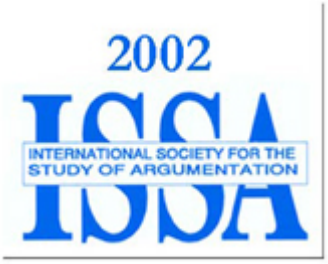
ISSA Proceedings 2002 – Differential Argument Construction: Examination Of Attorney And Pro Se Arguments In The Restraining Order Courtroom



1. Introduction

This essay compares the argument styles of pro se parties (those who represent themselves) and parties represented by attorneys in a Restraining Order courtroom in Denver, Colorado, USA. We were interested in examining the extent of differences and similarities in argumentation and their implications upon questions of allocation of justice, the maintenance of a monopoly on court argument held by lawyers in the United States and, especially, the extent to which arguments by lawyers may systematically distort client narratives. Data was gathered in two years of ethnographic observation in the Restraining Order courtroom, as well as twenty-seven qualitative interviews and an examination of one dozen Permanent Restraining Order hearing transcripts. Types of representation and styles of argumentation are discussed regarding how they influence perceptions and outcomes in the courtroom.

A brief overview of the Restraining Order process is needed to understand the context in which this communication occurs. The Restraining Order courtroom is a dedicated specialized court for survivors of domestic violence to obtain Restraining Orders against perpetrators of violence. An applicant (or plaintiff) is asking the court to order the defendant to have "no contact" with her**[i]**. The no-contact order may be accompanied by orders to vacate shared housing, for custody of children and for visitation. This is a two-step legal procedure in which the plaintiff must come to court two times. The first day in court is referred to as the Temporary Restraining Order. This first day in court the plaintiff is most often the only party present.

The plaintiff returns to court in approximately two weeks for her Permanent Restraining Order hearing at which time the defendant has a right to be present

to either agree or disagree with a Permanent Restraining Order (PRO) being placed against him. If the defendant disagrees with having a PRO placed on him, then the case will go to hearing that morning. Permanent is, as it sounds, forever. Although this is a civil complaint, if the defendant violates a "no contact" Restraining Order issued by the court then he is liable for criminal charges.

Parties (plaintiffs and defendants) can represent themselves at these hearings or hire attorneys to represent them, but no person other than an attorney may represent them or help them in presenting their cases. The great majority of plaintiffs represent themselves in court. Those few who do have lawyers are nearly always represented by legal aid programs. Defendants are more likely to be represented by attorneys that they have hired.

We conclude that there were few differences in content presented between attorneys and the unrepresented. However, the style of presentation and, especially, the fact that one other than the party in interest is making the arguments may affect outcomes in the courtroom. In particular, when an argument is made by a representative on behalf of a party, it may be given greater credence, while similar arguments made by the party may actually detract from her credibility by playing into a judge's preexisting conceptions about the situation of violence in the home.

2. Pro Se Plaintiffs

Most of these women are terrified of the defendant and find facing the defendant particularly difficult, especially when they have to disclose incidents of how he abused her. For example, one plaintiff describes:

Well, to begin with I was nervous. I couldn't sleep because I knew he was going to be there. I was-I couldn't sleep, all I kept thinking was, what if he's outside, what if something happens in court…It was nerve wracking. I was very nervous, especially when I opened that door and he's sitting right there – looking at me – like, "oh man, you're gonna get it." It was very scary, it was scary…I didn't like that experience at all. I still think, I can still see him. There's times I close my eyes and I can still see him just sitting there looking at me.

Nerves are mentioned as something that influences how pro se women plaintiffs present their cases, especially when they conduct their own cross-examination of the defendant. Fear is evoked when put face-to-face in the same room as the defendant. As one plaintiff mentions,

It was difficult for me to go first because I wasn't totally prepared as to what was

procedure. Yeah, the procedure, what was going to happen, what I really needed to present in my case…so I lost my train of thought, so that hurt me too I think…I was-I was nervous – I was internally shaking and I don't, so it's hard to represent yourself when you're nervous like that.

In addition to fear of seeing and confronting the defendant at the Permanent Restraining Order hearing, pro se plaintiffs often are not fully prepared to take on all of the tasks of an attorney. Pro se plaintiffs are often not prepared to go to hearing that second day in court because they get inundated with information their first day in court at the Temporary Restraining Order hearing and often cannot remember everything that was briefly explained by court representatives. This lack of preparation manifests in ways that are detrimental to plaintiffs' cases; for example, women often don't bring witnesses or other key evidence such as taped telephone conversations, hospital and police reports. Also because of nerves and fear women sometimes forget to convey key issues in their testimonies and cross-examinations. As one plaintiff explains,
I also didn't feel like I had an opportunity to make a clear guideline of visitation with my children…I don't really think I had an opportunity to say why I didn't, or conditions about visitation, because he tends to manipulate me through them, so I wanted some kind of condition, and all of a sudden my time was up. And I wanted to speak, but I didn't know how to address that.

Another problematic area for pro se plaintiffs is trouble framing stories in ways that judges deem appropriate and acceptable. Some problems include court representatives perceiving women as being too emotional, women described as talking in a circular fashion versus a linear format, women talking about violence in general terms versus specific incidents, and women having trouble communicating about the violence in their lives that may not be readily understood by courtroom representatives such as judges who have different contexts and worldviews.

Women may frame their arguments in general terms instead of citing specific cases of violence. For example, women often talk about how, "he's a bad man," or "he's very violent," without offering examples as evidence to back up their claims. This may hurt their cases because judges are often looking for specific, linear stories that involve a scenario like, "on the night of June 10th, 2002 about 2am the defendant broke into my house and held a knife to my throat threatening to kill me and my kids woke up and saw the whole thing." One judge describes how

male defendants may present their cases differently than female plaintiffs, “When you’re talking about time frames, for example, when you ask, ‘when did that happen?’ a man’s liable to sit there and tell, ‘well it happened on December 22, 1998,’ or something like that, whereas a woman is more apt perhaps to relate to an event, ‘well I was pregnant at the time with my second child.’ So that’s where they’re coming from to begin with in terms of the way they tell their story.”

In fact, another related problem is that women will often downplay the violence they experienced when first put on the stand and questioned about it. For instance, they often lead with, “well he called me bad names like “slut” and “whore.” Or they will talk about how he makes harassing phone calls and shows up at her house uninvited. Court representatives offer different theories on why this may occur including embarrassment, fear of angering the defendant, intimidation by the courtroom environment, high stress, as well as being ill-received the first time women told stories of violence to an official like a police officer. A court advocate also indicates how “saving face” may also be an issue for women in framing their stories that court might not take into consideration and that may indicate why women downplay relationship violence when the perpetrator is present.

Sometimes if you don’t give an indication that you are scared – they’re not going to give you a Restraining Order. And I saw that happen in Judge Z’s courtroom, where she was asked, ‘well, are you scared of him?’ ‘No, I’m not scared of him!’ Because if she said she’s scared of him, number 1) it’s a victory for him, and number 2) it makes her look like a punk – in her own eyes and maybe in her peers’ eyes. Um, especially to the man who has beaten her up on many occasions, who has threatened to take her kids. So, yeah, she’s scared of him, she just wasn’t going to say it in those words. She’s going to say it in other ways.

Unfortunately, women who do not frame their arguments and stories in ways judges expect may be denied protection. This is an area where attorneys (or others) may be able to act as translators between the court and the plaintiff so that they can mutually understand one another (Amsterdam and Bruner, 2000), which as Shotter (1993) asserts is quite difficult because mutual understanding happens rarely if at all.

Plaintiffs’ stories are often not well received by the court when described in the ordinary way that they usually tell stories. Judges will often cut off a woman’s testimony (Ross, 1996) in court, especially if she begins talking about things that the judge thinks is irrelevant as far as evidence needed to issue the Restraining

Order. This problem is identified by many Restraining Order participants as women presenting their cases in a circular manner and judges expecting a linear account. The following excerpt from a county court judge details this problem:
The biggest thing I see…is women tend to be pretty confused in their testimony, sounding often doubtful…but I try to think what it would be like to be knocked down or thrown against a wall…And all those maybes frequently enter the testimony. There are comparatively few maybes in the defendant's testimony – very rare to hear him unsure of the story line. Um and so the fact finder is sitting there and saying, well here we have the linear, calm story that makes sense. Then I have this confused, emotional mess, and I want to be comfortable with my decision. 'Well, I've got oceans of reasonable doubt, man!' Now I mean I don't feel comfortable telling women, 'okay so first your story, memorize a linear account, eliminate all doubt'…But the two biggest things I see is that difference, and the fact that what's important to her story is going to be episodic, and one thing is going to remind her of another thing which happened a few months ago and then she's going to want to talk about it…The truth is I don't know what to do about that.

In addition to expecting women plaintiffs to construct a linear account of abuse in their intimate relationships, women are expected to deliver these stories in unemotional ways.

The women are also emotional and that makes a lot of decision-makers extremely uncomfortable. And again I can observe it without being sure what to do about it…There is real fear of women out of control, there is real anger that you can't tell the story without making me feel bad. We like our victims un-angry; we white knights like to rescue damsels in distress, not damsels who are pissed off. (County Court Judge)

So a woman who is getting up there telling her own story…one problem with that is it comes off as less truthful to a judge, who is again, who looks at it from this epistemological construction that a truthful story is one that's internally consistent and chronological and has no gaps and is the same every time she tells them and that's just not the way people tell stories, um when they're telling their own stories…And a lot of times they say it in ways that make the judge feel uncomfortable and that hurts them. They say it with a lot of emotion or with all the fear and dread that they really experience and judges can't handle that, they'd much rather just hear a calm and sort of distant explication of their story…

(Attorney)

The above comments reify appropriate norms of communication messages (Berger & Luckmann, 1966) that are "un-angry" and unemotional which explains some of the difficulties court representatives have in understanding plaintiffs' daily praxis (Bruner & Amsterdam, 2000; Lopez, 1992). This inability to understand plaintiffs has silencing functions since women can't talk about their reality from their own points of views, but instead are expected to have the agency (Giddens, 1984) to frame stories in ways that resonate with judges' life experience and worldviews.

The next area that makes it difficult for women to frame their arguments revolves around issues of different contexts that women and court representatives have. As one attorney describes, "all communication requires context…that sort of unspoken context of all languages…and the judges are usually coming at their decision or come from a background of different cultures from the people in the courtroom…I think it distorts communication…It definitely influences outcomes…" These different contexts can create difficulties regarding differing perceptions of violence and differing views of importance regarding socio-economic issues such as money. The following examples illustrate some contextual differences that can be obstacles in pro se women constructing their arguments and presenting their cases:
People have ideas about acceptable levels of violence and so sometimes what she speaks about is that he was too violent this time and it's very hard to convey that reality. Well sure he slapped me, but he had his hands around my throat this time and our kid was there. It is very hard to take in that reality and hard not to leap to she didn't mind being hit that much. And if she didn't mind, why should I mind, statute or no statute…she might not be very clear how very different than how peaceful my life is and that is a very peculiar statement…it may be the best approach to say, "you know this may be hard for you to understand, but I can handle some stuff, but this was too far. (County Court Judge)

People confuse different things to be in court and there I think of class again – I'm not sure what to tell people but comparatively often, not surprisingly if you're poor, property discussion may be perceived as a worse thing than being hit. It's harder to get a new car than free health care at DG perhaps. And then that strikes people as, 'oh god all she's talking about is the car,' how serious can she be?…for the very poor and the very rich things have disproportionate importance. And it

takes a lot to admit it by a judge. (County Court Judge)

Plaintiffs have many difficulties in framing their stories in ways that judges and other court personnel would find believable such difficulties include differing worldviews and contexts, different storytelling styles, and differing knowledge of normative legal procedures. As Jerome Bruner notes, Law's demand that witnesses speak nothing but the truth violates the law of language that demands coherent and never merely true stories (Amsterdam & Bruner, 2000, p. 110). A further constraint in arguing cases in Restraining Order court for women plaintiffs involve issues of culture. "Like one girl – the Spanish-speaking girl I remember – couldn't concentrate – I don't think she could understand what 'threat' meant" (Plaintiff). Cultural differences is another contextual issue that makes understanding difficult. As well some cultural norms are antithetical to courtroom procedures such as disclosing 'private family matters' in a public courtroom.

Hispanic women in general don't feel as comfortable doing the very uncomfortable- playing the uncomfortable role of having to disclose what happened in the family. So for various ethnic groups it gets more difficult to communicate what had happened so I think that plays a part in able to obtain a Restraining Order if people are unwilling to or unable to impart information that the legal system requires. (Attorney)

Plaintiffs are being asked to construct stories and make arguments that are often in conflict with cultural norms of privacy and gender rules. This conflict could result in women not receiving protection from the state if they are unable to frame arguments the ways the state requires. Another problematic area in non-English speaking women's presentation is having to disclose intimate partner violence to men outside of the family, quite often white males in power such as interpreters, attorneys, and judges. This too can affect what is disclosed and influence outcomes.

Because women plaintiffs are often overwhelmed by intricate court procedures there are court advocates present from a non-profit agency Project Safeguard who will answer questions for women-in-crisis and help guide them through the Restraining Order process, but not represent them as would an attorney. Advocates can play a key role in making court a less daunting and unfamiliar process for women.

I just really appreciate the advocates being there – people walking you through it. That would have been awful if I was standing up there and not known that I could ask those questions, and not knowing how to ask them or what questions to ask… (Plaintiff)

Because judges listen for stock stories of violence that fit into neat categories of what does or does not warrant a Restraining Order, plaintiffs' knowledge of types of questions to ask defendants during cross-examination has the potential to elicit evidence that may also increase chances of receiving a Restraining Order. The advocates sometimes share a list of questions for pro se plaintiffs to ask during cross-examination, questions like: can you tell me what you are like when you are angry? Have you ever been to domestic violence classes? What's our children's doctors or teachers' names? In our experience, women who have these objective questions to ask, in addition to particular ones unique to the violent relationship, appear to be able to better argue their cases and win in court.

Another way plaintiffs and defendants argue cases is to evoke social identity roles such as wife/mother and husband/father. As mentioned previously, plaintiffs often describe things in general terms such as on a continuum of good to bad. So often in Restraining Order court we hear a lot of "he said/she said" type of arguments in which she claims she's a good mom and he's a bad dad and vice versa as part of elevating one's own credibility and trying to damage the credibility of the opposing party. The following hearing excerpt aptly represents how pro se plaintiffs and defendants use familial and religious identifications to argue their cases in Restraining Order court.

Plaintiff: *My oldest one, he was about six. My little one, she was about three. I was pregnant. He used to hit me and try to choke me, being very jealous, very possessive; he didn't let me go to work, didn't let me go to school. I was a slave for many years to him…The kids used to come back crying because he hit the other one with a belt in front of the little one…He's not a good father.*

Defendant: *My wife has lied many times before the court. This is not the first Restraining Order; it's been seven or eight times. I work at a church. I'm a pastor of a church…I've tried to live well with her, but she's abusive. She needs mental health. She's very emotional and nervous. The day of the problem I was returning from a pastor's meeting. I tried to give her a kiss and she was mad. Her mother has a very strong and bad influence over her…She began to argue and I told her to be quiet and she began to insult me, to push me, and she grabbed my right arm*

*and scratched me and quite a bit of blood came out…I have tried to reconcile with her because of my children and also because I'm a Christian***[ii]**.

In the above excerpts we see displays of constructed and contested identifications in the interactants' testimonies. For example, the plaintiff avows her identification as a mother who has been abused, and ascribes an abusive identification to the defendant as someone who beats a pregnant woman as well as his kids. The defendant contests these identifications in a number of ways. He ascribes an identification to his wife as a liar, trying to undermine her testimony as credible; he also claims she's mentally incompetent as well as abusive. While ascribing negative identifications to his wife, the defendant tries to elevate his own credibility by invoking his role as a pastor, a Christian, and a caring father – staying with his abusive wife for the sake of the children.
When both the plaintiff and defendant are pro se there appears to be more of a level playing field than when one of them has an attorney. When both parties are pro se judges may lean in favor of the male who constructs a story in ways judges prefer.

3. Pro Se Defendants
Defendants as well as plaintiffs utilize role identifications on a good/bad continuum as evidence for their arguments. However, as mentioned previously by judges and others, defendants' testimonies are much more likely to be linear versus circular and thus in accord with judges' expectations of a creditable story.

So you know unless he's a real thug, and most guys aren't real thugs, he will have put together a story that protects his ego, and it will probably be linear, and it will involve issues of being in control, not being angry, wanting to help her, wanting to keep her safe from herself, wanting to keep him safe from herself, wanting to keep the kids safe from herself. (County Court Judge)

Defendants tend to deny that they are abusive and often, as a tactic, claim that they are the abused ones.

The guy is much more likely to deny the obvious. And even though it often works he's very likely to be there saying, "no, I wasn't angry, I'm not angry at all. Nope, nope it was all her, I was in control." Or my favorite, "if I was that out of control I would have really hurt her, she can't be telling the truth…" (County Court Judge)

Also a defendant will often claim that he only responded to her physically abusive

acts towards him by pushing her away. As Zorza (1998) argues, abusers often rely on false myths and folk knowledge about domestic violence survivors (e.g., women are mentally ill, women lie about the abuse, and women cause the abuse), and the abusers testify that their partners embody these myths to gain sympathy from court officials who may believe in the myths themselves. In the hearing transcripts we consulted, it also appears that defendants will frequently argue that the plaintiff is an adulteress, lazy, and and/or a user of drugs or alcohol as an attempt to undermine her credibility and/or as a justification of why he hit her/stalked her.

4. Attorney for Plaintiff

Having an attorney is seen by many women and court representatives as helpful in part because as one attorney asserts, "the attorneys know what the judge is looking for." Attorneys may also act as protectors as one plaintiff describes, "it felt good for a change to have a big, strong person beside me – powerful and I needed that." Attorneys also know the processes and procedures that pro se plaintiffs do not and can be a sounding board for women to tell their full stories that would not be acceptable to judges.

The attorney can say, you tell me the story, but what we need to tell the judge is when we get to the following…And that gives her an opportunity to tell her story, but to impart the knowledge that the judge needs to know…and if an attorney can say, "but did he do anything to physically harm you?" Then she can say, "well, yes, there was the time he picked up a fireplace poker and hit me with it," but he really hurt my feelings when he insulted my mother – there are some lines that should not be crossed and that's one of them.

Consequently, the security of having an attorney has the potential to allow space for women to tell full stories and prepare women to focus on the specific acts of violence – stories or catch phrases that will be rewarded with protective orders.
Judges also like to communicate with attorneys because it is easier for them to talk with someone who speaks the same legal language, "well you've got more of the head approach so it becomes a little easier for me to communicate where we are going" (County Court Judge). Because lawyers and judges share a common speech genre (Bakhtin, 1986) of legal etiquette and jargon then they are much more likely to reach some sort of mutual understanding than plaintiffs would, particularly if they have similar worldviews and contexts that would facilitate understanding. Attorneys have the ability to bridge the gap between plaintiffs and

judges by translating women's narratives into stock stories that judges are prepared to hear. However they may do so at the cost of reinforcing those established stock stories and thus occluding a portion of women's experience (Giddens, 1984).

5. Attorney for Defendant

When attorneys are present it is mostly defendants who have them due, in part, to financial isolation of a woman in an abusive relationship. Consequently, defendants often have more resources to hire attorneys, and "there aren't many women who come into court on domestic violence cases that have attorneys, there's few of them" (County Court Judge). Defendants' attorneys' argument style is typically aggressive.

What you often see and this is interesting to me as a family law type, is women hiring family law – legal aid or private attorneys. Where the men or the respondents tend to hire criminal lawyers to represent them, even though this isn't a criminal hearing. The criminal lawyer ones take the form of bears, they're the ones that are on the attack. Family law types tend to try and work together to settle things, but criminal layers are much more trying to cut the party down. (Attorney)

There are several forms of attorney aggression including harassing and intimidating women before and during court sessions.

His lawyer kept coming up to me and telling me that I was supposedly lying about him hitting me that I shouldn't get the Permanent Restraining Order on him…And he kept telling me that I was supposedly lying about him hitting me that he had never hit me and that there's no way I could pull this off. That's what he kept telling me. (Plaintiff)

They will try to talk her out of it and that's what I – what I have seen mostly with every attorney – when she doesn't have an attorney, but he does…or trying to scare her into um vacating the order by saying, "well, we're going to bring up your doing drugs" or…so they use a lot of intimidation tactics. (Advocate)

Another form of defendant attorney aggression is shaming and blaming women in cross-examination.

And then to be cross-examined too, and have someone say, "no you didn't – you're

weak, stupid, defensive, ah why didn't you leave before?" It is blaming, it is putting the fingers all back on you and saying, "oh you're complaining, you had another choice you could have left earlier." (Plaintiff)

Butler & Bowe (1996) explain that shaming and blaming survivors of domestic violence often take the form of casting blame on women for the abuse they suffered. "American patriarchal society has relieved men of much of the responsibility for their abusive acts while blaming victims and sometimes condoning abuse (Locke & Richman, 1999, p. 2). Defendant attorneys often minimize women's fears via blaming and shaming and outright denial that the abuse occurred.

I've seen many, many women the majority of times, walk out without Restraining Orders when they didn't have attorneys and the defendants did. But, what ends up happening there is – whether the attorney intends it or not – it acts as another level of intimidation for the plaintiff. Um, the defendant most certainly means it to be that. (Advocate)

The presence of an attorney for the defendant can also intimidate the judge, "I think that judges are very aware of…dotting their "i's" and crossing their "t's" when an attorney is present" (Advocate). In addition to intimidating judges, we have seen where attorneys for the defendant will use manipulative tactics to align with the judge by saying things like, "your honor, we shouldn't allow this Restraining Order to be made permanent because…" or "I know plaintiff is not aware of court procedures, but…"

6. Discussion

Plaintiffs and defendants use many similar argument styles in presenting their cases in the Restraining Order court such as positive self-avowals regarding social identification roles like good: wife, mother, dad, and father as well as negative other-ascriptions such as bad: wife, mother, dad, and father. However, defendants are described as having more credibility than plaintiffs due to relying more on chronologically –ordered, linear story lines, rather than the circular context-laden emotional appeals that plaintiffs often exhibit. Defendant attorneys will often utilize this disparate gender story structure to the defendant's advantage. Instead of claiming these characterizations blatantly as plaintiffs and defendants do, attorneys tend to infer these by asking questions that will prompt answers describing stories that paint these pictures for the judge. For example, in one

hearing the attorney asked a series of questions about how the defendant procured citizenship for his wife and her daughter, thus the inference was that he is a good husband and provider and the judge attributed these positive characterizations to the defendant in his findings. Consequently, plaintiffs, defendants, and attorneys all use ethical appeals in their legal arguments.

However, few attorneys are knowledgeable about Restraining Order laws and successful argument styles in this court, and fewer still make direct appeals based on legal doctrine or frame presentations with any apparent eye on narrative theory. Nevertheless attorney outcomes were more likely to be favorable.

One primary advantage in having an attorney argue for you in this particular court is that she can be a physical and mental buffer between the plaintiff and the defendant or his attorney. This is an imperative aspect because there is much verbal and nonverbal intimidation occurring against historically battered women. As one attorney noted, "but when he gets to cross-examine her he can sort of utilize the resources of the state to reenact the abuse."

Finally, it appears that having a third party such as an attorney would elevate one's case due to having a person outside of the relationship believe your side and advocate on your behalf. So having a somewhat neutral person like an attorney can boost the ethos or credibility of a pro se party because the appearance of sponsorship by a third party may lend credence, because a third party can make claims that would sound boasting, evasive, or half crazy coming from a litigant. Finally there may be value in blanching these cases of some of their emotional content by means of agent representation; forcing judges to directly confront the emotions of battering situations often hurts women's cases perhaps because of avoidance strategies or cognitive dissonance on the part of the judge (O'Keefe, 2002).

However, some courtroom participants argue that what attorneys do is not related to their training or does not require a limited-entry monopoly such as provided by a law degree and bar admittance.

I have seen women with lawyers where the lawyer basically, I don't think, did anymore for her than she could have done for herself. She basically had a pretty good case and he just stood up and spoke for her. When clients are pro se the major difference is that they're speaking on behalf of their own selves. And when there is an attorney there somebody else is speaking on their behalf – somebody who is well versed in the language of the court (Advocate).

Indeed, some attorneys argue that the omnipresent court advocates who often spend more time in Restraining Order court than do some attorneys would do just as good a job representing women plaintiffs in this court.

I think maybe what we need to do is make Project Safeguard a party in the action…And so Project Safeguard could go on the record – and that's all that the attorneys do – they just explain to the court what the petitioner is having difficulty explaining. So that's a role that advocates could easily fill. (Attorney)

I think the one suggestion I have for your study is to open up the lawyers' monopoly…there's no reason why advocates can't represent women, other than lawyers maintain a stranglehold on representation for no good reason other than to make lots of money off of it…There's lots of women and the best ones I suspect would be people who were victims and got Restraining Orders and could actually speak on other women's behalf. And the Project Safeguard people are doing 90% of that now they're just not allowed to stand before the judge and make the arguments and there's no reason to bar them from doing that. So that would be my suggestion. (Attorney)
(See also Bezdec, 1992)

7. Conclusion and Implications

Legal systems operate principally to settle disputes, enforce societal prescriptions and allow for appearance, at least, of public input into societal decision-making. In popular conception, legal systems also serve as forums for truth finding and the allocation of justice. In the latter two matters at least, a significant drag on the Restraining Order courtroom is differential in access to legal services.

We find that this differential is likely to result in systematically more favorable outcomes for represented parties; in this case the overwhelmingly male perpetrators of domestic violence.

Where we expected to find vast disparities in argument styles between lawyers and unrepresented parties, instead we found lawyers making similar appeals in a (slightly) different voice. Attorneys have potential to change participant stories and court understandings of the world by using poetics and rhetoric to recreate client life situations in terms a court can understand. (See Soloman, 1954). Under present conditions this result is rarely realized and courts receive distorted visions of the world as one side of this debate disproportionately makes its case through an agent representative.

Lawyers failed to effectively make appeals to legal rules of evidence or to frame

stories in terms of legal doctrines. Lawyers made little apparent use of advances in narrative theory (Burns 1999). They used sweeping generalities, reprehensible personality and guilt by association appeals with similar frequency, as did pro se litigants.

The difference in outcomes for attorney- made appeals suggests that there is value in the dynamic of an agent making an appeal on behalf of another (Aristotle in Soloman, Ed. 1954), not least because the agent can make the appeal without reinforcing negative stock stories that judges hold about the battering situation: excuse-making and failure to take responsibility on the part of the male; overly emotional and mentally unstable exaggeration on the part of the female. Attorneys may also enact social connectivity with judges as part of a rarified elite accorded monopoly power over access to justice. As such attorney effects may suffer composition effects: the same advantages may not be apparent as more are represented. Loosening the monopoly offers the promise of fuller mutual understanding among courts, people, and society.

Nevertheless our recommendation is that, in the restraining order courtroom at least the lawyer's monopoly should be relaxed (cf. Bezdec 1992). Lay advocates could offer the same advantages of agent representation while lessening the impact of disparate access to justice owing to attorneys' exclusive hold. In the context of the Restraining Order courtroom, institutions affect interactions in ways that may limit women's knowledge, ability to tell their stories, and the likelihood that court personnel will define them as credible and worthy of Restraining Orders.

NOTES

[i] In this essay the authors refer to plaintiffs as women and defendants as men. This assumption is consistent with literature that asserts the majority of people who are battered are women, and those who batter are more often men (National Coalition Against Domestic Violence, 1997).

[ii] Permanent Restraining Order hearing number 1 of 12. Transcripts on file with the author. Transcripts requested and transcribed from the Court Transcriber, Denver County Court, Denver, CO, USA.

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