



## Domestic and Family Violence, Mental Health and Well-Being, and Legal Engagement

Heather Douglas

*TC Beirne School of Law, The University of Queensland, Brisbane, QLD, Australia*

This article reports on the findings from a qualitative study involving 65 women who have engaged with the legal system after experiencing domestic and family violence. The interviewees report on the increased levels of stress and trauma they experience as a result of impending court appearances, in preparation for cross-examination and in negotiating court orders and on the actions they take to address this stress. While many reported that they sought help from mental health practitioners, some women reported choosing not to seek medical assistance for, and hiding, mental health concerns and self-medicating in an effort to avoid negative court outcomes. In light of the women's experiences, this paper considers policy implications and practical considerations for legal practitioners and judicial officers involved in cases involving domestic and family violence.

**Key words:** domestic and family violence; legal processes; mental health; secondary victimisation.

### Introduction

The long-term mental health effects of domestic and family violence (DFV) have now been well documented. Similarly, the further traumatisation that many victims experience when they choose to assist authorities in prosecuting a criminal case against their assailant has been recognised. Although, in the context of DFV, women sometimes choose to be involved in criminal prosecutions of their abuser, more often when women separate from their partners after DFV they have little choice but to engage with a range of legal processes if they want to obtain safety through protection orders, resolve issues around children, and finalise disputes over their property. As a result, in the aftermath of DFV women are often involved in

multiple legal processes at once; such processes typically involve the abuser, involve numerous court appearances before finalisation, and occur over a long period of time.

This article reports on some of the findings from a qualitative study involving 65 women who have engaged with the legal system after experiencing DFV. The study is referred to as the *Using Law and Leaving Domestic Violence Study*. In particular, this article focuses on women's experiences of how legal processes that they were engaged in as part of their response to DFV affected their mental health and well-being. Many of the interviewees reported that they had taken preventative actions before attending court to address the increased levels of stress that they experienced in relation to impending court

---

Correspondence: Heather Douglas, TC Beirne School of Law, University of Queensland, Brisbane, QLD, 4072 Australia. Tel: +61 7 3365 6605. Email: [h.douglas@law.uq.edu.au](mailto:h.douglas@law.uq.edu.au)

This article was originally published with errors. This version has been corrected. Please see Erratum (<http://dx.doi.org/10.1080/13218719.2017.1411154>).

appearances, in preparing for and coping with cross-examination, and in negotiating court orders. Preventative measures included pre-court counselling to ensure they were ‘court fit’, seeking help from mental health practitioners, and taking prescribed medication. Some women reported self-medication while others discussed their reasons for avoiding certain diagnoses and medications or to select particular medications and self-medicating. They reported that they were concerned that proof of mental health concerns may have negative implications for their credibility as witnesses and may lead to damaging legal outcomes in relation to their safety and for their role as mothers.

This article begins with a review of the research before outlining the *Using Law and Leaving Domestic Violence Study* and the women’s comments. This is followed by a discussion of the women’s reported experiences and concludes with a consideration of policy implications and some practical suggestions for legal practitioners and judicial officers involved in cases involving domestic and family violence.

### Literature Review

Research has consistently identified that women’s mental health and well-being is negatively affected by DFV, with depression and post-traumatic stress disorder (PTSD) being the most commonly identified diagnoses by health practitioners in this context (Braaf & Meyerling, 2013, p. 1; Golding, 1999, p. 126; Howard, Trevillion, & Agnew-Davies, 2010, p. 527; Mertin & Mohr, 2001, p. 646; Victoria Department of Health, 2002). Logan et al.’s research found that women who had recently experienced DFV had high mental health burdens, and where the woman had experienced stalking as well as severe violence this added to her mental health burden (Logan, Shannon, Cole, & Walker, 2006, pp. 878–879). Australian research has identified that women

experiencing ‘severe combined physical, emotional, and sexual abuse’ are more likely to report PTSD, anxiety, and anti-depressant use than those experiencing lower levels of abuse (Hegarty et al., 2013, p. 280).

Research has shown that, even many years after DFV has ceased, women who have experienced DFV have significantly poorer mental health than women who have never experienced DFV (Holden et al., 2013; Loxton, Dolja-Gore, Anderson, & Townsend, 2017; G. Roberts, Williams, Lawrence, & Raphael, 1998). Some studies have demonstrated that negative mental health consequences can be reduced when PTSD is properly recognised and appropriate care is provided (Black, 2011) and that once the abuse has ceased, negative mental health consequences of DFV tend to reduce over time (Golding, 1999). Notably, Hamby (2014, p. 141) reports that around half of women who recover from PTSD after DFV will do so by themselves. In their study, Martin and Mohr followed 50 women who had been residents of a women’s shelter. At the first assessment, 42% of the women met the criteria for PTSD and at the second assessment, 14% met the criteria for PTSD (Mertin & Mohr, 2001, p. 649).

A subset of research on the links between DFV and mental health outcomes has considered whether, and to what context, women who have experienced DFV seek help with their mental health. Some research has questioned whether the experience of depression may prevent some women who are experiencing DFV from seeking assistance and has posited that it may cause them to stay in violent relationships for longer (Golding, 1999, p. 126; Sato & Heiby, 1992, p. 241). The type of DFV may also make a difference to help-seeking. Henning and Klesges’s (2002) research found that women who were physically injured by a violent partner were more likely to seek help with their mental health than women who were not physically injured by a partner. They also found that where assaults were severe, women were more likely to seek

help with their mental health than those who experienced moderate physical violence (Henning & Klesges, 2002, p. 633).

While legal advice and information may be considered a form of help-seeking, research suggests that engagement with legal proceedings can enhance negative mental health outcomes for people who have experienced trauma. Several studies have explored the effect of legal engagement on mental health. For example, Osenbach, Stubbs, Wang, Russo, and Zatzick (2009) assessed trauma patients at a large hospital and found that a patient's engagement in increasing numbers of legal events (including seeking legal advice and attending court) after admission were significant independent predictors of enduring PTSD symptoms. Other research has identified that stressful life events, of which legal engagement is one type, exacerbate PTSD (Mol et al., 2005). The role of court processes in exacerbating mental health issues, specifically for survivors of DFV, has also been explored. Important in this context is psychiatrist Judith Herman's ground-breaking research with clinicians and trauma survivors (Herman, 1997, 2003). Herman identified the disjuncture between what a victim needs in the aftermath of trauma and what the legal process requires:

Victims need social acknowledgment and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and procedures that they may not understand, and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and meaningful narrative. Victims often need to control or limit their exposure to specific reminders of the trauma; the court requires them to relive the experience by directly confronting the perpetrator. (2003, p. 160)

Herman (2003, p. 159) suggests that if one set out to design a system that would trigger PTSD symptoms, it would look like a court of law. She has emphasised the adversarial nature of legal proceedings noting that it is inevitably a hostile environment 'organised as a battlefield in which strategies of aggressive argument and psychological attack replace those of physical force' (Herman, 1997, p. 72). Herman identified the need for more data to be gathered on these issues, and Ptacek's (1999) study responded to this call. Ptacek observed court processes and spoke to 40 women applying for a protection order at an American court. He reported that the women recounted their experiences as, variously, embarrassing, humiliating, degrading, feeling scared, nerve-racking, and uncomfortable (Ptacek, 1999, p. 149). Ptacek (1999, p. 149) noted that the women's accounts revealed the 'psychic strain' they experienced in the courtroom.

In Australia, some research has focused on the experience of family court engagement in the context of DFV. Roberts, Chamberlain, and Delfabbro (2015; see also Rodgers, Smyth and Robinson, 2004) interviewed 15 women who had experienced DFV from their former partner and were now engaged in the family court process. They examined the psychological impact of engaging with family court processes, and, similar to Ptacek's research, interviewees identified many negative experiences in their engagement with judicial officers and lawyers. These negative experiences included a lack of empathy and understanding, invalidation (including not being taken seriously), lack of information, and poor communication skills (D. Roberts et al., 2015, p. 603). Similar issues have been observed and reported in Australian research about protection order hearings (Hunter, 2006; Lynch & Laing, 2013). In a number of studies, women have reported fear and anxiety, in particular about their ex-partner attending court, and re-traumatisation through having to tell their stories again in affidavits (Gillis et al., 2006; D. Roberts et al., 2015, p. 609).

Although Herman (2003, p. 159) observes that after a crime victims will generally make a choice whether to engage with legal systems, many women who have experienced DFV may have little choice but to engage with legal systems if they want to maintain their care role with children, stay in their home, and salvage some level of a property settlement. For women who have experienced DFV, and have children with their abuser, engagement with the family law system will, in many cases, be very likely. In some cases, women who have experienced DFV will not have chosen to apply for a protection order or to have their ex-partner prosecuted for DFV-related offending, and yet they will become enmeshed in civil and criminal processes not of their choosing. This was the case for many women interviewed for the *Using Law and Leaving Violence Study*, discussed below, and many of the women in this study also reported significant impacts on their mental well-being resulting from their engagement with legal processes.

### Using Law and Leaving Domestic Violence Study

#### Method

The following discussion draws on interviews conducted as part of the *Using Law and Leaving Domestic Violence Study* (the study).<sup>1</sup> Throughout 2014–2017 interviews were conducted with 65 women (on three occasions over 2.5 years) who had experienced DFV and had engaged with the legal system. The objective of the study was to explore women's experiences of engaging with multiple legal processes in the context of DVF over time. In recruiting for the study, the women were initially approached by their DFV support workers or lawyers from a range of organisations in Brisbane, Australia, who discussed the proposed study with them. The women are all over 18 years old, had in the past six months leading up to the first interview experienced DFV from their current or

previous intimate partner,<sup>2</sup> and had engaged with the legal system in some way to respond to the violence. Support workers or lawyers arranged interviews if the woman was interested in participating. A narrative interviewing style was used to encourage the participants to tell their stories and describe their experiences in detail, at their own pace, and as accurately as possible (Flick, 2007; Powell, Fisher, & Wright, 2005). Interviews were between 40 and 90 minutes<sup>3</sup> in length and were recorded and transcribed with the participants' consent. The interviews were analysed thematically both manually and using NVivo software. Pseudonyms are used when referring to the participants' comments, and some details have been changed to protect the anonymity of the interviewees.

Necessarily the women's comments cannot be understood as a definitive description of the way women who have engaged with legal systems in response to DFV experience legal processes (Dingwall, 1997). Women's mental health and well-being was not the exclusive focus of the study, and no medical assessment was undertaken as part of the study. Furthermore, this article does not purport to report on the *Leaving Domestic Violence Study* in detail; rather, the interviewees' comments about their experiences of court processes are drawn upon to explore their views of the impact of their engagement with legal proceedings on their mental well-being.

#### Participants

The women interviewed for this study were diverse in age, marital status, relationship duration, educational attainment, and employment status. At the first interview time, their mean age was 39 years ( $SD = 9$ ), ranging from 23 to 68 years. The majority of participants were Australian-born or had migrated with their families when they were children ( $n = 40$ ; 61.5%). Six of the women (9%) were Aboriginal or Torres Strait Islander women. Of those women born overseas, nine had been living in Australia for

five years or more, 13 for between two and five years, and three for less than two years. Just over half of the participants were ever married to the abuser ( $n = 35$ ; 54%), and 26 (40%) had lived with their abuser. The majority had mutual children with the abusive ex-partner (74%). Women spent between one and 29 years in their respective abusive relationships, with a mean relationship duration of 9.6 years. At the first interview, three women were still living with their abuser, two other women returned to live with their abusive ex-partner at Interview 2, but one of them had separated again by Time 3. For those who were separated at Interview 1, most ( $n = 44$ ; 69%) had been separated for less than 4 years, with 14 women (22%) separated less than one year, and 18 (28%) separated for more than one year but less than two years. In terms of highest level of education attained, 28 (44%) of the women had a university degree (bachelor degree or higher), 16 (25%) had a diploma or advanced diploma, 10 women (15%) had completed Year 12, and 11 women (17%) had finished school at Year 11 or earlier. Approximately half ( $n = 30$ ; 46%) were employed either part time or full time at the first interview. Nearly half of the women ( $n = 32$ ; 49%) relied entirely on social security payments, and at Interview 1, three women has no employment or access to social security as a result of their visa status.

## Results

### *The Interviews*

Nearly all of the women in the *Leaving Domestic Violence* study experienced at least some type of mental health issue or illness that they attributed directly to their experience of domestic violence. The intensity of the mental health issue or illness varied from mild to severe. The nature of the mental health issue also varied, and the women described combinations of depression, stress, PTSD, anxiety, panic attacks, trauma, sleeplessness, and weight loss. Similar to other

studies (for example: Humphreys & Thiara, 2003), women in this study often used a mixture of medical and non-medical language to describe their experiences.

At Time 1, most interviewees ( $n = 57$  or 88%) reported that their mental health had been negatively affected by the DFV. Further, at Time 1, most of the women ( $n = 51$  or 78%) were accessing some kind of formal support for their mental health and well-being including regular contact with a counsellor, general practitioner, psychologist, or psychiatrist. A number of the women ( $n = 17$ ) had been prescribed medications (descriptions of prescribed medications included 'anti-depressants', 'sleeping tablets', and 'anti-anxiety' medications) but some ( $n = 4$ ) had chosen not to take them. Two of the women reported recent stays in hospital as a result of attempted suicide. One woman disclosed to the interviewer at Time 2 that she often thought of jumping out of the train.<sup>4</sup> At Time 3, many women ( $n = 26$ ) were continuing to access formal support for their mental health and well-being, and one other woman, who had not been seeking formal help at Time 1, began seeking formal help (counselling) at Time 3.

All of the women in the study were involved in legal processes at some time during the study. Many of the women identified a direct link between negative effects to their mental well-being and the legal process they were involved in. While there is significant overlap, the women's comments about the links between their mental health and legal processes are divided into comments about the effects of attending court, seeing the abuser at court, giving evidence, and their avoidance of certain prescribed medications and diagnoses.

### *Attending Court*

Many of the women interviewed spoke of how their forthcoming court appearances triggered anxiety attacks. Some of the participants were recruited from a support

organisation that was based in the court house where their clients obtained protection orders. Staff made their offices available for interviews for the study. Teagan was one of the participants who came back through the court house to attend at the service for an interview. She said, 'I had a panic attack before I came here . . . just coming back into the courthouse'. When the interview commenced she was shaking and sweating but gradually became calm. Others described a similarly stressful experience of attending the court for mentions and hearings of their matters. Hilary explained that when she last entered a courtroom she was 'just shaking, absolutely couldn't stop shaking, I was holding my hands trying to stop, almost hyperventilating at one point'. Carol reported similar experiences. She had been separated from her partner for many years but had ongoing legal matters resulting from her ex-partner continuing to stalk her. She had been to court many times but nevertheless described her feelings of a recent experience of attending court in the following way: 'I felt like I was going to throw up. I was absolutely intimidated, completely intimidated.' At one of her interviews, Anna described walking into court as 'gut wrenching. Like I still walk in there going oh, I feel sick. Like, it's like no, and I'm thinking, you know what? If he shows up I'm going to show him that I'm not scared, like I'm not going to cry anymore. But I end up crying . . .'. Anna had ongoing legal matters leading up to her third interview, and she reported that she still found the experience of attending court traumatic. At Interview 3, Anna said she was represented by a lawyer and was not required at court on all occasions, but she always felt like she needed to go:

I get sick every time I've got court coming up, I get sick to the stomach and I, I'm getting stronger every time I go because I just feel as if no, I need to go. . . . Because I don't get to have a say, I don't, the judge doesn't ask me how I feel about this. I'm always on alert to make sure that no one's

around, I won't get there on time or early to meet my solicitor, I'll meet my solicitor upstairs and when it's finished my solicitors walk out with me.

Anna's comments revealed a mix of emotions; she was both afraid of going to court and yet felt she had to attend to make sure she was part of the story. To cope with the fear, she had established strategies to help make her feel safe.

Most of the participants in the study had little or no experience of engaging with the legal system outside of their experience with DVF. For Radha, who was born overseas, the experience was particularly challenging. She was not represented by a lawyer and only had her brother with her to help with interpreting. She obtained a protection order before a magistrate. Her ex-partner resisted the order being made, and so she had to give evidence and cross-examine her ex-partner. She commented on this experience:

. . . I still don't know enough about the Australian law thing and the court thing and court is always very stressful. Even if you haven't done anything wrong it's still stressful going into the court. I haven't been long here and it's just been one year, so I don't know and it's like not normal for me going to court alone myself . . . and sitting in front of a magistrate and the three times I've been to the court I just start . . . shaking.

#### *Contact with the Abuser*

Women reported that a significant issue for them was going to court as they would see their abuser (Ptacek, 1999, p. 145). While many of the interviewees were able to make arrangements in relation to child contact that would ensure that they did not see their abuser, the court process brought them into contact with the abuser. Many of the women spoke of the need for a safe place to sit in the court but also that finding one did not necessarily remove their sense of stress. For example, Francis explained at Interview 1, 'I do like remember I had to go to court last week

for the variation to the [protection order] and I was . . . very stressed and even though I had the door locked in a room . . . I was scared of him, that's right'. At Interview 3, Francis had continuing legal issues that required her attendance at court, and despite having attended many court hearings as a result of her experience of DFV she continued to be extremely stressed when attending court. She explained she felt 'freaked out, I was so scared I was feeling sick. He gave me the look of death again and then after court I'm sitting there in the room just outside court to wait until they go so we could get escorted back so we got escorted [by security]'. Similarly, Hilary explained:

Any court I've been to, everywhere, every court appearance. I had to ring up – when we were in the city – to organise a room, and first of all I was told the rooms are only for people who feel they're going to be physically hurt. Well I don't believe I'm going to be physically hurt, but my levels of anxiety and stress, about being in the same room as him will cause me not to probably be able to speak. I can't be in the same area as him, or I will just have a big physical reaction, because I just do.

Faith explained that she could get over the trauma of the DFV if she did not have contact with her abuser but when she went to court, the experience of DFV would be enlivened for her. She said, 'it had – at the end of the day, even though I have to get over him – so the domestic violence had such a hold. It's like this octopus that holds my brain. In order to break away from that I had to have no contact'. In her first interview, Gillian explained:

I had an experience when we were going through the first [protection order hearing] where I went down to get my paperwork and then he walked in behind me and he bailed me up against one of the counters and was [growl] in my face. I'm standing there, I'm just like, just about hyperventilating. I've managed to get past him and I've run out to the guards and that sort of kept him [away].

Several women explained that they obtained specialist assistance so that they would be able to engage with the legal process and the abuser. For example, in advance of Felicity's court date she could not read the affidavit material because it made her feel sick. She sought advice from a 'neurolinguistics specialist' to help her manage legal processes and contact with, her ex-partner:

I said I think I've held myself together long enough to get through the process of what I had to do. But . . . for me to have to be able to engage with him, I said I know that I need some help with that. I said so if you can program people not to smoke, surely you can program me not to get anxiety when I have to deal with this man. I saw [the specialist] for about five sessions and I felt really, really good after it. . . .

Many women believed their partners used court proceedings as a way of continuing their abuse. For example, in one year, Alex was required to attend court over 30 times for a variety of matters, none of which had been commenced by her. Often the cases were adjourned or dismissed but she was advised by her lawyer that she needed to attend or risk having orders made against her. Alex explained:

I'm okay, but I need to go and see [a counsellor], she's from [a special post-divorce service] – to get litigation fit. Because she said, you need – because my lawyer's really worried about me, because she might – she has said to me that – and this is what I think is really wrong – you have to be prepared. It's going to be a five day trial at least.

Most interviewees tried to limit their contact with the abuser. Where there were child contact visits to arrange, as far as possible, women tried to arrange changeovers of children with the fathers/abusers in a way that avoided direct contact with the abuser. Sometimes, however, the courts ordered changeovers in a way that necessitated a direct interaction between the parents. Similar to

other studies (for example: Lynch & Laing, 2013, p. 58), women often found child changeovers extremely stressful where contact was necessitated. Sandra explained that she thought she might be killed at a handover:

For two and a half months I couldn't do changeovers anymore because I mean, I was just anxiety. Because this was where Gary was threatening with me with life insurance policies and all that. I pay maintenance – and all that and I wasn't coping, thinking – you know, watching my back every time. I'm just running high voltage.

Sandra also explained that the court process had a similar effect:

... every time I just looked at this man, he would give me anxiety. He would give me panic attacks. It would take me – once upon a time it used to take me four days to heal where I would just be wiped just by the look of this man because of the trauma that I have been through previously.

Some of the women relied on professional counsellors and psychiatrists specifically to help them deal with the trauma of child handovers. For example, Lisa saw a counsellor and said, 'we do coping mechanisms and she encourages me. If there are things that are bothering me she helps me find ways to deal with it. I do follow through on what she gives me'.

### *Giving Evidence*

A number of the study participants found that the most stressful aspect of a court hearing is giving evidence, especially the experience of cross-examination. For example, Ingrid commented that her legal representative 'was worried that if I have to give evidence I'm going to break down in court, because it's such a traumatic experience'. Cross-examination is stressful for many witnesses but it is particularly stressful for a person who is cross-examined directly by a violent ex-

partner. While Queensland (where the interviews took place) and many other states generally prohibit direct cross-examination of a person in a protection order hearing, it was still allowed in family law cases at the time of the study (Australasian Institute of Judicial Administration, AIJA, 2017, 9.2.3).<sup>5</sup> While the Family Court has discretion to allow witnesses to give evidence by video link, this is rarely exercised. In talking about her experience of cross-examination in the Family Court, Gillian explained:

It was horrendous . . . so the barrister made an argument to the magistrate that I should be considered a protected witness because I'm the aggrieved and also because I have a diagnosis of post-traumatic stress disorder, an ongoing chronic condition, that Kyle actually annexed his affidavit. So we had the evidence right there before the court that he'd actually provided to them that I was a bit vulnerable. I sat shaking and crying on the stand and I was just made to sit there for three hours. . . . We had a break in between the second and third hour of cross-examination so that the judge could have lunch, and I basically begged him not to make – you know, I said can't we just finish this? Because I knew that – I can't even talk to anyone to get support while I'm still under oath. I had to go off to lunch for an hour where I could have, if I wasn't under oath, gone and spoken to – I've got a new partner, and my lawyer. I could have – but when you're under oath – I was basically sitting out there on my own for an hour knowing that I had to go back in there and be cross-examined some more. It was very stressful.

Alex described how during cross-examination she would be 'drawn into the crazy. You got drawn into it because you tried to defend yourself again'. Alex suggested that cross-examination was so stressful that 'there should be some sort of law . . . brought in that you can self-represent yourself, but to the point where until it gets to trial, then you must seek, or must be given a duty lawyer, for that duty lawyer then to cross examine you and that's how I see that to be in the family court'.<sup>6</sup>



Susan felt she was supported by her lawyer. She described her experience of cross-examination in the following way:

[I was] just so emotional, like I would . . . it was horrible. I was so anxious and so emotional. [My lawyer] said if you need to cry you'll cry because there's nothing worse than you needing to cry and trying to suppress it. You're going to look really weird on the stand. So you need to cry, you cry.

Some of the women commented that the experience of DFV had led to memory loss, and this had implications for giving evidence and preparing affidavits. Angelina identified that, 'I am not confident, I don't remember details'. Similarly, Faith observed:

It's strange. There's a lot I can't remember. I think that's a huge thing of that sort of PTSD – like in a depression. . . . But just massive parts where I'll sit here and I'll go, I honestly can't remember that time, not that year. That's like for large holes and things like that.

When asked about the difficulties she faced in relation to the legal process, Lisa expressed concern about her loss of confidence in making decisions and said 'I think the mental. I think that's what has taken its toll on me. How can I put it? I think – it's not just what he did to me, it's the fact that – I don't have faith in my judgment anymore'.

#### *Avoidance of Prescription Medication and Certain Diagnoses*

Women had mixed responses to the use of medication to help them to deal with their mental health. Susan's psychiatrist suggested that drugs would help to calm her down in preparation for child handovers and court processes. Susan explained:

Susan: [The doctor] said, look, you would be a prime candidate for alprazolam, but because it's so difficult to prescribe now, we'll try Seroquel, quetiapine off label, and

it's just to take that edge off when you are having handover. Just that situational anxiety at handover, because I was just having so much trouble.

Facilitator: Do you take one before you go to court?

Susan: Yeah, yeah. You just pop one. It works like a benzo would. You just – calms you right down . . . really short acting. . . .

Although a number of women were prescribed anti-depressants, anti-anxiety medications, and other medications to improve their mental health from time to time to time throughout the period of the study, the medications were usually not specifically prescribed to help women manage the court process. However, of concern was that some participants were apprehensive about the implications of being prescribed certain drugs, in particular the implications of this for legal outcomes. For example, one of the participants, Sandra, reported that she was taking 'natural', rather than prescription, anti-depressants and that she was selling these natural anti-depressant remedies to other women who had experienced DFV. She explained there was a need to avoid prescription medication to ensure that there was no prospect of a psychiatric report formally identifying a mental illness because this might have implications for post-separation parenting arrangements. Similarly, Susan explained that she had decided not to take a particular medication that was prescribed for her for anxiety on the basis that the Pharmaceutical Benefits Scheme (PBS) indicator for it was 'bipolar'. She said:

I didn't take it because I went oh, I don't want people to think I've got bipolar. . . . I thought, oh, actually I'm not going to get this filled. [The doctor] was doing me a favour because she wanted it on the PBS for me, but I thought, I don't want this filled because I don't want something on Medicare saying that I've gotten a script filled with the indication of bipolar, because this

is exactly what he's saying. He's accused me of being the one with a mental illness . . . and I didn't want him to subpoena my medical charts or Medicare records.

Frieda explained that she had discussed her diagnosis with her treating doctor in developing her mental health plan in the shadow of forthcoming court proceedings:

So I actually do have a mental health plan that I can get subsidised care. . . . But I was very careful and I guess read up about what you should put on there. I guess it sort of fitted in that the best diagnosis was to say it was post-traumatic stress. So the GP that I talked to said yeah that's the diagnosis that I will put down.

Frieda also reported that her doctor was concerned about her level of anxiety and suggested that she take certain medication. However, Frieda explained, 'I said no that I wasn't willing because I didn't want it on my record . . . people tell you a lot of contradictory things about the Family Court. What's true or not true?'

### **Discussion**

Study participants identified attending court, contact with the abuser through the court process, and giving evidence as aspects of the legal process that caused significant negative impacts to their mental health and well-being. Several of the women reported that these experiences both caused and exacerbated their mental health problems. They reported on a range of approaches they took to try to avoid and ameliorate the stress they associated with court processes. These included practical strategies such as arriving at court late so they would limit the opportunities to see their abuser, pre-arranging or waiting in a private room at court so they would feel safe, and attending court with support people. Other strategies involved engaging with a range of professionals to ensure they were

'court fit', including counselling and consultations with expert health providers, and the use of prescribed medication to manage their stress and anxiety.

The study participants' comments underline the need to minimise the requirement for them to attend court if they are to recover and maintain their mental well-being after separation from an abuser. Given that many of the women reported that getting ready to go to court was in itself traumatic, reducing the number of discrete court appearances would be likely to assist. To this end, courts should attempt to minimise the use of adjournments, preferring standing matters down for a short period of time if relevant inquiries are to be made, or materials collected (Gelb, 2015, p. 40). In this context, effective case management is important in order to minimise the need for court appearances. Where possible, case management meetings should take place in a way that does not require parties to attend at court.

There have been some potentially positive developments in the use of technology in the context of DFV, including evidence giving through the use of remote CCTV. In New South Wales, police can use their iPad to collect evidence-in-chief (Ferguson, 2015), and in some places applications for protection orders can be submitted entirely online (Magistrates' Court of Victoria, 2016). It may be worth experimenting further with technology to explore other ways to reduce the need for parties to be physically at court. It might be possible, for example, to conduct many procedures and even hearings via Skype or similar technology. Such developments might enable women to be at a support agency or their lawyer's office, or another place where they feel safe as their matter is heard.

The women's comments emphasise the need for safe waiting spaces in courts and to minimise the occasions for victims to see their abusers while entering, waiting at, and leaving the court. This issue is addressed in part by the creation of waiting spaces that are designed to ensure the separation between

parties to legal proceedings involving DFV and the identification of separate entry and exit points for them (Godsell, Brockie, & Bogdanis, 1993; Lynch & Laing, 2013, p. 14). However, many courts have not been designed with DFV in mind, and separate waiting areas and entry points may not be available. Despite this, the concerns can be addressed to some extent by staggering the attendance and departure times of the parties. It may also be possible to use screens in waiting areas to screen parties from each other's sight. Court security also plays an important role in maintaining vigilance so that intimidating behaviour is minimised. Security officers need to be well trained about the dynamics of DFV so that they are able to identify the often subtle intimidatory behaviours of abusers. Courts are increasingly aware that a court appearance may be an opportunity for continuing DFV, including intimidation and coercive and controlling behaviour, and many have developed safety protocols and procedures to address these concerns (AIJA, 2017, part 5.3).

Given that recovery from PTSD will usually improve over time once the abuse has ceased (Golding, 1999), it is important that court processes do not facilitate opportunities for abuse to continue and that court orders do not, themselves, operate as a form of secondary abuse. Courts should make orders that minimise, and where possible avoid, the need for continuing contact between parties where there has been DFV. Ideally there should be minimal contact between parents in arranging contact and handovers where there has been DFV and there are children of the relationship.

Clearly, the experience of giving evidence and of cross-examination can be extremely stressful for many women involved in DFV-related proceedings. Attempts have been made to address this issue to some extent through limitations on direct cross-examination and the use of screens and remote evidence giving via CCTV (AIJA, 2017, part 9.2.3). However, not all relevant

legislation guarantees these protections to victims of DFV. In some cases, women will have to apply to the court for the protections of screens and remote evidence giving, and there is no certainty they will be granted. Furthermore, as Gillian's experience outlined earlier suggests, even if protections are provided, testimony may continue for a longer time than is necessary. Judicial officers need to be vigilant to ensure that legal proceedings in general, and cross-examination in particular, are not misused by the abuser (Miller & Smolter, 2011). In a recent Western Australian case involving the prosecution of stalking, the Court of Appeal emphasised the responsibility of the court in this context:

The paramount responsibility which a judicial officer presiding over a criminal trial owes to the community is ensuring that the accused person receives a fair trial. However, the judicial officer also owes other concurrent responsibilities to the community. In a case such as the present they include a responsibility to see that the accused does not utilise the proceedings as a vehicle for harassment of the alleged victim. The exercise of that responsibility will require vigilance in confining an accused person to asking questions which are relevant to the issues raised for the court's determination. (*Conomy v Maden*, 2016, WASCA 30 at 117)

The women's comments about loss of memory may also have implications for the giving of evidence. In a courtroom, being unable to remember relevant events quickly may make victims of DFV appear to lack credibility. There has been a long history of women being deemed 'incredible' in the justice process (Hunter & Mack, 1997). The effects of DFV may add another obstacle to overcome. Those who have researched the effects of trauma have identified that victims of traumatic events often cannot remember or may disassociate from traumatic events (see Herman, 1997, pp. 72–73). Furthermore, there is an increasing recognition that many women who have experienced DFV may

have a traumatic brain injury, and this may have the effect of inducing short-term memory loss and creating difficulty in concentrating, among other issues (DeWard, 2010). These effects may be amplified by stress – for example, in circumstances where the victim is confronted by her abuser as she gives her testimony. Lawyers and judicial officers should be aware of this possibility.

It is a concern that some women may be refusing prescription medication or not taking up appropriate mental health interventions because they are anxious that this could contribute to negative legal outcomes (see also May, Rakhlin, Katz, & Limandri, 2003). In 2003, Humphreys and Thiará's research found that women's experiences of mental health services in the context of DFV were often unhelpful because they failed to recognise trauma or provide trauma services, blamed the victim, offered medication rather than counselling support, or labelled the woman with mental health problems enabling adverse consequences in child contact and child protection. As identified earlier, studies demonstrate that compromised mental health as a result of DFV is common (Braaf & Meyering, 2013, p. 1), and it should not detract from the responsibility of the perpetrator for the violence (Hunter, 2006; Meyer, 2016). The women in the study generally identified a sympathetic and co-operative relationship with the professionals who worked with them to help them cope with their circumstances, including court processes. Generally, the women's concerns seemed focused on the legal system response rather than the approach of the counsellor or health professional.

In their interviews with nearly 10,000 parents, Kaspiew et al. (2010) identified that 29.1% of mothers and 22.7% of fathers report that they had 'mental health problems' before separation and that there was a significant overlap between this issue and reports of DFV (Kaspiew, 2010, p. 41). Research has identified a link between mental illness and more limited contact time ordered with children (May et al., 2003, p. 27). Relevantly,

statistics from the Family Court of Australia (2009; see also McInnes, 2013; Bagshaw et al., 2011, p. 53) suggest that the impact of reduced time with children may be greater on women who have a mental illness than on men with mental illness. In their research surveying 931 adults, they identified that both men and women claimed that their partner's mental health was not taken into account when making parental arrangements but they also noted that some women claimed that their mental illness was caused by DFV and had resulted in their being deprived of the primary care of their children.

Claims by a parent that the other parent has a mental illness, and is therefore unable to care for the child, are relatively frequent in the Family Court in Australia (Ryan, 2006, p. 9). Ryan has explained that, 'there is no legal presumption that a parent, by virtue of their mental illness is incapable of being a responsible parent, nor is there any presumption that a parent who is free of such illness is better able to care for a child' (2006, p. 9). Mental illness is relevant to the court's consideration of the 'capacity' of a parent 'to provide for the needs of the child, including emotional and intellectual needs'. This is one of the 'additional considerations' to be taken into account by a court when determining what is in a child's best interests [*Family Law Act 1975* (Cth), s60CC (3) (f)]. In her review of 108 family law judgments decided between 2009–2011 generated by using the search terms 'mental illness' and 'unacceptable risk', McInnes (2013, p. 89) concluded, in part, that, 'mothers' alleged delusions and overprotection of their children are deemed by the family law system to be sufficient to prevent them having care of their children, but fathers' diagnosed mental illnesses, acts of violence and abuse do not prevent them from having contact with their children'. Greater education about DFV alongside better understanding of DFV as 'behaviour . . . that coerces or controls'<sup>7</sup> may make a difference to how these issues are resolved. In a recent family law case, a

mother was identified as having ‘a form of PTSD’ due to previous DFV. However, in this case, the judge’s significant concern was not about the mother’s parenting capacity in the absence of the father but that her parenting capacity could be impacted by unrestricted contact between the children and their previously violent father (*Dunst and Dunst, 2016, FamCAFC 15 [81]*). While each case necessarily turns on its specific facts and evidence, this case illustrates the complexity of the decision making in this context. It also points to some awareness, by the Family Court at least in this case, of the relationship between PTSD and DFV and the need for non-contact between the victim and her abuser to facilitate recovery and avoid re-traumatisation.

### Conclusion

Many women have little choice about whether to engage with the legal system in the aftermath of DFV. Going to court to obtain a protection order and court orders around children and property are often important steps towards ensuring protection for themselves, their children, and future physical and material security. The effect of DFV on mental health and well-being is well known, and it also seems clear that time away from the abuse and the abuser enables women’s mental health and well-being to improve (Golding, 1999). It is no surprise that engagement with the legal process, in particular having to attend court at the same time as the abuser, and the process of retelling their story through evidence in front of their abuser trigger severe stress for many victims of DFV (Herman, 2003, p. 159; Ptacek, 1999, p. 149). Each time that a person must go to court and face the abuser is likely to increase the time it takes to recover from the trauma of DFV. It is therefore particularly important that the courts carefully manage DFV-related proceedings if the legal process is to avoid facilitating the extension and reactivation of the experience of abuse.

Better understanding of DFV may improve judicial awareness of use of legal proceedings as an aspect of coercive control. Wider use of video link and other technologies may also be appropriate in this context. As observed in this study, women’s reports of memory loss after DFV have implications for giving testimony. Whether memory loss is a result of mental trauma linked to the experience of DFV or an effect of traumatic brain injury, it is important that legal professionals and courts are aware of this issue so it can be appropriately accommodated. This may mean that more time needs to be taken to elicit testimony or, again, that testimony is not given in the presence of the abuser.

Finally, women’s avoidance of diagnosis and medication may have significant negative health implications for them and potentially for their children. While there is emerging evidence suggesting a link between mental health diagnoses and negative court outcomes, especially for mothers, further research may be warranted in relation to this issue.

### Acknowledgments

The author thanks Dr. Jennifer Bell for research assistance and Zoe Rathus AM for her comments on an earlier draft of this article.

### Notes

1. For further information about this study see H. Douglas (2017), *Using Law and Leaving Domestic Violence Study*, <https://law.uq.edu.au/research/our-research/using-law-and-leaving-domestic-violence>
2. Domestic and family violence is defined as reflected in the definition in *Domestic and Family Violence Act 2012* (Qld), s 8: ‘Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that – (a) is physically or sexually abusive; or (b) is emotionally or psychologically abusive; or (c) is economically abusive; or (d) is threatening; or (e) is coercive; or (f) in any other way controls or dominates the second person and causes the

- second person to fear for the second person's safety or wellbeing or that of someone else.'
3. Some of the second and third interviews were shorter – between 25 and 90 minutes.
  4. This woman was put in touch with a support worker.
  5. See Part X1, Division 2, *Family Law Act 1975* (Cth). Note also that there may be reforms to the Family Law Act 1975 (Cth) such that direct cross-examination is no longer allowed; see Attorney General for Australia, Media Release 'Transforming the Family Law System' (9 May 2017) (<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/SecondQuarter/Transforming-the-Family-Law-System.aspx>)
  6. In fact, this is actually the law in some states – AIJA, 2017 (9.2.3).
  7. See *Family Law Act 1975* (Cth), s 4AB.

### Disclosure Statement

No potential conflict of interest was reported by the author.

### Consent

The study reported here received ethical approval from the University of Queensland. All interviewees provided their informed consent for interview.

### Funding

This work was supported by the Australian Research Council's Future Fellowship scheme [project number FT140100796]. The project leader is Professor Heather Douglas. For more information about this study see: Douglas, H (2017). Using Law and Leaving Domestic Violence. Retrieved from: <https://law.uq.edu.au/research/our-research/using-law-and-leaving-domestic-violence>

### References

- Attorney General for Australia. (2017, May 9). *Transforming the family law system* (Media Release). Retrieved from <https://www.attorneygeneral.gov.au/MediaReleases/Pages/2017/SecondQuarter/Transforming-the-Family-Law-System.aspx>
- Australasian Institute of Judicial Administration (AIJA). (2017). *National domestic and family violence bench book*. Retrieved from <http://dfvbenchbook.aija.org.au/>

- Bagshaw, D., Wendt, S., Campbell, A., McInnes, E., Tinning, B., Batagol, B., ... Arias P. F. (2011). The effect of family violence on post-separation parenting arrangements. *Family Matters*, (86), 49–61. Retrieved from <https://aifs.gov.au/publications/family-matters/issue-86/effect-family-violence-post-separation-parenting-arrangements>
- Black, M. C. (2011). Intimate partner violence and adverse health consequences: Implications for clinicians. *American Journal of Lifestyle Medicine*, 5, 428–439. <https://doi.org/10.1177/1559827611410265>
- Braaf, R., & Meyerling, I. (2013). Domestic violence and mental health. *Australian Domestic and Family Violence Clearinghouse*.
- Conomy v Maden* [2016]WASCA 30
- DeWard, S. (2010). The intersection of brain injury and domestic violence. Retrieved from [https://pdfs.semanticscholar.org/bed7/4d9403784c7cfe807c06c7f631c2e585525.pdf?\\_ga=2.81256414.877013273.1498968343-1369286712.1498968343](https://pdfs.semanticscholar.org/bed7/4d9403784c7cfe807c06c7f631c2e585525.pdf?_ga=2.81256414.877013273.1498968343-1369286712.1498968343)
- Dingwall, R. (1997). Accounts, interviews and observations. In G. Miller & R. Dingwall (Eds.), *Context and method in qualitative research* (pp. 52–66). London, England: SAGE Publications.
- Domestic and Family Violence Act 2012* (Qld)
- Douglas, H. (2017). *Using law and leaving domestic violence study*. Retrieved from <https://law.uq.edu.au/research/our-research/using-law-and-leaving-domestic-violence>
- Dunst and Dunst* [2016]FamCAFC 15
- Family Court of Australia. (2009). *Family court bulletin*, (4). Melbourne: Family Court of Australia.
- Family Law Act 1975* (Cth)
- Ferguson, S. (2015). Domestic violence: Recording crime scenes on video the new tool for police tackling Australia-wide crisis. 24 November, 2015, ABC News. Retrieved from <http://www.abc.net.au/news/2015-11-24/recording-domestic-violence-incidents-to-help-victims-in-court/6969310>
- Flick, U. (2007). *Designing qualitative research*. London, England: SAGE Publications.
- Gelb, K. (2015). *Understanding family violence court proceedings: The impact of family violence on the Magistrates' Court of Victoria*. Melbourne: Karen Gelb Consulting.
- Gillis, J. R., & Diamond, S. L. (2006). Systematic obstacles to battered women's participation in the judicial system. *Violence Against Women*, 12(12), 1150–1168. doi:10.1177/1077801206293500
- Godsell, P., Brockie, M., & Bogdanis, N. (1993). *The process of protection: Report of the court*

- assistance scheme pilot project in the Brisbane Magistrates Court by the Brisbane Women's Legal Service, March 1992 to May 1992. Brisbane: Women's Legal Service.
- Golding, J. (1999). Intimate partner violence as a risk factor for mental disorders: A meta-analysis. *Journal of Family Violence, 14*, 99–132. doi:10.1023/A:1022079418229
- Hamby, S. (2014). *Battered Women's protective strategies: Stronger than you know*. Oxford: Oxford University Press.
- Hegarty, K. L., O'Doherty, L. J., Chondros, P., Valpied, J., Taft, A. J., Astbury, J., ... Gunn J. M. (2013). Effect of type and severity of intimate partner violence on women's health and service use: Findings from a primary care trial of women afraid of their partners. *Journal of Interpersonal Violence, 28*(2), 273–294. doi:10.1177/0886260512454722
- Henning, K., & Klesges, L. (2002). Utilization of counselling and supportive services by female victims of domestic abuse. *Violence and Victims, 17*, 623–636.
- Herman, J. (1997). *Trauma and recovery: The aftermath of violence - from domestic abuse to political terror*. New York: Basic Books.
- Herman, J. (2003). The mental health of crime victims: Impact of legal intervention. *Journal of Traumatic Stress, 16*, 159–166. doi:10.1023/A:1022847223135
- Holden, L. (Elizabeth), Dobson, A. J., Byles, J., Loxton, D., Dolja-Gore, X., Hockey, R., ... Harris, M. (2013). *Final report: Mental health: Findings from the Australian longitudinal study on women's health*. Women's Health Australia.
- Howard, L. M., Trevillion, K., & Agnew-Davies, R. (2010). Domestic violence and mental health. *International Review of Psychiatry, 22*(5), 525–534. doi:10.3109/09540261.2010.512283
- Humphreys, C., & Thiara, R. (2003). Mental health and domestic violence: "I call it symptoms of abuse." *British Journal of Social Work, 33*, 209–226. Retrieved from <https://doi.org/10.1093/bjsw/33.2.209>
- Hunter, R. (2006). Narratives of domestic violence. *Sydney Law Review, 28*, 733–776. Retrieved from <http://search.informit.com.au/documentSummary;dn=200701273;res=IELAPA>
- Hunter, R., & Mack, K. (1997). Exclusion and silence: Procedure and evidence. In N. Naffine & R. Owens (Eds.), *Sexing the subject of law* (pp. 171–192). North Ryde, NSW: LBC Information Services.
- Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., & Qu, L. (2010). Family violence: Key findings from the evaluation of the 2006 family law reforms. *Family Matters, (85)*, 38–48. Retrieved from <https://aifs.gov.au/publications/evaluation-2006-family-law-reforms>
- Logan, T. K., Shannon, L., Cole, J., & Walker, R. (2006). The impact of differential patterns of physical violence and stalking on mental health and help-seeking among women with protective orders. *Violence Against Women, 12*(9), 866–886. doi:10.1177/1077801206292679
- Loxton, D., Dolja-Gore, X., Anderson, A., & Townsend, N. (2017). Intimate partner violence adversely impacts health over 16 years and across generations: A longitudinal cohort study. *PLoS ONE, 12*(6), 1–10. Retrieved from <https://doi.org/10.1371/journal.pone.0178138>
- Lynch, D., & Laing, L. (2013). 'Women get lost in the gaps' – Service providers' perspectives on women's access to legal protection from domestic violence. Sydney: University of Sydney. Retrieved from <https://ses.library.usyd.edu.au/bitstream/2123/9195/2/Women%20get%20lost%20in%20the%20gaps.pdf>
- Magistrates' Court of Victoria. (2016). *Family violence*. Retrieved from <https://familyviolence.courts.vic.gov.au/online-form>
- May, B. A., Rakhlin, D., Katz, A., & Limandri, B. J. (2003). Are abused women mentally ill? *Journal of Psychosocial Nursing & Mental Health Services, 41*(2), 21–29.
- McInnes, E. (2013). Madness in family law: Mothers' mental health in the Australian family law system. *Psychiatry, Psychology and Law, 21*(1), 78–91.
- Mertin, P., & Mohr, P. B. (2001). A follow-up study of posttraumatic stress disorder, anxiety, and depression in Australian victims of domestic violence. *Violence and Victims, 16*(6), 645–654.
- Meyer, S. (2016). Still blaming the victim of intimate partner violence? Women's narratives of victim desistance and redemption when seeking support. *Theoretical Criminology, 20*(1), 75–90. doi:10.1177/1362480615585399
- Miller, S. L., & Smolter, N. L. (2011). "Paper Abuse": When all else fails, batterers use procedural stalking. *Violence Against Women, 17*(5), 637–650. doi:10.1177/1077801211407290
- Mol, S. S., Arntz, A., Metsemakers, J. F., Dinant, G. J., Vilters-van Montfort, P. A., & Knottnerus, J. A. (2005). Symptoms of posttraumatic stress disorder after non-traumatic events: Evidence from an open population study. *The British Journal of Psychiatry, 186*, 494–499. doi:10.1192/bjp.186.6.494
- Osenbach, J. E., Stubbs, J., Wang, J., Russo, J., & Zatzick, D. (2009). Legal events as predictors of posttraumatic stress in injured trauma

- survivors. *Psychiatry: Interpersonal and Biological Processes*, 72, 70–78. doi:10.1521/psyc.2009.72.1.70
- Powell, M., Fisher, R., & Wright, R. (2005). Investigative interviewing in psychology and the law: An empirical perspective. In N. Brewer & K. Williams (Eds.), *Psychology and law: An empirical perspective* (pp. 11–42). New York: The Guilford Press.
- Ptacek, J. (1999). *Battered women in the courtroom: The power of judicial responses*. Boston: Northeastern University Press.
- Roberts, D., Chamberlain, P., & Delfabbro, P. (2015). Women's experiences of the processes associated with the family court of Australia in the context of domestic violence: A thematic analysis. *Psychiatry, Psychology and Law*, 22(4), 599–615. Retrieved from <https://doi.org/10.1080/13218719.2014.960132>
- Roberts, G., Williams, G. M., Lawrence, J. M., & Raphael, B. (1998). How does domestic violence affect women's mental health? *Women and Health*, 28(1), 117–129.
- Rodgers, B., Smyth, B., & Robinson, E. (2004). Mental health and the family law system. *Journal of Family Studies*, 10(1), 50–70. Retrieved from <http://search.informit.com.au/documentSummary;dn=513188701606510;res=IELHSS>
- Ryan, J. (2006). Mental health and family law - A question of degree. *Federal Judicial Scholarship*, 2, 1–16. Retrieved from <http://www.austlii.edu.au/au/journals/FedJSchol/2006/2.html>
- Sato, R. A., & Heiby, E. M. (1992). Correlates of depressive symptoms among battered women. *Journal of Family Violence*, 7, 229–245. doi:10.1007/BF00979030
- Victoria Department of Health. (2002). *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*. Retrieved from <https://www.vichealth.vic.gov.au/media-and-resources/publications/the-health-costs-of-violence>