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Judicial Perspectives of the Effectiveness of Domestic Violence Courts

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Abstract

The domestic violence court evolved with the feminist movement. As women gained rights, domestic violence became perceived as a male domination issue, rather than a private family matter. The development of the courts was based on therapeutic jurisprudence, and feminist and deterrence theory. Research regarding domestic violence courts is largely based on the effectiveness of victim advocates and batterer intervention programs. There is little to no research regarding judicial perspectives of the domestic violence court. Through inductive analysis of interviews and court observations, I examined how judges perceive the effectiveness of the courts and their general knowledge of domestic violence. Findings indicated that veteran judges and novice judges perceive their roles differently, and have different foci related to the execution of domestic violence hearings. Further, judges perceive victim advocates and lawyers as positive aspects of domestic violence courts, but find weaknesses related to the roles of law enforcement and prosecution. From these findings, I draw implications for judicial training as well as possibilities for a coordinated community response.

Chapter 1

Since the 1970s, the United States has seen dramatic increases in gender equality in education and employment. For example, women currently surpass men in educational attainment, and wage gaps between men and women have been reduced (Blau & Kahn, 1994). Despite the movement toward gender equality, women continue to be victims of domestic violence, and injury inflicted by an intimate partner is the single largest cause of injury to women in the United States (Epstein, 1999; Maytal, 2008). Research indicates that as many as four million women experience different forms of abuse from intimate partners each year, with some studies finding that up to 64% of women in the population report physical abuse, sexual assault, and/or stalking during their lifetime (e.g., Maytal, 2008; Thompson, 2004). While increasing awareness of violence against women has contributed to important changes in criminal justice responses toward domestic violence, these systems are still influenced by social perceptions of and the extent of public knowledge about domestic violence (Carlson & Worden, 2002; Maytal, 2008). One relatively recent official response to domestic violence involves the development and utilization of specialized domestic violence courts, yet to date less scholarly research has focused on the way in which these specialized courts treat and affect domestic violence.

This introduction describes historical social perspectives of domestic violence in the United States and the traditional approach used by the courts to

deal with family conflict. I then explain how these approaches led to the development of domestic violence courts as a result of second wave feminism, and introduce the theoretical basis for these courts. Next, I define domestic violence courts and describe common aspects and goals of these courts, including strengths and criticisms of the approach. Finally, I explain how judicial behaviors and attitudes potentially affect the implementation of the court, and their effects on the parties involved in domestic violence cases.

The Evolution of Domestic Violence Courts

Historically, both society and the legal system perceived domestic violence as a private family matter and women were taught to expect and even tolerate such behavior from their spouses (Erez, 2002; Gerebenics, 1982; Shepard & Pence, 1999; Thompson, 2004; Tsai, 2000). Women were viewed as the “property” of their husbands, which empowered men to use “moderate chastisement” to force women to “behave” (Epstein, 1999; Erez, 2002, Gerebenics, 1982; Tsai, 2000). In other words, physical abuse was socially acceptable, as long as the tool used to inflict punishment was not larger than the husband’s thumb (hence the term “rule of thumb;” Erez, 2000; Tsai, 2000). Husbands were not held accountable for what would now be considered abusive behavior and, therefore, were not subject to formal sanctions (Gerebenics, 1982; Tsai, 2000). As such, the American courts avoided becoming involved in family conflicts (Danis, 2003; Tsai, 2000). Several 19th century court decisions illustrate this resistance (Erez, 2002; Tsai, 2000). *Bradley v. State of Mississippi (1824)*, *State v. Black*, and *State v.*

Rhodes upheld the husband's role as a disciplinarian and demonstrate the court's belief that the legal system should not interfere in family matters (Epstein, 1999; Gerebenics, 1982; Thompson, 2004; Tsai, 2000). The case of *Joyner v. Joyner* went further and ruled that a wife was not entitled to a divorce even if she had sustained injuries as a result of physical abuse from her husband. In this case, the court determined that wives were subject to the husband, and that physical abuse, even beyond the traditional "rule of thumb," was justified by the husband's need to govern his household (Erez, 2002). As a whole, these court decisions confirmed the dependency of women and the imbalance of power between men and women (Erez, 2002; Tsai, 2000). However, as societal views of domestic violence changed over time, the role of the legal system also began to transform (Erez, 2002; Tsai, 2000).

Major improvements in the legal rights of women began to occur in the late 19th century (Danis, 2003; Epstein, 1999; Erez, 2002). *Fulgham v. State of Alabama* was the first case to determine that husbands no longer had the right to physically abuse their wives and it also held that women should be allowed the same legal protections as their husbands (Fagan, 1996; Shaffer, 2004; Thompson, 2004; Tsai, 2000). Other courts quickly followed suit, and by the early 20th century, many states had codified domestic violence laws (Epstein, 1999; Thompson, 2004; Tsai, 2000). Although these laws were positive movements toward women's rights, evidence indicates that the laws were rarely enforced, and punishments were only invoked when severe injury occurred (Danis, 2003; Epstein, 1999; Fagan, 1996; Tsai, 2000).

In the 1970s, as a result of the second wave feminist movement, criminal justice responses to domestic violence were further improved (Danis, 2003; Epstein, 1999; Erez, 2002; Fagan, 1996; Labriola, Bradley, O’Sullivan, Rempel, & Moore, 2008; Shaffer, 2004; Thomspson, 2004; Tsai, 2000). For example, government programs, such as domestic violence shelters and batterer intervention programs were developed and scholarly research on domestic violence increased dramatically (Danis, 2003; Erez, 2002; Shaffer, 2004; Tsai, 2000). In particular, the development of batterer intervention programs signified that domestic violence was being redefined as a male dominance issue, rather than a private family matter (Tsai, 2000). However, the court’s understanding of how to respond to domestic violence remained vague, and courts continued to largely ignore domestic violence issues (Danis, 2003; Fagan, 1996; Thompson, 2004; Tsai, 2000). Until the late 1970s, a woman was unable to obtain a restraining order against her spouse unless she was simultaneously willing to file for divorce (Erez, 2002; Fagan, 1996). Substantial changes in the court’s approach to domestic violence did not begin to occur until the 1980s and 1990s, when legislative and policy reforms enabled victims to use “battered woman’s syndrome” as a legal defense, improved access to emergency relief for victims of violence, increased the criminalization of domestic violence, increased the use of batterer intervention programs, and reorganized court structures to create special court dockets specifically for domestic violence cases (Fagan, 1996; Labriola et al., 2008; Shaffer, 2004; Tsai, 2000).

Two key events, *Thurman v. City of Torrington*, and the passage of the Violence Against Women Act [VAWA] in 1994, accelerated the legal changes that were taking place during this time (Bouffard & Muftic, 2007; Danis, 2003; Epstein, 1999; Labriola et al., 2009; Mazur & Aldrich, 2003; Shaffer, 2004). In the *Thurman* case, the courts determined that the police department was negligent, and awarded the plaintiff 2.3 million dollars, thus motivating police departments to employ mandatory arrest policies and for officials, overall, to adopt a more proactive response to domestic violence needs (Danis, 2003; Saccuzzo, 1999).¹ Among other things, VAWA established funding for victim services and created federal pro-arrest laws for domestic violence (Epstein, 1999; Labriola et al., 2008; Mazur & Aldrich, 2003; Shaffer, 2004). Not surprisingly, as a result of these changes, courts around the country experienced a dramatic increase in the influx of domestic violence cases (Labriola et al., 2008). The complexities of domestic violence cases, and a need for a consistent approach toward domestic violence cases and increased court efficiency, prompted innovations in how the courts responded to domestic violence and many jurisdictions began moving toward the development of a specialized court docket for domestic violence cases (Labriola et al., 2008).

Theoretical Basis of Domestic Violence Courts

¹ *Thurman v. City of Torrington*, DC, 595 F. Supp. 1521 (1985) was a court decision concerning Tracey Thurman, a Connecticut woman who sued her local police department for violating her rights to equal protection under the law. On June 10, 1983, Tracey was brutally attacked, stabbed, and nearly killed by her husband. This incident was witnessed by police. The local police had continuously ignored signs of progressive violence and failed to enforce restraining orders issued to keep her husband away from her.

Attempting to address the weaknesses of the traditional approach to domestic violence cases, many jurisdictions began to develop a more coordinated response to domestic violence (Hart, 1999; Shepard & Pence, 1999; Tsai, 2000). Specialized domestic violence courts were implemented to encourage the participation of abused women within the legal system, while also reducing the likelihood that abusers would reoffend (Fagan, 1996; Shepard & Pence, 1999). There were three primary theoretical bases for these courts: therapeutic jurisprudence, feminist theory, and deterrence theory (Danis, 2003; Fagan, 1996; Shaffer, 2003; Tsai, 2000; Winick, 2002).

A theory of therapeutic jurisprudence developed as scholars began to recognize that mental health law often resulted in detrimental consequences for the individuals it was designed to assist (Tsai, 2000; Winick, 2002). For example, imposing jail sentences on mentally ill individuals may exacerbate mental illness due to increased stress invoked by the jail environment, improper medical care, and/or worsening economic conditions. The application of law is a social force that inevitably affects the psychological well being of those affected by law, either in positive or negative ways (Tsai, 2000; Winick, 2002). Therapeutic jurisprudence seeks to minimize law's anti-therapeutic effects, while enhancing the law's therapeutic potential (Tsai, 2000; Winick, 2002). Yet, therapeutic jurisprudence does not only involve analyzing the impact of legal processes, it also perceives court actors as agents who actively affect the psychological well-being of those involved (Winick, 2002). The impact of court actors, such as lawyers and judges, on individuals

affected by law is a potentially important aspect to consider when examining specialized court systems.

Alongside innovations in legal theory, feminist theory has also contributed greatly to the development and implementation of domestic violence courts. Feminist activists during the 1970s and 1980s argued that domestic violence is rooted in the structure of society rather than in the pathologies of individual men (Danis, 2003). These arguments helped to slowly change social perceptions of domestic violence, and consequently, courts began to recognize the complexities associated with combating domestic violence issues. For instance, the traditional court focused solely on offender accountability (Gover, Brank, & MacDonald, 2007). As domestic violence became known as a social issue, the courts recognized that outcomes for the offender may also result in negative consequences for the victim (Gover et al., 2007). This meant that the responsibility of the court was to respond to victim needs as well as offender accountability (Gover et al., 2007).

Finally, deterrence theory is also relevant in terms of the expected outcomes of domestic violence courts. Deterrence theory assumes that as domestic violence offenders are held accountable through the formal and informal sanctions imposed and enforced by criminal justice agencies, they will be discouraged from future abusive behavior (i.e., specific deterrence). At the same time, holding domestic violence offenders accountable should also prevent domestic violence within the broader community (i.e., general deterrence--Fagan, 1996; Shaffer, 2003). The specialized domestic violence

court attempts to deter individuals through increased offender accountability and batterer intervention programs, as well as by increasing domestic violence education by referring victims to appropriate social services.

Definition of a Specialized Domestic Violence Court

The development of specialized domestic violence courts was based upon the recognition that policy reform alone was not adequate for resolving domestic violence issues (Bouffard & Muftic, 2007; Eley, 2005; Hart, 1995; Thompson, 2004). As Hart (1995) describes, although victims were encouraged to confront domestic violence by seeking court protection, court responses were often inconsistent and/or focused on offender accountability rather than on victim safety. This was because, to that point, the courts did not have a consistent method for identifying problems and developing solutions for issues related to domestic violence (Hart, 1995). Other factors that contributed to the courts' inability to deal effectively with domestic violence included: no communication between public agencies that dealt with domestic violence; no means by which to monitor the adherence to practices and standards for individuals involved in the implementation of the court; and no system for evaluating the effectiveness of the courts or to integrate community involvement (Hart, 1995). Therefore, activists sought to develop a cohesive scheme to establish "goals of reform, the fundamental principles of intervention, the roles of each component, the merit of collaboration, and the necessity for public accountability" (Hart, 1995, p. 2). As a result of these goals, the specialized domestic violence court was launched.

While domestic violence courts vary widely between jurisdictions, there are several common features that can be identified (Weber, 2000). First, jurisdictions that utilize the specialized court have created dockets that only handle domestic violence cases (Fritzler & Simon, 1998; Weber, 2000). These domestic violence courts, often defined as “dedicated” courts, handle all of the criminal or civil cases (Weber, 2000). In other jurisdictions, the domestic violence court may focus solely on prosecutorial efforts by developing prosecutorial teams that work only on domestic violence prosecutions (Weber, 2000).

Along with separate dockets for domestic violence, some domestic violence courts are defined as “integrated domestic violence courts” (Mazur & Aldrich, 2003). Integrated domestic violence courts can be identified through their “one family/one judge” approach, which means that one judge will preside over all criminal domestic violence cases and related family issues involving mutual parties (Epstein, 1999; Mazur & Aldrich, 2003). For example, this would mean that one judge would work with a couple through all of their divorce proceedings, custody decisions, and child support claims following the issuance of a protection order. These courts also focus on monitoring offender compliance and increasing victim involvement by offering support with crucial family issues (Mazur & Aldrich, 2003). For instance, the exchange of children for visitations often impedes victim safety. The one judge/one family approach allows judges to be knowledgeable of potential problems that may occur between the parties and encourages

decisions that are best for that particular family (Mazur & Aldrich, 2003). To further ensure that families get all of the support they need, including support outside the courtroom, most domestic violence courts utilize an approach defined as a coordinated community response.

Coordinated Response to Domestic Violence: Are they Effective?

A common feature of many domestic violence courts involves establishing a coordinated community response (Hart, 1995; Shepard & Pence, 1999; Thompson, 2004). Through the coordination of courts, victim advocacy groups, social service agencies, and the medical community, domestic violence courts rely on a coordinated community response to accomplish goals related to both victim safety and offender accountability (Labriola et al., 2009; Shaffer, 2004; Thompson, 2004; Shepard & Pence, 1999).

Coordinated community response involves the development of teams that regularly meet to discuss the implementation, development, and improvement of the domestic violence court (Labriola et al., 2009). These teams usually consist of representatives from police departments, the judiciary, prosecutors, probation, and social services agencies (Labriola et al., 2009). These agencies coordinate to refer victims to appropriate social services and share information regarding domestic violence issues (Bouffard & Mutic, 2007; Epstein, 1999; Labriola et al., 2009). Further, coordinated responses go beyond traditional approaches by incorporating the utilization of batterer intervention programs separate from, or in conjunction with, other formal sanctions (Shepard & Pence, 1999). In certain integrated courts, this coordination includes a

comprehensive intake process in which the petitioner is able to obtain a variety of services in one location (Epstein, 1999).

Research indicates that such a response may be an important component to ensure the effectiveness of the domestic violence court (Hart, 1995; Labriola et al., 2009; Maytal, 2008). Although system-wide evaluations of the effectiveness of the specialized court are limited, Gamache, Edleson, & Schock (1988) determined that coordinated responses resulted in higher rates of arrest, more successful prosecutions, and forced participation in batterer intervention programs for offenders of domestic violence. Other research suggests that a coordinated response to domestic violence reduces recidivism and improves victims' opportunities to escape and refrain from returning to abusive relationships (Shaffer, 2003; Maytal, 2008).

Studies that analyze the comprehensive effectiveness of a community coordinated response suggest that offenders who were arrested and ordered to treatment were least likely to commit future acts of violence when compared to offenders who either were arrested but did not receive treatment or did not experience any sanctions (Shepard, 1999). Tolman and Weisz (1995) evaluated a county court system that incorporated some aspects of a coordinated response to domestic violence, including pro-arrest policies, and determined that offenders were less likely to reoffend if they were arrested, and that this effect was maintained for an 18 month period. Other studies that support the court's coordinated approach also indicated that abusive behaviors were reduced for offenders who had participated in an integrated domestic

violence court as compared to those who were processed in the traditional court (Gamache et al., 1988; Gover, MacDonald, & Alpert, 2003).

Research also supports the notion that a coordinated response is beneficial for the victim. For instance, in many jurisdictions, victim advocates explain court processes to the victim/ petitioner (Henning & Kelsges, 2009; Labriola et al., 2009). Gover and colleagues (2007) indicated that petitioners who favored the coordinated approach suggested that it would be ideal if court processes were better explained (the evaluated court did not proactively engage petitioners or respondents). Other data suggest that victims of domestic violence will seek outside intervention when there are more apparent resources and options available (Hart, 1995; Shepard & Pence, 1999). Therefore, the needs of a domestic violence victim are better addressed when there are multiple resources available (Hart, 1995; Shepard & Pence, 1999).

Although research suggests that a community coordinated response may be more efficient than traditional methods, the effectiveness has not been conclusively determined (Hart, 1995; Maytal, 2008; Shepard, 1999). The difficulty in analyzing the effectiveness of the approach stems from the fact that many agencies are involved and there are inconsistencies between jurisdictions in the implementation of the courts (Shepard, 1999).

Critiques of the Coordinated Community Response.

There are also criticisms of the approach. Utilizing a multidisciplinary approach involves the coordination of several different agencies (Kaye & Knipps, 2000; Hart, 1995; Shepard & Pence, 1999; Shaffer, 2004; Tsai, 2000).

While the involved agencies and individuals may have a systemic agreement as to the appropriate methods for delivering effective services to victims and offenders, the potential exists for inconsistent and conflicting goals regarding the implementation of interventions (Tsai, 2000; Weber, 2000).

One potential area for conflict is the assumed role for each actor. Opposing goals of the involved agencies may result in conflicts that reduce the overall effectiveness of the domestic violence court (Tsai, 2000). For example, in many jurisdictions, prosecutors are pressured to bring criminal charges against the defendant with or without the consent of the victim (Koss, 2000). Specifically, no-drop policies, which inhibit the victim from dropping criminal charges against an offender, are a common practice for prosecutors (Epstein, Goodman, & Bell, 2003). At the same time, advocacy services are responsible for ensuring victim safety and there is a great deal of evidence that victims may be subjected to heightened potentials for danger if criminal charges are aggressively sought, particularly when the victim does not want to pursue them (Epstein, Bell, & Goodman, 2003). Ultimately, while aggressive prosecution may send a public message that domestic violence is unacceptable, it may also disempower victims and increase their risk of future injury (Epstein et al., 2003).

Tsai (2000) identifies another criticism of domestic violence courts that involves the roles of criminal justice system. Initially, the focus of the court was to sanction the perpetrator based on the severity of his/her crime. However, domestic violence courts must also be concerned with victim safety

and their psychological well-being, as well as the rehabilitation of the offender. At a time when officials are pressured to treat domestic violence as seriously as any other crime, the utilization of specialized courts that take all of these concerns into account may send contradictory messages to victims, offenders, and the general public. For example, when offenders are required to participate in batterer intervention programs as an alternative to incarceration, some may perceive this as leniency toward the offender when in fact, the court may be utilizing alternatives in order to achieve the best possible outcome for individual cases.

Another criticism of coordinated community responses involves the subjective nature of enforcement (Tsai, 2000). Even if organized and consistent programs are in place, the legal system is only as effective as the many different individuals responsible for enforcing the laws (Moore et al., 2009, 2009; Labriola et al., 2009; Tsai, 2000; Winick, 2002). Although the past decade has seen great improvements, research still indicates that some officials continue to engage in gender biased behaviors despite programs designed to improve treatment and sensitivity toward victims (Epstein, 1999). For instance, some judges may not order the offender to batterer intervention programs for reasons related to financial difficulties, transportation, or simply because he/she believes that batterer intervention programs are ineffective (Austin & Dankwort, 1998; Tsai, 2000). Other research indicates that prosecutors may encourage victims not to pursue criminal charges because of a lack of available resources within a jurisdiction (Goodman, Bennett, &

Dutton, 1999; Tsai, 2000). Failure to hold offenders accountable for their actions may invalidate victim status and potentially result in fewer victims reporting.

Goals of the Domestic Violence Court

Victim Services and Safety.

Domestic violence courts differ from other problem solving courts in that they do not focus on victimless crimes (Labriola et al., 2009). For instance, drug courts involve nonviolent crimes in which the focus is solely on the defendant. Domestic violence cases, on the other hand, involve not only a victim, but a victim who is at an ongoing risk of being harmed by the same defendant (Epstein et al., 2003; Labriola et al., 2009). As a result, domestic violence courts have a responsibility toward victims that other courts do not (Labriola et al., 2009). Therefore, one of the main goals of domestic violence courts is to provide victim safety along with other services aimed at preventing future victimization.

Victim services involve victim advocacy, advocacy services, orders of protection, and courthouse safety (Moore, Picard-Fritsche, Labriola, O'Sullivan, Rempel, & Cissner, 2009; Labriola et al., 2009). Many domestic violence courts utilize specialized victim advocates. Victim advocates are mainly tasked with providing victims access to domestic violence services, but they also assist the court and the victims throughout the legal process (Moore et al., 2009, 2009; Labriola et al., 2009). Victim advocates are described as providing a range of services that include accompanying victims

to court, explaining safety planning procedures, linking victims with appropriate services, facilitating prosecution, and offering emotional support and counseling (Bell & Goodman, 2001; Moore et al., 2009, 2009; Labriola et al., 2009; Mazur & Aldrich, 2008).

Domestic violence courts also issue orders of protection to attempt to ensure victim safety (Labriola et al., 2009). Orders of protection are designed to inhibit contact between the offender (respondent) and the victim (petitioner). Violations of orders of protection can result in criminal charges or a charge of contempt of a court order (Danis, 2003). Research on domestic violence courts indicate that most courts issue temporary protection orders at the petitioner's first appearance or prior to the first domestic violence hearing (Labriola et al., 2009). When criminal cases are involved, domestic violence courts are even more likely to issue protection orders that inhibit or limit contact with the victim (Labriola et al., 2009).

Finally, another way that domestic violence courts may try to provide victim safety is through safety measures taken while the parties are within the courthouse (Moore et al., 2009, 2009; Labriola et al., 2009). Research suggests that judges, prosecutors, and other agencies involved with the court are quite concerned about the physical safety of victims attending domestic violence hearings (Moore et al., 2009, 2009; Labriola et al., 2009). Options for providing victim safety within the courthouse include separating petitioners and respondents prior to and during court hearings, and providing childcare throughout the hearing; unfortunately there is not research regarding

whether or not these options are effective (Moore et al., 2009, 2009; Labriola et al., 2009).

How Effective are Victim Services?

Domestic violence can have detrimental effects on the psychological state of the victim, and these effects are known to affect victim's behaviors regarding their engagement in the criminal justice system (DePrince, Labus, Belknap, Buckingham, & Gover, 2012). DePrince and colleagues (2012) found that community-based outreach has significant potential for decreasing levels of fear within women who received services. Other research indicates that victims who have worked with court advocates reported less abuse six weeks after the initial incident (Bell & Goodman, 2001). Finally, when victims receive a variety of supports, they are more likely to pursue the prosecution of their batterers (Allen, Bybee, & Sullivan, 2004).

On the other hand, victim advocates are limited in the amount of time and energy that can be devoted to each victim, and, as individuals, have the ability to negatively impact victims (Han, 2003). Disentangling a victim from an abusive relationship involves much more than providing the victim emotional support and information on court processes (Han, 2003). Research shows that although victim advocates are knowledgeable as to the reasons the victims remain in domestic violence relationships, they are also aware that it is ultimately the victim's choice to leave the relationship (Dunn, 2003). Due to the fact that many victims return to the abuser, this awareness can decrease a victim advocate's passion for empowering and encouraging victims which

may lead to negative experiences for the victim, and a reduced chance that the victim will return for additional services. Contrastingly, some victim advocates can also replicate the power and control that are used by the abuser (Han, 2003). Domestic violence victims are often in a submissive state, which allows them to be easily coerced or forced into action, such as obtaining an order of protection or pursuing criminal charges. This undermines victim empowerment, and reinforces victim beliefs that they are incapable of independence (Han, 2003).

There is some controversy over whether orders of protection have the capacity to protect victims from future abuse. However, research provides evidence of some positive effects of protection orders. For instance, Carlson, Harris, & Holden (2002) evaluated court records and police reports and determined that, among victims who received an order of protection, there was a 66% decrease in physical assaults reported to the police two years after the initial incident. These findings are supported by another study that showed that the overall rates of physical and psychological abuse reported to the police decreased within the first year after the protection order was issued. In this study, one third to one half of victims who did not obtain protection orders were likely to be physically abused, and half were likely to be psychologically abused within the first year. The comparative sample who did gain legal protection experienced less physical (12%) and psychological abuse (14%; Lumley, Wolf, Rivara, Kernic, & Holt, 2002).

Although research indicates that protection orders can be effective in deterring offenders from reoffending, some of these studies also indicate that these findings were moderated by offender characteristics, such as prior domestic abuse history, suggesting that other methods for deterrence must be utilized in conjunction with the issuance of protective orders (Carlson et al., 2002). A study conducted by Finn and Colson (1998) concluded that the effectiveness of protective orders relies on the specificity of the petition, the consistency with which police and prosecutors enforce the order, and the ease in which victims are able to obtain protective orders. Therefore, while evidence indicates that orders of protection may play a role in deterring abusive behaviors, the success of protective orders potentially relies on the aggressiveness of the authorities who are expected to enforce them.

Offender Accountability.

Another major goal of domestic violence courts is to hold offenders accountable for their behavior. One of the primary ways to ensure offender accountability is through court supervision. This may involve compliance monitoring through probation, judicial oversight, or responses to noncompliance (Mazur & Aldrich, 2003; Labriola et al., 2009). Probationary periods involve giving the offender an opportunity to avoid more serious consequences, but imposing more serious sanctions when he/she does not comply with court orders. These probationary periods are more likely in jurisdictions that focus on offender accountability, as well as those jurisdictions that have mandatory sentencing requirements (Mazur & Aldrich,

2003; Labriola et al., 2009). Judicial monitoring requires the offender to return to the court so that judges can determine their status and progress. If an offender has not complied with mandated court orders, the judge then has the ability to impose formal sanctions on the offender (Mazur & Aldrich; Labriola et al., 2009). And there is evidence that judges use this opportunity; in one study, approximately fifty percent of domestic violence judges reported imposing sanctions on noncompliant offenders on a regular basis (Labriola et al., 2009). It is important to note, however, that judicial monitoring in practice varies greatly between jurisdictions (Mazur & Aldrich, 2003; Labriola et al., 2009).

Another way in which domestic violence courts seek to ensure offender accountability is through the use of batterer programs. These may include batterer assessments, intervention programs, or other programs intended to reduce violent behaviors (Labriola et al., 2009). Such programs are designed to rehabilitate offenders and reduce the likelihood that they will engage in future violent behavior (Bennet & Williams, 2001; Labriola et al., 2009). Some domestic violence courts invoke batterer assessments and attempt to measure the risk the offender poses (Labriola et al., 2009). Mandating offenders to batterer intervention programs is more common within domestic violence courts, yet there is evidence that many courts order less than half of offenders to such programs (Labriola et al., 2009). Other offender programs that are likely to be ordered through domestic violence courts include alcohol

or substance abuse treatment, mental health treatment, and/or parenting classes (Mazur & Aldrich, 2003; Labriola et al., 2009).

Strengths and Limitations of Batterer Intervention Programs.

Although there are different types of mandated programs for domestic violence offenders, batterer intervention programs [BIPs] are the most common, and are often used as an alternative to incarceration (Tsai, 2000). Typically, the offenders are mandated to participate in group treatments, with varying lengths and types of treatment (Austin & Dankwort, 1998; Bennett & Williams, 2001; Tsai, 2000). Although research assessing the effectiveness of BIPs is contradictory, some studies have indicated that offenders who attend these programs do show less future violence than those who did not attend (Bennett & Williams, 2001; Tsai, 2000). For instance, in one study, first time offenders who were required to participate in BIPs for longer periods of time were significantly less likely to reoffend over a 6 to 12 month period (Syers & Edleson, 1992). Further, other research indicates that individuals who attend BIPs are less likely to further engage in emotional or psychological abuse as compared to individuals who did not obtain treatment (Klein & Orloff, 1999). Such positive effects of BIPs may be moderated by the frequency and intensity of treatment; offenders who are required to attend frequent sessions may be less likely to use violence simply because they are being stringently monitored (Gondolf, 2000). There is also some indication that BIPs may only be successful when accompanied by other court interventions such as compliance monitoring (Healey, Smith, & Sullivan, 1999).

As mentioned, however, there are several studies that contradict these findings, suggesting that BIPs may not be effective in preventing recidivism among batterers (Austin & Dankwort, 1998; Bennett & Williams, 2001; Tsai, 2000). Most notably, such research identifies the inconsistent and varying structure of BIPs, and there is no consensus regarding which practice is most effective (Bennett & Williams, 2001; Healey et al., 1999; Tsai, 2000). Administrators are not certain of the most effective methods for treating offenders (Bennett & Williams, 2001). For instance, it is unclear as to whether offenders respond better to group counseling or individual counseling and the appropriate duration for these programs (Bennett & Williams, 2001; Tsai, 2000). Another criticism of BIPs is that they waste resources; domestic violence services are often void of appropriate resources, and many suggest that batterer intervention programs are absorbing funds that should be allocated toward victims (Tsai, 2000). For these reasons, whether BIPs are truly effective at preventing future violence is inconclusive.

Court Efficiency.

As noted, one motivation for the development of domestic violence courts was due to the dramatic increase in domestic violence cases; the influx of these complex cases creates a need to handle them more efficiently (Labriola et al., 2009). For instance, Mazur & Aldrich (2005) report that twenty percent of all cases in New York City's criminal court system are domestic violence related, and that New York's victim assistance agency helps more than 900 people a month obtain orders of protection. While the sheer number of cases

is reason enough to develop specialized courts to increase court efficiency, it is important to address domestic violence cases quickly because of the likelihood that victims will withdraw from the process when cases extend over a number of weeks/months (Shaffer, 2004). Therefore, an efficient system including quick processing of domestic violence cases may contribute to victim safety (Labriola et al., 2009; Shaffer, 2004).

The Importance of a Dedicated Staff and Informed Decision Making.

It is also important that domestic violence courts are staffed by individuals with domestic violence expertise (Labriola et al., 2009; MacLeod & Weber, 2000). Many domestic violence court staffs consist of domestic violence coordinators, victim advocates, lawyers, and specialized prosecutors (Moore et al., 2009, 2009; Labriola et al., 2009). In addition, specialized domestic violence coordinators typically serve as a liaison between judges and other domestic violence court personnel, improving communication between agencies (Moore et al., 2009, 2009; Puffett & Gavin, 2004). Other domestic violence court actors assist in the collection of case information, provide petitioners with information regarding court processes, refer victims to social service agencies, and monitor offender behavior (Moore et al., 2009, 2009; Labriola et al., 2009). Several studies suggest that the involvement of dedicated staff improves the overall handling of domestic violence issues, which may ultimately enhance court decisions and interactions between the court and parties involved in domestic violence cases (Moore et al., 2009; Labriola et al. 2009).

In summary, domestic violence courts have a number of important goals. These specialized courts attempt to address both victim and offender needs through a coordinated community response that increases court efficiency, while also providing much-needed victim services. The evidence seems to suggest that they are, at least partially, effective, although there is not enough research to be conclusive. A key factor of a court's ability to meet these goals is the staff. There is evidence that domestic violence courts are more effective when the individuals involved are dedicated to eradicating issues of domestic violence. Perhaps the most crucial actor in these specialized courts is the judges. So what exactly is their role in fostering an effective process that attends to victim needs and offender accountability?

The Role of Judges within the Domestic Violence Court

Judicial perspectives on the effectiveness of domestic violence courts and their components are important to analyze because judges have the authority to impact the implementation, development, and improvement of domestic violence courts. Most research regarding court actors within domestic violence courts focuses on the utility and effectiveness of victim advocates (Allen et al., 2004; Hart, 1995; DePrince et al., 2012; Dunn & Powell-Williams, 2007; Mazur & Aldrich, 2003; Tsai, 2000). Judges, however, have more involvement in the administration of the court, and have the highest level of discretion in regards to decision making. Therefore, their perceptions about their role within the court, the effectiveness of protection orders, and the

benefits of a coordinated community response may encourage the standardization and further improvements of the court.

The Effects of Judicial Behavior on Petitioners and Respondents.

Therapeutic jurisprudence not only involves the ways in which the *law* impacts parties involved in domestic violence cases, but also considers the ways in which legal actors, including judges, lawyers, police officers, and victim advocates, impact these individuals (Tsai, 2000; Winick, 2002).

Whether or not these individuals are aware of it, their behaviors affect victims and offenders involved in domestic violence cases in a variety of ways. For example, interactions with courtroom actors, including judges, may impact whether a victim will return to the courts in future efforts to escape abuse. Other possible effects might include the imposition of additional trauma to victims and/or invalidation of victim status, and the reinforcement of abusive behaviors. While every individual involved in the implementation of domestic violence courts has the ability to affect the parties involved in these cases, I focus specifically on the effects of judicial behavior.

The role of judges within domestic violence cases is significant as the experiences that victims have with the criminal justice system can have an impact on their future behavior (Gover et al., 2007). As one of the many authorities that a victim may come into contact with, judges have the capacity to affect how victims respond to future abuses. For instance, many victims of domestic violence file several petitions for protection orders and then do not follow through with the process. Dropping protection orders before the court

has been given the opportunity to hear the case often occurs because many victims return to their abusers (Mazur & Aldrich, 2003). If a judge does not understand the reasons why victims often return to abuse, they may assume that the petitioner is simply attempting to manipulate the system and then their response to the victim may be negative. Negative responses from judges may then lead to victims being less likely to report future abuse.

In terms of judicial effects on offender behavior, research has consistently shown that the manner in which legal decisions are imposed has a powerful and independent effect on why people obey the law (Kaye & Knipps, 2000). For example, Gover et al., 2007 determined that domestic violence offenders are more likely to reduce violent behaviors when they believe that judges have treated them with integrity and respect (Gover et al., 2007). Research by Paternoster, Bachman, Brame, and Sherman (1997) suggested that reoffending by domestic violence offenders was more influenced by the manner in which judges imposed sanctions, rather than the severity of the sanction itself. Therefore, it is fair to assume that the manner in which judges approach offenders has the capacity to increase or decrease future violent behavior, and that successful outcomes can occur if judges are knowledgeable about domestic violence issues.

It is also important for judges to understand that the individuals involved in domestic violence cases may require additional services. Offenders may be repetitive perpetrators of domestic violence because of cognitive deficiencies regarding their relationships with others and/or because they lack the social

skills necessary to resolve issues without violence (Gover et al., 2007).

Victims may not only be experiencing consistent patterns of the cycle of abuse, they may have mental illness or substance abuse problems as well, although that clearly does not suggest that they are not entitled to the protection of the courts. If judges are cognizant of these factors, then they can make decisions that better benefit the parties involved in these cases.

Finally, as domestic violence courts become more popular in the U.S., it is of great importance that judges recognize the uniqueness of domestic violence cases and respond to them differently than they might respond to cases involving strangers (Kaye & Knipps, 2000). In order to effectively respond to domestic violence cases, domestic violence judges must acknowledge the problem solving goals of the domestic violence court (Kaye & Knipps, 2000), aiming to rehabilitate offenders and/or providing services that might resolve underlying problems, rather than focus exclusively on the adjudication of previous problems (Shaffer, 2004). Further, domestic violence judges have to seriously consider victim safety and rehabilitation, instead of solely focusing on holding offenders accountable for their actions (Kaye & Knipps, 2000). Although some would argue that it is not a judge's role to provide "therapy" while adjudicating these cases, judges do have the ability to be interested in and concerned about the parties' situation without crossing professional boundaries (Kaye & Knipps, 2000).

Research Objectives

As the previous section highlighted, judicial perceptions of their role and the effectiveness of components of the court may contribute to the standardization and improvement of future domestic violence courts due to judges' authority within the court. However, while criminologists have explored the development and structure of domestic violence courts, research on the judicial perspectives of the effectiveness of domestic violence courts remains limited. My research focuses broadly on the roles of domestic violence court judges, their understanding of the characteristics of domestic violence, and their perceptions as to the effectiveness of protection orders and partnering agencies.

Further, my research also focuses on how judicial perspectives are translated into courtroom behavior. Prior research has indicated that the effectiveness of specialized courts is only as successful as the individuals who incorporate its goals, and a dedicated staff is required to achieve these goals. However, research has yet to evaluate how judicial behaviors within the domestic violence court potentially affect the victims and offenders of domestic violence. This is problematic because if judicial behavior has the capacity to deter victims from pursuing orders of protection or following through with them, or otherwise might reinforce abusive behaviors of the offender, then analyzing judicial behaviors is an important step in reducing negative outcomes.

In this research, I explore judicial perspectives of domestic violence courts and domestic violence generally, as well judicial behaviors within domestic

violence court settings. More specifically, I ask: How do judges perceive the effectiveness of domestic violence courts and orders of protection? How do judges perceive the importance of other court actors within domestic violence courts? Do judges have a clear understanding of domestic violence characteristics? And finally, are their perceptions of domestic violence appropriately translated into their courtroom behavior?

Chapter 2

Research Design

In this chapter, I describe the approach I will use to examine the research questions addressed in my study. Drawing on personal experiences from employment as a domestic violence advocate and a therapeutic jurisprudence framework, my work focuses on judicial perspectives of domestic violence courts. I first examine judicial perceptions as to their role as a domestic violence judge in a specialized docket. Second, I analyze judges' overall perceptions of the effectiveness of domestic violence court and orders of protection. Related, I am interested in judges' perceptions of the role and importance of victim advocates and lawyers assigned to domestic violence courts. Finally, I question whether judges are knowledgeable about domestic violence characteristics and whether these behaviors translate into judicial behaviors during domestic violence hearings.

In the following sections, I delineate the research design and methods used to investigate these research questions. Next, I describe the settings for my study, the sampling strategies employed for my interviews, and my sample. I

also detail data collection and analytic techniques. Finally, I discuss the limitations to my study, while simultaneously addressing its strengths.

Study Settings

Basic Processes of both Domestic Violence Court Locations.

I conducted fieldwork and interviews within two courthouses located in two Midwestern counties (County A and County B). There are many similarities between the two settings that were evaluated. For example, because the study took place within a courthouse, when entering either building, individuals are required to comply with security standards, and then are allowed to proceed to their desired location within the building (with the exception of judicial chambers and other private offices).

The processes of filing a petition for an order of protection are also similar between the two counties. If an individual is attempting to obtain an order of protection, they will proceed to an office designated for filing orders of protection. In County A, this office is titled the Adult Abuse Office, while in County B, individuals proceed first to the Circuit Clerk Office to obtain the paperwork, and they are then directed to a conference room adjacent to the designated domestic violence courtroom. Once in these designated areas, the petitioner, the person who is filing for the order of protection, will meet with an individual or victim advocate who is trained in assisting with protection order paperwork. Once the paperwork has been filed, the locations have different methods of reviewing the file. County A sends the file to an on-call judge who determines whether or not an *ex parte* (or emergency) order will be

granted. County B has *ex parte* hearings on a daily basis, during which the petitioner is required to meet with the judge in order to determine whether an emergency order is necessary.

If the decision is made to grant an *ex parte* order of protection, the judge will set a hearing date for the purpose of determining whether or not an extended, or “full” order of protection will be granted. During these hearings, respondents (the person from whom the petitioner is seeking protection) are given the opportunity to confront the allegations, and decide whether they would like to consent to the order of protection, or contest the allegations and have the case heard before a domestic violence court judge. In both locations, if the respondent does not appear after being served the domestic violence hearing summons, decisions can be made by default, often resulting in the petitioner receiving a full order of protection.

In the case that a respondent subsequently violates the order of protection, the petitioner has the option of calling the police and having the respondent arrested. Not all violations of orders result in arrest, of course, but if a police report is made, then the petitioner has the option of meeting with the State Attorney’s Office and requesting that charges be incurred (County B), or filing a “Rule to Show Cause” in order to force the respondent to return to the court and confront the allegations regarding the violation of the order of protection within a criminal contempt hearing (County A).

Another similarity between the two counties is the one-judge approach. This approach means that all civil cases- including those related to orders of

protection, parentage, divorce, and guardianship cases involving the protection and custody of minor children (excluding criminal cases)- that involve the same parties will be presided over by one judge. Such an approach means that judges are more familiar with parties involved in civil cases.

Distinctions between the Courts

Development of the Domestic Violence Court.

Discussing the differences between the courts is important because they provide an overview of the factors that the court finds vital in combating domestic violence. Further, the structure and procedures of the court are often determined by the judges presiding over them. Therefore, providing a summary of these differences may provide insight on, or even influence judicial perspectives of domestic violence courts.

Distinctions between County A and County B domestic violence courts involve the motivations behind the court, as well as the resources utilized to develop the court. Information about County B's domestic violence court is quite limited, but does indicate that it was initiated in 1993 following the formation of local domestic violence councils (IFVCC, 2002) In contrast, County A was part of a federal initiative to implement the "Green Book" program and there is a great deal more information on its development available ("Protecting Families," n.d.).

Development of the County A domestic violence court began in 2001, when the Family Court of County A was selected as one of six sites across the

country to participate in the Green Book initiative (“Protecting Families,” n.d.). This initiative was designed to focus on specific issues related to child protection and the ways in which the courts respond to domestic violence issues that overlap with child maltreatment (Meier, 2003; “Protecting Families,” n.d.). Although all six sites that were originally included developed a multidisciplinary approach to the simultaneous occurrence of domestic violence and child maltreatment, County A has further focused on improving offender accountability “as a vehicle for achieving safety, wellbeing, and stability” (Meier, 2003; “Protecting Families,” n.d.). As a result of this focus, County A developed and implemented a Civil and Criminal Court Batterer Compliance Program.

County A also developed and implemented Child Orders of Protection (COP), which enable individuals within Child Protective Services to file orders on behalf of minor children (“Protecting Families,” n.d.). A COP will remove a batterer from the residence when it has been determined that an individual is likely to impose danger to children within the home (“Protecting Families,” n.d.). This relieves adult victims from having to file against the offender, which may potentially reduce tensions and danger that could have been inflicted upon the adult victim (“Protecting Families,” n.d.). Traditionally, conventional perspectives have placed the responsibility of child maltreatment solely on the mother, but this innovative approach holds male abusers responsible when appropriate, building an alliance between involved agencies and victims of domestic violence (Meier, 2003). Overall,

COPs provide yet another tool for promoting the safety of both child and adult victims (“Protecting Families,” n.d.).

Victim Advocate Roles and the Presence of Court Appointed Lawyers.

The presence of victim advocates was a mutual feature of both domestic violence courts. Common roles of the victim advocate include providing emotional support prior to and after court hearings, providing a general understanding of court processes, assisting/escorting victims to file additional paperwork when needed, and referring victims to appropriate social resources to resolve other problems.

Despite these similarities, there are distinctions between the two locations in how they provide advocacy. County A employs a Domestic Violence Coordinator who is responsible for developing/refining program policies, procedures and forms associated with the domestic violence courts, assisting the Family Court judiciary in identifying, routing, and docketing appropriate intimate partner adult abuse cases, obtaining and making available appropriate background information involving the parties, allocating sufficient time for hearings (while also being available to meet with parties prior to the hearings), and collaborating with volunteer victim advocates to ensure proper victim services. County B does not employ a specialized Domestic Violence Coordinator. Instead they rely on the local domestic violence organization to provide a victim advocate to be present daily to assist with victim services.

Other distinctions between the victim advocates in County A and County B involve their roles within the court. Advocates in both counties are

expected to provide emotional support, an understanding of court processes, and referrals to appropriate organizations. However, based on observations, County B advocates appeared to have more direct involvement with the victims. For instance, advocates in County B proactively seek out petitioners in order to discuss concerns *prior* to plenary hearings. These discussions may occur by phone or in person before the hearing. Further, throughout the plenary hearing, County B advocates will sit with the petitioner (as long as it is desired) and, while they cannot speak on behalf of the client, they can confer with the client as long as they are not offering legal advice. In County A, on the other hand, the petitioner and respondent stand alone in front of the judge unless the petitioner requests the advocate to stand with her. Advocates in County A are typically unable to follow up with petitioners between the *ex parte* decision and the plenary hearing.

Another distinction between the two locales involves the presence of legal counsel. In County B, lawyers are only present if the petitioner or respondent has acquired representation through their own resources, or if the petitioner has sought out assistance through *pro bono* lawyers who volunteer for either community legal assistance or through the local domestic violence shelter. In County A, although the available legal counsel do not represent petitioners or respondents, judges have access to legal counsel who serve as *guardian ad litem*s in cases that involve child protection orders.

Courtroom Safety.

County A and County B also differ in certain court procedures involving courtroom safety. For instance, Sheriff's deputies in County B are present prior to, during, and after each court hearing. They exude an authoritative attitude and demand that petitioners and respondents behave a certain way in the courtroom. Such behaviors include separating petitioners and respondents while they are seated in the courtroom and when they exit the building, proactively seeking out abusive behaviors of the respondent and reprimanding them for these behaviors, and making sure that petitioners and respondents are at a safe distance from the judge. For example, one sheriff deputy in County B repeated a short speech at every hearing in which she participated in. She would stand in front of the courtroom prior to the beginning of the hearing and tell everyone what to do when their names were called, indicated that they were to speak to the judge and not to each other, explained that if they were sent to another courtroom, they were not to ride in the same elevator or have contact in the hallway, and that when the hearing was over, regardless of whether or not an order of protection was entered, the parties were to leave separately, with the petitioner given the option to leave first.

County A clearly also offers court security, however, the ambience in the courtroom is quite different. Court security was not observed in court hallways or during domestic violence hearings. Instead, Court Security was only observed at the entrance and exits of the building and bailiffs were present within court hearings. The bailiffs in County A were observed telling the petitioners and respondents to sit on opposite sides of the courtroom,

however, this often occurred after several parties had already arrived. In contrast, both petitioners and respondents were “checked in” by a clerk and directed to seating by Court Security in County B. Safety was identified as an ongoing concern of County A; during the interviews one judge indicated that they intended on improving safety in the design of the new courthouse that is being planned. The improvements include placing a designated courtroom in the vicinity of Court Security officers and separating the petitioner and the respondent throughout the hearing.

Service of Domestic Violence Summons.

In both locations, respondents cannot be held accountable for any action until they have been “served” with a court summons. There are not typically costs associated with filing an order of protection due to efforts to preserve the safety of domestic violence victims, even though serving court participants with notices may involve a Process Server at the cost of the petitioner. In County B, if the petitioner attends the plenary hearing and the respondent is not present, and has not been served, the petitioner is given the option to have the case continued (for a period of three weeks) to allow the Sheriff’s office more time to serve the respondent. If the respondent is unable to be served after three hearings (nine weeks), then the petitioner has the option to serve the respondent through a “notice by publication.” In these cases, a notice is published in a local periodical, and if the respondent does not show for the next hearing (at week 12), then the petitioner will automatically be awarded an extended order of protection if it is still desired. County A also continues

cases in which the respondent has not been served. However, depending on the circumstances, they will typically only continue the case two times (usually over a period between one to four weeks). After that, the petitioner is allowed to hire a process server for around \$85 if they want to further pursue the order of protection; otherwise their order is dismissed without prejudice, meaning they can re-file at any time if necessary.

Distinctions in Offender Accountability.

While both counties attempt to hold offenders accountable by imposing formal sanctions, the sanctions and procedures for imposing these sanctions differ. In County B, for example, when an offender violates an order of protection, the petitioner must make a police report and then follow up with the State's Attorney office in order to pursue charges (in severe cases, the State's Attorney Office may pursue charges without the permission or request of the petitioner). County A, on the other hand, in an effort to promote efficiency and ensure offender accountability, has developed a criminal contempt docket which allows the petitioner to avoid police reports and reliance on the State's Attorney. Here, petitioners file a "rule to show cause" which summons the respondent to answer to the petitioner's allegations. If the judge believes that violations of the order of protection have occurred, then he/she can impose fines, sentence the respondent to participate in a batterer intervention program [BIP], or sentence him/her to jail time. County A also has a BIP coordinator who ensures that respondents are complying with court ordered programming.

County B also has the ability to force offenders to participate in batterer intervention programs but this only occurs when respondents have incurred criminal charges. Through my observations, I heard a few petitioners request that the respondent be required to participate in a BIP or substance abuse program and heard the judge indicate that he/she has the ability to do so, but chose not to because 1) the offender cannot be held criminally liable in a civil case for noncompliance, and 2) the offender is not likely to respond to treatment unless they choose to be rehabilitated.

Sample

This study draws from interview and observation data collected in 2013 from six judges in two Midwestern counties. These locations were chosen primarily because of accessibility to the judges. This accessibility was provided by my employment as a victim advocate in County B, and a professor who volunteers as an advocate in County A. Three judges from each county were interviewed. Purposive sampling was used to select the sample, as I wanted to only include judges who were presiding over domestic violence cases at the time of the study. Purposive sampling is ideal for finding participants who will provide data that are relevant to the research (Berg, 2009).

Initial requests for participation for County B judges were through direct contact with each of the four family court judges; three judges agreed to be interviewed. In order to contact County A family court judges, I first met with the Domestic Violence Court Coordinator [DVCC] for County A, who

provided emails for each of the six judges who preside over the domestic violence courts. There were six judges total and three participated in the study. Participation was voluntary and no monetary contribution or incentives were provided. In general, I found the judges to be quite willing to participate, though my employment and education also likely encouraged their participation.

Five out of the six judges were White males, while one judge was a Hispanic male. There was a great deal of variation in their level of experience with family law. Three had more than eight years of experience, while the other three judges had between three months and two years of experience in the family court division. Judges with more than eight years of experience were defined as “veteran” judges, while those with less than three years were defined as “novice judges.” Those judges with more than eight years of experience also had family law experience prior to their judgeship, while the judges with less experience as a family court judge had no family law experience prior to “taking the bench.” All judges were assigned to the family court division, although County A judges mentioned having some say about the types of cases they would preside over within their division.

All judges have continuing legal education [CLE] and Judicial College requirements. There is no required formalized training beyond this for those judges who preside over domestic violence courts. One judge did note that one hour of domestic violence training was required, but there was no validation of this requirement. Rather, the judges mentioned that the majority

of domestic violence education was obtained through self-education and experience. All six judges I interviewed stated that domestic violence seminars within judicial conferences were available, and two of the judges indicated that they had participated in one of these trainings, with one presently teaching the domestic violence course at the Judicial College. Judges from both counties stated that they met with the other judges in their division on a regular basis and discussed the status of their domestic violence courts.

Data Collection

Participants received a consent form at the time the interview took place that described the purpose of the study, assured confidentiality, and indicated that participation was voluntary and could be declined at anytime (see Appendix A). I also explained the content that would be discussed in the interview. All materials, including the consent form and interview guide, were approved by the University of Missouri-St. Louis Institutional Review Board prior to data collection (Package 433219-1).

The interviews were recorded using a digital recorder with the participants' permission. I used a semi-structured interview guide, but allowed for other themes and threads to arise and be addressed within the interview (see Appendix B for the interview guide). I drew on my own personal knowledge of domestic violence courts to develop the interview guide. I first asked about the judges' background and involvement with the domestic violence court. Next, I asked questions about their experiences with

those individuals and organizations that are partnered with the domestic violence court. Finally, I asked them about domestic violence and domestic violence courts more generally. I tried to limit questions due to the time constraints of a judge's schedule.

Upon finishing each interview, I also recorded field notes pertaining to demeanor, changes in tone, and pauses or hesitations. These field notes are important for interpreting qualitative data (Berg, 2009). The interviews were transcribed verbatim in order to maintain accuracy. I ensured this accuracy by continuously replaying sections of the recording.

The interviews ranged in length from 22 minutes to 71 minutes, with the average interview lasting approximately 39 minutes. The interviews took place within judicial chambers and consequently allowed the judges to discuss their perspectives without concerns for confidentiality.

In conjunction with the interviews, I also observed several domestic violence hearings. In County B, I was able to observe *ex parte* and full hearings, while in County A I was only able to observe full hearings. During these hearings, I recorded field notes that focused on the overall environment of the courtroom as well as the statements, facial expressions, and body language of individuals within the courtroom. It is important to note that the primary focus of my observations was on judicial statements and behaviors, as well as the verbal and behavioral responses of the parties involved.

Data Analysis

The analysis of the collected interviews and the court observations was an inductive process and I used open coding to determine prominent themes within the interviews and field notes (Berg, 2009). To begin, I read through the judicial interview transcripts, field notes, and the court observations and labeled reoccurring codes by hand. Specifically, I looked for themes that provided insight into judicial motivations and personal perspectives. Then, I went back through the transcripts and field notes and identified patterns and key topics. From there, I developed hypotheses. Open coding was more beneficial than selective coding for this process because I was able to uncover themes that may not have been discovered through selective coding alone (Berg, 2009). After I coded the observations and transcripts, I merged the data into a summary of prominent themes and interpretations of each category that was discussed in the interviews.

Comparative methods were also used to determine the presence of themes. This involved comparing statements within and across interviews, and separately, comparing them with behaviors described in observational field notes. The patterns identified and illustrated in this thesis represent the most common themes of judicial attitudes and behaviors I observed. I provided contextual information of domestic violence generally and domestic violence courts, so that similarities and differences are clear, and readers are able to evaluate my assessments.

Sample Strengths and Limitations

One strength of qualitative analysis is its potential for theory building or expanding existing theoretical frameworks (Berg, 2009). My research illustrates how borrowing techniques from other areas and coordinating community response can have positive effects on responses to domestic violence. Further, my research also compares the perspectives of the judges (i.e., attitudes) with their interactions with individuals involved in domestic violence cases (i.e., behaviors). Prior research on judicial behaviors in domestic violence courts focuses on the perceptions of petitioners and respondents regarding judicial fairness (Gover et al., 2007).

Since the sample of judges came from jurisdictions in two counties in the Midwestern region, they do not represent domestic violence courts in other areas. The sample is also non representative because domestic violence courts are known to have little consistency between them (Bouffard & Muftic, 2007). In addition, the sample included judges who were White males, with the exception of one Hispanic judge. This is a significant limitation because it fails to represent how female judges may perceive domestic violence and domestic violence courts, and allowed for no comparisons by race. However, qualitative research is not intended to be representative of large populations, but rather allows researchers to gain insight into individual experiences and perspectives (Berg, 2009). My research explores relatively new territory in its focus on judicial perspectives, and the ways in which these perspectives are transferred into interactions between judges and individuals involved in domestic violence situations.

CHAPTER 3

Judicial Attitudes of the Domestic Violence Court

This section analyzes judicial attitudes regarding domestic violence courts and domestic violence generally. Specifically, it examines what judges perceive is their role as a domestic violence court judge and their knowledge regarding characteristics of domestic violence. Then, the discussion moves to judicial perceptions of the effectiveness and utility of some of the common features of the domestic violence court.

Judicial Roles.

As previously noted, there was variation in the experience levels of judges who were interviewed, and this variation was apparent when evaluating what judges perceived was their role within the domestic violence court. Veteran judges perceived their roles as utilizing domestic violence statutes to provide safety for victims of domestic violence. For instance, one veteran judge in County A stated:

I think my job is to enforce the law and take opportunities where I believe there is a potential for violence and try to do something for them. The hardest cases for me are the ones in which I already know I am not going to enter an order because you can't get there [there isn't enough evidence to issue an order], but oh my God, you

are worried about sending them back on the street.

In addition to similar concerns for victim safety, veteran judges indicated that their roles changed when children were involved because of the potential impact of their decisions. One veteran judge stated:

And so, if it's a DV case with kids, my role is to stay within the lines [of the statute] and make use of those resources [lawyers who act as *guardian ad litem*s] rather than making a spontaneous decision...pure and simply on whether I think in the course of, you know, twenty minutes of each person testifying, who I believe and who I don't.

These statements suggest that the veteran judges believed that their roles as a domestic violence judge revolved primarily around providing safety for all parties involved and particularly for children.

Novice judges, on the other hand, indicated that while they were aware of unique dynamics associated with domestic violence cases, presiding over these cases was similar to any other case and involved more focus on evaluating the credibility of the individuals involved. For example, one judge stated, "I think our role is to weigh the evidence and decide whether or not there is sufficient basis for granting an order of protection, much like any other case." Another novice judge remarked:

I don't know that I perceive these [domestic violence cases] any differently that I do anything else as a judge. I recognize there are unique dynamics involved in the sense that, this isn't a straight divorce case, you're not dealing with the same sort of pressures, but it isn't much different than making decisions on other cases.

Further, novice judges suggested that their roles in the domestic violence court also involved a more distinct focus on evaluating the credibility of the victim. One novice judge stated:

I also try to look out for situations where someone is using the DV allegation as an offensive tool rather than really being a victim of it. So I think there is a greater likelihood of less than credible people involved, where typically in your divorce you don't have to judge credibility as much. You have to be careful not to be used as a judge; into believing that something exists that doesn't really exist.

Another novice judge mentioned that his role involved "sorting through the motions that cause people to embellish the truth," implying that some petitioners may exaggerate the severity of the situation. While these statements do not necessarily imply that novice judges are *not* concerned with

victim safety, they do suggest that novice judges may not be conscious that their roles within a domestic violence court are different than in other court divisions. They also imply that novice judges seem to be more focused on evaluating the credibility of petitioners and particularly whether or not they have ulterior motives for seeking protection from the court.

Judicial Understanding of Domestic Violence Characteristics.

Another theme that emerged in my analysis involved judicial knowledge regarding the characteristics of domestic violence. Judicial interviews suggested that those with more experience in family law had a better understanding of domestic violence. Specifically, veteran judges were better at identifying different forms of abuse and had a working knowledge of why victims fail to escape abusive relationships. For instance, when asked about those characteristics that might persuade judges to award an emergency order of protection one veteran judge stated, “If you say gun, knife, took my car keys, keeps me away from friends, those you can guarantee, I know all the buzzwords, I am not going to question it.” Although weapons may clearly represent a danger, the judge acknowledged that restraint (keeping the victim from leaving) and isolation are signs of danger that he considers in his judgment as well.

In contrast, when asked the same question, two out of the three novice judges described quite different criteria for granting orders of protection. One stated, “The biggest one [characteristics necessary for an emergency order of protection] is whether I find the person credible, whether there is an

immediate danger to the person. Some cases, there is no immediate danger.” Another novice judge said, “...the minute that anything along the line of any sort of physical contact whatsoever, you know, punched, kicked, choked, slapped... Anything physical I automatically grant it.”

Although experience did seem to be a factor in judges’ understanding of the possible forms of domestic violence, it is important to note that one novice judge did state:

Do I need to see signs of physical abuse?
Absolutely not. Do I need to see the written harassment? I prefer it, but I don’t necessarily have to. I mean I can get a sense by the way people testify as to whether or not these things are really happening or not. I take mental abuse almost as seriously as I do physical abuse.

Further, the fact that the other two novice judges did not specifically mention other forms of abuse does not necessarily mean they are unaware of them; however, it does give insight into their primary foci when considering a petition for an emergency order of protection.

Many petitioners do not ultimately follow through with orders of protection. Research suggests several reasons for this occurrence: love for the abuser, terror, financial dependence, isolation, shame, fear of the unknown, and the impact of ongoing abuse (Buel, 1999). Indeed, the consequences of domestic violence sometimes make escaping abuse a tremendous feat to

accomplish (Buel, 1999), and these characteristics of domestic violence are important for judges to understand.

Experience also appeared to influence judicial perceptions regarding a victim's failure to follow through with an order of protection. Veteran judges, two in particular, immediately referenced the above mentioned factors as reasons that petitioners fail to follow through. The other veteran judge also mentioned several types of factors associated with staying in abusive relationships and described the "cycle of abuse," which includes the "honeymoon stage"² that may occur after a domestic violence incident, as an important consideration in why petitioners may not continue with the process. In contrast, one novice judge, when asked why petitioners fail to follow through with their petitions stated:

I think it [failure to follow through] has to do with the petitioner using the order of protection as a temporary band-aid for a few days, to separate themselves from the conflict and then in a few days knowing they are going to go back. That is a trial separation, a tool to be used as a trial separation between parties.

Another novice judge said:

² The "cycle of abuse," originally described by Lenore Walker (1979) includes three stages. These three stages include: the abuse, the honeymoon stage, and the escalation stage. During the honeymoon stage, the abuser stops abusive behavior and asks for forgiveness, often swearing the abuse will not happen again. This is an important concept for judges to understand because domestic violence victims are often caught in this cycle. Therefore, victims may not follow through with orders of protection because they are not mentally prepared to leave the relationship.

The majority of people who file and don't show up...you know, I can only speculate because I really don't know. I think some people use it as a tool to get somebody out of the house, some people use it to see if they can wake the other person up and stop them from continuing the behavior...I think a lot of times, it's just really hard to get here, if you're the caregiver of children, if you can't get a ride to the courthouse.

Although this judge's statement did not clearly implicate the "cycle of abuse," it did suggest that he had some understanding that other factors may contribute to a petitioner's failure to follow through with a protection order. While two of the novice judges did mention financial and emotional dependence more generally, it was clear that the veteran judges were much more cognizant of domestic violence research and the dynamics of domestic violence.

Judicial Attitudes toward Common Features of the Court.

The Value of Orders of Protection.

A common social perception of orders of protection is that they are "only a piece of paper," suggesting that they do not have the capability of protecting victims of domestic violence (Logan & Walker, 2010). Although this perception may have basis in reality, all the judges I interviewed indicated that

the order of protection is a valuable tool in combating domestic violence. They all recognized that orders of protection are the only legal way for victims to gain relief from their abuser. For instance, one judge stated that orders of protection are important,

because that is the only way they [victims] are going to be able to separate from that person [offenders]. They are usually aggressive, they will find you, they will track you down, they will mentally and physically restrain you into the relationship, and without the teeth of the court and law enforcement, the percentage wise of being able to get out the relationship would certainly go down.

Another judge stated that, “A lot of times, it’s the only place that they [victims] can get relief.”

Although the interviewed judges indicated that orders of protection are the only legal remedy available to protect victims of domestic violence, three judges also mentioned that it is important for petitioners to understand that they are just “pieces of paper.” One judge stated

To an extent, they are just a piece of paper. But, both the respondent and the petitioner need to understand that that piece of paper brings with it some teeth, and that the court can effect

some remedy to protect them, but if they come to court only with the notion that it is just a piece of paper, and therefore, I am going to let the respondent have contact with me, then it doesn't do any good.

Here, the judge is suggesting that petitioners, in some cases, may not appreciate or follow the order of protection, and therefore, the order of protection is void of power. The other judge remarked

I say that [that it is just a piece of paper]. I do. If I tell them that, I am telling them that this paper is not what is going to keep them safe. They need to keep themselves safe. A lot of times an OP [order of protection] just agitates people who are already agitated and I put it in terms of I'm going to give this to you, but don't get a false sense of security because you have this piece of paper. It's just a piece of paper. I mean, if this piece of paper is going to defend you, good luck.

These statements suggest that while the judges recognize that orders of protection are important tools, they also believe that victim safety is partly the responsibility of the victim because the victim must also refrain from contact and remain vigilant about his/her safety.

Finally, two of the judges also implied that orders of protection may help validate victim status. For instance, one judge stated the orders of protection are valuable because "...it's that step of someone else is out there who is listening to you, not criticizing you, not telling you you're full of it." Another judge noted that abuse is often generational and can become a behavior that is normalized, or expected. The judge then stated, "You get no support from anyone, and then you realize you want to fight this, and this [the courthouse] is the first place you are going to go. And then you have an authority confirming that it [abusive behavior] is not okay."

Perceptions of a Coordinated Community Response.

By asking judges questions related to the importance of victim advocates and court appointed lawyers, I was able to determine that a coordinated community response is highly valued by the judges who preside over domestic violence courts. All six judges implied that the role of the victim advocate is necessary and appreciated. For instance, one judge stated, "Ours [victim advocates] are a part of the whole process. The people we have here are very important." Another judge also stated

Oh, it's significant [the role of the victim advocate]. We are always smart to have the petitioner talk to the victim advocate, apart from the hearing, either before or after, to answer some of the questions they have because, you know, they can't call me.

All six judges mentioned that the victim advocate was responsible for providing emotional support to the victim as well as providing a general understanding of court processes. Two judges further mentioned that the presence of victim advocates relieved them of therapeutic responsibilities. One judge stated, “Victim advocates talk to petitioners about their problems and refer them to services, so I don’t have to worry about that part.” The other judge said

Without them [victim advocates], I am not sure what the petitioners would do. I certainly don’t have the time to sit and talk to them about all their problems, and I am not even sure that’d be ethical for me to do so.

Other advocate responsibilities that were mentioned by the judges involved an ability to help the victim organize his/her thoughts for their petition statement, assisting the court with duties such as filling out orders of protection, and escorting the victim to court offices in order to accomplish additional filings. The work done by the victim advocate allows judges to focus on their job, which is ultimately decision-making for each individual case.

In County A, two of the three judges also discussed the importance of the lawyers who work within the domestic violence court (County B does not employ lawyers for the court). For example, one judge in County A indicated that the presence of lawyers, mandated by the Green Book initiative, was particularly important when children are involved in domestic violence cases

(“Protecting Families,” n.d.). In these cases, two County A judges explained that a lawyer will work with parents to establish a “parenting plan,” which determines visitation and possible temporary custody until a family case can be processed. In these cases, the attorney meets with the parents, and if the attorney gets the impression that the child is in a possibly abusive situation, the attorney will tell the judge, who will then appoint the lawyer to act as a *guardian ad litem* for the minor(s) involved. The *guardian ad litem* will then investigate the situation and return with recommendations to the court. One of the judges indicated that with the time constraints present in domestic violence cases, this is an important feature for the efficiency of the court.

Judges were also asked about their perceptions regarding law enforcement’s responsibility to provide referrals to the court. All six judges mentioned that police officers referred petitioners to the court too often, meaning that there are cases that are referred that do not warrant the issuance of an order of protection. For example, one judge said:

Police are significantly more sensitive now than they were fifteen years ago to the needs of people who are involved in DV situations. But having said that, I know that a lot of police officers use ‘get an order of protection’ as a means of getting out of conversation on the streets. I also suspect that a police officer says in a tone that indicates that ‘if you’re unhappy

with what's going on, go get an order of protection.'

Similarly, another judge stated:

It is certainly the case sometimes that the police will say 'go file an order of protection' when they have no clue, they just don't want to deal with it. So I think they ought to not send people to do that, but they should err on the side of caution.

Although five out of the six judges indicated that police officers used the referral as a way of avoiding or escaping unwanted conversations on the street, most of these judges also suggested that it is possible that the petitioner misinterpreted the officer's directive. For example, one judge stated, "...by the time they get to us we hear 'the police told me to come here and get an OP', which may not be what the police said at all, it gets lost in translation." One judge noted that he was aware that many judges felt this way, but that he believed that the referral by the police is ultimately intended to assist petitioners through situations involving domestic violence and not merely as a way to defer responsibility.

Finally, one judge noted the importance of prosecution in domestic violence cases. Although it was not a direct question in the interview guide, one judge elaborated on a question and suggested that criminal prosecution of violations of orders of protection was not as high of a priority as it should be,

and that proper enforcement is an important factor in reducing future incidents through specific and general deterrence. The judge indicated that criminal prosecution for violations of orders of protection often involves a long period of time until trial and this is not sufficient in domestic violence cases because, as time elapses, the likelihood that the victim will be involved in the case diminishes. The judge suggested a “rocket docket” especially for domestic violence cases that would result in quicker prosecution of violations of orders of protection. While this County does have specialized prosecutors assigned to expedite domestic violence cases, the judge believes that it is still not sufficient and was ultimately the reason the County developed the criminal contempt docket. Although criminal dockets were not included in my research, this judge’s perception of the prosecution of domestic violence cases provides insight into potential limitations of the coordinated approach.

Summary

Overall, my findings indicated that veteran judges perceive their roles within the domestic violence court differently than novice judges. Specifically, veteran judges are more focused on victim safety as opposed to determining whether or not the petitioner is manipulating the system in order to remove an individual from the house, or in an attempt to suspend the other parent’s visitation rights. Veteran judges also seemed better able to identify certain domestic violence characteristics than novice judges.

The interviews verified the utility of orders of protection and suggested that they had the potential for validating victim status. However, three judges

also noted that victims need to be aware that orders of protection can only protect them if they are willing to protect them self. Overall, judges indicated that the utilization of both victim advocates and specialized lawyers relieved them from having to act as counselors within the domestic violence court, while also reducing time constraints and therefore allowing judges more time to hear other cases. This discussion also revealed that judges believe that unnecessary situations are referred to the court by law enforcement officers seeking to refer cases out of his/her hands, which may impede court efficiency.

CHAPTER 4

Judicial Behaviors within the Domestic Violence Court

In this chapter, I examine how judicial attitudes were translated into courtroom behaviors. Specifically, I compare judicial perceptions of the effectiveness of the domestic violence courts and domestic violence generally with their behaviors in the court. It is important to note that judicial behaviors do not necessarily reflect the attitudes or moral composition of the judges as each case is unique and requires an individual approach. However, observations of judicial behavior can provide insight into the extent to which their actions in the courtroom align with their stated perceptions.

Judicial Roles.

Court observations were generally supportive of the notion that veteran judges were more focused on victim safety as opposed to determining whether

or not the petitioner was manipulating the system. For example, none of the veteran judges was observed making statements about the motives of the petitioner, although this was observed on three separate occasions within a novice judge's hearings. In the first of these observations, the petitioner's allegations were that the respondent was threatening to conceal the parties' mutual child. Before hearing testimony, the judge expressed concern that the petitioner had filed for the protection order because the respondent had filed a separate motion, petitioning the court for custody and visitation a few days prior to the petition for the order of protection. In another hearing, the respondent stated that the couple had been separated for a period of ten years, and that he owned the house that he had been made to vacate. The respondent stated that he had let the petitioner move in for health reasons, but that he had asked her to leave once she was better because she had brought her son to live there too, a man with substance abuse issues who stole and pawned his property. He stated that the petitioner's motivation was to remove him from his own home because she had nowhere to go. The petitioner denied this and alleged several forms of abuse, but the judge denied her petition and stated that he believed that it was her intention to manipulate the court. He ended the hearing by shouting that she had better, "Never return to this court again." Finally, in another hearing, the petitioner alleged that she was trying to end her relationship with the respondent, but that he refused to leave the house, and would instead get intoxicated and keep her up at night. The judge stated that he was getting the impression that the petitioner was simply trying to

evict the respondent. Focusing on the possible motivations of the petitioner may be problematic for victims of domestic violence because it may shield judges from recognizing more subtle forms of abuse.

Judicial Behaviors and an Understanding of Domestic Violence

Characteristics

Recognition of Different Forms of Abuse.

Court observations also suggested that veteran judges considered a number of different forms of abuse in their decisions to grant orders of protection. For example, in one hearing, a veteran judge issued an order of protection for a petitioner who claimed that her boyfriend was threatening her sobriety because he had relapsed on alcohol and refused to leave. There were no threats of physical violence, only emotionally abusive behaviors. In another hearing, the petitioner alleged that the respondent consistently harassed her, hid her phone and car keys, and made comments such as “you don’t just talk to me when you want to.” The respondent attempted to plead the fifth amendment (not applicable in civil cases) and stated that he would not admit anything. The judge said, “You don’t have to” and entered an order of protection. In yet another case, the petitioner alleged that the respondent consistently refused to return her child to her and was using the child in efforts to control her. The respondent claimed that the petitioner was not allowing him to see his child enough, and claimed that she had only filed for the order of protection because he had a family case open in another state. The veteran judge ultimately stated that, “I am not sure exactly what is going on,

but I believe that something is awry. Sir, I believe you have negative intentions, and therefore, I am going to issue this order.” None of these cases involved physical violence, yet the veteran judges still issued full orders of protection suggesting that they recognized more than just the obvious forms of violence and understood other dimensions of domestic violence.

In contrast, court observations suggested that novice judges may depend on the presence of more evidence in order to be confident that domestic violence is the issue. One example involves a hearing in which the petitioner alleged that after she ended the relationship, the respondent started stalking her, leaving items and notes on her car and at her home. The petitioner further stated that the respondent had been charged with domestic battery in the past, and that his past history was one of the reasons for her concern. The judge stated that although the respondent’s behaviors were somewhat “obsessive,” they did not indicate serious abuse because the behaviors were the result of a breakup, rather than characteristic of domestic violence. Here, the judge’s response potentially ignores the progression of violence because although “red flag” characteristics of abuse may have been present throughout the relationship, they do not always materialize until the abuser has lost power and control over the situation (Smith & Segal, 2013). In another hearing, the petitioner alleged that her husband refused to leave and forced her to have sex with him, and that she allowed him to have sex with her because he was usually intoxicated and she did not feel that she could stop him. The petitioner further stated that she was unable to function properly because of

his behaviors, stating she could not sleep, work, or focus. The judge specifically asked if there was physical abuse, and whether or not the petitioner was afraid of the respondent. The petitioner stated there was no physical abuse (although marital rape is considered a form of physical abuse; Smith & Segal, 2013), and that she was a “little” afraid of him. The judge stated that she had not proven her case and dismissed the petition. Being able to recognize multiple forms of abuse is particularly important for judges presiding over domestic violence cases because failure to recognize less obvious forms of abuse may potentially result in more severe abuse for domestic violence victims.

Recognition of the Cycle of Abuse.

The behavior of veteran judges also suggested that they were more aware of the “cycle of abuse.” For instance, there were several instances in which petitioners would request to vacate their petitions for an order of protection. Two veteran judges were in the habit of asking questions as to why the petitioner was dropping the order. The questions were not accusatory, rather, they included: “How has his behavior changed?” or “Has anyone coerced you to do this [vacate the order of protection]?” Two veteran judges were also observed requesting petitioners to speak with an advocate before vacating the order of protection. After the petitioner explained his/her position, one veteran judge always told the petitioner to return to the court if the behaviors reignited. These are important behaviors for domestic violence judges

because they validate victim status, while assuring the victim that they may return to the court if they find themselves in abusive situations in the future.

Novice judges, on the other hand, did not have similar habits related to a petitioner's failure to follow through with an order of protection. Although I have not generally included *ex parte* hearings in these discussions due to procedural differences between the two locations, I feel that it is pertinent for this section because one novice judge's behavior concerning the petitioner's potential to vacate protection orders was in complete opposition to the veteran judges' approach. For example, in one particular *ex parte* hearing, several of the petitioners had prior orders of protection that had been vacated. The frustration of the judge was apparent, and he asked the petitioners several questions related to the reasons they did not follow through with the order. Some of these questions included: "Why did you go back to him if he blacked your eye before?" "How is the court supposed to protect you if you don't protect yourself?" "Why should I believe that you are going to follow through this time?" While these responses are clearly contrary to those of veteran judges within full order of protection hearings, it did not seem as though the judge was trying to blame the victims, but rather that he was concerned and wanted the victim to see the reality of her situation. Further, it is also important to recognize that *ex parte* hearings only involve one side of the parties involved, and other court observations did not suggest that the judge would have responded similarly had the offender been present in the hearing.

Regardless, the behavioral responses of both veteran and novice judges suggested differences in the acknowledgement of the cycle of abuse.

Willingness to Work with Victim Advocates and Lawyers

Court observations also suggested a willingness of judges to utilize victim advocates and court-appointed lawyers; exhibited by consistent requests for assistance. For instance, in County B, the judges empowered victim advocates to fill out full orders of protection and assist the parties in establishing child visitation schedules. This allowed the judges to move on to other cases, improving the efficiency of the court. When County A judges were concerned about a victim's request to vacate an order, they requested the petitioner talk to a victim advocate, which reduced the need for the judge to act as a therapeutic agent. Judges in both counties were observed asking for additional assistance for a variety of tasks, such as escorting petitioners to other departments or agencies. For example, one judge in County A had an advocate aid a petitioner in filing an address change so that the respondent could be served. In County B, another judge had the victim advocate lead the petitioner to the jail to gain possession of house keys from a respondent who was in custody.

Judges also demonstrated appreciation for the presence of court appointed (County A) or *pro bono* attorneys (County B). For instance, whenever cases involved child protection orders in County A, the judge would often only speak to the parties for a few moments before sending them off to speak to an attorney. Then, the judge would move on to another case, increasing the

amount of time that he could allocate to other cases. County B did not have court-appointed attorneys; however, the local domestic violence organization had a program where volunteer attorneys would assist with cases in which the respondent had an attorney. In one case, the domestic violence organization did not have a volunteer attorney and although the respondent's attorney attempted to object the petitioner's motion to continue the case, the judge denied the objection telling respondent's attorney, "You know how I feel about having a level playing field. Your client still has visitation [with the minor children], and if [the local domestic violence organization] does not have a *pro bono* attorney next week, I will find one somewhere in the building myself." This last statement indicates that the judge in County B valued fairness within domestic violence litigation, which is important because when petitioners are not represented by counsel, but respondents do have counsel, petitioners are often unable to articulate the full degree of abuse because lawyers know how to use the rules of evidence to stop them.

Summary

To summarize, court observations supported the notion that novice judges may be more focused on evaluating the motives of the petitioner rather than focusing on victim safety. Analyzing whether or not the petitioner is attempting to manipulate the court system is surely a determination that judges have to make, however, voicing these concerns toward legitimate victims may reduce the likelihood that victims will report abusive behaviors in the future and may reinforce violent behaviors of the offender.

Veteran judges were also more cognizant of the “cycle of abuse,” and therefore more likely to encourage victims to return to the court if they did choose to vacate the order, suggesting that they recognized the impact that they might have on the victims. Further, it is important for judges to understand the cycle of abuse because, as the highest authority within the courtroom, their responses to victims of domestic violence set the standard for others and potentially society in general. If judges exhibit discontent when victims fail to successfully escape the relationship, their behaviors may support traditional victim blaming behaviors.

Veteran judges also appeared to rely more on their personal feelings about a case, rather than relying strictly on case evidence. The burden of proof within civil cases is the lowest standard of evidence (i.e., a preponderance of the evidence), and this may be particularly beneficial in domestic violence cases because judges are allowed to make decisions based on their beliefs about each individual case. Many forms of abuse present in domestic violence relationships are not conducive to producing evidence, such as cases involving marital rape or psychological abuse. Therefore, it is important for domestic violence judges to use their intuition, based on experience and knowledge about the dynamics of domestic violence, to determine the likelihood that domestic violence is present in each individual case.

Finally, judges appeared willing to utilize advocates and legal counsel. The presence of these resources allowed judges to avoid counseling domestic violence victims, while also allowing them to move ahead with court

proceedings. Because of the large number of domestic violence cases on each docket, and the need for each case to have sufficient time to be heard, judges appeared to be reliant on the additional resources in the courtroom.

CHAPTER 5

Implications

The Need for Increased Training and Dedicated Judges.

Examining judicial perspectives of domestic violence generally and of the effectiveness of domestic violence courts is important because judicial responses to domestic violence have a substantial impact on the prevention, reduction, and resolution of domestic violence issues. As mentioned by most of the judges I interviewed, utilizing court processes is often the only avenue that victims of domestic violence have to escape abuse and hold offenders accountable for future abuse. Therefore, victims rely on judges to be knowledgeable about domestic violence issues, and to be invested in the mission of the domestic violence courts. Further, research indicates that specific and general deterrence are potentially successful at reducing future violence (Carlson et al., 1999), suggesting that judges have a responsibility for holding offenders accountable for their actions.

Research suggests that an important feature of domestic violence courts involves the presence of dedicated staff and this research is supported by the judicial interviews conducted in this research (Moore et al., 2009, 2009; Labriola et. al., 2009). My findings suggest that dedicated judges demonstrate more devotion to the implementation of the court as well as a better

understanding of domestic violence characteristics. This provides insight into the importance of educating new judges to the domestic violence court on domestic violence issues. Perhaps as part of, or in addition to CLE and Judicial College requirements, judges who are entering the domestic violence court should be required to attend domestic violence training. An alternative would be to require new judges to the court to undergo an evaluation of their knowledge on domestic violence issues. Another suggestion would involve having judges who are experienced in the family court division observe other judges and provide them feedback regarding any concerns. In fact, it may be even more valuable to have an objective domestic violence professional periodically attend hearings and provide feedback to the court. Finally, it may be beneficial, when possible, to request that judges entering the family court division *volunteer* (versus being assigned) to preside over domestic violence cases to ensure that they are motivated and passionate about case outcomes.

Many of the interviews and observations suggested that a possible negative influence on judicial perceptions and behaviors involves the presence of petitioners who have ulterior motives for filing petitions for orders of protection. Judges indicated that some petitioners use the domestic violence court as a means to evict someone from the home or in an attempt to suspend visitation when there is no legitimate reason. While four judges indicated that they did not allow these concerns to affect their decisions, two judges indicated that it did play a role, and there were court observations to support

this notion. The influence of potentially illegitimate cases on judicial decision making is of great concern because judicial behaviors have been shown to affect future behaviors of victims and offenders (Gover et al., 2007). While it is important that judges do not allow abuses of the domestic violence statute to occur, it is equally important for judges to reduce stereotypes that may, overall, reduce victim safety.

These findings further support proper education of domestic violence judges regarding domestic violence issues, and suggest a need for judges who are motivated to preside over these cases. Although the role of a judge is to weigh evidence and make decisions based on that evidence, domestic violence cases incur the need for additional inquiry about the abuse history and individual case characteristics (Tsai, 2000). For instance, domestic violence research indicates that victims are the only individuals who are aware of when it is safe and appropriate to leave an abusive relationship. Although levels of danger may appear low at the time the victim has filed for the order of protection, if judges gather more information about the history of the relationship and of the respondents themselves, they may determine that a protection order is crucial for the victim to escape abuse. An option for screening domestic violence cases may involve providing judges with a list of situational characteristics that they should investigate before final decisions are made, which may include asking petitioners what they have experienced throughout their relationship with the respondent.

Suggestions for Certain Aspects of a Coordinated Approach.

Research suggests that a coordinated community response may prove to be a successful approach toward adjudicating domestic violence cases (Hart, 1995). Although there are criticisms of a coordinated community response, reverting back to the traditional court model would eliminate much-needed victim services and rehabilitative offender programs. Judicial interviews and court observations validated the utilization of certain aspects of a coordinated community response within domestic violence courts. All the judges greatly appreciated the victim advocates, with three judges indicating that the role of the victim advocate was “highly significant” for the effectiveness of the courts. Court-appointed lawyers were also helpful in County A, especially for drafting parenting plans and determining whether individual cases involved child maltreatment. Although prior research suggests that conflicts may erupt between agency goals, the judges in my study seemed to invite the presence of other individuals who can assist the court and provide victim services because it makes the court more efficient and relieves them of acting as a counselor. Therefore, although definitive conclusions about the effectiveness of a coordinated approach cannot be made with my research, and it is important to note that only one portion of the approach is evaluated here, the evidence does suggest that victim advocates and lawyers serve an important role within the court.

Interviews also implied that judges believe that better communication between law enforcement and prosecutors may be beneficial for the effectiveness of the domestic violence court. Specifically, the judges

suggested that police officers should be knowledgeable about which cases to refer to the court, and prosecutors should make domestic violence cases a special priority. These findings suggest that better communication between the agencies may result in a more efficient court. For example, if officers are informed of who qualifies for an order of protection, and in which situations an order of protection may be appropriate, fewer inappropriate cases may come into the court. A reduced number of illegitimate cases may have multiple benefits for the court, including more time to assist in cases that do involve domestic violence and a potential change in judicial perceptions that some petitioners are manipulating court systems for his/her benefit. Further, if domestic violence court staff and State's attorney staff effectively communicate, domestic violence cases may gain priority, and result in better outcomes for victims of domestic violence.

Conclusion

Prior research indicates the importance of dedicated staff within domestic violence courts (Moore et al., 2009, 2009; Labriola et al., 2009), and my study revealed significant differences between veteran and novice judges. Veteran judges appeared to focus on victim safety and have more knowledge of domestic violence issues, as opposed to novice judges who appeared to be more focused on petitioner credibility and were not equally versed on domestic violence research. For this reason, training and education are clearly important for ensuring that judges are knowledgeable about the complexities associated with domestic violence cases. At the same time, judicial behaviors

also have the capacity to affect the psychological well-being of victims, and possibly reinforce abusive behaviors of the offender. Therefore, it is important that judges who are passionate about domestic violence issues are those who are chosen to preside over these cases.

While research shows that judicial response has the capacity to affect the behaviors of victims and offenders (Gover et al., 2007), it is also important to discuss the potential effects that illegitimate cases may have on judicial perceptions. Judges suggested during the interviews that, in order to improve the domestic violence courts, time and resources must be available and it appears that a possible contributor to reduced court efficiency involves the presence of illegitimate cases. To put it simply, individuals with ulterior motives of manipulating the court in order to benefit themselves can potentially influence the primary focus of domestic violence court judges. If judges come to perceive that the court is often used as a tool, rather than as a legitimate means of protection, then they may incorrectly scrutinize the intentions of the petitioner. When a legitimate victim is invalidated and/or revictimized by an authority, they may be less likely to report future crimes or seek assistance from other organizations (Gover et al., 2007). The potential for invalidating legitimate victims suggests the need for specialized training for domestic violence judges, in addition to measures taken to reduce the occurrence of illegitimate filings.

In summary, future research should continue to analyze the relationship between experience and judicial perceptions of domestic violence courts, and

expand this research to include female and minority judges. Further, future analysis involving the examination of the relationship between judicial perceptions and judicial behaviors may also be beneficial. By further studying judicial perspectives regarding the effectiveness of the court, the community can gain insight into standards that should be implemented in all domestic violence courts. Additional research should focus on individual/agency perspectives involving the implementation of the domestic violence courts in efforts to reduce the amount of agency conflict. Although my study suggests judicial support for utilization of domestic violence courts, research on the effectiveness of these courts remains inconclusive because it is difficult for scholars to evaluate a system with little to no universal standards. Therefore, initial goals in the future development of domestic violence courts should involve evaluations of each aspect of the coordinated approach so that collective standards of domestic violence courts may be developed.

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Appendix A: Consent Form



Department of Criminology & Criminal Justice

8001 Natural Bridge Road
St. Louis, Missouri 63121-4499

Informed Consent for Participation in Research Activities

Judicial Perceptions of Domestic Violence Courts

Participant _____

HSC Approval Number _____

Principal Investigator ____ PI's Phone Number ____

-
1. You are invited to participate in a research study conducted by Monica Wingler and Kristin Carbone-Lopez. The purpose of this research is evaluate judicial perceptions regarding the effectiveness of specialized domestic violence courts.
 2. Your participation will involve an in-person, semi-structured interview conducted by the principal investigator. The interview will include questions regarding the effectiveness of specialized domestic violence courts, orders of protection, advocates, and past judicial decisions. Approximately 15 judges may be involved in this research at the University of Missouri-St. Louis. The amount of time involved in your participation will not exceed 45 minutes.
 3. There are no known risks associated with this research.
 4. There are no direct benefits for you participating in this study.
 5. Your participation is voluntary and you may choose not to participate in this research study or withdraw your consent at any time. You will NOT be penalized in any way should you choose not to participate or withdraw.
 6. We will do everything we can to protect your privacy. As part of this effort, your identity will not be revealed in any publication that may result from this study. In rare instances, a researcher's study must undergo an audit or program evaluation by an oversight agency (such as the Office for Human Research Protection) that would lead to disclosure of your data as well as any other information collected by the researcher.

- 7. If you have any questions or concerns regarding this study, or if any problems arise, you may call the Investigator, Monica Wingler at (217) 638-2323 or Kristin Carbone-Lopez at (314) 516 5426. You may also ask questions or state concerns regarding your rights as a research participant to the Office of Research, at (314) 516-5897.

I have read this consent form and have been given the opportunity to ask questions. I will also be given a copy of this consent form for my records. I hereby consent to my participation in the research described above.

Participant’s Signature

Date

Signature of Investigator

Date

Appendix B: Interview Guide

Interview Guide

To begin, I'd like to ask you some questions about your background and your involvement with the domestic violence court.

1. How did you become involved in the domestic violence court? Was it voluntary, were there some incentives, or are you simply assigned to this court? Was there any domestic violence training involved? If so, is this training ongoing? How long have you been presiding over these cases?
 - a. What type of law did you practice before becoming a judge?
 - b. Did you have a particular 'specialty'?
2. Tell me about presiding over the domestic violence court; for example, what do you perceive is your role as a judge in domestic violence cases? How would you describe your judicial approach towards domestic violence cases? Do you think that your approach differs much from the approach of others in your court? Why or why not?
3. How do you decide whether or not to award an emergency order of protection? Are there certain characteristics of abuse that must be present? If so, what are they? What are the differences between the characteristics that result in an emergency order of protection and a plenary order of protection? Are there any characteristics that deter you from granting an emergency order of protection? What about a plenary order of protection?

Next, I would like to ask you questions about your experiences with agencies that are partnered with domestic violence courts.

4. Victim advocates are often involved with individuals who seek orders of protection in the domestic violence court. What do you perceive is the role of the victim advocate? What are your relationships like with the victim advocates in your court? What positive impacts occur by the presence of victim advocates? Are there any negative impacts from the presence of victim advocates?
5. Police departments are also involved in processes related to domestic violence. What do you perceive is the role of the police officers when their role in referring

victims to the domestic violence court? Is there a partnership between local police departments and this court?

6. What type of communication occurs between judges when parties have other cases, such as family or criminal cases, that are related to orders of protection?

Now I'd like you to think about what you know about domestic violence and domestic violence courts more generally.

7. Why is obtaining an order of protection an important step for victims attempting to escape abuse? Do you believe they deter offenders from further abusing the victim? Why or why not? How have your experiences in the court shaped your perceptions about the effectiveness of orders of protection?
8. Many victims file for several orders of protection and then vacate the order or do not show to extend the order of protection. Why do you believe that this is a common occurrence? How do you think this affects the behaviors of the offender? How does this affect your perceptions of the victim? Of domestic violence in general? Does this occurrence affect your decision making for emergency orders of protection? How about for plenary orders of protection? If so, how?
9. Why are victim advocates important or not important in domestic violence courts?
10. How are domestic violence hearings affected when only one party is represented by an attorney? Does the attorney's specialization affect their representation of their client? How are pro-bono attorneys important or not important in domestic violence courts? How are guardian ad litem important or not important in domestic violence courts?
11. Do you think that domestic violence courts are necessary entities within the legal system? Why or why not? Do you think they should be part of every jurisdiction? Why or why not?
12. Finally, what are the most valuable aspects of domestic violence courts? Are there any aspects of the court that result in negative outcomes for the court system? What would you suggest for the improvement of domestic courts?