or weakness of the existing domestic violence law. As it regards judge B, the apparent answer to this question

is a resounding no. Judge B was the one judge in family court observed to take complete judicial control of his courtroom, and its practices. Judge B was the clear leader in his courtroom. Observation, and reports about judge B, challenged traditional courtroom workgroup theory. The outcomes in judge B's part were dictated solely by his unique manner of dealing with cases. Judge B did not engage in settlement discussions with attorneys. He stated that it was more efficient to simply hold a hearing, and end the matter once and for all. Even when attorneys were interested in settling a case pursuant to an agreement, judge B was observed on many occasions to veto the agreement, however reasonable the agreement might seem, conduct a hearing in the matter, and issue a decision.

The third hypothesis is whether the desire of the members of the courtroom workgroup to expeditiously dispose of cases, maintains the status quo in dispositional orders, regardless of the strength or weakness of the existing domestic violence laws. Judge B was well aware of "standards and goals" time frames, and expressed concern that cases should be disposed of expeditiously. This

concern, however, did not result in maintaining the status quo with respect to the remedies issued in judge B's courtroom. Judge B clearly rushed through hearings, and was known to avoid courtroom delay at all costs. It was apparent, however, that when judge B decided to issue traditional orders of protection, as opposed to the new remedies available, it was a result of his beliefs as to what the appropriate remedy was, rather than a result of pressure to end the case. If judge B believed a case was serious enough to warrant the heaviest sanctions, he imposed them without any lengthy hearings, and was still able to expeditiously dispose of cases.

Expeditious case disposal appeared to be, in general, the most important consideration for judge B. It is noteworthy that in other family court proceedings, such as juvenile delinquency matters, child abuse and neglect cases, and cases seeking to terminate parental rights, judge B rarely made any inquiry into the respondent's financial ability to afford an attorney, and routinely assigned free counsel to litigants. This was in direct contrast to judge B's actions in domestic violence family

offense cases, where he assigned counsel infrequently. Judge B sped all his cases through the court process quickly, and efficiently, although not always fairly. His ability to dispose of cases in this manner appeared to be at the expense of the rights of the litigants who appeared before him. It appeared that judge B assigned attorneys in proceedings other than domestic violence family offense cases, because attorneys expedited, and facilitated, these other types of cases. Judge B apparently believed that attorneys hindered the smooth processing of domestic violence family offense cases.

The fourth hypothesis studied here is whether judicial ideologies, and attributes, dictate the dispositional outcomes in family offense cases, irrespective of the strength or weakness of domestic violence laws. The answer to this issue is yes as it regards judge B. It bears repeating the judge B had a reputation for readily granting orders of protection. Judge B, however, was not believed to have any sincere ideological beliefs regarding issues of domestic violence. He was simply apparently sensitive to the climate of heightened attention to these issues, and

was capitalizing on the situation. Regardless of the strength or weakness of the dispositional orders available, judge B often issued orders of protection similar to that of the other New York County family court judges. Judge B reported that many of the heightened remedies available under the new law, were inapplicable to all but the most serious cases appearing in family court. It was often unclear what basis judge B used to grant orders of protection, or to dismiss petitions, in domestic violence cases. It appears that the outcomes in judge B's courtroom were the sole result of his personal assessment of the merits of the individual cases.

The final hypothesis studied here is whether the presence of specialized legal advocacy groups results in stronger dispositional outcomes, than in cases where there is no group participation. This appeared not to be true as it related to the practices of judge B in these cases. Judge B welcomed the appearance of specialized attorney advocacy groups, such as Sanctuary for Families Center for Battered Women's Legal Services, and Safe Horizons. Judge B facilitated the presence of law student advocates in

family court to assist women in drafting petitions, as well as to accompany them to court. However, because judge B had such a strong judicial manner, and completely controlled the cases that appeared in his courtroom, it is apparent that the mere presence of these organizations did not change case outcomes.

Contrary to judges A and B, the remaining judges studied were not reputed to favor female petitioners over male respondents. The following judges assessed, have all been observed, however, to appear to take family court family offense proceedings more seriously than they did before the implementation of the new law.

Judge C

I had the opportunity to observe judge C conduct numerous family offense proceedings after the implementation of the new domestic violence law. Judge C was one of the judges assigned to specialize in domestic violence family offense proceedings. He, in contrast to judge B, handled these cases by trying to settle them in a "robing" room conference. The robing room was a small office adjacent to the courtroom. The robing room was

where the judge dressed in his or her robe prior to entering the courtroom. Family court conferences were frequently held in the robing room. The usual participants in the robing room conference were the judge and the attorneys only. If there was no settlement of the case after a robing room conference, judge C conducted a full hearing.

Judge C routinely held full, and fair, trials. He allowed attorneys to call as many witnesses as they wished. He gave attorneys his full time, and attention. His judicial demeanor was, however, on occasion characterized by truculence, and temperamentalism. He made faces when he disbelieved a witness. He raised his voice, and used a sharp tone, to attorneys, and to witnesses, if he was displeased with their questions, or their answers.

Many of judge C's family offense domestic violence hearings lasted a number of days. This was in direct contrast to the style of judge B, who held swift "mini-hearings", where judge B himself conducted the majority of the inquiry.

At the end of the testimony, judge C usually ended the

proceedings without conducting a separate dispositional hearing. Judge C usually granted the petitioner a one-year order of protection, with the "usual" terms and conditions. He was rarely observed to exclude a respondent from the petitioner's home. He reported that he only did so when he was convinced there was serious danger involved. He was noted to suspect that requests for exclusion from the household were simply tactics to avoid housing court litigation over marital property.

Judge C did a more thorough financial inquiry than most other judges, before he was willing to provide an assigned counsel panel attorney to represent a litigant. His style differed from judge B, in that he did not hesitate to inform litigants of their right to be represented by an attorney from the assigned counsel panel. However, he was quite strict in making a determination of indigence. He was observed requesting documentation of income, and assets before assigning counsel. In one matter observed, both parties indicated that they could not afford counsel. Judge C refused to assign counsel because they both worked, and each had a gross salary of over \$30,000.00

yearly. They eventually waived the right to be represented by counsel, and represented themselves in the case. The matter was adjourned for trial. On the following court appearance date, the parties, with the assistance of the judge's court attorney, resolved the matter. They agreed to a standard order of protection, issued on consent of the parties, with the "usual" terms, and conditions. Judge C frequently had his court attorney settle these cases. The other judges studied, relied upon their court attorneys to a much lesser extent.

The first hypothesis in this study is whether a domestic violence law, with stronger potential dispositional penalties, results in stronger dispositional outcomes, in family court family offense cases. As it related to judge C, this appeared not to be true, with one common exception. The reality with most of the judges observed was that they all had, on rare occasions, been noted to issue three-year orders of protection. This remedy was not available prior to the implementation of the new law. Judge C indicated that he rarely utilized this remedy because he believed it to be harsh, and only

suitable for the occasional case of "serious" domestic violence that appeared before him.

Judge C also deliberately refrained from utilizing the other newly available remedies under the domestic violence law. For instance, judge C reported that respondents should not be ordered to take batterer's educational programs, or any other forms of treatment, unless they admitted to having a problem. Judge C indicated that without such an admission, he felt it was useless to impose such a remedy. Family court, in his vision, was not meant to be a punitive court. Rather, orders of protection were there to protect women from further violence. He reported that he would never order someone into treatment against their will, because without an admission to having a problem, he believed they would never benefit from treatment.

Judge C also chose not to utilize the child support provisions in the new law. He reported that because a petitioner was able to seek an order of support by filing a petition elsewhere in the same family court building, there was no need for him to become involved in matters of

financial support.

The second hypothesis is whether the mediating practices, and culture, of the courtroom workgroup result in similar dispositional outcomes, regardless of the strength, or weakness, of the existing domestic violence law. The courtroom workgroup, as it was observed in judge C's courtroom, definitely favored maintaining the status quo in these cases, and judge C issued orders accordingly. Judge C was a big fan of robing room settlement conferences. There, he was able to be less formal, and talk "nuts and bolts", to the attorneys. He basically heard arguments from the attorneys in his private robing room, and made preliminary credibility assessments. Usually, he then threatened the respondent's attorney with the possibility of more severe sanctions if the case was actually taken to trial. Judge C's stated goal was not to punish attorneys, and litigants, for taking cases to trial, although he, and most other judges, have been reported to do just that, but rather, to let the respondents know through their attorneys, that he was affected by disturbing testimony of acts of domestic violence. These robing room

conferences usually resulted in a settlement where the parties consented to an order of protection being issued by the judge, without the respondent admitting to actual wrongdoing. This order of protection would contain the "usual" terms and conditions. As previously reported, this was the standard order of protection issued in the overwhelming majority of domestic violence family offense cases, both before, and after, the implementation of the new law. The difference between this order, and one a judge issues after a hearing, is that after a contested hearing, the judge makes a credibility determination, and enters a court finding on the record, that domestic violence occurred. The family court practice of granting an order of protection, without admission to wrongdoing, is similar to the criminal law nolo contendere plea, where guilt is also established, without admission to wrongdoing by the defendant.

The courtroom workgroup was observed to impact upon the dispositional orders in domestic violence family offense cases conducted in judge C's courtroom. Judge C encouraged settlement of most cases with a standard order

of protection being issued, without admission to wrongdoing. The dispositional orders issued after the enactment of the new law, were the same as those issued before. Judge C never ordered any of the new remedies available, such as mandatory attendance at a batterer's educational program, even in cases where evidence of domestic violence was revealed during his robing room conferences. Judge C reported that he approved these settlements without requiring the respondents to engage in treatment, both because he did not believe that treatment would benefit a respondent unless the respondent admitted to having a problem, and also because he believed that there were very few domestic violence programs available to treat respondents. Judge C further reported, that an offer of settlement to a respondent that included a guarantee that the respondent would not be required to enter treatment, served as a tool in the plea bargaining process. According to judge C, when cases are settled on consent, with an order of protection being issued, with no admission to wrongdoing, both parties "win". The petitioner is guaranteed the order of protection. The respondent is not

required to participate in any programs, and can end the court process that day, by simply consenting to the order of protection. Therefore, the courtroom workgroup's method of handling cases in this court part directly impacted on the strength of the dispositional orders issued.

The third hypothesis examines whether the desire of the members of the courtroom workgroup to expeditiously dispose of cases, maintains the status quo of case outcomes, regardless of the relative strengths or weaknesses of existing domestic violence law. This was not true as it regarded judge C. Judge C, like all the other judges in family court, was constantly aware of the "standards and goals" timetable of his cases. This deadline date, by which cases were expected to end, was automatically generated by computer printout on each court appearance date. It served as a constant reminder to the judge of the need to process cases expeditiously. Judge C openly expressed dissatisfaction when his cases lasted beyond standards and goals deadlines. However, judge C was observed to always grant attorneys adjournments in cases where they asserted a need for more time to gain additional

evidence, or needed the cooperation of a particular witness. In those situations, judge C encouraged the attorneys to commence the hearing with the witnesses present, and provided a continuance to another court date for further proceedings.

The pressure to dispose of cases expeditiously was also imposed in a subtle manner. Court dockets were usually extremely crowded. It was rare to have a hearing conducted on the first scheduled hearing date. Many times, the parties and their attorneys waited all day in court, only for the case to be adjourned to another day, because the judge did not have time to address the matter. If any of the attorneys involved were assigned counsel panel members, they usually had many other cases scheduled in other courtrooms in the family court building. This waiting game would often be repeated over several court appearances, spanning a period of months. This alone has been reported to induce parties to either stop appearing in court altogether, or to consider settling the case with the standard agreement to provide an order of protection without admission of guilt. Time pressure, however, did

not appear to impact upon the strength of the orders issued by judge C. His dispositional orders were the same whether he conducted a lengthy hearing, or whether he quickly settled the matter.

The fourth question studied here is whether judicial ideologies, and attributes, dictate the dispositional outcomes in domestic violence family offense proceedings. This is true as it regards judge C. Judge C was reputed to be very concerned with issues of domestic violence occurring in the presence of children. In one domestic violence family offense case observed in judge C's courtroom, the wife accused her husband of beating her in the presence of their young children. When the parties appeared before the judge, but before attorneys were assigned, the wife indicated that she wanted to withdraw her petition against her husband. Judge C would not let her do this. He indicated that he would not permit her to discontinue the matter, since there were serious allegations of domestic violence occurring in the presence of the children. Judge C ordered the child welfare authorities to commence a court ordered investigation

(often referred to as a C.O.I.) of the family situation, and assigned the wife an attorney, without making any inquiry into her finances. As stated previously, it was not judge C's practice to appoint attorneys, without first ascertaining whether the parties were indeed indigent. It was also judge C's practice in cases where there were no children involved, to permit the petitioner to discontinue a case after conducting a limited inquiry to ensure that she was not being forced by the male respondent to drop the proceedings. In this matter, however, judge C specifically told the petitioner's attorney that he was concerned about the allegations, and that if she were willing to drop the case, she might be deemed to be neglectful of her children. Judge C overtly threatened the woman with potential child neglect charges, were she to decide to refuse to proceed with the case against her husband. Judge C also provided the husband with an attorney without making a financial inquiry, which was contrary to his usual practice. At the end of the day, the parties settled the case before judge C with a one-year order of protection, without admission of wrongdoing, which contained the "usual" terms and

conditions. If judge C had not acted on his ideology concerning cases where children were involved, the case would have been dismissed, without an order issued at all.

The New York County family court judges on the bench at the time of this study had various political ideologies, including openly conservative, liberal, and feminist. Despite this, there was significant similarity in the types of orders judges granted in these matters. Judge C was noted to be rather politically conservative, with no apparent biases either for, or against, the women who appeared before him in domestic violence cases. Overall, his decisions appeared to be quite similar to those judges who were perceived as being biased in favor of women petitioners. Additionally, like the other family court judges observed, judge C reported that many of the provisions of the new domestic violence law were unnecessary, and his dispositional orders clearly reflected that belief.

The final hypothesis is whether the presence of specialized legal advocacy groups result in stronger dispositional outcomes. These groups did not appear to

impact on the actual decision-making in judge C's courtroom. Judge C openly criticized attorneys who worked for specialized domestic violence victim agencies. Judge C stated that they "could not see the forest for the trees". He reported that their excessive zeal did their clients a disservice. Judge C has heard many domestic violence cases during his years as a family court judge. He asserted that the one-sidedness of specialized victim attorneys led them to believe that every one of their cases involved serious violence, and that none of their clients were capable of lying. Judge C believed that these attorneys were unwilling to take an individual look at the merits and weaknesses of their individual cases, and instead had a separate political agenda. He further reported that he felt these attorneys lacked credibility.

Judge D

Prior to the implementation of the new domestic violence law, judge D was observed conducting numerous family offense domestic violence proceedings. Soon after the implementation of the new domestic violence law, judge D was selected to specialize in cases of juvenile

delinquency. He continued to handle preliminary matters involving domestic violence cases at the time of this study, but handled few substantive trials in this area after the implementation of the new law.

Judge D had a reputation as being an "easy-going" judge. He was perceived as not being particularly scholarly, but exhibited patience in handling domestic violence cases. He easily granted temporary orders of protection, and was also willing to grant final orders of protection, either on consent of the parties, or after a trial on the merits. He encouraged attorneys to settle cases, but was also willing to permit attorneys to try cases. He did not appear to be biased either for or against women or men who appeared before him. While all judges appeared to take these cases more seriously after the new domestic violence law was implemented, judge D did not express an interest in domestic violence as an issue. Judge D reported that the family courts could have only a limited impact on people's lives and behavior.

The first hypothesis is whether a domestic violence law with stronger dispositional remedies results in

stronger dispositional orders being issued by judges. This did not appear to be true as it regards judge D. Even though judge D only held a few substantive hearings in domestic violence family offense cases after the new law was implemented, he still presided over preliminary proceedings in the intake court part, and at no time did he ever use one of the newly available remedies under the domestic violence law. Judge D, for example, never issued orders of bail, arrest warrants, or temporary child support in these cases. When the parties agreed to settle a case with an order of protection, judge D never ordered the offender into a batterer's educational, or any other program. Judge D issued the same orders after the new law was enacted, that he did prior to the implementation of the new law.

The second hypothesis addresses whether the mediating practices of the family court courtroom workgroup, fosters similar orders and practices despite the changes in the law. This appeared to be true as it regards judge D. Despite the well-publicized changes in the law, judge D, and the other members of the courtroom workgroup, conducted

matters just as they did before the new law was implemented. Judge D held case conferences with attorneys in the hopes of quickly settling cases. During settlement conferences he talked casually with attorneys, and often sought their input in smoothly running his day's calendar. He was observed to encourage respondents' attorneys to have their clients consent to orders of protection with no admission of wrongdoing. Judge D, for example, was observed telling an attorney that consenting to a standard order of protection being issued without admission to wrongdoing was a "good deal" in a particular case, because it did not require anything of significance on the part of the respondent. The attorney apparently agreed with judge D, because minutes later, the parties were brought into the courtroom, and the case was settled as per judge D's recommendation. Judge D told the respondent in that case to just "stay away from her", and you won't have any further court problems.

If a case was not settled on consent of the parties, judge D conducted a hearing, after which he usually sustained the petition, and issued a standard one-year

order of protection with the "usual" terms and conditions. Judge D reported that his orders remained the same despite the changes in the law, in part, because the family court method of settling most cases without need for a trial, and without admission to any wrongdoing, encouraged the continued use of the standard orders of protection.

The third hypothesis in this study focuses upon whether the need to dispose of cases expeditiously impacts upon the strength of the dispositional orders in these cases. The fourth hypothesis assesses whether the strength of dispositional orders was determined by individual ideologies and attributes of a particular judge. It did appear that judge D, like other judges, felt the burden of being overloaded with cases. He often complained about the time it took to dispose of cases, and pushed to complete cases as expeditiously as possible. However, it is unclear whether judge D's orders in these cases remained the same both before, and after, the implementation of the new law because of the need to dispose of cases quickly, or rather, because his own ideologies and attributes regarding issues of domestic violence resulted in standard orders of

protection. He was open about his feelings that law in general was limited in its ability to impact upon the behavior of litigants in private disputes. He was also clear in his belief that the family court could do little to combat domestic violence. Indeed, Judge D reported that he did not believe the new stronger remedies provided in the law were necessary, and did not see a need to change his practices after the new law was implemented. Therefore, it appears that judge D's personal ideologies and attributes are the more probable explanation for the lack of change in his decision-making despite the enhanced remedies newly available in the law.

The final hypothesis examines whether the presence of specialized domestic violence legal advocates result in stronger dispositional orders. Judge D was part of the group of family court professionals who reported that specialized domestic violence advocates were a "pain", and did no more than cause the courts unnecessary trouble, and lengthy delay. There was no apparent difference in judge D's courtroom practices when these advocates were present. Judge D saw nothing special about the advocacy skills of

these legal specialists, and reported that he did not find them to perform any differently than assigned counsel panel attorneys.

Judge E

Judge E's role in New York County family court at the time of this study, was primarily to handle cases involving child neglect and child abuse. Judge E also handled domestic violence cases when they were associated in some fashion with child protective proceedings. This happened quite frequently in family court. Such cases usually involved allegations that a mother neglected her child for "engaging" in domestic violence in the presence of her children. This also happened in the context of cases filed against both a mother and father where the father abused the mother and the children. In these cases, the mother was held legally responsible for not protecting the children, even if she had herself been a victim of domestic violence. Judge E also handled standard domestic violence family offense proceedings in the intake part where cases were initiated.

In her role as an intake judge, judge E readily issued

standard orders of protection on consent of all parties. She also issued temporary orders of protection to women seeking such relief. Judge E granted orders temporarily excluding the respondent from the household if the allegations made by the petitioner were serious, such as those involving physical injury. In cases of child neglect or child abuse based upon domestic violence in the household, judge E was observed to freely grant temporary, as well as permanent orders of protection, on behalf of both the children and their mothers. This occurred even when the fathers were not present in court, and had not been notified of the proceedings. While technically mandated, due process requirements of proper notification of charges to the respondents, and full and fair opportunities for the respondents to be heard in such matters, were not big concerns of judge E.

While judge E readily issued orders of protection, she also made "victim blaming" type remarks regarding women suffering from domestic violence. If a battered woman failed to follow through with the court process, judge E made legal findings that she was neglectful of her

children, because she "allowed" herself to be battered, while having custody of her children. She frequently stated that the mother was an adult, and it was her obligation to protect her children, regardless of the abuse she herself was subjected to.

Judge E rarely conducted evidentiary hearings on the issue of whether an order of protection in a family court child protective proceeding should be granted. She simply issued orders in cases where she felt it appropriate. In the rare cases where assertive advocates demanded hearings, she provided all attorneys who appeared before her with a fair opportunity to present their cases, and to be heard. Judge E asserted, and clearly appeared to believe, that courts played an important role in combating domestic violence. She freely issued orders of protection that she believed worked toward that end.

Judge E did not pressure attorneys to settle cases. She, instead, held trials when necessary and did not punish attorneys who exercised their rights to hearings.

The court officers in this part held a great deal of power. They clearly controlled the calendar consistent

with their relationships, positive or negative, with the attorneys involved. These officers were also very involved with the litigants, and were often observed giving them advice.

The first hypothesis in this study assesses whether stronger domestic violence dispositional alternatives result in stronger actual dispositional orders. Judge E's orders did not appear to be influenced at all by the recent innovations in dispositional alternatives in family offense cases. Judge E was never observed or reported to give any order other than a standard one-year order of protection. Despite cases with widely varied factual allegations, judge E reported when questioned, that none of the cases she heard warranted orders beyond the standard order of protection. Judge E also failed to issue any of the newly available preliminary orders, such as temporary child support, arrest warrants, or bail, after the implementation of the new law.

The second hypothesis assesses whether the mediating practices and culture of the courtroom workgroup result in weaker dispositional orders, regardless of the strength or

weakness of existing domestic violence law. It is unclear if it was the mediating practices of the courtroom workgroup, or judge E's personal preference to maintain the status quo, that resulted in the failure to utilize the innovative dispositions in her court part. It is possible that both factors were at play here. Most orders of protection issued in this court part resulted from the judge granting an order without first holding a hearing. Often the attorneys settled cases themselves, with a standard order of protection without admission to any wrongdoing. When judge E conducted either a full-blown, or a shorter hearing on the issue of child abuse or child neglect, she issued the standard order of protection as a part of the disposition of the child protective proceedings.

The third hypothesis in this study examines whether the goal of expeditious case disposal results in traditional orders of protection being issued, in contrast to utilization of the dispositional remedies newly available under the domestic violence law. It appears that the goal of expeditious case disposal was less of an issue

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for judge E than it was for other judges. Judge E was observed to frequently complain about older cases dragging on too long. However, judge E truly did not appear to be motivated by workload statistics, and "standards and goals" deadlines. She was one of the few New York County family court judges, who routinely worked late to ensure that cases were conducted fully. She did not rush through cases, and gave all attorneys, and litigants, a full opportunity to be heard without interruption. Although she complained about court delay, she did not hesitate to herself adjourn cases for long periods of time.

The fourth hypothesis considers whether judicial ideology and attributes impacts upon the strength of dispositional orders issued. This is true as it regards judge E. In terms of the manner in which she conducts domestic violence proceedings, judge E favors neither men accused of committing acts of domestic violence, nor women who claim to be domestic violence victims. At times, however, judge E has made remarks that appeared to be "victim blaming". This was observed in situations where women appeared in court seeking orders of protection after

having previously withdrawn prior requests for similar relief. This is a frequent occurrence in family court. Judge E also clearly believed that women who "permit" or "allow" domestic abuse to occur in the presence of their children, should be held responsible for neglecting their children's emotional needs. Judge E rarely dismissed an application for an order of protection, and almost always found the petitioner to be credible in her testimony regarding acts of domestic violence. Judge E's personal ideologies and attributes appear to, similar to other judges, affect the dispositional orders imposed in these cases. Judge E's decision not to use the newly available remedies in the domestic violence law stemmed from her belief that they were unnecessary. Judge E stated that the provision for a domestic violence registry was a positive change in the law, but that the other provisions in the law were impractical.

The final hypothesis is whether specialized legal services advocates were able to provide their clients with stronger dispositional outcomes in domestic violence cases. The appearance of specialized victim attorneys did not

provide litigants with an advantage in judge E's court part. While no special advocates were observed appearing before judge E, judge E stated that she provided orders of protection depending upon the individual merits of a case, and not based upon who the lawyers were. Additionally, the specialized victim attorneys interviewed for this study found judge E to be uncooperative in considering stronger alternatives to the standard order of protection.

Judge F

Judge F appeared to be a very unpredictable judge. It was extremely difficult to understand her inconsistent policies and practices. A case would appear before her on one day, and she would rule in a particular manner. The very next day, a case with almost identical facts would appear before her, and her rulings would be the complete opposite of the ruling made the prior day. Judge F, however, appeared to take cases of domestic violence quite seriously. She spent a great deal of time on these matters. During domestic violence trials, she allowed attorneys to conduct complete hearings, and at the conclusion of each witness's testimony, she asked numerous

questions for her own clarification. Nonetheless, as previously stated, her rulings appeared to vary widely in cases with similar facts.

At the time of this study, Judge F specialized in domestic violence issues that arose in the context of child abuse and child neglect cases. She also handled family offense proceedings as a specialist judge immediately after the implementation of the new law. Additionally, judge F issued "process" in cases of domestic violence that came into court when she covered the intake court part. Issuing "process" occurred when a judge assigned to the intake part handled the preliminary requests for orders of protection, and granted temporary orders. Judge F appeared to be particularly concerned about instances of domestic violence that occurred in the presence of children. Judge F routinely ordered the child welfare authorities to conduct investigations in every case of domestic violence where children were reported to reside in the home. Even in situations where domestic violence was not alleged in a child neglect petition, judge F was observed to ask questions to ensure that it was not an issue of concern.

The first hypothesis assesses whether the presence of a stronger domestic violence law results in stronger dispositional orders in these cases. The answer to this question as it regards judge F is no. Judge F, although clearly familiar with the new provisions of the law in this area, did not issue orders other than the standard orders available prior to the implementation of the new law. Judge F stated that it was very rare for a case to warrant the stronger orders newly available.

The second hypothesis questions whether the mediating practices and culture of the courtroom workgroup discourages the application of the new stronger orders. It was not apparent that any courtroom workgroup culture was at all responsible for the way proceedings were held in judge F's court part. In part because of her unpredictability, there was no clear workgroup, as compared to most of the other court parts. Judge F, similar to judge B, appeared at all times to have total control of her courtroom. The influence of any courtroom workgroup, and its mediating practices, did not appear to exist in judge F's court.

The third hypothesis studies whether the desire of the family court courtroom workgroup to quickly dispose of cases impacts on the strength of the dispositional orders issued. Judge F was one of the family court judges observed in New York County to express concern about meeting "standards and goals" expectations. She was often observed to rush attorneys through trial, and to refuse to grant reasonably requested continuances, because she desired to complete cases expeditiously. It did not appear that her concern regarding courtroom delay actually resulted in weaker orders, however. Judge F repeatedly voiced her opinion that many of the new options available were unnecessary, and impractical.

The fourth hypothesis under consideration in this study is whether judicial ideologies and attributes impact on the strength of orders of protection issued, regardless of the strength of law in the area. It is clear that judge F's decision-making was impacted upon by her own particular beliefs about witness credibility, and the seriousness of domestic violence. She appeared to be clearly concerned about the issue of domestic violence. This was

particularly so when such violence was alleged to have occurred in the presence of children. Judge F entered findings of child neglect based upon domestic violence even when the children involved did not directly witness the violence. Despite her concerns, judge F did not believe the new domestic violence laws were necessary, and thus did not implement them. The orders of protection she issued were similar to those issued by other family court judges, and remained the same after the implementation of the new law.

The last hypothesis is whether the presence of specialized victim advocates result in the use of the stronger new dispositional alternatives available. This did not appear to be the case in judge F's part. She was apparently unimpressed with the special domestic violence attorneys. A number of child neglect cases involving domestic violence were observed where specialized victim attorneys represented the mothers in judge F's courtroom. The women involved were accused of child neglect because they were victims of domestic violence occurring in the presence of the children. In none of these cases, did

judge F absolve the women of legal responsibility for the neglect of their children, even though it was their spouses who engaged in the abusive conduct, and even where these women were represented by specialized counsel. Similar to judge E, judge F held such women to the same high standard as it regards protecting their children, regardless of who represented them in court. Domestic violence advocates also reported that judge F failed to utilize any of the newly available remedies in the domestic violence law.

Judge G

Judge G's role in the family court at the time of this study was to handle child protective cases. For over one year after the implementation of the new domestic violence law, judge G was one of the specialists focusing primarily on family offense domestic violence cases. Judge G was observed handling family offense cases both prior to, and after, the implementation of the new domestic violence law in family court.

Judge G was reputed as being "laid back". He was a licensed psychologist, with a doctorate, and appeared to be extremely interested in mental health issues. As a general

practice, judge G tried to settle all cases before him. He was only interested in conducting trials in cases of interest to him. Judge G made great use of his court attorney to conference all matters in the hopes of generating a settlement. His court attorney was reputed to be an extremely sensitive, and knowledgeable person, and acted as an effective mediator of family court disputes. Judge G did not provide litigants with assigned counsel panel attorneys until after the parties first discussed the matter with the court attorney, in the hopes of a speedy settlement. If there was no settlement, judge G usually assigned attorneys to the parties, and held a fact-finding hearing. It was clear to all present that judge G believed that trials in most family offense cases were a waste of time. During the proceedings, in fact, he frequently made faces, rolled his eyes upward, and appeared not to even pay attention. He often asked the attorneys to approach the bench, told them directly, and loud enough for the litigants to hear, that they were wasting his time, and asked the attorneys to speed up the process. He usually did not raise his voice during the proceedings, but his

tone and facial expressions were often intimidating.

The family offense hearings held in judge G's courtroom were neither very short, (like those notoriously conducted by judge B), nor very long (like those conducted by judge C). He did not hold separate dispositional hearings, but like the other judges generally granted standard orders of protection containing the "usual" terms and conditions. Judge G rarely ordered the offender to leave the household, unless it was done upon consent of the respondent. Judge G did not appear to have any biases regarding issues of domestic violence.

The first hypothesis assesses whether the presence of a stronger domestic violence law results in stronger dispositional orders. Judge G was extremely knowledgeable about both family law and mental health issues. However, like most judges observed since the implementation of the new law, he was not observed to do more than issue standard orders in the cases before him. Judge G reported that attorneys rarely sought the relief available under the new law. He asserted that he was not the type of judge to suggest to an attorney what relief the attorney should seek

on behalf of their client.

The second hypothesis questions whether the mediating practices and culture of the courtroom workgroup discourages the application of the new stronger orders of protection. The courtroom workgroup culture clearly existed in judge G's courtroom. The overwhelming majority of cases were settled without a trial, with either the court attorney's assistance, or with the assigned counsel panel attorneys involved agreeing to a standard order of protection.

One manner of settling a case without a hearing was for the petitioner to withdraw the application for an order of protection. This happened with some frequency in judge G's part. Usually, the court attorney met with the litigants, and they reported to her their desire to end the proceedings without an order of protection. When this happened, judge G briefly asked the petitioner if she was being forced, or was threatened to withdraw the case. Once the petitioner indicated that she was withdrawing the case voluntarily, judge G was eager to dismiss the case. Judge G did not make detailed inquiries into the reasons for

requests to withdraw cases.

The most prevalent manner of resolving these cases by settlement in judge G's part, was for the respondent to agree to grant the petitioner a standard order of protection. Again, this occurred after the court attorney met with un-represented parties, and acted as a mediator. This also occurred in many cases where attorneys represented the litigants. Once an agreement was reached, the parties entered the courtroom. The court attorney reported to the judge the details of the settlement. Judge G then granted a standard order of protection after briefly asking the parties about the agreement. Similar to the situation where the petitioner sought to withdraw her application for an order of protection, judge G did not usually conduct a thorough inquiry, but simply signed off on the agreement. Many attorneys reported that they encouraged their clients to settle family offense cases in judge G's part with a consent order of protection, without admission to wrongdoing, because they did not wish to anger judge G by compelling him to conduct hearings. These attorneys reported that the dispositional orders received

after a hearing were the same as those issued upon consent, without admission to wrongdoing. The attorneys reported that judge G routinely adjourned cases for many months if they requested a trial. It was, therefore, better for the litigants to settle cases as early as possible without a hearing.

The third hypothesis is whether the desire of the family court courtroom workgroup to expeditiously dispose of cases impacts on the strength of the dispositional orders issued in these cases. This did not appear to be the case in judge G's courtroom. Judge G was not overtly concerned with "standards and goals" statistics. His desire to resolve cases rather quickly, appeared to stem from his belief that most cases were not sufficiently complex, or worthy of taking up the court's time. He did not appear to be concerned with courtroom delay, and did not hesitate to grant adjournments, particularly when it would likely result in a settlement of the matter. Indeed, when attorneys demanded hearings in judge G's part, judge G would deliberately adjourn cases for months, which certainly prevented the cases from being concluded in a

timely manner.

The fourth hypothesis under consideration in this study is whether judicial ideologies and attributes impact upon the strength of orders of protection issued, regardless of the strength of existing law. It is clear that judge G's decision-making was in fact impacted by his personal ideology and attributes. Judge G stated that he was concerned about issues of domestic violence. However, he appeared uninterested in the parties, and cases that he faced on a daily basis, except when arcane legal or mental health issues were involved. For example, one observed domestic violence case did appear to pique his interest, because one of the parties lived out-of-state, and the case involved complicated jurisdictional issues. Judge G held a long, detailed open-court conference, ordered the parties to conduct legal research into the matter, and to draft, and submit legal memoranda prior to trial.

In his role as judge in child protective proceedings involving allegations of child neglect or abuse, judge G, like other family court judges, readily made findings of child neglect based upon domestic violence in the home.

However, because of his background as a psychologist, he gave great scrutiny to any evidence presented regarding the psychological impact upon the child. This was his practice in all cases where mental health was at issue. Judge G was frequently accused of substituting his own professional judgment as a psychologist, for that of the professionals who testified in cases before him. Nonetheless, judge G generally did not utilize the new stronger available dispositions in family offense proceedings, even when mental health issues were involved, and simply issued the standard orders of protection that were available prior to the implementation of the new law.

The last hypothesis considers whether the presence of specialized domestic violence victim advocates result in the use of the stronger new dispositional alternatives available. Like the other family court judges, judge G reported that he sometimes felt that specialized advocates "overdo it" in their zealous advocacy for their clients. However, he reported that specialized domestic violence advocates might obtain stronger dispositional orders from him under the new law in rare cases involving "serious"

acts of domestic violence, because they were more likely to seek such orders. According to judge G, however, specialized domestic violence victim advocates did not have any advantages before him in the standard family offense cases.

Judge H

Judge H was observed conducting domestic violence family offense proceedings only after the implementation of the new law in this area, because she was transferred to New York County family court from Bronx County family court, after the new law was implemented. Practitioners interviewed for this study, however, reported on the way she conducted family offense proceedings when she sat in Bronx County family court. Judge H was assigned to hear domestic violence family offense cases in New York County family court, and also handled domestic violence issues in the context of child protective proceedings.

Judge H preferred to resolve these, and other cases appearing before her, by settlement between the parties. Her efforts to settle cases occurred in open court. She did not involve her court attorney in the settlement

process, but rather talked to the litigants and the attorneys involved in the matter directly. When a case was unable to be resolved pursuant to settlement, judge H conducted full, and fair hearings, allowing both sides to present evidence. Judge H had a pleasant demeanor with attorneys and litigants. She never raised her voice. She was perceived as being a strict, intelligent judge. She often suspected that women filed false allegations of domestic violence, and was noted to question the petitioner herself to ascertain if there were any holes in her story. She was also noted at times to be insensitive, and was apparently naive regarding the living circumstances of the poor and working class litigants who appeared before her. In one observed case involving a woman who had trouble serving her former spouse with a modification of the petition seeking an order of protection, judge H stated to the woman "why don't you simply leave the court papers with your husband's doorman?" This remark was followed by stunned silence from everyone else in the courtroom. The woman's assigned counsel panel attorney then explained to the judge that the respondent lived in an apartment without

benefit of a doorman.

Like most other family court judges, judge H did not hold separate dispositional hearings, but rather issued dispositional orders at the conclusion of fact-finding trials. She granted standard orders of protection both after a full hearing, as well as after a settlement of the case upon consent of the parties. She did not appear to be biased in favor of either men or women in these proceedings, but did voice skepticism regarding the reasons some women came to family court. She was particularly suspicious when there were simultaneous family offense proceedings in criminal court family court based upon the same incident, which was only permissible under the new law, or when there were other cases existing in family court such as custody matters, or child neglect cases. When she first started hearing domestic violence family offense cases, she was perceived as being strongly pro-women in these cases. She was reputed to regularly, and without apparent basis, temporarily exclude men from their homes, and then adjourn the matters for well over a month. As time passed, she lost this reputation, and was then seen

as even-handed in these cases.

If a litigant was not on public assistance, judge H required documentation to support entitlement to free representation by an assigned counsel panel attorney. This differed from the practice of all judges other than judges B and C. Judge H was sometimes reluctant to assign attorneys in these cases, and similar to judge B, was observed to conduct proceedings involving un-represented litigants without first informing them of their right to counsel.

The first hypothesis assesses whether a domestic violence law with stronger dispositional penalties available results in stronger dispositional outcomes in family court family offense cases. Judge H was quite knowledgeable about the new law. She was observed discussing it with other members of the courtroom workgroup. She admitted that she herself had not often used any of the new remedies. Her proffered reason for this was that the overwhelming majority of cases did not warrant what she described as "extreme" measures, such as three-year orders of protection. She, like most other

judges, required petitioners to file separate petitions if they wished to obtain court ordered child support, although the new law permitted consideration of temporary support orders in the absence of any existing support proceeding. Judge H infrequently utilized the other new potential remedies such as bail orders, arrest warrants, or temporary support orders. Clearly, then, the stronger available remedies did not result in stronger orders being issued in judge H's courtroom.

The second question here is whether the mediating practices and culture of the courtroom workgroup result in similar dispositional outcomes, regardless of the strength or weakness of the existing domestic violence law. Judge H, at times, attempted to settle these cases prior to trial. Most cases that were settled resulted in granting the petitioner an order of protection with no admission of wrongdoing by the respondent. The petitioner obtained a standard order of protection without having to prove her case. When such settlements occurred, the courtroom workgroup was limited to just the judge, when there were no attorneys involved. Judge H did not make use of her court

attorney in settlement discussions, but rather attempted to settle cases herself. When there were assigned counsel panel attorneys present as part of the courtroom workgroup, the tendency was to issue standard orders of protection with the "usual" terms and conditions. Neither judge H, nor the attorneys who participated in settlement conferences conducted by judge H, ever made mention of the new domestic violence remedies as a bargaining tool, but rather, reported that the standard order of protection was the most appropriate disposition in most cases.

The third hypothesis studied is whether the desire of the members of the courtroom workgroup to expeditiously dispose of cases maintains the status quo in dispositional orders regardless of the strength or weakness of the existing domestic violence law. Judge H was very concerned with the issue of family court "standards and goals", and clearly sought to expeditiously dispose of cases. However, this concern did not appear to affect the strength of her dispositional orders. Judge H routinely told the attorneys involved in cases what the "standards and goals" date was, and pushed attorneys to trial, even when they had a valid

need for an adjournment of the matter. Despite judge H's focus on strict time guidelines within which she preferred to dispose of her cases, her actual orders in these cases did not appear to be affected by her desire to clear her calendar quickly.

The fourth hypothesis studied is whether judicial ideologies and attributes dictate the dispositional outcomes in family offense cases, irrespective of the strength or weakness of existing domestic violence law. The answer to this issue as it regards judge H was, as with the other judges, that they did. Judge H readily granted standard orders of protection. She was observed to grant orders of protection in other family court proceedings involving child neglect, and custody and visitation issues, even when no petition had been filed, and no one requested such relief. The order of protection issued in these instances, would usually contain the standard terms and conditions. If the order of protection was issued in a child neglect or abuse proceeding, judge H typically mandated that the order of protection remain in effect until the child's twenty-first birthday, which is a remedy

permitted in child protective proceedings. Judge H believed there was a definite need for such orders in many family court proceedings. The terms and conditions of her family offense orders, however, did not change after the implementation of the new law creating stronger dispositional alternatives. It was her belief, similar to the other judges, that many of the newly available remedies were unnecessary.

The final hypothesis is whether the presence of specialized legal advocacy groups result in stronger dispositional outcomes. This is not the case as it regards judge H. While judge H would usually engage in scholarly legal debates with attorneys who belonged to special advocacy groups, judge H's practices were the same no matter which type of attorney was involved. Like other judges, judge H believed these advocates had one-sided views of domestic violence issues, and she was careful not to give petitioners any preferences merely because of the presence of battered women's advocacy groups.

Judge I

Soon after the implementation of the new domestic violence law, judge I was assigned to the new "model court" part, which was a specialized child protective courtroom. She primarily handled issues of child abuse and child neglect. She dealt with issues of domestic violence in child neglect proceedings, and issued orders of protection in those cases. She also handled domestic violence family offense petitions pursuant to Article 8 of the Family Court Act, but only when she was the intake judge responsible for the initial court appearance of petitioners seeking orders of protection. Judge I was observed handling family offense cases prior to the implementation of the new law, and was also observed handling domestic violence child neglect cases after the new law went into effect.

Judge I expressed a special interest in cases involving domestic violence. Judge I conducted lectures for attorneys, and judges, on the difficulties of handling child neglect cases with issues of domestic violence present. She educated herself about learned helplessness, and battered women's syndrome. She reported that she

struggled to reconcile her understanding of these issues with the existing laws, which held women responsible for the damage that domestic violence did to their children, even when they were themselves domestic violence victims. She was extremely knowledgeable about domestic violence, and its impact upon children and families. She was clearly familiar with the new remedies available under the recent domestic violence law, but reported that she was not able to implement many of these changes herself in light of her limited exposure to these cases.

Judge I routinely assigned attorneys to represent indigent litigants who appeared before her. She reported that she believed that justice was better served if both parties had legal representation. Judge I exhibited impatience with attorneys who were unfamiliar with the substantive and procedural laws involved in the cases before her. Judge I did not use her court attorney to settle domestic violence cases. She encouraged settlement only when attorneys represented all litigants involved. Otherwise, she was quite willing to try these cases.

Judge I exhibited a strong courtroom personality. She

was clearly in charge of her courtroom. She was observed to frequently lose her temper when attorneys were unprepared, or when she believed a testifying witness was lying.

Judge I said she approved of the new domestic violence law, which strengthened dispositional alternatives available in domestic violence cases. She felt the law encouraged judges to take issues of domestic violence more seriously. However, she admitted that she, and other judges, routinely issued the same types of orders as they did prior to the implementation of the new law.

The first hypothesis is whether a domestic violence law with stronger potential dispositional penalties results in stronger dispositional outcomes in family court family offense cases. Regarding judge I this is not the case. Although she stated that she appreciated the remedies newly available to family court judges under the new law, she did not appear to issue orders accordingly. It must be kept in mind, however, that she had only limited exposure to domestic violence cases at the time of this study. However, judge I did not issue any of the stronger

preliminary orders possible under the new law when she covered the intake courtroom.

The second hypothesis studied here is whether the mediating practices and culture of the courtroom workgroup result in similar dispositional outcomes, regardless of the strength or weakness of the existing domestic violence law. Similar to judges B and F, this did not appear to be the case as it applied to judge I. Judge I's strong, and somewhat controlling courtroom personality, precluded others in her courtroom from impacting on the decision-making. Judge I's settlement conferences consisted of her making harsh threats to attorneys, and to litigants, to encourage settlement.

The third hypothesis studies whether the desire of the members of the courtroom workgroup to expeditiously dispose of cases maintains the status quo in dispositional orders, regardless of the strength or weakness of the existing domestic violence law. This question must also be answered in the negative as it relates to judge I. Judge I clearly experienced pressure to dispose of cases expeditiously. Judge I openly stated that she would not adjourn cases

because of "standards and goals" concerns. The pressure to handle cases quickly encouraged settlements, where orders of protection were frequently granted without the offender admitting to any wrongdoing. This was the standard order granted upon consent in these situations, both before, and after, the implementation of the new law. When this standard order was issued after the implementation of the new law, it did not contain any of the remedies newly available. Although the pressure to end cases quickly was apparent, this factor did not appear to impact on the quality of the orders issued.

The fourth question is whether judicial ideologies and attributes dictate the dispositional outcomes in family offense cases, irrespective of the strength or weakness of existing domestic violence laws. It appears that this is true for judge I. Judge I appeared to be genuinely concerned with domestic violence as a social issue, and she openly expressed her antipathy towards men who engaged in acts of domestic violence. After making judicial findings that domestic violence occurred in child protective proceedings, she was observed to lecture offenders. She

expressed intolerance for violence in intimate relationships. Her child protective orders routinely included requirements that offenders engage in counseling to address anger management, and domestic violence. Despite her limited exposure to domestic violence family offense cases, she did handle such cases in the intake part where petitioners had their first appearance before the judge. It was at this critical appearance that the judge had the power under the new law to issue bail orders, arrest warrants, and temporary orders of child support. Judge I was observed not to utilize these new powers. Similar to the other family court judges, her traditional practice in an initial appearance was to grant a temporary order of protection until the time that the respondent was provided official notice of the proceedings against him.

Judge I's standard disposition in a family offense case prior to the implementation of the new stronger domestic violence law, was to provide a one-year order of protection with the "usual" terms and conditions. Considering judge I's practices at the intake stage of domestic violence family offense cases, it is unlikely that

judge I would have chosen to utilize the new remedies available were she to return to handle family offense proceedings beyond the intake process. It appeared from both her comments, and her actions while handling initial family offense proceedings, that she would likely keep her traditional practice of granting standard orders of protection with the "usual" terms and conditions.

The final question is whether the presence of specialized legal advocacy groups result in stronger dispositional outcomes, as compared to cases where there was an absence of such group participation. This did not appear to be the case as it regards judge I. Judge I was observed to treat specialized legal advocacy groups the same as she did assigned counsel panel attorneys, and other privately retained attorneys in these cases. The orders she issued in cases with specialized victim attorneys, and without, were identical.

Summary of Findings: The Impact of Judges on the Implementation of the New Domestic Violence Law

The first hypothesis examines whether the existence of a stronger domestic violence law results in stronger dispositional penalties. None of the judges observed in

this study used any of the newer stronger penalties available with frequency. Even the two judges, who were perceived as overly favoring women petitioners in these matters, rarely utilized these remedies. When the new law was first implemented, judge A was seen to routinely issue arrest warrants, and order bail for respondents. This practice, however, stopped after a few months. Judge A was also noted to occasionally order respondents to engage in batterer's educational programs. Judge B, although reputed to favor women petitioners in family offense cases, rarely used any of the newer dispositional remedies available. The only new dispositional remedy applied by all the New York County family court judges in this study, on occasion, was the three-year order of protection. During the course of this study, the evaluator observed three-year orders of protection issued in fewer than ten cases out of hundreds of family offense proceedings witnessed.

The types of dispositional orders issued by the different judges observed in domestic violence family offense proceedings were remarkably similar. All nine family court judges, in the overwhelming majority of cases

witnessed, issued standard orders of protection with the "usual" terms and conditions. It was unlikely that such an order would exclude a respondent from the household, but this did happen in cases where serious physical violence was established. Judges were never observed by the evaluator to order respondents into batterer's educational programs. Only judge A reported that she, on occasion, ordered respondents to enter batterers' programs. None of the judges reported, or were observed, to order medical care reimbursement. None of the judges reported, or were observed, to order restitution. Only judge A held a separate dispositional hearing to determine the appropriate order in a particular case. Only judge A was observed to, on one occasion, place a respondent on probation. Whether judges held lengthy hearings, or presided over short trials, if judges found petitioners to be credible, which was usually the case, they issued standard orders of protection.

This should not be taken to mean that the implementation of the new domestic violence law had no impact on family court judges. To the contrary, all family

court judges reported a working knowledge of the new law, and a desire to have stronger remedies available for the rare cases where they felt they were warranted.

Furthermore, specialized domestic violence victim advocates, and assigned counsel attorneys, reported that as a result of the new law with stronger penalties available, the judges they appeared before took domestic violence cases much more seriously than they had in the past. While granting enhanced dispositional orders such as three-year orders of protection rarely occurred, as one domestic violence attorney reported "When I seek a three-year order of protection, and have necessary proof of the basis for it, I will get my three-year order of protection."

The second hypothesis considers whether the courtroom workgroup practices, and culture, mediate against the use of the new law. This appeared to be the case as it regarded some of the family court judges. Some courtrooms had a clearly identifiable courtroom workgroup culture where the practices impacted upon the quality of dispositional orders. The attorneys who appeared in the courtrooms of judges A, C, D, and G were observed to be

knowledgeable of the desires of the judge, and most cases were disposed of by the parties agreeing to settle the matter. The manner in which the attorneys and judges processed cases varied from courtroom to courtroom, but all judges tended to have internally consistent courtroom practices. In matters that were settled without a trial, the most common outcome was an agreement by the respondent to consent to a standard order of protection without actually admitting to any actual wrongdoing.

Settlement conferences in courtrooms A, C, D, and G, conducted with, or without, the assistance of judges, or court attorneys, served to work towards the courtroom workgroups' goals of efficiently, and smoothly, processing the courts' calendars. Settlement conferences in courtrooms C and D, in particular, also served to maintain the status quo in the strength of the dispositional orders issued. Judges C and D reported that they deliberately requested that respondents settle cases without admission to wrongdoing, and guaranteed them that no domestic violence treatment would be ordered. These judges actually offered to refrain from using the enhanced dispositional

remedies under the new law as a bargaining tool, in order to achieve their goal of efficiently disposing of cases. The attorneys appearing in judge G's courtroom representing both petitioners, and respondents, reported that it was the common practice to compromise as much as possible to reach settlement of cases, in order to avoid judge G's wrath. Such settlements generally involved a standard order of protection without any of the new enhanced remedies being ordered.

The third hypothesis is whether a need to expeditiously dispose of cases mediated against the use of the newer stronger dispositional remedies available in family court cases. While it was clear from this study that "standards and goals" was an overt concern of most family court judges, the pressure to dispose of cases expeditiously, did not seem to impact upon the dispositional outcomes in these cases. All judges, whether they granted lengthy adjournments in these cases without regard to "standards and goals", conducted lengthy hearings in these cases, held short "mini-hearings", or generally delegated to other members of the courtroom workgroup the

job of disposing of these matters by settlement, all were observed and reported to issue the same standard orders of protection. This is not to say that the time pressures resulting from the large volume of cases did not negatively impact upon the judges, and others. Judges were under considerable pressure to dispose of cases expeditiously. Judges were observed to be short-tempered with members of the courtroom workgroup, and with litigants, and specifically mentioned the time pressures involved with judging these cases as a cause for concern. However, it appeared that the time pressures did not impact on the content of the ultimate orders granted in these cases.

The fourth hypothesis assesses the impact of judicial ideologies and attributes upon the strength of the dispositional orders granted in these cases. Judicial ideologies and attributes clearly dictated the strength of the dispositional orders issued in family offense cases. Despite the judges having different political beliefs, they all, with few exceptions, believed that the newer remedies were only appropriate in the most "extreme" cases of domestic violence. These firmly held beliefs resulted in

their failure to issue orders with the newly available remedies. The judges were observed and reported to generally issue remarkably similar standard orders of protection with the "usual" terms and conditions. While the judges who appeared to take domestic violence most seriously did initially utilize the newer stronger dispositional remedies available, this was only a temporary practice.

The different judicial ideologies and attributes also impacted on how judges treated the parties in contested matters. Judge A, who clearly abhorred domestic violence in intimate relationships, made her beliefs known to all who appeared before her in court. She did, however, provide a fair trial in domestic violence cases. Although she usually issued standard orders of protection after trial, she conducted separate dispositional hearings, and routinely ordered reports from the probation department. She also, on occasion, issued orders that the offender enter, and complete, domestic violence counseling.

Other judges also made their personal views on domestic violence known. This was particularly true of

judges who handled cases where domestic violence occurred in households where young children resided. Judges often openly criticized mothers for failing to protect children from being exposed to domestic violence. Although standard orders of protection were issued in these cases, the judges made clear to those who appeared before them, their ideological beliefs regarding issues of domestic violence.

The fifth, and final hypothesis, examines whether the presence of specialized legal advocacy groups impacts upon the dispositional outcomes in these cases. It appears that the presence of these specialized advocates do make a difference to the relatively small percentage of individuals they represent, as well as contributes to a heightened recognition of domestic violence as a serious matter. All judges reported an awareness of the existence of these specialized advocates. All judges were observed to be more careful, and attentive to domestic violence family offense matters, when specialized advocates appeared. The domestic violence advocates generally sought the enhanced dispositional remedies available under the new law more frequently than the assigned counsel panel

courthouse "regulars". When specialized advocates appeared in family offense domestic violence cases, they were perceived by most as creating an added burden to the others who appeared in these cases. While most professionals in family court were skeptical of the specialized domestic violence attorneys, they were also more careful in how they proceeded, when these attorneys represented petitioners in domestic violence family offense cases.

Despite this clear impact, the truth of the matter is that domestic violence attorneys usually received the same standard orders of protections that other attorneys obtained in these cases. The specialized advocates often provided increased client contact, and specialized social work services, to their clients. However, this did not usually result in enhanced orders under the new domestic violence law. Indeed, judge A was the only judge who reported that specialized victim advocates obtained stronger dispositional orders in cases she heard under the new law.

Table 1

Judicial behavior in relation to hypothesis

Hypothesis 1) strength of law/ dispositional order strength

Hypothesis 2) workgroup/ dispositional order strength

Hypothesis 3) expeditious case disposal/ dispositional order strength

Hypothesis 4) judicial ideology/ dispositional order strength

Hypothesis 5) advocacy group/ dispositional order strength

Legend

Confirmed= C

Somewhat confirmed= S

Disconfirmed= D

Unclear= U

JUDGE	HYPO.1	HYPO.2	HYPO.3	HYPO.4	HYPO.5
A	S	S	D	C	C
B	S	D	D	C	D
C	D	C	D	C	D
D	D	C	U	C	D
E	D	U	D	C	D
F	D	D	D	C	D
G	D	C	D	C	D
H	D	D	D	C	D
I	D	D	D	C	D

Table 2

Summary of outcomes regarding judicial behavior

NUMBER OF JUDGES				
HYPO. #	CONFIRMED	SOMEWHAT	DISCONFIRMED	UNCLEAR
1	0	2	7	0
2	3	1	4	1
3	0	0	8	1
4	9	0	0	0
5	1	0	8	0

Chapter Nine

Findings: The Role and Impact of Secondary Courtroom Workgroup Members

While it was the primary members of the courtroom workgroup (assigned counsel panel attorneys, privately retained attorneys, specialized domestic violence advocates, and judges) who had the greatest impact upon the manner in which justice was dispensed in family court domestic violence family offense proceedings, secondary courtroom workgroup members also impacted these proceedings in significant ways.

When a domestic violence victim seeks an order of protection in New York County family court, a petition clerk is the first court employee he or she encounters. The petition clerk's job is to obtain pertinent information from the applicant seeking court relief, and to draft a petition containing the domestic violence allegations against the respondent.

The uniformed court officer is another secondary workgroup member of great importance in family court family offense domestic violence proceedings. Court officers

often provide litigants with basic information, and answer their questions. The court officer is generally responsible for deciding the order of the day's court calendar. The court officer is also often responsible for choosing the attorneys to be assigned to represent the indigent litigants. They also attend to the more obvious duty of keeping order in the courthouse, and in the courtroom.

The court attorney acts as a law clerk to the family court judge. The court attorney's role in assisting the judge in family court family offense domestic violence cases, varied. While it was the practice of some family court judges to dispense with the services of the court attorney in these cases, other judges had the court attorney conduct conferences with litigants in the hopes of coming to settlements of the proceedings.

The Role and Impact of the Clerk

There are many levels of clerks in the New York State court system. The chief clerk is the highest ranking. That position requires, at minimum, a high school diploma with four years related experience. If one has an

Associates degree, then only three years of related experience is required to be a chief clerk. With a bachelor's degree, one need have only one year of related experience. Chief clerks manage court operations, and are involved in case processing, and staff supervision. Petition room clerks were lower ranked than chief clerks. Although all members of the family court courtroom workgroup referred to the clerks who drafted petitions for family court litigants as "petition room clerks", their official job title was that of court assistant. Applicants for the positions of clerk and court assistant are required to take a New York State court system examination.

Clerks play an important role in family court family offense domestic violence proceedings. For litigants who appear in family court seeking orders of protection without an attorney, it is the clerk who actually drafts the legal documents that contain the allegations lodged against the respondent. When a litigant first appears in New York County family court seeking an order of protection, he or she is directed to the fifth floor, where there is a large window behind which sits two clerks. After a petitioner

waits on line, generally from five minutes to one half hour, a clerk calls the petitioner to the window, and asks the nature of their problem. Basic pedigree information is taken from the applicant, and a computer search is conducted to determine if the applicant has other cases within the New York State court system. The clerk completes appropriate forms, and then conducts a computerized domestic violence registry screening. A computer-generated document is printed which documents the applicant's, and the offender's, history with the domestic violence registry. The petitioner then waits in the waiting area to be interviewed by a court assistant. The wait at this point is longer. Some wait for well over one hour to be interviewed. The court assistant then conducts a full interview with the litigant, and drafts a petition. After the petition is drafted, the litigant reads the petition, and if it is accurate, signs his or her name to the document. The petitioner is then sent to a waiting room outside the intake courtroom, where new cases are first heard. Different judges rotate the responsibility for presiding over the intake courtroom. The wait to see a

judge can last anywhere from one hour, to the entire court day. The petitioner is eventually called into the courtroom, where he or she stands behind a table a few feet from a judge, and is asked by the court officer to raise his or her right hand and to swear or affirm to tell the truth. The judge then asks the petitioner if the allegations contained in the petition are true. The judge, on occasion, asks a few more preliminary questions, and issues an oral decision as to what temporary relief is granted to the petitioner, if any. The petitioner is then directed out of the courtroom to wait for yet another clerk to assist her with instructions on how to have the petition and temporary order of protection, if granted, served upon the accused respondent. This procedure usually takes the entire court day, depending upon the volume of cases presented in court.

Clearly, the role of the clerk who drafts the family offense petition is extremely important. The clerk processes the information provided by the petitioner, drafts a petition containing the allegations, which is then presented to the family court judge. The family court

judge is limited to addressing those issues of domestic violence that are clearly presented in the petition drafted by the clerk. Judges and attorneys interviewed for this study reported that insufficiently drafted petitions had a negative impact on petitioners. Petitioners were often observed to attempt to present evidence regarding incidents of domestic violence that had not been directly raised in the petition. At fact-finding hearings, however, petitioners were precluded from presenting such information to the court. In most cases where this occurred, there was other sufficient evidence of domestic violence, properly alleged in the petition, to permit an order of protection to be granted. However, during the course of this study, three separate cases were observed where petitioners seeking orders of protection had their cases dismissed in circumstances where the petitioner sought to introduce evidence of prior serious incidents of domestic violence. The judges explained on all three occasions that the alleged incidents of domestic violence raised in the petition, were insufficient to justify granting an order of protection because evidence of prior incidents of domestic

violence which was not included in the petition, could not properly be considered by the judge in deciding the case. In one of these situations, the judge advised the petitioner that she should "hire an attorney", who could draft a proper petition for her. This incident is disturbing because petitioners do not directly control what is included in their petitions, instead, they merely tell their stories to the clerks, who then sift through the information provided, and draft the petitions.

Moreover, whether or not some of the recent innovations in dispositional orders are granted can be directly related to the role of the clerk. For instance, a judge is not permitted to grant a three-year order of protection unless the petition alleges aggravating circumstances justifying the heightened remedy. The same is true for other remedies available under the new domestic violence law, such as orders of temporary child support. It is therefore the clerk's responsibility to determine if the facts presented to them include grounds for the innovative remedies available under the new domestic violence law, and, if so, to properly include them in the

petitions they draft.

The clerks interviewed for this study provided similar information regarding their perspectives about domestic violence as a social issue, as well as their beliefs regarding their role in processing applications for orders of protection. All clerks interviewed reported that too many litigants appeared in court seeking orders of protection for inappropriate reasons. The clerks stated that although the public viewed a typical order of protection case as one involving a woman being seriously beaten by a spouse, or a disgruntled boyfriend, the majority of complaints they received involved allegations of verbal abuse, and threats. The clerks personally believed that many of the allegations in the petitions they drafted lacked sufficient seriousness to warrant court intervention. However, the clerks were under an obligation to draft a family offense petition for every litigant who appeared in family court seeking relief. If the petition did not actually provide a cause of action for court relief, it could only be dismissed by judicial action.

The clerks interviewed did not believe that family

courts could really play a substantive role in litigants' lives. As one clerk reported, "an order of protection is just a piece of paper... If someone really wanted to hurt you, or kill you, is a piece of paper really going to stop that?"

Most petition clerks did not feel that they had a significant impact on the granting of orders of protection in family court family offense proceedings. They believed that all they did was write down the information provided to them by the petitioner, and that it was the other courtroom workgroup players in the process, particularly the family court judge, who determined whether an order of protection was granted, and what provisions were to be made in the order. All clerks interviewed reported that their job was uniquely frustrating, in that petitioners often talked to them about all of their problems, much of which had nothing to do with the case at hand. The clerks had a difficult time forcing the petitioners to focus their discussion on the grounds for which they sought protection from the family court. Some clerks admitted to being short-tempered with the petitioners, which could have

discouraged petitioners from pursuing family court relief, while others reported a compassion for their problems, and were softer in their approach. All clerks reported the need to repeatedly explain to the petitioners that much of the information they provided did not constitute a legal cause of action justifying the granting of an order of protection. In these situations, the clerks would focus the petitioners' attention on the allegations that did involve domestic violence.

None of the clerks interviewed reported being aware of any criticism by judges, or other courtroom personnel, regarding the quality of petitions drafted in family court family offense proceedings, while all judges and attorneys interviewed reported concern with the quality of petitions drafted by the petition room clerks. This is because none of the judges or attorneys reported their concerns directly to the petition room clerks, or to their supervisors. All clerks reported that since they were similarly trained, they believed that the petitions drafted were similar in content and quality.

All clerks interviewed reported that they rarely

interviewed petitioners whom they thought were eligible for a three-year order of protection. Occasionally, they interviewed a petitioner with serious injuries, or where there were threats made with firearms, or other weapons, but, for the most part, the cases consisted of standard cases of verbal abuse, or relatively minor incidents of physical violence.

Most clerks reported that the recent modifications to the family court domestic violence law have only changed their work to the extent that there is more paperwork to be conducted. Once they became accustomed to this new work, their jobs once again became routinized.

The importance of the role of the clerk (court assistant) in family court domestic violence family offense matters should not be underestimated. It is the clerk who drafts the petition containing the allegations of domestic violence, and then determines the relief requested by petitioners. This is an extremely critical role in these proceedings. The judge and attorneys are often limited to the allegations contained in the petition. If critical information is not included in the initial petition, the

petitioner is precluded from raising this information during the court proceedings. It is the clerk that details the information that could result in an order of protection containing the new stronger dispositional remedies, such as a three-year order of protection, or temporary child support orders.

It is significant that although the judges, court attorneys, specialized victim attorneys, and assigned counsel panel attorneys interviewed for this study all regarded the clerk as an important player in family court family offense domestic violence proceedings, the clerks interviewed did not see their roles as such. Additionally, the clerks were unaware of any criticism regarding the quality of the petitions drafted in these cases, and the effect this may have on the relief ultimately ordered.

The Role and Impact of the Court Officer

Court officers are responsible for maintaining order and security in court buildings and in courtrooms. Court officers work under the supervision of senior clerks. Senior clerks should not be confused with the court assistant clerks who draft family offense petitions.

Instead, senior clerks work in the courtrooms, assisting judges. Court officers are peace officers. All court officers wear uniforms and carry handcuffs. Many also carry guns. In family court, they execute warrants, and make arrests. All court officers are required to take a state court system examination, and are also required to undergo a psychological evaluation, prior to becoming employed by the court system.

The family offense petitioner's first contact with a court officer is when they "check in" to notify the court officer that they have been sent by the clerk's office to the intake courtroom to have their application for a family offense petition heard by a judge. The court officer takes the petitioner's name, instructs the petitioner to have a seat and wait to be called. Once the petitioner is called into the courtroom, it is usually the court officer who "swears in" the petitioner, by asking her to raise her right hand, and swear to tell the truth. The court officer then instructs the petitioner to state her name for the record. At that point, the judge takes over the questioning of the applicant to determine what, if any,

temporary relief should be granted. After the intake appearance before the judge is completed, the court officer directs the petitioner to another clerk's office, where she receives her court papers, and instructions on proceeding further.

The next contact with the court officer occurs on the "return date", which is the next scheduled court date. The court officers in New York County family court have a varied role. Court officers' duties go well beyond that of simply maintaining order in the courtroom and in the court building. The court officers are usually responsible for deciding the order in which cases are presented in the courtroom. The court officers usually also choose the attorneys to be assigned to represent the litigants in family offense domestic violence matters. In cases where petitioners appear afraid of being in the same waiting area as respondents, court officers direct the petitioners to sit elsewhere. Court officers often advise the petitioners to wait in the Safe Horizons office, or in another part of the court building. Many court officers also provide guidance, support, and advice, to litigants in family

court.

The court officers themselves do not believe they have a significant role in family court domestic violence family offense cases. Similar to petition room clerks, the court officers interviewed felt it is the judge and attorneys who affect outcomes, and that their only role is to keep order in the court, and to ensure that the cases are called in an efficient manner.

The court officers, however, did recognize the power in their role of selecting the attorneys to be assigned to represent litigants. They all noted, though, that this role has shifted significantly in recent years. In the past, the court officers were able to choose attorneys with whom they worked well, and whom they knew worked well with their judges. In more recent times, because of the significant shortage of attorneys available to represent indigents who appear in family court matters, the court officers find themselves having a difficult time being able to find attorneys willing to accept family court assignments. On many occasions, cases are adjourned to another day in order to assign an attorney to one of the

parties. Important rights are infringed due to this delay in obtaining counsel.

The court officers interviewed for this study attributed the shortage of attorneys available to assign in these cases to two factors. The first was the absence of a rate increase for assigned counsel panel attorneys in over sixteen years. Many assigned counsel panel attorneys simply stopped doing this work, and were not replaced. The second reason provided for the flight of attorneys from this practice, is the nature of the cases themselves. Many assigned counsel panel members reported to court officers that they disliked representing litigants in these cases because they felt they had little impact on the outcome of these matters. The attorneys reported to court officers that the judges who handled these cases at the time of this study were predisposed to rule in favor of women petitioners, and discouraged them from aggressively representing male respondents in domestic violence cases. Court officers were observed on numerous occasions, to plead with assigned counsel attorneys to take domestic violence cases, and the attorneys were observed to often

refuse, making comments like "why would I waste my time before that judge. He has already made up his mind, and he treats us like crap". One attorney was observed to say to a court officer, as he declined assignment to an eighty year old male respondent in a domestic violence case, "I'm not going to stand up next to this guy just to give the appearance that due process is being had. The judge doesn't need me to kick this poor guy out onto the streets ... He can screw this guy on his own."

Most court officers interviewed reported that courts did have an important role in assisting victims of domestic violence. On the other hand, similar to the clerks interviewed, many court officers complained of frequent merit-less cases being presented in court. The court officers reported that the more serious cases ended up in criminal court, and that most family court cases involved relatively minor issues of domestic violence.

Some court officers reported that a significant part of their job was to talk to family court litigants, and provide informal advice. They reported that talking in an empathetic manner to litigants (both petitioners and

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respondents), and treating all with dignity, made it easier to maintain order in the courtroom, and the court building. Other court officers took the opposite approach. They resisted any manner of counseling, and spoke in harsh tones to all parties. These court officers made comments like "I'm not a counselor, they'd better find somebody else to talk about their problems to." These court officers felt it was better to keep as much distance as possible from the litigants who appeared in domestic violence family offense proceedings.

In contrast to assigned counsel panel attorneys, all court officers interviewed had some knowledge of the new domestic violence law, and the heightened remedies newly available. Most court officers felt these new laws were unnecessary, and had not significantly changed family court practices. The court officers reported that the judges issued the same standard orders of protection that they had prior to the implementation of the new law.

Assigned counsel panel attorneys generally reported good working relationships with the court officers. The attorneys stated that they relied upon the court officers

to assign them cases, and they generally made a point of being considerate to all court officers, recognizing that if a court officer was angry at them for some reason, their case would certainly be the last one heard that day. One court officer was observed threatening an assigned counsel panel attorney at 10:00 a.m. one morning, stating "Don't bother coming to check back in with me until 6:00 this evening ... I'm going to finish every single case on this calendar before I get to yours." It was unclear what the attorney did to offend the officer in this instance.

Specialized domestic violence attorneys have voiced concerns regarding the apparent insensitivity of some court officers. They reported that women were re-victimized in the court process when they faced court officers who yelled at them, and treated them poorly.

While it is clear that court officers did not have a direct role regarding the dispositional outcomes in family court domestic violence family offense cases, they indeed were indirectly involved in a variety of ways. First, it was the court officer who, in most cases, decided the order in which cases were to be heard in court. It was the court

officer who had personal contact with both the petitioner, and the respondent, in these cases. Most importantly, it was the court officer who was usually responsible for choosing the attorneys to represent both the petitioner, and respondent in these proceedings. A court officer's inability to find an attorney to represent a litigant resulted in delay of the court proceedings for all parties involved. An individual court officer's ability, and relationship with other members of the courtroom workgroup, and the parties, impacted on the experiences of the litigants who appeared in family court in these cases, as well as on the entire court process.

The Role and Impact of the Court Attorney

Court attorneys in family court, also known as "law assistants", work in confidential capacities, assisting the judges to process cases. The court attorney is responsible for analyzing and researching legal issues at the request of the judge to whom they are assigned. They are also responsible for performing other related duties under the supervision of judges. Court attorneys are law school graduates, and must be admitted to the New York State Bar

within eighteen months of appointment to the position.

Some court attorneys assist family court judges by holding case conferences with the parties involved, in the hopes of settling the disputes on consent, without need of a trial. If the court attorney works out an agreement with the parties, he or she drafts a proposed order, reviews it with the parties and attorneys, and submits it to the judge for consideration. The parties then appear before the judge, who ascertains if the proposal is indeed their understanding of the agreement. The judge explains the terms, conditions, and obligations of each party subject to the order, and the clerk officially enters the contents of the order into his or her computer, and issues a final copy of the order of protection. This order of protection, granted upon consent of the parties, has the same force and effect of an order of protection issued after a trial.

The role of a court attorney was, at times, quite significant. This was particularly true in situations where the court attorney conducted case conferences with litigants who were not represented by attorneys. The court attorney, as an agent of the judge, was often perceived by

the litigants to be as powerful as the judge, and either of the litigants might be convinced to settle the case through the court attorney's efforts.

Court attorneys, like other members of the courtroom workgroup, varied in terms of their knowledge of, and sensitivity to, issues of domestic violence. Court attorneys regularly engaged in continuing legal education courses in all areas of family law practice, and were familiar with the new domestic violence law.

The court attorneys interviewed all reported concern about domestic violence as a social issue, and believed that family court played a special role in addressing domestic violence. As one court attorney stated, "the court's ability to issue an official order that prohibits certain conduct, is a way for the government to show society that domestic violence will not be tolerated. That alone can help someone in distress." The court attorneys, however, expressed skepticism about the ability of the courts to significantly decrease incidents of domestic violence. Similar to the beliefs of court officers, and petition room clerks, court attorneys described the order

of protection as a "piece of paper" with limited impact, in that it was only as good as a respondent's intent to obey the order, and the petitioner's ability to effectively enforce it.

The court attorneys reported satisfaction with the way the family court handled issues of domestic violence. The only dissatisfaction expressed was the overwhelming sense of pressure involved with the family court processing such a high volume of cases. It was felt that more judges, court attorneys, and support staff were required to deal with the high volume of domestic violence cases filed in family court.

At the time of this study, only two New York County family court judges, judges B and G, dealt exclusively with family offense domestic violence cases after the initial intake court appearance by the petitioner. Prior to this administrative case assignment change, all judges handled these matters on a rotating basis. Since this modification, the remaining judges only addressed substantive domestic violence matters that arose in child protective abuse and child neglect proceedings. Of the two

judges dealing directly with family offense order of protection cases, only judge G routinely utilized a court attorney to conference domestic violence matters, whereas judge B conducted all domestic violence matters himself.

Judge G's court attorney conducted conferences in all domestic violence cases scheduled before judge G. Because of the very limited space in the New York County family court building, judge G's court attorney often conducted conferences in domestic violence matters in the halls of the court building. Judge G's court attorney displayed a very calm manner. She patiently explained the legal process to un-represented litigants. When the parties waived their right to be represented by legal counsel, judge G's court attorney attempted to settle the matter amicably.

The role of the court attorney impacts upon all but the fourth hypotheses in this study. The first hypothesis assesses whether the presence of stronger dispositional alternatives in domestic violence matters results in orders of protection that utilize these stronger remedies. Most court attorneys reported that while the new law resulted in

a heightened awareness regarding the seriousness of domestic violence as a social issue, the enhanced dispositional remedies were rarely utilized. Court attorneys believed that most cases only warranted the standard order of protection remedy available under the old law. Judge G's court attorney reported that the standard order of protection was usually the agreed upon disposition in the cases she handled. Although judge G's court attorney was observed explaining to the litigants that enhanced remedies were available under the new law, she reported that orders of protection with the new remedies were never issued as a result of court conferences she conducted. It is possible, however, that the existence of these enhanced dispositional orders was used as a bargaining tool to encourage settlement of the matter, with a disposition consisting of the traditional order of protection.

The second hypothesis assesses whether the mediating courtroom practices discouraged the use of the enhanced dispositional remedies. Court attorneys recognized and understood the concept of the courtroom workgroup, in that

they believed that each court part had its own unique way of handling cases. All reported a preference to have "regular" assigned counsel panel attorneys involved in court matters because of their familiarity with the differing courtroom practices. The court attorneys did not feel that the cordial relationships between the different professionals in the family court organization negatively impacted upon the litigants, or resulted in weaker dispositional orders being issued in domestic violence cases. They reported that the majority of attorneys who practiced in family court were zealous, while cognizant of the unique pressures involved in family court practice.

The use of case conferencing by a court attorney was a means of settling cases without need for substantive judicial intervention. The attorneys who participated in case conferences with judge G's court attorney spoke of a preference to simply settle cases amicably, rather than anger the judge by demanding a hearing. The only time enhanced dispositional remedies were discussed by judge G's court attorney was when the parties were encouraged to settle the matter with a standard order of protection.

The push to settle these matters without a hearing reflected courtroom practices that made the use of enhanced remedies impractical.

The third hypothesis in this study assesses whether the desire to expeditiously dispose of court cases results in standard orders of protection, as opposed to some of the newer stronger dispositional remedies available in these matters. Court conferences usually resulted in speedier dispositions. However, judge G's use of his court attorney to settle domestic violence cases was related to his belief that these cases were simple, and of relatively minor importance, not a result of a desire to expeditiously dispose of cases. However, the court attorney did settle cases quickly, with standard orders of protection. Judge G's court attorney was observed advising litigants that a settlement with a standard order of protection would guarantee them that their case would be completed early in the day, and that they would benefit from not having to appear in court for future appearances. Use of the enhanced remedies, such as orders for the respondent to enter a batterer's educational program, would, by

necessity, require the litigants to have further contact with the court system to arrange for participation in, and monitoring of, the respondent's participation in court ordered treatment. Any dispositional order other than the standard order of protection, therefore, would strain the court's ability to process cases expeditiously.

The final hypothesis assesses whether the presence of specialized victim attorneys results in the use of the stronger newly available dispositional remedies in these matters. Judge G's court attorney reported that it was significantly more time consuming to conference matters when specialized victim advocates represented the petitioners. It was particularly difficult to conference these cases when the respondent was not represented by counsel. Despite this, judge G's court attorney reported that the actual dispositional orders in cases with specialized advocates were similar to other domestic violence cases, where specialized advocates did not participate.

Chapter Ten

Summary of Study Findings, Conclusions and Recommendations for Future Research

Study Findings

The Family Protection and Domestic Violence

Intervention Act of 1994 went into effect on January 1, 1995. This law was intended to create major changes in how the family courts handled issues of domestic violence. New enhanced remedies were made available to give judges the power to more strongly address issues of domestic violence in intimate family relationships. The new law expanded the existing law to include stalking type offenses.

Additionally, under the new law, battered women no longer had to choose between criminal court prosecution and family court protection. The new law provided for record sharing between the criminal court and the family court, and instituted a state wide computerized registry of all orders of protection. The new law further made provisions for longer lasting orders of protection in situations where aggravating circumstances existed. The family court, under the new law, has the power to address issues of child

support in the context of domestic violence family offense cases. Furthermore, the new law expanded dispositional remedies available to include placing a batterer on probation, and mandating that he enter a batterer's educational program.

Thus, the 1994 initiative significantly enhanced the available legal protections for abused women. The mere enactment of a new law to address a social problem, however, does not automatically result in changes in practice. This study sought to examine the courtroom workgroup's influence, as it existed in New York County family court, on the strength of dispositional orders issued after the implementation of the new law. This study also sought to contribute to our understanding of courtroom processes, as well as to provide insight into the experiences of battered women who appeared in court for assistance with domestic violence problems. A final goal of this study was to enhance our knowledge regarding the implementation of legal reforms in the area of domestic violence.

Hypothesis #1: Did a domestic violence law with

stronger potential dispositional penalties result in stronger dispositional outcomes in family court family offense cases?

This study has shown that the dispositional outcomes in family court domestic violence cases did not change despite the existence of stronger potential penalties in the new law. The presence of the new law, with its attendant enhanced dispositional alternatives, did have some impact on the practices in New York County family court, although it had little actual impact on dispositions.

All attorneys reported that the newer dispositional remedies, such as temporary orders of child support, orders of bail, orders mandating respondents into domestic violence batterer's educational programs, orders that the respondent pay for medical care for the victim, orders of restitution, and three-year orders of protection, were rarely, if at all, utilized. However, all also reported a significant change in the family court climate since the introduction of the new law. The attorneys believed that the mere existence of the new law increased attention to

issues of domestic violence, and encouraged family court professionals to handle these cases with more care. While specialized domestic violence victim attorneys also reported that judges rarely utilized the newer remedies, they reported that they obtained enhanced orders for their clients in cases involving serious acts of violence, although this was not borne out by the evaluator's observations.

The judges also reported that they rarely, if ever, utilized the newer remedies available in these cases. However, like the attorneys who practiced in family court, the judges also reported that the new law contributed to a climate where they were compelled to look at domestic violence cases more carefully than they had in the past.

Clerks and court officers did not often have the opportunity to observe the dispositional outcomes in these cases, although they did have a significant role in the process of obtaining family court relief in these matters. Clerks reported that they did not often see cases where they believed three-year orders of protection, or any of the newer available remedies, were warranted. Court

officers reported rarely seeing these newer dispositional alternatives being sought or obtained. Court attorneys, who often had a more direct role in the dispositional process by conferencing these cases, also reported only rare instances where the new remedies were sought and obtained.

While it appears clear that the new law changed the family court climate in domestic violence family offense cases during the evaluator's years of observation, it is also clear that the remedies newly available in this area were rarely utilized. The dispositional outcomes in family court domestic violence cases did not change, despite the existence of the new law with stronger potential penalties.

Hypothesis #2-Did the mediating practices and culture of the courtroom workgroup result in similar dispositional outcomes regardless of the strength or weakness of the existing domestic violence law?

The mediating practices and culture of the family court, where the attorneys, judges, and court attorneys worked together toward the common goal of smoothly and efficiently processing cases, did appear to contribute to

similar dispositional outcomes not containing the heightened remedies available under the new law.

The family court courtroom workgroup generally included judges, attorneys, court attorneys, clerks, and court officers. These professionals worked in relatively stable court based work environments, and relied upon one another to get their jobs done. The overwhelming majority of family court family offense cases were settled without a trial. The courthouse "regulars" processed cases in a manner that often resulted in the family court judge granting a standard one-year order of protection, both before and after the implementation of the new law. Attorneys representing both parties negotiated settlements in many of these cases, and the family court judge usually agreed to whatever settlement was reached by the attorneys. In cases where the court attorney conducted case conferences, most were also settled by stipulation with a standard order of protection being issued with the "usual" terms and conditions. Even in litigated cases, all professionals involved were aware of the particular practices of the others in the courtroom workgroup, and the

case procedures were similar.

Most judges continued to push litigants to settle these cases without a trial after the new law was implemented, and these settlements, by their nature, did not result in enhanced dispositional remedies. If, for example, the courtroom workgroup processed a case which resulted in a settlement that the respondent would consent to an order of protection issued against him with the "usual" terms and conditions, but without an admission to engaging in any wrongdoing, there was no order mandating that the respondent enter a treatment program, which would imply an admission of wrongdoing. The workgroup was aware that respondents would not readily agree to the settlement of these cases if the settlement included a period of probation, or mandated participation in batterer's educational programs. This would undoubtedly interfere with their mediating practices. In fact, the workgroup utilized the heightened remedies available under the new law as "sticks" to further facilitate their mediating practices, and entice respondents to accept settlements not containing such provisions.

Other judges continued their practice of holding full hearings in these cases after the enactment of the new law, but for the most part, failed to conduct separate dispositional hearings, and fashion specific dispositional orders, including any of the newly available remedies. One judge continued to utilize his court attorney to negotiate settlement agreements, none of which included any of the newly available remedies. Generally, the courtroom workgroup practices and culture remained the same as they were prior to the implementation of the new law, and contributed to maintaining the status quo with respect to the contents of dispositional orders.

Hypothesis #3- Did the desire of the members of the courtroom workgroup to expeditiously dispose of cases maintain the status quo in dispositional orders regardless of the strength or weakness of the existing domestic violence laws?

The desire to expeditiously dispose of cases, while very strong, did not appear to impact on the content of the dispositional orders after the new law. Instead, other factors were at play.

There was clearly pressure placed upon family court judges to expeditiously dispose of cases. The caseloads family court judges were required to handle were huge. Judges did not wish to keep too many cases pending at one time, because it became very difficult to address new cases when the older cases remained open. The Office of Court Administration, the agency overseeing court processes in New York State, established "standards and goals" regarding all cases in family court. Basically, these are guidelines under which judges are reminded that they should have cases completed. Many family court judges vocalized their concern about the time it took to complete cases. Some judges were observed telling attorneys that particular cases exceeded the "standards and goals" dates set by the Office of Court Administration.

However, despite this clear pressure to dispose of pending cases expeditiously, the judges generally did not allow this factor to impact substantively upon the cases they handled. The fact that the newer remedies were not being widely utilized was not a result of a desire to quickly dispose of cases. This study reveals that the

court parts that handled domestic violence matters more rapidly, or paid more heed to the "standards and goals" deadlines, did not have weaker dispositional outcomes in domestic violence cases than other court parts that processed these cases more thoroughly, and slowly.

It was also hypothesized that assigned counsel panel 18-b attorneys sought to dispose of cases expeditiously because they were not paid for their work until cases ended. Similar to judges, some assigned counsel attorneys put more time and effort into their representation in family offense matters than others. Despite this, the assigned counsel panel attorneys who spent a great deal of time on these cases, generally had the same case outcomes as those attorneys who routinely settled cases quickly with little or no case preparation. It appeared that while some attorneys sought to end cases quickly, this behavior did not result in weaker dispositional outcomes when compared to those who were less concerned with time factors.

Court officers and judges selected assigned counsel panel attorneys to represent litigants in domestic violence family offense cases. It was hypothesized that they

deliberately chose only attorneys who processed cases quickly, in order to facilitate expeditious case disposal. It is true that judges and court officers, for the most part, preferred to work with attorneys who helped them obtain their goal of processing cases quickly. However, at the time of this study, the crisis in family court caused by the failure to increase the wages of assigned counsel panel attorneys, resulted in a situation where there were far too few attorneys available to serve litigants. Court officers and judges no longer had the luxury to pick and choose favored attorneys as they had in the past, rather they were frequently observed to plead with all attorneys serving on the assigned counsel panel to take cases in their court part.

Therefore, it does not appear that the desire of the courtroom workgroup members to expeditiously dispose of cases, which was a common goal of family court personnel, contributed significantly to maintaining the status quo in dispositional orders, regardless of the strength or weakness of dispositional remedies available.

Hypothesis #4-Did judicial ideologies and attributes

dictate the dispositional outcomes in family offense cases irrespective of the strength or weakness of existing domestic violence laws?

The judges' different political ideologies and different attitudes concerning how these cases should be processed and handled before them had no impact on cases outcomes. However, the judges ideologies and beliefs concerning the worth and value of the various heightened remedies newly available, were dispositive as to whether they were utilized.

A judge's personal attributes determined how he or she handled these cases from start to finish. All judges held different beliefs about the role of a judge in these cases, and how to best conduct their courtroom functions. Some judges believed that the best way to ascertain the truth, and to provide due process in these matters was to conduct comprehensive hearings, with both parties having legal representation. Other judges felt that these cases were very straightforward, and preferred to conduct "mini hearings", where both sides were able to present their testimony, the judge would then conduct credibility

assessments, and decide the matter. One judge delegated the job of negotiating settlements to his court attorney assistant, who usually succeeded in disposing of matters without need of trials.

Most judges expressed their various beliefs regarding the dangers of domestic violence to the litigants appearing before them. They did this particularly when there were children residing in the litigants' households.

Consequently, there were many different attitudes as to how courtroom practices in domestic violence family offense matters should be conducted, and of the issue of domestic violence itself. What was striking however, was that regardless of the methods used, the personal political ideologies, and different attributes of the individual family court judges, the outcomes of these cases were remarkably similar in all courtrooms. The most standard dispositional outcome in these cases was a one-year order of protection with the "usual" terms and conditions, both before, and after the implementation of the new domestic violence law. New York County family court judges rarely utilized the newer dispositional remedies available. Even

the judges who were most serious about domestic violence rarely utilized the newly available dispositional remedies. Regardless of different personal political ideology, all family court judges issued similar types of orders in these cases.

All nine judges observed, however, did share one ideology in common. They all reported that they felt that the newly available remedies should only be used in the most serious cases. This common ideology was generally dispositive of the content of the orders the judges issued. Only one of the nine judges, for example, was reported to order probation reports, and on occasion, issue orders that respondents attend batterer's educational programs, one the new remedies available. The other judges questioned the value of batterer's educational programs, reported that few such domestic violence programs existed at the time of this study anyway, and that those few had long waiting lists. Without available resources, and a willingness on the part of family court judges to consider mandating batterer's educational programs, this newly available remedy will not be used as the legislators had intended.

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Another important, but rarely utilized new remedy, is the ability of judges to issue temporary orders of child support in domestic violence cases. Most judges reported that they failed to utilize this remedy, because in New York City, hearing examiners, not judges, routinely decide child support matters. The judges uniformly reported that there was no need for this provision of the new law, which they believed duplicated functions of other personnel, and consequently they did not utilize it. The provision for judges to issue temporary child support was not used in situations in which the remedy would have greatly assisted victims of domestic violence, as the legislators had intended. One observed case illustrates that the judges' uniform belief that this relief is merely duplicative, is erroneous. A petitioner appeared in family court seeking an order of protection against her husband. She did not speak English, did not have a job, and was a homemaker caring for her two-year old child. According to the petitioner, her husband was a wealthy business owner, and had all their marital assets in his name only. The petitioner alleged that her husband engaged in acts of

physical violence against her, including slapping and pushing her. She further alleged that her husband forced her to sleep on the floor of their bedroom, and poured cold water on her body in the middle of the night while she slept. In this case, the petitioner sought a temporary order of financial child support. The judge denied her request, suggesting that she file a case before a hearing examiner, even though this would seriously delay her receiving financial support. One can assume that the judge found the petitioner to be credible, since she did grant her request for a temporary order of protection. This is exactly the type of case the state legislature anticipated when it gave family court judges the discretion to issue temporary support orders in the new law. In family court, child support and spousal support matters are not routinely commenced on the same day petitioners appear in family court seeking relief. Unlike family offense proceedings, in support matters, petitioners are usually given an appointment date in the future on which to return to court to file a petition. Even in situations where a support petition is drafted on the same day the litigant appears in

court, support cases are usually adjourned for a few weeks. Hearing examiners generally do not provide temporary relief until the respondent is actually served with the court papers, and appears in court. Consequently, the ability of judges to award financial child support under the new law can significantly expedite the relief domestic violence victims receive, but because the judges were all of the opinion that granting such awards was the job of hearing examiners, and not theirs, they failed to utilize the new power.

New York family court judges also rarely issued three-year orders of protection. They reported that what they considered to qualify as aggravating circumstances was rarely presented in New York County family court family offense cases. This, they explained, was why such orders were rarely made. It is unclear if indeed family court proceedings involved less serious cases of domestic violence than did criminal court proceedings. An assessment of whether more serious cases of physical domestic violence were presented in criminal court as opposed to family court was beyond the scope of this study,

which focused solely on family court family offense proceedings.

The judges shared a common belief that the new remedies, particularly the provisions for ordering temporary child support, granting three-year orders of protection, mandating batterer's educational programs, ordering payment for medical expenses, and ordering financial restitution, were generally not warranted, and impractical. Consequently the judges' ideologies had a great impact on the strength of orders issued after the implementation of the new law.

Hypothesis #5-Did the presence of specialized legal advocacy groups result in stronger dispositional outcomes than in cases where there was the absence of such participation?

Although specialized legal advocacy groups made important contributions to the protection of domestic violence victims, they were not observed obtaining any stronger case outcomes through their advocacy efforts.

The presence of specialized domestic violence victim advocates often did make a difference for individual

litigants in a number of ways. Specialized victim advocates were more familiar with domestic violence law, had smaller caseloads than most attorneys appearing in family court, and were generally more persistent in fighting for their client's desires. However, this did not mean that these advocates achieved stronger dispositional remedies than other attorneys in family offense cases. In fact, they did not. The most common dispositional order these attorneys achieved was the standard one-year order of protection with the "usual" terms and conditions. This was the same standard order that they received before the implementation of the new law, and was the same standard order issued in most domestic violence cases.

After the new law, the difference in the practice of these advocates from other attorneys in family court was, that the domestic violence advocates rarely consented to the order of protection being granted without a hearing. Orders of protection issued against respondents upon consent are made without any admission to wrongdoing on the respondents' part. Orders of protection granted after a hearing, although containing identical terms and conditions

as those entered into upon consent of the parties, also contain the judge's finding that the respondent engaged in behavior constituting a family offense. Most specialized victim advocates refused to settle these cases without a hearing because they preferred to have a finding of wrongdoing on the record. Such a finding could establish a pattern of abusive behavior that could be helpful in future litigation, such as in contempt proceedings alleging violations of orders of protection, or in divorce proceedings. It must be noted, however, that this enhanced level of advocacy usually resulted in an identical dispositional outcome, which is the standard one-year order of protection.

Domestic violence advocates reported having few cases where they sought orders of protection containing newly available remedies. They reported that when they did seek such relief, they were usually successful in their efforts, although this was never observed in the evaluator's years of observation. Although domestic violence advocates presented an enhanced form of advocacy for their clients, the dispositional outcomes in the cases they handled were

no different than the results achieved in other family offense domestic violence matters in which they did not participate.

Conclusions

This study finds that the stronger dispositional remedies available in family court domestic violence family offense cases, were, with rare exception, not issued in New York County family court. The types of orders that were issued in these family court cases in New York County after the implementation of the new law were similar to those that were issued prior to the implementation of the new law. This is not to imply that the new law has not served any purpose. While there were few observed substantive dispositional changes since the implementation of the new law, some significant changes in the family court climate have been noted since the new law came into effect.

There was heightened awareness of the seriousness of domestic violence after the new law. While not necessarily related to dispositional outcomes, this was significant because family court judges, and other court personnel appeared to take these cases more seriously. There

appeared to be greater sensitivity from judges in regard to the plight of domestic violence victims.

Additionally, the new domestic violence law established a computerized domestic violence registry. The creation of the domestic violence computerized registry has provided victims of domestic violence added protection, giving judges the power to immediately ascertain critical information regarding any past history of domestic violence. As a direct result of the domestic violence registry, those with outstanding domestic violence warrants issued from other courts have been apprehended.

A further result of the new domestic violence law, and heightened awareness of domestic violence as a serious social issue, is that judges were observed to be more careful before they dismissed family offense domestic violence cases.

Despite the impact of the new law on the family court climate, the reality remained however, that the new law did not result in changed courtroom practices, or in stronger penalties against the respondents.

Admittedly, some of the new remedies provided in the

new law may not often be necessary. One rarely utilized provision in the new law, for example, provides for payment of medical expenses resulting from acts of domestic violence. Most petitioners who appeared in New York County family court in domestic violence matters were indigent, and received medical care from Medicaid or other forms of health insurance. Consequently, most family court personnel believed that it would be nonsensical to issue orders mandating reimbursement of medical expenses to the petitioner in such circumstances, since the petitioners themselves were not directly billed for such services.

The provision for granting three-year orders of protection in cases where there were aggravating circumstances, was another rarely utilized new provision because family court personnel believed that those aggravating circumstances rarely presented themselves in the cases filed in New York County family court. It is possible, although not investigated in this study, that more serious cases of domestic violence were indeed prosecuted in criminal court.

The issuing of orders of protection containing

heightened remedies, which exist to assist victims of domestic violence, however, was negatively impacted by judicial ideologies, and family court workgroup practices, and culture. The policy recommendations in the final chapter can overcome these impediments to the proper implementation of the 1994 law.

Recommendations for Future Research

To have a better understanding of the practices of court personnel in family court family offense domestic violence cases, it would be helpful to study another urban court such as the family court in Bronx County, Kings County, or Queens County. These courts, similar to the New York County family court studied here, are large urban courts with similar pressures and practices. It would be helpful to ascertain if the findings regarding the impact of the new law are similar in the other New York City family courts.

It would be helpful to have a study, which includes the observations of the litigants themselves. This study sought to examine the court process from the point of view of courtroom personnel. This study did not address whether

the new law benefited women seeking orders of protection in family court, although this study makes clear that they did not receive stronger orders of protection. To attain a fuller understanding of the impact of the new law, as well as general courtroom practices and procedures on the litigants involved in family court domestic violence cases, a study should be conducted which includes an assessment of the experiences of the litigants, both respondents and petitioners, in such matters.

A major change contained in the new domestic violence law involved the eradication of the seventy-two hour "choice of forum" rule, and this change should be examined as well. Prior to the implementation of the new law, petitioners seeking court relief in domestic violence cases had to make a choice to proceed in either family court or criminal court. Once a petition was filed in either court, after seventy-two hours, the petitioner was unable to have the matter heard in any other court. Under the new law, domestic violence matters could proceed simultaneously in both courts. Further study should be conducted to ascertain if petitioners are taking advantage of this new

ability to seek relief in both courts, as well as to determine if criminal court domestic violence cases involve more serious acts of violence than those presented in family court.

Chapter Eleven

Final Thoughts-Policy Recommendations

While legislation alone cannot change the system's response, and clearly cannot mandate changes in attitude, effectively implementing new laws can have a significant impact. As Del Martin (1976) said over twenty-five years ago:

Whatever progress we can claim in "legislating attitudes" has resulted from enforcement of laws, not the laws themselves... when a law is enforced, it eventually becomes a part of the social fabric, a given in the daily lives of citizens. Only then does the collective change in attitudes have a lasting effect. (p. 175)

To properly enforce the New York State Family Protection and Domestic Violence Intervention Act of 1994, the following policy recommendations should be adopted.

Policy Recommendations

The following policy recommendations are based upon the empirical research conducted in this study.

Improve training of family court personnel.

All family court personnel would benefit from additional training regarding issues of domestic violence.

Court appointed counsel need to be fully familiar with the new domestic violence law, and newly available remedies. This training would benefit those who represent both petitioners and respondents in family court domestic violence matters. New York State now mandates continuing legal education (C.L.E.) by all attorneys. Family court assigned counsel panel attorneys would benefit from C.L.E. training addressing domestic violence law, as well as education regarding the social and psychological aspects of domestic violence.

Family court judges would also benefit from enhanced training on domestic violence issues. Judges need to be educated about the myths, dynamics, and effects of domestic violence. New York County family court judges claimed that they did not order respondents to attend batterer's educational programs because they assumed that there were few programs available, and that they had long waiting lists. Despite the presumed absence of programs, however,

New York County family court child protective judges routinely order respondents to enter and complete treatment programs. Judicial training, therefore, should not be limited to addressing domestic violence as a social issue, but also address the nature of existing services for litigants involved in domestic violence proceedings, and the ability to meet court-mandated treatment needs of abusers. Family court judges currently participate in two-week judicial training seminars held during the summer, as well as other training throughout the year. The new domestic violence law, the psychological dimensions of domestic violence, and information concerning existing domestic violence service providers should be included as components of this judicial training.

Court officers who come into contact with domestic violence litigants, and clerks who draft domestic violence petitions, would also benefit from additional training. Such training should not be limited to an explanation of the domestic violence law, but should also include the myths, dynamics, and effects of domestic violence. Clerks, in particular, need to be aware of how critical their role

is in drafting domestic violence family offense petitions.

Court attorneys would also benefit from additional training regarding domestic violence law, as well as the psychological, and social dimensions of domestic violence. Court attorney training should also include mediation and negotiation techniques, with a focus on the propriety of mediation in matters of domestic violence.

Improve counsel assignment procedures.

At the time of this study, there is no systematic manner of assigning attorneys to represent litigants in family court domestic violence family offense matters. In some family court parts the judges choose the attorney, based upon the attorney's abilities, and availability. In other courtrooms the court officers choose the attorneys. Some attorneys were chosen because they happened to be in, or near, the courtroom at the appropriate moment. Often there were no attorneys available, and the parties were told to leave the court and return on another day to have counsel assigned to represent them.

Some of the problems associated with the process of assigning counsel were out of the control of the courtroom

personnel. For example, at the time of this study, there is a severe shortage of assigned counsel attorneys available to represent indigent litigants in family court. In addition to solving problem resulting in this shortage, uniform standards and procedures need to be introduced to assure that counsel is assigned in a fair and systematic manner.

Consideration should also be given to expanding the role of assigned counsel panel attorneys. Many petitioners would benefit from assistance at the petition-drafting stage of the family offense matter, as opposed to obtaining legal representation only after the court proceedings have already been initiated.

Additionally, all qualified petitioners and respondents should be fully advised of their right to be represented by assigned counsel, and uniform qualifications should be issued to determine who is indeed entitled to assigned counsel representation.

Increase available resources and services.

The interview space in New York County family court for attorneys, court attorneys, and litigants, at the time

of this study, is sub-standard. Adequate interview space is essential to improving the substantive impact attorneys can have in these matters.

Assigned counsel rates have remained stagnant for over sixteen years. This has resulted in many experienced attorneys leaving the assigned counsel panel for more lucrative employment. Very few new attorneys have joined the assigned counsel panel. This has resulted in a crisis where there are simply far too few attorneys available to represent indigent litigants in family court domestic violence matters. The assigned counsel rates of compensation should be increased to ensure that all parties eligible for assigned counsel receive legal representation in these critical matters.

Assigned counsel attorneys should be provided with, and encouraged to utilize, social service assistance in the form of social workers, and professional investigative staff to assist in presenting the court cases in a manner that best serves their clients' interests. Such social work resources could also assist in locating programs and services for both respondents and petitioners in these

cases.

Judges and attorneys both reported that there was a dearth of available educational programs for men who engage in domestic violence. The few programs they believed to exist at the time of this study reportedly had long waiting lists. If this is true, there must be an increase in programs specifically addressing domestic violence and anger management to accommodate the new provisions of the domestic violence law, which allow judges to specifically order educational programs for domestic violence perpetrators.

Family court judges reported that one reason they did not order respondents into domestic violence treatment programs, was the absence of a mechanism to arrange for treatment and monitor compliance. In fact, pursuant to section 252 of the New York State Family Court Act, the family court in each county has a probation service to assist the court at the intake, investigative, and dispositional phases of family offense cases. Efficient use of the probation department can optimize service delivery to both petitioners and respondents in family

offense cases. Judges should be encouraged to conduct comprehensive dispositional hearings, utilize the probation department to provide pre-dispositional reports, issue orders of protection which include a period of probation for respondents, order respondents to attend appropriate educational programs, and direct the probation department to supervise respondents found to have committed family offenses.

An increase in available resources and services to the family court would increase the efficiency of court functioning, eradicate unnecessary court delay, and be of particular benefit to family offense litigants, who currently suffer in a system of long court days, which frequently end in adjournments, without benefit of substantive court action.

If these suggested policy recommendations were realized, they would facilitate the implementation of the Family Protection and Domestic Violence Intervention Act of 1994.

Appendix A
Interview Guide for
New York County Family Court Courtroom Workgroup

INTERVIEW GUIDE

Codes and symbols

j=judge
a=attorney
c=clerk
o=court officer
l=court attorney

hypothesis 1-strength of law/ dispo orders strength
hypothesis 2-workgroup/ dispo order strength
hypothesis 3-expeditious dispo/ dispo order strength
hypothesis 4-judicial ideology/ dispo order strength
hypothesis 5-advocacy group/ dispo order strength

- describe nature of job generally (all) (hypo 2)
- educ background, prior jobs, length of time in this position, length of time in this court (all) (hypo 2)
- beliefs re: dom viol. As a social issue (all) (hypos 2 and 4)
- beliefs re: fam ct. role in dom viol. issues (all) (hypos 2 and 4)
- beliefs re: proper role of court re: dom viol (all) (hypo 2)
- how could fam ct. deal better w/ dom viol (all) (hypo 4)
- should dom. viol. cases be settled or tried?/ why or why not?/ under what circumstances? (j,a,l,o) (hypos 2,3,and 4)
- are there differences in dispos in cases settled v. tried? (j,a,l,o) (hypos 2,3 and 4)
- impact of your job on dom viol cases (all) (hypos 2 and 3)
- impressions of others who work in fam ct. dom viol matters (all) (hypo 2)
- which personnel most important in dom viol. cases (all) (hypo 2)
- goals of fam ct. in general (j,l,a) (hypos 2 and 4)

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- goals of fam ct. in dom viol. cases (j,l,a) (hypos 2 and 4)
- difference between goals of fam ct. and goals of litigants (j,l,a) (hypos 2 and 3)
- fam ct. caseload pressures (j,l,a,o) (hypos 2 and 3)
- special pressures in dom viol cases (j,l,a,o) (hypos 2 and 3)
- pressure to handle dom viol cases in particular manner? (j,l,a) (hypos 2 and 3)
- describe relat. between judges, attys, clerks and ct. officers in fam ct. (all) (hypo 2)
- describe your relat. w/ other fam ct. workers (all) (hypo 2)
- are relat. w/ other fam ct. workers more adversarial/conflict based or more friendly/cooperative (all) (hypo 2)
- describe job turnover rate in different fam. Ct. jobs (J,L,A) (hypo 2)
- to two newer f.ct. judges/ differences bet. this ct. and other f.cts./part. in dom viol. cases (j)(hypos 2,3,and4)
- what qualities in a judge, atty, clerk, ct. atty, ct. officer are favorable? (all)(hypo 2, 3, and 4)
- describe role of clerk in drafting petitions in dom. viol. cases (all) (hypo 2)
- difference in quality of petitions depending on clerk? (all but o (hypo 2)
- do clerks/ct. attys, judges/attys/ct. officers have impact on dom viol. cases (all) (hypos 2,3,4 and 5)
- describe attys from VSA/SFFCBWLS/18-b/private (j,A,l) (hypos 2,3,4 and 5)

INTERVIEW GUIDE

- different atty practices in dom viol. cases (j,a,l) (hypos 2,3,4 and 5)
- describe standards and goals and how impacts on dom viol. cases (j,a,l,o) (hypo 3)
- how many dom viol cases are tried/ how many settled/ any diff since new law in effect/ (j,a,l) (hypos 1,2,and 3)
- how many dom viol. cases dropped by petitioners/ any diff since new law in effect (j,a,l) (hypos 1,2 and 3)
- most common/average dispo in dom viol case since new law/ prior to new law (j,a,l) (hypos 1,2 and 3)
- any changes since new law (all) (hypos 1,2,and 3)
- what other types of dispo frequent in dom viol cases before and after new law (j,a,l) (hypos 1,2,and 3)
- do fam ct. workers prefer any particular types of orders/ any dispos make job easier (j,a,l) (hypo 2)
- do fam. Ct. workers dislike any part. types of orders/ any dispos make job more difficult (j,a,l) (hypo 2)
- judges role in assigning attys in dom viol. cases (all except c) (hypos 2 and 5)
- ct. atty role in assigning attys in dom viol cases (all except c) (hypos 2 and 5)
- ct. officers role in assigning attys in dom viol cases (all except c) (hypos 2 and 5)
- who is proper person to assign attys (all except c) (hypos 2 and 5)
- describe treatment of female litigants in dom viol cases by judges/ct. officers/attys/clerks/ct. attys/ (all) (hypo 4)
- describe treatment of male litigants in dom viol cases by judges/ct. officers/attys/clerks/ct. attys/ (all) (hypo 4)

INTERVIEW GUIDE

- aware of criticism of fam. ct. handling of dom viol cases / if so opinion of criticism (all) (hypos 1, 2,3 and 4)
- awareness of current public policy re: dom viol/ ct. role / opinion (all) (hypos 1, 2,3 and 4)
- understanding of new dom viol laws/ opinion/ (all) (hypo 1)
- positive aspects of new law/ negative/ (all) (hypo 1)
- impact of new law on your job (all) (hypos 1,2,3 and 5)
- your practices in dom viol cases before and after new law (all) (hypos 1 through 5)
- observations of differences in how ct. functioned before and after new law (all) (hypos 1 through 5)

Appendix B

Order of Protection Form

P R E S E N T: Hon. _____
Judge

**In the Matter of a Proceeding under
Article 8 of the Family Court Act**

Docket No.

Date of Birth:

Petitioner,

v.

Date of Birth:

Respondent,

ORDER OF PROTECTION

| | Ex-Parte

| | Respondent

Present in Court

NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT, AND/OR MAY SUBJECT YOU TO FAMILY COURT PROSECUTION AND INCARCERATION FOR UP TO SIX MONTHS FOR CONTEMPT OF COURT.

NOTICE: PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE LAW GUARDIAN UPON THE APPELLANT, WHICHEVER IS EARLIEST.

[99] THIS ORDER IS ON BEHALF OF: _____ and CHILDREN

A petition under Article 8 of the Family Court Act, sworn to on _____ having been filed in this Court in the above entitled proceeding, and Respondent having appeared with or without counsel.

Now therefore, after hearing or on consent it is hereby ordered that _____ observe the following conditions of behavior:

- [01] Stay away from: [A] _____**
- [B] the home of _____**
- [C] the school of _____**
- [D] the business of _____**
- [E] the place of employment of _____**
- [F] *****;**

[02] Refrain from assault, stalking, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats or any criminal offense against _____:

**[11] Permit _____ to enter the residence during
***** to remove personal belongings not in issue in
litigation;**

risk to the safety or welfare of _____; i

[05] Permit _____ entitled by a court order or separation agreement, to visit with _____ under the following terms and conditions: _____ i

[07] Custody of _____ shall be awarded to _____ under the following terms and conditions: _____ i

[12] Surrender any and all firearms owned or possessed, including, but not limited to the following: _____ Such surrender shall take place on or before [specify date/time]: _____ at: _____.

Respondent's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby: [13A] suspended [13B] revoked and [13C] the Respondent shall remain ineligible to receive a firearm license during the period of this order.

Pay or provide access to health or medical insurance for necessary medical care and treatment arising from the incident or incidents forming the basis of the order [specify beneficiary of treatment and coverage]: _____; i

Pay counsel fees and/or any costs associated with the order to: _____;

Participate in an educational program (and pay the costs thereof) [specify program]: _____;

Participate in a batterer's education program designed to help end violent behavior (and pay the costs thereof) [specify program]: _____;

Pay to the petitioner/victim(s) restitution as follows [specify terms]: _____ (amount up to \$10,000);

[99] Observe such other condition(s) as are necessary to further the purposes of protection [specify conditions]: _____; i

Finding of Aggravated Circumstances

The court has made a finding on the record of the existence of the following AGGRAVATING CIRCUMSTANCES: _____

It is further ordered that this order of protection shall remain in effect until _____.

Dated:

Hon. _____, J.F.C.

_____ Order Extended to _____ J.F.C.

_____ Order Extended to _____ J.F.C.

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY
OF AN ORDER OF PROTECTION MADE IN THE
MANNER DESIGNATED IN SUCH COPY AND SHOWN BY
THE RECORDS OF THE FAMILY COURT OF THE
STATE OF NEW YORK, WITHIN THE CITY OF NEW
YORK, FOR THE COUNTY OF QUEENS

Clerk of Court
Dated: _____, 20____

CHECK APPLICABLE LINE:

- ☐ Personal service executed (specify date): _____
☐ Order mailed on (specify date(s) and to whom
mailed): _____
☐ Order received in court on (specify date(s) and to whom
given): _____

The Family Court Act provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize, and in some situations may require, such officer to arrest a person who is alleged to have violated it's terms or bring him or her before the court to face whatever penalties may be imposed therefore.

Federal law provides that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if it is established that the person against whom the order is sought has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. 2265).

It is a federal offense to: cross state lines to violate an order of protection; cross state lines to engage in stalking, harassment or domestic violence; purchase, transfer, possess or receive a firearm following a conviction of a domestic violence misdemeanor involving the use or attempted use of physical force or a deadly weapon; or (for persons other than military or law enforcement officers while on duty) purchase, transport, possess or receive a firearm while an order of protection, issued after notice and an opportunity to be heard, prohibiting assault, harassment, threatening and/or stalking, is in effect (18 U.S.C. §§922(g)(8), 922(g)(9), 2261, 2261A, 2262).

Appendix C

Family Offense Order of Disposition Form

F.C.A. §§ 841(b),(c), (d),(e);842; 842-a

Form 8-5
(Family Offense -
Order of Disposition)
1/2001

At a term of the Family Court of the
State of New York, held in and for
the County of
at , New York,
on

PRESENT:

Hon.
Judge

.....
Petitioner,

Docket No.

-against-

ORDER OF DISPOSITION

Respondent.
.....

NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY,
AFTER COURT HEARING, RESULT IN YOUR COMMITMENT
TO JAIL FOR CONTEMPT OF COURT FOR A TERM NOT TO
EXCEED SIX MONTHS FOR EACH VIOLATION. VIOLATIONS
OF AN ORDER OF PROTECTION MAY RESULT IN CRIMINAL
PROSECUTION AND INCARCERATION FOR UP TO SEVEN
YEARS FOR CRIMINAL CONTEMPT.

A petition under Article 8 of the Family Court Act having been filed in this Court; and

The Respondent having appeared before this Court to answer the petition and having
[check applicable box]: ☐ admitted ☐ denied ☐ consented to the entry of an order of
disposition without admission to the allegations; and

The matter having duly come on for fact-finding hearing, and this Court, after hearing the
proofs and testimony offered, having found that the allegations of the petition were supported by
a fair preponderance of the evidence; and

(This Court having found the following aggravating circumstances [specify; delete if
inapplicable]:

); and

The matter having duly come on for a dispositional hearing, and the Court having made

Form 8-5 page 2

examination and inquiry into the facts and circumstances of the persons involved, it is hereby

[Delete inapplicable provisions]:

(ORDERED that the Respondent shall for a period of [check applicable box]:

☐ one year ☐ three years ☐ other period [specify]: _____) observe the conditions of behavior specified in the Order of Protection entered herein and annexed to this order and made a part hereof.)

(ORDERED that the Respondent surrender any and all firearms owned or possessed, including, but not limited to, the following: _____

_____. Such surrender shall take place on or before [specify date/time]: _____ at: _____.

(ORDERED that the Respondent's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby [check applicable boxes]: ☐ suspended; ☐ revoked; and ☐ the Respondent shall remain ineligible to receive a firearm license during the period of this order.)

(ORDERED that the Respondent pay restitution in the amount of \$_____ to [specify]: _____ for the benefit of [specify name(s)]: _____ to begin on [specify date]: _____ at the rate of \$_____ per month and to be paid in full by [specify date]: _____.)

(ORDERED that the Respondent be and hereby is placed on probation under the supervision of the Probation Department of _____ County for a period of _____ upon the following terms and conditions [check applicable provisions; See 22 NYCRR §§205.74(a),(b)]:

- ___ 1. Observe the specified conditions of conduct as set forth in the Order of Protection issued pursuant to Section 842 of the Family Court Act.
- ___ 2. Remain within the jurisdiction of the Court unless granted permission to leave by the Court or probation officer.
- ___ 3. Answer all reasonable inquiries by the probation officer and notify the probation officer prior to any change in address or employment.
- ___ 4. Report to a probation officer as directed by the Court or the probation officer and permit the probation officer to visit your place of residence.
- ___ 5. Do not have any contact with the following persons [specify]:
You must not have any physical, visual, written, telephone, e-mail, fax or other electronic contact with such person(s). You must not directly or indirectly cause or encourage anyone else to have such contact with such person(s).

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- ___ 6. Pay for medical or mental health treatment expenses for the following person(s) [specify]:
- ___ 7. Pay all court-ordered attorney's fees and disbursements incurred by the following person(s) [specify]: that arise from this Family Offense matter.
- ___ 8. Cooperate with Department of Social Services and/or child protective workers associated with this Family Offense matter.
- ___ 9. Obey the order for [check applicable box]:
☐ no visitation ☐ supervised visitation ☐ unsupervised visitation with your children. Court-ordered visitation with your children is permitted as follows:

- ___ 10. Surrender any and all firearms owned or possessed by you to the law enforcement agency designated above by the date and time ordered above.
- ___ 11. Attend, pay for, and satisfactorily participate in a batterer's education program designed to help end violent behavior. You will not be discharged from probation without satisfactory completion as determined by your counselor and probation officer.
- ___ 12. Participate in available [check applicable box(es)]: ☐ medical ☐ substance abuse ☐ psychiatric evaluation and treatment and remain in a specified program as follows: _____
- ___ 13. Submit to drug/alcohol (alcosensor/urinalysis) testing as requested by your probation officer. You must cooperate with drug/alcohol counseling and random testing as deemed necessary by your probation officer.
- ___ 14. Obey the directions given by the probation officer to insure compliance with the Conditions of Probation.
- ___ 15. Pay restitution or reparation in the amount of \$_____ to [specify]: _____ for the benefit of the following person(s) [specify]: _____ to begin on [specify date]: _____ at the rate of \$_____ per month and to be paid in full by [specify date] _____
- ___ 16. Sign Release of Information.
- ___ 17. Other:

(ORDERED that the Judgment against the Respondent be and the same is suspended for a period of _____ months upon the following terms and conditions [check applicable provisions; see 22 NYCRR §205.74(a)]:

- ___ 1. Stay away from the residence of the following person(s) [specify]:
- ___ 2. Stay away from the place of employment or place of education attended by the following person(s) [specify]:
- ___ 3. Do not have any physical, visual, written, telephone, e-mail, fax or other electronic contact with the following person(s) [specify]:

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- ; and do not directly or indirectly cause or encourage anyone else to have such contact with such person(s).
- ___ 4. Do not repeat the conduct that was adjudicated a family offense at the fact-finding hearing.
- ___ 5. Cooperate in seeking to obtain and in participating in [check applicable boxes]:
- ☐ evaluation and treatment [specify]: ☐ medical ☐ psychiatric
☐ alcoholism ☐ drug abuse ☐ other [specify]: _____
- ☐ employment counseling ☐ family counseling ☐ child guidance services
☐ batterer's educational program designated to help end violent behavior
- ___ 6. Permit information to be obtained by the Court from any person or agency providing evaluation, treatment or services specified in ¶5, above.
- ___ 7. Allow medical or psychiatric treatment to be furnished to the following person(s) [specify]:
- ___ 8. Cooperate with the person against whom the family offense was committed, the head of the household, or parent, in maintaining the home or household.
- ___ 9. Pay restitution or reparation in the amount of \$ _____ to [specify]: _____ for the benefit of the following person(s) [specify]: _____
- to begin on [specify date]: _____ at the rate of \$ _____ per month and to be paid in full by [specify date] _____.
- ___ 10. Other [specify]:

(And it is further ORDERED that:

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT,
 AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30
 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT,
 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO
 APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER
 SERVICE BY A PARTY OR THE LAW GUARDIAN UPON
 THE APPELLANT, WHICHEVER IS EARLIEST.

Dated: _____,

ENTER

 Judge of the Family Court

Check applicable box:

- ☐ Order mailed on [specify date(s) and to whom mailed]: _____
- ☐ Order received in court on [specify date(s) and to whom given]: _____
- ☐ Order served by police on [specify date]: _____

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