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Communication Challenges in Family Violence Court: An Ethnography of Protective Order Hearings

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Communication Challenges in Family Violence Court: An Ethnography of Protective Order Hearings

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Communication Challenges in Family Violence Court: An Ethnography of Protective Order Hearings

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This study provided an in-depth and immersive field study of the process of protective order hearings. The goal of this study was to examine the communication taking place in the courtroom on Protective Order (PO) day to provide a foundation for uncovering discourse dynamics that affect the experiences of applicants and respondents, as well as the role that legal decision makers play in the process of issuing protective orders for cases of family violence. There are numerous ways in which communication defines and affects the protective order process in the courtroom on PO Day. For the purpose of this study, the focus consisted of communication surrounding 1.) The institutionalized process (role of gatekeepers, access to representation by respondents, and the physical structure/environment of the courtroom—open, public, and fast-paced nature of the docket process), and 2.) Communication as the primary means of evidence (how communication constitutes credibility and the fact that applicants must face their alleged batterer in order to obtain an order of protection).

This study focused on viewing institutional discourse in protective order hearings that extends beyond the official legal record in order to broaden our understanding of legal behavior, family violence, and discursive characteristics of the Protective Order courtroom culture. The analysis consisted of macro (immersive ethnographic fieldwork and detailed observations) and micro approaches (Action-Implicative Discourse Analysis). The findings uncovered multiple

layers of communication challenges that manifested themselves in all steps of the PO process. Environmental communication challenges were present from the moment applicants initiated the application process and continued through their respective hearings. The physical space presented challenges to access and representation, and the gatekeepers provided differing (and sometimes unequal) levels of support for the applicants and respondents. The functional communication challenges stemmed from the constraints of the legal language to meet the necessary burden of proof for cases of family violence. Implications for future research by communication scholars, as well as for practitioners who work with victims and alleged batterers of family violence, are discussed.

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Chapter 1: Rationale and Theoretical Perspectives

BACKGROUND AND PROJECT OVERVIEW

This project stems from my ongoing research interest in understanding how victims of family violence make sense of interactions and instances of abuse with former partners. After working with victims one-on-one to understand their individual experiences (Master's Thesis), I took a job as a community educational coordinator with a local women's center for one year before starting my doctorate work. As part of my course curriculum, I took a summer class on Issues in Domestic Violence where I was asked to observe a few hours of Protective Order (PO) Court. It was this experience that led to a pilot study during the months of October and November in 2009 where I observed procedures from the perspective of not only a member of the public, but also from the lens of a researcher who has worked with victims of family violence and as a practitioner who has worked to understand perceptions and provide educational awareness to the community regarding family violence issues.

From this preliminary research, I found that there are stark differences in how individuals communicate based on their roles in the protective order process. Applicants (victims) enter the courtroom to seek legal assistance in hopes of ending the violence, respondents (accused batterers) enter with the decision to contest the order or not, and the courtroom administrators and legal decision makers enter the space often as employees which can be observed as behaviors indicating "just another day at the office" (which is often constructed in their interpersonal discourse during intercessions and breaks in the hearing process).

This study was the next step in determining if the communication processes in this particular protective order courtroom were consistent with the pilot study data over a longer

period of observation and analysis. The data consisted of interactions taking place during both legal proceedings (hearings) and breaks/intercessions in the “official” PO Courtroom of a County Court located in south central United States. Due to the nature of the “naturally occurring” discourse, the primary focus for this study was the communication taking place in the front of courtroom, in which the primary participants consist of the judge, bailiff, attorneys, applicants, respondents, witnesses, and any other expert testimonies that occurs. According to Glenn, LeBaron, and Mandelbaum (2003), most research on interaction in institutionalized settings revolves around the dichotomy between casual and formal communication exchanges in terms of turn taking, and thus “little work has attempted systematically to explore variations in talk in different types of institutions” (p. 289). This study examined all forms of discourse that took place during Protective Order Day in this particular PO courtroom. Although academic and community agencies use the terms domestic violence, intimate partner violence, and family violence interchangeably, for the purpose of my study, the operational definition employed the term used in the legal statutes, which is Family Violence.

Most of the research surrounding the legal and organizational context of courtrooms has primarily focused on how interactions and procedures lead to positive and efficient outcomes for the judicial system (Atkinson & Drew, 1979; Pryor & Buchanan, 1984). However, existing research fails to adequately explore institutional processes from a communicative lens which focuses on the experience of the individuals involved. Van Hoecke (2002) argues that by studying legal processes, one is always studying human action, which involves interpersonal relations, hence, human communication. Therefore, in order to understand the procedures that take place in the protective order courtroom, we must begin by observing, describing, and

analyzing the communication that takes place during this institutionalized practice. The purpose of this study was to initiate the first steps in understanding the communication occurring in PO courtrooms. My goal was to examine the communication taking place on PO day to provide a foundation for uncovering discourse dynamics that affect the experiences of applicants and respondents, as well as the role that legal decision makers play in the process of issuing protective orders for cases of family violence.

In order to provide a clear background for studying communication in PO courtrooms, the following sections will review the growing prevalence of family violence (both nationally and statewide), the role that protective order courtrooms play in combating the instances of abuse, and how studying communication in PO courtrooms can initiate the first steps in understanding how the processes and discourse affect all parties involved—those seeking and contesting orders, as well the legal decision makers who issue and establish rules for addressing family violence in society.

Prevalence of Family Violence and Role of Protective Order Courtrooms

According to the 2010 National Intimate Partner and Sexual Violence Survey (NISVS) conducted by the Center for Disease Control and Prevention, "Approximately 1 in 4 women and nearly 1 in 7 men in the U.S. have experienced severe physical violence by an intimate partner at some point in their lifetime" (p. 43). More specifically, an estimated 2.7%, or approximately 3.2 million women reported experiencing severe physical violence by an intimate partner in the 12 months prior to taking the survey (severe violence defined as being slammed against something by a partner, being hit with a fist or something hard, and being physically beaten). Consistent with the national average, statewide, a total of 32% of Texans (total of 5,353,434) have

experienced intimate partner abuse in their lifetime (TCFV, 2003a). According to the Texas Council on Family Violence (TCFV, 2003a), "In 2002, the Texas Department of Public Safety reported that 117 Texas women were killed by their intimate male partners. In that same year, 183,440 incidents of family violence were reported to law enforcement" (p. 2). However, family violence is not always manifested through physical means.

Findings of NISVS highlight the significance of non-physical abuse experienced by women and men in the United States indicating that that almost half of all women and men (48.4% and 48.8%, respectively) have experienced psychological aggression (including expressive aggression such as name calling, insulting or humiliating, as well as coercive control behaviors intended to monitor, control, and threaten) by an intimate partner in their lifetime. However, it is important to note that the impact of family violence goes beyond the individual victims to include their family, friends, colleagues, and other social network members. In Texas alone, 57% of state residents (an estimated 10,314,003 Texans) report knowing someone (friend, family member, or coworker) who has been in an abusive relationship at some point in their lives (2011 Statewide Prevalence of Intimate Partner Violence in Texas Study by Institute on Domestic Violence and Sexual Assault (IDVSA) at UT Austin). When asked how Texans feel about family violence, "Almost half of women (46.8%) and a quarter of men (25.6%) consider intimate partner violence a very serious problem in Texas. This equates to an estimated 6,463,985 Texans (36.2% of all Texans) who consider this a very serious problem" (IDVSA , 2011, p. 35). Survey respondents from this same prevalence study (50.9% of women and 42.2% of men) report that the state assistance for victims is not enough. Although survey respondents feel that law enforcement and medical response systems are making a strong effort in regards to

victim services, they hold less favorable opinions of the criminal justice system's response to victims (IDVSA, 2011).

Brewster (2002) notes that although there is an increased recognition of family violence throughout society, the ambiguities and contradictions regarding the prevalence of (and processes responding to) family violence are still areas of great concern. The TCFV (2003a) argue that, "The public must become acutely aware of the tragic consequences domestic violence has on our families, friends, workplaces and communities. They must rid themselves of many of the senseless misperceptions that exacerbate the barriers that block domestic violence survivors' pathways to safety" (p. 12). One way in which communities respond to cases of family violence is through legal recourse for victims, more specifically the issuance of orders of protection. Of the nationally reported incidents of family violence in 2010 (NISVS), approximately 1,131,999 victims obtain protective or restraining orders against their attackers annually.

Types of Family Violence Protective Orders

In the state of Texas, there are three different types of family violence protective orders (see Appendix A for more details):

1. Magistrate's Order for Emergency Protection (MOEP)

   The magistrate's order for emergency protection (MOEP) is found in the Texas Code of Criminal Procedure, Art. 17.292. This order was created to provide emergency criminally enforceable protection for victims of family violence and stalking victims after an offender has been arrested for an offense involving family violence or stalking (TCFV, 2003b, p. 2).

2. Temporary Ex Parte Protective Order (TEXPO)

   Temporary ex parte protective orders are routinely requested by victims and issued by courts at the time an application for a final protective order is filed. "Ex parte" means that the order is issued based solely upon the affidavit of the applicant and

without notice to the respondent (the batterer). The primary reason for applying for a temporary ex parte order is to provide the applicant with some protection between the time she requests the TEXPO and when the hearing for the final protective order takes place. (Usually no later than 14 days after applying for the order.) (TCFV, 2003b, p. 3-4).

3. Final Protective Order

Protective orders are useful tools in stopping the violence between two people; this includes non-marital situations such as in-laws, parent abuse, grandparent abuse, same sex abuse, and other violent or threatening situations involving members or former members of the same household, extended family relationships, or of a dating relationship. The court can issue a protective order that remains in effect for up to two years. If the court does not specify a date for the order to expire, the order will be in effect for two years (TCFV, 2003b, p. 5 & 9).

The cases I observed were for Final Protective Orders. Although some applicants may have already been issued a MOEP or TEXPO, all applicants were in court for their official hearing to receive a 2-year protective order. In this process, court documentation and both parties' attendance are required in the courtroom.

According to the TCFV (2003b), protective orders play a vital role in ending family violence: PO's deter future violence, stipulate rules for appropriate behavior, reinforce the belief that family violence is wrong and 'needs to be stopped', and emphasize the fact that family violence is in fact a crime. However, an area of concern for victims is the effectiveness of the judicial system's enforcement of the order. Existing research provides mixed results in regards to the effectiveness of protective orders; however, one area of agreement resides in the difficulty of enforcing the orders (Roberts & Kurst-Swanger, 2002). It is this concern that has led researchers, practitioners, and intervention providers to call for more clear and consistent communication of procedures for the process and enforcement of all orders of protection. For example, "topics such as where a victim can get a protective order, implementing state mandatory arrest laws, what to

do when there are dual complaints, and how family court and criminal court process protective orders" are areas that need to be more fully explored and understood (Roberts & Kurst-Swanger, 2002, p. 133). Roberts and Kurst-Swanger (2002) argue that the process of navigating the court system is intimidating for any victim of violence, but for victims of domestic abuse who must face their abuser, it is an especially daunting process and in many cases victims do not make the effort to seek legal protection. Keilitz (2002) highlights the importance of understanding the role of courts in domestic violence by adding, "By virtue of their wide-ranging jurisdiction over individuals and families, courts play a pivotal role in addressing domestic violence in our communities" (p. 147). Although the county provides forms on their website and in their offices to help people prepare for the experience of being in the courtroom for their hearing (see Appendix B & C), very few people enter the process with a clear understanding of the dynamics of what happens in the courtroom on Protective Order day.

Importance of Studying Communication in Protective Order Courtrooms

The institutionalized process of obtaining a protective order is a process that is constituted in the communication taking place in the courtroom on the day of the hearing. However, the legal proceedings (hearings) are only one step in the communicative process that one must take to when seeking a protective order. There are several barriers to the court system and procedures that complicate the process (and ultimately the understanding) for those seeking or responding to orders (i.e., overly complicated rules and procedures, lack of privacy in regards to documentation and communication with staff, staff whose behavior violates or ignores the severity and trauma of their experiences, lack of security in waiting areas of the court, inconsistent procedures in regards to serving and monitoring the enforcements of the protective

orders) (Levey, Steketee & Keilitz, 2001). The role of communication throughout these processes is what determines the decisions, actions, and outcomes of family violence cases being brought before the judge in a protective order courtroom. Thus, the study of communication occurring among applicants, respondents, attorneys, judges, bailiffs, and witnesses provides the means to understanding the protective order process.

There are numerous ways in which communication defines and affects the protective order process in the courtroom on PO Day. For the purpose of this study, the focus consisted of communication surrounding 1.) The institutionalized process (role of gatekeepers, access to representation by respondents, and the physical structure/environment of the courtroom—open, public, and fast-paced nature of the docket process), and 2.) Communication as the primary means of evidence (how communication constitutes credibility and the fact that applicants must face their alleged batterer in order to obtain an order of protection).

Institutionalized Process

Findings from a 2009 Protective Order study conducted by Logan, Walker, Hoyt, and Faragher highlights that throughout the process of seeking orders of protection, applicants must engage in multiple levels of interactions and discourse with courtroom "gatekeepers" (i.e., court clerks, attorneys, judges). It is during these interactions that victims often face several obstacles in navigating the process of obtaining a protective order (i.e., courtroom intimidation, condescending or harsh demeanor of authority figures; See 'Judicial Responses That Reinforce Women's Entrapment' & 'Obstacles in the Criminal Justice Process' handouts in Appendix D).

In addition to obstacles faced by applicants, respondents also have to manage interactions with institutional "gatekeepers" during the process of obtaining legal counsel. In this PO court,

most interactions between respondents and their attorneys are most likely to first occur at the docket call of the hearings. Respondents are required to have received notice at least 48 hours prior to the scheduled hearing; therefore, a majority of the respondents only have communication with their representative the day of court (although respondents can choose to hire their own private attorney). In many cases, respondents are considered or find themselves to be indigent, which offers them the opportunity for legal representation on the day of their court appearance. Public defenders for this particular County PO Court are not county-appointed; instead they are made up of a pool of private attorneys who submit to be on a court list for indigent defendants in criminal cases. Because the representing attorney may or may have not had any previous contact with their clients (respondents), prospective clients have the unique opportunity to observe defense attorneys and their interactions with and about other respondents before they are assigned one of the defense attorneys. Due to the high amount of recesses/intercessions on Protective Order day, respondents, witnesses, and members of the public also have the chance to observe how these attorneys portray themselves in a private way in a public view during such recess times (which can also affect the perceptions of credibility towards attorneys).

Another way in which communication plays an integral role in this courtroom is the physical structure of the environment. Because these hearings are not heard in front of a jury, and a judge makes the final ruling, this particular courtroom environment provides a space to study discourse that, according to Conley and O'Barr (1990) takes place in an "informal court trial" consisting of interactions between judge, litigants, and witnesses. Because this courtroom is an open public space, the sensitive nature of communication disclosed during applicants' private

hearings introduces elements of access to information and comfort of disclosing personal details of abuse.

Communication as Primary Means of Evidence

According to the TCFV (2003b) "The most important piece of evidence in proving family violence is the testimony of the victim. Protective order hearings are often a 'battle for credibility' between the parties since there are rarely other witnesses" (p.12). Therefore, communication is the key source of evidence in these hearings. Keilitz (2002) notes the particularly critical role the judge plays in the communication dynamics that emerge during protective order hearing (i.e., they must understand the communicative effects the abuse has placed on the victim as they testify, as well as being able to recognize the manipulative behaviors abusers often use their discourse to control interactions and outcomes). The effects of physical and psychological abuse can often result in victims' experiencing a form of systematic terrorism (National Violence Against Women Survey, NVAW, 2000). In Texas alone, residents reported experiencing as many as 43 different types of abuse inflicted upon them by current and past intimate partners, specifically reporting high levels of psychological abuse (IDVSA, 2011). This can lead to ambiguity in language in regards to evidence and descriptions of abuse events. As Shuy (2003) argues, many criminal cases center around the communication and language used by the participants. Research on the ambiguous nature of communication in the courtroom also highlights how these language choices affect the interpretation of the words. Shuy (2003) explains that in criminal cases, "both the government and the defense tend to hear what they want to hear and interpret ambiguous utterances in a way that best serves their own goals" (p. 446).

In order to receive the final protective order, applicants must face the respondent face-to-face in court. In addition, if the respondent contests the order, they also have the option to represent themselves, which allows them to direct all questions to the applicant and any other witnesses on the stand during the hearing. This poses an important distinction in how communication (in this case—evidence of abuse) is expressed to the judge during the hearing. The communicative environment is, therefore, structured not only by the physical space, but also by the rules that govern the legal process. The following section will review two theoretical perspectives in which to study the PO courtroom environment (as it is defined by the emergent communication occurring during this institutionalized process).

THEORETICAL PERSPECTIVES

Participation as Context and Action

Due to the multi-modal nature of this field study, it was important to implement theoretical frameworks that integrated all contextual elements of communication (i.e., space and environment, institutional structure and culture, and language used within the courtroom and beyond). One framework that provided an effective lens to understand these communication dynamics is the framework of Participation. For the purpose of this study, I incorporated the framework of participation from the perspective of Goodwin & Goodwin (2008), who define participation as the study of how participants interact with one another through their language and embodied action. More specifically, this approach provides a framework for investigating how "multiple parties build action together while both attending to, and helping to construct, relevant action and context" (pp. 230-240). To better understand participation in human

interaction taking place within a specific communication context, we must examine how talk is enacted and coordinated among all parties (speakers and hearers). By examining the multi-modal communication, participation in the environment can be observed as social action (emergent coordination of multiple participants as they unfold in a shared situated context or event), as opposed to other participation frameworks that are conceptualized as structural speech events and analyzed through typologies of individual communication behavior.

Previous work in participation has been couched in linguistic anthropology, which provides an effective foundation for my particular methodological approach to communication in the courtroom. However, as Goodwin and Goodwin (2008) argue, previous participation frameworks have focused on analyses that construct typologies in order to define categories of participants in the communicative event being studied. This limits the range of discursive characteristics that can be examined within a multi-party, emergent communication environment. By using a social action approach to the study of participation in situated activities, "it is possible to investigate how both speakers and hearers, as fully embodied actors and the detailed organization of the talk in progress, are integrated into a common course of action" (Goodwin & Goodwin, 2008, p. 223).

The goal of this study was not to simply categorize the discourse being used by participants, but rather, to examine and understand how communication is enacted in multiple levels of the protective order process. This included understanding the PO application process and the legal courtroom proceedings (hearings) from both a structural and linguistic lens. Thus, investigating, analyzing, and describing communication practices by which participants "build action" together through their respective participation in the situated communication event—the

protective order process for cases of family violence. The framework of participation as presented by Goodwin and Goodwin (2008) helps link "the details of language use to embodiment, culture, social organization, and material structure in the environment" (p. 214), which can provide an effective lens to study the layers of communication that exist in the PO process.

Genres in Institutional Contexts

A second theoretical framework that provides an effective lens in which to study the situated context of the PO process in through the study of Genre's as described by Tracy and Robles (2013). They differentiate between frames and genres in communication contexts by noting that genre's, like frames, refer to the situated communicative activities or practices that are being enacted in an interaction. However, according to Tracy and Robles (2013),

> The biggest difference between the two concepts is that, whereas genre highlights the expectations that preexist an interactional moment, frame, with its easy verb form, framing, highlights the in-the-moment interactional moves. I addition, frame foregrounds the name and meaning of the activity, whereas genre foregrounds the parts that make it up. (p. 248)

There are four distinct features of speech genres: 1.) Genre is a sequence of acts. In most genres certain acts are required, whereas others are optional (e.g., opening, closing), 2.) Genres are characterized by specific speech styles (e.g., formal, informal)—"genre foregrounds the structural aspects of talk; whereas style focuses on the expressive features or on how speakers vary," 3.) Institutional genres possess specialized vocabulary, and 4.) Genres are intricately tied to community identity. Each profession has its own distinct speech genre that defines the way the

members "enact" themselves within the particular institutionalized culture. Although all genres have their unique features, often institutional genres share a commonality across cases of 'gatekeeping' focused interactions. Therefore, analyzing challenges within specific institutional genres (such as the PO courtroom), provides a lens in which to examine culturally distinct features of the talk at multiple levels of abstraction (defining the communication exhibited within this unique courtroom culture).

Institutionalized discourse can be observed through rules that are both fully codified by participants and those that are uncodified or informal—but are often still widely understood (Lofland, Snow, Anderson, & Lofland, 2006). In this particular courtroom, the judge, bailiff, and county attorneys for the applicants remain the same each week for hearings. So by examining the aforementioned constructions of social order through everyday functions of member/participant communication, multiple layers of communication can be explored. In the context of the PO courtroom, there are established rules for conduct and behavior entitled "Local Rules of Procedure and Rules of Decorum for the County Courts at Law" (see Appendix B). Although these rules are outlined in handouts located on the county website (and "tips" for preparing for court are briefly addressed through leaflets), observing how these rules are enacted by participants on protective order day reveal how individuals actually 'maneuver through' this institutionalized environment.

According to Roberts and Kurst-Swanger (2002), due to the overwhelming nature of legal procedures for assisting victims of domestic violence, how applicants (and respondents) experience the process can significantly affect outcomes, perceptions, and ultimately how future incidences of violence are prevented or responded to at every level of the process. Thus, the

study of both systematic guidelines for legal processes and scholarly research endeavors into the communication of said procedures is necessary in order to address the 'unique dynamics' of family violence (Roberts & Kurst-Swanger, 2002). Therefore, I approached the data through both a macro lens (examining the structure and roles using participation and genre frameworks), as well as through a micro lens (using discourse analysis—DA) in order to understand the nature of the communication exchanges themselves. A thorough review of my DA approach will be included in Chapter 3.

Chapter 2: Review of Literature

First and foremost, the details of legal discourse matter because language is the essential mechanism through which the power of law is realized, exercised, reproduced, and occasionally challenged and subverted. Most of the time, law is talk: talk between disputants; the talk between lawyers and clients; the courtroom talk among lawyers, parties, judges, and witnesses; the legal talk that gets reduced to writing as statutes and judicial opinions; and the commentary on all of this other talk that people like us engage in. (Conley & O'Barr, 2005, p. 129)

This chapter examines literature that provides a foundation for understanding the role of communication and language in the courtroom, as well as the need for a cultural approach to the study of law and discourse.

COURTROOM COMMUNICATION

The research on courtroom communication is organized into three areas: behaviors of key actors, language styles, and how language affects judicial outcomes. The role of communication in the courtroom has often focused on behaviors of judges, attorneys, and witnesses. More specifically in communication approaches, research in a courtroom setting has examined the significance of language in terms of style, relating to power and interpretations of testimonies (Atkinson & Drew, 1979; O'Barr, 1982; Ulmer, 1994). Legal communication research has also focused on how language directly affects and determines judicial outcomes (i.e., forensics linguistics, led by Malcolm Coulthard, which employs the expertise of linguist scholars to assist in testimonies and textual analysis of legal documents for the court system).

Role of the Judge, Attorneys & Clients

Saks and Hastie (1979) approach the study of law from a psychological perspective in order to use laboratory and field research of trials to better understand behaviors of key actors in courtroom such as the judge (as the central actor in courtroom), juries (ordinary citizens placed

in a task in which they are ultimately untrained for), attorneys (which have goals of persuasion and management of social perception in their communication strategies), and clients (importance of demeanor and communicative behaviors during trials). The following review focuses on these roles of key actors as they relate to communication and decision making processes in the courtroom.

There are differing opinions on how the public and other court officials view various judicial styles as represented by the judge in the courtroom (i. e., procedure-focused versus record-oriented; liberal versus conservative judges; and more controlling or less controlling judges) which affect the environment of the courtroom culture (Conley & O'Barr, 1990; O'Barr, 1982; Philips, 1998). A historical (and rhetorical) debate has revolved around the question of the 'human side' of judges (Frank, 1949). For example, Kozin (2008) argues that judges present their 'discursive identity' when communicating their interpretations of the law. Blanck (1993) adds that perceptions of judges' credibility can be affected by the manner in which they project their discursive identity in the courtroom.

Blanck (1987) stresses the importance of "live" courtroom fieldwork when studying key members of the court such as judges and attorneys during trial. His research examines the communicative behaviors of judges in relation to verbal and nonverbal actions as they relate to and affect the concept of due process. Blanck, Rosenthal, Hart, and Bernieritt (1990) employed an empirically-based model for understanding judges' behaviors in actual trials and found that even unintentional or subtle communicative acts can affect trial processes and overall outcomes of cases. Beach (1994) describes the routine nature of interactions in the courtroom among key actors (routine interactions between judges, attorneys, defendants, and other lay people in the

courtroom) and highlights the constraints that are undoubtedly “at work” based on the institutionalized structure of speech events. Much of the research examining judges’ communicative behaviors (verbal and nonverbal) has revolved around the impact that these mannerisms and language choices have on the outcomes of the case based on the responses and perceptions of the jury members (Blanck, 1991; Blanck et al., 1990; Burnett & Badzinski, 2005; Smith, 1991).

Decisions Makers as Interpreters

Solan (1993) studies language and law in order to highlight that decision makers (such as judges) serve as both linguists and interpreters of others’ language use (in describing their case and using discourse as a primary means for exhibiting evidence). His research cautions us to look at the primacy of communication a judge must manage every day and how these interpretations (and implementations to the law) have consequences beyond what most ‘lay’ people consider when they read, hear, and make decisions. He concludes, “But the consequences of how the judge understands the open issues in the language that he hears and reads, and what he says about them are frequently more awesome than the consequences of how the rest of us construe sentences and express our understanding” (p. 185). Looking to this question of why particular judges take different approaches to the decision-making process, Conley and O’Barr (1990) found that differences in legal experience, training, and education were key factors to understanding these discrepancies. For example, in their sample of 14 judges, Conley and O’Barr (1990) found that lack of legal training and experience correlated with the decision-making outcomes based on judges’ tendency to either displace responsibility or not (based on the rules that were beyond their individual control). Their findings also suggest that these differences of

experience levels among judges can affect whether they take a more rule-oriented approach versus a relational-oriented approach to law.

Other research has focused specifically on the role of lawyers in the communicative dynamics that occur in the courtroom (Hans & Sweigart, 1992). Cunningham (1992) argues that lawyers metaphorically serve as "translators" for their clients, meaning that the information shared between the two individuals is most heavily a function of how that information is used to serve the client. Existing research in the area of professionalism, codes of conduct, and studies of attorney behavior in the courtroom have often examined how deviations from the normative rules of courtroom culture and institutionalized forms of talk affect not only the environment of the court, but also the outcomes of cases (Halldorsdottir, 2006; Kunstler, 1988; McMahon, 2006). Articles written in law reviews and journals not only provide some critical perspectives in instances where attorneys "overstep" their communication boundaries, or display a lack of professionalism or attention to the codes of conduct, but also describe how such events are managed by the trial judge (Tannenbaum, 2008). According to research conducted by McMahon (2006), comparing actions in the courtroom between American and English attorneys, American attorneys engage in a combative and failed-collaboration approach with the opposing counsel, which can affect the communication of the cultural environment. In a study of attorney communication effectiveness and impression-making in the courtroom, Linz, Penrod, and McDonald (1986) used trained court observers to rate attorney communication in regards to the informative nature of their performance, as well as their level of articulateness and organizational structure of opening statements in a data set of 50 trials. Findings revealed that prosecuting attorneys' statements were found to be more organized and more informative than those of

defense attorneys. As we can see from existing literature, judges' and attorneys' behaviors are continuously observed during the court proceedings, and these actions are often qualitatively interpreted by observers as positive or negative, efficient or inefficient, etc.

Language and Style

Another way in which language is studied in the courtroom consists of research focusing on chosen language styles (how styles are used, controlled, and interpreted in the courtroom). More specifically, styles that affect interpretations (and possibly the decisions) made by legal authorities include powerful versus powerless speech styles (Bradac, Hemphill, & Tardy, 1981; O'Barr, 1982), the use of coded language (Shuy, 1997), language style use as a tool for identification and assessment of criminals (Smith & Shuy, 2002), and the role of ascribed agency in the institutionalized structure of the courtroom (D'hondt, 2009). Beach (1985) has approached the communicative structure of the courtroom during trials as a temporally organized and constrained social activity through which various language and communicative devices are employed. More specifically, his research has examined the manner in which language styles serve as "time traveling" devices in the courtroom where participants must maneuver through past, present, and future discourse to "do" the process of law.

Martinovski (2006) examined the role of linguistic style in Swedish and Bulgarian courtroom examinations, specifically focusing on mitigation strategies. Findings concluded that the styles used to approach mitigation provided a linguistic tool for coping with disagreements or conflicts in the examination process. This study also highlights the larger implications of communication and language choices that are expressed in the courtroom environment by concluding, "The court setting also turns all utterances used during trial into testimonies that can

be used in further allegations. Thus, every utterance in trial has a stronger performative force than it would have under daily circumstances" (p. 2084). Language styles that are interpreted as "non-typical" whether verbal or nonverbal, can lead to assessments of guilt or innocence in both civil and criminal cases (Searcy, Duck, & Blanck, 2005). For example, communicative behaviors such as shifting eyes, shuffling feet, hesitancy in tone of voice or pace of response, lack of expected emotion, and inconsistencies among verbal and nonverbal signals often lead to untrustworthiness of the speaker and possible interpretations of guilt (Pryor & Buchanan, 1984). Searcy, Duck, and Blanck (2005) note that "Outside of the courtroom, however, these same non-typical verbal and nonverbal behaviors, even produced by these same individuals, may be interpreted as eccentric, humorous and perfectly appropriate in their context." (p. 41). By studying these communicative actions in the context of the courtroom, we can also begin to understand how language can impact legal outcomes and decision-making procedures.

Communication and Legal Outcomes

Scholars in the field of linguistics argue that the study of courtroom discourse provides awareness of how language is constituted in the institutionalized interactions, which can have a significant impact on people's lives and future (Hansen, 2008; Solan, 1993, Solan & Tiersma, 2005). Solan and Tiersma (2005) examine how misconceptions or misinterpretations of language in the criminal justice system can drastically affect legal outcomes. They argue that the legal system itself often engages in inconsistent practices based on how legal decision makers handle linguistic features of the law.

In the field of forensic linguistics, studying language in the courtroom is imperative to understanding institutional discourse as it relates directly to lay and social meanings (Coulthard

& Johnson, 2007). Much of the work done using forensic analysis is directed at legal outcomes, as there are currently a growing number of countries that now frequently call on the expertise of linguists to assist with the proceedings of cases (i.e., language as evidence, patent and ownership rights, linguists as expert witnesses). Coulthard's (2000) work with authorship of texts provides an example of how linguists are brought into the legal process to identify the legality of ownership in text and plagiarism cases, as well as the authenticity, accuracy, and interpretations of police records of speech. Within these practices, the work of studying and analyzing language use in the court system is directly influenced by the methodological approach and findings of forensic discourse research. Conley and O'Barr (2005) add that "sociolinguistics can benefit from law and society's focus on who gets what and when, whereas law and society can turn to sociolinguistics for a deeper understanding of how they get it" (pp. 13-14). From these forensic discourse perspectives, language research of legal processes can benefit not only researchers, but also practitioners who want to better understand the systems in place for establishing laws and rules in society.

THE COURTROOM AS A CULTURAL SPACE

There are numerous scholars calling for more research that initiates a cultural approach to studying law, noting that the relationship between law and culture is constitutive of one another (Bracey, 2006; Kahn, 1999; Mezey, 2003; Sarat & Simon, 2003; Starr & Goodale, 2002; Van Hoecke, 2002). Conley and O'Barr (1997) specifically argue for the need to study law within a cultural context by stating:

> The anthropological perspective reminds us that we can benefit from putting law back into its cultural context, emphasizing the very connection between law and society that

> formal legal proceedings often seek to suppress…The practice of law is a human practice, and human beings always practice in cultural ways. There is, thus, something to be learned from looking at law and legal processes in the same way as we might look at families or religion or social organizations. (p. 6)

Thus, to study “law in action”, organizational and interactional activities must be observed to determine connections between process and shared understanding and meanings within members of the courtroom culture (Ulmer, 1994). As Goodwin (2000) suggests, in a setting where multiple interactions are taking place at once, action can be studied to determine connections between language and environmental structure in relation to meanings assigned within cultures. Scholars in the field of anthropology and communication argue for the importance of conducting field ethnography to understand legal proceedings and the larger social implications (Black & Metzger, 1965; Blanck, 1987; Burns & Peyrot, 2008; Leo, 1995). Also, due to the gap in existing research between spoken and written language in the courtroom, systematic approaches to discourse can provide a way to fill this gap in the field of communication (O’Barr, 1982). According to O’Barr (1982), “The term law and language suggests several types of relations, various theoretical and practical questions, and some competing approaches” (p. xi). By observing open-public hearings, we can focus in on not only the institutionalized processes, but all layers of communication that takes places among the various parties, those that affect both the institutional structure and the individuals seeking legal assistance. It is from this lens that we can uncover the experience of the protective order process for the different parties involved (from those entering the room seeking a means to end the violence to the attorneys who are conducting their everyday activities as a member of the court).

Research Questions

When examining the process of ethnography as a means of cultural interpretation, definitions of what makes up a "culture" can vary; according to Wolcott (2008), culture is represented and revealed through discerning patterns of "socially shared" behaviors. This study focused on viewing institutional discourse in protective order hearings that extends beyond the official legal record in order to broaden our understanding of legal behavior, family violence, and discursive characteristics of the Protective Order courtroom culture. By systematically observing the communication emerging from all parties involved in the process (applicants, respondents, attorneys, judge, bailiff, witnesses), we can better understand how this experience constitutes meaning from not only an institutionalized lens, but perhaps more importantly, how individuals perceive and approach issues of family violence outside of the courtroom as well. From this framework, the following research questions were developed:

RQ1: What are the environmental communication characteristics of the PO process?

RQ2: What are the functional communication characteristics of the PO process?

RQ3: How do participants discursively engage in the institutional process for PO cases in Family Violence court?

Chapter 3: Methods

My method for gathering data involved immersive ethnographic fieldwork and detailed observations, and my method of analysis incorporated both macro and micro approaches. The following sections will outline my epistemological approach to ethnographic and field research, as well as detail the research site and data gathering and analysis procedures used for my study.

INTERPRETIVE PARADIGM AND INDUCTIVE PROCESSES

The conceptual framework for my methodological approach stems from the Interpretive Paradigm which highlights commitments that make up the primary tenets and goals for this approach. For example, realities are socially constructed, simultaneous, and emergent, collaborative, and symbolic and are embedded in local phenomena. Knowledge of these realities emerges from the interdependent relationship of researcher and participants. Within this paradigm, "the researcher does not use methodological instruments. The researcher is the instrument" and knowledge is acquired through extensive immersion and discourse practiced in natural, social settings. Therefore through this immersive process, "intimate familiarity with the performance and significance of social practices is a requirement for adequate explanation, and evidence for claims about social action should be recorded and expressed using verbal and narrative means" (Lindlof & Taylor, 2002, p. 11). From this paradigm stems the study of culture as an interpretative process of seeking meaning, as opposed to experimental science in search of law (Geertz, 1973). Thus, the interpretative study of culture is the study of the public; "culture is public because meaning is" (Geertz, 1973, p. 12).

From this interpretative foundation, the inductive nature of qualitative inquiry can also be highlighted. Qualitative research is an inductive process, which means that the data gathering

and theoretical approach moves from specific to general. Therefore, in qualitative research, we begin with a specific group, organization, or culture to derive abstract theoretical implications and strategies that speak to our research questions and goals of inquiry. According to Geertz (1973), "If you want to understand what a science is, you should look in the first instance not at its theories or its finding, and certainly not at what its apologists say about it; you should look at what the practitioners of it do" (p. 5). By using an inductive approach, the focus becomes naturalistic inquiry in order to explore and discover important patterns of interactions of participants in their own environment. This inductive process also guides these elements of discovery and vision to move towards theoretical understandings of complex phenomena being observed in the fieldwork. In order to conduct my qualitative approach to studying Protective Order Courtrooms, I developed specific procedures in which I gathered my data and conducted fieldwork from an ethnographic approach (with the focus being on the naturally-occurring, face-to-face interaction of the key participants in the courtroom).

ETHNOGRAPHY AND FACE-TO-FACE INTERACTION

According to Wolcott (2008), "To make a study ethnographic, the researchers must have a sense of the kind of data to gather, the kinds of analysis that are appropriate, and a sense of what is meant by the broad charter of 'cultural interpretation'" (p. 54). As researchers in ethnography have argued, through the study of a particular culture or scene, cultural meanings can have different connotations depending upon the world-view of those who are doing the interpretation; therefore, each interpretation may represent different elements of the communication taking place in that particular culture (Trujillo, 1992). According to Emerson, Fretz, and Shaw (1995), "As a result, the task of the ethnographer is not to determine the 'truth'

but to reveal the multiple truths apparent in others' lives" (p. 3). Therefore, my methodological approach provided an analysis of culture as observed in naturally-occurring interactions, meaning that the interpretations are based on meanings and interpretations in this individual courtroom, at the time the observations are conducted. Thus, this study attempted to "not generalize across cases, but to generalize within them" (Geertz, 1973, p. 26). As Hymes (1964) argues, ethnographies of communication "must take as context a community, investigating its communicative habits as a whole, so that any given use of channel and code takes its place as but part of the resources upon which the members of the community draw" (p. 3).

For my approach, I borrowed from the guiding principles outlined by Schensul, Schensul, and LeCompte (1999) for the purpose and process of ethnographic fieldwork:

1. Ethnography research is guided by and generates theory;
2. Ethnographic research is conducted locally;
3. Ethnographic research is both qualitative and quantitative; and
4. Ethnographic research is applied. (p. 1)

When entering the field during an ethnographic study, it is important for researchers to develop a theoretically-informed process and framework based on previous research and knowledge of the research site. However, the goal is not to "test" the theory, rather the goal is to expand or further develop the theory and use the data and observations to discover associations among tenets and assumptions. Schensul, Schensul, and LeCompte (1999), note that "ethnographic research focuses on understanding a local population in a broader socioeconomic and political context" and "understanding this broader or macrocontext is essential in order to situate local experience and cultural observations" (p. 5). Because ethnography is conducted in spatially-defined sites,

ethnography can effectively build “local” theory, which can serve as a basis for understanding other cultures and communities. And finally, the principle of ethnographic research as being an ‘applied process’ is important in order to observe and understand interactions and events happening in social settings that may affect larger populations, policy, or program development.

The study of face-to-face interactions can take place in both public and private arenas, with both offering unique opportunities to study “naturally-occurring” interaction and communication. My project consisted of observations in a public setting where logistically there are established rules of participants’ roles. Therefore, studying interaction in this setting focuses on roles in respect to the communication enacted and negotiated in the courtroom. As an operational definition, roles are constituted by groups of actions or behaviors associated with one’s specific position in the relational network or community (Lofland et al., 2006). Goffman (1971) identifies the “rules” associated with these public roles by adding, “the dealings that any set of actors routinely have with one another and with specified classes of objects seem universally to become subject to ground rules of a restrictive and enabling kind” (p. ixx). When conducting interactional analyses, it is important to understand the role of “meaning” in conjunction with the social roles and ascribed rules in such public settings.

Other researchers have used ethnography to study interactions in public settings from the perspective of the public “audience”. For example, Carbaugh (1996) used an ethnographic approach to study public interaction and communication at college basketball games and found that meaning emerged from a collective performance exhibited through a shared identity among participants, highlighting the importance of communal communication in a public culture. Trujillo (1992) observed baseball as a cultural institution and found it to serve as a symbolic

community and "theater for social drama" stemming from interactions among participants in the community. For my study, I sought to understand how participants in the protective order process engage in their "public" roles as attorneys, judges, bailiffs, etc. in the courtroom, focusing on multiple forms of discourse.

According to Becker (2001), ultimately, the goal and expectation for an ethnographic approach:

> Is not to prove, beyond a doubt, the existence of particular relationships so much as describe a system of relationships, to show how things hang together in a web of mutual influence or support or interdependence…to describe the connections between the specifics the ethnographer knows by the virtue of having been there. (p. 319)

In order to accomplish this, the process must consist of a diverse range of observations and information, collected over a prolonged period of time in a persistent and systematic way (Lofland et al., 2006). When the researcher engages in this active and immersive process, the researcher becomes a participant of knowledge development, which leads to understanding and identifying new questions about the culture (Malterud, 2001).

RESEARCH SITE

I conducted my research in a formal Protective Order Courtroom (housed in the criminal court system of the county). The Criminal Courts consist of 7 District Courts, 6 County Courts at Law, and 1 Drug Court. In this system, the County Attorney obtains protective orders for victims of family violence. The PO hearings are held every week on Friday from approximately 8am-2pm. As the formal Protective Order Court of this county, this courtroom and judge are designated to address family violence cases in which applicants seek a full protective order. The

judge specifically hears cases in which the applicant has no children by the respondent. Although custody PO cases are heard in other family courts in the county, this courtroom was the sole focus of study because it serves as the “official” PO Courtroom for this county, and has the most sophisticated and professional legal services for family violence. The focus of “key participants” included the judge, bailiff, attorneys, applicants, respondents, and witnesses (communication occurring in the front of the courtroom during hearings and all recesses and intercessions). However, I was also presented with the opportunity to observe and engage in a “walk through” of the application process from the perspective of an applicant before attending the courtroom proceedings. Please see Figure 1 below for a diagram of the physical layout of the courtroom, and Table 1 which lists the key participants and their location and roles.

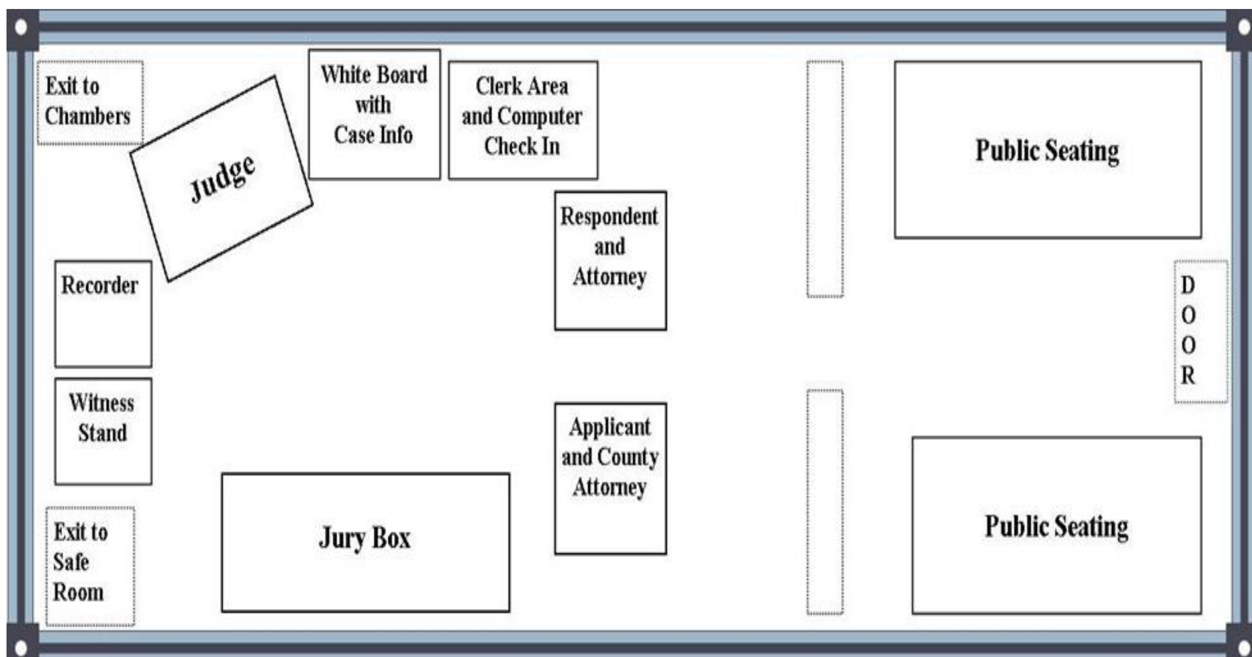


Figure 1: Physical Layout of Courtroom

Title	Role	Location
Judge	Hear and Issue Protective Orders	At the Bench During Recorded Proceedings (often out of the courtroom during recesses)
Bailiff	Manages the Courtroom and Procedural Instructions	In Court During Proceedings and Recesses
County Attorneys	Appointed to Represent the Applicants in Obtaining a PO	Near the Jury Box Area (in the courtroom during proceedings and recesses unless with their clients in Safe Room)
Defense Attorneys	Pool of Private (Volunteer) Attorneys to Represent Respondents in Contesting PO	In Court During Proceedings and Recesses (unless in the hallway meeting with their client)
Applicants	Participants Seeking PO	In Courtroom or Safe Room (if not in hearing and need support from advocates/volunteers)
Respondents	Participants Responding to PO	Attendance in Court Dependent on Their Choice to Contest (those incarcerated are brought in to be 'read' the rules of the order)
Legal Advocate & Volunteers	Serve as Advocates for Applicants (provide hearing dockets, assistance with processes, offer support in Safe Room)	In the hallway before docket call and then in the courtroom (proceedings and recesses) or available to sit with applicants in the Safe Room

Table 1: Key Participants

OBSERVATIONAL METHODS: PROTOCOL FOR GATHERING AND RECORDING DATA

Ethnography, then, can be examined for how ethnographers 'do closeness' on the one hand and 'do distance' on the other…Participant/observation stances vary in their direct vulnerability to such challenges and relatedly, to the task of overtly and interactionally maintaining a boundary in situ (Emerson & Pollner, 2001, p. 240-242). In order to meet the goals of my ethnographic study of interactions in a Protective Order Courtroom, I designated a process of data gathering that most accurately and effectively allowed me to answer my research question and focus (Schensul, Schensul, & LeCompte, 1999). According to Van Maanen (1988),

"The trick of ethnography is to adequately display the culture (or, more commonly, parts of the culture) in a way that is meaningful to the readers without great distortion. The faithful hold that this depiction must begin with intensive, intimate fieldwork during which the culture will surely be revealed" (p. 13). The level of participation in the field can include complete participant (fully functioning members of the group), participant-as-observer (observations emerge from the level of participation), observer-as-participant (participation is derived from the primary position as an observer), as well as complete observer (in this case participants do not recognize the researcher as part of the setting) (Lindlof & Taylor, 2002). In my case, I served two participant roles during my study: Observer (participant of the public) and Observer-As-Participant (since my presence as a researcher was known by key participants that remained in their roles every week such as the judge, bailiff, county attorneys, and legal advocates).

According to Adler and Adler (1987), there are four factors that researchers must take into account pertaining to their role in the field: 1. Understanding that conditions inherent in the research setting are in existence before you arrive can have an effect on the access getting in, staying in, and exiting the setting; 2. "Field workers attributes will influence which role s/he takes"; 3. The roles can be influenced by changes in the setting or culture; and 4. "Changes in the researcher will possibly cause a change in the role s/he desires in the setting". Therefore, understanding that these roles can change, and that they are oftentimes emergent in the field, are important elements of what level researchers are immersed in their research setting. Wolcott (2008) distinguishes these different observational roles through the lens of approaching ethnography as a way of seeing versus merely looking. For example, "There is nothing wrong with a researcher taking an essentially passive role and remaining uninvolved" (Wolcott, 2008, p.

54), because this approach can accomplish the task of "experiencing" the culture from all senses, which allows the researcher to hear and see interactions and behaviors in an active way. He goes on to add that through this process of observation, we are constantly reminded of how much we are able to see and hear in the field. From my observational approach, I was able to understand the enacted roles of participants at both formal and informal levels. Wolcott (2008) highlights the value of this approach as follows:

> "What is more, people on their best behavior enact roles in what they perceive as ideal types. Witnessing such behavior can be extremely valuable to the ethnographer interested in teasing out beliefs about how people should act and the inevitable tension between what people feel they ought to do or ought to say, and what they do or say in fact" (p. 52).

Kerchove and Ost (1994) suggest that the courtroom is not only a culture of complex, multi-interactional models of discourse; it is also a temporal environment that balances these complexities with both formal and informal understandings of members of the culture.

The courtroom has been the object of ethnographic study in several fields (i.e., anthropology, communication, social work). More specifically, O'Barr (1982) defines the ethnographic approach to studying courtrooms as follows: "An ethnographic approach to the study of trial courtrooms thus means long-term, careful observation coupled with detailed recording through note taking and mechanical devices, toward the goal of making as accurate description as possible" (p. 51). In line with Lofland et al.'s (2006) view of social action fieldwork (talk and action in human interactions serve as the fundamental sources of data for field research), the data for this study was collected through the process of field observations in

an open public courtroom. In order to study language as the symbolic system for establishing meaning (Lofland et al., 2006) in this culture, I attended open sessions for hearings in the Protective Order Courtroom on Fridays from 7:30am-2:00pm for 15 weeks from May-September of 2012.

PROCEDURES FOR ENTERING AND COLLECTING DATA IN THE COURTROOM

I arrived for data collection every Friday starting at 7:30 AM (I checked in with the legal advocate in order to receive a copy of the hearing docket). The courtroom process consisted of an open docket call at both 8:00 AM and 10:00 AM for all protective order cases. At this time, all respondents were required to be present to determine if a full hearing was necessary for their case. The judge read the docket of names and one of four rulings were called: default if they are not present (meaning the applicant is automatically granted the protective order); recall (means that the respondent is there but awaiting their attorney); Reset (meaning that there has been an agreed upon rescheduled date to determine this particular case); and Scheduled Hearing (which means that the order is being contested by the respondent and a hearing is then scheduled for later that morning). The unique nature of this dual docket adds multiple layers of communicative activity that takes place in addition to the actual hearings, and thus interactions are also taking place between attorneys to determine agreements, prepare for upcoming hearings, or to speak with their clients. In addition, if a respondent requests to represent themselves, they may also have extra time allotted to prepare their case before the hearing.

In order to conceptualize the data gathering process of taking detailed fieldnotes, I referred to several sources for best practices. Schensul, Schensul, and LaCompte (1999) highlight three necessary considerations when taking and writing fieldnotes: Behaviors should be

defined as they emerge with specific details; Descriptions of individuals should include details of appearance and all other interaction behaviors; and The physical state of the environment should also be described as if through a lens of a camera. Emerson, Fretz, and Shaw (1995) provide an effective designation in how fieldnotes are gathered both in the site during the observation (jotting notes down about the interactions, appearance, setting, processes, etc.) as well as those that are written after each observation (reflective, personal, and theoretical observations). Due to the importance of being able to document social life as a process in which meanings are shared through social interaction, "attending to the details of interaction enhances the possibilities for the researcher to see beyond fixed, static entities, to grasp the active 'doing' of social life" (Emerson, Fretz, & Shaw, 1995, p. 14). Goffman (2001) in a tape-recorded speech given in 1974 at a Pacific Sociological Association Meeting notes the importance of self-discipline in the process of taking and compiling your fieldnotes. He adds that to be scientific in the process of data gathering, you have to begin with trusting yourself, and writing as lushly and comprehensively as possible.

The data collected consisted of detailed fieldnotes during each observation (Emerson, Fretz, & Shaw, 1995; Lofland et al., 2006; Wolcott, 2008), an in-depth "walk through" with the legal advocate at the county attorney's office from prospective of an applicant (I took detailed fieldnotes and audio recorded the interactions with the staff members during my walk through, to which I later transcribed—for the purpose of this study, the audio recording transcripts do not reflect performance elements of talk), interviews with the legal advocate and one county attorney, and informal conversations with participants (including judge, bailiff, court recorder, county attorneys, and applicants). I collected two full binders of fieldnotes, and I designed

individual case sheets for all observed hearings (see Appendix E). During my observations, I was able to write down, and thus record, verbatim interactions that occurred before, during, and after the legal proceedings (hearings). I spent over 100 total hours collecting data, and during that time, there were a total of 212 cases that included 178 participants (89 Applicants and 89 Respondents) presented to the court. The breakdowns of the gender of the participants, pairings, as well as the outcome of the case type are illustrated in Figures 2, 3, and 4 below.

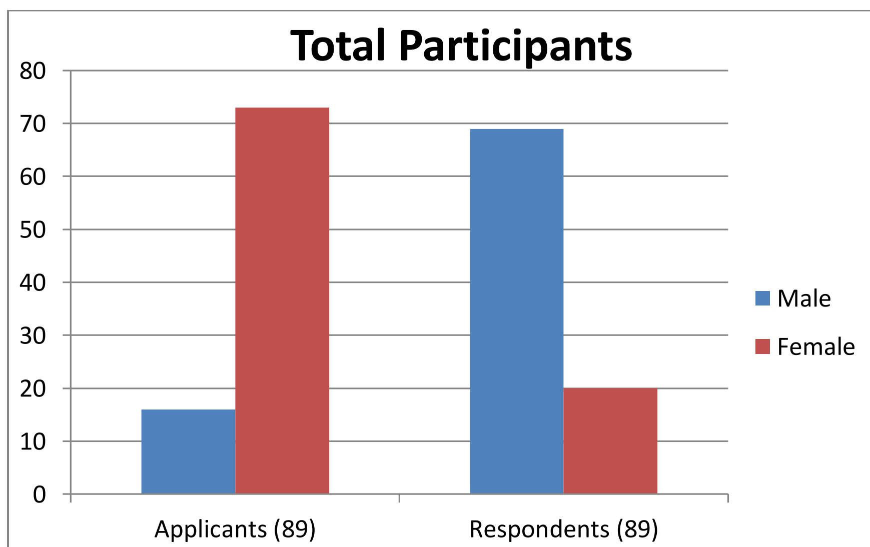


Figure 2: Participants

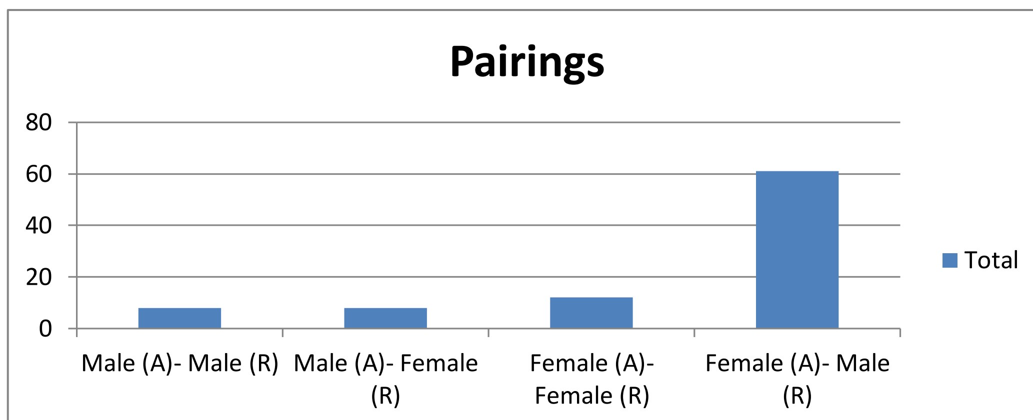


Figure 3: Applicant/Respondent Pairings

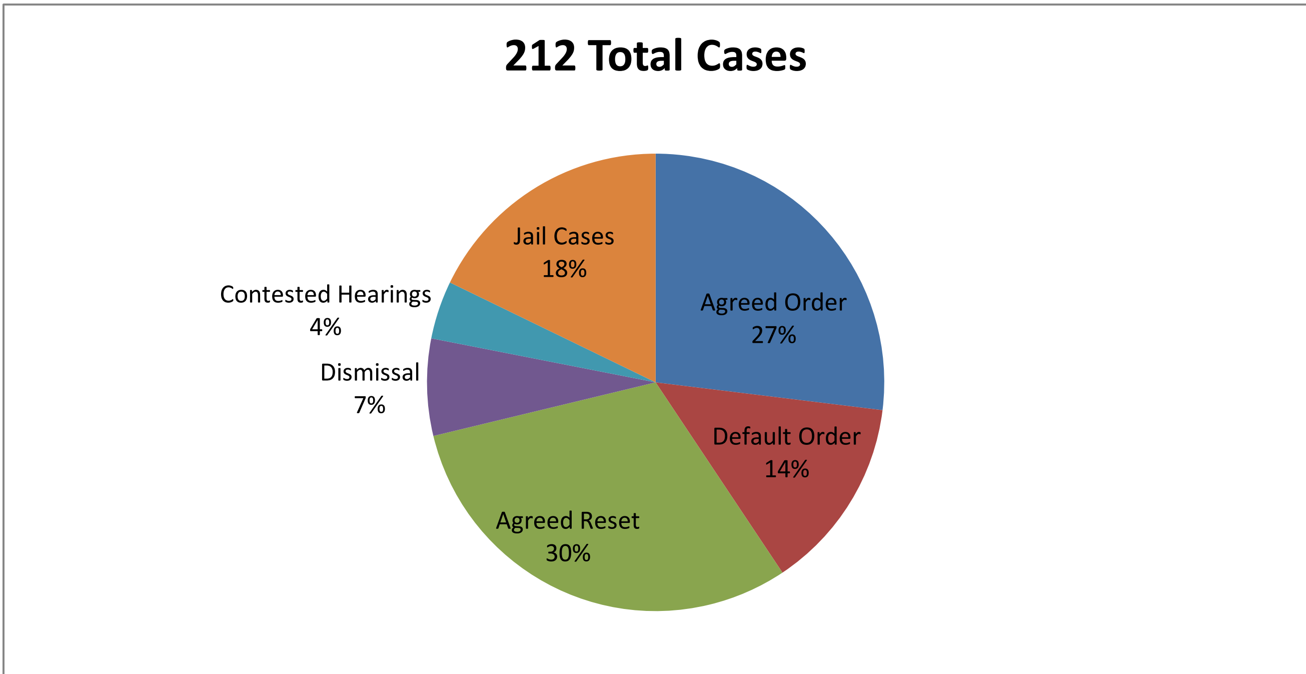


Figure 4: Case Breakdown

MATERIALS AND INTERVIEWS

In conjunction with in-depth fieldnotes, I also had access to the printed docket of hearings during each session that I observed provided by the Legal Advocate and volunteers outside of the courtroom before each court day. Due to high costs of obtaining court records, I chose to purchase only the official court transcripts for cases that were contested by the respondent, and that I was able to observe the entire hearing. I also had access to several professional members of the court and/or processes as sources of data as well (e.g., County Director of Protective Orders; Legal Advocate, and the Judge on occasion during recess and email correspondence).

DATA ANALYSIS

Due to the integrative nature of this inductive inquiry, data gathering, fieldnotes, analysis, theoretical ties, and the final written document do not emerge as a linear process; instead writing is a vital factor that takes place at every stage of the research process. Therefore, my analysis

began during my first day of observations. I engaged in consistent writing of fieldnotes, theoretical memos, my own reflexive thoughts, and things to consider before and after every day of observation—keeping in mind that regardless of what forms the writing took place in the process, it should always serve as a rich source of detail (Wolcott 2008). So the key to writing from the data gathered in observational studies is "description" (Emerson, Fretz & Shaw, 1995). Geertz (1973, 2001) refers to this as "thick description" and outlines three characteristics of such descriptions: they are interpretative, the interpretative focus is in fact the flow of social discourse, and the interpreting process consists of trying to contextualize the discourse through written description.

The writing process moves back and forth from specific events in fieldnotes to connection of theory, analysis, and larger theoretical ties (Emerson, Fretz, & Shaw, 1995). So, as I moved from fieldnotes to thick description to analysis, I engaged in discourse analysis (DA) to interpret the data of specific instances of interactions among and between actors during the legal proceedings (hearings). Borrowing from sociolinguistics, this approach is grounded in the framework that "Sentences do not exist in the abstract, they (sociolinguists) argue, nor are words usually spoken without a purpose. Sociolinguistics is the branch of linguistics that studies the relationship between language and its social context" (Conley & O'Barr, 2005, p. 10). As previously noted, I used both macro (Participation and Genres Frameworks) and micro (Discourse Analysis) level analyses to review my observational data in order to examine word-for-word discourse, while examining the function that the communication serves in the larger social, cultural, and organizational context of the PO courtroom.

Discourse Analytic Approach

According to Penman (1991), "All discourse analysis is concerned with making sense of a fundamental human phenomenon: communication. At the heart of discourse analysis is the assignment of meaning to communicative practices" (p. 21). Thus, the approach to discourse analysis can be diverse and multidisciplinary. I agree with the perspective of Schiffrin, Tannen, and Hamilton (2003) that the study of discourse analysis is a productive and engaging analytic tool because of its diversity. More specifically, due to the very nature of the "vastness" of perspectives as scholars, we can better understand communication, interaction, meaning, and relationships through both micro and macro levels. My approach incorporated the key aspects of studying language use in institutional contexts outlined by Drew and Heritage (1992):

> 1). Institutional interaction involves an orientation by at least one of the participants to some core goal, task, or identity (or set of them) conventionally associated with the institution in question.
>
> 2.) Institutional interaction may often involve special and particular constraints on what one or both of the participants will treat as allowable contributions to the business at hand.
>
> 3). Institutional talk may be associated with inferential frameworks and procedures that are particular to specific institutional contexts. (p. 22)

One consideration that is often overlooked in the study of institutional discourse is the asymmetrical properties of interactions between institutional professionals and the lay public (Drew & Heritage, 1992). As Atkinson (1982) observes, these asymmetrical properties are often perceived by lay participants as troublesome, constraining, and (at times) threatening. Much of

the research on institutional discourse focuses on the communicative boundaries between institutional talk and ordinary or interpersonal conversations (i.e., fluid versus structured). I argue that these two forms of discourse should be studied in tandem in order to uncover the dynamics of interactions among institutional members and lay participants. Heritage (2005) calls for more research examining these asymmetrical properties of discourse in institutional settings by concluding, "In sum, although the boundaries between institutional talk and ordinary conversation are not clearly fixed and demarcated, the distinction is useful and empirically sound" (p. 108). In this study, this approach to discourse in an institutionalized setting (a PO courtroom), helps reveal how the participants use discourse in variable ways to carry out their interaction goals.

Action-Implicative Discourse Analysis

As the frameworks of Participation and Institutional Genres have already been outlined in Chapter 1, this section will focus on the specific DA approach I used to examine the discourse exhibited during the hearing process including discourse used by the judge, county attorneys, defense attorneys, applicants, and respondents. I conducted DA using Tracy's (2004) Action-Implicative Discourse Analysis (AIDA), which describes problems, discursive strategies, and outcomes within existing communicative practices. The strength of this particular analytic approach is that it can help explain both macro (broad organization and structure) and micro (moment-to-moment interactions) discursive features of the participants in a specific institutional context, which makes up the majority if AIDA datasets. Drawing from Conversational Analysis (CA), Critical Discourse Analysis (CDA) Approaches, and Interactional Sociolinguistics, this DA approach provides a framework in which to study challenges that exist in current

communication practices within institutionalized contexts that highlight the structural and interactional layers that lead to such barriers for all participants, thus defining an action-implicative focus to study of the communication involved throughout the protective order process. The key features of AIDA include the following (Tracy, 2004):

1.) AIDA has a focus on communicative practices in institutional sites with an analytic aim of reconstructing the web of actor problems, conversational moves and strategies, and the situated ideals in that practice. (p. 224)

2.) AIDA is a type of discourse analysis that is also ethnographic. To reconstruct communicative practice well demands that a researcher have an extensive knowledge about the routine actions and variation in it. This requires the analyst to do sustained observation of the practice. It also requires analysts to develop an understanding of both how participants talk with each other in the practice (the focal discourse) and how they talk (or write) about each other and themselves as a group (meta-discourses). (p. 227)

3.) Similar to normative pragmatics, AIDA has frequently selected communicative sites for analysis (e.g., community meetings and academic colloquia) in which the activity of arguing is and should be central. In addition, both approaches seek to develop rational-moral principles for the critique of interaction. But, instead of beginning with a priori, philosophically derived principles about rational action, as normative pragmatics does, AIDA begins by examining actual exchanges in focal sites, seeking to take the legitimate, often contradictory, aims of the practice

> seriously. AIDA does not presume that there are known principles of good conduct that are universally applicable. (p. 230)

For the scope of my study, I have been able to use this analysis approach to highlight and describe communicative challenges and discursive strategies involved in the PO process, while also highlighting how these challenges affect the legal outcomes of this particular PO court. I cannot, however, attribute these practices and observations to all PO courtrooms outside of my dataset. However, this analysis approach provides a means to bring communication challenges to the forefront of the PO process, which can result in both theoretical and practical implications for the study of communication in this unique cultural context. Implications for practice in regards to institutional participant members (i.e., judge, bailiff, attorneys, legal advocates), as well as future research endeavors on behalf of the lay participants directly affected by the legal process and outcomes (i.e., applicants, respondents) will be discussed in the discussion and conclusions chapter (Chapter 8).

Chapter 4: Environmental Challenges—Access & Gatekeepers

The legal response and remedies available to battered women consist of a complex network of processes, people, and laws. The victim of domestic violence is often expected to understand this legal system and to access the remedies she needs.
It is a system that stumps experts.
("The Justice System," handout included in legal advocate volunteer manual)

In order to understand the functional communication challenges present during the protective order (PO) process, it is important to first highlight the environmental challenges that exist for both applicants and respondents. I was fortunate to have the opportunity to engage in a "walk through" of the application process from the perspective of the applicant in order to visualize the procedures first-hand. My analysis is illustrated through personal narrative, direct insights and quotations from the Legal Advocate, and physical diagrams designed to complement the narrative data in relation to environment and structure. Through the study of the physical environment, we can uncover "how the physical environment is an integral and essential part of effective intra- and interpersonal functioning" (Werner, Altman, & Brown, 1992, p. 298). Although as a researcher in this context, I cannot experience the same fears, frustrations, confusions, anxiety, and hesitancies as those entering the County Attorney's building to apply for a protective order, I can shed light on the environmental barriers present, as well as the 20+ years of experience shared by the Legal Advocate regarding her work with victims of family violence who enter this building every day. At this time, I would like to acknowledge that both men and women can be victims and perpetrators of family violence; however, the following results and discussion reflect the language used by participants of this study. In most cases,

participants refer to applicants as women and respondents as men in interviews and organizational documentation.

The following sections are organized into two key environmental and structural processes that occur prior to the formal PO hearing: 1.) how applicants and respondents find their way and maneuver through the system, and 2.) how the environment of the courtroom itself is layered with gatekeepers and processes that result in confusion for both applicants and respondents. Due to the complexity of this process, I begin with the application procedures as experienced by victims (applicants), followed by how the accused batterer (respondent) is made aware of their role in the process. I then identify the environmental challenges experienced in the courtroom from the perspective of both the applicant and respondent when they arrive for their PO hearing. This discussion will highlight the setting, access to information and representation, and the role of gatekeepers in the courtroom on the day of the participants' formal PO hearing. Figure 5 illustrates the first floor layout of the County Attorney (CA) Building in which clients first begin the application process.

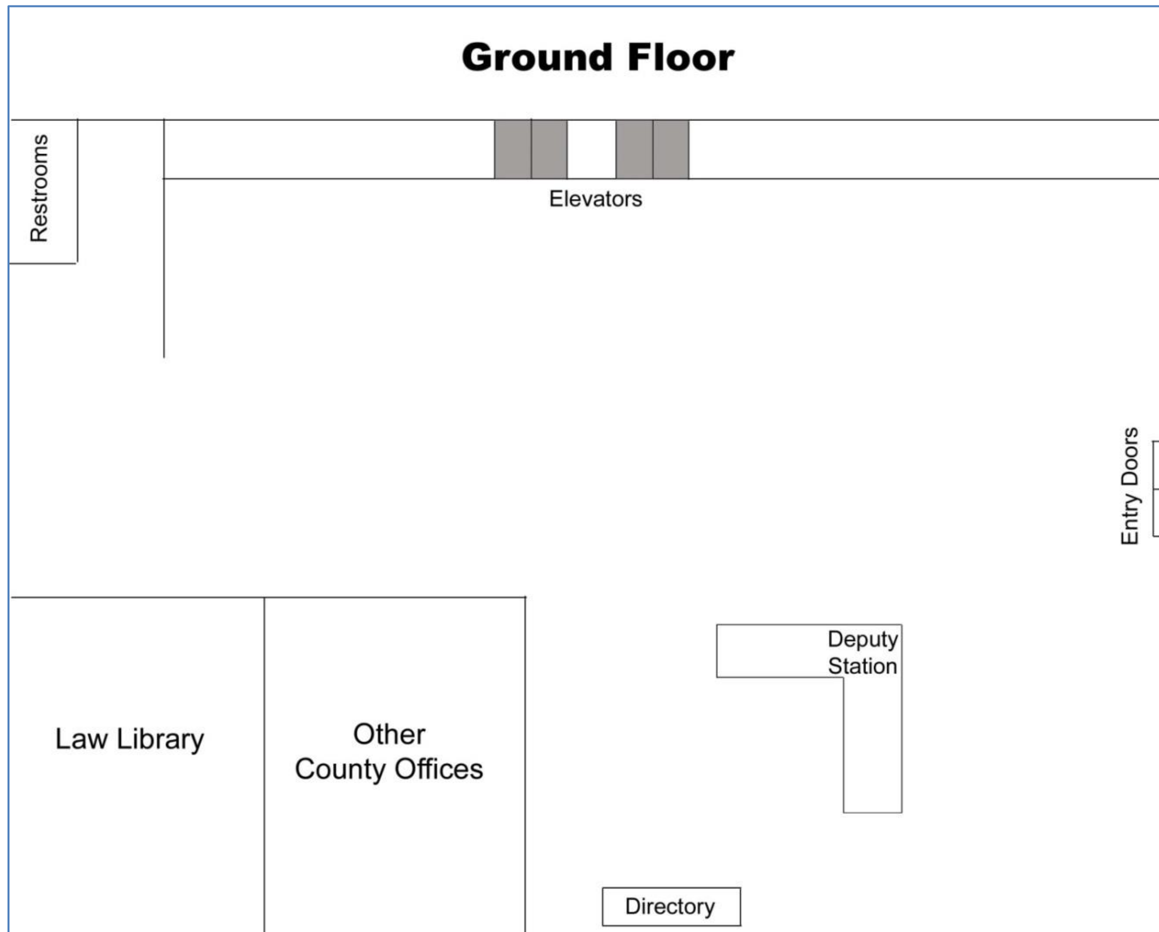


Figure 5: Ground Floor CA Building

FINDING YOUR WAY: MANEUVERING THROUGH THE SYSTEM

There are many perceptions that exist in regards to how one goes about obtaining an order of protection for cases of family violence. As members of the public, we might think about representations we see in the media, or maybe we know someone who has gone through the process. However, the reality of these procedures is much more complex, and how applicants and respondents access information and maneuver through the system is not often available to those outside of the institutionalized process. The application process in and of itself is layered

with challenges in terms of applicants "finding their way" and the role in which gatekeepers play in the process. However, the application process itself is just the beginning: additional environmental challenges are introduced on the day of the PO hearing. Particularly, challenges exist in the physical and organizational structure of the PO courtroom and the gatekeepers that manage the formal institutionalized procedures.

Application Process for Victims

Environmental challenges are introduced in the first moments of the protective order application process. In order to apply for a protective order, victims must first identity how to access the necessary legal information regarding protection orders. Issues include access to information regarding location, and according to the Legal Advocate, a majority of the applicants do not have access to online resources or any information regarding the process for obtaining an order of protection:

> *Step one someone is recommended that she come and apply for protective order. Most of our clients are not going to be savvy enough to go to the website, they're not going to know there is such a thing, they have no computer no way to access the information. So I'm mostly talking about clients who for example clients with a sister who had a protective order so she learned that way. Or somebody called the police and the police arrived and that's a piece of information they get. Or somehow there was contact with safe place and we tell them. People get restraining orders and peace bonds and all those other things mixed up, so they may have heard that there's something out there but don't really know what it is. If you don't need one why would you pay attention? So unfortunately I've been here long enough to where I'm now seeing second-generation,*

where they say I was with my mom in the shelter, so that's very sad. ***(PO Application Walk Through)***

If and when the applicants access location details and the necessary transportation, etc., they face the challenge of physically identifying the building, as the number is not clearly located in an easily-accessible manner. Therefore, once they locate the building, the very action of finding and navigating the parking process is another challenge. For example, the only parking options close to the CA Building are parking meters, which are not always clearly marked, and the fact that English is not often the first language of applicants, the process of interfacing with the electronic meter can pose access challenges. The Legal Advocate explains these confusions as follows:

> *So let's say you're a Spanish speaker there's no meter here, so it looks free to me—problem number 1. I've had people come to court and say yeah, I got a free spot right at the court house. What on earth says go down there and use the machine? There are pictures and I'm not even sure I would know what they mean. "Insert Card" well what card, I don't have any card. Coins, well she might not have any money….In order to get to Spanish they would need to find the right button to press to convert the language. And we have people that, this building there looks like something official so they go to the courthouse instead of here. Or nobody can even find the new building; I also say over the phone, look for the old building first and then go to the building behind it.* ***(PO Application Walk Through)***

Time as Environmental Challenge

The next challenge is time, which can be confounded by the lack of access to transportation and childcare on the part of the applicant. According to the Legal Advocate, confusion can be found in the most basic instructions, such as building operating hours:

> *So somehow they find out. So, first someone has to give them an address of where to go and it's a little misleading because we say that were open from 8 to 5 but if you get here at 4:30 they're not going to be able to finish the process so we suggest if they do call first to block out three hours of time, not bring their kids, some people have no choice some people bring in infants or toddlers and the whole gang.* ***(PO Application Walk Through)***

Another challenge to time results from recovery time for applicants who have been brutality injured in a recent incident of family violence:

> *She may have injuries herself which renders her incapable of filling out the paperwork. I've seen ladies with both eyes swollen she can't even read the papers. Hands in a cast, unable to read for whatever reason. Unable to write. Or he pushed her head against the wall and she has a migraine and can't read or write. You just can't imagine, other ladies I have seen the minute I see them I think oh my God why are you not in the hospital why are you not at the very least at your home recuperating and you have to fight this urge from saying I'm going to shut off my computer and take you to my house and take care of you. I'm going to give you hot tea chicken soup. The worst I've ever seen and this is off the top of my head so I may come back and say that wasn't really the worst but what I'm remembering right now is a lady came in and over the phone and she told me I said do you have any injuries and she says yes I have a bruise. She came in black eyes down her*

face, broken nose both orbital bones fractured broken jaw her jaw was wired shut so here I'm thinking over the phone she sounds like she's on drugs or she's not talking right. Her mouth was wired shut. So of course she had difficulty reading, writing and understanding, retaining. ***(PO Application Walk Through)***

Lack of Direction and Safety Concerns

Once a victim accesses the necessary information, acquires transportation, and maneuvers through the parking procedures and locates the entry door for the building, they are then faced with another layer of access challenges: lack of signage, direction, and safety concerns. Once in the building, it is almost impossible for anyone unfamiliar with this particular building or any other county building to navigate where to go from the time they enter the door (which is the only option from all corners of the building—again not well marked). There is a guard desk that houses a black and white peg-title board that lists over a hundred names and departments, none of which indicate where to go to apply for a protective order. During our walk through, I was introduced to one of the deputies, and we addressed these concerns with him:

Legal Advocate: *There is a deputy at the entrance from 8-5. Does everyone here speak Spanish or is there always someone here that speaks Spanish?*

Guard: *No, But back here (referring to the law library area) there is someone who speaks Spanish and that's where I go if I get stuck. But technically, that is not the job of the security guards. In fact this desk hasn't been here for very long. This desk has only been here for three years. And so much of that was wrong when I got here, and I spent a lot of time fixing it. People had been moved for two or three years and it wasn't updated on the board so people did not have the right direction to find the floor in office they*

needed. The only thing you would've seen a few years ago is this (pointing to a building diagram). It has the full courthouse the Criminal Justice Center and the County attorney's office. ***(PO Application Walk Through)***

Even today, the only direct marker for where to go for a protective order is a taped piece of paper on the elevator that states "Protection Orders are Located on 4th Floor". And this signage was only added due to the fact that the floors had recently changed. Otherwise, one cannot easily find where to go.

Another issue is safety. When one enters (the only public entrance of the building), they can just walk right in with no identification or check in required. There is a security desk that is staffed by a deputy; however, there is no accountability for registering your name or identification. You can just walk in, say hi to the guard, and hop on the elevators. According to the Legal Advocate and the Guard, this lack of security is a challenge not only for applicants, but also employees that work with these family violence cases and clients:

Legal Advocate: *And also from the standpoint of security, no guard check in leaves employees totally vulnerable to anybody walking in the door.*

Guard: *People used to sleep in that back hallway. They would lock themselves in the restroom.*

Legal Advocate: *So how do you think it felt to us to be here. No, we didn't have badges back then.* ***(PO Application Walk Through)***

When an applicant exits the elevator on the 4th floor, there is a door to the left that is identified as the office for protective orders. This is the only indication of where to go on the entire floor. In addition, there is not a secured entry for the main PO office door, which is

another safety concern for applicants and employees. The Legal Advocate shares an example of a security threat she experienced:

> *The protective order offices just moved to the fourth floor which is the only reason that there is a tape signed by the elevators to indicate where to go to apply for protective order. Sometimes respondents will follow us over here after court—crazy acting respondent in court that had a pro say contested hearing okay, he showed up over here within minutes because he wanted to file his own protective order.* ***(PO Application Walk Through)***

The first secured entry door is not present until the applicants complete the screening procedures and are then taken back to the intake counselors for their interview. Figure 6 illustrates the 4th

Floor layout in which the official PO Office is located.

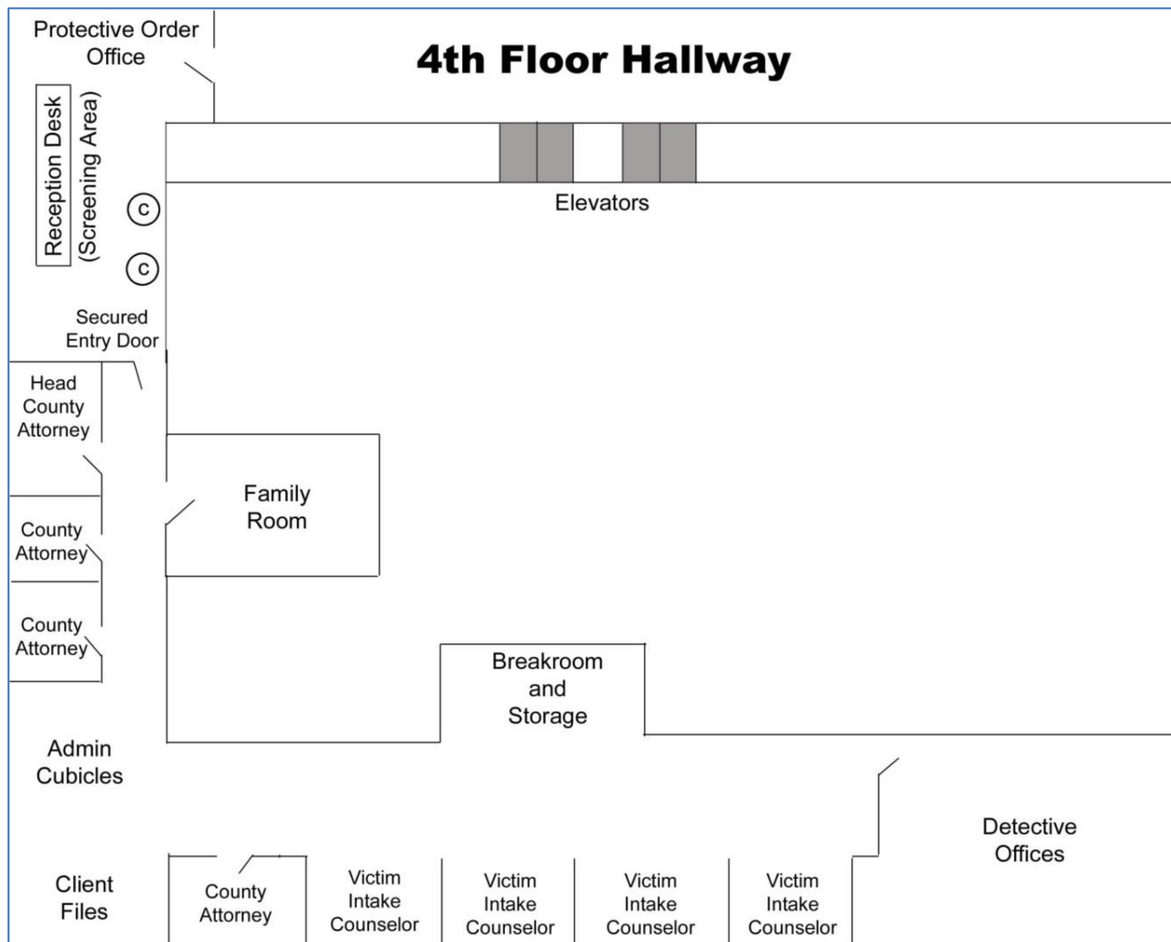


Figure 6: Protective Order Application Offices

Screening Process: Issues and Challenges

Once applicants enter the PO office door, they are welcomed by two administrative assistants that provide them with a screening form (Please see Appendix F). Space is an issue in this reception area because there are only two chairs in a narrow space in which to fill out the screening form. According to the Legal Advocate, there are several concerns and misunderstandings experienced by applicants when completing the screening form. However, the

administrative staff told me that the goal is to only keep the applicants in this area for no more than 10 minutes for the screening process:

So we will give her the screening form to fill out and then we like to bring her into the sitting room. They don't sit here for more than 5 or 10 minutes, we don't even like them to spend any time out here. We send them to the family room in the back while they wait. So the front desk administrators take a lot of general information calls regarding protective order application. We do not have the authority to tell them if they are qualified or not, we tell them that they have to talk to the counselors, we tell them what they will need to do in regards to the process. ***(PO Application Walk Through)***

Therefore, the applicants complete the form as best they can, and the issues or concerns are later addressed in their intake interviews.

Three Functions of Screening Form

There are three functions of the screening form: determine eligibility based on the legal statutes, maintain file of application (if rejected) in case of future abuse, and the ability to "weed out" individuals seeking to abuse the system. The first function requires the applicants to divulge any prior or pending legal charges or proceedings in process (i.e., divorce, custody, criminal charges). The Legal Advocate shared one possible hurdle that can hinder the application process that is often misunderstood or unclear for applicants:

Number 10 is a good one to discuss—do you have a pending case. What comes up a lot is, "yes I have a warrant out for hot checks." The County attorney prosecutes hot checks so we can't represent her and prosecute her at the same time. If it's hot checks specifically as opposed to out and out fraud, you know she really just messed up her

check book. Hot checks is here in this building so before she even gets started on the paperwork to say go talk to the hot checks people and work something out today work out a payment schedule give them five dollars they need to hear from you. We can work around. We're not ever going to say you don't deserve a protective order because of this; we're just going to explain the conflict of interest, so they would need to hire their own attorney. Maybe she's a prostitute and she has charges against her, well, that doesn't mean she doesn't deserve the order, it's just we can't do it. ***(PO Application Walk Through)***

The fact that they have any other pending legal issues is another barrier that can cause victims to avoid seeking a PO in cases of family violence.

In the second function, the case may be that there was no physical violence, and therefore, the application is rejected. However, according to the Legal Advocate, these are kept on file:

So we go from extreme to people not recognizing what is abuse. To the other extreme of not often but sometimes we have someone where there was no violence, there was no threat, however, her husband or boyfriend is terrorizing her in other ways, he starts every day yelling and screaming at her and all she wants is somebody to make him stop. She does not want him kicked out of the house, especially for two years. She needs his financial support, she still loves him, but she wants somebody to say you can't do that. There is nobody, there is nothing, we'll still talk with her, but there's no recourse other than an intervention with a minister, couple's counseling, or counseling just for her, because we really don't encourage couples counseling, knowing that the other person

has a problem, that he's going to sit there and say all the time it's her, fix her, I don't even have to be here, fix her. So for those folks, there no such thing. We can't even make him come to court just so a judge can chastise him. I encourage those who don't necessarily qualify to still come in and fill out the form and talk with us, because if this behavior is escalating, and there is then a record that she was here. The screening form is kept even if they do not complete the application completely or go to court or have a hearing or continue the process in case future incidents occur in reference to the fact that they came in with these experiences of abuse need to be entered into evidence for any case this terms of escalation possible murder or other assaults. ***(PO Application Walk Through)***

The third function addresses the very rare occasions where individuals seek out protective orders to "punish" or "scare" their partner, based on no incidents of violence. In this case, the screening form can serve to "weed out" anyone trying to use the institutionalized process to abuse the system. The Legal Advocate explains this as follows:

They are told you are filling out a sworn affidavit so at that point we're trying to weed out anybody who the public may envision is the he's got a new girlfriend and the other girlfriend is furious so she's gonna get back at him with a protective order. Number one she has to tell a credible story. We talked about evidence, she doesn't have to have evidence but if the counselors and the attorney get the feeling now wait a minute this isn't jiving at all, you know they don't have to take the case they can say we need to take a look at this and investigate some more. So, I'm sure that happens but not too many people, I think because it's too much trouble to do it. The only benefit they might get out

of it is a ‘kick out’ if they were living together the ‘kick out’ may happen. So, maybe temporarily she could get him kicked out of the home. She could maybe some revenge by making him go to classes, a BIT the program. Financially it's not going to behoove her to go through all this. So when people say oh she's just mad cause he's got a new girlfriend, I don't think that’s going to happen, or she's gonna go through part of it and say you know what I don't have time, I’ll be back tomorrow, and we never see her again. ***(PO Application Walk Through)***

Support Person’s Access: Family Room

As established in the previous section on time as an environmental barrier, clients are asked to not bring their children, as they often result in distractions, loss of time in completing paperwork, and there is simply not space available to accommodate several clients with children (or lots of support persons). Once applicants have completed the screening process, they are then taken back to wait for their intake interview. The only “waiting” area is in a small room entitled “The Family Room,” which is a small room with a closed door, that has a small play area for children, approximately 10 waiting chairs, and one television tuned to kids programming. However, there is barely enough room for two children at a time in the area, so it is apparent that clients, who have no other alternative than to bring their children, are faced with additional environmental and procedural challenges. Another issue related to children and other support persons being present during the application process, is the barriers to disclosure by applicants during their intake interview. There is no childcare, and oftentimes support persons will want to accompany the client to the interview offices. The Legal Advocate highlights these challenged as follows:

Some people bring family and friends with them; however, the actual interviewing the paperwork the counselors will prefer to have that person alone for a couple reasons. 1.) Even though this person may be supportive enough they are going to be asked a ton of questions and they want them to be comfortable answering questions. 2.) And some potential clients have not disclosed everything to their support person so maybe she only told her dad that he knocked her in the face, but she never told him that he raped her. So we don't want for some dads to get ballistic, but it's not usually a dad, it's usually a mom, a sister, a girlfriend, although we have had dads. ***(PO Application Walk Through)***

Victim Intake Counselors: Challenges that Impede the Interview Process

Once applicants are called for their interview, the Victim Intake Counselor spends the majority of the three hour time frame reviewing the screening form, asking additional questions, gathering information about their exposure to family violence, and establishing their official statement known as their legal affidavit. There are four intake counselors in this PO office that interview applicants. An intake counselor is trained in crisis communication and management, although, according to the Legal Advocate, they often lack the time and resources to enact these skills during the interview process with victims:

And unfortunately, although most of these people have been trained they're not able to utilize their counseling skills because they're frantically trying to get all this information. They have to do background checks on both parties. Get it down in their handwriting and translate in, even if English speakers, the grammar may be so bad that the judge couldn't even read it so I got to clean it up or may have to do it over again if it's done wrong. They have this much space, but it's human nature to explain everything that happened to them

before and then down here and then he broke my arm, he threw me up against the wall, that's the most important part. ***(PO Application Walk Through)***

Challenges that impede the interview process consist of limited space and lack of privacy, as well as barriers to the level of disclosure communicated by applicants.

Space and Privacy Concerns

The offices in which the interviews take place are very small and cramped, barely enabling enough room for one chair for applicants, with limited space to place personal items, manage paperwork, and as previously established, it is almost impossible to make room for children or support persons. Therefore, applicants who have no other choice than to bring their children struggle with being able to clearly focus on the affidavit process. For example, there are no baby gates, space for the children to play, or even sit while their parent is being interviewed. The Legal Advocate adds:

> *If someone comes in with no support person and her children, there is no one here to help with childcare so there's no one to take care of the kids when the parent is being interview so that's why we encourage them to not bring children, (for example they've been traumatized, they saw daddy go away in a police car, they haven't slept, they haven't eaten). However sometimes they have to which then also impedes upon the process and how much they share what they share how long the process takes.* ***(PO Application Walk Through)***

The most surprising element of the interview room structure is that there are no doors on any of the intake counselors' offices (please refer to 4th Floor Diagram on page 52). When I inquired about this, the Legal Advocate responded with frustration by stating, "These are counselors'

offices—why they built the offices with no doors, I have yet to understand" (PO Application Walk Through). When I was introduced to one of the counselors, she (the counselor) added, "Reasons for County building offices where you know you're going to be talking privately to clients without doors, I don't get it" (Intake Counselor, PO Application Walk Through). According to the Legal Advocate, this lack of privacy can lead to applicants feeling more anxious, rushed, and can often hinder the attention they are able to pay in order to accurately and completely share their story.

Disclosure: Communication Barriers

The interview process is a pivotal step in the application process that establishes the credibility of the applicant's side of the story. The paperwork that derives from the interview is often the only source of "evidence" in the PO hearing in front of the judge. According to the Legal Advocate, while some applicants come into the building with pictures, voicemails, text messages, or emails, most have only their accounts of abuse that serve as their voice in court:

> *If she walks in the door with pictures, wonderful, good for her for thinking of it, but evidence can also be here's the plaster he knocked out of the wall. If she brings that with her that solidifies her story. Certainly she could have generated it and knocked into the wall herself, you know all sorts of things, but we're going to assume our job is to believe her.* ***(PO Application Walk Through)***

Therefore, the information gathering process to develop the legal affidavit is an important communicative process. This speaks to the necessary role of interpretation in the human communication process in determining how evidence is perceived and ruled by the judge during formal proceedings on PO day. The intake counselors ask the applicants to begin with the most

recent incident of abuse. The Legal Advocate explains in information gathering process as follows:

> *Basically what has happened in the past and the most recent, like something recent, with exceptions I couldn't get away from him we live in a trailer and I have no car; I have no cell phone. I heard he is getting out of prison and the last episode was a couple years ago but that's why he went to prison. There always exceptions to something recent. We also want the most egregious thing. Maybe he broke her arm a few years ago OK that's not recent but that sure set a precedent. And then, from each episode we seek information who what when where, was he arrested, injuries, did EMS come? There is one generic place where she can throw in anything else like he drinks a 12 pack every day after he gets home, also has he injured pets before, this is one of the questions. But there are lots of things that don't fit neatly into a package like he broke his mother's arm and I saw that happen, and that' important for us to know. And it doesn't necessarily 'count' towards her application but it sure gives us information to go back and check his record or maybe his mom didn't call the cops, but it's important to know that. Was CPS involved, are there other court records we need to know about, a previous divorce, an annulment paternity papers. Do you consider yourself common-law married?* ***(PO Application Walk Through)***

Oftentimes, counselors have to help applicants understand what constitutes as abuse in the legal paperwork. For example, counselors have to spend time drawing out applicants' disclosure through the use of probing questions:

The three hours is assuming that they can speak English, and read and write, that they have full recall, we have to show a pattern, so sometimes we can help draw out through other questions is part of the experiences they may not think about when they initially come in. I remember we used to have a list with questions like did he grab you, shove you, restrain you, put you in bear hug,--and some applicants say, well I didn't know he wasn't allowed to do that. ***(PO Application Walk Through)***

One tool the counselors use to determine and understand the abuse experiences is to review the Continuum of Family Violence scale with applicants (Please see Appendix G). The scale is broken down into three categories: Physical Violence, Verbal/Emotional Violence, and Sexual Violence. Many applicants do not understand the levels of violence, and thus, do not always disclose the full picture of their abuse experiences during the interview process. For example, the lack of clarity regarding the legal ramifications for terms such as "strangling" versus "choking" can lead to misunderstandings on the part of the victim. The Legal Advocate describes this confusion as follows:

Everybody gets confused, because legally the definition is different. OK, this is one of our papers and it still says choke, in retrospect we now have learned that choking is usually considered as we're swallowing something like a hard candy that's choking. Under the law strangulation means your hands, a ligature, which unfortunately people are very creative about ligatures, an electric cord, I've heard of people being strangled by their own panties, one of our victims was killed with their own clothing. Pantyhose, it doesn't take much. Or technically strangulation also can be the abrupt restriction of airflow that keeps us alive. So a knee on neck is an example. A pillow over your face impedes your

ability to breathe. A bag over your head. However, the public always says chokes, the cops say choke, we used to say choke. This should be corrected. You will see me when working with a client I cross that out and I put strangulation. The reason that it is a huge question is because we used to put choke down here, because they'd say he choked me but I'm okay now. We realized thank the Lord you're okay this time because we've been trained by coroners who do autopsies and they talk to us, we spent three days learning about strangulation. ***(Strangulation, Audio File 41)***

The legal definitions are not only confusing for victims, but how to communicate and identify their experiences using terms such as choking versus strangulation can affect their presentation of "evidence" in their affidavit. The Legal Advocate expands on this further by adding:

The woman is strangled and then he stops and that is incredibly confusing to the client because it was terrifying in the moment it hurts but now she's okay, so do I call the cops do I go to the hospital there's nothing to show do I call my mom they don't know what to do with that. They may not know it's against the law. When this coroner came and trained us, he explained that there are so many vital things in the neck and choking someone to the point of passing out used to be a misdemeanor. So let's look at the things that can happen. Brain damage from lack of oxygen. Depending on how he is doing it, spinal cord damage. You could be paralyzed. Crushed trachea, crushed voicebox, you can never speak again. The guys tell her about the hyoid bone and they say I learned this in the military and it's a secret other people don't know about. It if he breaks the hyoid it leads to an artery and she bleeds to death internally and he tells her that no one would ever know what happened to you and she believes it. ***(Strangulation, Audio File 41)***

The Legal Advocate went on to explain the importance of showing the victims the chart, because visual aids are "huge when one's overwhelmed because she may remember nothing else other than those arrows, which is the continuation of family violence" (Strangulation, Audio File 41).

Lack of Clarity Regarding Communication Restrictions

In addition to space and privacy concerns that can impede disclosure, there are some questions in the screening form that must be confirmed with the intake counselors during the interview process. In order to proceed with the application and to be able to meet with a CA, the applicant must agree to the communication restrictions placed upon them (as well as their accused batterer) outlined in the temporary PO. Question 3 (Do you want the Respondent ordered to stay away from you?) is one of items that can cause pause in applicants. The Legal Advocate adds, "Question 3 is a point where clients get stuck, do you want your batterer to stay away from you. I would assume that 99.9% of our clients have not researched protective orders" (PO Application Walk Through). The applicants must certify that they will not contact their accused batterer under the temporary PO, and they must also certify to "not let the Respondent violate the order" in Question 5. The intake counselors explain that it takes approximately 14 days to obtain a final PO, and in the meantime, the restrictions of the temporary PO remain in effect from the time the judges signs the order to the formal appearance during the scheduled hearing. The Legal Advocate explains this as follows:

> *So other than the kick out which the Constable does, there's not supposed to communication between the two parties. However, there often sometimes is because the kids are crying for daddy, or she's not sure she's doing the right thing, so you never know who might officially violate it.* ***(PO Application Walk Through)***

Access to Communication with County Attorney

Once the applicants have completed the interviews process, they are then taken to one of the (four) County Attorney's offices for the final determination of eligibility and to discuss the court procedures. One key barrier in terms of access and communication with the CA is the limited number of attorneys and high volume of cases each week. The Legal Advocate highlights this barrier as follows:

> *You only have four protective order attorneys so assuming that one of them has to hang back here to do interviews. Then what if someone is sick and that only leaves two in court for hearings. I'm sure they are under extreme pressure to not call in sick, or don't ever call in if your car is broken down. With four people, that's not a lot of folks—and when you consider all the different reasons, vacations, conferences.* ***(PO Application Walk Through)***

With the average case list ranging from 15-30 hearings each Friday, the personal attention often expected by applicants can cause confusion and another layer of anxiety before they even enter the courtroom for the formal PO hearing. The Legal Advocate adds that the confusion often stems from the fact that the CA they meet with to complete their application and the CA that represents them during their hearing may not be the same person:

> *They do get confused, OK so I talked to this attorney during my application, but it may not be the same attorney that represents them in court. And I try to explain that it may not be the same attorney, but all the notes—that's why if you ever talk to a client and they want to call the attorney, we say what's even better, put it in writing. Everything has to be in writing so that it is always the claimant's words and their files as opposed to an*

interpretation of their words over the phone or someone caught the phone when she wasn't here, cause you know how interpretations can change. ***(PO Application Walk Through)***

After the applicant meets with the attorney, they must have their application notarized and then sent to a judge for approval. Once the judge signs the paperwork, the application becomes a Temporary Ex-Parte Protective Order (Ex-Parte refers to a court order issued to one party to an action without the other party being present). The court date is scheduled for approximately 14 days from the time the Temp PO is put into action. The actual process from entering the building to having the judge sign the temporary order is layered with environmental challenges that can impede the overall communication process. The Legal Advocate adds to this finding by stating:

Where people get confused and where even the law gets a little funny is when you physically think about the process. Supposing she comes, the assault happens Sunday night. She comes in to report it and apply for protective order Monday at 4:30. Well, she's not going to finish. So she's only going to get started. We'll do safety planning, and then she'll need to come back and finish the process. So if you think it logically. We don't have a judge in this building. You know maybe other counties could have the judge around but we don't have one right here. So that means we have to have enough time for her paperwork to be literally transported in whatever manner to any judge over there to sign off on it. Which means I've seen the Judge do it, they read it really, really fast, sounds good to me & sign it. So usually the judges know somewhat about procedures over here and they're trusting us that they went through the screening process and the

story sounds pretty legit. The minute that judge signs the paper is when it becomes official however, the respondent doesn't know about it yet. ***(PO Application Walk Through)***

Although the applicant has completed the process and is now protected under this temporary order, the accused batterer (respondent) has yet to be made aware of the legal order against him/her. The following section will outline the procedures from the perspective of the respondent, as they are notified of the Temp PO, instructed of their court date for the hearing, and presented with information about the process.

Serving of Accused Batterers: Respondents' Procedures

Once the temporary PO is in effect, the first steps in contacting the respondent involves alerting the constable's office to seek an official "serving" of the accused batterer. With the limited time frame of 14 days to locate the respondent, serve them, and give them the opportunity to seek counsel, there is a lack of information processing that exists for the respondent (as well as the applicant as indicated in the application process). The Legal Advocate describes these challenges as follows:

She has it but if he doesn't know about it, how is he supposed to know to stay away. So now someone has to then alert the Constable's office to let them know that papers need to be served on this individual. Another requirement is that she has to have when she comes in, an address. Home, work, PO boxes don't work of course. Do think you think he's staying with his mom, where do you think he's hanging out, you say no he's homeless he's a drug dealer. We'll say ok, work with us where can we find him well he hangs out at this bar. We've served people in the pool halls and bars. One guy who was extorting money

from his wife, they served him they jumped out of the bushes at the bank and said oh by the way, we're going to serve you and arrest you. So he has to physically be found and handed the order. And there are exceptions to that too. If the Constable knows the description of his car or what it looks like he can go to the door first and, say he sees the car out there, and the mom opens the door and says 'I haven't seen him I don't know where he is' and he hears a TV on in the back. Or he may go the neighbors and say 'you know I looking for so and so, have you seen him'. And they say' yes, he was here last night, okay'. So they would prefer to give the papers to him directly with some instruction; however, if they cannot find him but they're pretty sure he's in there at some point they are allowed legally to leave the papers at that residence. ***(PO Application Walk Through)***

In addition to the temporary PO being legally binding at the time the judge signs the paperwork, the stipulations of the order enforce what is called a "kick out" order. This kick out means that the respondent has to not only stay away from the applicant, but must also remove themselves from any shared residences immediately until the final ruling is made by the judge on their scheduled hearing date. For example, if the respondent is served at his/her place of employment, they are not allowed to return to their residence unless accompanied by a member of law enforcement to get any personal belongings needed. By law, from the time that the respondent is served, he/she is required to be given a certain number of days in order to obtain an attorney (or at the very least seek legal advice). The Legal Advocate shares the importance of protecting the rights of both parties:

All the paperwork has to be prepared. There's so much behind the scenes work. The concept is we want to get her safe, immediately, but then we have to protect her rights AND his rights because we're already stepping way out there by saying we're kicking you out of your house. So he's going to be so mad which puts her in more danger and we need to be prepared. Two weeks can feel like a long time, but in my mind also though, she's going to be two weeks further out from just haven been assaulted. You know that's not very long, and to sit and testify and look at the guy who's last words were right before he did this or grabbed your hair or smashed you into the concrete. You have to prepare as if there is going to be a hearing either way, so that takes a lot of time. Even though we think we are doing a good job giving our clients information. ***(PO Application Walk Through)***

We can see from the following flow diagram in Figure 7 that the process leading up to the PO hearing in court is very different for the applicant and the respondent. Although the data collected primarily focused on the perspective of the environmental challenges faced by applicants, it is important to understand that the respondents also face communicative challenges throughout the institutionalized protective order process in regards to time, access to information, and access to counsel.

Pre-Hearing Process

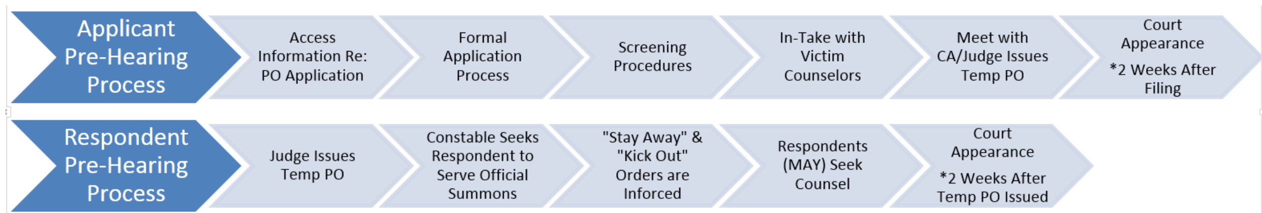


Figure 7: Pre-Hearing Process

CONFUSION IN THE COURTROOM: DAY OF HEARING

Now that I have presented the data in terms of the environmental communication challenges that exist throughout the application process, I will now outline the environmental challenges introduced in the PO courtroom for both the applicant and respondent. The following sections will describe the role of institutional gatekeepers in regards to access to information, resources, and security when the participants (applicants and respondents) enter the courtroom the morning of their scheduled appearance before the judge. The courtroom findings are presented in this chapter through a structural communicative lens; whereas, the next three chapters will focus on the functional communication challenges that emerge in the discourse and interactions during the hearing and ruling procedures. In order to effectively illustrate the structural environmental communication challenges, I designed a detailed flow diagram that will highlight the layers of gatekeepers and how applicants and respondents have access within the physical space of the courtroom.

Role of Gatekeepers: Layers and Access

The access to information regarding what to expect when they arrive for court from the perspective of the applicant is provided through the PO office and the County Attorneys, as well

as The Legal Advocate and domestic violence (DV) center volunteers. The respondent, however, is primarily guided by the 'order to appear' summons given to them by the Constables office. Those respondents that choose to hire a private attorney may be given more direction on what to expect with they arrive for their court appearance. However, from the data collected, less than half of the respondents (39%) arrived to court with an attorney. Both parties are required to arrive for docket call (the judge reads all names on the list of appearances to confirm attendance before setting hearings) at 8:30 AM on PO Day.

Security and Support

In order the access the courtroom, both parties must enter the main entrance of the criminal justice building in time to get in line for the security check, where they must go through a metal detector and their belongings must pass through a scanner. Once cleared, they must find the elevators and determine the proper procedures for entering the courtroom. The entrance to the building is bursting with institutional members including police officers, attorneys, staff, and other members of the public. There are two large flat screen monitors that scroll through the hundreds of names of individuals summoned to appear in one of the 13 courts (6 Criminal County Courts, and 7 District Criminal Courts) located in the building. It was an overwhelming experience for me as a member of the public who was there to observe, so the additional anxiety of appearing for court to disclose your personal experiences of family violence publically adds another layer of confusion.

After maneuvering through the busy entrance, security, and finding their way to the elevator and to the third floor, there is another layer of gatekeepers awaiting them as they exit the doors. There are at least two volunteers from the local DV Center that greet the applicants and

their support persons. The volunteers have a copy of the court docket, so they are able to identify each individual applicant, with the primary goal of making them feel at ease and supported. The applicants are then escorted to the "SafeRoom" which is located in the rear of the building, in a restricted room typically housing jury members for court hearings. With the exception of the few respondents who may have an attorney with them, respondents are left on their own to find their way into the courtroom. They might inquire with the volunteers as to where they need to go, and the volunteers (who have the respondents' names on their docket as well) will tell them they are in the right place and to wait inside the courtroom for the judge to call their name. Figure 8 below illustrates the pathways for applicants and respondents.

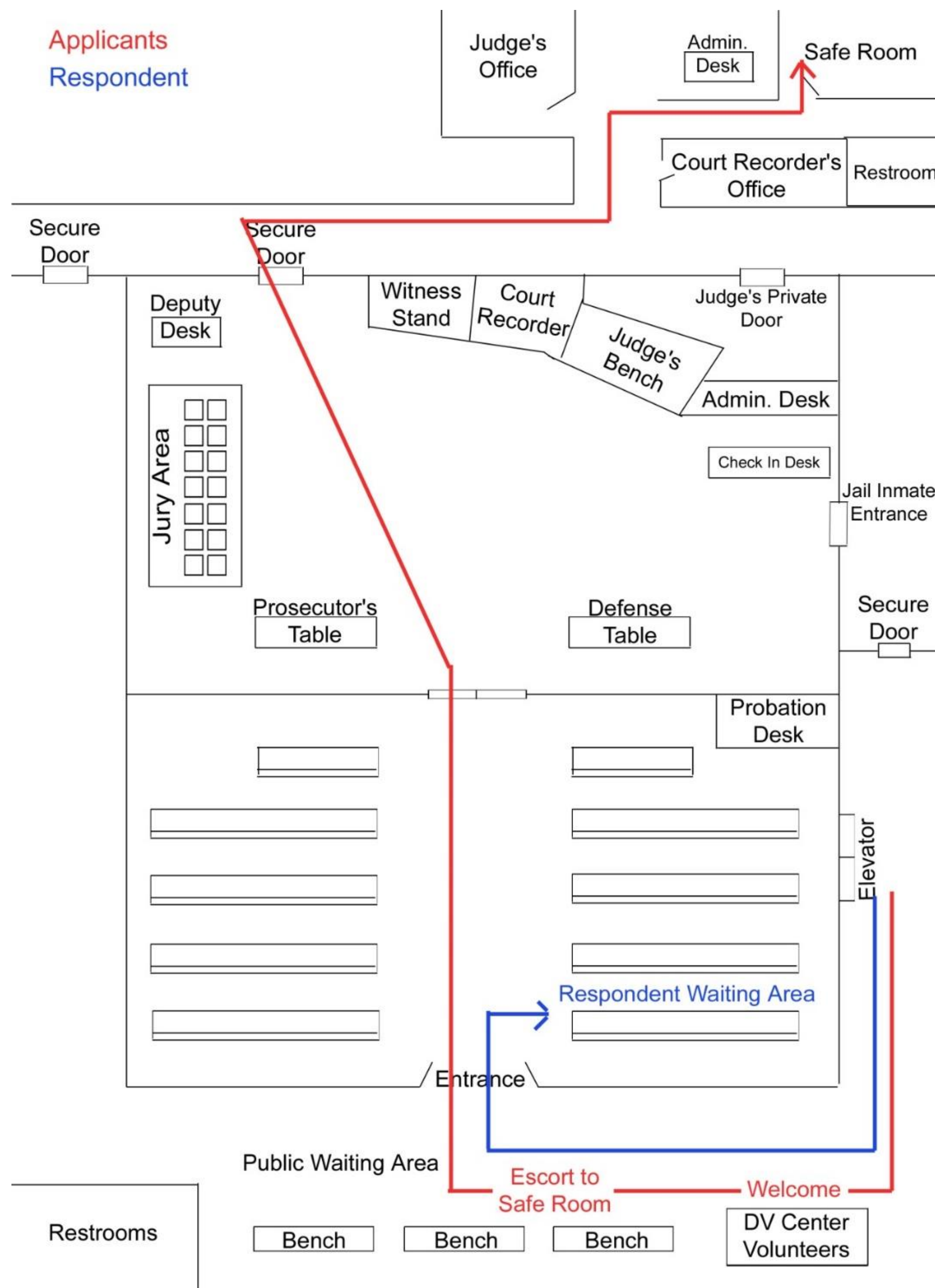


Figure 8: Applicant and Respondent Pathways

Courtroom Environment: Communicating Territory Markers

The physical space of the courtroom indicates the territory markers for where members of the public are forbidden to enter; the threshold is identified by a "gate" between the public

seating and the space allotted for institutionalized members of the court. The second marker is the physical presence of the deputy, who serves as the PO courtroom's bailiff every week. He is adorned with his full deputy uniform, and is armed with his service weapon and radio. Before and during the formal docket call, he stands in front of the gate to communicate the restricted access, as well as his authority and status in this courtroom. He uses distinct language choices to identify these territory markers, to which he refers to the front of the courtroom as "the well." He also vocally confirms when an acceptable "pass" through the territory markers is underway by exclaiming, "Hold up, someone's passing the bar." The only exception to this rule for members of the public is for applicants who are allowed to pass through this threshold with a DV Center volunteer to be transported to the "SafeRoom". When a respondent or another individual with a case pending approaches this threshold, they are quickly and directly told to "just sit down until your name is called." No questions are addressed if one of these individuals is unsure of where they should be or are anxious about proper directions or expectations. You can see these territory markers in Figure 9 below, illustrating the differences in accessibility between applicants and respondents.

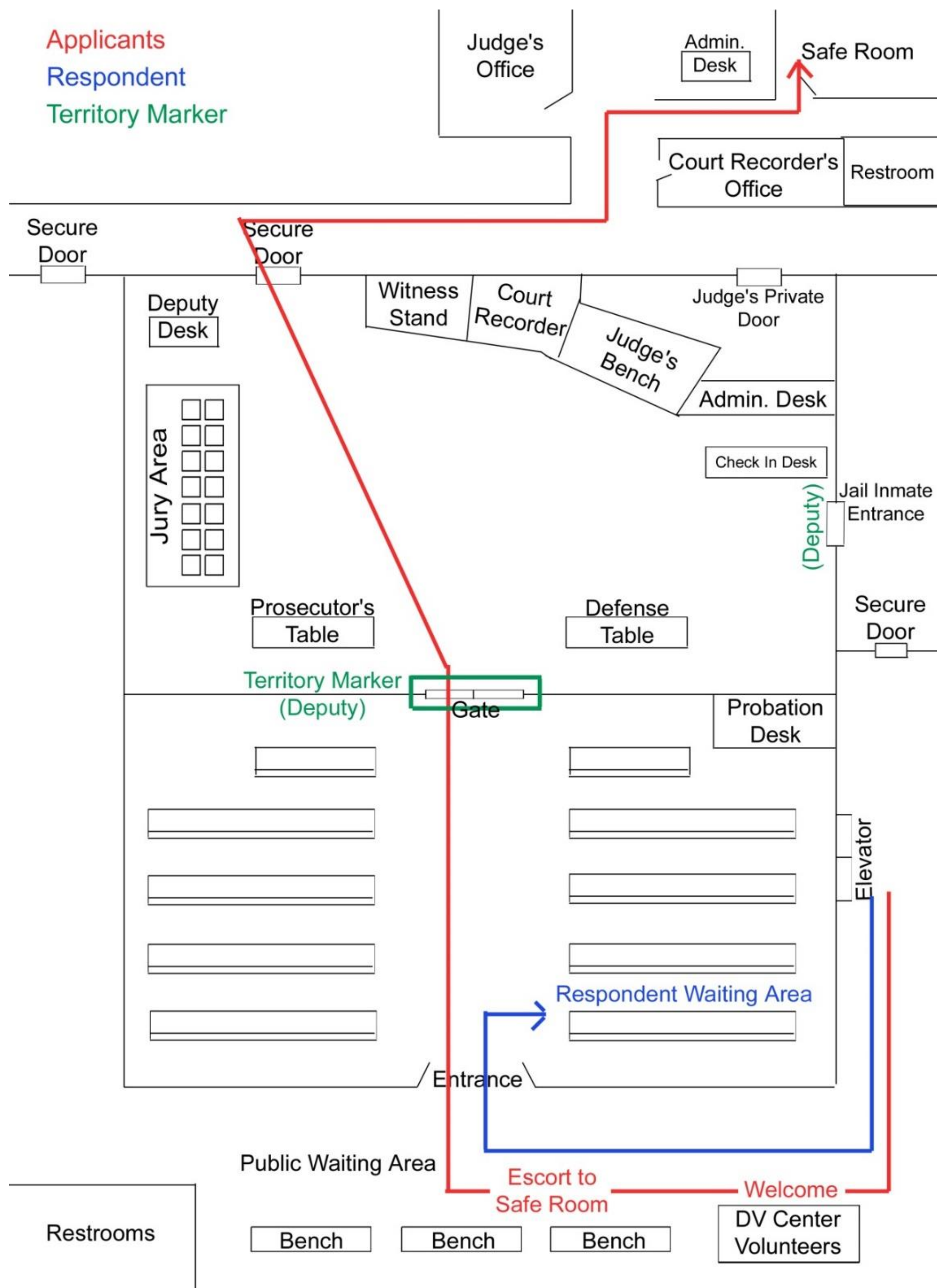


Figure 9: Territory Markers

The SafeRoom

While respondents wait in the courtroom for the docket call, the applicants are secluded in the SafeRoom where the Legal Advocate and volunteers provide them with safety planning,

answer questions about what to expect when they are called in for their hearing, or simply to listen and provide emotional support. Although the space is quite small (a table with approximately 20 chairs and a sink and whiteboard), the environment allows the applicants the opportunity to avoid contact with their accused batterer until the absolute last minute. They are also able to sit with others in their same position, which provides a sense of inclusion for applicants and their support persons. According to the local DV Center, the roles of the advocates are as follows:

> We are there to greet the client, calm them down, escort them to a safe room away from the abuser and his family, friends. We explain the process, make referrals, educate the client about the dynamics of abuse, briefly describe and handout Victims' Comp forms; do safety planning, discuss the effects on children, etc. This takes place in a crowded, noisy room and we try to talk and LISTEN to the concerns of all clients, however, some require more assistance than others. **(Protective Order Applicant Instructions included in Volunteer Manual)**

During the four months of my fieldwork, the Legal Advocate administered a brief survey to applicants in the SafeRoom to seek their perceptions of the space and time spent in the room while waiting for their hearing. Results indicated that of the 92 applicants who completed the survey, 100% of participants agreed that the presence of DV Center staff and volunteers in the SafeRoom added to their comfort level and provided insight into the dynamics of family violence. When asked to describe what was most helpful, responses included the comments such, "Having a room to go back in the back and having court processes explained;" "It's confusing and nerve-wrecking going through this. This service is helpful;" "They comforted me when I

didn't feel ready to face (name of respondent) at court and explained to me the escalation;" "She (Legal Advocate) listened to me;" "Her (Legal Advocate) thorough explanations of what was going to happen and her compassion;" "Being among other victim hearing some of their stories;" "Thank you for the jury room safe and comfortable;" and "Having the court process explained as well as discussing the characteristics of battering personalities." Although all applicants who responded felt appreciative of the space, some wanted more privacy and individual interactions with the county attorneys. Some comments included, "Please have the attorneys take the victim outside the group room setting for meetings or updates—not in front of the group;" Please always have a separate room;" and "We need a constant bilingual interpreter!" The Legal Advocate includes the following disclaimer in the handout given to advocate volunteers in their training manual:

> Language is a problem. I speak some Spanish but I only have one regular volunteer who speaks Spanish. Obviously I cannot speak in both languages simultaneously. A translator is provided, however, only when the attorney talks to the client or while in the courtroom, not while the advocates talk. **(Protective Order Applicant Instructions included in Volunteer Manual)**

Docket Call: Chaos and Uncertainty

Once the applicants are in the SafeRoom, they are not required to enter the courtroom again until their hearing. A representative from the local DV Center or a CA speaks on the behalf of the applicants during the formal docket call. One of the most cumbersome environmental challenges in this particular criminal courtroom on PO day is that there is what is called a "dual" docket. This means that in addition to the PO docket, there are also "first-time" appearances for

other criminal cases unrelated to the PO hearings. This causes the physical space to erupt in chaos during the initial docket call at 8:30. It is not made clear to respondents summoned to court for their hearing that not all cases are for protective orders. This also adds an additional layer of confusion, as there are 'outside attorneys' (those other than the CA and respondents' counsel) that are consistently coming and going through the aforementioned barrier "gate". This is even when formal hearings are taking place at the judges' bench. Although the county attorneys stake their claim to the prosecution's side of the front stage of the courtroom with their cart full of files, it does not deter outside attorneys from crossing through their space. Figure 10 illustrates the multiple pathways of traffic taking place simultaneously in the courtroom during the legal proceedings.

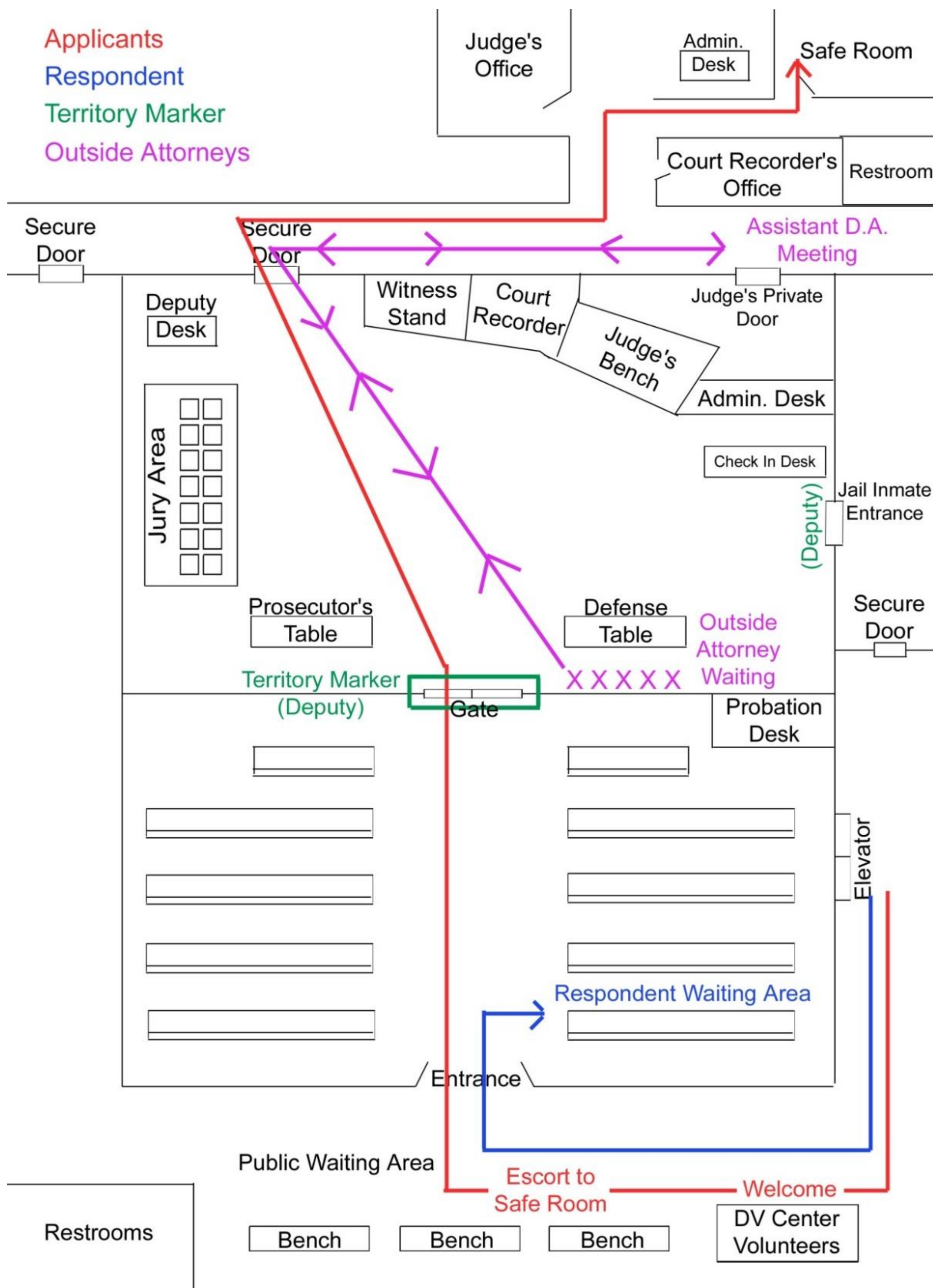


Figure 10: Courtroom Flow Diagram

Once the respondent's name is called, they stand up to certify that they are present in front of the judge. However, there are still multiple players of gatekeepers that they must attend to in order to meet their legal obligations. Regardless of whether or not they want to contest the order or make an agreement, they must first meet with a CA either in the hallway (public waiting area) or in the back of the courtroom to discuss the terms of the proposed order of protection. This is not made clear to the respondents immediately upon their presence being noted in the legal record. They are often told by the judge or deputy to wait until the CA approaches them or for their attorney to arrive (if applicable). This may take anywhere from 10 minutes to 2 hours to occur, due to the large amount of cases the CAs must addresses each week. This causes frustration on the part of the respondents, and they often attempt to approach the CAs by standing at barrier gate to inquire how much longer they must wait, etc.

SUMMARY OF ENVIRONMENTAL COMMUNICATION CHALLENGES

The institutional process for seeking and obtaining an order of protection for cases of family violence is layered with environmental challenges that constitute barriers to communication and understanding. This chapter has set the stage for how a victim of family violence seeks out the formal legal avenues for applying and appearing for court to obtain a formal 2 Year Protective Order. It has also demonstrated the steps that the accused batterers must face once the judge issues the Temporary Ex-Parte PO in order to meet their legal obligations related to the process. It is clear that the physical environment, as well as the layers of institutional gatekeepers, contribute to the confusion of both applicants and respondents throughout the pre-hearing process. These structural barriers lead to challenges in both parties' ability to access and maneuver through the required legal channels. Now that the environmental

communication challenges have been established, the following chapters will focus on the functional communication challenges that exist in the courtroom once the formal docket call has commenced.

Chapter 5: Functional Challenges—
Legal Proceedings & Authority Genres

Challenges to courtroom statements are formal, rather than indirect or polite, truthfulness is prescribed by oaths, and familiar processing of communicative information is replaced with prescribed ritual. (Searcy, Duck & Blanck, 2005, p. 43)

INTRODUCTION

As outlined in Chapter 4, this particular courtroom is layered with environmental challenges to access and communication for participants initiating the legal process. As illustrated in the courtroom diagram, there is limited physical space in which to achieve all the necessary procedures that take place officially "on the record", or which constitute evidentiary discourse. The dual docket poses extra layers of functional communicative challenges, as the expectations for who, what, when, and where are often blurred. According to Atkinson (1982), challenges to understanding the order and "formal" processes of language use in multi-party settings leads to a problem of shared attentiveness:

> …research suggests that the production of orderliness in multi-party settings…is crucially dependent on practical solutions being found to what can be characterized as the problem of achieving and sustaining the shared attentiveness of co-present parties to a single sequence of actions. (p. 97)

Once the entire docket is called (including the PO and Criminal Cases), there is not a clearly established consistency or "rules" for what case will be heard first, when one can expect to be called to the front of the courtroom to speak with the judge, or even who they must speak to regarding their case.

However, these challenges are manifested even more so when the participants engage in their individual cases in front of the judge. Using the framework of speech genres (outlined in Chapter 3), the remaining findings chapters (5-7) will examine the language structures required in the formal proceedings that cause functional communication challenges—particularly, the institutional barriers to effectively understanding the discourse in this particular cultural and legal/structural space.

These functional communication challenges are enacted in the expectations for what discourse is constituted as coming from authority figures, understanding the parameters of legal language (constraints of navigating the required evidentiary discourse requirements), public versus private, and what is considered a shared understanding of the interactional dynamics emerging during participants' time in the courtroom. This chapter will examine the communicative challenges to authority structures, particularly examining how the judge's approach to courtroom discourse affects the institutionalized structure of the courtroom during PO hearings. (In all represented transcripts, the following conventions are used: Applicant=A; Respondent=R; Witness=W; County Attorney (State)=CA; Defense Attorney=DA; and Judge=Court).

Communicative Challenges to Authority Genres: Structured Talk and Persona of Power

As previous research has established, there are contradictory opinions on how the public and other court officials view differences in judicial styles as represented by the judge in the courtroom (i.e., procedure focused versus record oriented; liberal versus conservations judges; and more controlling or less controlling judges) which also have an impact on the environmental culture of the courtroom (Conley & O'Barr, 1990; O'Barr, 1982; Philips, 1998). This also affects

the perspectives of the role of the judge in the courtroom based on not only communication styles and procedural behaviors, but also how other court officials respond to the judges' sense of authority or control of the courtroom. The role of the judge was a major factor in determining the communicative environment, as well as the elements of "control" and order in the courtroom. For example, the primary judge for this particular courtroom (for the most part) caters to a well-respected and organized judicial environment.

Normative Communication Rules and the 'Human' Side of Judicial Authority

Although there are normative rules of communication that are established in this courtroom culture, there is a dominant focus on interpersonal communication approaches in terms of all judicial members of the courtroom. For example, there are occasional reminders of the "official nature of communication" such as during a cross-examination during a hearing when an attorney asked the respondent (who was representing herself) to please wait a moment and stated, "please wait until I finish the complete question so the lady can get it down exactly what we are both saying." In addition, terms such "Invoking the Rule for Witnesses" (when they are asked to leave the room after their testimony) or the scripted nature of "defaults" and "recalls", as well as elements of the hearing process, all provide guidelines of what language needs to be used to make sure that the protective order is granted.

However, outside of these "scripted" language processes, the majority of the communication exchanges in this particular court formulate around an interpersonal and somewhat informal nature of discourse. This is exemplified in the manner in which the judge asks the applicants to come forward once a protective order is granted to explain the process and rules for future communication with their batterer. Following the outline of "formal" processes,

he adds, “If you have any questions just interrupt me and I will try to explain it better” and maintains constant eye contact with the applicant. His tone of voice and gestures represent more of an interpersonal relationship rather than an authority figure. He goes to add, “It is our experience, as I am sure it is yours too that he will try to get away with as much as possible” and asks, “Did you have a chance to sit down with the folks from (the shelter) back there to discuss safety planning”, as well as “Make yourself as comfortable as you can” if the applicant is asked to take the stand for questioning. From this communication style, the judge approaches the applicants with a sense of comfort, support, and confidence.

A long-term historical and rhetorical debate has revolved around the question of the human side of judges (Frank, 1949). In my observations, the discursive identity, identifying the “human” and reflective side of the judge came through in many instances as reviewed in interpersonal exchanges with applicants. However, the most telling behaviors of the discursive identity of the judge came across in all of his closing statements when he decided to grant the protective order or not based on the evidence presented by both attorneys. Each time he would begin to make his closing remarks, he would begin with an outward communicative monologue as if he were processing the evidence and all elements of the hearing introspectively. The judge used his personal narrative to not only reiterate the primary evidentiary points of the case, but also explicate his thought process to denote the meaning behind his final order. In addition to going through the evidence verbally out loud as he processed his thoughts, another important distinction in this particular courtroom is the level of knowledge that the judge possesses about the history, patterns, and long-term emotional effects of domestic violence which in turn, also gets incorporated into these closing remarks. He often argues that evidence has shown a “pattern

of abuse" and based on research, women return to their abusive partner on average of 7 to 8 times, etc. These are not pieces of the county attorney's evidence; instead they are based on his individual knowledge and serve as key determinants for how each case is communicated in terms of outcomes and procedures.

PO Judge & PO Court Inception

One consistent perception reported across a majority of the participants (legal advocates, volunteers, county attorneys, and applicants) was the uncontested and respected authority of the PO Judge. When asked about how this perception came to be, the Legal Advocate responded:

> *He would listen to our input because he didn't know how to do family violence court, we've never had one before, whose record was he supposed to be following? There was not procedure for it, and I can remember when he first became the judge he started out as a baby prosecutor, and I remember the first day he showed up for work in I remember him literally telling me after he became the judge I don't know what I'm supposed to say I know how to rule but I don't know what to say so he would sit down with multiple people and now he has a bench book. We have other judges who are opening up family violence courts across the country and he travels all over to teach them and then he gives them a copy of his bench book.* ***(Re: PO Judge, Audio File 37)***

When asked how the institutional process and perception of authority is established within this particular courtroom, legal advocates and county attorneys shared that the PO Judge goes above and beyond the required attention to legal procedure to ensure the understanding and acknowledgment of both applicants and respondents. This is enacted in his extensive attention to

detail when communicating with participants either at his bench or at the counsel tables during a hearing. The Legal Advocate explains this as follows:

> *And a couple of things that they judge like you've noticed, he goes over the conditions. Number 1, so nobody can come back and go 'well I didn't know I couldn't have a gun and go hunting with my dad'. Yeah, it's on the record, one thing I love that he says is and 'if you violate that order, I'm going to be the judge that you're going to come back to and I have a very long memory'. He's not threatening he's just putting them on notice. You're not just a number, I'm going to remember you…And you'll also notice that if you've going to train under anybody, or watch anybody in action, the PO Judge is the best. Because even when it looks like he's not paying attention, he will notice that a client is ready to start crying sometimes before I do. So that to me is part of the response. Do you need a break, are you OK do you need some water? As opposed to waiting until the crying and sobbing to go "well I guess we have to take a break now" you know it's all in the timing, how he says it.* ***(Re: PO Judge, Audio File 37)***

This attention to detail was exemplified in all hearings conducted by the PO Judge over the course of my fieldwork. The focus on institutional discourse required by the law and the use of discourse to explain what the implications are, are two different means of communication embodied in the process.

Transparency of Experience

Another discursive tool used by the PO Judge is his transparency of experience—needing to understand the human nature behind the actions of participants in order to make a fair and informed ruling. This transparency is achieved by asking the necessary questions about the

experience of applicants and respondents in order to make sense of their testimonies, while also ensuring that the legal process is withheld in his authoritative role. The Legal Advocate shares her insight and experience with this communication process as follows:

> *I don't how he got so enlightened. But he, I remember when he became a judge, he was honest with us. And he said, But I don't know what I'm supposed to say. I know the law I can do the rulings, I can say objection sustained. But I don't know what I'm supposed to say. And he asked for input. He said what do you think I should say what do you think I should say. There are other judges, for example another judge who says he looks at our victim and well I believe some of the things you said but not everything. And you think wait judge either you are going to grant the order or you're not. Why are you doing this to my client? You notice that the PO Judge is extremely patient with pro se contested or oh my gosh, He'll just let them go on and on. An you're probably thinking why are we doing this, and I used to do that, he said if I can let the guy run out of steam in court, that could help deescalate (the situation) if I just shut him down in court. The PO Judge is using some psychology. He's very calm with defense attorneys they are pulling all their magic tricks out of their hat, and just, you know, terrorizing the victim and talking too fast, and I've heard him say counselor this is not a murder trial tone it down. Uhm, and he's really good at giving the attorneys on both sides hints about you don't have any more questions do you? You don't have any more witnesses do you? That's, it depends on how he phrases the question, but like, I've heard plenty. And other judges don't do that.* ***(Re: PO Judge, Audio File 37)***

One of the most powerful examples of this intersection between the institutionalized process and the interpersonal needs of the participants was exemplified through a narrative shared by the Legal Advocate about an encounter she shared with the PO Judge. When she spoke of her own communicative challenges to teaching people about the process of family violence and the role of seeking out protection, the PO Judge shared his perception through a metaphor of war:

> *One of the hardest things I have to do in teaching the public is understanding the fear factor of a battered woman who feels trapped, there's no escape, and she's going to be killed. I said, Judge, the only way I can even explain that to anybody else especially men, is to say if you've been in combat then maybe you can understand the fear factor. Well some soldiers and some judges could have jumped all over me and said how dare you relate my experiences to your pittly ass little situation. He didn't do that. He changed the story and turned it around, and he said I talked to the girl, and know of and have heard testimony of, battered woman who stayed in their relationships because of the children. Knowing the guy was going to come home beat the hell out of her and yet she stayed. He said, that to me was courage, because we as soldiers were trained physically, trained mentally, trained as a unit, we all go in together we all come out together. The camaraderie is built in from the moment you set foot on the base the training base. You cannot compare the two. And he was giving more credit to the woman who stayed and protected her children then a soldier who's jumping into the middle of combat and could die. And I said judge, my estimation of you went up even higher from you saying that. And he was not BSing, he was not telling me what I wanted to hear. He was telling the*

way he saw it. Being alone, isolated, not knowing what your options are, not understanding what's happening. Not even having a title, oh this is called domestic violence. ***(Re: PO Judge, Audio File 37)***

Order in the Court Disrupted: Visiting Judges

While the aforementioned environmental challenges cause functional communication challenges to the institutional process for applications and respondents, we can see the efforts by the primary judge to addresses these challenges in an active manner. However, there were two occasions where a visiting judge took the stand during my fieldwork. The environment of the courtroom changed dramatically. The bailiff did not say "all rise" as he traditionally does when the primary judge enters the courtroom, and no one seemed to even notice the new judge at the stand. Also, because of this reaction, the guest judge did not assert himself into the new communicative environment, but instead waited quietly to be recognized by the lawyers to start the docket call. He was soft spoken, did not designate "on" or "off" the record to control the flow of the procedures, and overall the entire courtroom appeared in disarray. I was very surprised to see the drastically different response to this outside judge in not only the communication patterns of the court officials and public members, but also the change or lack thereof of any formal structure to the procedures. The Legal Advocate shares her experience with other judges as follows:

I've seen other judges who are so sarcastic, one judge, I thought the guy was having a mental breakdown and didn't know it. He was screaming at all the witnesses, screaming at the top if his lungs. He turned his back on everybody and continued the hearing while he was facing the wall. And I thought, OK something's not right here. Well, you know

what happened, I went to my judge, the PO Judge, and said hypothetically, if you notice some very strange behavior from somebody you already knew, what would you do? Well, I think we would need to talk to that person's supervisor and that would be that. And I didn't respond, and the judge said don't tell me it is TADA, I said I'm not saying it, and it was. And we've had one judge that was drunk on the bench, I mean, we've seen it all.

(Re: PO Judge, Audio File 37)

The Legal Advocate shares her insights into how the communicative culture of authority is challenged when a visiting judge is present as follows:

Visiting judges (let's keep in mind they're usually retired), they're stuck in their ways. They're not enlightened about family violence and don't care to be enlightened. They tend to have an attitude "I've done it I know how to do this don't come to me little lady with any suggestions," and usually they're bored to tears, but they get good money. I've been told when a judge's out a substitute judge makes very good money. So I don't think they're doing out of love for the legal system. I've seen (VJ) do a murder trial and he acted bored, and you could swear he was playing solitaire on his computer. Or, there's a very old judge, visiting, and they could not come to an agreement. He hauls both of the parties up to his desk and says, 'why don't the two of you go over to that corner over there and now be nice, and you just see if you can't figure this out between yourselves and come then come back and tell us what you decided'. And the head CA, who's been doing this for many years, had a fit. She said no sir that is not going to happen. He is under a temporary protective order, whoa, so do you think that this judge got it if this guy could be nice and negotiate with her why does he think they were in court in the first

place. And then he'll talk to me afterwards and he'll say, the same judge, he'll say I just don't understand why people just can't be nice to each other. I'm like, judge, it's way way more than not being nice. ***(Re: PO Judge, Audio File 37)***

True Victim & Establishing Credibility throughout Legal Channels

During my fieldwork, I witnessed the construct of what constitutes a "true victim" firsthand when a defense attorney for a respondent entered the SafeRoom after court had adjourned for the day, and I was debriefing with the legal advocate. The defense attorney entered the room and addressed the Legal Advocate by saying, "Hey, we got evidence of a true victim, so we need to proceed accordingly." This meant that there was evidence that his client was in fact guilty of family violence, and therefore, new charges needed to be initiated by the court (PO office by the County Attorneys). In this particular case, the female was arrested at the scene when police officers arrived because she had no visible injuries; whereas, her male partner had scratches on his face. The Legal Advocate explained that the "true victim" is a policy of pro-arrest/mandatory arrest—in this case—visible injury and complaint of pain ("little scratch on his face") versus bruises around the neck on the "true victim" the next day (when out on bail from court). She added, "it's not about who started it—you have to find out who is the dominating person, who is creating the fear…victims want to talk about the history, and where they fail is the officers want to talk about the moment, and the moment the judge signs the PO, you and the victim now have a special relationship" (True Victim, Audio File 46). She went on to explain this particular "true victim" case as follows:

We had a true victim, which is a person—that's the term that we use—where the prosecutors have determined by reading the police reports (by the jail deputies realizing

wait a minute okay she looked yesterday but hey look at her neck today) that she's the victim. So I'm not sure how that transpires who contacts whom but somehow the defense attorney who are always going to say my client is innocent no no he wasn't even there. But somehow they convinced the prosecutor that she is the true victim and this is where the police I don't think got the full story because of course her boyfriend was lying at the scene but she mentioned to us that he had been arrested no she had called them at least four times and he had been arrested twice. So why didn't police go into the computer and say okay let's get the other side of the story. He had a little scratch on his face and because our police department and our chief has chosen to follow the policy of pro-arrest and mandatory arrest when there is a visible injury or complaint of pain. So usually the story I hear from my true victims is that either maybe he was strangling them and she reached up and scratched his face in self-defense or he has her in a choke hold and she bites him that seem so obvious to me that the cops haven't figured that out yet. So then the prosecutor and the defense attorney and I work in conjunction to have the case dismissed. So her case more than likely will go away. And I'm not the determining factor there it's the prosecutor I'm there to talk to her about safety and what's the real picture here. So you saw how she was minimizing. She had a previous PO. You have to be able to ask the right questions because she wasn't going to volunteer any of that information.

(True Victim, Audio File 46)

Although in the previous case, physical evidence was the determining factor for deciding who, in fact, was the "true victim," in a majority of the PO cases, communication serves as the primary means of evidence. Oftentimes there is no physical evidence of the abuse. More

specifically, communication constitutes credibility and the fact that applicants must face their alleged batterer in order to obtain an order of protection, adds another layer of challenges to evidentiary frames. There are procedural rules for what constitutes as "credible" or accepted forms of evidence, and these are restricted by the language of the law as outlined in this particular county.

Contested Hearing Case Summaries

The remaining analysis sections specifically focus on the discursive features that emerged within the contested PO hearings. These cases illustrate the functional communication challenges present during the communicative interactions of cases where respondents' appeared before the judge to contest the PO application. The following table provides a brief summary for each case analyzed and discussed.

Case # & Notation Identifier	Brief Summary of Key Issues Raised
Case #6 (Choking)	Two key components in this case involved defining the term "choking" and whether or not the discourse surrounding the use of a shotgun were both credible and justified by all testifying parties
Case #7 (Drugs/Alcohol)	All evidence surrounded the alcohol used by both parties, but the "blame" was primarily focused on the applicant's alcohol and drug use as evidence that her credibility was tarnished, and therefore, according to the respondent, her argument for seeking a PO is not credible, nor warranted.
Case #8 (Sexual Assault)	The testimonies focused on the details surrounding the alleged incidences of abuse, particularly focused on the role of alcohol and individual actions in the participants' disclosure. Unintended consequences emerged in the respondent's testimony that brought to light the possibility of sexual assault charges in future legal actions.
Case #12 (Stalking)	In this particular case, the State could not prove "physical" abuse had occurred; therefore, they could not seek a family violence PO within the language of the original statute (as used in all the other cases). The alternative was to seek a stalking PO (which automatically serves as a lifetime order).
Case #16 (CPS)	Child Protective Services (CPS) gave applicant an ultimatum—seek and access a PO or lose custody of her 8 year old child. Three incidences of abuse are reviewed in the testimony.

Table 2: Summary of Contested Hearings

The communicative constraints on testimony are evident in the turn-taking process of the hearing. Credibility is established through communication (affidavit, testimony, how they handle cross-examination of attorneys). One barrier is the actual legal implications for discourse presented during the hearings (the 'on record' discourse of the formal proceedings). In the following court transcript excerpt from a case involving Child Protective Services (CPS), we can see the judge actively assist the CA in establishing the burden of proof during the cross examination:

A: *My mom had his number saved in her phone so that's how I knew it was him.*

CA: *Did you recognize the number?*

A: *Yes.*

CA: *Okay. And did you look at those texts?*

A: *Yes*

CA: *And what did he say in those text?*

DA: *Objection, hearsay.*

THE COURT: *Do you have any response to hearsay?*

CA: *Well, Your Honor it's not hearsay. He sent the text, she recognized the telephone number and she saw the text herself, it's not hearsay it's a statement made by the party.*

THE COURT: *That's what I was looking for.*

THE COURT: *You're saying then that it's an admission by party opponent I statement by the party. Overruled, please proceed.* ***(Case #16, CPS)***

In the example, the definition of the term "hearsay" is challenged and refuted by language structures that meet the burden of proof established in the legal parameters set out and executed by the governing body, in this case, the judge.

Extended Example of Communicative Challenges to Authority Genres: Case # 16 CPS

One important element to understanding the role of authority in the institutionalized context of this PO courtroom is the fact that the judge has the final ruling on whether or not the PO is granted to the applicant. However, as we can see from the following case, there are multiple variables that make-up the evidentiary procedures that determine who has a hand in the authoritative decisions. In this case, we can see that other institutional agencies may represent the needs of those also affected by the incidences of abuse surrounding a PO case. One of the contested PO cases involved an applicant who did not want to seek a protective order against her

accused batterer; however, Child Protective Services (CPS) gave her an ultimatum—seek and access a PO or lose custody of your 8 year old child. In this particular case, the authority was not only with the judge hearing the case, but ultimately, CPS held authority over the testimonial structure, as well as the decision to even seek out a PO from the perspective of the applicant. CPS initiated their authority in order to protect the well-being of the child, which also determined the actions by which the applicant took in pursuing an order of protection. This extended example will outline the variables present in the formal PO hearing discourse.

During the hearing, the CA questioned the applicant about the three incidences of abuse that were outlined in her affidavit. The individuals involved with these incidences extended beyond the applicant herself. Her son and mother were both present and affected by two of the incidences outlined in her affidavit for an order of protection.

Case #16: Incident 1

The first incident was presented to the judge during the hearing as follows:

> ***CA:*** *And what happened between the two of you that day?*
>
> ***A:*** *I had asked him for gas money so I could pick up my mom from work, and he was laying on the bed and five minutes had went by and I was still waiting and I asked him again, and then that's when we started arguing.*
>
> ***CA:*** *And after you started arguing what happened then?*
>
> ***A:*** *He pulled me back inside-I was on the staircase and he pulled me back inside of the house and he started hitting me.*
>
> ***CA:*** *What did he hit you with?*
>
> ***A:*** *Just his hands.*

CA: *And where did he hit you?*

A: *It was mainly my arms because I was fighting back, and my ribcage and all that.*

CA: *And did that cause you pain?*

A: *For that day but it wasn't something that I had to go to the hospital for.*

We can see that the applicant, although describing specific acts of abuse, uses several terms that minimize the experience, such as "Just" with his hands, and qualifies that he hit her "mainly" in the arms because she was trying to fight back. She concludes this specific abuse description with a qualifier and attempts to minimize the abuse by adding, "But it wasn't something I had to go to the hospital for." As we move through the hearing discourse, these minimization strategies on the part of the applicant become clearer (especially when we learn later in the cross examination that she disclosed she didn't personally even want the PO).

The CA goes on to inquire about a gun being present in the first described incident:

CA: *And at any time during that incident did Mr. M show you a gun?*

A1: *Yes.*

CA: *And at that time did you believe that gun was real?*

A: *Yes.*

CA: *And what did he do with the gun?*

A: *He hit me a couple of times with it in my stomach.*

CA: *He hit you with the gun?*

A: *Yes.*

CA: *Did he say anything while this was going on?*

A: *No.*

CA: *You said that he hit you with his hands, what part of your body did he hit you?*

A: *It was everywhere, it was mainly my chest and my stomach area and my arms.*

CA: *And did he do anything else to you physically that day?*

A: *He had ripped my dress when I was trying to run.*

CA: *And how did that incident end?*

A: *I ended up running back to my car and I just left.*

CA: *Did he chase you to the car?*

A1: *Yes.*

CA: *Did he say anything to you while he was chasing you?*

A: *No.*

CA: *Did you call the police because of that incident?*

A: *No.*

CA: *Why did you not call the police?*

A: *I just didn't, I wasn't thinking about that at the time I was just worried about picking my mom up I was already late.* ***(Case #16, CPS)***

Case #16: Incident 2

The applicant is then asked about the second incident included in her affidavit:

A: *We had went to my mom's friends Bar B Que and we were outside, I was helping him with his homework, and I stepped inside with my mom to say hi to a friend, and when I came back outside to talk to Mr. M he stated that I was looking at the guy too long and he had got upset then, but when I dropped my mom off that's when he had got upset and pulled me from my coat and just pushed me down.*

***CA**: Pushed you down where?*

***A:** In the staircase of the (hotel name).*

***CA:** And did you receive any injuries during that incident?*

***A:** No.*

***CA:** Did he say anything to you when he pushed you down?*

***A:** He was just saying do you think I'm stupid, you know like I was trying to talk to the guy but I wasn't, it was just a hello.*

***CA:** Had Mr. M shown any jealousy about you in the past?*

***A:** Yes.*

***CA:** Was that something he did regularly?*

A:** Somewhat, yeah.* ***(Case #16, CPS)

Case #16: Incident 3

The third incident which led to the respondent's arrest took place at a hotel where the applicant was staying with her son and mother. The respondent appeared at the hotel room:

***CA:** And when he came in to that room what happened?*

***A:** He started screaming he wanted to come outside and talk to him, he said if I didn't that he was going to hurt me, and I said no and so my mom was jumping in the middle of this and she was freaked out, and so I had moved my son to the bathroom so he wouldn't see anything else. It happened so fast all I remember you know, he had pushed me down and bit my head and then he left.*

***CA:** He bit your head?*

***A:** Yeah the top of my head.*

CA: *And was your son there when Mr. M. first came into the room?*

A: *Yes.*

CA: *Okay. Was he sleeping?*

A: *We were both sleeping; my mom was the only one that was up and she was just --she woke me up when she heard the knock on the door.*

CA: *And did Mr. M's behavior wake your son up?*

A: *Right.*

CA: *And what was your son's reaction to that situation?*

A: *He was screaming, he started crying because he didn't*

DA: *Objection relevance, Judge.*

During the description of the third incident, we see the son's role in the event, and as she testified to the effects on her son from the abuse, the DA quickly takes this opportunity to object. We see that the DA objects to the "relevance" of this part of the applicant's testimony. Although it is not explicit, we may assume that the details of the child crying are the reference to what is "not" relevant to the applicant's testimony. This becomes more apparent when the judge swiftly "overrules" this objection (leaving no time for the CA to even address this objection):

The Court: *Overruled.*

CA: *Go ahead.*

A: *He didn't know what was going on I was startled too, so that's why I had tried to put him in the bathroom.*

CA: *Okay. And so you removed him from the room?*

A: *Right.*

CA: *And was Mr. M still there?*

A: *Yes.*

CA: *Okay. And you said that he bit your head, how did that happen?*

A: *He had pushed me down and then he pulled my hair a little bit and he bit my scalp.*

The Court: *I'm sorry, where on the head, ma'am?*

A: *Just at the top I don't really know, just the top of it.*

CA: *Did he grab you by your hair?*

A: *Yeah he pulled me a little bit.*

CA: *And after he had done that what did he do?*

A: *He had stated for me to -he asked me to come back outside to talk to him, I said no and then he left.*

CA: *Did you call the police?*

A: *Yes.*

CA: *And did the police respond?*

A: *Yes.*

CA: *At any point during that incident did you think that Mr. M had a gun with him?*

A: *Yes, I did.*

CA: *And what made you think that?*

A: *He just kept on grabbing his hip, I never seen anything you know, he never pulled anything out but it's just what I had thought.*

CA: *Have you ever seen him with a gun before?*

A: *I have but it wasn't real.*

CA: *And what made you believe that he had a gun this time?*

A: *He just kept on grabbing you know, his belt or whatever, his pants, and I thought he was going to pull something out I didn't know what it was but I just knew it was like a weapon.*

CA: *Did it cause you concern?*

A: *Yes it did.* ***(Case #16, CPS)***

The very brief objection interjected by the DA in regards to relevance of why the son was crying is the first utterance we can identify the importance that the effects on other family members are addressed and acknowledged by the judge.

Introduction of New Variables into Applicant's Narrative

Following the description of the first incident of abuse, the applicant introduces new variables into the narrative of abuse. We now learn that she did not press charges after the first incident, although the respondent was arrested at the time. It was at this point that the shift in authority presents itself in the form of the State's Attorney on behalf of the child.

A: *In April on the 6th he was arrested for what had happened between us.*

CA: *Okay. And at some point after he was arrested did you notify the prosecutors that you didn't want to press charges?*

A: *Right, I did.*

CA: *And why did you make that decision?*

A: *Because we were still --even though that had happened, that Sunday we had got, you know, back together and we were still talking so I didn't want to pursue charges.*

CA: *Okay. And to your knowledge did the State go forward with those charges?*

A: *Yes.* ***(Case #16, CPS)***

The fact that the State pursued the charges demonstrates the authority of not only the legal system at a diverse range, but also the primary role that the affidavit and narrative evidence plays in bringing charges against the accused perpetrator. We see from the continued questioning of the applicant, that she in fact did not want a protective order against the accused, and enacted this by visiting him numerous times while he was in jail:

CA: *After Mr. M was arrested and placed in jail did you go visit him?*

A: *I did.*

CA: *And how long did you visit him? For how many months?*

A: *Let's see, I guess for a month straight I was there faithfully twice a week seeing him.*

CA: *And why did you go visit him in jail?*

A: *Because I missed him you know, I didn't want to see him get arrested that's why I didn't press the charges.*

CA: *Okay. And did you write him letters while he was in jail?*

A: *I did.*

CA: *And did he respond to those letters?*

A: *Yes, he did.*

CA: *Did you plan to get back together with him when he was released?*

A: *Yes.*

CA: *And what changed your mind?*

A: *You know for the sake of my son you know, he was present and CPS had to get involved so they're saying that I'm not a protective mother. So for me to follow through with this if I want to get him back.*

CA: *Has he been removed from your custody at this time?*

A: *Yes, he has.*

CA: *Would you feel safer if this protective order was in place?*

At this point in the testimony narrative, we can hear and see the struggle the applicant is feeling between the need to protect her son and retain custody, while also still wanting to be with the respondent. She adds "for the sake of" her son, she decided to not get back with the respondent, and we learn that CPS is the driving force behind her need to "follow through" on the PO application. She goes on to testify that the respondent has never directly hurt her son:

A: *I would, I'm not saying that -he's never hurt my son, but my son has seen incidents that I wasn't aware of that they're concerned about, so I would just feel more safe if I did have it to where if there was a violation I could just call maybe.*

CA: *Has Mr. M called you while he's been in jail?*

A: *Yes.*

CA: *And how many conversation have you had since he's been in jail?*

A: *A lot. I had the account set up so I was able to add money on the phone talk and talk to him daily.*

CA: *If this protective order is entered today do you want any communication with Mr. M?*

A: *Yes.*

CA: *You want that communication to be non-threatening and non-harassing?*

A: *Yes.*

CA: *To your knowledge before he was arrested didn't he have a gun?*

A: *Not to my knowledge I didn't know.*

CA: *The gun that he used to hit you in the stomach, do you know what happened to that gun?*

A: *No I don't.*

CA: *Is that the only time you saw him in possession of a gun?*

A: *Yes.*

CA: *Do you think that Mr. M has anger issues?*

A: *I believe so.*

CA: *Do you think he would benefit from family violence counseling?*

A: *Yeah.*

CA: *I'll pass the witness Your Honor.* ***(Case #16, CPS)***

At this point in the hearing we have learned of three instances of abuse that were part of the original affidavit for the PO. We also see the challenges to authority experienced by the applicant herself. She says, under oath, that she wants to remain in contact with the respondent, even though she must seek the PO to regain custody of her son.

Cross-Examination by Defense Attorney

Challenges to authority is not only made clear by the applicant's testimony, but also the way in which the emergent discourse unfolds in the cross examination by the defense attorney

for the respondent. This adds yet another level of authoritative stress on the formalized hearing process:

DA: *Ms. A we've never met have we?*

A: *We have.*

DA: *Where did we meet?*

A: *At your law office.*

DA: *Okay. And we talked on the phone?*

A: *Yes.*

DA: *And tell me what's the real reason that you're seeking this protective order, really?*

A: *The real reason is because CPS asked me to get it when I went to court. They asked me to get the protective order or they'll remove my son out of my mom's care and put him in foster care if I didn't.*

DA: *You're not really scared of him are you?*

A: *No, I'm not.*

DA: *He's not a threat to you?*

A: *NO.*

DA: *You're still in love with him?*

A: *I am.*

DA: *Uh-huh. Do you want him back?*

A: *Yes.*

DA: *Wouldn't mind marrying him?*

A: *Yes.*

DA: *And you wrote a statement dated April 11th I guess maybe at the law offices of another lawyer, you remember making that statement?*

A: *I do.*

DA: *And isn't it true that in that statement you wrote that you don't even understand why he's in jail?*

A: *Yes.*

When the respondent's attorney begins his cross-examination, he instantly focuses on the fact that the applicant really does not "want" the PO. Specifically, he hones in on how this is demonstrated in her thoughts, feelings, and actions surrounding the details of the three incidences of abuse. He proceeds to try to pick apart the physical evidence leading to the respondent's arrest:

DA: *You write that they don't have any evidence of a gun; isn't that true?*

A: *Right.*

Q *Right. And in a letter written to (respondent's name) dated June the 6th you write he's basically in jail for nothing; isn't that true?*

A *Yes.*

DA: *And you understand that if this judge denies this protective order that that's not your fault; right?*

A: *Right.*

DA: *So basically you don't need and you don't want a protective order do you?*

A: *I don't but I was asked to get it.*

DA: *I have no further questions, Judge.* ***(Case #16, CPS)***

The previous excerpt outlines the full cross examination of the defense attorney, and the discourse sequence is clearly focused on the applicant's desire for the respondent, and the DA does not introduce the child or mother into his questioning at any time. He even goes on to justify the applicants responses by adding, "and you understand that if this judge denies this protective order that that's not your fault right?" The authoritative response from posing counsel (CA) in closing arguments addresses this as follows:

> ***CA:*** *Your Honor, I know that the respondent's attorney has tried to show the Court that this applicant doesn't want this protective order. There is nothing in the statute that says the applicant must want the protective order-*
>
> ***THE COURT:*** *But certainly you think I should take that into consideration, don't you? You're not saying I should ignore that?*
>
> ***CA:*** *I'm saying that the State applied for this protective order on her behalf, Your Honor, and State has the right to argue their case in front of the Court. And I believe that the case is very clear, there is no controverting testimony to tell you that the violence did not occur, the violence obviously occurred from the testimony. And is it likely in the future? You heard the testimony that the respondent has an anger issue. You heard the testimony that the respondent has contacted her from jail. I think we met both burden of proofs, Your Honor, and the State is asking that this protective order be entered. I realize that the applicant is reluctant to that did; however, in a case like this I think it's very likely that she will be back in this court unfortunately in the future if she gets back together with the respondent, and there is also a child to be considered here. So the State is asking that the protective order be entered as requested.* ***(Case #16, CPS)***

The question of who bears the authority regarding this protective order exists at all layers of the institutional process. The initiation for the application process was due to the ultimatum established by CPS regarding the custody of the applicant's child. The affidavit was designed to meet the burden of proof required of the State, and thus, outlined three instances of abuse. These instances of abuse were verified on record by the testimony given by the applicant when questioned by the CA. The DA took the opportunity in his cross examination to introduce the issue of "want" for the PO from the applicant versus the State (e.g., CPS findings).

Language Barriers: Meeting the Necessary Burden of Proof

The barriers to each party's argument lie in the constraints of the legal language required to meet the burden of proof for obtaining a PO: 1.) establish that abuse has occurred and 2.) establish that abuse is likely to occur in the future. From the perspective of the DA, this is made clear through the applicant's affidavit and testimony of abuse patterns and levels of future threat. From the perspective of the DA, the argument lies in the fact that the applicant herself does not "want" the PO. He does not address the issue of abuse or the child. The DA concludes his final statements as follows:

> ***DA:*** *Judge, it's kind of ridiculous if she doesn't want a protective order, she don't need it, the only reason she's up here is because of CPS. She's not afraid of him she wants to be with him. You heard her she wouldn't mind being married to him. When she comes back up here he might be with her to ask you to marry them, so we don't need a protective order.*
>
> ***CA:*** *Your Honor, that is outrageous, this is not ridiculous at all. Family violence is not ridiculous. And the uncontroverted testimony tells this Court that that man committed*

family violence against this woman and is likely to happen in the future. It's a real tragedy that someone would stand in this court and say it's ridiculous because she does need this protective order. She may not want this protective order at this time but I don't want to come back in this court and have a felony pending against him because he's been violent with her again. I'm asking the Court to enter this protective order. ***(Case #16, CPS)***

Again, we can see from these exchanges that the evidence stems from two very different narratives related to the role in which the judge is supposed to play for this particular case. The following is the judge's narrative regarding the outcome of the hearing, based on all the evidence presented and the burden of proof that lies in front of him within the parameters of his jurisdiction.

Ruling from the Court

Anything factually that either side needs to argue with me at this time from either side? If not, let me tell you what I -ma'am given the burden that's required in this kind of case I do believe your testimony. I believe what you described occurred occurred. I do believe that on numerous occasions as you have testified that the assaults occurred. I also believe that at least in some of them your son saw it. When you say he never hurt your son I believe you when you say he never struck the child; however, as I think you sort of pointed out yourself, you didn't want your son to watch it and there's a reason, obviously it does hurt the child any child to see their parent assaulted, it always does. So based upon the evidence that I heard today I do believe and make the finding that domestic violence has occurred here, not once but multiple times. I also believe the child was

present when it occurred. When counsel argues I don't understand why we're here, I think it's those findings tell us why we're here. *So, now at the same time I do have to give as I asked your lawyer early on, I have to certainly give credence to what you ask. Strikes me I'm in the middle, I do think that this occurred I believe you.* *I also hear your request about whether you want or don't want a protective order. I have a duty that if I believe violence has occurred that I have to respond. So I'm going to grant the protective order but I'm going to probably grant an order slightly different than what I've done normally.*

As highlighted throughout the data, and specifically outlined in the narrative of the Legal Advocate, the PO Judge in this court is especially educated in the patterns and outcomes of family violence that bring constituents into his courtroom. The transparent nature of his interpretation and analysis of the testimony is clearly illustrated in his ruling narrative. He is careful to address the needs of all parties by noting that he believes the events unfolded as the applicant testified to, and that he understands that she does not want to sever all contact with the respondent. He also explains the important of CPS's role in determining the final outcome for this particular case, introducing the variable of the child's welfare (while admitting he believes that the child has never directly been abuse). The fact that the exposure to the violence also serves as evidence of past and future abuse, the burden of proof was presented successfully on behalf of the State. He goes on the highlight the unique nature of his ruling based on these layers of authority structures for the PO in question:

I make the necessary findings, both that the assaults have occurred and that there's future violence based upon the repetitious nature as well as the increasing violence, which is demonstrated by I didn't call the first time but then the second time et cetera. I am going

to start off issuing a protective order sir…I'm also going to order that you are allowed to have communication with the applicant; however that communication may not be threatening or harassing. So I know that ma'am, you want there to be communication I will allow that, sir, that communication if as an example you are to call to make threats or say what would otherwise be considered harassing or call then hang up at odd hours et cetera, those are crimes all by themselves, but they would also be a violation of this order; however, as long as it's not threatening or harassing I will allow you to have communication with the applicant, whether it be by phone, text, computer, et cetera. I am willing because of your request to review this decision in the future, see about modifying it, ultimately maybe even removing it but we need to see how it goes. Quite frankly sir, that's going to be dependent upon how you do on this protective order; as an example, do you go enroll in the program in the jail and if you wish to do so your lawyer can approach me and I can contact the jail to ensure that it's done relatively quickly so you don't get on a long waiting list. If you come back for me to review this order I'm going to look to see whether or not there has been violations of the order, whether or not you have completed or making good headway in the Batterers Intervention Program et cetera. So, bottom line is I am going to order the order but I'm also willing to come back in the future depending now how you do look at either modifying it to allow some contact ultimately with the goal to do what you've asked to ultimately remove the order. In other words it depends on what evidence I get back, but essentially we're taking a step back, Okay? ***(Case #16, CPS)***

We can see that in the ruling discourse presented by the judge incorporates both procedural and interpersonal discourse structures. For example, he starts by addressing the fact that his understanding of the testimony fits within his frame of authority highlighting the "burden that's required in this kind of case" before he discloses his reasoning. He acknowledges the applicant's hesitation for the order based on her testimonial language structure, and adds, "I have a duty that if I believe violence has occurred that I have to respond. So I'm going to grant the protective order but I'm going to probably grant an order slightly different than what I've done normally."

Issues Raised: Implications for Communication Theory

This chapter highlights the role of perceived authority in regards to "who" has the "right" to seek a protective order, and who has a "right" to grant one, and under what circumstances. We see in this particular case that the applicant testified that that she did not desire a protective order based on her own feelings of fear of the respondent, but that she would lose custody of her child if she did not go through the process of obtaining an order of protection. This was a unique hearing from all the others I observed, because although the applicant testified and described three instances of abuse, when questioned by the defense attorney, she admitted that she still wanted to remain in contact (and in a relationship) with the respondent. The presentation of communication and in what order the testimony unfolded has implication for communication theory.

In this case example, the communication process of how the details of the abuse were presented sheds light on the implications of who speaks first, who inquires first, and how important elements of the case are disclosed. For example, in all the PO hearings (I observed),

the CA held the floor first, meaning that she called her client to the stand, inquired about each incidence of abuse described in the applicant's affidavit, and from this confirmation of abuse in the applicant's testimony, the CA concluded with, "And that is why we are seeking an order of protection today, Your Honor." Then, in most cases the DA has the opportunity to cross-examine the applicant in order to poke holes in the credibility of their narrative to begin to build a case for their client, the respondent. In this case, the order of communication remained the same; however, the variables changed drastically from the "typical" process of discourse that unfolds in most PO cases. This introduces questions about how the applicant designs and responds to each examination by the attorneys, because in this particular case she follows the CA's lead by addressing each instance of abuse, confirming that abuse did indeed occur. However, the dynamic of the communication process shifts when the DA focuses in on whether or not she actually "wants" protection from the court. The key variable in each testimony narrative revolves around the role of a third party—the child. This new variable also introduces new authority figures into the PO proceedings—CPS.

So what does this mean for communication theory? Issues in these data raise interesting questions surrounding the communicative process from both an institutional and interpersonal communication perspective. We see that it is not simply that an applicant goes through the application process, attends their hearing, and is either granted the PO or not based on her narrative of abuse experiences. The variables in the case, the process in which the information is presented, and who has the authority to seek and grant the PO are all issues that make the communication process even more dynamic than it may look on the surface.

The next chapter will examine another layer of the process that focuses on language constraints that illustrate the functional communication challenges embedded in the limitations of legal discourse in PO hearings. These communication challenges arise in the "formal" procedures stem from constraints within the parameters of legal language, and how discourse is used to meet the necessary burdens of proof set out by the justice system for orders of protection.

Chapter 6: Functional Challenges—
Communication Challenges to Evidentiary Genres

While it is important to recognize the role that any language has in providing the communicative resources for the definition and enactment of (past, present, and future) realities, it is equally important to develop an analytical framework for distinguishing between speakers' conceptualization of what a language ''does'' and the conditions that make such a conceptualization possible. (Duranti, 2008, p. 451)

INTRODUCTION

In addition to the communication challenges in terms of authority in PO cases, as described in the previous CPS case in Chapter 5, the constraints imposed by the "formal" legality of terms in PO cases creates ambiguity in the parameters of understanding legal language from a lay person's perspective (in particular how this affects communication and outcomes for both applicants and respondents in PO hearings). Oftentimes, attorneys must find strategies for "working" within the confines/constraints of legal language. Azuelos-Atias (2011) argues that:

> These rigid formats of legal argumentation together with the technical legal terminology are at the basis of the fact that legal language seems incoherent to the general public as they give means to implicit presentation of legal information…Indeed, the difference at the level of the argument between ordinary speech and legal language—the existence of a wealth of rigid formats of argumentation in the latter—is not a difference in the language per se but a difference in the way it is used. (p. 43)

This chapter will examine two contested hearings (Case #6 & Case #12) where communication expectations of legal counsel were challenged by the constraints of the law (using the language necessary to meet the burden of proof by the State). Thus, both applicants were denied their protective order.

Conley and O'Barr (1990)'s work on the ethnography of legal discourse found that there are often three types of fundamental discord between attorneys and the legal system that highlight assumptions regarding the extent to which legal discourse can meet the needs of their clients. The three types include 1.) Dissatisfaction and misunderstanding of language used to present intangible evidence with constraints of statutes made for tangible evidentiary procedures, 2.) When non-economic issues are raised in an agenda-driven system that relies on concrete outcomes and rational economic demands, and 3.) many attorneys enter the courtroom with "unrealistic expectations of the law's authority." In Cases #6 & #12, the CA and DA engaged in communication that presented the third fundamental discord—attempting to work within the constraints of legal discourse and, ultimately, failing.

The first case involves a former romantic partnership where the participants lived together with a third roommate, and over the two and half year relationship, there were multiple incidences of family violence (three of which were included in the applicant's affidavit). The testimony begins with a description of the most recent incident when she attempted to leave the apartment to go and stay at her mother's house, and he grabbed her keys and locked them in his safe (and put the only key in his pocket so she could not leave). Two key components in this case involved defining the term "choking" and whether or not the discourse surrounding the use of a shotgun were both credible and justified by all testifying parties (Applicant, Respondent, and Roommate—Witness). In all represented transcripts, the following conventions are used: Applicant=A; Respondent=R; Witness=W; County Attorney (State)=CA; Defense Attorney=DA; and Judge=Court.

Case #6: "Consequently since the State carries the burden I cannot grant the protective order"

The hearing began with the State (CA) calling her client (the applicant) to the stand for her testimony. The CA asked her to share her most recent experience of abuse at the hands of the respondent in order to establish the burden of proof (1. Abuse has occurred & 2. Abuse is likely to occur again). Although the CA presents physical evidence in the form of police photographs entered into evidence, the manner in which the discourse unfolds designates the credibly over the submitted physical evidence. The applicant discloses that the respondent attempted to choke her in order to restrain her from physically leaving the bedroom where the incident occurred:

> ***A:*** *I said I'm still going to pack my bag, and went into the bathroom with my bag and I started putting my toiletries in the bag.*
>
> ***CA:*** *Did he follow you into the bathroom?*
>
> ***A:*** *Yes, ma'am.*
>
> ***CA:*** *Did he say anything to you?*
>
> ***A:*** *He kept saying that I wasn't going to leave, that I wasn't going to go anywhere.*
>
> ***CA:*** *Okay. And once you had the things packed in the bathroom what did you do?*
>
> ***A:*** *I didn't finish packing my stuff in the bag in the bathroom because he grabbed me by the neck*
>
> ***A:*** *and started choking me to where I couldn't breathe.*
>
> ***CA:*** *And did he grab you with one hand?*
>
> ***A:*** *He grabbed me with both.*
>
> ***CA:*** *And was he facing you at that time?*

A: *Yes ma'am.*

CA: *Okay. And were you still in the bathroom?*

A: *Yes.*

CA: *And then what happened?*

A: *I'm sorry give me a minute. After grabbing me around my neck squeezing until I couldn't breathe. He pushed me against the bathroom wall and pulled me out of the bathroom and hit me against the door jam.*

CA: *Did that cause you pain?*

A: *Yes. A great deal of pain.*

CA: *Where did it cause you pain?*

A: *On my back and my neck.*

CA: *Did he still have a hold of your neck when he pushed you against the doorframe?*

A: *Yes ma'am. I was trying to say you're choking me I can't breathe but nothing came out.*

CA: *Okay. And then what happened? (Page 10, Lines 14-25 & Page 11, Lines 1-22)*

(***Case #6, Choking)***

When asked about any attempts to seek medical treatment for her injuries resulting from the "choking," she responded that she went to the doctor and they did x-rays but there were no broken bones. She confirmed that they did take photos of her neck, which were them submitted into evidence. When the defense attorney cross examined her about the chocking incident, he addressed the physical evidence submitted by the State, but proceeded to seek out the applicant's definition of "choking" as it occurred in her own words:

DA: *Okay. And I took a look at the photographs, were you able to see any visible injuries in those photographs?*

A: *I saw a little bit of discoloration on my neck.*

DA: *And at the hospital did they take note of that?*

A: *I'm not sure.*

DA: *Did the doctor maybe or nurse ask you how you got those marks on your neck?*

A: *No.*

DA: *They did not?*

A: *They didn't mention it.*

DA: *They didn't mention it?*

A: *They did not mention it.*

DA: *Okay, fair enough. And he did choke you enough for you to --for it to cause pain?*

A: *Yes, sir.*

DA: *But you did not lose consciousness?*

A: *No, sir. (Page 23, Lines 2-21)* (***Case #6, Choking)***

We start to see the intricacies of the term "choking" when each party testifies to the details surrounding the act. The CA inquires into whether the respondent used one or two hands, and the DA tries to establish the severity by asking about discoloration. The DA indicates a lack in severity by highlighting that the doctor never mentioned any evidence on her neck, and proceeded to ask about the extent to which she was "choked". This initiates the DA's strategy to minimize the act when he adds, did you lose consciousness? When the roommate who claims to

be a witness for the defense is called to the stand to testify about the choking incident, he shares a different story:

> ***DA:*** *Did you ever see him choking her?*
>
> ***Witness:*** *I didn't see him choke her at all.*
>
> ***DA:*** *Would you have been in a position to see it if he had?*
>
> ***Witness:*** *I would have been in a position to see it and hear it.*
>
> ***DA:*** *Did you have any interaction with them as this was happening?*
>
> ***Witness:*** *No I didn't have any interaction at all.* (*Page 39, Lines 24-25 & Page 40, Lines 1-7)* (***Case #6, Choking)***

When cross examined by the County Attorney, the roommate is asked to expand upon his understanding of what constitutes as "choking" from his perspective of the incident:

> ***CA:*** *And how long have you known Ms. T?*
>
> ***Witness:*** *For about give or take a year, year or two years*
>
> ***CA:*** *So the night that this incident happened you think you would have heard him choking her*
>
> ***Witness:*** *Because ---*
>
> ***CA:*** *What noise does that make?*
>
> ***Witness:*** *It usually makes a gargle because you're trying to gasp for air.*
>
> ***CA:*** *Have you seen a lot of people choked?*
>
> ***Witness:*** *No, but I have worked security and I have certain training's and I can hear. I worked security for six years. (Page 42, Lines 1-14)* (***Case #6, Choking)***

Working Within Legal Definitions

All parties try to use descriptive language choices to defend their understanding of what choking means and how it either occurred (or did not) in this statement of abuse by the applicant. From the applicant's testimony, she describes not being able to breathe or speak when the respondent grabs her by "both" hands and squeezes. The DA attempts to challenge this definition by differentiating between whether or not the action caused her pain (and to what extent), as well as whether it led to her becoming unconscious. The roommate has a third perspective, whereas he claims to be trained to be able to recognize the sounds of someone being choked ("usually makes a gargle").

Although there are photographs entered into evidence, the ruling is constituted in the discursive evidence presented by all parties in their respective testimonies. The fact that the applicant did not disclose how she got the marks taken in the pictures at the hospital was established in the cross examination by the DA. He asks her, "Did the doctor maybe or nurse ask you how you got those marks on your neck?" to which she responds no. In closing remarks, the DA argues for the lack of physical evidence:

> ***DA:*** *Judge, we heard testimony that can be contrived, I don't see where the proof is that she got injured at all. If you look at those pictures there's no marks on her neck indicative of somebody's fingers being around her throat. She had went to the doctor she said nobody even took note of any injuries, she said that they just told—*
>
> ***THE COURT:*** *Well I'm not sure that that's true, she said she doesn't know what they did and neither one of you gave me medical records so we'll never know what they may have said.*

DA: *That's right, and where's the evidence that establishes the assault?*

THE COURT: *That's not quite the same as nobody asked, I don't know what was asked is more realistic. (Page 49, Lines 24-25; Page 50, Lines 1-15)* (***Case #6, Choking)***

Physical Component: Shotgun Present

The second component that highlights the use of language choices versus physical evidence is the role of a shotgun present during the incident. In the applicant's affidavit and formal testimony claimed that the reason she could not leave the bedroom was because the respondent was in possession of a shotgun. The applicant describes this fear in her testimony as follows:

A: *He said if you want to leave then leave, and he went to the safe and grabbed the keys out, threw them against the wall and they fell on the ground by the bedroom door.*

CA: *And what did you do?*

A: *I was walking towards the keys and I saw him go back towards the bed, and when I got to the opening of the closet to see what he was doing, <u>he grabbed the 12 gauge shotgun that was laying next to our bed</u>.*

CA: *What did he do with that gun?*

A: *<u>He cocked it and then he sat down on the bed and put the barrel under his chin and his hand on the trigger.</u>*

CA: *Did he say anything to you at that time?*

A: *I can't live without you I can't breathe without you.*

CA: *And where were you when he did this?*

A: *I was standing in the opening of the closet.*

CA: *And when he said that to you, what did you do?*

A: *I was trying to calm him down trying to convince him to set the gun down.*

CA: *And did he put the gun down?*

A: <u>*He put it down just to pick it back up a couple of more times.*</u> *(Page 14, Lines 4-25 & Page 15, Lines 1-5)* (***Case #6, Choking)***

When cross-examined by the DA, the applicant was tested about her knowledge of firearms in order to disprove her credibility by the defense:

DA: *Have you ever seen (respondent's name) use that shotgun?*

A: *Yes, sir.*

DA: <u>*What kind of shotgun is it?*</u>

A: *12 gauge.*

DA<u>*: Are you familiar with shotguns and how they work?*</u>

A: *Yes, sir.*

DA: <u>*Is it an automatic or is it pump action shotgun?*</u>

A: *Pump action.*

DA: <u>*Can you describe how he loaded it?*</u>

A: *It was already loaded. The shells were already inside all he had to do was cock it to load one into the barrel.*

DA: <u>*How did he cock it?*</u>

A: *I don't understand your question?*

DA: *Well you said he cocked the gun*

A: *Yes.*

DA: *--can you describe how he cocked the gun?*

A: *(Demonstrating)*

DA: *So he pulled the front part of the shotgun back to front?*

A: *Yes, sir.*

DA: *And did he at any time point it at you? Did he point it at you?*

A: *No, but I was afraid that he would.* (***Case #6, Choking)***

The DA attempts to challenge the applicant's knowledge of how guns operate in order to discredit her testimony, but the applicant addresses this by physically illustrating the action that she witnessed, which led to the DA attempting to discredit her from a new direction.

Attack on Applicant's Credibility

The DA then goes on to question her as to why she didn't take the opportunity to leave when he was reaching for his gun (implying fault on her behalf—again, lack of credibility):

DA: *While he was getting the shotgun were you able to leave at that time?*

A: *No.*

DA: *Why not?*

A: *I was afraid.*

DA: *While he's getting the shotgun doesn't that give you the opportunity to leave the room?*

A: *Not necessarily.*

DA: *How did he prevent you from leaving?*

A: *He was armed.*

DA: *No I mean while --where was the shotgun?*

A: *It was besides the bed.*

DA: *Okay, so while he was getting the shotgun didn't that give you the opportunity to leave the room?*

A: *I didn't see him grab the shotgun until it was too late.*

DA: *Okay. Well on direct didn't you say you didn't see him get the shotgun?*

A: *I'm sorry?*

DA: *On direct examination you said you didn't see him get the shotgun?*

A: *I saw him walking towards the bed, and when I reached the opening of the closet he had it in his hands. (Page 23, Lines 22-25; Page 24, Lines 1-25 & Page 25, Lines 1-23)*

(***Case #6, Choking)***

The language used such as "cocked," "armed," and visual access to the shot gun, all are meticulously analyzed in order to determine evidentiary details. In order to build the case against the credibility of the applicant, the DA questions the roommate (witness) as to what he observed regarding the use of a shotgun:

DA: *Okay. Did you ever see (respondent's name) with a shotgun?*

Witness: *Not that night.*

DA: *Would you have been able to see him or if he had gotten the gun?*

Witness: *I would have been able to heard it from the back balcony because the shotgun is a very distinct noise, the --(makes noise) you can hear it all across the house, there's no way you could have cocked the shotgun as well as*

DA: *What makes you think that he cocked the shotgun?*

Witness: *Because the police officer cocked the shotgun when he was unloading the bird shot.*

DA: *No, but –*

Witness: *If he had cocked the shotgun the police officer wouldn't*

CA Objection: *Your Honor, I'm going to object as to non-responsive.*

THE COURT: *Just answer the specific question, sir, the lawyer will ask more questions if he doesn't get what he's looking for.*

Witness: *All right.*

DA: *Okay. Did he tell you that he had cocked the shotgun?*

Witness: *No, nobody had told me.*

DA: *But you didn't—*

Witness: *I assumed that the shotgun was uncocked when I was out on the back balcony.*

DA: Okay. *And so if the shotgun had been cocked you think you would have heard it?*

Witness: *I know I would have heard it.* *(Page 38, Lines 6-25 & Page 39, Lines 1-13)*

(***Case #6, Choking)***

The goal of all parties was to define their credibility by describing their knowledge of the physical use of a shotgun to intimidate/control the applicant. The repetitive use of terms such as "uncocked" and being able to hear the distinct sounds made when a shotgun is cocked were paramount in the communicative evidence presented in this case. Ultimately, the judge found that he only had enough evidence to determine that the narratives did not match up. The physical evidence was not effectively presented in this PO hearing, and thus, the testimonial language

choices were the determining factor for the ruling. We even witness the judge attempting to assist the attorneys for both sides to more clearly communicate their respective arguments by giving them one last opportunity to inquire about the incident:

DA: *No further questions.*

CA: *I have no questions, Your Honor*

THE COURT: *Anyone have an objection if I ask a question?*

DA: *No, sir.*

CA: *No, sir.*

THE COURT: *Sir, you said that at one point he --I think you used the word threw, he threw the keys and said you want to leave, leave, essentially, where did he get the keys from?*

Witness (Roommate): *From his top drawer of his dresser.*

THE COURT*: And you can see all this from where you were?*

Witness: *Yes, sir.*

THE COURT: *Anyone have any questions based upon my questions, defense?*

DA: *No, Judge. THE COURT: State?*

CA: *No, Your Honor. (Page 45, Lines 19-25 & Page 46, Lines 1-14)* (***Case #6, Choking)***

The judge communicates his problems with the lack of physical evidence, as well as the lack of "proof" on behalf of the state to meet the necessary burdens for granting a PO. He clearly discloses these challenges in his final ruling remarks.

Final Ruling from Court: Lack of Evidence

THE COURT: *Okay, but I'm going to tell you both the same and I've said this so many times before, simply asserting well my guy is the one that's believable, that doesn't really do anything. I'm asking you both to show me logically why one is believable over the other, I think I've asked that about two different ways here. You have any response other than just simply say no, I should win. I'm looking for more than that…All right. There are two third party witnesses in this case and they're so many things that would make my decision easier and I do not have it…The State has the burden and the fact that I'm sitting here wrestling with myself right now about what happened tells me that I don't know…I don't doubt that in a criminal case there will be a lot of other evidence produced that is not produced here, the diagram of the apartment as an example, somebody seeing whether I can hear from one room to the another, can I see from that mirror that I use, was that mirror that was broken in a place that it could be broken by a swinging door. All kinds of things that would have made it easy to tell what was or what was not credible, but as I pointed out earlier to the lawyers there are simply to this point unexplained diametrically opposed testimony about things done, things said or heard and I have a doubt in my own mind what happened…I'm saying based upon the evidence that I have before me today I cannot find a place to say which of the two statements that occurred in the apartment is correct. Consequently since the State carries the burden I cannot grant the protective order.* (***Case #6, Choking)***

From these observations, it is clear that those who are considered to be "experts" in the language of law still struggle with the parameters in which they can use communication to

effectively present evidence on behalf of their clients for cases of family violence, specifically those seeking orders of protection. These findings support previous work on the ambiguity of courtroom communication, particularly focused on those who are assumed to be able to "speak the official language;" as O'Barr (1982) argues, "But in addition, there are those who speak the official language—or rather some varieties of it—but who do not sufficiently command the language variety used in the courtroom" (p. 39). The next case analysis will illustrate this lack of "sufficient command" of courtroom language from the perspective of the judge in response to the evidence presented by both the county attorney and defense attorney. The way in which legal terms are used by all parties during the hearing has implications on judicial outcomes (Philips, 1984). And because the burden of proof is placed on the CA for making a valid claim for issuance of a PO for the applicant, the lack of "words" available within the statutes sets a barrier between process and outcome.

Case #12: "With the evidence I heard here today, I do not believe State has met their burden and I am not going to grant the protective order as requested"

The second case also illustrates these functional communication challenges that result from constraints in the language of the law available to execute an order of protection in cases of family violence. This contested hearing involved a female applicant (23 years old, and English is her second language). Respondent was a Caucasian 53 year old male. The applicant formerly worked for the respondent at his law firm, then they started dating (she moved in with him and he paid for her schooling, allowed her a weekly allowance, and decided when she could visit her family). The applicant testified that the respondent has been stalking her since she left him two years prior. She claims that he has changed her number three times, and that he has appeared at

her family's church looking for her. The role of context in this case determined how the evidence was assessed, particularly, due to the constraints of meeting the burden of proof for a Stalking PO (which is for a lifetime order). The observational data, official court transcripts, and follow-up interviews with the legal advocate and county attorney will be examined to illustrate the complexities of the language constraints in cases of stalking. There is, at present in this County, there is no room in the legal language of the Family Violence penal codes to clearly address the evidence necessary to prove stalking in order to grant an applicant's PO under these circumstances. The communication challenges to these evidentiary speech genres for cases of stalking in family violence PO hearings demonstrate the complexity of layers required in the legal language, and the fact that oftentimes, the language does not even exist. According to the Legal Advocate, the burden of proof for proving a stalking case is layered with barriers:

> *The stalking case those are so hard to prove because you have a healthy puppy one day and then you go in the backyard and he's dead the next. You suspect he did something yes, does her gut instinct say he did it yes, can you prove it—even if the vet does an autopsy and finds out that he was poisoned. Well you can't prove that he was the one who threw the poison meat over the fence. I've had that happen I mean it's not just a threat, they do it.* **(Stalking, Audio File 46)**

In this particular case, the State could not prove "physical" abuse had occurred; therefore, they could not seek a family violence PO within the language of the original statute (as used in all the other cases). The alternative was to seek a stalking PO (which automatically serves as a lifetime order).

Stalking Statute Constraints

As I learned from the CA who represented the applicant, she (the CA) had to find a way to work within the language parameters in order to seek any legal protection:

> *The only thing we could go forward on was stalking if we would have had some violence I would've pled in the alternative I would have pled stalking and family violence but we didn't have any threats of violence and no actual violence so I couldn't file under the family violence statute and then so it says bodily injury or death for that person or another member of their family or household or that an offense will be committed against the other person's property which is weird because I don't know it seems like what we had in that case was much scarier than if she was worried he was gonna mess with her car. But it doesn't fit into the statute at all. So with stalking the problem is that when they added stalking to the code of criminal procedures sexual assault protective orders statute which is 7A. They just added stalking to that so the burden is reasonable grounds which isn't much right?* ***(Interview with CA, Case #12 (Stalking), Audio File 47)***

This case lacked the necessary speech genre (and legal precedent) in which the CA could prove the necessary evidence to meet the confines of obtaining a stalking PO. The following sections will review specific examples from the transcripts that highlight these intricacies in the language choices used in the hearing, which ultimately, led to the PO being denied by the judge.

In order to explain her attempt to reframe the evidence in the hearing to meet the necessary burden of proof, the CA walked me through her cognitive processes for addressing these constraints:

We used to do all of our protective orders under the family code but then sexual assault and stalking are under the code of criminal procedures…And I think we're sort of we've done a little bit of research and we're sort of starting to see it equal to probable cause which is not a very high showing it's pretty low. But, you use the Penal Code statue to define stalking and our Penal Code statute is extremely difficult to prove and I think I'm pretty sure that's what happened I didn't have a chance to talk to the judge afterwords, he usually tells me, but I think where our problem was is that you have to show that that a person who committed the offense on more than one occasion pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that the actor knows or reasonably believes the other person will regard as threatening bodily injury or death. And we didn't have any threats. Everything was context, it was. It was really hard. ***(Interview with CA, Case #12 (Stalking), Audio File 47)***

In the first five minutes of the applicant's testimony, as stated in her affidavit and read for the court records, we see the constraints of the legal language enter the proceedings when the DA objects to the following:

CA: *And is everything you stated in your affidavit true and correct?*

A*: Yes.*

CA: *Has Mr. (respondent's name) committed acts of stalking against you?*

A: *Yes.*

DA Objection: *Objection. <u>Calls for legal conclusion this witness doesn't have such knowledge, and I also object that it calls for an expert opinion and it hasn't been</u>*

established whether this witness is expert or even if she's read the section of the penal code. ***(Case #12, Stalking)***

To which the judge responds:

> ***THE COURT:*** *I don't think we're asking for a legal here, we're asking for what --without saying whether I believe it or not, the State is asking for a common experience it strikes me so I will overrule your objection. (Page 24, Lines 22-25 & Page 25, Lines 1-13)* ***(Case #12, Stalking)***

Throughout the formal proceedings, two major themes that emerged were inadequate language choices in presentation of evidence, and the role of context when physical evidence was presented by the defense attorney in cross examination. As we can see from the initial testimony stated by the applicant, the goals of the defense were to use the constraints of the penal code language to discredit her testimony. This trend continues throughout the four hour hearing. As evidence is presented by the State, the strategy used by the DA was to object to relevance time and time again:

> ***CA:*** *You mentioned something when you saw the letter with the one that was the exotic dancer, did you and Mr. (respondent's name) discuss him frequenting strip clubs at the time?*
>
> ***DA Objection:*** *I'm going to object as to relevance whether or not anyone goes to adult entertainment establishments is not relevant to anything in the pleadings or any responses of motions made in this case.*
>
> ***THE COURT:*** *I'm kinda sitting here thinking the same thing ma'am, you need to—*
>
> ***CA:*** *I'll move on. (Page 15, Lines 21-25 & Page 16, Lines 1-7)* ***(Case #12, Stalking)***

Escalations of Turn-Taking in Questioning Sequences

After the first 20 minutes of the applicant's testimony, the adversarial nature of the turn-taking begins to escalate, which is clearly represented in the discourse between the parties (DA, CA & Judge):

> ***CA:*** *So you left the house before the trip?*
>
> ***A:*** *Yes.*
>
> ***DA:*** *Objection. Leading.*
>
> ***THE COURT:*** *There's been a lot of leading, go ahead.*
>
> ***CA:*** *But you didn't move out until you got back --I'm sorry you didn't break up until—*
>
> ***DA Objection:*** *I'm going to object again as to the leading.*
>
> ***THE COURT:*** *Just let her testify, ma' am. Go ahead. (Page 17, Lines 8-20)* ***(Case #12, Stalking)***

Six short turns later, the pattern continues:

> ***CA:*** *And when --the first time that you heard from him about stealing things or owing him money when was that?*
>
> ***DA:*** *Objection: it assumes facts not in evidence. There's been no accusations of stealing or what if anything was stolen.*
>
> ***THE COURT:*** *Actually I have already heard an accusation of stealing.*
>
> ***DA:*** *But not by Mr. (respondent's name), she's trying to reference Mr. (respondent's name) is the one who stole something.*
>
> ***CA:*** *No, I said when did he accuse you of stealing.*

THE COURT: *<u>That's kinda what I heard sir.</u> Overruled then please proceed.* ***(Case #12, Stalking)***

During the opening testimony given by the applicant, the DA objected thirteen times, arguing for vague language, lack of knowledge regarding legal language, and lack of discursive evidence related to the burden of proof.

Presentation of Physical Evidence: Discursive Challenges

The second theme surrounding the presentation of physical evidence was introduced in the cross examination of the applicant by the DA. At this point in the hearing, the challenges shift from ambiguity of the language of the statue to, to how the physical evidence is communicated by all participants. For example, it was at this time in the proceedings when a thread of email correspondence was entered into evidence (sent to applicant by the respondent) in order to address the argument of "harassing" communication for State's evidence. When the DA attempts to question the nature of the correspondence, the judge addresses the lack of clear knowledge of the language choices used to support his case:

DA: *Isn't it true between 2009 and 2011 there's only a total of about three e-mails between you and (respondent's name)?*

A: *No*

DA: *You have them?*

A: *I do*

DA: *Where are they?*

A: *They should be there.*

DA: *Did you look at them before you testified today?*

A: Yes.

DA: *I'm going to move under 608 or 612 a right to refresh memory that I be given the opportunity to look at these e-mails.*

CA Interjects: *Your Honor, I think that question needs to be clarified because nothing was used to refresh her memory before we came to court today.*

THE COURT: *I was going to say, I'm not sure you're citing the right thing. On the other hand if they're e-mails I heard testify about and there's some discussion about whether there were just a few or that there were many, I'm going to hope that somebody will show me these. Let's go ahead with your questioning while they look into those files. (Page 38, Lines 1-25 & Page 39, Line 1)* ***(Case #12, Stalking)***

When the DA asked the applicant about her family's relationship with members of the church (to where the respondent had recently visited and spoke to members of the parish), the following exchange unfolded:

DA: *Do they have a close relationship with the church leaders?*

CA Objection: *Your Honor, I'm going to object to—*

THE COURT: *Sustained. Anything else?*

DA: *This goes to the bias and motive of the witness to testify in a slanted of the word.*

THE COURT: *Thank you, you got my ruling please proceed.*

DA: *I'd like to make an offer of proof?*

THE COURT: *No, sir, go on. (Page 43, Lines 3-17)* ***(Case #12, Stalking)***

As the proceedings continue, we see the judge become increasingly frustrated with both counsel for not being able to adequately represent their cases. The judge responds to the DA at one point:

"I don't think your question is near sharp enough. Sustained, please proceed" (Page 44, Lines 44-45). He then is challenged by the DA, to which he calmly maneuvers the discourse forward:

> ***THE COURT:*** *I'm going to sustain that we're not here to do discovery on some other lawsuit, we've gone that far too many times.*
>
> ***DA:*** *I'm not even –*
>
> ***THE COURT:*** *<u>You heard what I said sir, let's get back to the point, do it, thank you</u>.*
>
> ***DA:*** *I don't see how I can possibly prepare a defense against this protective order application the very application affidavit that references the lawsuit, if I can't go into how the applicant says one thing in her affidavit about how she thought it was a bizarre lawsuit and said that on direct and then when I tried to get into e-mails that applicant wrote to respondent about how she was going to be supportive of him and encouraged him in exposing the church and filing the lawsuit ---*
>
> ***THE COURT:*** *<u>Thank you. Please proceed sir.</u>*
>
> ***DA:*** *I'd like to make on offer of proof.*
>
> ***THE COURT:*** *<u>No, sir, please proceed</u>. (Page 56, Lines 1-21)* ***(Case #12, Stalking)***

Navigation Strategy: Narrowing the Evidence Presented

Another attempt made by the DA to navigate within the language parameters of the statute focused on narrowing the evidence presented to "make" the applicant read aloud only damaging testimony from the physical evidence entered on behalf of the State (re: email correspondence). This communicative strategy highlights the fact that taken out of the larger context, evidence can be manipulated and inaccurately presented:

THE COURT: *Why is it relevant sir, the fact that your client is a great guy is not relevant, now whether or not he's angry is relevant so within the narrow of what's here I will allow you to proceed with this witness but we're not here for some other matter, you can approach for those limited purposes, go ahead sir.*

DA: *I'm going to show you these that were made after you wrote this, so I'm going to show you this top part this is the email do you remember writing that e-mail?*

A: *Yes.*

DA: *And you wrote it on January 22, 2012, 1:26 p.m; is that right?*

A: *Yes.*

DA: *And I'm going to point down here to the bottom of this e-mail after I give you some time to go over it can you read out loud the sentence right here that starts with "I think you're"?*

The DA asked her to specifically read one sentence, which turns out to be out of context from where the previous testimony began.

A: *Can you start from the time –*

DA: *Just that, the Judge just wants us to read the limited part of this so just that part.*

A: *"I think you're a sweet person and like to help people out".*

DA: *Who are you talking about there?*

CA Objection: *I'm going to object to the context not just the portion.*

THE COURT: *It's not an issue about whether or not I consider sweet good it's whether or not angry guy and it's gone far afield.*

DA: *Judge I'm talking about the witnesses' perception of my client which is whether or not he's ever—*

THE COURT: *Well you heard my ruling I may be wrong but please proceed according to my ruling, thank you.*

DA: *So the Court is instructing me not to go into respondent's --or not go into-*

THE COURT: *I think the record is very clear what I told you not to go into, in accordance with that please proceed, thank you. (Page 57, Lines 8-25 & Page 58, Lines 1-24)* ***(Case #12, Stalking)***

The DA actually attempts to authorize his line of questioning, focusing on one sentence (outside the context of the entire email), by prefacing his question with "the judge wants 'us' to read…" indicating that it was required for her to do so. When this line of questioning did not work, the DA tried another way to maneuver the discourse to meet his evidentiary needs:

DA*: Well in the affidavit you left that e-mail out you didn't reference that; right?*

CA Objection: *Objection. Relevance.*

THE COURT: *If that's the objection overruled.*

A: *Right. I'm not sure what you're asking, why I didn't show it to them? When I applied for the protective order is that?*

CA Objection: *Your Honor I'm going to object to the form of the question it's clearly vague.*

DA: *I didn't even ask the question yet, she just started talking and she's objecting to it.*

THE COURT: *Well no, you asked a question sir and then it kind of spun. Why don't you just ask another question, let's go.*

DA: *May I approach the witness, Judge?*

THE COURT: *Why? Just ask the question.*

DA: *I have to show her some documents.*

THE COURT: *If it's for impeachment purposes first ask your question, did she say it? et cetera.*

DA: *She said she didn't know what I was talking about*

THE COURT: *I kind of think it's because of the question, please follow my instructions and ask a question, thank you.*

We see the judge increasing becoming frustrated with the DA's line of questioning, and as the DA struggles to maneuver within the constraints of the procedural rules, his judicial favor becomes compromised.

DA: *You sent (respondent's name) an e-mail on March 12th; right?*

THE COURT: *Saying?*

DA: *Judge, you wanted me to ask the question, I asked the question.*

THE COURT: *All right then if that's it then I'm going to pass the witness. Do you have any questions sir that are serious I'll allow you to ask it…*

DA: *Judge, I asked three questions and she seemed confused.*

THE COURT: *Sir, please follow my instructions, thank you.*

DA: *I'm going to object to the Court's restricting my ability to ask questions.*

THE COURT: *And the record shows that, now ask another question sir.*

DA: *May I finish my objection?*

THE COURT: *Sure.*

DA: *And that failure of the Court to allow me to finish asking the question and approaching the witness with documents is violation of Article 9 section 9 of The Constitution (State), and also 5th and 14th Amendment of the U.S Constitution*

THE COURT: *Thank you. Now ask your next question sir. (Page 67, Lines 3-25; Page 68, Lines 1-25 & Page 69, Lines 1-14)* ***(Case #12, Stalking)***

In this exchange, we clearly witness the judge's impatience with the line of questioning and the presentation of statute code language by the DA. However, the judge calmly moves the proceedings forward, while making it clear that his questions are now moving into the arena of "non-serious," and thus, will not be tolerated in the formal process of the hearing.

Final Ruling: Distasteful Testimony

Once the CA and DA conclude their cross-examination, we hear the judge clearly share his feelings about the lack of discourse structure followed by both sides in his final ruling:

THE COURT: *As counsel has point out I have heard a lot of distasteful testimony today and I don't have any doubt that the State had enough evidence to in good faith file this application for protective order, but with the evidence that I heard today, I don't know if there's more out there or not, but with the evidence I heard here today, I do not believe State has met their burden and I am not going to grant the protective order as requested… I do remind you and tell you that the complainant finds communication from you harassing, and you run a real risk of harassing communication type offenses be filed against you. However, as the requirement of the protective order I will not issue that today. Thank you, we're off the record. (Page 77, Lines 2-11 & Page 78, Lines, 11-16)* ***(Case #12, Stalking)***

The judge finds in favor of the DA due to the lack of evidence presented by the CA during the hearing. He does, however, warn the respondent that (based on what he learned in the courtroom today about his behavior), the applicant could proceed with a communication harassment suit in the future. This aside provides insight into the complexities of the legal communication even more, because the judge also has to work within the confines of the legal language provided to him. He, in turn, offers an alternative in his closing remarks that may assist the CA and applicant in pursuing this case further under a different set of statute discourse that does not fall within the burden of proof necessary for a PO.

I had the opportunity to interview the CA who lost this case a few days following the hearing, and she shared her frustration with the communication challenges within the existing statutes for cases of stalking when seeking a PO. She concluded with her goals for future steps to maneuver through such constraints by looking:

> *At legal aid look into either working with some legislators to pass some legislation or lobbying for just for the purpose of because they've tried to tweak the stalking Penal Code crime and they haven't been successful, but just for the purpose of the protective order he's asking that they adopt the model stalking code definition which is way way easier. So if we get that change that would be huge it would be a really big deal. <u>Until then like after that case I am so scared to take the cases and I am so I'm going to call Y County unfortunately our DAs office doesn't try stalking cases that much and they sort of hide behind the definition, but X County I think and I know Y County files stalking charges all the time. And they are successful so I want to call and get some ideas from them on defining it in court.</u> I hope I can get some information or that we can make some*

changes. *But until then I think we're going to have a really hard time was stalking cases unless we've had a threat of some sort*. ***(Interview with CA, Case #12 (Stalking), Audio File 47)***

As represented in the previous two case examples, there are clearly communicative challenges that exist in the discourse parameters set out for meeting the burden of proof in protective order hearings. In the second case, it is even more difficult for the attorneys to effectively represent their clients' interests when entering into a stalking PO application. And although the defense attorney was able to maneuver the presentation of evidence to work in the favor of the respondent, it was due to the fact that the burden rested on the shoulders of the State to prove a PO was needed. Because the judge was unable to find in favor of the applicant within the limitations of the statute language provided for him to make his decision, we do see that he too understands these communicative challenges and offers an alternative approach for future legal assistance for the applicant in this particular case. According to Searcy, Duck, and Blanck (2005), "However, the courtroom context also enables attributions about certain performances. Clearly, not all players in the trial drama are informed equally about the context and its parameters and processes" (p. 43). This data illustrates that even those who expected to be "experts" within this context can also struggle with communication parameters that can lead to failed attempts to find justice within the legal language for their clients.

ISSUES RAISED: IMPLICATIONS SURROUNDING OUR UNDERSTANDING OF "ABUSE"

In these cases, we are presented with functional communication challenge surrounding the use of specific words used to describe incidences of abuse, as well as constraints that exist

within current legal language to meet the necessary burden of proof for PO cases. In the first case, the use and understanding of the terms "choking" versus "strangulation", has implications for how "we" as a society understand these terms in relation to how they are defined as exhibiting "abuse" in interpersonal relationships. The Texas Council on Family Violence (TCFV) reinforces the importance of these distinctions in their advocacy brochure (TCFV, 2014). They add, "Victims and law enforcement often refer to strangulation as "choking." However, it is important for advocates to refer to the act as 'strangulation.' The use of the term 'strangulation' helps convey the seriousness of the offense" (TCFV, 2014). As discussed in Chapter 4, one step in the application process involves the applicants interviewing with a Victim Intake Counselor to develop their official affidavit, and begin the evidence-building process. I learned from the Legal Advocate that historically, victims would come and tell their stories, and most applicants did not even know how to "label" their specific experiences of abuse.

One example that has (and continues) to cause confusion for applicants (as well as many members of the lay public) is how the act of being physically constricted of air by the throat is defined. Historically (and oftentimes still today), the term "choking" was used to describe this act; however, just in the past few years, the legal reference has changed to "strangulation" to legally describe this act of abuse. Choking refers to something that "happens" when an object you have ingested blocks your airway. According to TCFV (2014), Texas Penal Code Section 22.01, defines strangulation by stating, "…the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth" (TCFV Brochure). Also, according to the TCFV (2014), "historically, strangulation has not been

prosecuted as a serious offense because 1.) victims minimized the level of violence; 2.) police have not been trained to ask about it; and 3.) medical personnel failed to recognize it" (TCFV Brochure). We can see the challenges clearly in this example, which leads to concerns of how not only justice officials, but also lay persons, struggle with how to define and label specific experiences that victims present to them in seeking orders of protection. The fact that intake counselors must sit down with applicants and review a continuum of violence scale to "label" their traumatic experiences, highlights important questions for communication scholars, as well as family violence practitioners.

We can also see in the second case that how abuse experiences are labeled is crucial to the success (or failure) to obtain orders of protection from the court. The second case describes a failed attempt at a stalking PO for a victim of family violence. Due to the restrictions in the existing statute for Family Violence POs, there are not explicit protections for victims of stalking that have not experienced physical assault at the hands of their alleged abuser. Such language barriers lead to frustration by not only applicants, but also the legal officials working within these constraints, particularly the CAs who are often fearful to even "take on" stalking cases because of these challenges.

Chapter 7: Functional Challenges—Privacy & Disclosure

Any act of speaking involves some kind of agency, often regardless of the speaker's intentions and the hearer's interest or collaboration. This is due to the fact that by speaking we establish a reality that has at least the potential for affecting whoever happens to be listening to us, regardless of the originally intended audience. (Duranti, 2008, p. 451)

INTRODUCTION

The legal advocate and county attorneys both shared the importance of individual agency for applicants seeking orders of protection. The legal advocate explained the role of agency when she shared, (you) "must be proactive as an applicant, the public doesn't get it, we'll watch out for you IF something happens." This statement referred to the fact that it is in the hands of the applicants to disclose their own evidence in their testimony, and it is often up them to be able to effectively present it before the judge. Although the burden of proof lies with the State for PO hearings, I also observed individual agency enacted in the respondents' discourse when appearing before the judge. The previous findings chapters have focused on the environmental and functional communication challenges exhibited by the institutionalized context of the courtroom from the perspective of the judge and attorneys. This chapter will examine the discursive features used by the applicants and respondents from the perspective of personal disclosure during testimony regarding evidence of abuse presented in the PO hearing. As described in Chapter 4, the institutionalized environment possesses unique communication challenges for applicants during the application process, as well as for the applicants and respondents when they are called to appear before the judge. These challenges are embedded in the balance between private and public disclosure of personal and sensitive information.

Due to the public nature of this particular courtroom, all testimony is accessible to anyone in the courtroom (other applicants, respondents, family members, those awaiting criminal charges unrelated to the PO process, etc.). The open court and dual-docket nature of this courtroom presents a unique set of disclosure obstacles for both applicants and respondents during the hearing process. The following sections will describe the features of disclosure used by applicants and respondents during their public hearings, specifically focusing on effects of disclosure patterns on the legal outcomes of their cases.

According to Searcy, Duck, and Blanck (2005), disclosure in the social context of a courtroom can take two forms of expectancy violations: those attributed to "regular performers" such as judges, court officers, and attorneys), and those attributed to "irregular performers" that make up the lay witnesses (applicants and respondents).

> Within the spectrum of the social stage, the courtroom provides a unique context and hence, we argue, disables certain ordinary sorts of attribution of meaning about observed cues and behaviors. The courtroom is a context where pleasure and sociability are irrelevant and determination of criminal guilt or civil liability, or the lack thereof, is the prescribed focus for jurors and judges. The outcome-driven process, particularly where the presented evidence is finely balanced or confusing to lay jurors, often depends on their determinations of witness credibility. Yet, the unfamiliar legal context does not necessarily reflect similar determinations in other contexts of everyday life where conversation may offer "testimony" of one kind or another upon which judgments are made of other people. (pp. 42-43)

My observations of the applicants and respondents during their PO hearings revealed the challenges described by Searcy, Duck, and Blanck's (2005) contextual analysis of courtroom communication, particularly the fact that most "irregular performers" (applicants and respondents) were unsure how to effectively present their accounts as evidence, ultimately, revealing disclosures that resulted in detrimental outcomes for their case. The following case (Case #8) will be examined in detail to provide data illustrating these disclosures from both applicants and respondents during their individual testimony regarding the account of the alleged abuse incidences. I will then present the methods in which participants used communication to "avoid ownership" of the circumstances and actions leading to the alleged abuse (Beach, 1990).

Privacy Self-Management

From the perspective of the parameters of the law, this framework attempts to provide individuals a sense of control over their private information, particularly providing options for people to weigh costs and benefits of how their information is disclosed (Solove, 2013). However, the various layers in which people must navigate their disclosure of personal information disclosure can present obstacles to how they manage disclosure across contexts. For example, Solove (2013) writes in the Harvard Law Review that these challenges are inherently present in how the law uses and defines personal disclosure. He argues:

> …even well-informed and rational individuals cannot appropriately self-manage their privacy due to several structural problems. There are too many entities collecting and using personal data to make it feasible for people to manage their privacy separately with each entity. Moreover, many privacy harms are the result of an aggregation of pieces of data over a period of time by different entities. It is virtually impossible for people to

> weigh the costs and benefits of revealing information or permitting its use or transfer without an understanding of the potential downstream uses, further limiting the effectiveness of the privacy self-management framework. (p. 1881)

This chapter will focus on how individuals manage private information within the protections of the law to illustrate the functional communication challenges faced by both applicants and respondents during individual testimony in an open-public PO courtroom.

Case #8: Credibility of Testimony

Case #8 involved a former dating couple who had dated for approximately 9 months (and lived together for 8 months of that time). They had three roommates at the time they lived together, and the most recent incident of abuse alleged by the applicant occurred approximately 6 months after they ended the relationship. The applicant testified to three specific incidences of abuse that all occurred following their break-up. They both work at the same nightclubs (he as an entertainment manager/promoted and she as a cocktail waitress), which makes the parameters for the PO difficult to establish, and all three instances involved disclosure of alcohol use that resulted in physical abuse as alleged by the applicant. The most recent incident disclosed in detail during the hearing occurred one month prior, and the applicant alleges that the respondent took her phone, spat at her, and flushed her phone down the women's restroom toilet. The details surrounding this alleged assault were the primary points of contention between the parties that presented challenges to both witnesses credibility, as their personal disclosure of details served as the evidence in the PO hearing.

Request for More Information: Witness Credibility

The testimony presented by both the applicant and respondent focused particularly on the role of alcohol and individual actions in the regards to their personal disclosures. We can see from the judge's closing statements that the issue of credibility has yet to decided, as he requests more information from the CA and DA on behalf of their clients:

> ***CA:*** *Yes, your Honor. Your Honor just briefly, you heard from the victim about all the extensive violence that occurred between her and Mr. (respondent's name).*
>
> ***THE COURT:*** *I got probably ten pages of notes here, so what I want from you please, <u>is obviously respondent and applicant have told stories that are remarkably different, why is one credible and the other one not</u>?*
>
> *CA: Well Your Honor, <u>I don't think that the respondent was credible at all</u>, his own witness contradicted him as to the incident with the mattress at the house. Respondent says that he came out of his room she's acting crazy and he's trying to get her to leave trying to get her leave, the witness says he never even saw (respondent) during incident, the mattress was there was taken and doesn't consistently match. Respondent's story about being in Vegas they're still together they're still dating, well his own witness says at most they were acting cordial with each other and they just seemed --they did not seem to be a couple at all. <u>He was not consistent about the criminal trespass warning that was given to him at the residence,</u> his luggage is there he's running from the police he was given the warning.*
>
> ***THE COURT:*** *Well I never really heard any testimony about running from the police did I? I heard a lot of questions.*

By addressing the closing statement of the CA, we see the judge attempt to assist her by clarifying that he never heard concrete evidence, rather he heard questions. This provides a nudge to the CA that she needs to more directly address the testimony surrounding the respondent's actions when the police arrived.

> ***CA:*** *That's true. But he was given a criminal trespass warning at the time and it just doesn't make any sense, why would he -he sees her at the bar she says he can come and stay with her, he doesn't get a ride with them he takes a cab later and then all of sudden she doesn't want him there, Your Honor, that just really does not make any sense at all.*
> ***THE COURT****: I'll admit it's inconsistent for me to invite you and then get a criminal trespass warning, I'll grant that much.* ***(Case #8, Sexual Assault)***

After briefly discussing the previous inconsistencies of the respondent's testimony as described by the CA, the judge asks if there is any more evidence the CA would like to present to speak to the credibility of her client (the applicant):

> ***CA:*** *No, Your Honor, just to say that she was very credible she was very honest with the Court about the dog situation, taking the dog, about her drinking about her going downtown, and her witness as well was very consistent with what she said and what (the applicant) said.*
> *THE COURT: Okay anything else respondent, I guess.* ***(Case #8, Sexual Assault)***

The CA openly admits that her client was very forthcoming in her disclosure of drinking and partying downtown, as to show that her disclosure of such events demonstrates her credibility. However, as we can see from the judge's response with the inclusion of "I guess," that the CA was meeting the required level of detail and evidence in her response (as was expected by the

judge). The judge then gives the DA an opportunity to address the credibility of his client based on the disclosure of his testimony:

> ***DA:*** *Yes, Your Honor, actually believe the record will reflect with regard to what Mr. -- what (respondent's name) testified to I don't believe that he testified to anything more than he couldn't really remember anything but letting her in, where the mattress was and that Mr. (respondent's name) was in the bedroom.*
>
> ***THE COURT:*** *But I will tell you in my own notes I wrote a question to me that if there was, I walk in on my X partner and they're in the bedroom with their new partner and the hubbub that I heard testify about and then that witness was like nothing like that happened that he was aware of, <u>certainly sounds like a ruckus like that would have drawn everybody's attention; right?</u>*
>
> ***DA:*** *<u>If that ruckus actually occurred, yes.</u>*
>
> ***THE COURT:*** *<u>But your client is the one that testified that the ruckus occurred.</u>*
>
> ***DA:*** *The actual--*
>
> ***THE COURT:*** *When I walk in on him with his new girlfriend.*
>
> ***DA:*** *Yes, but not Ms. (applicant's name) is the one that –*
>
> ***THE COURT:*** *<u>Actually both sides testified that there was a ruckus and the third party witness is the one who said nothing.</u>*
>
> ***DA:*** *That he couldn't really remember what happened.*
>
> ***THE COURT****:* *<u>That's my point. So it contradicts both sides actually.</u>* ***(Case #8, Sexual Assault)***

Similar to his response to the CA, the DA was still not adequately addressing the necessary details needed to establish credibility; the judge makes note of this by saying "it contradicts both sides actually." The judge addresses the details of both sides' testimonies' in order to highlight the inconsistencies in the attorneys' concluding arguments. He lets them know that what they are saying in the final remarks is not consistent with the way the discourse unfolded in the actual cross-examination. Again, his attention to detail is a way in which he attempts to help guide the attorneys throughout the process.

Attempts to Establish Client's Credibility

In response to this comment, the DA attempts again to establish the credibility of his client and discredit the credibility of the applicant:

> *DA: And also, <u>Your Honor I don't believe Ms. (applicant's name) testimony was consistent either,</u> it is difficult to believe that she's going to go over and pick up a mattress, have an argument where he's holding her down and choking her and then she's going to go back over there. <u>It's also difficult to believe</u> that when she shows up to go get this mattress and Mr. (respondent's name) has a woman in the room, that he is going to lock Ms. (applicant's name) in with this the same woman in a room and not let her out, that is somewhat a stretch as well, <u>it just does not appear to be credible.</u> I believe that what the testimony and the evidence have shown is that this is a mutual argument that's going on between two people and she's actually seeking him out. She was aware that he was a promoter for (the club), and yet she goes two weeks ago to get a job at (the club). <u>So I believe that the testimony was credible and consistent</u> with regard to the fact that Ms. (applicant's name) is the lone one who has been going to the bars that she knows*

that Mr. (respondent's name) has relationships --work relationships with, and there are hundreds as I'm sure the Court knows, there are hundreds of bars down in that area that she could go to as oppose to the ones that Mr. (respondent's name) works at that she knows Mr. (respondent's name) works at.

THE COURT: *I think both sides are talking about dates and all have different answers.*

(Case #8, Sexual Assault)

Being unconvinced by the testimony and disclosure of either party, the judge reflects on his ruling based on these inconsistencies in the narrative and issues of credibility. However, it is at this point in the hearing where some of the testimony made by the respondent (regarding one of the incidences of alleged abuse) that the judge presents his thoughts on how this particular disclosure reflects some serious legal issues in the case (that was not addressed by either attorney during the proceedings):

THE COURT: *As I pointed out to you both there seems to be credibility issues here. I-- actually the third party witnesses for both sides are pretty straight forward as best as I could tell. Then I look at the two parties and it's not unusual for the parties to tell completely different stories. I will tell you that I very often like to look at the testimony and see what is more credible, and I will tell you what one of the first struck me, one of the incidents that--ones that was discussed here, the issue about did I take your phone and throw it in the toilet, or did we engage in sexual relationship, and the phone fell in the toilet. Well it was the testimony that we all heard here and you can correct me I'm looking through my notes but essentially this, the applicant testified that he took the phone and she was drunk that night you can assume that by his own testimony. Now if I'm*

> *intoxicated how can she remember and the person who had sex with me knows that I'm really that intoxicated who knows that and had sexual relationships and lost her phone while that was happening. He knows she's so drunk to the point that she can't remember and still have sex with her, being intoxicated to the point of being unable to consent is a crime.*

As the judge begins to decipher the two narratives to determine credibility, he introduces evidence that was uncontested by the DA and not questioned by the CA—the issue of whether or not the sex was consensual or not based on the details presented by both parties. He breaks down the actions that occurred in order to not only uncover credibility, but also to address another serious issue—possible sexual assault on behalf of the respondent:

> *So either I believe that or I believe she wasn't that intoxicated in which case strikes me I can't believe the respondent's story. There are other places like that that are inconsistent the one I pointed to counsel a moment ago about the one where the police come to the residence and whether I ran or didn't run I have a couple of bags there, and the police see that. My concern is about she being so intoxicated that night to the point she couldn't remember anything and was to the point of blackout and I really know that she was really that drunk, and then I went ahead and had sex with her, I can go down all the pages but I'm going to tell you the evidence that I've heard here today I have some great credibility issues with the story given to me by the respondent. Do I agree with all the actions I've heard testify to by both sides, of course not, and are some of them hard to explain? Sure they are but when it comes down to the bottom line I am going to make the finding required like I said I have credibility issues' for the reasons I've just explained on the*

record, and consequently I do making the findings that these events occurred, and obviously based on the nature of the relationship they work et cetera, there is certainly future danger. ***(Case #8, Sexual Assault)***

After outlining the restrictions on communication and determining the work conditions, the judge asks the attorneys if there are any other matters to attend to before he goes off record. The DA quickly responded:

> ***DA:*** *Your Honor if I could, just remind you what you were talking about the second degree felony rape and et cetera et cetera, I would ask the Court to remember that on the record Mr. (respondent's name) testifies that he calls the next day and asks whether or not she remembers, so I don't know if it's quite—*
>
> ***THE COURT:*** *It is true that when he talked about blackout he was talking more generally. But if I say I saw you and I really know you because of our relationship and you were drunk, and then I go on to say I had sex with you, I'm not saying that that's proof, I'm saying that certainly raises a real issue as to the credibility, that's what I'm saying. We're off the record. Lawyers talk and let me know if you can come up with an agreement or if I need to go forward.* ***(Case #8, Sexual Assault)***

The hearing illustrates the power of disclosure made by participants that can unfold in the proceedings that can have unintended effects on either party. In this case, the issue of credibility was grounded in the communication as evidence in testimony by both the applicant and respondent. While taking multiple pages of notes, the judge carefully regards all disclosures made in his determination of overall credibility of witnesses.

Unintended Consequences of Disclosure

Although he offers both attorneys the opportunity to address issues of credibility based on their clients' testimony, neither party is able to adequately address the concerns of the court (based on the judge's own observations and notes of disclosure of events). The leads to an important finding in the ruling that the judge presents the idea that based on the respondent's testimony and details of the events, the judge actually brought the possibility of rape to the surface. As we saw from the DA's response, this was taken as a serious concern, particularly because it was considered "on the record", and could be later used against his client. This hearing illustrates the power of language choices in the testimony presented by both applicants and respondents when they appear before the judge. As scholars of communication, we study all forms of meaning making in terms of communication as verbal, non-verbal, intended, unintended, etc. The data represents the emergent nature of disclosure and discourse of the courtroom proceedings that can have far reaching implications beyond the PO case at hand. Just as this case presented issues of disclosure made by participants in relation to legal outcomes, the following case example will examine credibility based on patterns of behavior (engaging in alcohol and drugs) that are used by the attorneys to paint a negative picture of the core character of the opposing witness.

Case # 7: Drug & Alcohol Use as Evidence

In Case #7, both the female applicant and male respondent were Caucasian and in their mid-20s. The DA initiated the hearing by asking for a continuance to have more time to speak with his client. The judge denied this request, and the asked both parties to begin. The couple had dated for a year and lived together with a male roommate at the time. The applicant testified that

the respondent had pulled a knife on her multiple times when they were at home drinking, he would get angry with her if she wanted to leave, he would tell her "Go get raped" or "kill yourself". He threatened to have her killed: "could get someone from Dallas to kill her" (mentions his ex-girlfriend who still texts him as a possible person). They ended the relationship following what they coined throughout the hearing as "the incident". The alleged assault involved the respondent telling her "this is why none of my friends like you drunk" and he continue by threatening to "crush her head like a cockroach if he wanted to". He grabbed her by the throat and "choked her for a couple seconds and then let her go". He then threw the applicant into the door frame, to which she responded by striking him in the side of the head to get away. She testified that "he threw me into it backwards" and she was "dizzy and couldn't see". After speaking with an EMS the night of the incident, she was encouraged to go to the doctor the next day. There she was prescribed Lorazepam for anxiety and Nexium for her gastrointestinal problems (she claims resulted from the stress of the assault). The state presented evidence of photos taken by her cousin who was a police office in another state (as well as her mother another week following the incident).

The DA asks the applicant, "Are you on any medication today?" and adds, "I'm not concerned with your Nexium, I'm concerned about your ability to understand questions" (making note of the Lorazepam). To which a member of the public (uninvolved with this particular case) shouts out "I think the picture has been painted". When the DA inquires into how much she had to drink the night in question, the applicant said she had a three vodka sodas and six pints of beer before returning home to the respondent (who had already consumed a 12-pack of beer by that time himself). The DA then asked, "How much do you weigh?" Throughout the

cross-examination by the DA, the applicant testified that she thought that the respondent had been "doing cocaine" and that she caught him a few nights prior to this incident. However, the DA deferred her questioning to focus on the applicant's alcohol consumption. At one point the DA questioned the applicant about other times the two parties had drank together, and the applicant mentioned doing jello shots. To which the DA asked, "what is a jello shot—I don't know that is, and what's the difference between a single and double in terms of alcohol content?" The applicant defined her consumption during that previous example of her drinking patterns and added, "I was not very drunk at all", and the DA concludes by stating, "1/2 pizza while drinking three drinks and one jello shot over a two hour period, at 125 pounds." Followed by, "do you drink frequently?" The applicant responded, "yes."

The judge interjects to the line of questioning and puts himself into the relevancy of the examples being drawn out by the DA regarding the applicant's character and drinking history:

> *If my wife took me to the hospital because I was drunk seven years ago, what does that have to do with anything?...Or the fact that I'm alcoholic, what does that have to do with if my partner assaulted me?* ***(Case #7, Drugs/Alcohol)***

(The Legal Advocate shared with me that the judge's wife is an alcoholic, and that he is very open about it. He doesn't like people using that against applicants and victims). All the evidence surrounded the alcohol used by both parties, but the "blame" was primarily focused on the applicant's alcohol and drug use as evidence that her credibility is tarnished, and therefore, her testimony arguing for a PO is not credible.

ISSUES RAISED: COMMUNICATION CONSTRAINTS & PERMISSIONS

As illustrated by these two PO hearings, the level of disclosure made by both the applicants and respondents during the legal proceedings not only defines witness credibility to the alleged abuse incidents, it also can shed light on sensitive information that was unintentionally presented on record. According to Beach (1990),

> Just as first speakers employ a variety of resources for constructing, attributing, and pursuing responsibility for another's wrongdoing, so do next speakers invoke and rely on various methods for excusing, reducing, averting, and perhaps altogether eliminating the need to take ownership of alleged wrongful (e.g., immoral, unethical, unhealthy, unwise, etc.) actions. (p. 5)

In these cases, while participants used individual disclosure to provide evidence in hopes it would serve in their favor of the court, discursive choices presented as possible methods to avoid ownership of the alleged abuse, it can also work in favor of the opposing side. All information disclosed is recorded by the official court reporter, but in the courtroom, the judge also takes an active role in taking detailed notes that hold all disclosures to task in determining the final outcomes of the case.

More specifically, in the first case, the judge is the one who introduces the issue of a potential sexual assault charge in his closing remarks and ruling. This highlights some interesting issues surrounding control of communication in context of this PO courtroom, as well as who is responsible for, or has permission to, speak to the parameters of the legal language presented in the PO hearings. In this case, as the evidence of the amount of alcohol consumed in relation to possible consent on behalf of the applicant was described, the issue of sexual assault was never

addressed by the CA. Would we expect the CA to address this piece of evidence, or is that beyond the scope of the PO? We see that the judge introduces is as a possible “future” complaint that the applicant “might” pursue. At that mention, we see the DA quickly speak up to the repercussions of such testimony and the actual mention of sexual assault “on record” by the judge could result in detrimental outcomes for his client.

In the second case, we also see the active role of the judge in interjecting on behalf of the applicant when the DA attempts to attack her character and credibility by interrupting the questioning by asking, “If my wife took me to the hospital because I was drunk seven years ago, what does that have to do with anything?. Or the fact that I’m alcoholic, what does that have to do with if my partner assaulted me?” We do not see the CA objecting to this particular line of questing regarding the applicant’s medication use or amount of alcohol consumed, etc. This brings us to questions such as, how is communication controlled in this courtroom environment? We can also see issues related to the role of institutional members in being able to advocate for individuals that result from incidences of abuse that happen in the privacy of their homes. So, what are the implications for institutional members seeking to make important distinctions about these crimes happening in people’s homes? We often expect those of legal authority to know how to communicate on behalf of people in reference to their client’s personal traumatic experiences. And what happens when they fail to do this? Although beyond the scope of the present study, future research into possible constitutional and/or other such jurisdiction restraints on members within this courtroom context could possibly shed more light on these communication constraints and permissions.

Chapter 8: Discussion & Conclusion

OVERVIEW

The study of courtroom communication has examined talk from both theoretical and practical lenses. However, existing literature has primarily focused on litigation outcomes in relation to organizational processes from the perspective of the institutional members. This study provides insight into organizational processes within and among the judicial staff members, while also taking into account the process as experienced by those seeking justice by the system. Specifically, this study helped shed light on the institutional process from the perspective of an applicant (starting with the application process and continuing to the day in court for formal proceedings before the judge). The pathways and involvement of respondents' were also examined and explored to determine how individuals of the lay public enter and maneuver through the necessary legal channels surrounding the protective order process in cases of family violence. According to Searcy, Duck, and Blanck (2005), the study of courtroom communication possess unique communication challenges for researchers:

> The physical organization of the courtroom context is highly unusual compared to most everyday settings. Likewise, the sequencing of communicative interactions is circumscribed by procedural rules—direct versus cross-examination, objections to speculative statements, and so on. The nature of the controlled interaction further is atypical in that amounts of self-disclosure are unusually high, even required by probing questions in which a witness may be required to answer, and sometimes even with only a "yes" or "no." (p. 43)

My findings illustrated that these challenges manifested themselves in both environmental and functional communication challenges, and that the process is layered with gatekeepers and discursive constraints throughout. In order to best present the findings, the previous chapters outlined these challenges through a macro and micro analysis approach. The strength of this analysis approach provided me the opportunity to illustrate the unfolding communicative dynamics that I observed during my fieldwork. The following sections will provide an overview of these communication challenges as observed in the county building and courtroom, shared by court staff in interviews, and demonstrated in testimonies and cross-examinations in case hearings (obtained by observational field notes and official court recorder transcripts).

ENVIRONMENTAL COMMUNICATION CHALLENGES

The institutional process for seeking and obtaining protective orders for cases of family violence is layered with environmental challenges that constitute barriers for how applicants and respondents understand the process and their role within the larger judicial process. The environmental communication challenges outlined in Chapter 4 consist of structural, spatial, and access constraints presented from the legally-required steps in the PO process. Kendon's (1992) work on focused encounters looks at how participants in any given contextual communication environment react to rules and expectations for the context for how to behave in such encounters. He argues that one perspective to better understand these expectations revolves around the spatial-orientational organization of the encounter. He adds, "By arranging themselves into a particular spatial-orientational pattern, they thereby display each to the other that they are governed by the same set of general considerations. By cooperating with one another to sustain a given spatial-orientational arrangement, they can display a commonality of readiness" (p. 329).

However, what happens when these arrangements are not provided, explained, or introduced to the participants ahead of time?

For example, as illustrated in data regarding the application process for protective orders, applicants are presented with multiple layers of physical and communicative barriers that often lead to anxiety and confusion. According to the legal advocate, the majority of her clients do not even know how to begin gathering information on how to apply for an order of protection. This includes understanding what agency handles these requests, the physical location of the building, how to find their way once they've entered the correct building, etc. This is due to lack of access to information or background (i.e., technology, transportation, childcare, knowledge of parking procedures). Time is also an important environmental challenge for applicants seeking orders of protection, as it takes a minimum of three hours to complete the process. The challenge of time can manifest itself in the form of lack of access to transportation, childcare, and/or severity of injuries sustained from incidences of recent physical abuse.

If and when applicants maneuver through these initial environmental challenges, they are presented with another set of barriers in the form of gatekeepers for proceeding through the application process itself. The screening form can serve as a barrier because applicants are unsure of how to answer all the required questions. Another barrier exists in how to handle bringing in support persons or children (if no childcare can be arranged). The small space of the family room and the lack of doors on the intake counselor's doors present an extra layer of anxiety for applicants that can result in lack of clarity and disclosures in developing their affidavit for court. Once they are in the in-take process with the victim counselors, they are often presented with legal jargon and language that is unfamiliar to them. The counselors work to

explain these in order to gather the most accurate information surrounding the alleged events of abuse. In addition, the fact that their interview answers serve as their “evidence” and testimony to present to the court, these procedures can also initiate communication challenges for applicants.

The last step in the application process also leaves applicants with a sense of uncertainty. When they actually have the chance to speak one-on-one with a county attorney, they do not understand that there are four possible CAs, and the one they meet with during their application may not be the same CA who represents them in court. If and when the application is accepted and signed by the judge, it becomes an ex-parte PO, which introduces even more communication challenges that now include challenges for the respondent. The limited amount of time (2 weeks approximately) allotted for serving the respondents and their options for finding counsel, results in lack of understanding for respondents (i.e., what are my rights, where do I need to appear, what do I need to prepare).

Additional environmental challenges exist when both the applicants and respondents arrive to court for their scheduled PO hearing. As outlined in Chapter 4, the diagrams of the flow of movement within the courtroom illustrate that the access to space and courtroom staff is vastly different for applicants and respondents. According to Kendon (1992), situated encounters in which two parties find themselves results in a system of spatial and orientational relations:

> It is noted that by establishing such a system of spatial and orientational relations, individuals create for themselves a context within which preferential access to the other's actions is established. Furthermore, such a system of spatial and orientational relations

> provides for a visually perceivable arrangement by which participants in a given focused encounter are delineated from those who are outsiders. (p. 330)

However, in the case of this PO courtroom, the "outsiders" are not, in fact, delineated from the focused interactants when everyone enters the courtroom. The dual-docket nature of this courtroom provides an environmental challenge to communication and understanding in that there are other cases being addressed in addition to the PO cases. Also, the courtroom is open to the public, so the actual make-up of individuals in the environment is not clear to all participants.

Environmental communication challenges are present in multi-layers throughout the PO process. These findings highlight the challenges from the perspective of the applicant from the time they enter the application process, to when they enter the courtroom for their hearing. We can also see there are several layers of challenges for respondents as well from their respective expectations and role in the institutional process. These structural and environmental barriers lead to challenges in both parties' ability to access and maneuver through the system.

FUNCTIONAL COMMUNICATION CHALLENGES

One area of research that both scholars and practitioners argue need to be initiated includes studies that examine the process with which victims of family violence seek protection from the law. A study by Yearwood (2005) determined that there is discrepancy between judicial outcomes when it comes to ex-parte versus full protective orders in terms of frequency of POs being granted by the court. These findings were based on a statistical outcome analyses, and by which the author argues for more close observation analyses on the actual hearing and court processes in full protective order applications to better understand this discrepancy. I believe that my study can speak to this call for further research in that it uncovers why all orders are not

granted in cases brought before the judge. One possible reason may stem from the functional communication challenges that exist in the legal proceedings where facts and testimony are examined from the perspective of both parties (applicants and respondents). The functional communication challenges presented in this study were enacted in the expectations for what discourse is constituted as ‘meeting’ the necessary requirements established in the statue language for meeting the burden of proof for a PO. This involved the discourse among those in a power role of decision making (judge), how institutional members (CAs and Das) understand the parameters of legal language (constraints of navigating the required evidentiary discourse requirements), and how the lay public participants (seeking assistance from the court) engage in discourse (reflecting issues of public versus private, communication as primary means of evidence, and expectations for personal goals) in relation to the outcomes of the hearings. According to Searcy, Duck, and Blanck, (2005)

> …the social context of the courtroom establishes expectations—that is, learned or instinctual rules of communication—against which specific micro and macro manifestations of verbal and nonverbal communication are assessed. The courtroom is a strongly defined context: It is orderly and the assessments relevant therein concern the meaning of verbal and nonverbal messages as these cast light on issues of truth, falsehood, guilt, or liability specifically. (p. 42)

The framework of institutional genres (Tracy & Robles, 2013) provided a lens in which to examine these expectations in regards to participants’ respective knowledge of the legal system in the constraints of the communication necessary to maneuver through the statutes for establishing burden of proof. The data collected from court transcripts, observations, and

interviews of five hearings highlighted these functional communication challenges surrounding expectations of authority (Case #16), language choices in reference to evidence (Case # 6 & Case #12), and disclosure obstacles that constrain testimony by applicants and respondents (Case #8 & Case #7).

Case # 16 (CPS Case Hearing)

Chapter 5 focused on the hearing involving the role of CPS presented unique questions and assumptions surrounding the role of authority in the courtroom in how the PO application was initiated. The majority of cases that appear on the docket are initiated by the applicants themselves who seek protection from their alleged batterers. In Case #16, we learn that there are other authoritative agencies at work behind some of the PO cases that extend beyond the judge. For example, in this case, the applicant testified that she felt "forced" to apply for a protective order because if she didn't, she would lose custody of her child. Mazzi's (2010) examination of judicial authority genres found that discursive features related to the evaluation process of evident served as the primary indicator for hearing outcomes in his study of Supreme Court cases. More specifically, the evaluation process by judges involves a number of elements related to the authoritative parameters of legal language. Mazzi (2010) found that, "it shows that judges make use of a number of related strategies in order to take stance as they organise their argumentative discourse in judgments" (p. 383). In Case #16, the judge was not the only overarching power of authority for whether or not the applicant actually wanted the PO herself. In this case, the CA (representing the State) represented the interests of the child through CPS, thus making the discourse structures of the institutional process a challenge for both the applicant and the defense attorney representing the respondent (who was contesting the PO).

Case # 6 & Case # 12 (Evidentiary Discourse Challenges)

Chapter 6 described the functional challenges that result from the ambiguity of legal language that asserts the necessary requirements for meeting the burden of proof for cases of family violence. The analysis of court transcripts and interviews with court staff provide an illustration of how institutional members, attorneys in particular, work within these constraints throughout the hearing process. According to Azuelos-Atias (2011),

> Another difference between the legal language spoken in court and ordinary speech can be found at the level of the argument. There are in legal language many genres of text presenting legal argumentation that do not exist in ordinary language, such as demonstrations of deeds of various types or application of rules, statutes and contracts. Each of these genres of text has its own relatively rigid format. (p. 43)

The data from these findings demonstrate this idea of rigid formats and provide evidence to how language choices impact the judge's final ruling. In PO cases, the burden of proof lies with the State, thus the county attorneys must present their case to clearly show that 1.) abuse has occurred, and 2.) it is likely to occur in the future, so that a pattern can be argued. Case #6 and Case #12 both illustrate the constraints of the legal language required to meet the statues for protective orders resulting in both cases being denied a PO. Case #6 exemplified these challenges by the extended deconstruction of two language terms—choking and "cocking" a gun—that were microscopically negotiated to determine if the evidence presented in this discourse met the necessary language structures required in the statue for determining abuse had occurred.

The same scrutiny was present in Case #12 when the CA attempted to obtain an order of protection for her client that would serve as a lifetime order under the statue of "stalking." This too proved to be unsuccessful as the discourse unfolded throughout the hearing process. Again, the parameters of the language in the law did not allow for a successful burden of proof from the perspective of the CA. She admitted in an interview following the case that she was "scared to take the case" if a victim comes in for a stalking PO application. She added that there is just not room in the existing language to meet the burden of proof without explicit threats (no matter how much other evidence is presented in the case).

Case # 7 & Case # 8 (Participant Testimony, Disclosure & Outcomes)

Chapter 7 focused on the discourse exhibited by the lay parties, in these cases, that consisted of applicants, respondents, and witnesses. The ambiguity in the language of the law can be difficult for institutional members (attorneys) that are expected to be experts (as described in Chapter 6). So what about the lay public who are the ones entering the system in search of legal assistance, voice, and protection? According to the legal advocate, lay participants (referring in the context to the applicants) must enact their own agency in seeking and obtaining orders of protection. While they have representation by the State through CAs, they must initiate the process and are ultimately responsible for providing the evidence necessary to meet the burden of proof, which is most often grounded in the form of disclosure surrounding the alleged event(s) of abuse.

Beach's (1990) courtroom research surrounding how participants avoid ownership for alleged wrongdoings in response to cross-examination by opposing counsel examined how witnesses manage accusations and threats to credibility. He focused on five methods including

1.) discounting, 2.) using accounts to minimize wrongdoings, 3.) actively engaging in silence (withholding any response), 4.) using strategies to seek closure of topic surrounding alleged wrongdoing, and 5.) minimizing the seriousness of the action/attribution by engaging in humor. In Cases #7 and #8, the decision-making process by the judge was transparent and clear from his communication with both attorneys (representing applicants and respondents). He openly addressed issues related to testimony seeking to discount, minimize, or engage in attributing blame to the other party by both applicants and respondents. Such disclosures both positively or negatively reflected and impacted the persona of credibility on the individual. We saw in Case #8 that the disclosure made by the respondent in his version of events led the judge to inquire about a possible rape conviction if he did in fact know she was too intoxicated to consent. In Case #7, the character of the applicants was consistently challenged by the DA in order to build his client's credibility and dismiss that of the applicant. However, again we saw this discursive strategy backfire when the judge made it clear that the fact that anyone is an alcoholic has nothing to do with whether or not that person is a victim of abuse (and thus, "deserve" an order of protection from the law). " Duranti (2008) argues that, "The very act of speaking in front of others who can perceive such an act establishes the speaker as a being whose existence must be reckoned with in terms of his or her communicative goals and abilities" (p. 455). Although any communicative action we take is perceived by our audience, in the unique case of sensitive information being disclosed in the PO courtroom, these utterances may have longer-reaching implications for the speaker than originally intended.

LIMITATIONS

This study generated multiple forms of communication data that provided an extended examination of the layers of people, actions, and outcomes in this protective order courtroom. I was able to gather additional data beyond the original scope outlined in my proposal which helps build on existing research and public practices surrounding issues in family violence. However, there are still some limitations to note about this study as well.

First, because I only observed this one particular courtroom culture, observed findings cannot be generalized to all protective order courtrooms. In fact, from my discussions with the courtroom staff, this PO court is quite unique. This was attributed to the knowledge base of the judge surrounding family violence issues and patterns, as well as the open lines of communication between the judicial authorities and the litigation staff for both the applicants and respondents. And although this courtroom engaged in a dual-docket on PO day that led to environmental and functional communication challenges as demonstrated in the data, the courtroom is the one of the closest to achieving a collective venue for addressing family violence and protective orders in one space and under a consistent judicial staff. Advocates and volunteers shared their concerns for the lack of continuity in the legal space and processes across the state for family violence cases. Scholars differ in their arguments for whether or not a streamlined court is best for cases of family violence (MacDowell, 2011), thus making it a point of possible future research (which will be discussed more in the next section).

Second, I was unable to access respondents and defense attorneys directly to interview them about their perceptions of the institutional process, as well as their individual case

outcomes. According to the lead county attorney, there is little to no communication before court between the CAs and the DAs representing the respondents. She added:

> *We rarely hear from them before court. Sometimes they will file an answer and send that to us or sometimes they pick up the phone and call us but that's the exception. Yeah we don't hear; I wish we would so we can figure out what our docket is going to look like but we don't hear from them so we'll get to court and there'll be like nine cases and nine attorneys are there and we're all just overwhelmed because there's four of us. Or we get there and nobody's there you know so you just never know what you're going to get which can be sort of frustrating in like just managing your docket*. ***(Interview with CA, Case #12 (Stalking), Audio File 47)***

The lack of communication ahead of time may have implications for the challenges on the day both parties appear before the court that were not explored in this study. Not having direct access to the respondents during my data collection limited the claims that could be made about the process from the perspective of the alleged batterer. Although I was able to directly observe and record all communication taking place during the legal proceedings of the hearings, the personal perceptions and experiences of the respondents were not clearly known.

Lastly, because I was able to access the legal advocate, many of the county attorneys, and even the judge and court reporter at times, the perspective of the applicants' view of the process was the primary focus of the findings. However, I did not have the opportunity to formally interview applicants during my data collection (due to time, space, and psychological constraints), which only allowed me to make claims based on direct observations and not reflection or follow-up discussion with the applicants after their hearings.

FUTURE DIRECTIONS

One distinct outcome of this study for future research stems from the need to understand and communicate more nuanced ways of discussing family violence patterns and what these patterns mean to those experiencing the abuse, as well as those advocating for and/or providing protections. The following will examine future directions from the perspective of both scholars and practitioners in the field.

Future research into the protective order process could zero in on the application procedures as experienced by applicants and victim intake counselors. Currently, scholars have examined this interaction and process of 'screening' victims of family violence through the lens of listening styles (Chapin, Froats Jr., & Hudspeth, 2013) and politeness strategies used by screening gatekeepers (Trinch, 2001). Chapin, Froats Jr., and Hudspeth (2013) found that nurses who engaged in people-oriented and content-oriented listening styles were perceived as more knowledgeable as opposed to time-oriented and action-oriented styles. Trinch (2001) found that institutional members who are in screening roles for victims of family violence were often torn between their role as gatekeeper and their role as advocate. My study presented environmental constraints to communication throughout the application process due to time and space limitations. Future research could examine these constraints from the perspective of both the applicants and the intake counselors to determine how these challenges are perceived.

Another avenue for future research could focus on the role of the victim advocates (legal advocates that work solely with the court such as in my data) in the protective order process. My findings were informed consistently from my interactions and interviews with the Legal Advocate, who serves as the primary legal intermediary between the local DV Center and the

County Attorney's Office. Therefore, her job was two-fold, to provide information, resources, and support for applicants throughout the institutional process, while also serving as an expert and coordinator of care for the interactions between the clients and the judicial staff members. D'Enbeau and Kunkel (2013) explored empowerment from the perspective of how organizational members manage their role in assisting victims of family violence. They found that constraints exist between advocates' goals for implementing empowerment and actually putting the concept into practice. Future work could focus on this advocate role and the balance between being an advocate and gatekeeper for the court system. Current research on advocates working within family violence agency highlights the problem of burnout through the examination of communication anxiety, communication competence, and perceived social support (Babin, Palazzolo, & Rivera, 2012). One question could look at how burnout manifests itself for advocates who possess multiple roles for victims of family violence.

Although not focused on in this study, other future research endeavors could also examine the nonverbal responses to testimony between applicant and respondent, as well focusing on the process of communication and language in cases where respondents represent themselves (which did not occur during my fieldwork). Another important element to consider here is how the dynamics between the applicant and respondent (being in the same room, sharing their relational history to strangers) affects their communication and presentation styles on the stand. For example, in the present study, I was able to examine and analyze the disclosure as it unfolded during the respective hearings, noting the testimony and official recorded discourse. Future in-depth analyses could include follow-up interviews with applicants and respondents in

order to understand their experience, language choices, and perceptions of the process from a cognitive communication lens.

Also, due to the emergent nature of courtroom interactions, it is important to continue to add to the research in our field of communication studies through ethnographic and interpretative lenses. For example, the cultural context of PO courtrooms offer a unique look into an area of law enforcement that adjudicates alleged batterers before their day in court (Temporary Ex-Parte Protective Order—a court order issued to one party to an action without the other party being present). As Bix (1993) concludes, when examining language and interpretation of law, "even a superficial look at the relevant literature is enough to show that the two levels of discourse cannot be kept apart" (p. 3).

CONCLUSION

This study provided an in-depth and immersive field study of the process of protective order hearings. Applying a discourse analysis framework constituted in understanding the problems, communication strategies, and outcomes of existing institutional practices, the findings uncovered multiple layers of communication challenges that manifested themselves in all steps of the PO process. Environmental communication challenges were present from the moment applicants initiated the application process and continued through their respective hearings (and most likely beyond, but that is outside the scope of this particular study). The physical space presents challenges to access and representation, while the gatekeepers provide differing levels of support (and sometimes unequal access) for the applicants and the respondents. The functional communication challenges stem from the constraints of the legal

language to meet the necessary burden of proof for cases of family violence. Liebwald (2013) articulates the layers of challenges that exist in the ambiguity of legal language as follows:

> Thereby, the question of the law's capacity for vagueness is closely related to the question of the impact of vagueness in law, since exaggerated vagueness combined with the elasticity of legal interpretation methodology may affect the constitutional principles of legal certainty, the division of powers, and the binding force of statute. (p. 31)

The institutional members representing the lay participants consistently struggled to work within these constraints when presenting, refuting, and questioning the actions of both the applicants and respondents before the judge. The lay participants also experience these challenges embedded in the ambiguous nature of the legal language that impacts their understanding of authority figures, implications for personal disclosure, and expectations for the extent to which their attorneys can assist them.

This study highlights the challenges that exist in navigating the law to solve people's problems. In particular, situated contexts in which people have to work within the constraints of higher authority, in this case, the constraints of the way in which the law is written and the language barriers that are intrinsically present. In order to be successful in these situated contexts, individuals need access to guides/advocates or they have to figure out how to navigate the system on their own. In these cases, people enter the system without the necessary language or experience to be successful on their own. Even those within the institutional structure, who are expected to be knowledgeable and possess the skills needed to maneuver through such constraints, are presented with consistent challenges. As this study has revealed, even the attorneys who are considered to be experts in the law struggle to manipulate the necessary

language constraints to meet their goals for their clients. The judge must also operate within these parameters, and he too, works within the institutional structure through his interpersonal interactions to assist the attorneys (from both sides) to achieve the necessary language to meet the required burden of proof stated in the legal statutes.

Although the observations from this study reveal components of rituals in organizational settings, it moves beyond the ritual to highlight the importance of interpersonal interactions. The data illustrate that although the boundaries are ritualistic, the actual negotiations and interactions are not. The study of communication within the institutional structure of the PO courtroom highlights and explains the moves of the ritual nature of the process while being able to uncover the situated constraints that exist when individuals operate within the parameters of the ritualistic structure established in the language of the law. We can see that the prescribed communication patterns are not always explicit for every case, such as the cases that are contested. We witness the ritual language structure move smoothly for cases that are uncontested, or those in which the respondent does not appear for their court summons. In these cases, the county attorneys can easily review their client's affidavit without challenge, and the court proceeds with granting the requested PO. However, the communication challenges are clear when we witness a contested case where the respondent arrives with (or without) an attorney to testify on their own behalf to why the PO is not warranted.

In the present study, people are seeking out legal assistance for their personal issues with family violence. They are unable to manage their problems on their own; therefore, they seek out other means of assistance to help them find means to deal with/work through/terminate their designated interpersonal relationship/s in question. This area of inquiry can be explored in other

institutionalized structures where individuals find themselves seeking assistance for their interpersonal problems (e.g., healthcare services, conflict mediation, counseling services), as it provides a means to understanding how people are vulnerable to the constraints placed upon them within the larger system.

Appendix A

Texas Council on Family Violence Protective Order Brochure

What are the requirements for a Final Protective Order?

In order to receive a Final Protective Order, the petitioner must show, "Family violence has occurred and is likely to occur in the future".*

TX Family Code Ch.85.001

If the applicant is a survivor of sexual assault, the court must find reasonable grounds to believe that he/she is "The Subject of a Threat that reasonably places the applicant in fear of further harm from the alleged offender".*

TX Code of Criminal Procedure Art.7A.03

What is a Magistrate's Order for Emergency Protection (MOEP)?

A MOEP is a court order issued at a "defendant's appearance before a magistrate after arrest for an offense involving family violence"* and is meant to stop the abuser from engaging in abusive, threatening or harassing behavior, and from contacting the victim in any way. It is intended to protect the victim from further abuse or violence.

*Art.17.292.

What are the requirements to receive a Magistrate's Order for Emergency Protection?

In order to receive a MOEP, the perpetrator must have been arrested for an offense involving family violence, stalking or sexual assault. A MOEP can be requested by the victim of the offense, the guardian of the victim, a peace officer OR an attorney representing the state. The Magistrate must issue an order if the charge involves "serious bodily injury (SBI)" or "use or exhibition of a deadly weapon".*

*TX Code of Criminal Procedure Art.17.292.

How long does a Magistrate's Order for Emergency Protection last?

A MOEP is issued for 31–61 days or for up to 91 days if a weapon is involved.

Full Faith and Credit

The "Full Faith and Credit" provision within the Violence Against Women Act allows protective orders consistent with federal law to be enforced in any state or tribe (i.e. if a person receives a protective order in any state, that order should be enforceable in other states). For more information contact the **National Center on Full Faith and Credit** at 1–800–903–0111 ext. 2.

Gun Laws and Protective Orders

It is a crime for an abuser to have a firearm if an active protective order is in effect.* It is also a federal crime to possess firearms or ammunition if subject to a "qualifying protection order".** There is an exception for peace officers working as sworn, full-time paid employees of state agencies or political subdivions.

* *TX Family Code Ch.85.026*

** *18 U.S.C. Ch.922(g)(8)*

Preparing for a Final Protective Order Hearing

While a batterer will usually not be at a court hearing for a Temporary Ex Parte Protective Order*, he/she attend the Final Protective Order hearing and will always have the opportunity to tell his/her side of the story. **Because of this, it is important to develop a safety plan prior to a court appearance for the final protective order hearing.**

* *Texas Family Code Ch. 83.007*

For more information on how to prepare for the hearing, go to *www.womenslaw.org* and click on "How do I get a restraining order?"

Domestic Violence Protective Orders in Texas

Thirty Years of Building a Safer Texas

P.O. BOX 161810
Austin, TX 78716
www.tcfv.org
512.794.1133

A Protective Order can be an important part of a safety plan to prevent further family violence.

There are three types of Protective Orders in Texas:

1. Temporary Ex Parte Protective Order.
2. Final Protective Order.
3. Magistrate's Order for Emergency Protection (MOEP). (In order for a MOEP to be issued, an arrest involving family violence must have occurred).

Who can get a Protective Order?

Victims of:
1. Family Violence.
2. Dating Violence.
3. Sexual Assault. (Victims of sexual assault may obtain a lifetime Protective Order. Contact the Texas Association Against Sexual Assault for more information at 1–800–656–HOPE).
4. Stalking. (Victims of stalking are only eligible for a Magistrate's Order for Emergency Protection).

How can a Protective Order help?

A Magistrate's Order for Emergency Protection, a Temporary Ex Parte Protective Order, and a Final Protective Order ALL prohibit the respondent from:

1. Committing family violence.
2. Communicating in a threatening or harassing manner with a family or household member.
3. Going near a victim's residence and place of employment.
4. Going near childcare and school facilities.
5. Stalking.
6. Possessing a firearm.

A Temporary Ex Parte Order addresses the following:

1. Temporary possession of and access to children.
2. Temporary possession of and access to property.

A Final Protective Order may:

1. Grant possession and access to children.
2. Protect mutually owned and leased property.
3. Grant possession of a residence.
4. Require payment of child and/or spousal support.
5. Require respondent to attend a batterer's treatment program.

Should a victim of family violence apply for a Protective Order?

A person living with family violence is the sole expert on his/her own situation. Only the individual being abused can decide whether or not obtaining a protective order is the right choice. A protective order can be an important part of a safety plan. However, in some situations, getting an order of protection may worsen the situation. For more information on safety plans and protective orders contact the **National Domestic Violence Hotline** at 1–800–799–SAFE or go to *www.womenslaw.org.*

What are the steps for obtaining a Protective Order?

An applicant for a protective order must go to court and show:

"1. Family violence has occurred; and
2. Family violence is likely to occur in the future".*

**TX Family Code Ch.85.001*

A person applying for a Protective Order may:

Personally submit their request at the local County/District Attorney's Office or hire a private attorney to act on his/her behalf.

Free legal help is available for individuals applying for a Protective Order. To find help in your area contact the **Texas Family Violence Legal Line** at 1–800–374–4673. (Calls will be returned within 24 hours).

Certain local family violence programs may be able to assist in applying for a Protective Order. For immediate assistance and referral to a local domestic violence program, contact the **National Domestic Violence Hotline** at 1–800–799–SAFE (7233) or 1–800–787–3224 (TTY for the Deaf).

What is a Temporary Ex Parte Order?

A Temporary Ex Parte Order is an immediate court order of protection meant to stop the abuser from engaging in abusive, threatening or harassing behavior, and from contacting the victim in any way. It is intended to protect the victim from further abuse or family violence until a full court hearing for a Final Protective Order is held.

How long does the Temporary Ex Parte Order last?

A Temporary Ex Parte Protective Order can last for up to 20 days and can be extended at the request of the applicant or court.* Temporary Ex Parte Orders are criminally enforceable IF they have been served.**

**TX Family Code Ch.83.002*
***TX Penal Code Ch.25.07*

What are the requirements to receive a Temporary Ex Parte Order?

In order to receive a Temporary Ex Parte Order, the applicant must provide detailed facts concerning the alleged family violence and demonstrate the need for the immediate Protective Order. There must be a "clear and present danger of family violence,"* "sexual assault or other harm".**

**TX Family Code Ch.83.001*
***TX Code of Criminal Procedure Art.7A.02*

What is a Final Protective Order?

A Final Protective Order is a court order meant to stop the abuser from engaging in abusive, threatening or harassing behavior, and from contacting the victim in any way. It is intended to protect the victim and his/her children from further abuse and violence.

How long does a Final Protective Order last?

A Final Protective Order lasts for up to two years. The order is effective for "the period stated in the order, not to exceed two years; or if a period is not stated in the order, until the second anniversary of the date the order was issued".*

**TX Family Code Ch.85.025*

Appendix B
Local Rules of Procedure and Rules of Decorum for the County Courts at Law
Chapter 4: Rules for Decorum
Effective 1/01/2011

Chapter 4 Rules of Decorum

4.1 Opening Procedure.
Immediately before the scheduled time for the first court session on each day the bailiff shall direct all persons present to their seats and shall cause the courtroom to come to order.
As the Judge enters the courtroom the bailiff shall state:
"All rise."
And while everyone is still standing, the bailiff shall announce: "County Court at Law Number ___ is now in session, Judge ___ presiding. Please be seated. "

4.2 Recess
When the Judge announces a recess, the bailiff shall state: "All rise."
And all shall remain standing until the Judge leaves the courtroom, whereupon the bailiff shall announce: "The Court is now in recess".
In reconvening after a recess, the bailiff shall call the courtroom to order and request everyone to rise as the Judge enters and shall state:
"Please be seated."
Before a recess of a jury trial, the jury will be excused, and all other persons present shall remain seated while the bailiff conducts the jury from the courtroom into the jury room.
After a recess, the bailiff shall direct all jurors to the jury room and shall call the courtroom to order and request everyone to rise as the Judge enters, as in non-jury trials. After everyone is reseated, the jury shall be returned to the jury box from the jury room.

4.3 General Rules of Courtroom Conduct.
All officers of the court, except the Judge and jurors, and all other participants, except witnesses who have been placed under the rule, shall promptly enter the courtroom before the scheduled time for each court session. When the bailiff calls the Court to order, complete order should be observed.
In the courtrooms there shall be:

(a) no tobacco used;
(b) no chewing gum;
(c) no shorts or bare midriffs;
(d) no reading of newspapers;
(e) no audible cell phones or pagers;

(f) no bottles, cups or beverage containers except court water, pitchers and cups or as otherwise permitted by the Judge;
(g) no edibles;
(h) no propping of feet on tables or chairs;
(i) no noise or talking that interferes with court proceedings.
The Judge, the attorneys, and other officers of the court will refer to and address other court officers and other participants in the proceedings respectfully and impersonally, as by using appropriate titles and surnames rather than first names.
All officers of the court should dress appropriately for court sessions.

4.4 Attorneys

(a) Attorneys should observe the letter and spirit of all canons of ethics, including those dealing with discussion of cases with representatives of the media and those concerning improper ex parte communications with the Judge.

(b) Attorneys should advise their clients and witnesses of Local Rules of Decorum that may be applicable.

(c) All objections, arguments, and other comments by counsel shall be directed to the Judge or jury and not to opposing counsel.

(d) While another attorney is addressing the Judge or jury, an attorney should not stand for any purpose except to claim the right to interrupt the attorney who is speaking.

(e) Attorneys should not approach the bench without leave of court and must never lean on the bench.

(f) Attorneys shall remain seated at the counsel tables at all times except:

(1) when the Judge enters and leaves;

(2) when addressing the Judge or jury; and

(3) whenever it may be proper to handle documents, exhibits, or other evidence (leave of court is not required.)

(g) Attorneys should anticipate any need to move furniture, appliances, or easels, and should make advance arrangements with the bailiff. Tables should not be moved during court sessions.

Appendix C

Instructions for Court Included in Protective Order Application Package

Protective Orders

What is a protective order?

It is a court order that protects you from someone who has been violent or threatened to be violent.

How can a protective order help me?

It can order the other person to:

- Not hurt you or threaten to hurt you
- Not contact you or go near you, your children, other family relatives, your home, where you work, or your children's schools
- Not have a gun or a license to carry a gun

The police can arrest the other person for violating any of these orders.

Can I get a protective order?

You can get a protective order if:

- Someone has hurt you, or threatened to hurt you, **and**
- You have a close relationship with that person (you were or are married, dating or living together, have a child together or are close relatives), **and**
- You are afraid that person may hurt you again.

How much does it cost?

It is free for you.

How do I ask for a protective order?

Fill out the forms in this kit:

- Application for Protective Order
- Temporary Ex Parte Protective Order
- Protective Order
- Respondent Information

Where do I file the forms?

After you fill out the forms, take the forms with 2 copies to the courthouse. File them in the county where you or the other person lives. But if you have a divorce or custody case pending against the other person, file the forms in that same county or the county where you live.

What if the other person and I live together or have children together?

The judge can make orders about who gets to use the house, apartment or car.

The judge can also make other orders, like child custody, child support, visitation, and spousal support.

Can I get protection right away?

The judge may give you a temporary order that protects you until your court hearing. This ord r is called a "Temporary Ex Parte Protective Order".

In some cases, the judge orders the other person to leave the home right away. If you want this, you should ask the judge. Be ready to testify at a hearing when you file your Application.

Do I have to go to court?

Yes. Even if you get a Temporary Ex Parte Protective Order, you must go to the next hearing. It should be in about 2 weeks. The judge will decide if you should have protection and for how long. If you do not go, the Temporary Ex Parte Protective Order may end.

Read *Get Ready for Court* in this kit. Or get it from the court clerk or from:
www.texaslawhelp.org/protectiveorderkit

How will the other person know about the protective order?

You must have the other person "served" ***before*** the court hearing. This means someone—not you—will serve the other person a copy of your application for a protective order.

The clerk can arrange for law enforcement to serve the other person the court papers for FREE (for you).

Need help?

There is an instruction sheet for each form.
But, if you need more help, contact:

Family Violence Legal Line: **800-374-HOPE**

Or, go to:
www.texaslawhelp.org/protectiveorderkit

Although you may file these forms without having a lawyer, you are encouraged to get a lawyer to help you in this process. Your county or district attorney or legal aid office may be able to help for free. The State Bar of Texas may also be able to refer you to a lawyer if you call 800-252-9690.

Get Ready for Court

Don't miss your hearing!

If you miss it, your Temporary Ex Parte Protective Order may end and you will have to start from the beginning.

Get ready.

- Fill out a Protective Order before you go to court and bring it with you.
- Bring any evidence you have, like photographs, medical records, torn clothing. Also bring witnesses who know about the violence, like a neighbor, relative or police. The judge may ask them to testify.
- Bring proof of your and the other person's income and expenses, like bills, paycheck stubs, bank accounts, tax returns.
- If the Proof of Service was returned to you, file it with the clerk and bring a copy to court.

Get there 30 minutes early.

- Find the courtroom.
- When the courtroom opens, go in and tell the clerk or officer that you are present.
- Watch the other cases so you will know what to do.
- When your name is called, go to the front of the courtroom.

What if I don't speak English?

When you file your papers, tell the clerk you will need an interpreter.

If a court interpreter is not available, bring someone to interpret for you. Do not ask a child, a protected person, or a witness to interpret for you.

What if I am deaf?

When you file your papers, ask for an interpreter or other accommodation.

What if I need child support or visitation orders?

Call the Family Violence Legal Line before you go to court: **800-374-HOPE**

What if I am afraid?

If you don't feel safe, call your local family crisis center or the National Domestic Violence Hotline: **800-799-SAFE**

Practice what you want to say.

Make a list of the orders you want and practice saying them. Do not take more than 3 minutes to say what you want.

If you get nervous at the hearing, just read from your list. Use that list to see if the judge has made every order you asked for.

The judge may ask questions.

The other person or his or her lawyer may also ask you questions. Tell the truth. Speak slowly. Give complete answers.

If you don't understand, say, "I don't understand the question."

Speak only to the judge unless it is your turn to ask questions. When people are talking to the judge, wait for them to finish. Then you can ask questions about what they said.

What happens after the hearing?

If the judge agrees you need protection, the judge will sign your Protective Order.

Take your signed order to the court clerk. Ask for copies of your order (or make extra copies) and keep one with you at all times.

Give copies of your order to your children's day care, babysitter, or school. If the other person violates the order, call the police and show them your order.

Need help?

If you are in danger, call the police: **911**

Or call Family Violence Legal Line:
800-374-HOPE

Or go to:
www.texaslawhelp.org/protectiveorderkit

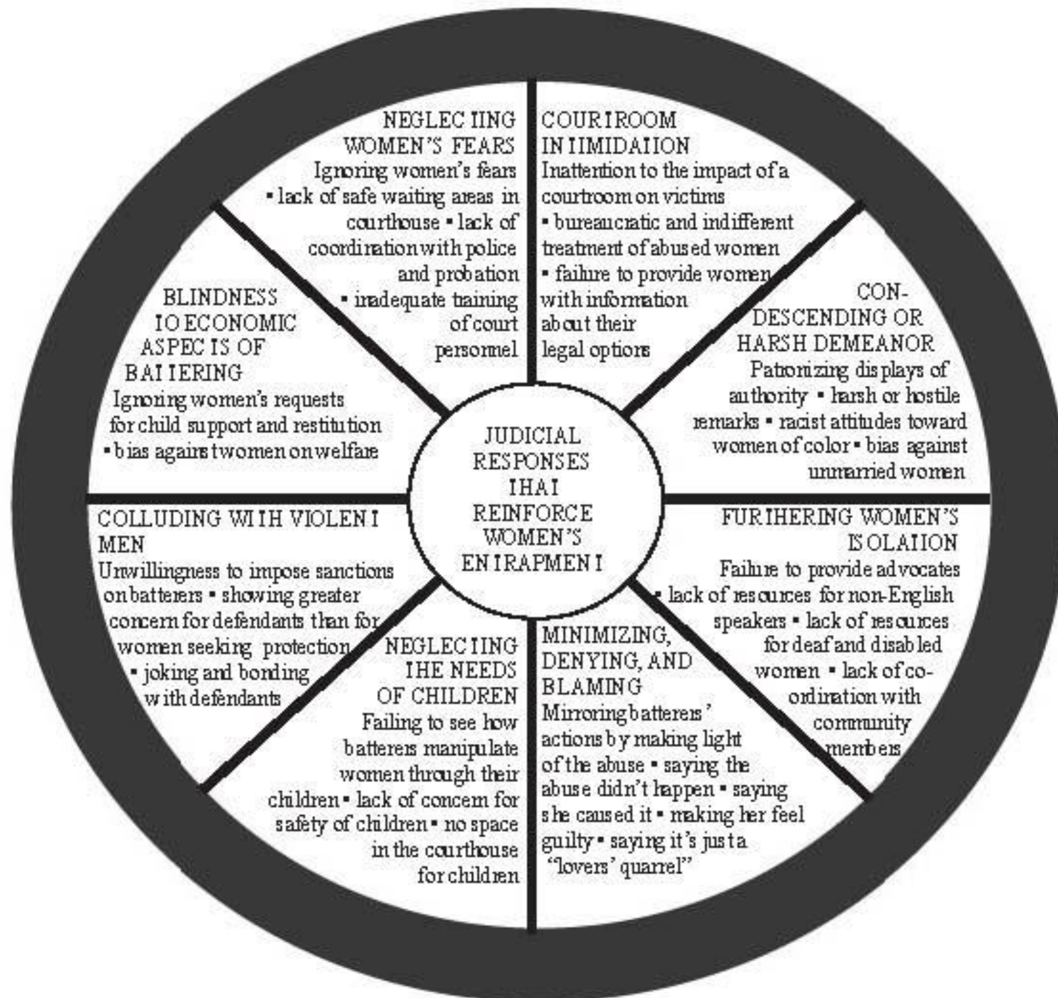
Appendix D

‘Judicial Responses That Reinforce Women’s Entrapment’ &

‘Obstacles in the Criminal Justice Process’

Handouts from the Texas Council on Family Violence

JUDICIAL RESPONSES THAT REINFORCE WOMEN'S ENTRAPMENT



Texas Council on Family Violence
P.O. Box 181610 ▪ Austin, Iexas 78716
512/794-1133 ▪ Fax: 512/685-6396
www.tcfv.org

From Battered Women in the Courtroom: Ihe Power of Judicial Responses by James Ptacek. Copyright 1999 by James Ptacek. Reprinted with the permission of Northeastern University Press.

OBSTACLES IN THE CRIMINAL JUSTICE PROCESS

THE VICTIM MAY…

1. Fear that the batterer knows where the victim is and will continue to intimidate the victim throughout the criminal proceedings.
2. Have been forced or threatened to rescind or request dismissal of charges in the past and may fear initiating proceedings again.
3. Have participated in the past and the criminal justice system failed to protect her, and/or failed to provide adequate intervention to hold the batterer accountable or stop the violence.
4. Be financially dependent upon the batterer and be forced to continue residing in the same household.
5. Have suffered consequences for involving the criminal justice system in the past (i.e., from batterer or law enforcement arrested them for defending themselves).
6. Lack valid information about the criminal justice process.
7. Feel pressure from their family and friends to not cooperate.
8. Lack assurance that the criminal justice system can provide safety for the victim from the batterer if the victim cooperates.

THE BATTERER MAY…

1. Interfere with the victim's ability to appear in court by intercepting her mail, or misinforming the victim about court dates, etc.
2. Interfere by talking to the victim about the case, or by providing misinformation about the court process.
3. Threaten the victim and the victim's family or friends to prevent the victim from cooperating.

Texas Council on Family Violence
P.O. Box 181610 • Austin, Texas 78716
512/794-1133 • Fax: 512/685-6396
www.tcfv.org

Appendix E

Case Data Collection Form

DATE:____________

CASE # ___________

STATS:
Applicant____
Respondent______________________________________
County Attorney___________________________________
Defense Attorney__________________________________
Witnesses_______________________________________

NOTES:____

RESULT OF HEARING:______________________________

RESET DATE:__________________________________

Appendix F

PO Screening Form

PROTECTIVE ORDER SCREENING FORM

Date: ______/______/__________

Applicant's Name: ____
FIRST MIDDLE INITIAL LAST MAIDEN NAME

____
DATE OF BIRTH AGE RACE SEX

ADDRESS: ____
STREET CITY STATE ZIP COUNTY

PHONE: ____
HOME CELL WORK

Emergency Contact:

____
NAME PHONE NUMBER RELATIONSHIP

Respondent's Name: ____
FIRST LAST

____
DATE OF BIRTH AGE RACE SEX

ADDRESS: ____
STREET CITY STATE ZIP COUNTY

What is your relationship to the Respondent? ____________________

DO NOT WRITE BELOW

OFFICE USE ONLY

Applicant Arrival: ______________ ______________
Receptionist Initials Time

Received by Victim Counselor: ______________ ______________
VC Initials Time

	APPLICANT	RESPONDENT
VWALL		
MNI		
FACTS COUNTY		
FACTS DISTRICT		

Applicant Rejected: Y or N
WHY? ____

____

Applicant left office prior to completing paperwork (other than being rejected)? Y or N
WHY? ____

____

Safety Plan? Y or N

Close Patrol? Y or N

Please wait to complete this section.

Please answer the following questions by checking the appropriate column:

YES	NO	DON'T KNOW	
____	____	____	1. Have you ever been involved in a Protective Order before? When?____________ Were you the victim or the Respondent?____________
____	____	____	2. Do you have an Emergency Protective Order against the Respondent at this time? If so, please give date issued: ____________
____	____	____	3. Do you want the Respondent ordered to stay away from you?
____	____	____	4. Will you take the necessary steps to comply with any Court Order entered in this case, including reporting all violations to the proper authorities?
____	____	____	5. Do you understand that: a. It takes approximately 14 days to obtain a final protective order and requires at least one court appearance? b. Once the court signs an order, you cannot let the Respondent violate the order? c. Once the Court signs an order, you must personally appear before the judge if you want the order modified or vacated? d. If a protective order is granted, it will be in effect for two years?
____	____	____	6. Do you have some form of identification with you? any adult
____	____	____	7. Do you and the Respondent have children together? Ages:____________ Do you have any other children who live with you? Y or N Ages:____________
____	____	____	8. Has Child Protective Services ever removed a child from your custody or from the custody of the Respondent?
____	____	____	9. Do you currently have a divorce or a Suit Affecting the Parent-Child Relationship pending against the Respondent? If so, give Cause Number:____________
____	____	____	10. Do you have any pending felony or misdemeanor criminal charges against you or are you on probation in Travis County at this time? For what offense? "warrant (ex: hot checks")
____	____	____	11. Have the police ever been called on you?
			12. When did the last incident of violence occur? ____________

I authorize the release of the above information to other agencies for the sole purpose of determining eligibility for assistance in obtaining a protective order against the Respondent listed above.

____________ Date

____________ Applicant

Appendix G

Continuum of Family Violence

Continuum of Family Violence - Continuo de Violencia Familiar

Any of these actions can lead to:
Cualquiera de estas acciones pueden llegar a:

Physical Violence - Violencia Física

push	punch	slap	kick	throw objects	choke	use of weapons	**DEATH-MUERTE** homicide/suicide
empujar	golpear	abofetear	patear	lanzar objectos	estrangular	usar armas	homicidio/suicidio

Verbal/Emotional Violence - Violencia Verbal/Emocional

name calling	criticizing	insulting	ignoring	yelling	isolating	humiliating	**SUICIDE-SUICIDIO** depression/substance abuse
maldecir	criticar	insultar	ignorar	gritar	aislar	humillar	depresión/abuso de sustancia

Sexual Violence - Violencia Sexual

unwanted touching	sexual insults	unfaithfulness	false accusations	forced sex	**RAPE-VIOLACIÓN SEXUAL** hurtful sex
caricias sin desearlas	insultos sexuales	infidelidad	acusaciones falsas	sexo forzado	sexo doloroso

Without help, the violence usually gets worse. The end result can be death.
Sin ayuda, la violencia usualmente aumenta. El resultado puede llegar a la muerte.

For more information call the National Domestic Violence Hotline:
Para más información llame a la Linea Nacional Sobre La Violencia Doméstica:

Texas Council on Family Violence • PO Box 161810 • Austin, Texas 78716

1•800•799•SAFE (7233) **1•800•787•3224 (TTY)**

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