

# Mediating Justice: Women's Perceptions of Fairness in the Civil Protection Order Process

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## Abstract

Mediation use has grown rapidly in the past few decades as an efficacious method of civil dispute resolution. However, early research suggests that civil mediation may cause further harm to victims of intimate partner abuse because, based on the inherent power dynamics of abusive relationships, they are not able to effectively advocate on their own behalf. In addition, organizational efficiency concerns have led to the development of consent processes for civil protection orders (POs). However, research has yet to examine the extent to which victims of intimate partner violence who take part in these consent processes perceive the process and associated outcomes as fair. Using qualitative data ( $N = 19$  interviews) collected from women who sought civil POs through Family Court in Delaware, this research finds that the consent process and women's interactions with mediators reproduce power inequalities that are inherent in cases of intimate partner abuse, which shape their perceptions of fairness in the PO process and outcomes. Victims being silenced and disempowered throughout the consent process results in cumulative effects—similar tactics used by batterers—which continue to leave victims vulnerable. In addition, the power asymmetry victims

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experience in abusive relationships is replicated by the legal institution and court structure in terms of not having access to attorneys, not receiving guidance and advocacy, and, at times, experiencing insensitive treatment. Thus, this study provides insight into the inequalities present within the PO consent process that can create further harm to victims.

**Keywords**

intimate partner abuse, protection order, power inequalities

**Introduction**

Mediation has grown rapidly in the past few decades as a method of civil dispute resolution (Holtzworth-Monroe, 2011), particularly in divorce and child custody cases. Administrative concern for efficiency within courts has led to the use of consent processes for civil protection orders (hereafter referred to as POs<sup>1</sup>) to move the cases through the system quickly and efficiently (Epstein, 2002). Research on civil mediation, however, suggests that the consent process may cause further harm to victims of intimate partner abuse (hereafter referred to as IPA) because they are often not effectively able to advocate on their own behalf due to the inherent power dynamics that characterize abusive relationships (K. Fischer, Vidmar, & Ellis, 1992; Hart, 1990; Johnson, Saccuzzo, & Koen, 2005; Tishler, Bartholomae, Katz, & Landry-Meyer, 2004). Victim-blaming attitudes from authorities further exacerbate victims' sense of responsibility for abuse by failing to assure women of support and demonstrating intolerance toward abusers (C. Fischer & Rose, 1995). As a result, the behaviors of mediators within the consent process can shape victims' experiences within the judicial process. Thus, this article asks, how do IPA victims' experiences with mediators and the consent process shape their perceptions of fairness in both the court process and case outcome? This study provides insight into the inequalities present within the PO consent process that can create further harm to victims.

***Civil POs***

Civil POs are designed to prevent abuse by limiting contact between victims and their abusers and can include restrictions such as freezing bank accounts, limiting access to shared residences and children, and providing monetary relief. After the Violence Against Women Act was passed in 1994, POs have become a commonly used tool among women seeking safety from abusive partners (e.g., Logan & Walker, 2009; Richards, Tudor, & Gover, 2018;

Tjaden & Thoennes, 2000). POs have many benefits for victims of IPA including increasing victim safety, increasing victims' participation in the justice system, and reducing violence (Carlson, Harris, & Holden, 1999; Logan, Cole, Shannon, & Walker, 2007; Logan & Walker, 2009; Fleury-Steiner, Fleury-Steiner, & Miller, 2011; Wright & Johnson, 2012); they also have psychological benefits for victims, such as reducing fear and providing a greater sense of empowerment (Connelly & Cavanagh, 2007; C. Fischer & Rose, 1995; Gover, Brank, & MacDonald, 2007; Wright & Johnson, 2012). Civil POs empower victims in a way that criminal orders do not because they are actively constructed and influenced by what victims themselves want (Kethineni & Beichner, 2009).

POs are intended to facilitate access to justice for victims who lack legal representation. However, "victim-friendly" (DeJong & Burgess-Proctor, 2006) procedures are sometimes impeded by institutional inequalities as victims without legal representation are less likely to have orders granted (Durfee, 2009) and those who are not in current relationships with abusers report higher levels of support from criminal justice actors (Belknap, Melton, Denney, Fleury-Steiner, & Sullivan, 2009). Furthermore, women often feel that they are silenced and their voices distorted within the system (Laing, 2017).

### *Procedural Justice and Situated Justice*

Researchers have yet to examine the extent to which victims of IPA who seek POs perceive the process as fair. Findings from procedural justice studies consistently demonstrate that people are more likely to perceive legal outcomes as fair—whether or not they are in their favor—if they also perceive the associated process as fair (Tyler, 1988, 1990, 2003; Tyler & Huo, 2002; Tyler & Mentovich, 2011). In addition, given the sometimes disempowering nature of legal proceedings, IPA victims can be empowered through having a voice and choices within the justice system that emerges from courts that include trained victim advocates and judges who treat them with respect (Anderson, 2015). Victims who have the opportunity to voice their views about the court process perceive being treated with respect that, in turn, informs a sense of satisfaction with case outcomes (Brockner et al., 2001; Gover et al., 2007). Ultimately, if victims believe they are treated fairly and with respect, they tend to be more invested in the legitimacy of the system and are more likely to cooperate with the legal system in the future (Miller & Hefner, 2015).

Theories of procedural justice, however, fail to account for the social contexts that characterize individual people's lives and, thus, overlook insights into how social contexts shape perceptions of fairness and justice (Berrey,

Hoffman, & Nielsen, 2012). Berrey et al. (2012) use the term *situated justice* to describe the reciprocal relationship between fairness and social context. Specifically, people's perceptions of fairness are shaped by who they are, where they are positioned within society, and how much relative power they possess in a specific situation. This framework takes into account institutional constraints and social context to elucidate how individuals perceive and understand fairness within circumstances that are intrinsically unequal. Thus, using a situated justice framework allows for an understanding of the extent to which women who seek POs against abusive partners perceive the process as fair given their unequal access to power, information, and resources.

### *The Delaware PO Process*

All states and the District of Columbia have statutes providing POs for cases of IPA (American Bar Association, 2016), even though specific definitions of domestic violence vary by state. For example, in South Carolina domestic abuse only includes the threat of or actual physical harm or a criminal sexual offense to a family member or a current or former household member (South Carolina Legal Services, n.d.; South Carolina Legislature, n.d.). However, other states—including Delaware—extend this definition to encompass emotional abuse (Delaware State Courts, n.d.). In Delaware, individuals who can apply for POs include family members<sup>2</sup> or current or former intimate or romantic partners/spouses, including same- and opposite-sex dating partners (Delaware State Courts, n.d.).

In Delaware, victims (also referred to as petitioners) complete and file a Protection From Abuse petition against the abuser (also referred to as a respondent) through Family Court. Once the petition has been filed, orders can be granted in one of two ways.<sup>3</sup> First, the petitioner and respondent can present their case in front of a judicial officer in an official court hearing. In the hearing, both the petitioner and respondent are given the opportunity to present their case by providing testimony and presenting evidence—including subpoenaed witnesses—to the court (Delaware State Courts, n.d.). The petitioner must show a preponderance of the evidence (State of Delaware, n.d.) for the judicial officer to find that the abuse occurred and to grant the PO.

To circumvent having to testify in an official court hearing and to speed up the process, the petitioner and respondent can choose to go through a consent process where they agree to have the order granted and to the conditions of the order. The consent process in Delaware involves court staff (subsequently referred to as mediators, as most also serve as mediators in other court hearings<sup>4</sup>) who serve as a conduit between the petitioner and respondent. Although this process is a method of civil dispute resolution intended to achieve organizational efficiency

(Epstein, 2002), it is not a settlement-driven mediation process between the petitioner and respondent like in divorce or child custody cases. Instead, the consent process explores whether or not the parties will consent to an order as an alternative to going through a full hearing. The consequence of abusers consenting to an agreement but not admitting to the abuse is that there is no official court record reflecting that the abuse occurred. As a result, victims do not have tangible evidence of the abuse to be used in future court processes if needed. The current study examines how women's experiences with the consent process and mediators impact their perceptions of fairness in the court process and outcome.

## Data and Method

The participants in this research are a part of a larger, mixed-methods longitudinal study.<sup>5</sup> Women were recruited at Family Court as they waited for a PO hearing. At court, the researchers introduced themselves to each of the women waiting, briefly told the women about the research project, and obtained contact information for women with whom to follow-up regarding the study. Those who agreed were promptly contacted by the researchers, provided detailed information about the study, and, if they agreed to participate, the interview was scheduled. Thus, the interviews were conducted shortly after the women's PO hearings were held, typically within 1 to 2 weeks. Each participant chose the time and location of the interview that was most convenient to her. While most of the interviews were in person, some were conducted over the telephone. The in-person interviews primarily took place in the participants' homes; however, some were also conducted in public places, such as local coffee shops or libraries. Women were interviewed a second time approximately 3 months later.<sup>6</sup>

Qualitative interviews were conducted with 30 women who (a) were at least 18 years old and (b) pursued a PO against a current or former male partner. Of these participants, 19 had some substantive interaction with a mediator or other court professional related to the consent process as defined by contact that could have shaped the outcome of the case. This article focuses on interviews with these 19 women.

The interviews were conducted between July 2014 and January 2016, as part of a larger mixed-methods study. Every fifth participant was assigned to a qualitative interview to ensure that the participants receiving qualitative interviews were similar to those in the larger study. Either written (in-person interview) or verbal (phone interview) consent was obtained from all participants. Each woman was given a US\$25 Visa gift card for participating. Of the 19 participants, 18 agreed to have their interviews audio recorded. All study procedures were approved by the Institutional Review Board at the University of Delaware.

**Table 1.** Participants' Demographic Characteristics.

Participant	Age	Race <sup>a</sup>	Education	Children (below 18 years)	Attorney	Private or Volunteer Attorney
Samantha	28	White	College degree <sup>b</sup>	Yes	Yes	Private
Deborah	51	White	PhD	No	No	—
Regina	49	Black	Some college	Yes	Yes	Volunteer
Brittany	28	White	Some college	Yes	No	—
Christine	32	White	High school	Yes	No	—
Sheryl	34	Black	College degree	Yes	No	—
Elizabeth	49	White	College degree	Yes	No	—
Holly	21	White	Some college	No	No	—
Monica	48	Biracial <sup>c</sup>	Some college	Yes	No	—
Kimberly	36	White	Some college	Yes	No	—
Janet	49	White	Some college	Yes	No	—
Linda	29	Hispanic	Some college	Yes	Yes	Private
Courtney	24	White	Some college	Yes	Yes	Private
Amber	27	White	High school	Yes	No	—
Carol	49	Black	Some college	No	No	—
Renee	40	White	College degree	Yes	No	—
Tiffany	31	Black	Some college	Yes	Yes	Volunteer
Diane	39	Black	Some college	Yes	No	—
Sharon	32	Black	High school	Yes	Yes	Volunteer

<sup>a</sup>During each interview, the participants self-identified as the racial category noted.

<sup>b</sup>College degree indicates associate's or bachelor's degrees.

<sup>c</sup>Native American and African American (self-identified).

Of the 19 women included in this analysis, 13 were granted POs either based on consent agreements or full hearings. Four women dropped or dismissed their petitions, one had her petition denied by a judicial official after an unproductive consent process, and one had her case continued at the time of the first interview but was unavailable for a follow-up interview to ascertain the end result. As such, not all of the women in this analysis underwent the full consent process, but they all had interactions—to some extent—with a mediator or other court professional related to the consent process in Family Court. Table 1 provides an overview of the participants' demographic characteristics and access to an attorney. In terms of diversity and intersecting social locations, the sample included various ages, racial/ethnic groups, and educational levels. The participants were between the ages of 21 and 51 years, with the average age being 37 years. Most of the participants identified as White ( $n = 11$ ), with

six identifying as Black, one as Hispanic, and one as biracial. All but three participants have children of their own, and all but three have at least some college education (five of whom have at least an associate's degree). Only six of the women had an attorney with whom they consulted about the PO. Of the attorneys obtained by the participants, three were privately acquired, while the other three were volunteer attorneys attained through the court. However, only one of the private attorneys was actively involved in the PO process with his or her client. The other had limited involvement in the PO process because of the women's financial constraints and their inability to pay the expenses necessary to have them present. The Family Court of Delaware does not include race information in their annual report (Administrative Office of the Courts, 2016) on PO applications and outcomes, but these demographics are similar to those of the larger county (U.S. Census Bureau, 2016), and thus reflect the racial diversity in the sample.

The interviews were transcribed verbatim and analyzed. Two authors coded and analyzed the transcriptions. To ensure interrater reliability, the lead author analyzed the data by using both deductive codes from existing literature and the interview guide, as well as inductive codes that emerged from the data. The second author initially coded the interviews based on the list of codes from the lead analyst. Both coded the data separately and frequently compared, discussed, and reviewed the data and resulting interpretations. As new codes and subcodes developed, the transcripts were recoded to account for the new information (Corbin & Strauss, 2008).

The interviews were analyzed using codes and subcodes for both the court process and outcome. As the analysis progressed, more distinguishing codes and subcodes emerged including four final themes: (a) the silencing of women's voices, (b) reproducing abuse through power and control, (c) mediator demeanor and guidance, and (d) fairness in the court outcome.

## **Findings and Discussion**

Most participants (12 of 19) felt that the PO court process was fair, although this belief had more to do with the work they did with attorneys and advocates than it did with either the consent process or their interactions with mediators. Similarly, 10 of the participants who perceived their outcome as fair did so as a reflection of being granted the official order; their perceptions were not influenced by either the consent process or their work with court staff. In fact, the women discussed several ways that the consent process and their interactions with mediators reproduced power inequalities that are inherent in cases of IPA.

### *Silencing of Women's Voices: Consent Process and Access to Attorneys*

An important aspect of procedural justice is the extent to which people have a “voice” in legal processes and outcomes. In this study, about a third of the participants explicitly expressed that, by going through the consent process, their voices, experiences, and opinions were not heard by the court; this shaped their perceptions of fairness because they did not fully understand the extent to which they would be silenced. Even though the women ultimately consented to a PO—even when they did not fully understand the process—a few wished they had the opportunity to verbally express their experiences to a judicial official during a full hearing. In fact, for Regina,<sup>7</sup> the process exacerbated the trauma she experienced and was emotionally and physically draining. She stated,

[The process] was not fair or helpful. It was very frustrating and add[ed] more trauma. It was grueling, emotionally and physically draining, and terrifying. At the end of the day, I felt very raw . . . and I could not even talk to the judge, so the judge didn't hear me . . . I really wanted to talk to the judge. I don't feel like my voice was heard in court.

Thus, consenting to a PO prevented her from conveying her experiences to the court.

Similarly, Samantha expressed that “every victim's story deserves to be heard.” She hired an attorney, but he did not go to court with her because he did not think that the monetary cost of his presence there was justified by the limited amount of help he could provide in person. However, prior to court, her attorney encouraged her to accept a consent agreement because of the risk of not getting the PO at all if they went through a full hearing. Although Samantha agreed to the order, she felt that every victim should be able to present her case in front of a judge. Based on the interviews, victims having their stories and experiences heard in and acknowledged by the court is important for validation and for maintaining trust in the system.

The presence or absence of attorneys also shaped the extent to which the women felt the consent process was fair and that their voices were heard. Six of the participants were represented by either a volunteer or privately obtained attorney although only one of their attorneys was actively involved in their PO petition. At court, a limited number of attorneys volunteer their services to women who may not be able to afford legal counsel otherwise. Still, not all women are able to obtain the assistance of legal experts. To qualify for free legal assistance, women must meet specific income requirements. But even if



they met the financial restrictions, a few women expressed that the volunteer attorneys are often reluctant to provide counsel to victims who are going through the consent process, as opposed to those going through a full hearing. When asked if a volunteer attorney approached her at court, Janet said “yeah, but he said [the abuser] consented so you don’t need an attorney.” In reality, the number of volunteer attorneys at the courthouse is limited, so they tend to select cases in which they believe victims have greater need for legal representation. Unaware of this, women may feel disappointed or unfairly treated if a volunteer attorney declines to represent them.

Eight of the 13 participants who did not have attorneys felt that their perspectives of and experiences with IPA were not fully heard by the court because they were not represented by legal counsel. Deborah was granted her PO via consent. But she doubted that her PO would have been granted if she went to a full hearing without an attorney. She stated, “if [my petition] had gone to a full trial, I don’t know that I could win on my own. I don’t know enough [about] how the court system works.” Thus, these women believed that their cases would have been stronger and their voices more influential if they had been able to secure legal counsel.

In addition, Monica felt that her voice was absent in the consent process, specifically, because her abuser had an attorney but she did not. She believed that this was one of the reasons she was not listened to by the mediator. In fact, the mediator encouraged her to drop her PO against her abuser. She stated,

The mediator was just like “he has a strong attorney and he’s going to fight you and I don’t think you have enough to stand on and you’re not going to win.” And, so, I pondered over it for a while [and] took about an hour to make the decision and I just said “forget it. I’ll just back down”.

Thus, Monica abandoned her desire to have her experiences heard in a formal court hearing because the mediator convinced her that her petition would most likely be denied by the judge as her abuser’s attorney was going to fight against her.

Other women felt that an attorney could have provided important information throughout the process. For example, Elizabeth noted that the mediator went through the basic options for victims—such as informing her that her abuser would have to stay away from her—but felt like having a lawyer would have provided options that were new to her. She said,

The mediator suggests things and the obvious thing is to have the person stay away from them . . . [but] it probably would’ve been better to have someone who could legally . . . make suggestions . . . I didn’t really know what I could ask for.

Overall, the lack of attorneys who could help magnify the victims' voices led to perceptions of unfairness in the process. Research suggests that unequal access to attorneys can prevent victims' voices from being heard in full hearings (Durfee, 2009). As this study illustrates, this is also the case with PO consent processes; when victims either cannot afford a private attorney or are not able to procure a volunteer attorney, their experiences and perspectives are often unheard.

People perceive legal procedures to be more fair when they have a voice in the process (Folger, Rosenfield, Grove, & Corkran, 1979; Lind & Tyler, 1988). Folger et al. (1979) refer to this as the *fair process effect*. Our data illustrate the reverse of this effect. While POs are intended to give victims a legal voice that they often do not otherwise have, in practice, consent procedures essentially silence them. According to Regina, "the point of the PO was to . . . give a voice to [victims]. There's where I felt like maybe I have some power. [But] it was stripped from me". Being able to tell their stories and having some control over the process is important to victims. When people's voices are silenced or ignored within legal processes, they have less overall satisfaction with the process, which in turn shapes their perceptions of fairness.

### ***Reproducing Abuse Through Power and Control in the Consent Process***

The interviews provided ample examples of how power imbalances in abusive relationships are often reproduced in the consent process, resulting in victims' sense of powerlessness. Abusers employed various strategies to exert power and control throughout the consent process that sometimes shaped the outcome of the victim's PO petition. Some abusers exerted control simply by refusing to agree to the petition. For example, Tiffany's abuser refused to agree to the terms of her petition and they went through a full hearing in front of a judge. Her petition was granted, but her abuser continued to exert control over her by refusing to agree to an order like she hoped he would.

A few women argued that their abusers should not have had the option to agree or disagree with the stipulations in their petition because this gave them continued power and control. Sharon stated, "I felt like he shouldn't have this right; to tell me what he's not gonna [agree to]." We are not arguing that everyone should simply consent to an order; however, even the fact that abusers can decide whether or not to agree to a victim's petition perpetuates power inequalities inherent in abusive relationships.

Power and control also played out in more subtle ways within the consent process, such as abusers filing false police reports and PO cross-petitions against victims. Linda's abuser called the police on her without justification

and filed a PO cross-petition against her. For the PO case, her abuser claimed he was not going to consent to anything and that he wanted the case to either be dismissed or go to trial. Ultimately, both petitions were dismissed based on negotiations between their attorneys and they agreed to an informal agreement where they only have contact regarding their children via text messaging. This type of “paper abuse” (Miller & Smolter, 2011)—through filing false police reports and PO cross-petitions to force victims to spend time and energy responding to allegations—perpetuates the power dynamics inherent in abusive relationships and is a way that abusers continue to exercise control over their victims, particularly when they refuse to consent to an order.

Several women also noted that their abusers negotiated the length of time the PO would be in effect. For example, Janet wanted the consent agreement to be effective for 1 year; however, her abuser insisted on a 6-month agreement. Janet found this request odd but understood it as continued control tactic because of the counseling she had gone through due to her abuse. Other women encountered similar tactics from their abusers regarding requesting shorter term orders. For example, Carol’s abuser tried to negotiate the terms of the order by requesting it for a year and a half, while she wanted 2 years. She believes that her abuser’s sense of control likely led him to believe that she was going to give him anything he wanted.

Abusers also made other demands during the consent process that further demonstrates their control over their victims. For example, as Elizabeth explained, “The mediator came back and said ‘could you do him a favor and make sure you give him his bus passes?’” She perceived his actions as a scare tactic and recognized the he was trying to play on her emotions. This example emphasizes how the power imbalance in relationships plays out in terms of victims’ sense of powerlessness through emotional manipulation while the mediator is also used as a mechanism for him to maintain control of the situation.

In several cases, the consent process also allowed the abusers to control their victims through eliciting sympathy from the mediator. At times, this sense of empathy resulted in mediators negotiating on behalf of the abuser. For example, Amber indicated that, in a child custody case, her abuser suggested that women are primarily concerned about money and that this concern guides their desire to gain financially from the men with whom they are in relationships. But, more interestingly, she noted that the mediator agreed with him. While this example occurred during a child custody case, Amber noted that something similar happened while working with the mediator in her PO case. She stated, “I don’t know what he does, but he just wins ‘em over in order to get his way.” In the end, Amber felt the consent process was unfair because the mediator seemed to favor and listen to her abuser over her.

In this way, her voice was silenced as a result of her abuser's strategic and manipulative use of charm to sway the mediator and ultimately replicates his abusive tactics within the consent process.

Similarly, Regina asserted that her abuser lied during the consent process, but the mediator believed him. For example, when asked whether her income increased or decreased since the PO, she stated,

[It] decreased, because of [the consent process]. He said his salary was \$300 a year from his self-employment work, his second job. That was a lie and dishonest. [But] the mediator believed him. She felt sorry for him. It brought me to tears. He wound up giving me less than he normally gave me before I went to court. Had I not gone to court, I would have gotten more money.

She continued to say that "his charm and demeanor was able to sway the mediator's opinion [in his favor]." Thus, the mediator appeared to express sympathy toward Regina's abuser resulting in his contributing less financially than he had before. Given the speed with which PO cases are decided (typically in a single hearing within 15 days of filing), petitioners may not have the evidence or the opportunity to rebut false claims about respondents' income or assets. Instead, they would need to file an additional case to modify the order or file a separate case for support (see Delaware Code 10 Del. C. §1041-1045).

Literature points to ways in which abuse occurs in subtle ways (e.g., K. Fischer et al.'s [1992] idea of "culture of battering" and Stark's [2007] idea of "coercive control"). This includes controlling behavior through facial cues and seemingly harmless words that further complicates consent procedures as it disempowers women through continued control by abusers. By making specific demands, failing to agree to an order, or manipulating the victim or mediator, abusers continue to exert power and control over their victims via the consent process, thus extending their abusive tactics into the legal arena.

### *Perceptions of Mediators: Demeanor, Guidance, and Fairness*

The third theme that emerged was participants' perceptions of the mediators' demeanor and guidance provided. Many of the women had limited experience with the legal system and most had no experience with the PO process, including consent procedures. As a result, they often felt powerless, overwhelmed, and discouraged by the process because they did not possess enough knowledge to navigate it confidently.

While mediators in Delaware's PO process mainly serve as a conduit between the victim and the abuser and are not supposed to provide advice or

direction, many of the women believed that the mediators should guide them throughout the consent process. This assumption is significant because it ultimately shaped the women's perceptions of fairness of the process as well as their interpretations of mediators' behaviors. Only two participants noted times when the mediators provided sufficient—although limited—instruction about the process; most of the women indicated that mediators provided insufficient guidance and information.

Deborah attended court for her PO hearing twice because her first hearing was continued and, thus, worked with two different mediators. The first mediator she worked with was quite harsh with her and did not provide any information about the process. She stated,

She was very cold and I started crying when she said we have to continue [the case]. I was just overwhelmed by everything and she just shoved a piece of paper in front of me and said “you need to sign this if this [is] all correct.” I just signed it . . . No one said “do you want to talk to somebody?”

However, when discussing her interactions with the second mediator, she stated, “. . . he was very good . . . He talked to me and made sure he understood everything I had written out in my PFA.” Therefore, Deborah's perception of fairness was, at least partly, based on the information communicated between her and the mediator.

Similarly, Holly noted that her current partner (not her abuser) had to explain some of the process to her because the mediator failed to do so. She felt like the mediator had not done her best and the experience was overwhelming. Her reflections indicate that perhaps the fault was not with the mediator, but rather the emotional toll the consent process takes on victims of abuse. Holly stated,

It was like you can't even get it across to who you are supposed to get it across to but, yet, somebody else has to interpret that you are not really doing your job the way you should, or just explaining wise. I'm not saying she did a bad job; I'm just saying at that she wasn't doing the best. [The process was] just very overwhelming; a little too involved for me.

Holly's experience highlights the emotional nature of the process for victims who seem to need more support than the mediator can provide as victims struggle with voicing their experiences while advocating for themselves in a process they do not fully understand.

In other cases, victims' negative experiences with the consent process were based on perceptions of mistreatment by mediators including being accused of lying, silenced through interruptions, and spoken to in a condescending

manner. For example, Amber noted that the mediator lost patience with the difficulty of the negotiations: "She was annoyed with the fact that she kept having to go back and forth from room to room and we weren't agreeing on anything." The mediator's demeanor also affected her feelings as she was there to seek help and was treated as though she was a "bad person." Amber also felt that the mediator conveyed a sense of exasperation by sighing heavily at times and asking her "what do you want me to do?" Her case sheds light on the way mediators' projection of their feelings and attitudes can impact victims negatively.

Diane had a similar experience, indicating that she worked with the mediator immediately before she entered the courtroom for her PO hearing. In her case, the mediator accused her of fabricating her experiences, interrupted her when she spoke, and talked down to her for not having witnesses available. Diane said, "I didn't know I was supposed to have witnesses. That's when the mediator was like 'well, you're going in front of the judge, what did you think'?" Diane clarified that she was not aware of the procedure of subpoenaing witnesses, which resulted in her case being continued:

I said "excuse me . . . Don't talk to me like that . . . I don't work here. You do this every day; I don't do this every day. I don't come here; I don't file PFAs every day. So, I have no idea what you're talking about."

Similarly, Christine noted, "Not that they needed to give me special attention but they can't assume that everybody knows what's going on, what they're doing, or what everything means." Diane and Christine's experiences highlight not only their lack of knowledge about the process but also their experience with a mediator who expected them to have sophisticated knowledge of the PO process.

Thus, victim's lack of knowledge about the process, the exclusion of information, and mediators' demeanors shaped victims' perceptions of fairness. When this occurred, victims perceived a sense of inadequacy or failure on the part of mediators even when they adhered to their professional roles.

### *Fairness in the Court Outcome*

Not only is it important that victims have a voice in the process but they should also have a voice in the outcome as these often reflect the extent to which a victim's voice was heard throughout the process. As stated above, 10 of the participants perceived their PO outcome as fair. However, their perceptions were exclusively based on being granted the order. For most of the women, perceptions of fairness in the outcome were based on their *expected* case

outcomes. For example, Brittany noted that she felt her outcome was fair because her final order included everything she requested in her petition. She said, "They granted everything. He agreed to it all actually." Similarly, even though Holly was overwhelmed by the process and felt disadvantaged because her abuser had an attorney and she did not, she ultimately felt that the outcome was fair because she received the order. She stated, "After all of that, I did get what I wanted and what I went there for." Based on the interview data, women who seek out POs want their petitions to be granted. In the end, obtaining an order is often worth the difficulties and injustices they experience throughout the process, particularly if they initially expected to receive it.

While most of the women who were granted their orders perceived the outcome as fair, several women perceived certain aspects of the outcome as unfair based on mediators' behaviors and the consent process. As noted, many women had limited knowledge of the process, did not know what stipulations they could request in their petitions, and wished someone would have provided them with more information. For example, Kimberly was not satisfied with the outcome because she did not know that she could ask for child support until it was too late. She stated, "I feel like the courts half-assed a lot of stuff 'cause they just don't feel like doing it. They don't have time. You're just a number. That's it. That's a really crappy feeling to feel, but that's the truth." Thus, for many women, even if they received the order, their lack of knowledge about what conditions they could have asked for in their petitions resulted in perceptions of unfairness in the outcome because they might have asked for more had they known it was an option.

In addition, four of the women who went through the consent process believed the outcomes were unfair because their abusers were not held accountable for their actions. For example, Samantha felt like her case was rushed and her experiences discounted by going through the consent process. This, in effect, resulted in the perception that her abuser was not fully held accountable for the abuse. She stated,

I feel like he's not being charged with anything since it was a consent. I feel like . . . the court system wants to do this quick little thing to get it done and over with. They're not really seeing the real damage, the real situation.

Renee also felt that POs fail to hold abusers accountable because often they are not effective in protecting victims. She asserts, "They aren't worth the freaking paper they're written on. The only time it's going to come into play is if he kills me; [then] he'll go to jail because there was a PFA." Thus, some women feel that outcomes of these processes are unjust because they fail to hold their abusers accountable in any meaningful way.

In sum, women perceived the court outcome as fair if they received their order; ultimately, victims simply want their petitions granted. However, even the women whose petitions were granted still believed that aspects of their outcomes were unfair, including not having enough information and feeling like their abusers were not held accountable.

## **Conclusion**

This study illustrates that the consent process has the potential to reproduce the power-control dynamics found in abusive relationships. These acts can be observed in various ways throughout the process including victims being silenced and disempowered, abusers attempting to control the process and/or outcome, and abusers refusing to agree to the petition. The cumulative effect of being disempowered—similar tactics used by batterers—continues to leave victims vulnerable. For example, victims' sense of powerlessness during consent procedures is further exacerbated by their limited knowledge of the legal system. In addition, the power asymmetry victims experience in abusive relationships is replicated by the legal institution and court structure in terms of not having access to attorneys, not receiving guidance and advocacy, and, at times, experiencing insensitive treatment.

A situated justice framework (Berrey et al., 2012) asserts that perceptions of fairness are influenced by where people are positioned in relation to others within specific situations. As illustrated in this study, throughout the consent process, women felt silenced and marginalized, and men maintained control of their victims and were often given the benefit of the doubt by mediators. Thus, the same unequal power dynamics that are inherent in abusive relationship are often perpetuated through the PO consent process and within victims' interactions with mediators. As a result, women's perceptions of fairness in the consent process and outcomes are a direct reflection of their unequal access to power, information, and resources. Furthermore, these issues can be compounded by women's various intersecting social identities including their education level and socioeconomic status.

Several implications of these findings exist. Courts should be more "victim-friendly" in terms of treating victims fairly and creating straightforward processes by which victims can obtain POs (DeJong & Burgess-Proctor, 2006). The extent to which victims perceive the consent processes and resulting outcomes as fair may influence the extent to which they will utilize the legal system for protection in the future. If victims feel they were treated unfairly, they may be less likely to use the legal system in response to any future abuse. Thus, judicial officials must take victims' concerns and experiences seriously and provide a place where victims feel



valued and protected. Richards et al. (2018) found that, on the whole, state statutes have become more victim-friendly over time. However, the current research suggests that improvements still need to be made.

POs, however, are useful to victims. As noted in the interviews, some women appreciate the option to go through consent processes—as opposed to a full hearing—because they do not have to see their abuser in court or they do not want to testify in front of a judge. However, they also want someone to advocate on their behalf. While victim advocates and volunteer attorneys are available throughout the PO process in Delaware, they are often overworked and understaffed. Therefore, not all victims are able to utilize the services that these professionals can offer. Ensuring that each victim has an advocate and/or attorney throughout the process is important because they are familiar with the process and can help give victims a voice that, in turn, can help bolster victims' perceptions of fairness in both the process and outcome. Other resources include engagement with nonprofit organizations, as well as utilizing trained community volunteers, who can guide victims through the process, as well as providing informational materials including factsheets for victims to aid in their completion and filing of PO petitions in court.

In addition, the consent process seems to facilitate additional trauma for victims. Trauma affects victims in both the long and short term and, thus, may impact how women process information; placing women into a situation they are unfamiliar with—such as a legal case—can exacerbate these effects. The possibility of implementing a trauma-informed PO process that addresses the effects of being in an abusive relationship should be explored. Court personnel and policy makers should seek to understand the effects trauma has on victims and incorporate this information into legal policies and practices (Substance Abuse and Mental Health Services Administration [SAMHSA], 2015). Future research could explore this feasibility in light of already constrained circumstances.

Future research could also examine the training and screening of mediators and other judicial professionals used in PO hearings. The *Burgundy Book* and subsequent *CPO Guide* published by the National Council of Juvenile and Family Court Judges emphasize the need for POs to be accessible to all survivors, as well as the need to ensure ongoing training of court professionals. In particular, diversity training for mediators who address issues beyond power dynamics in relationships, including acknowledging the various marginalizations women face across race, ethnicity, age, education, and socioeconomic status, can also inform and reshape perceptions of POs. Studies of the impact of such training on survivor outcomes and satisfaction will be critical to improving survivor safety and holding batterers accountable (National Council of Juvenile and Family Court Judges, 2005, 2010).

A few limitations do exist for this study. First, the sample size for this study is relatively small. Only a portion of the qualitative interviews conducted for the full study were used in this analysis because not all participants had substantive interactions with a mediator or other court professional related to the consent process that could have shaped the outcome of the case. This limits our ability to generalize our findings to other consent cases. Thus, this study illustrates the need for further research on the dynamics of consent processes in PO cases. Second, given that the majority of the sample identified as White ( $n = 11$ ), there are limitations to providing a race analysis within this study. Research illustrates that a victim's race (as well as other demographic factors) impacts the extent to which POs reduce physical violence against victims (Carlson et al., 1999) and the level of support received from court personnel (Belknap et al., 2009). In addition, only women who are in opposite-sex relationships were interviewed. Just as one's race shapes their experiences within and perceptions of the criminal justice system, so does sexual orientation and identity. Therefore, this study also encourages further analysis of the experiences of racial/ethnic minorities and victims in same-sex relationships as these social locations shape access to resources and victim perception.

Even with these limitations, this study is useful in elucidating the extent to which the PO consent process, victims' interactions with mediators, and the court structure may cause further harm to victims by reproducing the power dynamics that inherent in abusive relationships and omitting women's voices. Overall, courts should ensure that victims are treated fairly throughout the PO process, including consent agreements. Steps should be taken to ameliorate these negative effects on victims and to create a more equitable process.

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### **Notes**

1. While the term *Order of Protection From Abuse* (PFA) is used in Delaware, we are using the general term *protection order* as it is commonly used in the literature. PFA is only used in participants' quotes as applicable.

2. Defined as people who live in a home together, which broadly includes spouses, cohabiting couples with a child/children, or other relatives including, but not limited to, parents/grandparents/stepparents, in-laws, and siblings, children/step-children (State of Delaware, n.d.).
3. Petitioners can also request an emergency hearing if they believe they are in imminent danger (State of Delaware, n.d.).
4. While other states also have consent procedures in place, the terminology of “mediator” is unique to Delaware. In this state, mediators do not function the same as facilitators in a restorative justice context or mediators in divorce and child custody cases. Mediators in PO cases in Delaware are present to ensure efficiency in the process to routinize cases to avoid the time of a full hearing.
5. The overall data collected for this study includes quantitative surveys, court observations, and in-depth, semistructured qualitative interviews. However, only the qualitative interviews are utilized in this article.
6. Even though interviews were conducted at two timepoints, temporal order was not established. Thus, Time 1 and Time 2 interviews were combined for this analysis.
7. All names used are pseudonyms to protect the anonymity of the participants.

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