

**“IT’S ALL ABOUT WOMEN WHEN IT COMES TO THE COURTS”:
ASSESSING DOMESTIC VIOLENCE BATTERER ATTITUDES TOWARDS
PROTECTION ORDERS AND MANIPULATIONS OF RELATED LEGAL
PROCESSES AS A TACTIC OF ABUSE**

by

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A thesis submitted to the Faculty of the University of Delaware in partial fulfillment of the requirements for the degree of Honors Bachelor of Arts in Political Science and Women and Gender Studies with Distinction

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ABSTRACT

Leaving an abusive relationship does not always mean that the violence ends. Therefore, upon leaving an abusive relationship many victims of domestic violence apply for Protection Orders against their former partner and abuser to increase their level of safety. Protection Orders are civil court orders that can provide a domestic violence victim many forms of relief including restraining and no-contact orders against their abuser, temporary custody and visitation arrangements, and temporary child-support payments. However, for some victims, a protection order can operate as another means by which they are manipulated and abused. This type of abuse is known as “paper abuse” and occurs when an abuser uses the judicial system to manipulate and control his or her victim. Though an increasing amount of research acknowledges the existence of paper abuse, it is a relatively new concept in the field of domestic violence. Therefore, the purpose of this study was to understand paper abuse from the batterers’ perspective. 49 men in a court-ordered treatment program for domestic violence completed surveys. Surveys elicited information about these men’s behavior throughout the protection order process as well as their attitudes related to the process so as to better understand the occurrences of and choices related to paper abuse. Interviews were also conducted with five family court attorneys to learn more about the involvement of third parties in paper abuse activity as well as develop how to eliminate this manipulative behavior.

Chapter 1

INTRODUCTION AND LITERATURE REVIEW

The National Network to End Domestic Violence (NNEDV) identifies domestic violence as “a pattern of coercive, controlling behavior that can include physical abuse, emotional or psychological abuse, sexual abuse or financial abuse (using money and financial tools to exert control).” According to the Centers for Disease Control’s 2010 National Intimate Partner and Sexual Violence Survey, one in four women are victims of severe physical violence at the hands of an intimate partner. This report also found that one in six women have been stalked in their lifetime, and that two-thirds of those women were stalked by a current or former partner (Black et al., 2011). On September 17, 2013 the NNEDV conducted its annual 24-Hour Census of Domestic Violence Shelters and Services and found that 66,581 domestic violence victims across the United States received related services that day. The Census also found that there were 9,641 unmet requests nationwide for services that same day (Domestic Violence Counts, 2013).

There are a range of services that domestic violence victims seek to increase their safety and meet their needs. One option that domestic violence victims may pursue for protection is a civil Protection Order. Countless scholars have explored the effectiveness of civil Protection Orders and examined violation rates and the impact of such on victims. Many large-scale studies have determined that there are high rates of Protection Order violations, but these findings are often limited to only those violations in which physical re-abuse occurs. (Klein, 1996; Logan & Walker, 2009).

Much less research, however, has focused on how respondents violate Protection Orders through other means, such as respondents who manipulate the legal processes themselves to harass or hurt their victims. There is also not a great deal known about how batterers perceive Protection Orders and related proceedings. This is important to understand as attitudes can impact the level of seriousness one accords to legal proceedings, which can inform a batterer's decision to violate a Protection Order. The purpose of this research is to understand more about batterers committing paper abuse, their attitudes towards Protection Orders, and ways that the Protection Order system can be improved to eliminate domestic violence batterers' negative perceptions and the manipulation of legal processes.

Gender and Domestic Violence

Feminist theory surrounding domestic violence posits its cause to male oppression of women within a patriarchal structure. In this model men are the typical abusers and women the primary victims of domestic violence (Dobash & Dobash, 1979; Walker 1979; McPhail, Busch, Kulkarni, & Rice, 2007). Men's use of violence is attributed to power differentials and a means to maintain male entitlement (Miedzian, 1991; McPhail et al. 2007). Finally, although the feminist perspective emphasizes the role of gender norms and socialization, it also requires the adoption of an intersectional lens in understanding domestic violence. That is, gender must be understood in the context of the other intersecting characteristics of the involved parties including race, ethnicity, sexual orientation, class and age to name a few (McPhail et al. 2007).

More and more, this gender-based perspective and analysis has been challenged by those who argue that domestic violence demonstrates gender symmetry.

This is the idea that women and men are relatively equal in number among domestic violence victims (Pleck, Pleck, Grossman, & Bart, 1978; Schwartz & DeKeseredy, 1993; Steinmetz, 1994; Straton, 1994). Though the support for this camp is growing, it lacks substantial evidence and fails to account for several departures from its theories. For example, those who argue symmetry fail to account for the reason that there is a great number more women receiving services from shelters and hospitals related to domestic violence. In most realms of social life men are far more likely to use violence as compared to women, so theories of symmetry fail to explain why this would differ within intimate relationships (Kimmel, 2002).

Kimmel (2002) discusses the two sweeping literature reviews that demonstrate gender symmetry in domestic violence. Fieber (1997) reviewed 79 empirical articles, 55 of which made use of the Conflict Tactics Scale (CTS) as the single measure of domestic violence. Archer (2000) examined 82 studies, 76 of which relied completely on the CTS. Kimmel identifies a range of reasons as to why the CTS is problematic and therefore drawing conclusions from studies solely based on findings from the CTS do not provide an accurate measure of domestic violence.

The CTS was a tool designed by Murray Straus to examine tactics employed during conflict. The tool presents a list of behaviors that a party involved in conflict might demonstrate or utilize. The behaviors are broken into three categories; reasoning, verbal aggression, and violence. Reasoning includes the use of discussion or argument. Verbal aggression encompasses behaviors such as threats or other verbal acts designed to hurt the other party. Violence stands for the use of physical force towards the other party involved in the conflict during the course of attempting to resolve the conflict (Straus, 1979).

The primary problem inherent to the CTS is that it frames domestic violence in the context of argument and conflict as opposed to a batterer's efforts to control his or her partner. The CTS asks only about instances of violence that have occurred with one's current partner within one year. The CTS simply totals counts of violence, but does not examine the circumstances that give rise to those acts or their consequences. Finally, sexual assault is not included in the behaviors identified by the CTS (Kimmel, 2002; Melton & Belknap, 2003).

Michael Johnson (1995, 2006) distinguishes between two types of violence. He identifies intimate terrorism, or instrumental violence, as control-motivated violence. This typically involves more severe violence that may build over time and cause significant damage or injury. The second type he identifies is situational couple violence, or expressive violence. This is the type of violence measured by the CTS, and it includes less severe violence that is less the result of patriarchal oppression but rather familial conflict.

This distinction is important in understanding domestic violence and gender implications. There is no dispute that women use violence, but their use of such tends to exist within the second category of violence. Women's violence tends to occur in the context of situational couple violence meaning it typically yields much less severe injuries and is not necessarily motivated by the desire to exert power and control over one's partner (Kimmel, 2002). Because many studies demonstrating gender symmetry in domestic violence result from the overwhelming use of the CTS, we can conclude that gender symmetry may exist within situational couple violence (Kimmel, 2002). Many other scholars, however, challenge this finding based on methodological limitations that fail to examine the context and motivation of the use of violence, the

result of the violence and, overall, the over-reliance on survey data that asks respondents to check 'yes or no' without obtaining further information about the details of the incident (see Miller, 2005, Larance, 2006; Osthoff, 2002).

Despite the symmetry found within situational couple violence, however, it is important to understand two things. First, intimate terrorism, or control-motivated violence, lacks gender symmetry and is overwhelmingly perpetrated by men. Kimmel (2000) estimates that men perpetrate more than 90% of this type of violence and its execution relates to disruptions and failures in men's control over women. Second, women's violence against men rarely accomplishes the same degree of threat and fear over her partner as compared to men's violence against women (Durfee, 2011).

Miller and Meloy (2006) conducted a study in which they observed a treatment program for female offenders for six months. They found that 65% of the women they observed had exhibited defensive behavior in the context of trying to escape or avoid a violent scenario with their partner. These findings were consistent with the majority of literature in this area that demonstrates that, "most women who use violence do so to escape or stop abuse" (Miller & Meloy, 2006, 104). This shows that a great number of women arrested for domestic violence are not actually the primary aggressors or the batterer in the relationship, but rather victims executing violence as a means of self-defense (Miller & Meloy, 2006). These findings directly challenge gender symmetry positions.

Durfee (2011) analyzed narratives of alleged abuse written by petitioners in their PO petitions. Durfee found that male petitioners described their victimization much differently than women. The narratives written by men petitioning for a PO demonstrated their portrayal of themselves as the party in the relationship with power

and control, despite claiming to need a PO. Yet, the men also often explicitly stated that they were not the abuser in the relationship, and that their partner would attempt to frame them as such. Finally, Durfee found that most men petitioning the court for a PO did not express any fear in relation to their partner. This is significant in light of Durfee's previous research, which demonstrates that nearly half of women who file for POs specifically claim to fear their partner. Durfee's findings indicate that women's violence against men does not result in the impact of causing fear or altering gendered power dynamics within the relationship.

Although feminist analyses of domestic violence highlight the importance of understanding the implications of gender, its call to also employ an intersectional lens must not be neglected. This is especially important in understanding domestic violence that occurs outside the framework of heterosexual relationships. The very ideas about gender that feminist theories embrace can be problematic to victims of domestic violence in same-sex relationships.

A relatively similar proportion of same-sex couples experience domestic violence as compared to heterosexual couples (Brown, 2008). Additionally, members of the LGBTQ community that are also victims of domestic violence experience many of the same impacts and consequences as compared to heterosexual victims. However, much of the theories surrounding domestic violence that attribute its dynamics to gender create problems for LGBTQ victims. Ideas about gender and patriarchy create ideas about who can and cannot be a victim and who is most likely to engage in violent acts, and this creates barriers for LGBTQ victims (Brown, 2008). Therefore, in understanding gender in relation to domestic violence it is also important to understand it in contexts beyond just heterosexual relationships.

Protection Orders

The victim in an abusive relationship is at greater risk of abuse when she attempts to terminate the relationship. The criminal justice system responds to this elevated risk, as well as the general need for a judicial remedy for victims of domestic violence, by creating Protection Orders (POs). POs are civil orders designed to respond to domestic violence by placing restraints and limits on the contact between the two parties involved in an abusive relationship. In Delaware, POs are more specifically called Protection From Abuse Orders or PFAs. However, this study will refer to these civil orders as POs because that is the term widely used in the literature on domestic violence. POs establish a means for state intervention into the family in order to decrease violence, and because POs are civil orders, the burden of proof necessary to receive one is much lower than that required in criminal proceedings (Topliffe, 1992; Faragher, Logan, Shannon & Walker, 2006; Logan & Walker, 2009; Fleury-Steiner, Fleury-Steiner & Miller, 2011; Watson & Ancis, 2013). POs can grant a wide range of reliefs including limiting an abuser's ability to contact the victim, specifying temporary child custody and visitation agreements, and banning an abuser from having access to the victim's home and place of employment. In addition POs can settle disputes over who will maintain use of a shared residence, vehicle, and bank accounts. Though POs are civil orders, criminal penalties can be incurred for violating the order (Fleury-Steiner, Fleury-Steiner & Miller, 2011).

In addition to the wide range of reliefs offered, POs can serve as a tool in the healing process for a survivor of domestic violence. Nearly 1 million POs are issued to survivors annually, and some studies demonstrate that receiving a PO can mean more than just securing one's safety. Some women report feeling a sense of empowerment and an increase in self-esteem as a result of obtaining a PO (Logan & Walker, 2009).

Harrell, Smith & Newmark (1993) reported that 79% of the women involved in their study felt that their PO was important in sending their partner a message that his actions were unacceptable.

Effectiveness of Protection Orders

Although POs have the potential to greatly protect survivors of domestic violence, some critics of POs assert that the orders are of little value and nothing beyond a mere piece of paper. However, it is difficult to discuss the true effectiveness of POs as the various studies that have examined this employ different methodologies in making determinations. Some studies track violations through police reports and court records, whereas others measure this through records of victims' self-reports.

Klein (1996) conducted a study to determine whether POs really work to end abuse by tracking abusers from PO cases for two years to see if they committed re-abuse after a PO was issued against them. The results here demonstrated that 48.8% of abusers re-abused their victims. Re-abuse was measured by tracking action taken against the abuser in the criminal justice system, which means that only those instances of re-abuse which were reported were recorded in the study. Logan & Walker (2009) used a different methodology that combined tracking arrests for PO violations in addition to self-reports from victims and found that 3/5, or about 60% of women experienced re-abuse after obtaining a PO. These two methods alone clearly yielded different outcomes indicating the impact of the methodology on the results (Carlson, Harris & Holden, 1999; Logan & Walker, 2009; Miller & Smolter, 2011). Hotelling & Buzawa (2003) found that only about half of PO violations are reported to police, which further complicates the ability to truly determine the effectiveness of POs.

Logan et al. (2006) explored the findings from a range of studies related to PO violation, and violation rates ranged from 23%-70%. Here the impact of the methodology on the findings was very evident. Their 1999 study that found a 23% rate of PO violations relied solely on police reports, and examined only reported physical abuse that occurred after a victim obtained a PO. A more comprehensive study that employed a self-report methodology in which women who obtained POs were interviewed, found that 60% of those women experienced unwanted contact in the year following the granting of their PO (Logan et al., 2006).

Beyond the varied and often limited methodologies that these various studies employ, there is an additional flaw to their survey design. This lies in the narrow definition of re-abuse. Often studies that examine whether re-abuse occurs after a PO is issued focus only on the instances of physical abuse. This means that those rates of re-abuse recorded by Klein (1996) and Logan & Walker (2009) fail to encompass any re-abuse beyond that which is physical, which could include emotional, psychological, and financial abuse among others. Overall, the issues surrounding effectiveness make it clear that despite the many benefits POs may provide, they come with serious limitations. What many victims hope will be an end to violence often fails to serve this purpose.

Paper Abuse

“Paper abuse” is a newly emerging term in the field of domestic violence, and as such, it is another form of abuse that is neglected in much of the literature examining re-abuse. Over time, legislation has improved victims’ ability to obtain POs. However, changes that worked to increase the accessibility of POs to victims have led to some unforeseen consequences, including the ability of batterers to commit

paper abuse. Miller & Smolter (2011, 637) have written one of the few articles focusing exclusively on this issue and define paper abuse as

acts that are routinely used by batterers against their former partners to continue victimization and includes a range of behaviors such as filing frivolous lawsuits, making false reports of child abuse, and taking other legal actions as a means of exerting power, forcing contact, and financially burdening their ex-partners.

Miller & Smolter identify PO hearings along with divorce and custody proceedings as sites that are particularly vulnerable to paper abuse, because these types of proceedings are typically drawn out over several hearings and can be heard by several different judges. Often women file for custody, divorce, and POs simultaneously, so they may experience paper abuse across these several avenues at the same time (Miller & Smolter, 2011).

In PO proceedings, paper abuse manifests itself in two main forms. Paper abuse is often carried out through several related motions surrounding the PO process, including motions to modify, extend or vacate a PO. Once a PO is granted either party involved may file for these motions, and the motions are heard at subsequent hearings at which both parties are required to attend. In some cases there are legitimate reasons for a batterer to request, for example, a modification to a PO. However, as Miller & Smolter's interviews with community legal aid attorneys confirmed, often these motions are used by abusers who, as one lawyer states, "...attempt to control everything by filing bullshit litigation" (Miller & Smolter, 2011, 639-640).

Secondly, paper abuse occurs through mutual POs. Another legislative modification allowed for the filing of mutual POs, or POs that are entered against both parties. This was intended to prevent a situation in which a batterer files for a PO against the victim first, so the victim is unprotected. With this change, victims are able

to file for a PO against the batterer. However, batterers have begun using this as an abuse tactic to gain power through the PO process (Topliffe, 1992; Miller & Smolter, 2011). Although it is important to protect victims whose batterers get to the system and file first, mutual POs are complicated and create several problems.

From a court perspective, having parties reach agreement and avoid a hearing is beneficial. If both parties will consent to mutual protection orders, both time and resources can be saved. There is a chance during the PO mediation process, which occurs prior to a hearing, for the parties to agree to the mutual protection orders and thereby eliminate the need for a hearing. Therefore, this option may appeal to court staff and lawyers representing the parties involved, because the process may be shorter (Topliffe, 1992). Court employees are not always well educated in the dynamics of domestic violence, however. In situations such as those involving mutual POs, court staff, such as mediators, may not recognize the abusers' use of a mutual PO as a bargaining tool or as a source of power and manipulation. Court employees may become frustrated with victims who hesitate or refuse to agree to a mutual PO because they do not recognize its use as a manipulation tactic (Faragher, Logan, Shannon, Walker, 2006). On the other hand, however, some victims may willingly agree to mutual orders. This could be done in the interest of time as well as the expectation to cooperate with lawyers and court staff. Victims may also do so in order to avoid a violent reaction from their abuser, for should they refuse the mutual order during mediation, the matter is then heard in front of a judge and hence is more time-consuming (Topliffe, 1992).

When a PO is issued only against the batterer, the victim faces no consequences should she see or contact him, for only the batterer's behavior is

restrained. However, in these situations, various parties, including judges and lawyers, still often warn the victim to stay away from the batterer regardless of the lack of consequences. The logic behind this is that the person filing for a PO is asking the court to forbid the other party from seeing and contacting them, so ideally they will not themselves initiate contact with the other party, as they have demonstrated through their request that they wish for all contact to cease. This explanation leads lawyers and judges to often think it makes no difference whether a PO is mutual or not. However, when this attitude is applied “in cases where there truly is one victim and one batterer, they ignore some of the real difficulties of mutual protection orders” (Topliffe, 1992).

One grave consequence of mutual POs is the message it sends to the batterer. When the court gives a victim the same restraint and restrictions as the batterer, this can enforce the batterers’ belief that they are not responsible, or at least not solely responsible for the abuse. Batterers may interpret a mutual PO as the court blaming both parties involved equally. This compromises the potential of a PO to send a batterer the message that the abusive and controlling behavior is unacceptable, which Harrell, Smith & Newmark (1993) reported as a satisfying aspect of the process for many victims (Topliffe, 1992).

Mutual POs also make it difficult for police to properly enforce the orders if violations occur. When police are called to enforce a PO and they learn there are mutual POs issued, it complicates their ability to immediately determine who are the real batterer and victim. Due to this confusion, police often arrest both parties “just to be safe” even if no evidence of mutual abuse exists in the situation to which they are responding (Topliffe, 1992).

Topliffe (1992) makes a strong argument for issuing mutual POs only when there is evidence that true mutual abuse has occurred between the parties involved. Topliffe, however, fails to mention the use of mutual POs as a bargaining tool during the mediation process. Yet Topliffe's 1992 study, though dated, is relevant and important to consider nonetheless. It is one of few studies that focused on the various impacts of batterers filing for mutual POs. It is important to note that abusers often apply for mutual POs as a counter move in response to the victim's action. Then, during mediation the PO is used as a coercive tool, and an abuser will offer to dismiss the request for a PO if the victim will dismiss the request as well. This will be addressed more in the section discussing this project's research findings, but it is important to understand this possible outcome in addition to those identified in Topliffe's research.

Paper Abuse in Divorce and Custody

Although this project focuses primarily on paper abuse as seen in PO proceedings, it is important to understand how it functions during divorce and custody processes as well to understand the broader scope. Watson & Ancis (2013) studied 27 women engaging in divorce and custody proceedings who had experienced some form of abuse during their marriage or relationship. These women reported that the abusers used the legal system in a number of ways during these processes to maintain power and control. Abusers threatened to pursue full custody as a means to prevent some of the women from leaving the relationship. Other victims experienced various tactics employed by abusers to prolong the case. This was accomplished through requests for emergency hearings, failure to provide required documents, and making false accusations of things such as child abuse. One woman reported that her ex-partner "brought up seven charges of contempt in court which were completely thrown out,"

but despite being false accusations they served to drag out the process through unnecessary additional hearings. In addition to the legal methods exploited by abusers, several of the women Watson and Ancis (2013) worked with experienced scare tactics, such as threatening or harassing emails, that they perceived as attempts to coerce them to agree to certain terms in custody or divorce settlements.

Impact on Victims

In examining the behavior employed by batterers to complicate legal processes and maintain power, it is essential to evaluate the consequences victims face as a result. Attempts to prolong the process through frivolous filings cause victims stress as they have to go back to court over and over again. This can mean taking time off from work, arranging transportation and childcare, and having to confront one's abuser in person time after time. If a victim is able to retain counsel throughout these complicated proceedings, the batterers' efforts often succeed in causing financial depletion (Miller & Smolter, 2011; Watson & Ancis, 2013).

In the same way that experiencing a successful PO can create a sense of confidence and empowerment for victims of domestic violence, Miller & Smolter (2011) found in their interviews with victims of paper abuse that the complicated and drawn out proceedings can have the opposite effect. Some women reported overhearing their abuser in the court waiting room making disparaging and even false comments about them. Moreover, coming back to court and answering to the abuser's claims "created a feeling of powerlessness and a sense that the state was not acting in their best interest." The dynamics of these proceedings mirror those of the abusive relationship that preceded, so it can cause a victim to relive past traumatic experiences of abuse (Miller & Smolter, 2011; Watson & Ancis, 2013).

Significance of Present Study

In a study conducted by Fleury-Steiner et al. (2011) researchers identified an important research gap to be batterers' perspectives on POs and their choices related to PO violations and re-abuse. Miller and Smolter (2011) wrote that more information is needed about the extent of paper abuse and ways it is used. This study seeks to fill in some of those research gaps by providing a better understanding of the attitudes and behaviors of batterers involved in PO proceedings.

Chapter 2

METHODS

This study explores domestic violence batterers, their attitudes towards Family Court and POs, and their resulting self-reported behavior. A multi-methodological approach was employed.

Batterer Survey Data

The primary findings of the study result from analysis of surveys completed by 49 men in a court-ordered domestic violence treatment program in the State of Delaware. Only 44 participants completed full demographic information. 29 participants identified as white, 13 as African American, one as Asian/Pacific Islander, and one identified as “other.” Respondents ranged in age from 20 to 97 years old.

Participants completed the survey during their weekly group meetings and their participation was voluntary. Questions focused on their history of POs, behavior during related processes, and attitudes toward the process. Questions were framed to investigate intimate terrorism or control-motivated violence as opposed to “common couple” violence that occurs mutually in relationships (Johnson 1995, 2006). This focus was intentional so as to incorporate exploration grounded in feminist theory and gain an understanding of how intimate terrorism can be carried out through the manipulation of legal processes. Surveys were administered by group leaders and were completed during June and July 2013.

Both open- and close-ended questions were asked (see Appendix A for a copy of the survey issued). The close-ended questions examined behavior and actions taken during the PO process, such as motions and petitions filed and resources utilized. The open-ended questions allowed survey respondents to express their opinion about the PO system in their own words. Many took great advantage of the partially open-ended format and provided detailed insights into their attitudes surrounding POs.

During the month of July 2013, I observed two sessions of a treatment group whose members participated in the surveys. The group was the program's smallest with just eight participants. The observations, though limited due to the small number of men present, allowed me to further contextualize some of the opinions expressed through the survey responses.

Attorney Interviews

Based on the survey results that indicated attorneys are a frequently utilized resource in the PO process, I followed up by inviting family court attorneys practicing in Delaware to participate in an interview to better understand their role in the process and discuss ways to improve the PO system. Twenty-two attorneys were contacted from an attorney referral list available from an advocacy service office in the New Castle County Family Court. Attorneys who did not answer the initial interview request were followed up with another request after one month, and once more after another month had passed. Five attorneys responded and agreed to sit for interviews. Data was collected between November 2013 and February 2014. Interviews lasted between 27 and 38 minutes.

The interviews probed attorneys about their role in the PO process representing both petitioners and respondents. Questions were open-ended, which was beneficial in

allowing attorneys to freely express their opinions related to the PO system in Delaware, and this would not have translated to a written survey or close-ended question format. The framing of questions for these interviews was done sensitively so as to not offend any attorneys who believe that it is in their clients' best interest to use the legal system to gain influence in PO proceedings (see Appendix B for a copy of the interview guide).

Responses varied from the different attorneys. Some were far from interested in sitting for an interview and made that clear through communication surrounding my initial request. Enthusiasm and interest also varied among those who were willing to engage in my project. Some were very open and shared personal experiences related to the PO system whereas others answered questions with the barest information. I explained to attorneys that their participation in my research would help me better understand the role attorneys play in PO hearings as well as ways the system could be improved. During all five interviews, I asked questions out of order and added some follow up questions based on the way the conversation unfolded. All interviews took place in the participants' offices and all participants allowed me to tape record the conversations.

My sample size was small but definite themes emerged. My hope in conducting these interviews was primarily to solicit ideas for ways the PO system can be improved. Due to attorneys' frequent interaction with the system, I thought they would be a great resource with whom to discuss this.

Limitations of This Research

The survey administered to batterers in the domestic violence treatment program has some limitations. Respondents were not representative of a wide range of

social locations. For instance, there was not a great deal of racial diversity among respondents. In addition, only three respondents reported earning a Bachelor's Degree, with the rest either having a high school diploma or completed just some high school coursework. This demonstrates that there may not have been a great deal of diversity in social class among the respondents as well. Finally, the survey failed to ask the respondents their sexual orientation. However, in answering the open-ended questions 30 respondents used female pronouns or referred to the other party in their PO case as a "female" or "woman." This indicates that the majority of respondents completed the survey in relation to the dynamics of heterosexual relationships. As research demonstrates that domestic violence occurs in same-sex relationships at rates similar to heterosexual couples, further research should seek to explore this issue in same-sex relationships.

In addition, due to the small sample size of attorneys, I am unable to move beyond descriptive data. The sample size is a definite limitation of this research, and the findings must be considered within this context. The willingness of these five attorneys to meet with me could reflect a selection bias; so further research could seek to explore whether or not similar findings emerge when interviewing a larger pool of attorneys.

Chapter 3

ANALYSIS

After receiving the surveys from the treatment program, I coded all of the responses. I assigned each survey an identification of R1-R49 to keep track of the respondents. For close-ended questions, I recorded the respondent identification number next to the answer chosen. I entered responses to open-ended questions word for word along with the identification number of the respondent. As I coded the data, I made note of emerging themes, particularly among the open-ended responses. I read through these several times to ensure I coded them verbatim and became familiar with them.

To analyze the data, I first looked at the close-ended ended questions to establish suspected paper abuse. I did this by examining the different legal actions taken by respondents during the PO process and their reasons for these decisions. I then looked to the section assessing respondents' use of various resources to better understand where they may learn about the legal system and the various ways it can be manipulated. Finally, I broke down the open-ended responses into several themes. These themes focused around reasons respondents may feel POs are difficult to comply with, why they perceive the PO system to be fair or unfair, and why they do or do not feel gender bias exists in the PO system.

Themes related to PO compliance included failure to accept responsibility for one's own actions, hardships caused by the PO including those related to a respondent's finances or career, difficulties related to the involves parties' shared

children, and frustration regarding contact between the two parties. The themes that emerged surrounding the fairness of the PO system included ideas that women use the PO system to gain an advantage in legal proceedings, biases exist in the court system that serve to discredit the respondents, the court system itself is flawed, and again the issue of contact between the two parties. Themes that emerged surrounding perceptions of gender bias in the court system encompassed the respondents' feelings that the Family Court system in Delaware favors women, that the involvement of children impacts gender biases, and finally, that the ability of petitioners to contact respondents free of punishment is unfair.

After conducting each attorney interview, I transcribed the recording verbatim. Similarly to the open-ended response section of the surveys, I looked for themes among the answers to each question I asked. The two major categories of themes that emerged related to encounters with attempts to manipulate the legal system during PO proceedings and ideas for ways to improve the PO system. Due to the very small number of attorneys I paid attention to any opinions expressed by more than one participant.

FINDINGS

This section explores the different themes and information illustrated by the collected data. The section is divided into two parts so that the survey and interview data could be reported distinctly. Quotes have been used to contextualize some of the attitudes and beliefs of both the survey respondents and attorneys interviewed. Three themes to be explored include occurrences of paper abuse, resources used during the PO process, and attitudes towards it.

Batterer Survey Themes

Nature of the Relationship Between the Two Parties

To contextualize the survey data, I felt it important to inquire a bit about the current status of the involved parties' relationship. As of survey completion, 12 men responded that they were back together with their ex-partner. Thirty-three men responded that they were not back together, but eight of those men indicated that they would like to be. 15 of the parties share property including credit cards, bank accounts, vehicles, and pets. Finally, 35 of the respondents have children in common with the other party.

Occurrences of Paper Abuse

In examining the surveys completed by men in the domestic violence treatment program, I assessed the questions they answered about their behavior during the PO process to determine the existence of paper abuse. 12 out of the 49 respondents indicated that they filed for a mutual or cross-PO against their ex-partner. A follow up question provided three options for why the men chose to file for their own PO. Four indicated that they filed because their partner abused them. Three men responded that they filed for a PO because their partner filed one against them first, and five said they filed because their attorney recommended they do so. This suggests that eight of the 12 men who filed for a cross-PO did so for reasons other than their own safety or as the result of abuse. One man even wrote in the margin of his survey "counter move - attorney recommended." Six of the men who filed were successful in receiving a PO against their ex-partner. Out of the six who received POs, only one responded that he filed as a result of being abused; the other five had filed either at their attorney's suggestion or as a response to having one filed against them first.

In addition, respondents were asked if they were ever concerned about their safety with the ex-partner whom they filed the PO against. All four respondents who filed because they experienced abuse indicated that they did have safety concerns. The three who filed because their partner filed first said they were not concerned about their safety. Two of the five men who filed for a PO because their attorney recommended they do so responded that they were not ever concerned about their safety. The respondent who wrote a note in the margins admitting to using the PO as a legal tactic indicated he was not ever concerned about his safety.

These responses demonstrate some of the men who filed for their own POs were not motivated by the need for protection but rather the potential to use a cross-PO as a source of leverage or manipulation. For example, one respondent wrote he filed a PO because his partner filed one against him first. He also responded that he never feared for his safety with his ex-partner. Finally, he indicated that he was successful in receiving the PO he filed for, and that there was not a PO in place against him. This is a clear manipulation of the system and makes it obvious that some of the men in this survey pool had indeed committed paper abuse.

Determining instances of frivolous filing was a bit more difficult to assess. Unfortunately the questions that sought to determine instances of this type of behavior were not probing enough and did not result in any clear themes or findings. Nine men answered yes to having filed a motion to modify, vacate, or dismiss the PO in place against them. Two of those nine men answered that they did not attend the hearing that resulted from the motion they filed. However, more information is needed to draw conclusions about this, such as the nature of their request, how many times they had filed motions, and so forth. This could be a fruitful inquiry in future research.

Resources Utilized

The second set of themes that emerged relate to the resources utilized by the survey respondents during the PO process. I was interested in exploring the ways people learn about the PO process to better understand how people learn about the various ways they can manipulate and complicate the process. Understanding the role of third parties in the process could indicate whether paper abuse is executed with the assistance of others.

Only 12 respondents had an attorney represent them during the PO process. Half of those who filed their own cross-PO were among those who employed attorneys. One respondent who had filed a cross-PO wrote that he learned about the process and what to file from a police officer. Two others learned about the process and were assisted by family and friends. Although many of the respondents were not represented by an attorney, the findings demonstrate that those who did seek information or assistance filing utilized attorneys more than any other, less formal resources such as family, friends, or co-workers. This finding led to the plan to interview attorneys that work on PO cases so as to better understand their role and beliefs surrounding the PO process.

Attitudes Towards Protection Orders and the Family Court System in Delaware

The respondents' attitudes and opinions regarding POs in general and the PO system in Delaware were assessed through a number of questions. Most questions were asked in a close-ended "yes or no" format, and followed up with an open-ended probe that provided an opportunity to explain their answer to the close-ended question. Many respondents utilized the open-ended format to express their opinions, which

facilitated the appearance of several themes to emerge from the responses to each question.

35 men answered that there was a PO in place against them. Those men were then asked in an open-ended question if they thought the PO was fair or deserved, and why or why they did not think so. Five men answered that they felt the PO against them was fair or deserved. Unanimously, they accepted responsibility for the abuse that led to a PO being granted against them. For example, one man wrote, “Yes, because I was out of line,” and another wrote, “Yes, ‘cause I hit her.” These responses all acknowledged their own personal actions and how those related to the PO being put in place against them.

One theme that emerged among the 11 respondents who wrote about why the PO was unfair was the contribution of another person’s actions and how that related to the PO. One man responded, “ She was just being mean ‘cause we broke up and wouldn’t let me see my son.” Another respondent explained, “No because the cops did not let me explain my side.” These quotes sharply contrast with the personal responsibility taken by those who felt the PO was deserved. Ten of the 11 respondents who felt it was unfair or undeserved made no mention of their own actions and how their behavior contributed to the PO being granted against them.

These findings reflected the dynamic of the group treatment sessions I observed. Only two of the eight men in the group were willing to openly take responsibility for their actions and how those impacted their need to complete the treatment program. The other six men attending the group were much more reserved and less willing to take any responsibility for their actions, and demonstrated frustration for having to attend the group. Two men explicitly stated that there was no

relation between their actions and the fact that they had been required to complete the treatment program. In discussions with the group facilitator subsequent to the first group meeting observed, we both agreed that only two of the men in group seemed to take the treatment seriously that day, and it was those two men who had accepted responsibility for their actions.

The next question assessing batterer attitudes asked if it was hard to comply with the conditions outlined in the PO in place against them. 19 said it was difficult and 17 said it was not difficult. In explaining why or why not, four respondents mentioned resulting difficulties related to finances or their careers. Four mentioned the difficulty in feeling as though there are consequences looming over them constantly if they were to violate the order, and that this was stressful. Ten men wrote the about difficulty surrounding the parties' shared children. Many shared how frustrated they were that the PO made it hard for them to see their kids as much as they would like. This is important in light of the fact that 35 out of the 49 respondents shared children with the other party. Finally, two respondents wrote about the frustration that ensues from the other party contacting them. As mentioned previously, although the PO prohibits the person it is in place against from contacting the other party, it is technically not enforceable against the party who seeks the order. This theme emerged from the answers to several questions, so it will be discussed subsequently in greater depth.

Next, respondents were asked if the PO system is fair overall. 12 said that the system is fair overall, and 33 said it is not. Six themes emerged in the open-ended opportunity for an explanation and follow up to that answer. The first theme emerged among respondents who believe the system was fair overall. Of the 12 who indicated

they felt this way, only three answered the open-ended section. All three answers revolved around the idea that the system is fair “as long as it is used right.” Two respondents mentioned the system is unfair because women use POs to gain an advantage in upcoming custody and divorce proceedings. Six respondents discussed beliefs about the existence of biases in the court system related to gender and victim/offender identities. For example, one man wrote, “Cause they take the woman side more than the man,” and another wrote, “It’s geared to simply destroy offenders.” Similar to the perception of a gender bias, two men expressed opinions that in the case of a mutual PO, the court favors the party who files first and does not give both sides a fair chance.

Four men discussed their frustration surrounding perceived flaws in the court system or issues related to legal proceedings. One mentioned that “the Delaware system needs to be revamped,” and another was irritated “because the things written in the [PO] are unclear.” The last theme that emerged was very similar to the last theme in the answers to the previous question. Here, three respondents discussed frustration about the fact that the PO was unenforceable against the party who filed it, which meant that person was able to contact the respondent. One man wrote, “The person who gets one on you should not be allowed to contact you or they should get in trouble.” This quote is very representative of the similar opinions expressed throughout the surveys.

The final question assessing batterers’ opinions asked if they thought the PO process treats men and women the same. Nine responded yes, indicating that they do feel it treats women and men the same, and 33 felt that it does not. In the open-ended section of this question that allowed respondents to elaborate on their previous answer,

24 discussed the system's unfairness by reiterating their feelings of the existence of a gender bias by writing thoughts such as, "Family court in Delaware sides with the mother always has and always will," and "Because they always go with the woman." Again, two respondents mentioned the fact that the order was only enforceable against them and the other party faced no punishment were they to contact the respondent.

Suggested Changes

The final question on the survey, aside from demographic information, asked respondents what they would change about the PO system, and 18 men responded to this question. Three men wrote that both parties should have to attend domestic violence classes. Six men brought up the issue of raising the burden of proof necessary to obtain a PO. Again, three respondents wrote that the other party should not be able to contact them. Other responses were varied and did not give rise to any specific themes. For example, one respondent simply wrote, "lie detector," and another responded, "keep it the same."

These surveys provided great insight into batterer behaviors and attitudes. In assessing all the responses, the main themes that emerged in the questions surrounding attitudes were perceptions of biases in the court system, frustration with the enforcement of POs, and frustration with the other party's behavior related to the PO. The findings were very useful in creating the question guide for the subsequent attorney interviews. The findings demonstrated that attorneys are a utilized resource in the PO process, so I asked questions to explore the role attorneys play to paper abuse. By identifying the batterers' perceptions of the fairness of the system, the survey findings also provided a basis from which to discuss possible changes to the PO system. The survey pool for attorney interviews was very small. The main purpose

was to discuss ways to improve the PO system, specifically in terms of curbing paper abuse. In addition to the discussion surrounding improvements to the system the attorneys provided some insight into the role they play in the process, so the conversations did yield some relevant findings.

Attorney Interview Themes

All attorneys stated that they have experience representing clients with a history of domestic violence in PO cases. The attorneys have represented both PO petitioners and respondents.

Training

Due to the fact that attorneys were the resource most-utilized by the survey respondents, I wanted to first learn about what training, if any, family court attorneys have related to domestic violence. All of the attorneys indicated that they have no formal training in domestic violence. All five have attended Continuing Legal Education (CLE) sessions as required by the Delaware Bar Association. There are sessions about POs in which different representatives from the field such as judges and mental healthcare workers will teach a seminar. The attorneys are required to attend a certain amount of CLEs but have choice as to what types of sessions they attend. This means that although these attorneys choose to attend sessions about POs because that is relevant to what they practice, they are not specifically required to attend those types of CLEs. Three attorneys stated that most of what they know about domestic violence and POs they have learned through the experience of handling those types of cases.

Attorneys as a Resource

In addition, I thought it was important to discuss the role attorneys play in providing information to their clients in PO cases. All five attorneys indicated that they feel they are typically the primary source of information from which their clients learn about POs. Two attorneys mentioned an exception to this, which occurs when they represent victims who have been assisted by the Domestic Violence Advocacy Program in Family Court before hiring representation. Those who are clients of the Advocacy Program typically come with more knowledge. However, everyone else typically comes with questions and little information about the process and ways to proceed. This is important because it could indicate that attorneys may be instrumental in carrying out paper abuse.

All five attorneys said that they see cross-petitions for POs abused and used as a tactic to gain leverage or an advantage in legal proceedings. Four of the attorneys made a point to say that they use cross-petitions only when they believe real mutual abuse occurred between their client and the other party. In discussing this issue, one attorney said,

It's something that does happen and something that some attorneys use as a tool. I don't think that's an appropriate tool for an attorney to use and I discourage it unless someone has told me it's a very legitimate and meaningful protection from abuse petition. A lot of times it's just because the other person filed. I don't think it's appropriate to be filing cross petitions but I have done it on occasion when I think it's appropriate.

Another attorney told a story of a fellow attorney and friend who was representing a client that was the victim of abuse in a relationship and the abuse was not mutual couple violence. This attorney's client had been assaulted by his ex-partner and criminal charges were pending against the other party as a result. However, the other

party had gotten to the courthouse first and filed for PO before the attorney and her client were able to file. She said that when POs are being used as a legal tactic “sometimes it is literally the race to the courthouse.”

That same attorney said, “I think when an attorney gets involved cross PFAs tend to be filed more.” This statement relates to the previous theme of using attorneys as a resource. It seems that the involvement of an attorney may indeed make manipulations of legal options more likely. In referring to those attorneys who utilize this tactic another attorney said, “It’s interesting with Wilmington and Delaware being a small community we all know who those attorneys are...it’s typically the same people.”

Bias

Another theme that emerged in the attorney interviews was related to bias. I mentioned to all five attorneys that 33/49, or 67%, of the survey respondents felt the PO system is overall unfair and treats men and women differently; I asked the attorneys if they had any thoughts about this. Three attorneys felt that the commissioners who hear PO cases in the Delaware court system do incorporate some bias in their judgments. One attorney stated, “Certain woman commissioners are more likely to find abuse, and if I have a male respondent there are other commissioners that are less likely to find abuse and I hope I get them.” The same attorney felt there is not much effort made to abandon these biases and they are just part of the way the system works. Similarly, one of the other attorneys who believes there is bias in judgments said,

That’s one of the reasons why it’s helpful to have an attorney who knows what the preferences are and the leanings of a particular commissioner...but you don’t know who your particular commissioner

is going to be when you go in on a PFA until sometimes literally when you walk in the door so you have to kind of use an overall judgment.

Two of the attorneys who believed that bias exists in the system identified the advantage for offenders of working with an attorney who can effectively navigate those biases.

Mediation

Two attorneys identified issues that they see occurring in the mediation process for POs. Both attorneys stated that they feel the quality of mediators varies greatly and that many of them lack the skills to properly mediate PO cases. One attorney stated, “You know a lot of hearings occur I think because they’re inartfully mediated.”

Similarly, the other attorney that discussed this issue said,

I know in my experience as a volunteer attorney down there, more often than not, I’ll be presented with a case and they say oh this one’s going to trial and I’ll look at it and it’s clear to me there should be a resolution. It doesn’t need a trial, and I’ll say, so what’s the deal and it hasn’t really been flushed out.

Both attorneys felt that many of the mediators lack the skills necessary to deal with cases that involve domestic violence. One attorney said they see a variety of skill levels among mediators in child support or custody cases but that the lack of skills is even more evident in the PO arena indicating that many of them know little about the dynamics of domestic violence.

Similarly, the other attorney who identified issues in the mediation process discussed his experience with mediators struggling to work sensitively with victims. He explained that when a victim shows up on the day of a PO hearing without any evidence or witnesses to prove the abuse, that victim will struggle to win the case and receive a PO due to the necessary burden of proof. It is important that if a mediator or

attorney attempts to explain this to the victim that they emphasize the fact that this is a procedural issue, and it does not mean that the victim's experiences are invalid or unimportant. This attorney acknowledged that, "those are complicated conversations," but then discussed the fact that mediators often handle them poorly. He also noted, "I'm not even sure attorneys handle those very well that often." Mediation plays a large role in the PO process and, if carried out effectively, has the potential to save the court time and resources by limiting the number of cases that require a formal hearing. That, in combination with the impact poor mediation processes can have on parties involved in PO cases, makes it an important issue to address.

Chapter 4

DISCUSSION

Many of the themes of this research reinforce themes that have emerged from previous research. What is unique, however, is that the themes emerged with a sample of male batterers; much of the prior research addresses the issues of the occurrence of paper abuse, issues of bias in the court system, the relationship between domestic violence cases and procedural justice, and the role of attorneys and mediators in the PO process from the victims' perspective. Due to the fact that not a great deal of research exists on paper abuse, the findings of this study are important in understanding how batterers carry out paper abuse and how their attitudes towards the PO system and the involvement of third parties, such as attorneys, may influence their behavior.

Miller & Smolter (2011) stated that paper abuse is related to the use of coercion, and that this type of abuse can persist even after victims leave abusive relationships. The findings of this study demonstrate that legal processes are indeed used manipulatively by abusers and their attorneys to gain leverage or power during the PO process and jeopardize a victim's chance of successfully obtaining a PO. Miller & Smolter also discussed that paper abuse is often left out of examinations of domestic violence batterer tactics, yet it can be very harmful to victims. Their research suggests that court personnel do not take these types of manipulations seriously and often fail to recognize them.

This issue presents a difficult scenario, because it is intentional that anyone is able to file for a PO. Cross-petitions exist as an option for the purpose of ensuring victims are still able to seek a PO even if their batterers file for a PO against them first (Miller & Smolter, 2011). A conversation with one attorney in which she referred to the “race to the courthouse” between the two parties made it clear that this is a common occurrence. This means that court personnel need to have a heightened awareness of the issue of paper abuse. When mutual POs are filed efforts must be made to determine if the situation is one of mutual couple violence, or if the petition is indeed being used as a tactic of abuse and the nature of the relationship is more along the lines of intimate terrorism or control-motivated abuse (Johnson, 1995).

The issue of bias in the court system emerged from both the survey data and the attorney interviews. A majority of batterers who completed the survey perceived bias that worked against them in the Family Court system. The issue of bias was also raised by some of the attorneys who said that their decisions within the PO process may differ based on which commissioner presides over a case. The attorneys indicated that the leanings of court officials vary, and that individual biases exist. The attorneys interviewed, however, did not overwhelmingly feel that biases favored one gender uniformly, rather individual commissioners are known for particular preferences that vary. The literature on gender bias in the court system mostly demonstrates the existence of such leanings.

Beginning in the 1980s, states began to create task forces to address the issue of gender bias in the courts. These task forces published reports to demonstrate the existence of gender bias in legal systems (Czapniskiy 1993; Resnik, 1993; Kearney & Sellers, 1996; Martin, Reynolds, & Keith 2002). Findings showed that men and

women were treated differently in the courtroom. Reports demonstrated that female lawyers and witnesses were often discredited or not taken seriously in the courtroom (Czapniskiy, 1993; Kearney & Sellers, 1996). Verbal and sexual harassment by judges and male attorneys was also widely experienced, as reported among female attorneys (Kearney & Sellers, 1996). Although these studies indicate that women suffer a great deal due to gender biases, reports showed that gender bias does impact men as well. For example, men are typically found less fit than women to serve as legal custodians for their children. This finding was common across many states (Kearney & Sellers, 1996).

Martin, Reynolds, & Keith (2002) used data collected by the Florida Task Force on Gender Bias. Using mail-in surveys to all members of the Florida Bar and the Florida judiciary. 1,655 attorneys' and 300 judges' responses were analyzed. Based on their findings, Martin et al. argued that a judiciary composed of just men would vary greatly from one that was more gender balanced because men and women occupy different standpoints. This study's findings demonstrated that women recognized and experienced higher rates of gender-based harassment within legal institutions than men. These experiences of gender bias often cause female attorneys and judges to possess a greater feminist consciousness than male judges possess. This consciousness manifests itself through women to taking a more feminist approach to issues such as rape, domestic violence, and property division by recognizing the influence gender as well as power and control play in these types of issues.

However, a 2008 study by Miller and Maier contradicted those findings. This study analyzed interviews conducted with 13 female family court judges from one state. These judges embraced their female identity, but believed that male and female

judges still come to the same legal conclusions. They did acknowledge, however, that judges' female identity could impact the way that they reach their ultimate conclusions, and that their path towards such may differ from that of male judges.

In examining the literature on gender bias in the courts, it is important to recognize the time period during which the study originates. The most recent piece of scholarship, the study conducted by Miller and Maier (2008), perhaps accounted for the least amount of gender bias in the decisions of male and female judges. Some of the state task forces that undertook initial investigations into gender bias in the courts are nearing 30 years old. Despite this evolution, it is clearly established that gender bias has existed in legal systems at least in the past. The current study suggests perceptions of gender bias are also held by men who have been arrested. It is important to note, however, that the perceptions of bias, as articulated by the survey respondents in this study, indicate a feeling of bias in favor of women. Research on this issue, while acknowledging the existence of bias, largely discusses biases against women in the court system. Thus we must consider batterers' perceptions as compared to what the research demonstrates exists in actuality.

Men's accounting of gender bias may reflect the reality of domestic violence as a gendered issue. Kimmel (2002) estimates that over 90% of intimate terrorism and control-motivated abuse is perpetrated by men against women. Though this certainly leaves room for different scenarios, this indicates that a large number of POs will be requested by women to be put in place against men. Procedural justice theories, which are discussed in greater depth below, suggest that in evaluating legal processes batterers often compare their experiences to those of others (Leventhal, 1976). Batterers may then feel a bias exists if they know that many women have been

successful in seeking POs against men, but this may be a greater reflection of the reality of domestic violence as a gendered issue rather than the existence of gender bias within the PO system.

Batterers' perceptions relating to fairness and bias, whether grounded in actuality, are important in the context of paper abuse in light of a concept called procedural justice. Procedural justice is a theory which posits that one's satisfaction with legal processes and their outcomes is influenced by perceptions about the fairness of the processes themselves (Tyler, 1988). That is, perceptions of fair procedures increase the likelihood one will view the outcome as acceptable, whether or not it favors them.

Paternoster et al. (1997) examined procedural justice in relation to domestic violence. This study, conducted with the Milwaukee Police, found that when police acted in a way that was procedurally fair when arresting domestic violence batterers, those batterers were significantly less likely to re-commit abuse. The findings of this study demonstrate that fair treatment from legal actors, even in the face of punishment or sanction, can cause a person to view those actors with greater respect and validity.

Leventhal (1976) theorized six elements of procedural justice, and they are relevant to the current study. The first is representation, which refers to the chance to voice one's opinion and feel as though one's voice is being heard. The next element is consistency, which is the idea of uniform treatment across the board. This reinforces the idea of bias, which means different characteristics cause different experiences of treatment. The third element is impartiality, which again incorporates elimination of subjectivity. Next is accuracy, which refers to the ability of authority and actors to make good, educated decisions. Correctability is the concept of having the ability to

appeal decisions. In the PO system, one has the option to motion to modify or vacate a PO order they may not be happy with. The final element Leventhal identifies is ethicality, which refers to legal actors treating involved parties with respect.

Guzik (2008) also examined domestic violence batterers and perceptions of the legal system. This study, similarly to Paternoster et al. (1997), found that parties who felt respected by legal actors had greater respect for the system overall. All of these findings demonstrate that efforts to eliminate biases and make procedures as fair as possible may impact the respect given to POs by batterers. This is important due to the high violation rates and behavior, such as paper abuse, that occurs far too often. Legal actors must make efforts to improve batterers' perceptions of the legal processes. If this is done, greater respect may then be given to POs that result from those processes and batterers may be less inclined to commit subsequent acts in violation or manipulate those legal processes to harass or hurt the other party.

The perceptions and views expressed here by batterers, however, must be considered in light of all that we know about batterers' unwillingness to acknowledge the extent of their abuse. Dobash et al. (1998) sought to better understand men's and women's accounts of violence. The authors of this study interviewed 122 men who were perpetrators of violence against women, and 144 women who were victims of this type of violence. The findings of this study demonstrate that women and men offer vastly different versions of this violence, with men typically minimizing or downplaying their violent behavior. This means that although it is important to understand batterers' attitudes, we should be cautious to accept batterers' self-reported accounts of behavior and experiences related to the PO process. Absent the perspective of the other party involved in the violent or abusive relationship, we

cannot trust that batterers are providing a completely accurate portrayal of their violence and experiences.

The issue of mediation was discussed during the interviews with attorneys. Two attorneys felt there was potential for mediation to be effective, but felt that in its present state it is fraught with problems. Much of the literature on mediation in domestic violence cases suggests that the two are fundamentally incompatible. Advocates for mediation argue that, from a logistical standpoint, it helps clear court dockets, because those cases settled during mediation do not need to go before a judge in a formal hearing (Fischer, Vidmar, & Ellis, 1993). However, the practice of mediation typically seeks a conflict resolution approach in legal proceedings. This is problematic due to the fact that intimate terrorism is not the result of conflict but rather that of one party's desire to control and dominate the other party (Fischer et al., 1993; Imbrogno & Imbrogno, 2000). Another element crucial to effective mediation is that parties have equal power in negotiations. Due to the fact that domestic violence often revolves around power differentials, this is simply impossible to achieve in some cases (Imbrogno & Imbrogno, 2000).

Fischer et al. (1993) and Davis (2006) suggested that mediation can effectively resolve domestic violence cases when highly trained mediators are involved and pay special attention to balancing power differentials. However, Fischer et al. (1993) also suggested that although it is possible that mediation will be effective in those circumstances, it is much more likely that victims will be disadvantaged by the process. These findings are consistent with the views expressed by the two attorneys who discussed mediation in depth. The attorneys felt that mediation is ineffective because so many mediators are grossly unequipped to handle issues relating to

domestic violence, which suggests a lack of proper training. One attorney mentioned, however, that the PO calendar in the Delaware courts is often very full, and that the mediation process is necessary to get through all of the scheduled cases each week. The interest in keeping the court docket clear through the use of mediation is a significant interest and seems necessary to the functioning of the PO system, so this means that serious improvements must be made to the quality of the mediation in PO cases to ensure its effectiveness.

The role attorneys play in the PO process was mentioned both in the survey data and the attorney interviews. Durfee (2008) found that PO petitions submitted with no legal assistance can differ greatly from POs submitted with the assistance of an attorney. Her findings also demonstrated that the quality of the petition itself was not as important in cases where the respondent was not denying allegations of abuse or there was abundant evidence that abuse had occurred. However, in the cases where the respondent had a lawyer or there was no physical evidence of abuse, the petition's content and organization were much more important in determining the outcome of the case. For example, in the latter set of circumstances, a petition that was organized chronologically and provided specific dates and accounts of instances of abuse were much more likely to result in a PO being granted. In the absence of an attorney's assistance, parties do not often know the best way to construct their allegations.

This relates to the discussions with attorneys who stated that they see manipulations of cross-POs more frequently when attorneys are involved, and that it is often the same attorneys who employ this tactic over and over. Durfee's study indicates that the presence of an attorney could make a difference if there are cross-POs filed, which typically means the parties deny the others' allegations. When the

impact of an attorney's presence is taken into account with the increased use of mutual POs as a tool or tactic it seems clear that attorneys play an instrumental role in paper abuse.

POLICY SUGGESTIONS

In assessing the issue of paper abuse, this study and previous research make it clear that this problem persists in the PO system. Much more difficult, however, is determining what changes can be made prevent this type of behavior from occurring. Both structural and societal changes can work together to eliminate paper abuse from occurring.

One attorney I spoke with suggested that greater sanctions for findings of contempt would cause batterers to perceive POs with more respect and seriousness and that this may result in less violations. This attorney mentioned one case he handled where he represented a victim and the batterer was held in contempt four times and the PO had been extended for an additional two years as a result of the batterer's continued contact and violations. The attorney felt the violations persisted because the consequences of violating the order were never significant. The same attorney mentioned another instance of a case in which the party found in contempt of the order was fined \$5,000 and was required to pay the other party's attorney fees related to the contempt issues. The attorney said "that got her attention" and there had since been no issues of violations. If violations were treated more seriously the batterers may denote more legitimacy to POs and manipulate them less frequently.

Miller & Smolter (2011) suggested that paper abuse be added to the domestic violence power and control wheel. The power and control wheel is a tool commonly used to help victims understand abuse, and adding paper abuse to the wheel of abuse

tactics would lend the issue more legitimacy. In addition, this tool can be incorporated into basic training surrounding domestic violence, so the presence of paper abuse in those scenarios is important.

Increases in training for parties involved in the PO process across the board are important. Discussions with attorneys indicated that their training in domestic violence is limited. All five attorneys I interviewed have attended CLE sessions related to POs, but they are not required to do so. Further, it seemed that the focus of sessions is often on the PO process rather than dynamics of domestic violence in general, which is a very important foundation to have when working with victims and abusers. The incorporation of paper abuse into basic training tools, such as the power and control wheel, and requiring basic training for attorneys that practice in family court is crucial. This study revealed that attorneys play a significant role in many instances of paper abuse and can help the related behaviors to be executed more successfully. Perhaps if family court attorneys had a greater knowledge of domestic violence and understood that this behavior is an extension of the coercion inherent in intimate terrorism they may be less likely to practice these tactics. One attorney also mentioned that attorneys have a specific CLE requirement to attend a certain amount of ethics training. This is an issue that could be raised in that context

Mediators are another party to the PO process that should be well-trained. Research indicates that the need for mediation in domestic violence cases is clear, and that highly trained mediators have the potential to balance power differentials and mediate successfully. However, discussions with attorneys revealed that some mediators in the Family Court System in Delaware seem to lack this training and sensitivity. Mediation is a crucial part of the PO process, because it gives victims a

chance to clearly state to the batterer what relief they are seeking, so it has the potential to be an empowering process. In its present state, however, it seems clear that this purpose is sometimes not served and that it can be damaging to victims. If mediators are better trained and paper abuse is a concept incorporated in their training, they can serve as a screen for this type of behavior. For example, if during the mediation of cross-POs the first thing batterers suggest is that they will dismiss their PO request if the other party does the same, a trained mediator could recognize this behavior as coercive. In these situations mediators could then exhibit more patience when working with the victim rather than rushing the victim through the process.

In addition to attorneys and mediators, increased training for Family Court judges and commissioners may be beneficial. Two attorneys mentioned that after granting a PO commissioners read victims a colloquy which states that a PO is just a piece of paper, and that if someone really wants to hurt a person a piece of paper may not stop him or her. The attorneys stated that the colloquy is read as a preventative warning that allows the court to cover its tracks, because “the worst thing for a commissioner is to wake up and see in the newspaper that somebody was seriously injured or killed and had been in their courtroom.” The court should take a similar approach to preventing violations and manipulations of POs and could add a short statement in the colloquy about domestic violence being a gender based crime as a means to combat batterers’ perceptions of gender bias.

One attorney also discussed the increased use of a judicial tool called administrative orders. The attorney described this as an order that goes to the court intake office where parties file motions and petitions. Administrative orders state that if a certain individual files paperwork with the court, the intake office is required to

send it directly to a judge or commissioner. The commissioner or judge can then dismiss the request if they feel it is ungrounded, and alert the individual that they are no longer allowed to file motions related to that judicial matter. This lawyer said he has never seen this utilized, and a situation has to escalate to a very extreme level for a judge to issue an administrative order. He discussed a case he worked on where his client's ex-partner was "just filing and filing...I mean unbelievable amounts of filing," but he requested an administrative order and the judge said that the remedy was too extreme for the circumstance. This may be a very extreme remedy that should not be overused. However, an increased awareness through training of the ways that the court system itself is manipulated in the course of abusive relationships may make judges more open to this tool.

CONCLUSIONS

The major findings of this study demonstrate that paper abuse is a tactic employed during the PO process according to attorneys and self-reports from batterers. Responses from the batterer surveys also indicate that batterers hold very negative perceptions of the PO system and Family Court in Delaware. Procedural justice theories relate these perceptions of bias and unfairness to the choices of batterers to ignore the law and violate POs. It is also clear that many legal personnel could benefit from increased training surrounding domestic violence to be able to better recognize and be cognizant of the seriousness of paper abuse. This alone, however, is not enough. More importantly than just screening for paper abuse is eliminating it. Shifting batterers' perceptions may help eliminate this type of behavior, but the issue remains very complicated. The court system must keep avenues open to all parties when it comes to filing the various motions and petitions that are sometimes

taken advantage of, because there are certainly legitimate reasons for parties to file them. With this in mind, the challenge requires a balance between working to keep batterers from committing paper abuse and training those involved in the PO system to better recognize those batterers who do commit paper abuse.

This research focused mostly on the use of mutual POs as a tactic and was more limited in its conclusions about the use of frivolous filings as a means of manipulation. Past research and this study's interviews with attorneys indicated that this does occur, and so future research should seek to explore the implications of this action in more depth. The attorneys interviewed provided great insights and suggestions related to the PO process and paper abuse. However, with just five interviews conducted it is impossible to draw concrete conclusions from the conversations. Future research should seek to explore the themes that arose from the interviews conducted in this study by pursuing interviews with a larger pool of attorneys. Additionally, further research on paper abuse and ways to improve the PO system could incorporate interviews with family court mediators as well as conducting research on both parties involved in a PO case, not just batterers. Finally, future research exploring batterer attitudes should seek to explore these themes with a more diverse sample in terms of race, class, and sexual orientation among other characteristics so as to employ a more intersectional approach than this study allowed. It is also important for further research to explore the veracity of batterers' self-reports about POs and their related experiences. One way to go about this is to look at POs themselves to learn what specific measures batterers are required to comply with when the court issues such orders. This can help determine batterers' propensity to tell the truth about the scope of the order in addition to the situation presented to the court,

which will lend more legitimacy to their opinions. Given how extensively protection orders are used to enhance safety of victims, further research on their effectiveness is well-warranted.

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Appendix A

SURVEY

Men's Experiences with Family Court

We would like to learn more about how men feel about the civil court process. Could you please answer the following questions and share your perspectives? Your group facilitator at Turning Point/People's Place will **not** have any access to any information on this survey and we do not want to know your name. Your views will be part of a larger project that explores men's experiences in court.

Thank you very much!

Please **CIRCLE** the answer or answers that best describe your experiences.

Do you know what a Protection from Abuse order is?

Yes No

Have you ever applied for/filed a Protection from Abuse (PFA) order against a current or ex-partner/girlfriend/wife?

Yes No

If yes, why did you file one? (circle all that apply)

- A. Partner filed one against you first
- B. Abuse from partner
- C. Attorney recommended you file

If you have filed a PFA, could you please state what conditions you wanted covered?

- A. No contact order
- B. Stay away order
- C. Custody of children
- D. Financial support from spouse/partner
- E. Use and possession of home
- F. Use and possession of vehicle
- E. Other:

Were you successful in getting these conditions?

Yes No

Do you have a PFA against you by the same person?

Yes No

If answer to previous question is YES:

Do you think it is fair or deserved?

Why or why not?

Why not:

- A. No abuse occurred
- B. Abuse was mutual
- C. Other reason:

Is it hard to comply with the conditions?

Why or why not?

Have you every filed a motion to modify, vacate, or dismiss the PFA against you?

Yes No

If yes, did you attend the hearing?

Yes No

How did you learn about PFAs and what to file? (circle all that apply)

- A. Internet
- B. Attorney
- C. Friends
- D. Family
- E. Other:

Did you have an attorney representing you through the PFA process?

Yes No

If you filed a PFA, who helped you file? (circle all that apply)

- A. Lawyer
- B. Family members
- C. Friends

- D. Neighbors
- E. Domestic Violence Advocates
- F. Co-workers
- G. New girlfriend/partner/wife

What other ways did you get information about PFAs?

What kind of contact, if any, do you have now with the person named in your PFA?

- A. No contact
- B. Limited contact
- C. Some contact related to children
- D. Contact is not limited

Do you share property together or other things? (circle all that apply)

- A. Bank accounts
- B. Credit cards
- C. Home/apartment
- D. Vehicle
- E. Electronics
- F. Pets
- G. Other:

Do you have children together?

Yes No

How many children do you have with this partner?

- A. 1
- B. 2-3
- C. 4 or more

Do you have shared or joint custody?

If so, how are exchanges arranged?

- A. Through visitation center
- B. Curbside outside residence
- C. Through a third party
- D. At a public location/parking lot

Is the PFA system fair overall?

Was the process fair to you? (circle all that apply)

Yes?

- A. You were granted a PFA order
- B. Your partner's PFA was denied leaving your relationship less complicated
- C. Your lawyer helped you in getting the result you wanted

No?

- A. You were not granted an order
- B. Your partner was unfairly granted a PFA against you
- C. Process was confusing

Do you think the PFA process treated men and women the same?

Yes No

Why or why not?

**If you could change up to 3 things about the PFA process, what would those be?
(for instance, what worked well, what did not?)**

Please share any additional comments you have about the PFA process.

Demographics:

Age

Highest education level

- A. Some high school
- B. High school diploma
- C. Some college
- D. Bachelor degree
- E. Graduate degree or higher

Occupation

Race/ethnicity

- A. White
- B. African American
- C. Hispanic
- D. Asian/Pacific Islander
- E. Native American

Thank you very much for completing this survey!

Appendix B

ATTORNEY INTERVIEW GUIDE

1. Do you have any formal training in domestic violence?
2. Do you have experience representing clients with a history of domestic violence in divorce and/or custody and/or protection from abuse (PFA) order cases?
3. In PFA cases, do you have experience representing respondents, petitioners, or both?

If participant has ONLY represented petitioners:

1. Have you represented petitioners/victims who have experienced their abuser using the court system to harass or manipulate your client through means such as cross-petitions or frivolous filings? (Probe for examples)

Follow-up:

- A. Can you provide some examples of the situations in which this has happened?
 - B. How effective was the effort of the abuser?
2. If yes, how often have you seen this occur? (Frequently, rarely, just once, etc.)
 3. From your perspective, how has this behavior impacted the clients who are victims of this behavior? (Financially, emotionally, in relation to children)
 4. Do you think those manipulating and using the system utilize attorneys as a resource to learn about the court system and the different ways they can carry out this type of behavior?
 5. What, if anything, do you think can be done to prevent this behavior?

For all other participants:

1. In your work with representing clients in PFA hearings, do you feel that you are often the primary source from which they receive information about family court?

2. What types of motions do you typically file on clients' behalf?

Potential follow-up questions based on response to question 2:

A. How do you decide to what to file?

B. Do you ever suggest filing a cross-petitions?

3. What are the kinds of options or actions that you advise your client to do in PFA cases?

4. Are there any tactics that attorneys can use to affect the length of the PFA process?

Potential follow-up questions:

A. What are some examples of this?

B. Do you know of other attorneys who use these tactics?

C. How effective are these tactics?

Final Questions for All Participants:

1. In survey data I recently analyzed from men in a court ordered domestic violence treatment program, 67% of respondents said they felt the family court system was overall unfair and treats men and women differently.

What do you feel, if anything, can be done to change or address these perceptions of bias?

2. Do you think this overwhelming perception of bias plays into abusers' actions to prolong the process/file frivolous things/make it difficult for the other party?

3. Do you think if people perceived the system to be more fair overall they would have greater respect for PFAs?