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# Non-Adversarial Approaches to Domestic Violence: Putting Therapeutic Jurisprudence Theory into Practice

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*This article analyses therapeutic jurisprudence (TJ) informed approaches to domestic violence (DV). Part I of the article considers ways in which the adoption of such approaches in DV contexts can be positive for the parties involved, while Part II explores some of the caveats. This analysis leads to four key recommendations for the safe management of TJ informed approaches to DV. First, comprehensive screening protocols are necessary to ensure that only appropriate offenders who have the capacity to participate effectively are screened in to TJ informed programs. Secondly, given the complex nature of DV and the need for multi-disciplinary and multi-agency responses, information across these disciplines and agencies must be shared. Thirdly, extensive training is needed for first responders such as police and community groups, as well as for judges and program facilitators. Finally, it is important to adopt practices that allow processes and protocols to be perceived as procedurally fair to all parties.*

## INTRODUCTION

In the context of managing domestic violence (DV) matters, a paradigm shift is occurring in contemporary justice systems. In Australia, the UK, Canada, New Zealand and the US, punitive, retributive approaches to DV are being replaced by more rehabilitative and healing ones. This paradigm shift is evidenced, for example, by the introduction of specialised DV courts,<sup>1</sup> which seek to deal with DV matters in a non-adversarial way. As an alternative to, and in combination with, formal prosecution, the use of non-adversarial approaches to DV has the potential to deliver justice to victims and families in a comprehensive and healing manner, lay the foundation for a durable solution to changing violent

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<sup>1</sup> B Tsai, "The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation" (1999) 68 *Fordham Law Review* 1285; DB Rottman, "Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?" (2000) 37 *Court Review* 22; RB Fritzler and LMJ Simon, "Creating a Domestic Violence Court" (1984) 261 *American Sociological Review* 266; J Stewart, "Specialist Domestic/Family Violence Courts Within the Australian Context" (Australian Domestic and Family Violence Clearinghouse, UNSW, 2005). See also, eg Queensland Government, "Interim Evaluation of the Trial Specialist Domestic and Family Violence Court in Southport" (2016); Griffith Criminology Institute, "Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport – Final Report" (2017). The Southport specialist DV court has now been made permanent, and other courts are to be established in Queensland and the ACT in Australia. For a UK perspective, see Crime Reduction Centre Information Team, "Safety and Justice: The Government's Proposals on Domestic Violence" (Crime Reduction Centre, 2003). For a Canadian perspective, see L Tutty, J Ursel and F Douglas, "Specialized Domestic Violence Courts: A Comparison of Models" in J Ursel, LM Tutty and J leMaistre (eds), *What's Law Got to Do With It? The Law, Specialized Courts and Domestic Violence in Canada* (Cormorant Books, 2008). For a New Zealand perspective, see New Zealand Family Violence Clearinghouse, "Evaluating the Waitakere Family Violence Court" (2007). For a Californian perspective, see Judicial Council of California Administrative Office of the Courts, "Domestic Violence Courts: A Descriptive Study" (2000). In the US in 2009 a national project identified 208 courts hearing criminal DV matters with specialised DV dockets or dedicated judges: M Labriola et al, *A National Portrait of Domestic Violence Courts* (Center for Court Innovation, 2009) ix. See also D Shelton and E Donald, "The Current State of Domestic Violence Courts in the United States, 2007" (2007); J Helling, "Specialized Criminal Domestic Violence Courts" (2005); S Kelitz et al, "Specialization of Domestic Violence Case Management in the Courts: A National Survey" (National Center for State Courts, 2001).



behaviour, and reduce the prospect of recidivism in a more humane, efficient and cost-effective manner.<sup>2</sup> There are certainly many advantages to adopting non-adversarial approaches to DV matters; however, there are also significant caveats, particularly in terms of ensuring that safety is elevated in such systems.

This article evaluates some of the advantages and qualifications of adopting non-adversarial approaches to DV. The first part discusses therapeutic jurisprudence (TJ) as an appropriate lens through which to analyse developments in non-adversarial approaches to DV; it also defines DV and considers the positive aspects of adopting TJ approaches in DV contexts. The second part explores some of the caveats in relation to using TJ principles to inform non-adversarial approaches to DV matters. On the basis of this analysis, a number of recommendations are made to uphold safety in contexts where TJ-related non-adversarial approaches to DV are adopted.

The article makes four key arguments: that a comprehensive screening protocol is necessary that excludes egregious reoffenders but identifies offenders who are both willing and capable of reform; that additional training for first responders such as police and community groups, as well as for judges and program facilitators, is also necessary; that, given DV cases often present in many courts such as civil, family, criminal and probate courts, information-sharing protocols are important for efficacy throughout the system; and that practices that allow processes and protocols to be perceived as procedurally fair to all parties are essential.

## THERAPEUTIC JURISPRUDENCE AND DOMESTIC VIOLENCE

### Therapeutic Jurisprudence

TJ<sup>3</sup> is a positive development in legal (particularly criminal law) contexts in recent years.<sup>4</sup> It was first conceptualised by David Wexler and Bruce Winnick in the late 1980s to offer an alternative lens through which the consequences of legal practice in mental health contexts could be analysed.<sup>5</sup> King et al

<sup>2</sup> See, eg KA Kaiser and K Holtfreter, "An Integrated Theory of Specialized Court Programs: Using Procedural Justice and Therapeutic Jurisprudence to Promote Offender Compliance and Rehabilitation" (2016) 43(1) *Criminal Justice and Behavior* 45; GM Pinchevsky, "Understanding Decision-Making in Specialized Domestic Violence Courts: Can Contemporary Theoretical Frameworks Help Guide These Decisions?" (2017) 23(6) *Violence Against Women* 749. It must be acknowledged, however, that the broad body of international literature clearly indicates the diversity of DV courts. Not all DV courts are informed by TJ. Some are designed with case management efficiencies in mind, while others enact some of the more conventional criminal justice approaches, such as deterrence-based policies and practices. Evaluations of problem-solving DV courts have produced mixed findings, see eg LM Tutty and R Babins-Wagner, "Outcomes and Recidivism in Mandated Batterer Intervention Before and After Introducing a Specialized Domestic Violence Court" [2016] *Journal of Interpersonal Violence* 0886260516647005; AB Cissner, M Labriola and M Rempel, "Domestic Violence Courts: A Multisite Test of Whether and How They Change Offender Outcomes" (2015) 21(9) *Violence Against Women* 1102; D Paquette Boots et al, "A Comparison of the Batterer Intervention and Prevention Program With Alternative Court Dispositions on 12-Month Recidivism" (2016) 22(9) *Violence Against Women* 1134.

<sup>3</sup> There is a significant body of scholarship on the integration of TJ approaches in the context of DV. See, eg DP Saccuzzo, "How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest" (1998) 39 *Santa Clara Law Review* 765; LMJ Simon, "A Therapeutic Jurisprudence Approach to the Legal Processing of Domestic Violence Cases" (1995) 1 *Psychology Public Policy and Law* 43; CJ Petrucci, "Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court that Utilizes Therapeutic Jurisprudence" (2002) 28(2) *Criminal Law Bulletin* 263; L Bennett Cattaneo and LA Goodman, "Through the Lens of Therapeutic Jurisprudence: The Relationship Between Empowerment in the Court System and Well-Being For Intimate Partner Violence Victims" (2010) 25(3) *Journal of Interpersonal Violence* 481; C Copps Hartley, "A Therapeutic Jurisprudence Approach to the Trial Process in Domestic Violence Felony Trials" (2003) 9(4) *Violence Against Women* 410; E Erez and C Copps Hartly, "Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective" (2002) 4(2) *Western Criminology Review* 155; BJ Winick, "Therapeutic Jurisprudence, Perspectives on Dealing with Victims of Crime" (2009) 33 *Nova Law Review* 536; BJ Winick et al, "Dealing With Mentally Ill Domestic Violence Perpetrators: A Therapeutic Jurisprudence Judicial Model" (2010) 33(5) *International Journal of Law and Psychiatry* 428; R Boldt and J Singer, "Juristocracy in the Trenches: Problem-Solving Judges and Therapeutic Jurisprudence in Drug Treatment Courts and Unified Family Courts" (2006) 65(1) *Maryland Law Review* 82; BJ Winick, "Applying the Law Therapeutically in Domestic Violence Cases" (2000) 69 *University of Missouri-Kansas City Law Review* 33; JS Kaye and SK Knipps, "Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach" (1999) 27 *Western State University Law Review* 1.

<sup>4</sup> MS King, "Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice" (2008) 32 *Melbourne University Law Review* 1096; RF Schopp, "Integrating Restorative Justice and Therapeutic Jurisprudence" (1998) 67 *Revista Jurídica Universidad de Puerto Rico* 665.

<sup>5</sup> A Freiberg, "Psychiatry, Psychology and Non-Adversarial Justice: From Integration to Transformation" (2011) 18 *Psychiatry, Psychology and Law* 1, 4.

described TJ as the “interdisciplinary study of the law’s effect on physical and psychological wellbeing” and as an “intellectual discourse” of significant practical impact.<sup>6</sup> TJ acknowledges that the “law, legal personnel, and legal procedures have psychological effects upon the individuals and groups involved in each legal matter”,<sup>7</sup> and that these effects can be better understood and responded to through a “therapeutic lens”.<sup>8</sup> It invites an analysis of the law – its rules and procedures, and the roles and influence of legal actors – as a potentially therapeutic agent.<sup>9</sup> That is, TJ conceives of the law as impacting on those who come into contact with it in either a therapeutic or anti-therapeutic way. It promotes understanding and evaluating the anti-therapeutic effects of the law in order to seek out ways to ensure that where possible the impact of the law is not anti-therapeutic.<sup>10</sup> A TJ approach seeks to maximise the law’s “healing” role.

TJ is now a well-established, significant and “truly international field of legal scholarship”.<sup>11</sup> It has been very influential in many disciplines, including law, psychology and social science.<sup>12</sup> Freiberg has suggested that TJ has the potential to transform the justice system, along with other non-adversarial approaches to justice such as restorative justice and preventative law.<sup>13</sup> Evidence of the growing influence of TJ can be found in its application in a diverse range of legal areas, from criminal law, family law and juvenile law to discrimination law, health law, evidence law, tort law, contract and commercial law, worker’s compensation law and probate law.<sup>14</sup>

As noted above, the key objective of the operation of systems informed by TJ is to be instrumental in reducing the law’s anti-therapeutic consequences and to increase the potential for the law to have a therapeutic impact, while ensuring that due process and other justice principles are not compromised.<sup>15</sup> By identifying and being explicit about the harmful impacts of the operation of the law that contribute to creating and exacerbating anti-therapeutic outcomes, it becomes possible to generate and implement more humane, creative and effective legal procedures and practices.<sup>16</sup> Through attending to the people and their wellbeing in legal processes, anxiety, distress, depression and anger can be reduced, optimising the therapeutic effects of the law for those who come into contact with it.

The principles of TJ emphasise psychological wellbeing, positive human functioning, relationships, ethical values and non-adversarial procedures and potentially offer positive ways of responding to the challenging nature of DV matters.<sup>17</sup> Indeed, it could even be said that the difficult and testing nature

<sup>6</sup> M King et al, *Non-Adversarial Justice* (Federation Press, 2<sup>nd</sup> ed, 2014) 20

<sup>7</sup> S Daicoff, “Law as a Healing Profession: The Comprehensive Law Movement” (2006) 6 *Pepperdine Dispute Resolution Law Journal* 1, 11.

<sup>8</sup> B Winick, DB Wexler and E Dauer, “Preface: A New Model for the Practice of Law” (1999) 5(4) *Psychology, Public Policy and Law* 795, 795–796.

<sup>9</sup> Freiberg, n 5, 4.

<sup>10</sup> B Winick, “Therapeutic Jurisprudence and Problem-Solving Courts” (2003) 30 *Fordham Urban Law Journal* 1055, 1063.

<sup>11</sup> E Richardson, P Spencer and DB Wexler, “The International Framework for Court Excellence and Therapeutic Jurisprudence: Creating Excellent Courts and Enhancing Wellbeing” (2016) 25 *Journal of Judicial Administration* 148, 155. A number of TJ networks exist, see eg International Network on Therapeutic Jurisprudence <<https://law2.arizona.edu/depts/upr-intj>>.

<sup>12</sup> S Daicoff, “Growing Pains: The Integration vs Specialization Question for Therapeutic Jurisprudence and Other Comprehensive Law Approaches” (2008) 30 *Thomas Jefferson Law Review* 551, 551–552.

<sup>13</sup> Freiberg, n 5, 4.

<sup>14</sup> DP Stolle et al, “Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering” (1997) 34 *California Western Law Review* 15, 17–18; Daicoff, n 7, 11–13.

<sup>15</sup> DB Wexler and BJ Winick, *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence* (Carolina Academic Press, 1996) xvii.

<sup>16</sup> M McMahon and J Willis, “Neighbours and Stalking Intervention Orders: Old Conflicts and New Remedies” (1993) 20(2) *Law in Context (Special Issue)* 1, 96.

<sup>17</sup> See, eg EM Hyman and L Aldrich, “Rethinking Access to Justice: The Need for a Holistic Response to Victims of Domestic Violence” (2012) 33(4) *Women’s Rights Law Reporter* 449.

of DV matters creates an imperative to harness TJ's therapeutic agenda in the interests of the parties involved and particularly in the interests of the children of the relationship.<sup>18</sup>

## Domestic Violence

To be able to appropriately consider TJ's potentially positive influence on the way DV matters are dealt with in justice systems, a clear definition of DV is required.<sup>19</sup> DV, which is also variously referred to as family violence or intimate partner violence, is a complex and extremely challenging form of violence. Definitions of DV reflect this complexity and many legislative definitions are long and detailed.<sup>20</sup> This article uses the definition offered by the Australian Domestic and Family Violence Clearinghouse, adopted by the Commonwealth Partnerships Against Domestic Violence program in 1997:

[A]n abuse of power perpetrated mainly (but not only) by men against women both in relationships and after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. For many Indigenous people the term family violence is preferred as it encompasses all forms of violence in intimate, family and other relationships of mutual obligation and support.<sup>21</sup>

There are a number of elements of this definition that should inform analyses of the potential of TJ-informed approaches to DV. First, it acknowledges the gendered nature of DV.<sup>22</sup> As Douglas and Fitzgerald said: "Official statistics consistently demonstrate the gendered nature of domestic violence."<sup>23</sup> They are referring here to the 2009 Commonwealth Government report that established that women are most affected by DV, that violence against women affects one in three women in Australia, and that DV costs the Australian economy billions of dollars a year (the estimated cost for 2009 was around \$13.6 billion).<sup>24</sup> Recognising that DV is a gendered form of violence does not result in a consequential claim that women do not perpetrate violence against men; it is simply a statement of the reality that more

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<sup>18</sup> It should be acknowledged also, however, that the interests of the parties (the victim, perpetrator and children) may not be aligned. If the interests of the parties need to be prioritised then in the authors' view it is the victim and any children's interests that should trump those of the perpetrator. The issue of dealing with competing interests is a complex one and beyond the scope of this article. Further detailed discussion of issues for children is also beyond the scope of this article.

<sup>19</sup> Two important recent Australian reports on DV include: Australian and New South Wales Law Reform Commissions (ANSWLRC), *Family Violence — A National Legal Response*, ALRC Report No 114 (2010) <<http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>>; Royal Commission into Family Violence, *Summary and Recommendations* (Victorian Government Printer, 2016) <[http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf)>.

<sup>20</sup> See, eg *Domestic and Family Violence Protection Act 2012* (Qld) s 8, which is indicative of definitions of DV in Australia. See also S Jeffries, R Field and C Bond, "Protecting Australia's Children: A Cross-Jurisdictional Review of Domestic Violence Protection Order Legislation" (2015) 20(6) *Psychiatry, Psychology and Law* 812. In the UK, a cross-government definition of domestic violence and abuse has been adopted, see <<https://www.gov.uk/guidance/domestic-violence-and-abuse#domestic-violence-and-abuse-new-definition>>.

<sup>21</sup> ANSWLRC, n 19, 188.

<sup>22</sup> The Australian statistics evidence that women experience DV at higher rates than men. Men also experience violence at alarming levels but more often in public environments at the hands of other men. See, eg H Douglas and RB Fitzgerald, "Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Protection Orders" (2013) 36(1) *University of New South Wales Law Journal* 56; F Mackay, "Gendering Constitutional Change and Policy Outcomes: Substantive Representation and Domestic Violence Policy in Scotland" (2010) 38(3) *Policy and Politics* 369; DV Bridges, "The Gendered Battlefield: Women in the Australian Defence Force" (Thesis, University of Western Sydney, 2005). From the US, see literature over a number of decades, eg P Tjaden and N Thoennes, *Prevalence, Incidence and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey 2* (US Department of Justice, 1998); SC Swan and DL Snow, "A Typology on Women's Use of Violence in Intimate Relationships" (2002) 8 *Violence Against Women* 286, 292.

<sup>23</sup> Douglas and Fitzgerald, n 22, 56, citing The National Council to Reduce Violence Against Women and Their Children, *The Cost of Violence Against Women and Their Children* (Commonwealth of Australia, 2009) 4.

<sup>24</sup> Douglas and Fitzgerald, n 22, 56.

women than men are victims of DV.<sup>25</sup> Men experience unacceptable levels of violence also, but more commonly at the hands of other men, and in public.<sup>26</sup> Critically, an acknowledgement of the gendered nature of DV is important to working safely and therapeutically in DV contexts. As Hyman J said: “A rather obstinate statistic of domestic violence is that 85% of all victims are women, period. Yet we continue to litigate this finding, which only serves to detract the focus from the core problem area.”<sup>27</sup>

Secondly, the definition above refers to the key dynamic of DV – the use of physical or psychological strategies to dominate and control another person. Perpetrators of DV variously use strategies of power and control, ranging from physical and sexual violence to economic violence. The Australian Family Court’s *Family Violence Best Practice Principles* acknowledge that “family violence takes many forms” and suggests that it is “important to differentiate between the types of violence”.<sup>28</sup> The Principles support Kelly and Johnson’s articulation of the “typologies” of DV, which include: coercive controlling violence; violent resistance; situational couple violence; and separation instigated violence.<sup>29</sup> These typologies could be seen as providing a way of making the complex and nuanced characteristics of DV explicit, particularly in terms of understanding the nature of DV in post-separation environments. The typology of coercive controlling violence, for example, can be defined with clarity as an “ongoing pattern of use of threat, force, emotional abuse and other coercive means to unilaterally dominate a person and induce fear, submission and compliance in them. The focus is on control, and does not always involve physical harm”.<sup>30</sup>

However, while an awareness of the different forms DV can take is important, opinion about the efficacy of the typologies is divided, and many DV specialists critique the typologies as concerning.<sup>31</sup> In particular, scholars argue that an accurate use of the typologies to categorise DV requires a deep and sophisticated understanding of the dynamics of DV.<sup>32</sup> There is concern that it is too easy, without this level of professional understanding, for the use of the typologies to result in an over-simplification of analyses of violence and incorrect categorisation of experiences of violence.<sup>33</sup> It is a particular safety concern, and a potentially anti-therapeutic impact, that the typologies might result in a misdiagnosis

<sup>25</sup> For a discussion of the perpetration of DV by women, see eg Domestic Violence and Incest Resource Centre, “Men as Victims of Domestic Violence: Some Issues to Consider” (2001) <<http://www.dvrcv.org.au/sites/default/files/Mens%20as%20victims%20of%20domestic%20violence%20%28full%20paper%29.pdf>>. See also, eg A Lee and R Lincoln, “Reciprocity and Exchange: Perspectives of Male Victims of Family Violence” in W Petherick and G Sinnamon (eds), *The Psychology of Criminal and Antisocial Behavior: Victim and Offender Perspectives* (Elsevier Inc, 2016); E Tilbrook, A Allan and G Dear, “Intimate Partner Abuse of Men” (Men’s Advisory Network, 2010) <[https://www.ecu.edu.au/data/assets/pdf\\_file/0007/685276/10\\_Tilbrook\\_Final-Report.pdf](https://www.ecu.edu.au/data/assets/pdf_file/0007/685276/10_Tilbrook_Final-Report.pdf)>.

<sup>26</sup> See, eg M Flood and B Pease, “Factors Influencing Attitudes to Violence Against Women” (2009) 10(2) *Trauma, Violence and Abuse* 125; R Jewkes, M Flood and J Lang, “From Work with Men and Boys to Changes of Social Norms and Reduction of Inequities in Gender Relations: A Conceptual Shift in Prevention of Violence Against Women and Girls” (2015) 385(9977) *The Lancet* 1580; M Flood, “Men’s Collective Struggles for Gender Justice” in M Kimmel, RW Connell and J Hearn (eds), *Handbook of Studies on Men and Masculinities* (Sage, 2004) 458; M Flood, “Men and Gender Equality” in MG Flood and R Howson (eds), *Engaging Men in Building Gender Equality* (Cambridge Scholars Publishing, 2015) 1.

<sup>27</sup> EM Hyman, “Improving Court Outcomes: Deliberations of a Judge, Discussion of DV Issues in a New Era of Response” (Keynote Address, *AJIA Improving Court Practice in Family Violence Cases Conference*, Melbourne, 15–17 June 2016) 1.

<sup>28</sup> Family Violence Committee of the Family Court of Australia, *Family Violence Best Practice Principles* (Family Court of Australia, 2013) 6.

<sup>29</sup> J Kelly and M Johnson, “Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions” (2008) 46 *Family Court Review* 476.

<sup>30</sup> Family Violence Committee of the Family Court of Australia, n 28, 6.

<sup>31</sup> J Wangmann, “Different Types of Intimate Partner Violence – An Exploration of the Literature” (Issues Paper No 22, Australian Domestic and Family Violence Clearinghouse, 2011) 14; A Bailey et al, “Typologies of Violence in Family Court Processes: Reflections from the Field” (Paper presented at the *11th Australian Institute of Family Studies Conference*, Melbourne, 7–9 July 2010); Z Rathus, “Shifting Language and Meanings Between Social Science and the Law: Defining Family Violence” (2013) 36 *University of New South Wales Law Journal* 359. See also Z Rathus, “A Call for Clarity in the Use of Social Science Research in Family Law Decision-Making” (2012) 26 *Australian Journal of Family Law* 81.

<sup>32</sup> Wangmann, n 31; Bailey et al, n 31; Rathus, n 31.

<sup>33</sup> Wangmann, n 31; Bailey et al, n 31; Rathus, n 31.

of coercive controlling DV as either “simply” situational couple violence<sup>34</sup> or separation instigated violence,<sup>35</sup> and that as a result coercive controlling violence may be inappropriately minimised or dismissed as a less significant and less dangerous form of DV. It is beyond the scope of this article to critically analyse the typologies in any further detail. However, in the context of considering the potential of TJ-informed approaches to DV, it is important to acknowledge that if safety is to be elevated, and therapeutic impacts pursued, care should be taken with the use of the typologies and with the categorisation of DV.

Any attempt at adopting a TJ-informed approach to DV matters should always prioritise safety. In order to do this, not only are clear definitions of DV required as well as awareness of the dangers and risks of coercive controlling behaviour, but also acknowledgement and understanding of the psychological profile, attitudes and consistent characteristics of DV perpetrators.

Bancroft, Silverman and Ritchie have provided a useful analysis of the dynamics of DV, the common character traits of perpetrators and victims, and the emotional and developmental risks to children who witness DV.<sup>36</sup> Writing as clinicians and informed by their clinical experience, their scholarly work offers knowledge and perspectives aimed to assist workers in the field to avoid misdiagnoses of DV and to elevate safety. Bancroft, Silverman and Ritchie caution against minimising DV by labelling families as “dysfunctional” or “high conflict”, saying that careful assessment, analyses and observation are necessary to manage the dynamic of DV safely.<sup>37</sup> They identify a “coherent and consistent profile of attitudes and behaviours” that are regularly apparent in perpetrators of violence. That is, perpetrators are consistently controlling, have a strong sense of entitlement, are selfish and self-centred, have a strong sense of superiority, are possessive, confuse love and abuse, are manipulative, externalise responsibility, and deny and minimise their violence.<sup>38</sup>

One of the many difficulties of DV is that it may not be identified until several episodes have taken place and a pattern of coercive control has been established. The question arises as to how to intervene in a way that protects the safety of victims and their children while still maintaining a TJ-informed approach. As noted above, TJ-informed approaches are grounded in humane motivations, and in the DV context this can mean seeking to address and prevent DV, as well as keeping perpetrators and victims out of the justice system and its institutions. TJ-informed approaches should also be attractive to government because they can achieve more pragmatic objectives such as cost and resource savings.

The following sections explore two specific TJ-informed approaches to DV matters: specialist DV courts; and pre-charging, pre-trial and pre-sentencing strategies. A number of caveats for implementing such systems are set out that are important to recognise and address if the safety of victims and their children is to be prioritised in DV contexts.

## **TJ-Informed Approaches to DV: Specialist Courts**

TJ provides the theoretical framework and foundational principles for the operation of a range of specialist or problem-solving court programs and procedures.<sup>39</sup> Problem-solving courts deal with issues that have a particular social or psychological dynamic that requires them “to not only resolve the disputed issues

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<sup>34</sup> Situational couple violence is defined as “partner violence that does not have its basis in the dynamic of power and control. Generally, situational couple violence results from situations or disputes between partners that escalates into physical violence”: Family Violence Committee of the Family Court of Australia, n 28, 7.

<sup>35</sup> Separation instigated violence is defined as “violence instigated by the separation where there was no history of violence in the relationship or in other contexts”: Family Violence Committee of the Family Court of Australia, n 28, 7.

<sup>36</sup> L Bancroft, JG Silverman and D Ritchie, *The Batterer as Parent Addressing the Impact of Domestic Violence on Family Dynamics* (Sage, 2<sup>nd</sup> ed, 2011).

<sup>37</sup> Bancroft, Silverman and Ritchie, n 36.

<sup>38</sup> Bancroft, Silverman and Ritchie, n 36.

<sup>39</sup> H Blagg, *Problem-Oriented Courts* (Law Reform Commission of Western Australia, 2008) 1, 3. See also Richardson, Spencer and Wexler, n 11, 153.

of fact, but also to attempt to solve a variety of human problems that are responsible for bringing the case to court".<sup>40</sup> Examples of such courts include drug courts and mental health courts, courts that deal specifically with first nations people, as well as DV courts.<sup>41</sup>

The purpose of DV specialist courts is to reduce the occurrence of DV in the community. The need for a specialist approach is based on an acknowledgement that the traditional adversarial court system is ineffective in this context because it is non-therapeutic and restricted by the rigidity of processes and procedures, limited in terms of available sanctions and lacks an ability to adequately coordinate government agencies and the information they hold to ensure victim safety.<sup>42</sup> As Judith S Kaye, a former Chief Judge of New York State, has said:

In many of today's cases, the traditional approach yields unsatisfying results. The battered wife obtains a protective order, goes home, and is beaten again. Every legal right of the litigant is protected, all procedures are followed, yet we aren't making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.<sup>43</sup>

Further, Fritzier and Simon have argued that when DV matters are processed by the same courts that handle other criminal matters "they are less likely to be treated seriously".<sup>44</sup> This, as they note, is extremely problematic "because many low-injury, domestic violence cases escalate into high-injury or homicide cases that might have been prevented with effective legal sanctions at the outset".<sup>45</sup>

In dealing with complex social problems such as DV that cannot be effectively dealt with by the standardised and mechanistic approaches of traditional courts, problem-solving courts have several distinctive features: first, they are more outcome based than focused on traditional processes and precedents;<sup>46</sup> secondly, active interaction and communication between judges and the parties is encouraged; thirdly, they are not restricted by or limited to normative legal sanctions in the same way as traditional courts; and fourthly, such courts are creative and innovative, eg in harnessing community service and other social services as alternative sentences.<sup>47</sup> In addition to imposing sentences and sanctions, problem-solving courts are also actively involved in monitoring and ensuring compliance by offenders.<sup>48</sup>

These operational features of problem-solving courts are informed by a number of justice imperatives, which apply in DV court contexts.<sup>49</sup> First, ensuring enhanced information provision to

<sup>40</sup> Winick, n 10, 1055

<sup>41</sup> S Daicoff, "The Comprehensive Law Movement" (2004) 19 *Touro Law Review* 825, 839–845; Daicoff, n 7. See also JL Nolan, "Redefining Criminal Courts: Problem-Solving and the Meaning of Justice" (2003) 40 *American Criminal Law Review* 1541; P Casey and DB Rottman, "Therapeutic Jurisprudence in the Courts" (2000) 18 *Behavioral Science and Law* 445. See, eg E Marchetti and K Daly, "Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model" (2007) 29 *Sydney Law Review* 415.

<sup>42</sup> See n 1. Winick, n 10, 1055. See also, eg H Douglas, "The Criminal Law's Response to Domestic Violence: What's Going On?" (2008) 30 *Sydney Law Review* 439.

<sup>43</sup> JS Kaye, quoted in G Berman and J Feinblatt, "Beyond Process and Precedent: The Rise of Problem-Solving Courts" (2002) 41 *Judges Journal* 5, 5.

<sup>44</sup> RB Fritzier and LMJ Simon, "Creating a Domestic Violence Court: Combat in the Trenches" (2000) 37 *Court Review* 28, 31.

<sup>45</sup> Fritzier and Simon, n 44, 31–32.

<sup>46</sup> According to Menkel-Meadow, the problem-solving approach to justice is about determining the actual needs of the parties: C Menkel-Meadow, "Toward Another View of Legal Negotiation: The Structure of Problem-Solving" (1984) 31 *UCLA Law Review* 754, 801.

<sup>47</sup> KC Sammon, "Therapeutic Jurisprudence: An Examination of Problem-Solving Justice in New York" (2008) 23 *St. John's Journal of Legal Commentary* 923, 924–926.

<sup>48</sup> Blagg, n 39, 3. See also G Berman and A Fox, "The Future of Problem-Solving Justice: An International Perspective" (2010) 10 *University of Maryland Law Journal of Race, Religion, Gender and Class* 1, 5.

<sup>49</sup> Berman and Fox, n 48, 3–5. In 2001, Berman and Feinblatt listed case outcomes, system change, judicial monitoring, collaboration and non-traditional roles as the common elements of various problem-solving courts such as drug courts, community courts, domestic violence courts and mental health court. See Berman and Feinblatt, n 43, 131–132. See also King et al, n 1, 140.

improve decision-making. Secondly, achieving community engagement to improve public trust in the court's approach to DV matters and enhance the community's commitment to achieving just and safe outcomes and preventing DV. Thirdly, the promotion of collaboration through improving inter-agency communication and integration and the creation of partnerships beyond the court with government agencies and community-based organisations. Fourthly, ensuring offender accountability; this is critical to achieving therapeutic outcomes such as behavioural change in perpetrators. Fifthly, ensuring the efficacy of outcomes by requiring that court practices are evaluated by the active and ongoing collection and analysis of data. Finally, ensuring rigorous risk and needs assessments to arrive at better, and safer, decisions for the individuals involved.

The implementation of these justice imperatives means that DV courts require a new style of judging, one that seeks to "humanise" the justice process and acknowledge that changing the perpetrator's behaviour and achieving victim safety are complex human and social problems.<sup>50</sup> Unlike traditional judges who view themselves as arbiters, judges in problem-solving courts such as DV courts consciously have a professional identity as therapeutic agents, applying therapeutic functions in their dealings with the parties by adopting collaborative, long-term, relational, interdisciplinary and healing approaches.<sup>51</sup> In this way, specialist DV judges can work to reduce the emotional trauma of the legal process, and more effectively achieve safe outcomes and promote change in the behaviour of perpetrators.<sup>52</sup>

The efficacy of the operation of DV courts as a non-adversarial approach to DV is based on the effectiveness of the courts to achieve the justice imperatives discussed above. Fritzler and Simon have given the following examples of how these outcomes can practically be achieved through the coordination of legal responses, law enforcement, corrections and victim advocates:

A coordinated, specialized domestic violence court can work with police officers called to the scene of a domestic violence incident by issuing protection orders by phone 24 hours a day, in much the same way search warrants are currently issued in exigent circumstances. The court can facilitate collaboration between police, probation/pretrial services, the victim, and victim advocates in making decisions to jail a (perpetrator) pending criminal proceedings, if no reasonable assurance can be made that the victim will be safe upon the offender's release. The court can proactively enhance the well-being of the victim by routinely issuing a civil order of protection in conjunction with any pending criminal case and encouraging prosecutors to initiate civil protection orders in criminal cases. Probation officers can monitor pre- and post-sentencing compliance of court orders by an offender, and can schedule cases of non-compliance immediately for the judge to determine whether graduated sanctions are warranted.<sup>53</sup>

DV specialist courts are now widely implemented around the world. It is important that their operations are rigorously evaluated and monitored.<sup>54</sup> There is much potential for these courts to achieve significant societal change in relation to the perpetration of DV but only if government invests adequate

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<sup>50</sup> See Sammon, n 47, 926. See also, eg M King and B Batagol, "Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts" (2010) 33 *International Journal of Law and Psychiatry* 406.

<sup>51</sup> Both Winick and Babb refer to judges in problem-solving courts as therapeutic agents, see BJ Winick, "Problem Solving Courts: Therapeutic Jurisprudence in Practice" in RL Wiener and EM Brank (eds), *Problem Solving Courts* (Springer, 2013) 211; BA Babb, "Unified Family Courts: An Interdisciplinary Framework and a Problem-Solving Approach" in Wiener and Brank, n 51, 65. See also King and Batagol, n 50; D Epstein, "Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System" (1999) 11 *Yale Journal of Law & Feminism* 3.

<sup>52</sup> Daicoff, n 7, 127. See also Winick, n 10, 1055–1056, 1065–1066.

<sup>53</sup> Fritzler and Simon, n 44, 34. While these qualities discussed here are examples of how non-adversarial DV courts may effectively use TJ, it is acknowledged that some of these characteristics are not necessarily confined to non-adversarial justice nor to TJ. However, these qualities are commonly missing from standard court approaches to DV, and the argument here is that they are especially important in making a non-adversarial DV court work.

<sup>54</sup> See, eg references at n 2.



resources in their establishment and functioning so that they enact the TJ principles and features discussed above.

## **TJ-Informed Approaches to DV: Pre-Charging, Pre-Trial and Pre-Sentencing Strategies**

TJ-informed approaches may assist with achieving change in a perpetrator's violent behaviour and promoting the safety of victims through measures that emphasise the perpetrator's accountability and rehabilitation. Pre-charging, pre-trial and pre-sentencing strategies are justice mechanisms amongst such measures.<sup>55</sup> They can be employed to enact a restorative justice (RJ) approach by avoiding or diverting the parties away from the punitive and retributive traditional court system and can have a therapeutic effect for families affected by DV by keeping perpetrators out of the prison system.<sup>56</sup>

### **Pre-Charging**

A pre-charging approach to DV matters emphasises therapy for perpetrators and “the use of community services in lieu of prosecution”.<sup>57</sup> It involves the responding police officer determining whether a crime has been committed and if there is probable cause to make an arrest.<sup>58</sup>

In jurisdictions where a pre-charge diversion of a DV matter is permitted it is usually considered an alternative measure to be used in exceptional circumstances.<sup>59</sup> This is because it is usually beyond the training and expertise of those involved in the initial police response to a DV matter to do an adequate evaluation and risk assessment. Any prediction of reoccurrence of DV is difficult so the judgment as to whether a perpetrator can appropriately be referred to a program that does not involve a formal criminal charge process and trial proceedings must be made by qualified experts. Pre-charging approaches are also potentially dangerous because perpetrators of violence are often dealing with a complex suite of issues, eg involving mental health issues and substance abuse, that make the recurrence of DV, without further immediate intervention, more likely than not. For this reason, where DV has been perpetrated it is only in exceptional circumstances that a matter would not be processed at least to the charging stage in the traditional criminal justice system.

<sup>55</sup> Daly defines justice mechanisms as justice responses, processes, activities, measures or practices: K Daly, “What is Restorative Justice? Fresh Answers to a Vexed Question” (2016) 11(1) *Victims and Offenders* 9, 18.

<sup>56</sup> See Daly, n 55. See further A Hayden, L Gelsthorpe and A Morris (eds), *A Restorative Approach to Family Violence: Changing Tack* (Routledge, 2014) and the references within. See in particular in this work J Stubbs, “Gendered Violence and Restorative Justice” and A Hayden, “Reflections on Family Violence and Restorative Justice: Addressing the Critique”. See also J Robinson and J Hudson, “Restorative Justice: A Typology and Critical Appraisal” (2015) 23 *Willamette Journal of International Law and Dispute Resolution* 335. There is a significant body of literature and resources relating to restorative justice, see <<http://www.cehd.umn.edu/ssw/rjp/>>; <<http://restorativejustice.org/>>. For a perspective on the concept of redemption in relation to female offenders, see EM Hyman, “The Scarlet eLetter and Other Roadblocks to Redemption for Female Offenders” (2014) 54 *Santa Clara Law Review* 119.

<sup>57</sup> J Brown, “The Emergence of a Non-Adversarial Jurisprudence in Criminal Cases: The San Francisco Experience” (1997) 7 *San Francisco Law Review* 1.

<sup>58</sup> There are few existing examples of such pre-charging approaches in DV contexts that the authors are aware of, apart from the juvenile DV court in San Francisco. This type of court is more likely to be a drug treatment court. It is raised here to encourage exploration of this as a possible approach in appropriate circumstances.

<sup>59</sup> For example, in Canada a majority of the working group that produced the “Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation” recommended against the introduction of pre-charge measures, see <<http://justice.gc.ca/eng/tp-pr/cj-jp/fv-vf/pol/p2.html>>.

**Pre-Trial**

Pre-trial strategies<sup>60</sup> occur after a perpetrator has been charged but before they are required to appear in court. They usually involve the imposition of release conditions, such as the perpetrator's participation in an intervention program.<sup>61</sup> Other common release conditions include: abiding by contact; association or travel restrictions; compliance with all court orders; and removal of any firearms from the perpetrator's possession.<sup>62</sup>

In Australia, the ACT Magistrates Court is using pre-trial mediation for certain family violence orders to determine whether the order may be settled by consent.<sup>63</sup> Currently, this is Australia's only jurisdiction that undertakes legislated, mandatory conferences in family violence matters, and the reported statistics indicate that settlement rates are around 95%, with only 5% of matters proceeding to a hearing.<sup>64</sup> TJ-informed aspects of this approach include: the parties are supported in the process by Domestic Violence Crises Service support workers; the parties are empowered through the process to determine the conditions of their Family Violence Order, rather than having an order imposed on them by the court; the perpetrator of violence is encouraged to be accountable for their conduct; and the emotional and financial impact associated with a court hearing is reduced. The process is underpinned by a commitment to rigorous internal training and continuing professional development for the mediators, and observational quality control. While this innovation is new and will, presumably, be subject to ongoing evaluation, it does represent a significant TJ-informed pre-trial innovation with the aim of creating a safe and supported mediation process for family violence order matters. Indeed, the Victorian Royal Commission into Family Violence identified the ACT as a model for new practices in this context.<sup>65</sup>

Pre-trial assessments should be done by those with the professional expertise to do a risk assessment to determine whether a perpetrator can safely be released on conditions.<sup>66</sup> Such experts should have

<sup>60</sup> See, eg acknowledgement of the Pre-Trial Reform Project in RA Berk, SB Sorenson and G Barnes, "Forecasting Domestic Violence: A Machine Learning Approach to Help Inform Arraignment Decisions" (2016) 13(1) *Journal of Empirical Legal Studies* 94. See also OM Gur, PR Ibarra and E Erez, "Specialization and the Use of GPS for Domestic Violence by Pretrial Programs: Findings from a National Survey of US Practitioners" (2016) 34(1) *Journal of Technology in Human Services* 32. Note one of the most famous cases of pre-trial diversion was used in the case of former NFL football player Ray Rice. Rice knocked his then-fiancee, Janay Palmer, unconscious in an Atlantic City, New Jersey, casino elevator. He was permitted to enter a pre-trial diversion program, successfully completed it and the charges against him were dropped: see A Wilson, "Ray Rice's Domestic Violence Charges Dismissed by New Jersey Judge", *Baltimore Sun*, 21 May 2015.

<sup>61</sup> See, eg AR Robert, *Handbook of Domestic Violence Intervention Strategies: Policies, Programs, and Legal Remedies* (Oxford University Press, 2002); K Scott, "Intervening to Prevent Repeat Offending Among Moderate to High-Risk Domestic Violence Offenders: A Second-Responder Program for Men" (2015) 59(3) *International Journal of Offender Therapy and Comparative Criminology* 273. See also, eg Domestic Violence Prevention Centre Gold Coast Inc, *Men's Domestic Violence Education and Intervention Program* <<http://www.domesticviolence.com.au/pages/mens-domestic-violence-intervention-education.php>>.

<sup>62</sup> JM Sadusky, "Pre-Trial Release Conditions in Domestic Violence Cases: Context and Issues" (Battered Women's Justice Project, 2006) 7 <[http://www.bwjp.org/assets/documents/pdfs/pretrial\\_release\\_conditions\\_domestic\\_violence\\_cases.pdf](http://www.bwjp.org/assets/documents/pdfs/pretrial_release_conditions_domestic_violence_cases.pdf)>. See also, eg AM Zeoli et al, "Removing Firearms from Those Prohibited from Possession by Domestic Violence Restraining Orders: A Survey and Analysis of State Laws" [2017] *Trauma, Violence and Abuse* 10.1177/1524838017692384.

<sup>63</sup> This information was provided by Deputy Registrar Philippa Spence of the ACT Magistrate's Court in correspondence with Hyman J. See *Family Violence Act 2017* (ACT). See also discussion of such an approach in ANSWLRC, n 19, Ch 23 where ADR in family violence legislation is discussed.

<sup>64</sup> The ADR Team is comprised of a Manager of Alternate Dispute Resolution who is responsible for ADR. The conferencing staff are almost all legally qualified and ADR practitioners. At the family violence conference, the applicant and respondent remain in separate rooms in separate areas of the court. Each conference room has two doors on opposite sides, and a duress button linked to court security to ensure safety. The conference is based on shuttle mediation with facilitative consultation. Most parties are self-represented and have direct interaction with the conferencing staff. If parties are legally represented they still have direct interaction with the conferencing staff. The conferences take approximately 45 minutes. At the conclusion of the conference, the parties either agree to an outcome, whether a formal court order or otherwise, or the matter is adjourned to a hearing before a magistrate at a later date. If a matter is referred to hearing, the parties attend another facilitative conference on the morning of the hearing in a further attempt to reach agreement.

<sup>65</sup> Victorian Royal Commission into Family Violence, n 19, recommendation 77.

<sup>66</sup> See, eg JT Messing and J Thaller, "Intimate Partner Violence Risk Assessment: A Primer for Social Workers" (2014) 45(6) *The British Journal of Social Work* 1804.

appropriate qualifications, such as in social work or mental health. This is because the determination of future dangerousness is far from an exact science. While there are many screening tools for future risk assessment, there isn't presently a tool that can accurately and definitively determine the likelihood of future perpetration of DV.<sup>67</sup> Further, there is evidence that when risk assessment and screening is conducted by trained professionals, such as social workers, they achieve higher disclosure rates.<sup>68</sup> A victim of violence must also be consulted and informed about the appropriateness of any pre-trial release, and its associated conditions.

The efficacy of DV intervention programs is critical to the success of any pre-trial non-adversarial strategies. Intervention programs have been studied for many years.<sup>69</sup> Unfortunately, the perfect program does not presently exist. What is known, however, is that for a program to stand a chance for success it needs to be at least in the range of four to six months in duration, and perpetrators might need ongoing counselling, support and supervision for many months or years.<sup>70</sup>

If a decision is made to release a perpetrator prior to trial, then both the perpetrator and the victim should be advised of the conditions of release and provided with any necessary resources for the victim to remain safe. As noted above, it is a reasonable condition of release that a perpetrator not be allowed to contact the victim. It is also a safety strategy for victims that perpetrators are supported to fully understand their procedural due process rights. While controversial amongst some feminist scholars, the provision of additional services to perpetrators, such as in relation to substance abuse, housing assistance and job or training assistance can also be a therapeutic measure with the end result of changing the perpetrators behaviour and supporting victim safety. Further, in many cases a perpetrator will need to continue to be supervised by a team consisting of mental health professionals as well as law enforcement or community corrections officials.

Traditionally, in RJ-informed pre-trial programs, upon successful completion of the program the perpetrator is restored to a pre-arrest status and the case is treated as though it never occurred. It is debatable whether this is appropriate in DV cases.<sup>71</sup> Certainly, there must be some retention of information by the court and relevant agencies due to the repetitive nature of DV.

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<sup>67</sup> Messing and Thaller, n 66, 17, note that the Danger Assessment tool is the only DV risk assessment instrument that is specifically designed to predict lethality. See, eg JC Campbell, "Prediction of Homicide of and by Battered Women" in JC Campbell (ed), *Assessing Dangerousness* (Sage, 1995) 96; JC Campbell, "Safety Planning Based on Lethality Assessment for Partners of Batterers in Intervention Programs" (2002) 5(2) *Journal of Aggression, Maltreatment, and Trauma* 129.

<sup>68</sup> N Trabold, "Screening for Intimate Partner Violence Within a Healthcare Setting: A Systematic Review of the Literature" (2007) 45(1) *Social Work in Health Care* 1.

<sup>69</sup> See, eg MF Shepard and EL Pence (eds), *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond* (Sage Publications, 1999); J Babcock, CE Green and C Robie, "Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment" (2004) 23(8) *Clinical Psychology Review* 1023; JC Babcock and R Steiner, "The Relationship Between Treatment, Incarceration, and Recidivism of Battering: A Program Evaluation of Seattle's Coordinated Community Response to Domestic Violence" (1999) 13(1) *Journal of Family Psychology* 46; TR Broady and RM Gray, "Taking Responsibility: Psychological and Attitudinal Change Through a Domestic Violence Intervention Program in New South Wales, Australia" (2017) 5(6) *International Journal of Social Science Studies* 68. Note that on 20 December 2016, Australia's National Research Organisation for Women's Safety (ANROWS) announced a program of research to improve the evidence base for stopping men's violence against women and holding perpetrators to account. This set of ANROWS's Perpetrator Interventions Research Priorities 2017–19 comprises 11 projects with a total value of almost \$1.8 million. See <<https://anrows.org.au/research-program/perpetrator-interventions-research-program>>.

<sup>70</sup> P Morrison et al, "Elements Needed for Quality Batterer Intervention Programs: Perspectives of Professionals Who Deal with Intimate Partner Violence" [2016] *Journal of Family Violence* 1.

<sup>71</sup> See, eg Babcock, Green and Robie, n 69; L Feder, DB Wilson and S Austin, "Court-Mandated Interventions for Individuals Convicted of Domestic Violence" (2008) 12 *Campbell Systematic Reviews* 1; A Holtzworth-Munroe, "Standards for Batterer Treatment Programs: How Can Research Inform Our Decisions?" (2001) 5(2) *Journal of Aggression, Maltreatment & Trauma* 165; RA Geffner and A Rosenbaum, "Domestic Violence Offenders: Treatment and Intervention Standards" (2001) 5(2) *Journal of Aggression, Maltreatment & Trauma* 1.

**Pre-Sentence**

Another TJ-informed strategy involves the use of pre-sentence reports. Douglas has argued that “sentencing justices often fail to tailor an appropriate sentencing response that takes into account the particular background of the offence and the relationship between the perpetrator and the victim”.<sup>72</sup> Pre-sentence reports can assist judicial officers to hand down sentences that are therapeutic in nature for the particular family involved, and that minimise the trauma that the experience of state intervention in family life can incur.<sup>73</sup> That is, a judge needs to consider the entire family and its issues, not just the perpetrator and their circumstances; it is important to avoid a cookie-cutter approach to standard jail and probation conditions. Additional issues that might pertain to the family court, as well as care and neglect and/or guardianship issues, should also be taken into account.<sup>74</sup>

Pre-sentence interventions, such as deferred prosecution, diversion to restorative justice programs and adjournments, must, however, take account of the relevant available and current risk information. Such information is integral to informing any consideration of incarceration of the perpetrator and the setting of release and probation conditions, eg requiring the perpetrator’s participation in violence intervention programs or substance abuse and mental health programs. Further, if pre-sentence approaches are adopted, the perpetrator must continue to be monitored with regular reviews, preferably before a judge so that any relevant orders can be amended if necessary.<sup>75</sup> In addition, in such circumstances the court and relevant agencies should be in periodic contact with the victim so that their safety plan can be updated to reflect any change in risk.

The TJ-informed strategies discussed above can be considered as having efficacy because they enact the three key elements of Hudson’s conception of justice for responses to DV – namely discursiveness, relationalism and reflectiveness.<sup>76</sup> In the enactment of all and any of these TJ-informed strategies, it is critical focus on the victim of violence. As the central person in the scenario, the relevant courts and agencies should be in frequent contact with them for continuous risk assessment and safety support, and to ensure the appropriateness and therapeutic nature of the chosen approach.

**CAVEATS FOR THE USE OF TJ-INFORMED APPROACHES TO DV**

It is important that the significant potential of TJ-informed approaches to the way DV matters are dealt with in the justice system is acknowledged. If the overall goal of that system is to keep families safe by preventing and reducing the occurrence of DV, then these approaches deserve the investment of government funds for their effective implementation. The enactment of such justice mechanisms is made difficult, however, by the complexity of the dynamic of DV. For this reason, this section considers a number of (but by no means exhaustive) caveats in relation to their implementation: first, concerns relating to risk assessment;<sup>77</sup> secondly, the need for multiagency information sharing;<sup>78</sup> and thirdly, the need for extensive training of all relevant actors across the

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<sup>72</sup> Douglas, n 42, 440.

<sup>73</sup> L Mills, “Killing Her Softly: Intimate Abuse and the Violence of State Intervention” (1999–2000) 113 *Harvard Law Review* 551.

<sup>74</sup> It is noted that pre-sentence reports are a form of state intervention. However, TJ-informed justice approaches do not necessarily entail an absence of state intervention.

<sup>75</sup> Hyman, n 27.

<sup>76</sup> B Hudson, *Justice in the Risk Society* (Sage, 2003) xvi.

<sup>77</sup> Although there has been a great deal of work undertaken in Australia to develop common risk assessment tools, this work has not been entirely successful. See, eg the significant discussion on this issue in the Report of the Victorian Royal Commission into Domestic Violence, n 19, Vol 1, Ch 6. Note, eg that in Victoria prior to 2007 there was no common risk assessment framework. However, in 2007 the Family Violence Risk Assessment and Risk Management Framework (known as the Common Risk Assessment Framework (CRAF)) was introduced.

<sup>78</sup> Victorian Royal Commission into Domestic Violence, n 19, Ch 7. See also, eg MF Shepard, DR Falk and BA Elliott, “Enhancing Coordinated Community Responses to Reduce Recidivism in Cases of Domestic Violence” (2002) 17(5) *Journal of Interpersonal Violence* 551.

system,<sup>79</sup> including not only judges, police and government agency staff but also, for example, doctors and school teachers.

## Risk Assessment

The first caveat in relation to the adoption of TJ-informed approaches to DV relates to the importance of expert risk assessment. There is a significant body of theoretical and empirical research on risk assessment and there is no doubt that it is critical to the efficacy of any TJ-informed approaches to DV.<sup>80</sup> Roehl and Guertin defined risk assessment as “the formal application of instruments to assess the likelihood that [DV] will be repeated and escalated. The term is synonymous with dangerousness assessment”.<sup>81</sup> As Hyman and Veale have said:

Considering the complex psychological and psychosocial characteristics of (DV), namely, the interplay of power, control, and coercion with physical, emotional and economic abuse, risk assessment is a favourable source of guidance for all players involved with (DV).<sup>82</sup>

A number of risk assessment tools exist but, as discussed above, none is able to definitively predict the risk of a perpetrator reoffending.<sup>83</sup>

Continuous risk assessment is certainly critical in relation to both adversarial and non-adversarial justice approaches to DV, but it is more important in the non-adversarial domain because it is central to elevating the prioritisation of “the safety and autonomy of victims over any other outcomes”.<sup>84</sup> The notion of safety in this context includes “freedom from the risk of exposure to further physical and psychological abuse as a result of the utilisation of specific processes”.<sup>85</sup>

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<sup>79</sup> The importance of training cannot be underestimated. Note, eg that the Report of the Victorian Royal Commission into Domestic Violence refers to training 1,161 times, n 19.

<sup>80</sup> See, eg JC Campbell, “Helping Women Understand Their Risk in Situation of Intimate Partner Violence” (2004) 19 *Journal of Interpersonal Violence* 1464; JC Campbell et al, “Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study, Final Report to the National Institute of Justice” (NCJ, 2005) 209731–209732; ME Bell et al, “Assessing the Risk of Future Psychological Abuse: Predicting the Accuracy of Battered Women’s Predictions” (2008) 23(2) *Journal of Family Violence* 69; LE Bennett, LA Goodman and MA Dutton, “Risk Assessment Among Batterers Arrested for Domestic Assault: The Salience of Psychological Abuse” (2000) 6(11) *Violence against Women* 1190; LB Cattaneo et al, “Intimate Partner Violence Victims’ Accuracy in Assessing Their Risk of Re-Abuse” (2007) 22 *Journal of Family Violence* 429; JK Connor-Smith et al, “Risk Assessments by Female Victims of Intimate Partner Violence: Predictors of Risk Perceptions and Comparison to an Actuarial Measure” (2010) 26(12) *Journal of Interpersonal Violence* 2517; DA Heckert and EW Gondolf, “Battered Women’s Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault” (2004) 19 *Journal of Interpersonal Violence* 778; NZ Hilton et al, “An In Depth Actuarial Assessment for Wife Assault Recidivism: The Domestic Violence Risk Appraisal Guide” (2008) 32 *Law and Human Behavior* 150; PR Kropp, “Intimate Partner Violence Risk Assessment and Management” (2008) 23(2) *Violence and Victims* 202; AN Weisz, RM Tolman and DG Saunders, “Assessing the Risk of Severe Domestic Violence” (2000) 15 *Journal of Interpersonal Violence* 75.

<sup>81</sup> J Roehl and K Guertin, “Intimate Partner Violence: The Current Use of Risk Assessments in Sentencing Offenders” (2000) 21 *Justice System Journal* 171.

<sup>82</sup> EM Hyman and R Veale, “Intimate Partner Violence – the Role of Risk Assessment and Information Sharing (2015) 879 *Law Talk* 3, 3.

<sup>83</sup> See, eg NZ Hilton et al, “A Brief Actuarial Assessment for the Prediction of Wife Assault Recidivism: The Ontario Domestic Assault Risk Assessment” (2004) 16 *Psychological Assessment* 267; PR Kropp and A Gibas, “The Spousal Assault Risk Assessment Guide (SARA)” in RK Otto and KS Douglas (eds), *Handbook of Violence Risk Assessment* (Routledge/Taylor and Francis, 2010) 227; Campbell et al, n 80; JT Messing et al, “Culturally Competent Intimate Partner Violence Risk Assessment: Adapting the Danger Assessment for Immigrant Women” (2013) 37(3) *Social Work Research* 263; J Roehl and K Guertin, “Intimate Partner Violence: The Current Use of Risk Assessments in Sentencing Orders” (2000) 21 *The Justice System Journal* 171; KR Williams and SR Grant, “Empirically Examining the Risk of Intimate Partner Violence: The Revised Domestic Violence Screening Instrument (DVSI-R)” (2006) 131 *Public Health Reports* 400; T Wong and J Hisashima, “Domestic Violence Exploratory Study on the DVSI and SARA” (Hawaii State Department of Health, 2008).

<sup>84</sup> S Hooper and R Busch, “Domestic Violence and the Restorative Justice Initiatives: The Risks of a New Panacea” (1996) 4 *Waikato Law Review* 101, 102–103.

<sup>85</sup> Hooper and Busch, n 84, 102–103.

Risk assessment should be consistently in focus and ongoing once the state is involved in a DV matter. This is because it is not only critical for safety planning,<sup>86</sup> but also for decisions about appropriate advocacy and appropriate interventions and responses that are tailored to the needs and interests of individual families.<sup>87</sup> All service providers must understand that risk is constantly in flux and subject to change. It is dangerous if certain service providers in the system fail to continuously assess risk or simply rely on past risk assessments and decisions of others. Rather, every time a perpetrator appears before an actor in the system (such as police, probation, corrections, judge, offender program, child evaluator) the opportunity should be taken to reassess current risk. From a judicial perspective, it has been said that:

The fluid nature of risk factors can be viewed as moving along a continuum to the point of danger or worse lethality. It is not a linear progression with violence ratcheting up in an orderly manner. Instead, what is clear is that the latest incidence of DV is different from the last and likely to be different to any future event. Therefore, reliance cannot be placed on the details of past reports to be indicative of what is occurring in the present.<sup>88</sup>

As Hyman and Veale have argued: “It is imperative that each and every incident of (DV) must be viewed de novo by all participants from law enforcement to the Court.”<sup>89</sup>

Hyman J noted that “generally speaking risk factors coalesce around common themes of history of DV, disturbing and violent behaviour, and personality traits that are obsessive, sadistic, belligerent, threatening posturing and the presence of catalysts such as a separation”.<sup>90</sup> Based on his extensive judicial experience of more than 20 years, Hyman J also identified the following questions to support risk assessment.

Does the perpetrator:

- Live with the victim?
- Have children and/or stepchildren in the home?
- Have a history of abuse?
- Have steady employment?
- Use alcohol or other drugs?
- Have access to a firearm or to other dangerous weapons?
- Threaten homicide or suicide?
- Force sex upon the victim?
- Attempt to strangle or choke the victim?
- Control most or all of the victim’s daily activities?
- Obsess about, follow, or stalk the victim?
- Have emotional dependence on the victim?
- Demonstrate violence towards pets?

Further:

- Is the violence escalating in frequency and severity?
- Is the victim afraid of the batterer?
- Does the victim believe that the batterer is capable of killing the victim and/or the victim’s children?
- Has the victim contacted law enforcement?

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<sup>86</sup> K Heilbrun et al, “Expert Approaches to Communicating Violence Risk” (2000) 24 *Law and Human Behavior* 137; VM Kress, “Counseling Clients Involved with Violent Intimate Partners: The Mental Health Counselor’s Role in Promoting Client Safety” (2008) 30(3) *Journal of Mental Health Counseling* 200.

<sup>87</sup> Messing and Thaller, n 66, 2.

<sup>88</sup> Hyman, n 27.

<sup>89</sup> Hyman and Veale, n 82.

<sup>90</sup> Hyman, n 27.

Hyman J also noted a critical aspect of risk assessment that must not be overlooked:

Listening to the victim is crucial. Their perception is their reality and only they have heightened sensitivity to their risk of re-victimization and are uniquely positioned to provide observations on the personality, mental health and violent behaviour of the perpetrator. Conversely, victim's assessments could be 'off' if there is a hesitation, a palpable fear for her safety or a general disinclination to get involved with the criminal justice system. Contrarily, the opposite situation where the victim has no sense of the impending danger, can occur—a situation when hope blurs reality. Victims are often mired in a deep conflict. On the one hand they fear for their safety and that of their children but on the other hand dread losing them to child services. Confusing matters further, many victims are under the misguided belief that contact with the father, however unpredictable, is beneficial for the children. An experienced assessor with proper training is essential to navigate through the confusion, preferably while refraining from any judgment.<sup>91</sup>

The efficacy of risk assessment is central to achieving the safety of victims and their children, and to ensuring that “at the very least, the system which a victim turns to for protection should not be complicit in her further victimisation”.<sup>92</sup>

## Information Sharing

This second caveat relates to the importance of information sharing,<sup>93</sup> and the need for multiagency processes and protocols for the coordination of such.<sup>94</sup> For a coordinated community and effective response to DV,<sup>95</sup> risk assessment information needs to be better disseminated across the diverse agencies and service providers involved.<sup>96</sup> If safe outcomes are to be achieved for victims of DV and their children, obligations of confidentiality to the perpetrator and their privacy must be trumped by ensuring that all stakeholders have the best information available to them for decision-making about the appropriateness of TJ-informed approaches and interventions.<sup>97</sup>

Hyman J's judicial perspective from a practical point of view is that “important decisions are often made from a limited, incomplete or stale dossier – with the safety of the victims hanging in the balance”.<sup>98</sup>

<sup>91</sup> Hyman, n 27.

<sup>92</sup> Hooper and Busch, n 84, 130.

<sup>93</sup> The importance of information sharing as an integral element of risk assessment cannot be over-stated (as decisions are made based on information). It is problematic that, practically, there are still many challenges to appropriate levels of information sharing. When it does occur, there is a need for high levels of training to ensure that the actors in the system who receive information know how to use it. See, eg AL Robinson, “Domestic Violence MARACs (Multi-Agency Risk Assessment Conferences) for Very High-Risk Victims in Cardiff, Wales: A Process and Outcome Evaluation” (Cardiff University School of Social Sciences, 2004); M Shepard, “Twenty Years of Progress in Addressing Domestic Violence: An Agenda for the Next 10” (2005) 20(4) *Journal of Interpersonal Violence* 436; J Sullivan Wilson and N Websdale, “Domestic Violence Fatality Review Teams: An Interprofessional Model to Reduce Deaths” (2006) 20(5) *Journal of Interprofessional Care* 535; L Bugeja et al, “The Implementation of Domestic Violence Death Reviews in Australia” (2013) 17(4) *Homicide Studies* 353. See also, eg information about the Queensland Domestic and Family Violence Death Review and Advisory Board, which is responsible for the systemic review of domestic and family violence deaths in Queensland and the assessment of the effectiveness and failures of information sharing protocols, see <<http://www.courts.qld.gov.au/courts/coroners-court/review-of-deaths-from-domestic-and-family-violence>>.

<sup>94</sup> Hyman and Veale, n 82.

<sup>95</sup> See, eg Sandra J Clark et al, “Coordinated Community Responses to Domestic Violence in Six Communities – Beyond the Justice System” (Urban Institute, 1996) <<http://www.urban.org/sites/default/files/publication/70271/406727-Coordinated-Community-Responses-to-Domestic-Violence-in-Six-Communities.pdf>>; NM Malik, K Ward and C Janczewski, “Coordinated Community Response to Family Violence: The Role of Domestic Violence Service Organizations” (2008) 23(7) *Journal of Interpersonal Violence* 933; LF Salazar, “Examining the Behavior of a System: An Outcome Evaluation of a Coordinated Community Response to Domestic Violence” (2007) 22(7) *Journal of Family Violence* 631; M Baobaid et al, “A Culturally Integrative Model of Domestic Violence Response for Immigrant and Newcomer Families of Collectivist Backgrounds” (2014) 3 *Critical Issues on Violence Against Women: International Perspectives and Promising Strategies* 154.

<sup>96</sup> See, eg R Robbins et al, “Domestic Violence and Multi-Agency Risk Assessment Conferences (MARACs): A Scoping Review” (2014) 16(6) *The Journal of Adult Protection* 389.

<sup>97</sup> See, however, C Florence et al, “An Economic Evaluation of Anonymised Information Sharing in a Partnership Between Health Services, Police and Local Government for Preventing Violence-Related Injury” (2014) 20(2) *Injury Prevention* 108.

<sup>98</sup> Hyman and Veale, n 82, 33.

For example, if a community corrections officer is concerned about risk based on something that happened in a men's offender group, it isn't likely that this perspective will be shared on an emergency basis with someone in the family court to change parenting orders on an urgent temporary basis pending a further hearing. Further, information is not shared between the family court and community corrections officers either. For example, a family court finding that the perpetrator is returning the children late or is cancelling visits with the children at short notice, is not currently shared with community corrections. However, if community corrections had that information to hand, they may recommend on that basis that the matter should be brought back to court as soon as possible.

As Hyman and Veale have commented:

[F]amily and criminal courts operate with different burdens of proof and confidentiality requirements. While these due process protections must be maintained, protocols can nevertheless be established for the safe and appropriate exchange of information while respecting privacy concerns. Striking a balance between safety and privacy concerns is paramount for high-risk cases.<sup>99</sup>

Information-sharing protocols should be entered into to ensure that information is shared in appropriate ways that also uphold the fairness of the treatment of the parties and of the relevant procedures.<sup>100</sup> Protocols are a covenant – a formalised checklist of procedures – to ensure that all tasks are clearly delineated and completed. The implementation of protocols by all groups interfacing with DV provides a host of benefits. Protocols provide a clearly planned approach to ensure a thorough job is done. They reduce the reliance on any given individual, facilitate a seamless transition when there is a change in agency staff and assist in training efforts. Protocols should be reviewed regularly by the community, eg through the medium of a DV council. Such a review, preferably conducted on an annual basis, provides an opportunity to objectively assess ongoing practices. It is an opportunity to incorporate any new statutes, new case law and current best practices.

## Training

The third caveat concerns training.<sup>101</sup> All service providers in the system who interact with perpetrators and victims of DV require specialist training – not only so they can work effectively and with synergy to achieve victim safety and therapeutic outcomes for families, but also so they better understand each other's diverse roles.<sup>102</sup>

For example, it is important for community workers and professionals involved in intervention programs to be trained in risk assessment, as well as to understand what happens in different divisions of the court. Further, for example, if a police officer is appropriately trained in relation to the information a court needs when making protection orders or when deciding if TJ-informed approaches may be appropriate, then they can ensure that they ask the necessary questions of the parties so that the relevant information is contained in their police report. In Hyman J's experience, adding a few sentences of information to a police report may make a significant difference in the outcome of a court hearing, especially where a party does not have an attorney.<sup>103</sup> Without appropriate training police officers may focus on investigating simply whether a crime has been committed, instead of also being alert to gathering information that may be important to risk assessment, or to care and protection orders.

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<sup>99</sup> Hyman and Veale, n 82, 33.

<sup>100</sup> Hyman, n 27. See also, eg N Stanley and C Humphreys, "Multi-Agency Risk Assessment and Management for Children and Families Experiencing Domestic Violence" (2014) 47 *Children and Youth Services Review* 78.

<sup>101</sup> See, eg TS Harwell et al, "Results of a Domestic Violence Training Program Offered to the Staff of Urban Community Health Centers" (1998) 15(3) *American Journal of Preventive Medicine* 235; TH Leppäkoski, A Flinck and E Paavilainen, "Greater Commitment to the Domestic Violence Training is Required" (2015) 29(3) *Journal of Interprofessional Care* 281.

<sup>102</sup> JS Gordon, *Helping Survivors of Domestic Violence: The Effectiveness of Medical, Mental Health, and Community Services* (Routledge, 2016).

<sup>103</sup> Hyman, n 27.



Of particular importance is training in relation to significant risk factors, such as non-fatal strangulation.<sup>104</sup> However, there is also a need for training in areas such as implicit bias to address, for example, the number of people in the system who continue to blame or punish partners who stay. Training should also include an opportunity for people to come to terms with their own experiences of DV.

There is increasing acknowledgement of the role of doctors as first service providers to victims of DV,<sup>105</sup> and of school teachers as being within the context of complex family relationships with DV present. For this reason, doctors and other health professionals, such as nurses and mental health workers, need to be educated about DV and trained in how to contribute positively to the system,<sup>106</sup> as well as in safety and risk assessment.<sup>107</sup>

## CONCLUSION

A number of recommendations arise out of the analysis above. The implementation of TJ-informed approaches to DV has much potential in terms of humanising the justice system and ensuring both the safety and wellbeing of victims of DV and their children, as well as having therapeutic potential for perpetrators. However, such approaches can only be safely adopted if a number of additional factors are enacted alongside them.

First, comprehensive risk assessment is necessary to ensure that egregious perpetrators are excluded but perpetrators who are both willing to, and capable of, positively responding to TJ-informed initiatives are identified. Risk assessments must be conducted by experts, but must also be an integral part of each actor's role in the system so that continuous reliable checks and reassessment can be made to keep the victim and the children safe. Secondly, given the complex nature of DV and the need for multidisciplinary and multiagency responses, information across these disciplines and agencies must be shared, including across the many relevant courts that the parties may appear before, such as the civil, family, criminal and probate courts. Information-sharing protocols are important for the efficacy of such a system. Finally, comprehensive training for all actors in the system is needed – for first responders such as police and community groups, as well as for judges, government agency workers and program

<sup>104</sup> A Foley, "Strangulation: Know the Symptoms, Save a Life" (2015) 41(1) *Journal of Emergency Nursing* 89; AJ Pritchard, A Reckdenwald and C Nordham, "Nonfatal Strangulation as Part of Domestic Violence: A Review of Research" [2015] *Trauma, Violence and Abuse* 1524838015622439; AJ Pritchard, "Improving Identification of Strangulation Injuries in Domestic Violence Pilot Data from a Researcher-Practitioner Collaboration" [2016] *Feminist Criminology* 1557085116653181.

<sup>105</sup> See, eg K Hegarty, ED Hindmarsh and MT Gilles, "Domestic Violence in Australia: Definition, Prevalence and Nature of Presentation in Clinical Practice" (2000) 173(7) *The Medical Journal of Australia* 363; S Othman, C Goddard and L Piterman, "Victims' Barriers to Discussing Domestic Violence in Clinical Consultations: A Qualitative Enquiry" (2014) 29(8) *Journal of Interpersonal Violence* 1497; J Valpied et al, "Are Future Doctors Taught to Respond to Intimate Partner Violence? A Study of Australian Medical Schools" [2015] *Journal of Interpersonal Violence* 0886260515592616; LE Walker, "Psychology and Domestic Violence Around the World" (1999) 54(1) *American Psychologist* 21.

<sup>106</sup> J Keeling and C Fisher, "Health Professionals' Responses to Women's Disclosure of Domestic Violence" (2015) 30(13) *Journal of Interpersonal Violence* 2363; K Hegarty, "Acting on Family Violence: How the Health System Can Step Up", *The Conversation*, 11 August 2015 <<http://theconversation.com/acting-on-family-violence-how-the-health-system-can-step-up-45592>>. See also, eg L Curran, "Health Justice Partnership Research, Start-Up Support and Evaluation Workshop" (Advocacy and Legal Centre, Health and Justice Partnerships, Australia, 2016); L Curran, "Health and Justice Partnerships (HJP) Working Ethically to Reach Those in Most Need of Legal and Medical Support and to Improve Outcomes" (Health and Justice Partnership, University of London, 2016).

<sup>107</sup> See, eg E Zaher, K Keogh and S Ratnapalan, "Effect of Domestic Violence Training: Systematic Review of Randomized Controlled Trials" (2014) 60(7) *Canadian Family Physician* 618; J Ramsay et al, "Should Health Professionals Screen Women for Domestic Violence? Systematic Review" (2002) 325(7359) *BMJ* 314. See also, eg G Strack and EM Hyman, "Your Patient. My Client. Her Safety: A Physician's Guide to Avoiding the Courtroom While Helping Victims of Domestic Violence" (2007) 11 *DePaul Journal of Health Care Law* 33; JV Appleton, "Recognising and Responding to Domestic Violence and Abuse: The Role of Public Health Nurses" (2016) 89(3) *Community Practitioner* 24; S Nyame et al, "A Survey of Mental Health Professionals' Knowledge, Attitudes and Preparedness to Respond to Domestic Violence" (2013) 22(6) *Journal of Mental Health* 536. W Turner et al, "Interventions to Improve the Response of Professionals to Children Exposed to Domestic Violence and Abuse: A Systematic Review" (2017) 26(1) *Child Abuse Review* 19; HL Young et al, "Examining the Long-Term Effects of Domestic Violence Training for Educators" (2016) 25(7) *Journal of Aggression, Maltreatment and Trauma* 671.

facilitators. In addition, important actors who may currently be considered on the edge of the system, such as doctors and school teachers, need to be educated and trained in DV and in how they can play a stronger role in supporting victim safety when TJ-informed approaches are adopted. If these caveats are enacted, TJ-informed approaches to DV have potential to achieve therapeutic goals while also supporting the safety of victims of DV and their children.