

**LIMITATIONS OF THE PROTECTION FROM ABUSE ORDER PROCESS:
JUDICIAL INATTENTION TO PSYCHOLOGICAL ABUSE**

by

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ABSTRACT

Intimate partner abuse (IPA) affects nearly one in four women in the United States within their lifetimes (Luken, Rosky, & Watkins, 2014). In most cases of IPA, women are typically the victims and men are the abusers. Civil protection orders are an effective way to protect women from experiencing future abuse; however, fewer than 80 percent of women in the United States who are victims of abuse by an intimate partner are issued a civil protection order each year (Holt, Kernic, Wolf & Rivara, 2003). Physical abuse is the most widely publicized form of intimate partner abuse. Despite this, most woman report that the psychological and emotional abuse that they experience is more damaging and long lasting than their physical injuries (Follingstad, Rutledge, Berg, Hause & Polek, 1990). Unfortunately, this type of abuse, even though it almost always works in tandem with physical abuse, is often overlooked by judges in court (Stark, 2008). The purpose of this research is to draw attention to psychological abuse and the need for judges to identify tactics of power and control as well as to utilize risk assessments. Two case studies observed in the Delaware civil court system are used to exemplify judicial inattention to psychological abuse and demonstrate the utility of a more comprehensive examination of judicial response to intimate partner abuse.

Chapter 1

INTRODUCTION

Intimate partner abuse (IPA) affects nearly one in four women in the United States within their lifetimes (Luken, Rosky, & Watkins, 2014). This is an alarming percentage of women and should be of concern to society. In most cases of IPA, women are typically the victims and men are the abusers. Although this comprises the majority of IPA, abuse still occurs in same-sex relationships as well as by women against men (Fleury-Steiner, Fleury-Steiner & Miller, 2011). Fleury-Steiner and colleagues define IPA as “a pattern of psychological, physical, sexual, and/or financial abuses and threats which are committed against a current or former intimate partner. These abuses result in the batterer gaining control over the survivor” (p. 512).

Women are most at risk for increased violence and abuse after they leave their partner. This is a time period where they are most likely to become victims of stalking or even homicide. McFarlane and colleagues (1999) found a significant relationship between stalking and homicide in intimate partner relationships. A likely reason for this increased violence is that the abusers wish to maintain power and control over the lives of their victims (Fleury-Steiner, Miller, Maloney & Postel, 2014). This concept of power and control will be discussed in greater detail later on.

Civil protection orders are an effective way to protect women from experiencing future abuse, however, less than 80 percent of women in the United States who are victims of abuse by an intimate partner are issued a civil protection order each year (Holt, Kernic, Wolf & Rivara, 2003). Protection orders are a way for

survivors of abuse to regain control of their lives from their abusers as well as a way for them to show their abuser that they are serious about leaving the relationship (Cattaneo, Grossmann & Chapman, 2015). Many survivors of IPA also report feeling safer after being issued a protection order (Fleury-Steiner et al., 2011). Although protection orders are believed to be an effective way to stop abuse, three out of five women with protection orders still end up becoming victims of intimate partner abuse after they receive protection orders (Nichols-Hadeed, Cerulli, Kaukeinen, Rhodes, & Campbell, 2012). This number is alarming, especially given the failures of the criminal justice system to enhance victim protection (Belknap, 2015).

Physical abuse is the most widely publicized form of intimate partner violence and seems to carry the most weight in court since assault is clearly a crime. Despite this emphasis, most women report that the psychological and emotional abuse that they experience is more damaging and long lasting than their physical injuries (Follingstad, Rutledge, Berg, Hause & Polek, 1990). Unfortunately, judges in court, even though physical and psychological abuse often work in tandem, often overlook this type of abuse, since it is not necessarily illegal and it is difficult to present tangible proof (Stark, 2008). This is a serious issue in terms of protection orders being issued and is the main idea guiding this thesis.

Background and Terminology

INTIMATE PARTNER VIOLENCE VS. INTIMATE PARTNER ABUSE

Most people are familiar with the terms domestic violence or even intimate partner violence (IPV). The term “domestic violence” is problematic because it typically encompasses sibling abuse, elder abuse, and other family configurations that

are not related to partner violence. The term “intimate partner violence” has become more prevalent since the 1990’s because it includes same-sex couples as well as dating relationships. Most legislation, including court policies and police reports, refers to IPA as domestic violence or IPV (Belknap, 2015). IPA recognizes that abusers use tactics to control and harm their victims that are not always violent. Since my thesis focuses on psychological abuse, the term IPA will be used.

CIVIL COURT VS. CRIMINAL COURT

Before discussing in greater detail how protection from abuse orders are obtained, it is essential to understand the difference between the civil court system and the criminal court system. Most people are familiar with the criminal court system from watching television or from keeping up with the news and current events. These cases follow criminal procedures where the state prosecutes the defendant for a crime and the defendant has a constitutional right to legal representation as well as to have the case heard before a jury of his or her peers.

Most people are familiar with the terms defendant and prosecutor from criminal cases. The equivalent to these terms in civil court are respondent and petitioner in civil cases (Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015). In PFA hearings, the petitioner is the person who has filed for a protection order and the respondent is the person that the order has been filed against. In Delaware, the state where the case studies in this paper were observed, commissioners serve as judges.

There are major differences between the civil and criminal court systems. The greatest difference between these systems is the burden of proof. Most people are familiar with the defense in a criminal case saying that the prosecution needs to be able to prove the defendant guilty “beyond a reasonable doubt”. This means that the

evidence presented needs to be 99 percent sure that the defendant is guilty of the crime. In civil court, the burden of proof is the “preponderance of the evidence”. It is easiest to picture this burden of proof being placed on a scale and slightly tilted in favor of the petitioner. If the evidence does not suggest at least 51 percent guilt on the part of the defendant, then the order will not be granted. In a PFA hearing, this means that the commissioner must be 51 percent sure that abuse has occurred (Retrieved from www.lawhelp.org, 2015).

Another major difference between these court systems is that the Constitution does not grant a civil right to legal representation outside of criminal hearings. This means that the petitioners and respondents need to either represent themselves or find and pay for legal representation on their own. In line with this, only the judge or commissioner makes decisions of guilt in civil court hearings. There is not a jury of peers present in family related civil cases (Retrieved from www.lawhelp.org, 2015).

PROTECTION FROM ABUSE ORDERS

Protection from abuse orders (PFAs) are a means for survivors of intimate partner violence to gain back control and protect themselves from future abuse (Fleury-Steiner et al., 2014). They are filed through the civil court system and, when granted, state that no further abuse may occur. In addition, they may offer forms of relief, such as protecting money or assets, as well as devising custody arrangements. Orders also state that the abuser must relinquish and refrain from owning and purchasing firearms.

PFAs can be filed by people involved in a romantic relationship with one another as well as by immediate family members. This includes spouses, ex-spouses, dating relationships, people with a child in common, same-sex relationships, family

members, and a parent or guardian on behalf of a minor child. Orders cannot be filed against, for instance, a roommate or a friend (Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015).

PFA's are granted in civil court where a petition must be completed and filed by the person seeking protection and then a hearing must be scheduled. A judge or commissioner will ultimately decide whether or not abuse has occurred and will choose to grant or deny the petition for a PFA. If a PFA is granted and the abuser violates any part of the order, consequences will be enforced by the criminal justice system. Violating a PFA is a criminal offense and punishment can include fines and/or serving time in prison (Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015).

FILING FOR A PFA AND THE COURT PROCESS

Since this paper focuses on intimate partner abuse against women, I describe here the process followed by a woman who is a victim of abuse who files for a PFA. First, she would need to physically go to the courthouse and ask for a petition for a PFA. She can also fill out the petition online, but will need to bring a physical copy to the courthouse in person in order to file the petition. She would need to fill out the questions asked and describe the abuse that has occurred. Since she is not given the right to an attorney in the civil court system, she must either fill this petition out herself or hire an attorney to help her complete it. Victims' advocates are also able to help with this process.

Once the petition is complete, the woman may request an ex-parte. This is an emergency and temporary PFA order that is used to protect the petitioner until the actual hearing occurs. The commissioner may grant the woman an ex-parte order if s/he believes that the woman is in immediate danger and needs a temporary order

(Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015). The respondent will then be served the petition and must appear in court the day of the hearing. The petitioner and respondent can be accompanied by legal representation if they can afford to hire an attorney. Free legal aid is available for people who qualify, however, this aid is limited and not everyone who cannot afford an attorney qualifies.

On the day of the hearing, the parties will be given the chance to the potentially mediate the petition through a court appointed mediator. This mediator will ask the respondent if s/he consents to the petition. This means that the respondent can choose to accept the petition without admitting to any of the allegations in the petition. S/he is only agreeing to abide by the terms in the PFA (Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015). If this happens, both parties will enter the courtroom and the commissioner will read the terms of the PFA and both parties will consent to the order. Consent hearings are quick, although the commissioner is required to ask certain questions, such as those concerning possession of firearms.

If the parties do not agree to the petition and a consent is not reached, a full hearing will ensue. When this happens, the petitioner will present her case first. She is able to present her testimony herself or have an attorney represent her, only if she can afford one. She is also able to call witnesses and enter documents as evidence. When her position is complete, the respondent is able to state his side of the story, using the same means that she was given, however he can use an attorney even if she cannot. At the end of the hearing, the commissioner decides whether or not abuse has occurred. This procedure is different than a consent hearing where there is no finding of guilt. Anything said or entered into evidence in a PFA hearing can be used to incriminate the respondent in criminal court. The commissioner will either grant or deny the petition.

If the petition is granted, the commissioner will state the conditions of the PFA, ask the respondent if he/she owns or has access to firearms and will tell the respondent that no more abuse may occur. Orders usually are written for one year with an extension available for another six months after the one-year expires. Some orders can be written for two years and possibly extended for life; however lifetime PFAs are rare (Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015). Both parties will then exit the courtroom and complete any necessary paperwork.

If either party is unsatisfied with the results of the hearing, he or she is able to file for an appeal. This must be done within 30 days of the initial decision. When the order expires after the given time that it was written for, the petitioner may file for a motion to modify or extend the petition. Miller and Smolter (2011) found that many judges are not willing to extend PFAs unless there is strong evidence of physical abuse.

Three out of five women who receive PFAs still become victims of IPA (Nichols-Hadeed et al., 2012). If the respondent violates any condition of the PFA, the police are to be notified. The police will then issue a warrant for the abuser's arrest. After arrest, the abuser will be seen in criminal court before a judge and will face fines and/or time in prison. In the state of Delaware, violation of a PFA results in fines of up to \$2,300 and/or up to one year of jail time (Retrieved from <http://courts.delaware.gov/help/pfa/>, 2015). Although violations are common, jail time for violating a protection order is not (Durfee, 2008).

Chapter 2

CASE STUDIES

The case studies described next are what inspired me to write this thesis. I had the opportunity to participate in the University of Delaware's Summer Scholar program during the summer of 2014. I worked with Dr. Miller and Dr. Fleury-Steiner on their research concerning battered women and their perceptions of the PFA court process. I ventured to the New Castle County Courthouse in Wilmington every Friday morning from June through August and spent the days observing PFA hearings. The two cases that follow illustrate the inconsistencies and potential unfairness of the PFA process. One of the most glaring issues raised in the PFA process is the failure to fully acknowledge all forms of abuse. I believe that these two cases demonstrate the complexities and potential injustice within the PFA process.

Choosing Case Studies

I chose two case studies to highlight in my thesis. Although I witnessed several hearings and consents each day in the courtroom, I selected these two cases because I believe that they illustrate patterns and problems that I noticed in many other cases as well. The first day that I observed PFA cases at the courthouse, along with other undergraduate students and our mentors from the Delaware Coalition Against Domestic Violence, a commissioner told us that she "just wants to see a real domestic violence case". This statement is concerning and reflects the idea that unless a person has sustained serious physical injuries, the courts may invalidate the abuse that s/he

experienced. The cases that I chose highlight the complexities of intimate partner abuse and illustrate the psychological abuse that takes place both inside and outside the courtroom.

Case Study 1

This case study involved a hearing between a divorced couple. Both the ex-wife and ex-husband filed for PFAs against one another. This is called a cross-petition. The man and the woman were both Hispanic and Spanish was their primary language. The woman did not use a translator and did not have an attorney represent her. The man had an attorney to represent him and he did not take the stand at all during the hearing. It was mentioned at the beginning of the case by the commissioner that the woman was not a legal citizen of the United States. The commissioner said that there were immigration issues being addressed elsewhere. The couple had divorced several months earlier and stopped living together prior to the divorce, so a great deal of the abuse occurred a little over a year before the date of this court hearing. The man's attorney set the scope of the hearing to one year at the beginning of the case, so much of the evidence and testimony presented by the woman was objected to by the attorney and was not included in the hearing. Although a scope does not need to be set in PFA cases, the attorney did this because the abuse that the woman would describe in her testimony occurred prior to a year ago.

The woman presented her case first. She spoke English fairly well, but was unable to express herself the way she seemed to want to at times. She presented cell phone bills and text messages, a medical report, and a picture of her ex-husband holding a gun to his head. Cell phones are not permitted in the courthouse unless they were introduced as evidence; however she did not know about this exception and did

not have the cell phone with her. The commissioner allowed her to send a family member who would not be testifying to retrieve the cell phone from her car and bring it in to the courtroom. This took a substantial amount of time and the commissioner appeared annoyed. The text messages between the couple were written in Spanish. The woman felt that the text messages were threatening, but as she struggled to translate the text messages into English, they seemed to lose their original meaning. From what she was able to express, the texts seemed to be threats that he would report her to the immigration authorities if she would not get back together with him.

The woman also testified about the physical and psychological abuse that she endured from her ex-husband. She talked about how he had entered her home after they separated while she was making dinner one night and threw her pot on the floor and beat in her walls with a baseball bat. She said that he then slammed her head onto the sink, leaving a cut above her eye that needed medical attention. She told another story about how she was cleaning at a client's house that had a pool and he had come along. He pushed her into the pool after an argument and tried to drown her. She got away from him and ran down the road and received help from a stranger. The police were not informed because the woman was not a legal United States citizen and she was very fearful of deportation. She said that she almost always had bruises all over her body while they were together.

Another example of abuse that the woman presented was a picture of her ex-husband holding a gun to his head. She said that he sent her this picture threatening to kill himself if she left him. The attorney objected to the picture saying that it was outside the scope of the hearing since her client sent it over a year ago. The commissioner did not allow the photograph to be entered into evidence.

Her son also testified as a witness. He described how afraid his mother was of her ex-husband. He told the commissioner how the man controlled his mother's movements and did not allow her to come out of their bedroom, where she slept on just a mattress. The man also did not allow the son to enter the bedroom to see or talk to his mother.

The attorney presented the man's case to the court. She created a narrative that described the man as being afraid of his ex-wife. The attorney maintained that his ex-wife hit him once while they were driving in his car and it caused her client to be afraid that he would crash the car. The attorney also refuted the incident in the pool where the woman said that her ex-husband tried to drown her. She said that her client was "fooling around" and "just splashing her" and in no way trying to drown her.

The woman tried to object at times to things that the attorney presented. The commissioner almost always shut her down. The woman expressed frustration at this and asked the commissioner, "Why when she [the attorney] objects to something I say you allow it but when I try to object you say no?" The commissioner responded by saying, "She knows the law and you don't."

Ultimately, the commissioner granted the cross-petition, meaning that both the man and the woman received a PFA against the other. She told them that no further abuse may occur and asked if either the man or the woman owned or had access to firearms. Both said no. The woman then interjected and said that her ex-husband does have a gun and that it was clearly shown in the picture she tried to present as evidence. The commissioner ignored her statement.

Case Study 2

This second case study involves a hearing between a divorced, African-American couple; however, in this case the ex-husband had filed the PFA against his ex-wife on behalf of their two young sons. The woman had filed for a PFA against her ex-husband earlier in the summer, but her petition was not granted. She claimed that her ex-husband was very psychologically abusive and continued to control and harass her even though they were no longer together. Since he had not been physically abusive, she did not have tangible evidence of the abuse that she had suffered. For this reason, in the earlier hearing the court did not believe that a PFA was necessary.

During the hearing for the petition filed by the ex-husband, the woman was accompanied by her mother and sister in addition to a victim's advocate from a domestic violence agency. The ex-husband was not supported in the courtroom by any family members or friends. Both parties sat alone at their tables on their designated sides of the room since neither had an attorney. The woman looked down at the table throughout the entire hearing, often times crying, while the man leaned back in his chair with his legs crossed and with his body turned towards her. His stance seemed threatening to me. Several times throughout the hearing, he would stare directly at her.

Since the man filed the petition on behalf of his minor children, he had his children take the stand and tell the commissioner how their mother abused them. He had his older son, who was probably about nine or ten years old, provide his testimony first. The son told his story very robotically, like he had rehearsed and memorized it. He said that his mother had hit him and his brother several times with a toy space ship and that "my mother's mother" would hit them when his mom was at work. He would not refer to his grandmother, whom he and his brother lived with along with their mother, as his grandmother, and denied knowing her before they moved in with her.

The second son, who was probably about five or six years old, walked by the ex-husband when he entered the courtroom, stopping to hug him. He then took the stand, placing a journal that he brought with him on the podium. The commissioner asked what the book was that he had with him and he explained that it was a journal that he had kept of all the times that his mother had abused him. He told the same story that the other son told about being hit with the toy in the same rehearsed manner that the older son did.

The ex-husband did not bring any tangible evidence into the hearing. He relied solely on the testimonies of his sons.

The woman was given a chance to present her side of the story. She said that she never hit her children with a toy. She admitted to spanking them before on their behinds with an open palm when they would disrespect her. She said that most of this disrespect would occur after the boys returned home from a weekend with their father. She also had a social worker testify on her behalf. The court learned that the woman's ex-husband had tried to open a child abuse case with Children and Youth Services against her. The social worker told the commissioner that she had investigated the case and she believed that their father had coached the children to lie about being abused. She said that she had interviewed many children over the years who had been abused and that these two boys used words that other children their age would not use to describe their abuse and that their stories sounded overly rehearsed.

Despite having a social worker who had worked on this case testify, the commissioner ruled in favor of the ex-husband and granted him full temporary custody of the boys. The commissioner determined that the woman abused her sons

even though the commissioner did say that she believed that the ex-husband has coached the boys. The woman was ordered to domestic violence counseling.

After the hearing, the woman was sobbing outside of the courtroom. Her sister and mother as well as the victim's advocate were there to comfort her. The grandmother was very upset that the boys lied about knowing her. She said that she was there the day that they were both born and had always been a part of their lives. She also said that they never referred to her as their "mother's mother" and always called her "Grandma." The woman expressed being devastated about being ordered to domestic violence counseling and that the commissioner believed that she had hurt her sons. She said that she would never do anything to harm them and she did not know that she could not spank her children in the state of Delaware. She said that she only wanted to teach them to be respectful so that they would grow into respectful men. As this was happening, the ex-husband walked out of the courtroom directly past his ex-wife with their two sons. All three of them were smiling and the boys were hanging on their father's arms. The boys did not even seem to notice their mother.

Case Study Problems and Judicial Inattention to Psychological Abuse

These two case studies illustrate significant problems within the courtroom, specifically judicial inattention to issues concerning power and control. In the first case, there is reason to believe that the ex-husband is using the court system to continue to exert power over his ex-wife, especially concerning her immigration status. There is also the possibility that he controlled the money in the relationship, giving him access to legal representation and leaving her without financial resources to do the same. It is also evident that he had tried to coerce her to stay in the relationship by threatening to kill himself, which was made clear to the court through

the picture of her ex-husband with a gun to his head. In the second case, the woman had tried to file for a PFA against her ex-husband, but she was unsuccessful. It is likely that her ex-husband manipulated the court system as a way to continue to exert power over her by filing for a PFA on behalf of their children. He had also launched a case with the Division of Family Services to continue to assert control over his ex-wife. By coaching the children on what to say in court and turning them against their mother, he was able to continue his psychological and emotional abuse over his ex-wife. Literature on PFA filings reinforces that these methods of abuse continue after relationship termination; the next chapter of this thesis addresses these concerns.

Chapter 3

LITERATURE RELATED TO CIVIL PROTECTION ORDERS

In order to contextualize the case studies, in this chapter I present literature relevant to intimate partner abuse. First, I describe the tactics that abusers use to maintain power and control over their victims by discussing the Power and Control Wheel. I identify and highlight the numerous psychologically and emotionally abusive ways that abusers exert power and control over their victims. Next, I will discuss the devastating effects that psychological and emotional abuse has on women who endure intimate partner abuse. Finally, I will argue that having legal representation is beneficial when filing for a protection order and I will outline the benefits of using risk assessment tools when making judicial decisions.

Power and Control

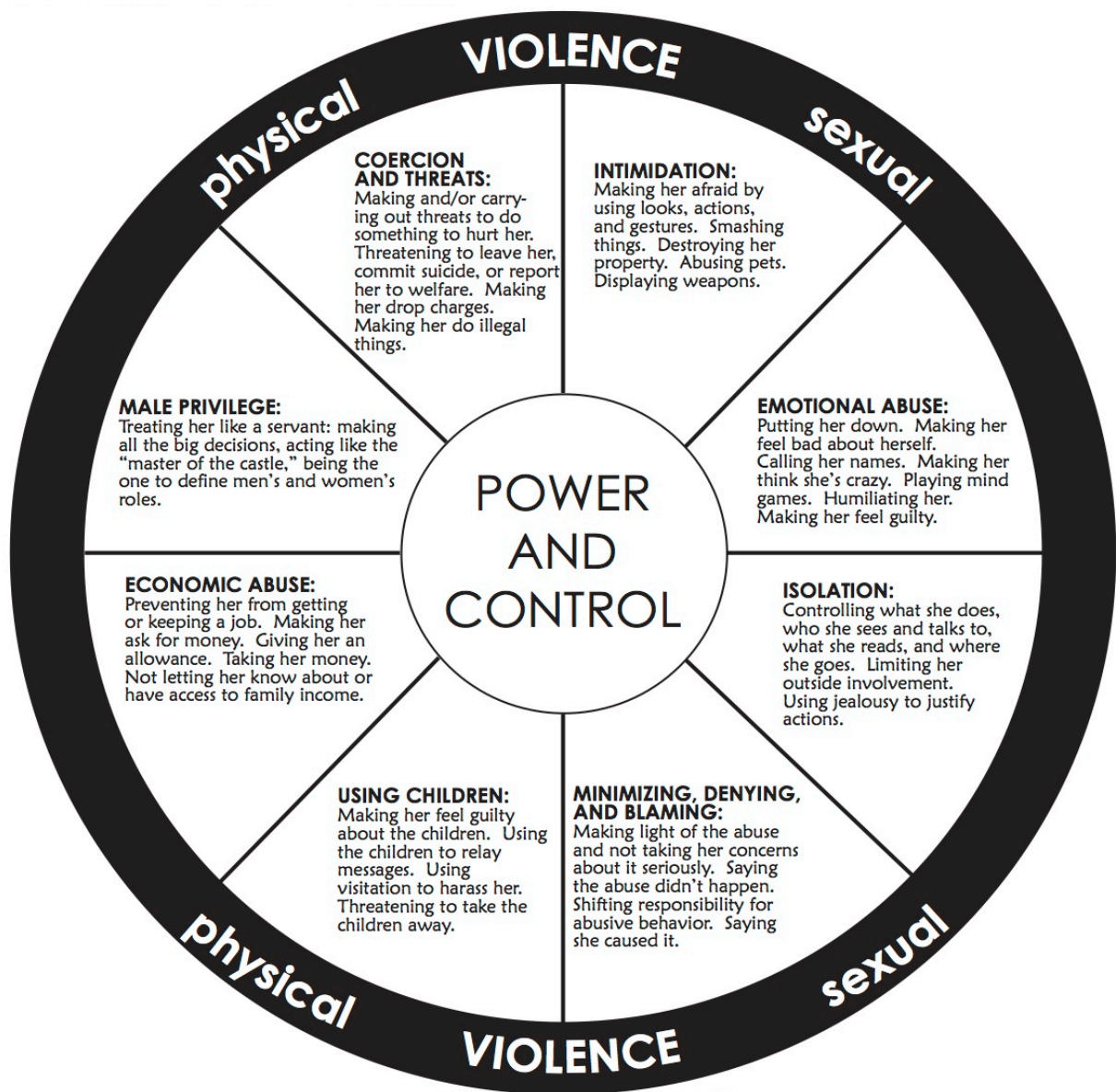
Abusers use several tactics instead of or in to addition to physical violence in order to obtain power and control over their victims. Pence and Paymar (1984) worked with women in Duluth, Minnesota who had been abused by their ex-partners. The women that they interviewed were in treatment groups for victims of IPA. The treatment groups focused on intimate partner abuse at a women's shelter in Duluth and were asked to share the tactics that their abusers used to exert power and control over them. Together, they created the Power and Control Wheel. This wheel explains the tactics that abusers use to have and maintain power and control over their victims. Belknap (2015) describes the wheel as a tire with spokes. The tire includes physical

and sexual violence. The spokes include more specific, non-violent tactics, which include the use of coercion and threats, intimidation, emotional abuse, isolation, minimizing/denying/blaming, using children, economic resources, and the idea of male privilege (Pence & Paymar, 1984). This model is pictured in Figure 1.

There are several types of IPA. Belknap (2015) summarizes research that demonstrates the range of characteristics that are used to define types of IPA. For instance, tactics of IPA must occur in a current or previous intimate partner relationship, the abuse must cause harm to the victim, and the tactic must represent the need for power and control on behalf of the abuser (Tong, 1984). Abuse does not need to occur repeatedly, as some researchers earlier believed, because once abuse has occurred, both partners involved are fully aware of the possibility of its reoccurrence. It only takes one incident of abuse for the abuser to obtain control over his/her victim and create an intimidating environment (Belknap, 2015).

Many women report that the psychological and emotional abuse that they endured is more devastating and long lasting than the physical abuse that they may have experienced (Fleury-Steiner et al., 2011). Belknap (2015) provides a list of IPA tactics, some of which are taken from the Power and Control Wheel. The violent tactics consist of physical and sexual abuse. This list is very short compared to the psychological and emotional abuse tactics on this list. Psychological and emotional tactics include: child abuse, extended family and friend abuse, harming pets and property, verbal and written threats, degradation and humiliation, social isolation, financial and economic abuse, stalking, spiritual abuse, proxy abuse, and paper abuse. This is a substantial number of ways that abusers can control their victims and most

abusers use several of these tactics together to exert power and control (Pence & Paymar 1984).



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Figure 1 Duluth Model of Power and Control

STALKING

Although all of the tactics listed by Belknap (2015) result in psychological and emotional abuse, the courts should pay particular attention to the tactics of stalking, paper abuse, and using children. One in six women will become victims of stalking within their lifetimes compared to one in 19 men, making this a gendered crime (Retrieved from <http://www.cdc.gov/violenceprevention/pdf/nisvs-fact-sheet-2014.pdf>, 2015). Melton (2007) has found that there is a correlation between stalking behaviors and intimate partner abuse. Stalking includes following or watching the victim, unwanted communication, damage to property, and threats that cause fear to the victim. Stalking is usually done to convince the victim to return to the relationship with the abuser, but it is also seen in relationships where both partners are still together (Melton, 2007). Research has also found that a significant relationship exists between stalking and homicide in intimate partner relationships (McFarlane, Campbell, Wilt, Sachs, Ulrich & Xu, 1999). This is important for judges and commissioners to be aware of since stalking is not necessarily a violent crime. By overlooking the psychological and emotional abuse tactics involved in stalking, judges and commissioners may not grant a PFA to a victim who is being stalked. Since stalking is correlated with an increased risk of homicide, this judicial inattention to these tactics could be devastating.

The first case study that I described illustrates tactics of stalking. The woman presented unwanted text messages from her ex-husband that she stated were threatening towards her. She also testified that her ex-husband had followed her to work and that is where he pushed her into the pool. These tactics, along with the picture of the gun to the ex-husband's head, are concerning and have the potential to turn lethal if gone unrecognized.

PAPER ABUSE

It is also important for the courts to pay attention to paper abuse. Paper abuse is when the abuser manipulates the legal system by filing frivolous lawsuits or by making false allegations of abuse or child abuse in order to continue to have control over his/her victim (Miller & Smolter, 2011). This type of abuse makes it so that the abuser can continue to have the opportunity to manipulate and harass the victim through contact in the courts even if a protection order is already in place (Miller et al., 2011).

Both of the case studies that I presented illustrate paper abuse. In the first case, it is likely that the man filed a frivolous cross-petition against his ex-wife in order to make things more complicated for her, especially in terms of her immigration status. His testimony only included one incident of abuse in which he stated that his ex-wife had hit him once when they were driving in his car. It is reasonable to assume that she may have been trying to defend herself against him and that no abuse towards him actually occurred. The second case is another example of what may be seen as a frivolous cross-petition. Since the court was unable to find tangible proof of abuse when the woman filed against her ex-husband a month prior, he used a cross-petition to continue to abuse her through the use of the legal system.

USING CHILDREN

In addition to stalking and paper abuse, an abuser may use children in common to continue to exert power and control over his victim (Pence & Paymar, 1984). I presented an example of this tactic in the second case study. In this case, the ex-husband coached the children to testify about their mother abusing them. He was able to turn the children against the woman and used the legal system to gain temporary

custody. Although cases involving child abuse allegations are complicated and judges and commissioners may err on the side of caution, it is important for them to understand that using children is a tactic used by abusers to continue to exert power and control over their victims.

Effects of Abuse on Women

Being a victim of intimate partner abuse opens the door to both physical and psychological injuries. Research conducted by Ann Coker and her colleagues (2002) focus on these consequences. They found that women who had experienced physical and psychological abuse are more likely to develop a chronic disease, a mental illness, or an injury. They also found that women who were victims of intimate partner abuse are more likely to develop poor health, drug and alcohol problems, and depression.

Depressive symptoms are especially linked to IPA. Chang and colleagues (2015) found that women who have been victims of IPA are three times more likely to become depressed and show depressive symptoms than do women who were not abused. Chang and colleagues (2015) believe that there is correlation between depression and IPA through the loss of belongingness. They define belongingness as having a connection to their intimate partner, family, or friends. These relationships give them a sense of meaning and importance. When an intimate partner invalidates them or keeps them from having a relationship with their friends or family, they lose this sense of belongingness. This loss is believed to have an impact on how depressive symptoms are developed (Chang et al., 2015).

Campbell, Sullivan, and Davidson (1995) performed a study where they evaluated women's depressive symptoms after they left a domestic violence shelter. They assessed the women right after leaving the shelter, after 10 weeks of leaving the shelter, and after six months of leaving the shelter. They found that 83 percent of the women reported being depressed immediately after leaving the shelter. This percent decreased to 53 percent after 10 weeks of leaving the shelter. It remained the same for the six-month assessment (Campbell, Sullivan & Davidson, 1995). In agreement with Chang and colleagues (2015), Campbell, Sullivan, and Davidson found that

powerlessness and loss of social support contribute to depressive symptoms in women who have experienced intimate partner violence.

Benefits of Having Legal Representation

As presented earlier, legal representation is not a right in the civil court system. If the petitioner or respondent wish to use legal representation, he or she must find an attorney on their own. In many cases, affording legal representation is a great financial burden on a victim of IPA, especially if her abuser controls the finances. Free or low cost legal aid is available for victims who qualify; however this is not guaranteed (Retrieved from <http://www.womenslaw.org/index.php>, 2015).

Judges and commissioners in civil court are responsible for deciding whether or not a protection order should be granted. Although the civil protection order process was meant to be able to be completed without legal representation, judges are more likely to grant petitions for protection orders that are filed by an attorney (Fleury-Steiner et al., 2014). This is likely due to the fact that attorneys are able to structure the petition in a way that the abuse meets the legal definition of abuse, supplemental evidence, such as police reports, is included, and the events of abuse are in chronological order. Lawyers also know what information is most relevant and what does not need to be included in the petition (Lucken et al., 2014). In a study conducted by Durfee (2008), 70 percent of petitions filed by attorneys were granted, 60 percent of petitions filed by advocacy programs, and 58 percent of petitions were granted that were filed without any assistance. This shows that there is a significant difference in the percentage of petitions that are granted by judges when attorneys are involved. Research also indicates that “judges are seen as inclined toward a systems or situational approach to appointing blame and believability. This judicial ideology

entails a willingness to accept the premise that some violence is provoked and the responsibility can be equally assigned to the petitioner and respondent” (Lucken et al., 2014, p. 23). Judges are inconsistent in how they decide to grant protection orders. They see some forms of evidence, sometimes even including police reports, as hearsay. Most do not use risk assessments or past records of abuse to make their decisions. Consistency and a uniform procedure for handling protection from abuse order cases should be mandated (Lucken et al., 2014).

Increasing Judicial Attention Through Risk Assessments

When filing for a protection order, petitioners are asked to describe the abuse they experienced in written form. A petition for a protection order in the state of Delaware can be seen in Appendix A. Nichols-Hadeed and colleagues (2012) found that petitioners are not asked specific questions when they file for protection orders. This makes it difficult for a true assessment of risk of abuse to take place. Campbell (2003) created a risk assessment tool for intimate partner violence that specifically measures a victim’s risk for lethality from abusers known as the Danger Assessment. The first part of the assessment consists of victims keeping a calendar of their abuse. They are directed to mark days where abuse occurred and how bad the abuse was on a scale of one to five. The second part of the assessment is a series of yes or no questions that are related to how at risk the woman is of becoming a homicide victim by her abuser. Both of these parts of the Danger Assessment are used to determine the severity of abuse and what degree of physical danger a victim is in (Nicholas-Hadeed et al., 2012). Nichols-Hadeed suggests that courts use questions from the Danger Assessment in the petitions in order to more effectively assess for risk (see Appendix B for a copy of Campbell’s Danger Assessment).

Chapter 4

DISCUSSION

As demonstrated by the two case studies from Delaware's family court, it is important for judges and legislators to pay attention to all forms of abuse, not just physical violence. I believe that the terms domestic violence and IPV should be changed in court policies and police reports to IPA. This should be done to underscore that not all abuse is necessarily violent (Belknap, 2015). By changing the word "violence" to "abuse", it acknowledges that other forms of abuse exist. This is especially important in legislation, where terminology is so essential. One word can make or break a case. When the term "violence" is used, it is reasonable for a judge to pay extra attention to physical injuries that have occurred. However, the term "abuse" encompasses all the power and control tactics that abusers use as well as physical violence. Using the term IPA in the court system reinforced by risk assessment judicial trainings, should help judges to identify all forms of abuse instead of concentrating on physical violence alone.

Equal legal representation should also be offered to petitioners filing for a protection order. In the first case study that I presented, the woman did not have representation and her ex-husband did. This made the case very unbalanced, as the attorney knew exactly how to frame the case to protect her client as well as how to bring into evidence enough cause for a PFA against the woman. If the woman had also had an attorney, it is less likely that the judge would have been rude to her and it would have made it much more likely that she would get her documents entered into

evidence. Her attorney would have also most likely found a way to extend the scope of the case to exceed one year.

Judges should be more educated regarding power and control and risk factors of both victims and abusers, especially since many abusers use the court system to continue to abuse their victims. This was seen in the second case study that I presented. The man manipulated Child and Youth Services as well as the civil court system to continue to abuse his ex-wife. It appeared that he turned the children against her and coached them on what to say in court in order to gain temporary full custody and to obtain a PFA against her on his children's behalf. In addition to manipulating the court system, he was able to psychologically harass her by the use of a threatening stance and stares throughout the hearing. Educating judges about power and control and risk factors is important because psychological abuse works in tandem with physical abuse and can be a warning of abuse that will occur in the future. It is also important because many women express that the emotional and psychological abuse that they have experienced is more devastating and long lasting than their physical injuries (Follingstad et al., 1990).

It would benefit victims of intimate partner violence as well as judges and commissioners for the questions on the petition for a protection order to reflect the questions used by the Danger Assessment. The current petition used by the state of Delaware asks the petitioner to describe instances of abuse, including dates if possible. As presented by Lucken and colleagues (2014), it is difficult for many women to describe the occurrences of abuse in a manner that pleases the court. By restructuring the questions in the petition to reflect the questions from the Danger Assessment, it would make filling out the petition more accessible for petitioners who do not have or

cannot afford an attorney. In addition to this, the Danger Assessment acknowledges all forms of abuse and would make psychological and emotional abuse more recognizable for judges and commissioners since many petitioners have difficulty describing this type of abuse (Lucken et al., 2014).

Chapter 5

CONCLUSION

In conclusion, intimate partner abuse affects nearly 1 in 4 women in the United States each year (Lucken et al., 2014). Although protection orders offer a potential way for survivors of IPA to gain back control of their lives and make them feel safer, three out of five women are still abused after obtaining an order (Nichols-Hadeed, 2012). Through the cases observed in the Delaware civil court system, I noticed judicial inattention to psychological abuse. This is a problem because psychological abuse and physical abuse often work in tandem. In addition to this, many women report that the psychological abuse that they endure is more painful and long lasting than their physical injuries (Follingstad et al., 1990). It would benefit survivors of intimate partner abuse for the legal system to explicitly acknowledge a greater range of IPA tactics, given that judges seem to prioritize the risks of physical violence over all other kinds of abuse (Miller et al., 2011). In addition to this, equal representation should be mandated so that no person is advantaged/disadvantaged based on the availability of legal representation. Judges should also be better educated about the use of power and control by abusers in non-violent ways. This will give them the knowledge that they need to be able to identify when an abuser is using psychological tactics to continue to exert power and control over his/her victim. In addition to enhancing judicial training, risk assessments that ask victims clear questions about all forms of abuse should be used by judges in order to better identify all forms of abuse.

There are implications to this thesis. I only described two case studies. However, the case studies that I observed were not an anomaly and do represent problems prevalent in the literature. Future research could continue to observe cases to discern if the patterns I identified are widely present and if judicial behavior and decisions vary across different judges.

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Appendix A

Petition For Order of Protection From Abuse

Form 450
Rev 03/14

The Family Court of the State of Delaware

In and For ☐ New Castle ☐ Kent ☐ Sussex County

PETITION FOR ORDER OF PROTECTION FROM ABUSE

Petitioner

v. Respondent

Name	Name	File Number
Street Address (Refer to Question 1 below before filling in address)	Street Address (including Apt)	Petition Number
P.O. Box Number	P.O. Box Number	
City/State/Zip Code	City/State/Zip Code	
Date of Birth	Date of Birth	
Attorney Name	Attorney Name	
Interpreter Needed <input type="checkbox"/> Yes <input type="checkbox"/> No Language:	Interpreter Needed <input type="checkbox"/> Yes <input type="checkbox"/> No Language:	

Child(ren)	Date of Birth	Is this the respondent's child?	Are you alleging the respondent abused this child and you want the child to be a petitioner?
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

The Petitioner respectfully requests that this Court issue an Order of Protection from Abuse against the Respondent, as provided for in 10 Del. C., § 1041 et seq. In support of this request, the Petitioner states that:

1. I ask that the following addresses be **kept confidential because** the disclosure of this information will place me and/or my child(ren) in danger:

- ☐ the address of my place of residence, school and/or employment
☐ the address of my child(ren)'s residence, school or child care

***** DO NOT LIST ADDRESS ON PETITION IF REQUESTING CONFIDENTIAL ADDRESS *****

2. Choose one:

☐ Petitioner's relationship to Respondent is: (select relationship)

- ☐ Current or former spouse ☐ Living together
☐ Current or former substantive dating relationship ☐ Child in common
☐ Family member (specify relationship): _____
☐ Custodian of Children

☐ Affidavit of Parentage attached and incorporated herein.

OR

☐ Petitioner is the Division of Family Services acting in the interest of a minor child.

OR

3a. The Respondent has committed the following act(s) of abuse against the Petitioner (*Please describe all the acts of abuse you wish the Court to consider, including dates if known. If additional space is required please attach the Court Addendum Form, [Form 540.](#)*) :

3b. The Respondent has committed the following act(s) of abuse against the Child(ren) (*Please describe all the acts of abuse you wish the Court to consider, including dates if known. If additional space is required please attach the Court Addendum Form, [Form 540.](#)*) :

4. Petitioner has reason to believe that the Respondent is in possession of the following firearm(s):

WHEREFORE, Petitioner asks this Court for the following relief(s):

- ☐ Prohibit the Respondent from committing any act of abuse against the Petitioner (or his or her minor children).
- ☐ Order the Respondent to stay away from:
- ☐ Petitioner
 - ☐ Petitioner's home
 - ☐ Petitioner's workplace
 - ☐ Other: _____
- ☐ Prohibit the Respondent from contacting or attempting to contact the Petitioner in any way, including, but not limited to, by phone, by the mail or by any other means.

☐ Order the Respondent to be evaluated by a certified domestic violence treatment agency and follow all recommendations for treatment and counseling.

☐ Other: _____

The Petitioner also asks the Court for any other such relief that the Court deems appropriate and just.

Date

Petitioner/Petitioner's Attorney

VERIFICATION	
STATE OF DELAWARE)) ss.:
COUNTY OF _____)	
_____, being duly sworn, says:	
I am the Petitioner in this action. I have read the above Petition and know to the best of my knowledge that the Facts contained therein are true.	
Subscribed and sworn before me on this date,	_____ Petitioner
_____ Date	_____ Notary Public

Appendix B

Danger Assessment

DANGER ASSESSMENT

Jacquelyn C. Campbell, Ph.D., R.N.
Copyright, 2003; www.dangerassessment.com

Several risk factors have been associated with increased risk of homicides (murders) of women and men in violent relationships. We cannot predict what will happen in your case, but we would like you to be aware of the danger of homicide in situations of abuse and for you to see how many of the risk factors apply to your situation.

Using the calendar, please mark the approximate dates during the past year when you were abused by your partner or ex partner. Write on that date how bad the incident was according to the following scale:

1. Slapping, pushing; no injuries and/or lasting pain
2. Punching, kicking; bruises, cuts, and/or continuing pain
3. "Beating up"; severe contusions, burns, broken bones
4. Threat to use weapon; head injury, internal injury, permanent injury
5. Use of weapon; wounds from weapon

(If **any** of the descriptions for the higher number apply, use the higher number.)

Mark **Yes** or **No** for each of the following. ("He" refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

- ☐ 1. Has the physical violence increased in severity or frequency over the past year?
- ☐ 2. Does he own a gun?
- ☐ 3. Have you left him after living together during the past year?
3a. (If have *never* lived with him, check here ☐)
- ☐ 4. Is he unemployed?
- ☐ 5. Has he ever used a weapon against you or threatened you with a lethal weapon?
(If yes, was the weapon a gun? ☐)
- ☐ 6. Does he threaten to kill you?
- ☐ 7. Has he avoided being arrested for domestic violence?
- ☐ 8. Do you have a child that is not his?
- ☐ 9. Has he ever forced you to have sex when you did not wish to do so?
- ☐ 10. Does he ever try to choke you?
- ☐ 11. Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, "meth", speed, angel dust, cocaine, "crack", street drugs or mixtures.
- ☐ 12. Is he an alcoholic or problem drinker?
- ☐ 13. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car? (If he tries, but you do not let him, check here: ☐)
- ☐ 14. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.")
- ☐ 15. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: ☐)
- ☐ 16. Has he ever threatened or tried to commit suicide?
- ☐ 17. Does he threaten to harm your children?
- ☐ 18. Do you believe he is capable of killing you?
- ☐ 19. Does he follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don't want him to?
- ☐ 20. Have you ever threatened or tried to commit suicide?
- ☐ Total "Yes" Answers

Thank you. Please talk to your nurse, advocate or counselor about what the Danger Assessment means in terms of your situation.