

Domestic Violence, Separation and Parenting: Negotiating Safety Using Legal Processes

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Research suggests that separation can be a time of heightened risk for women who have experienced domestic violence. This may be especially so for women who are mothers as they may face ongoing contact with their abusive former partner as arrangements are reached and exercised for the care of children. Moreover, under Australian constitutional arrangements, separated women with children who seek legal assistance may face complex and competing practices and procedures as they engage with laws and courts in both Commonwealth and State jurisdictions dealing with family law and criminal law. Yet there has been little Australian research that has attempted to understand the experiences of this vulnerable group.

This article reports selected findings from a study of women who were negotiating and facilitating residence and contact arrangements¹ for their children with a former partner who had abused them (Kaye, Stubbs & Tolmie 2003a). The article analyses women's attempts to protect themselves and their children from domestic violence using legal processes. In doing so it contributes to the empirical literature in two ways. Firstly, it demonstrates that women (at least when they are mothers) are not autonomous actors. Women's experiences of domestic abuse and the manner in which they engage with the legal system are profoundly affected by their relationships with others, especially their children. We found evidence that women's and children's safety are often both at risk in circumstances of domestic violence and that women's capacity to achieve effective legal protection from domestic violence may be diminished as a consequence of their role as mothers. Secondly, the study provides recognition of the fact that where women have separated from a former partner their recourse to legal protection from violence for themselves and their children will typically require them to engage with both State

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1 Prior to the *Family Law Reform Act* 1995 the terms used to describe such parenting arrangements were 'custody' and 'access.' Those terms are still in common usage.

legislation and family law. We found that inconsistencies and failures in coordination between different systems and bodies of law can potentially diminish the degree of protection from domestic violence that women are able to achieve.

1. Methodology

Forty women were recruited for the study with the assistance of the Family Court, women's refuges and women's health centers, all of which distributed literature about the study to clients. The criteria for inclusion in the study were that the women were separated from a former partner who had abused them, they had children, and they were involved in making or facilitating residence and or contact arrangements concerning the children with that former partner. Individual women who wished to participate in the research then made contact with the researchers. All of the women were resident in NSW. We used a semi-structured interview technique in order to allow individual participants to have some role in defining the issues and experiences they perceived as important (see Seuffert 1996 on methodological issues in domestic violence research).² We note the concerns of some researchers that fathers' perspectives have been overlooked in such research. However, as our primary concern was how victims of domestic violence negotiate contact for their children, we believe that our focus on mothers is a legitimate one due to the gendered patterns of domestic violence.

The use of a semi-structured interview schedule allowed the women to recount the violence as they understood it and avoided imposing external meanings on their experiences. However, one consequence of this approach is that the range and number of violent behaviors described by the women is likely to be incomplete. This is because they were not asked to list every incident, or type, of violence that occurred. The Conflict Tactics Scale (CTS) is an instrument commonly used to quantify discrete acts or incidents of domestic violence. However, we chose not to use the CTS because of the controversy about its utility and because it extracts violent incidents from their context (Dobash et al 1992).

Semi structured interviews were also conducted with 22 people who were professionally involved in the process of facilitating the development or implementation of child contact arrangements. This was a purposive sample derived from individuals or organisations known to have relevant experience (De Vaus 1985:68). The sample included solicitors, Family Court counselors, refuge workers, domestic violence court assistance scheme workers, employees from a supervised contact centre, and a counselor from a women's health service.

This research is necessarily exploratory. Funding limitations placed constraints on both the sample size and the geographical area that could be covered by the research. While percentages are sometimes provided throughout this article in order to indicate themes or patterns in our findings, the primary benefit of this research is qualitative rather than quantitative. Furthermore, the sampling methodology used in this project also limits the generalisability of the findings. The fact that the women interviewed were self-selected and were recruited through selected agencies means that our sample will not be representative of all women who are resident parents and who have been the targets of violence. However,

2 The interview schedules were based, in part, on those used by Hester and Radford 1996, modified for local circumstances and to reflect local law, policy and practice. They are contained in the appendices to Kaye, Stubbs and Tolmie 2003a together with a more detailed description of the methodology employed in the study.

there are real practical and ethical impediments to undertaking such research in other ways. The primary concern in constructing the sample was to ensure the safety of the women involved.

For the purposes of this study we adopted the definition of domestic violence used by Partnerships Against Domestic Violence, a program under which Commonwealth, State and Territory governments and the community collaborate to work against domestic violence:

Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women in a relationship or 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.

2. Experiences of Violence

A. Pre-Separation Violence Against the Women

All of the women interviewed had been subjected to psychological or emotional abuse before separation, most commonly in combination with other forms of abuse. Many women, including those subjected to severe physical abuse, commented that the psychological abuse was as bad, and often worse, than the physical abuse. For example, Rebecca said that she could handle the physical abuse 'except against the kids' but the psychological abuse is 'worse than any physical abuse you can go for' and was '24 hours a day.'

The psychological abuse typically centered around attempts to control the women's lives. The most frequently mentioned form of psychological abuse, raised by 16 women, was verbal abuse — being called derogatory names, told that they are worthless, and/or being subjected to racist or sexist abuse. Four women reported having received death threats and six women reported threats of other forms of violence. In many instances the psychological abuse also took the form of isolating women within their homes and removing other forms of support. Ten women reported not being allowed to have friends, contact with family and/or to invite people to the house. Three were not allowed to leave the house unaccompanied, one was locked in their bedroom at night and had all the windows in the house bolted shut, and another was tied up as well as being physically locked in the house. Other direct attempts to limit women's autonomy included: not being permitted to drive or having the mileage checked; having to hand over her wages every week or not being given any or enough money; being told what to wear; being called incessantly on the phone whenever she left the house; having to ask permission to watch a television show; not being allowed to be in the same room as the children; not being allowed to breast feed; being forced to sleep outside or on the floor; not being allowed to have her own opinion or finish a sentence; and not being allowed to choose her career or where she lived.

Most of the women (n=34; 85%) had experienced physical abuse in addition to psychological abuse. A number of the cases of physical abuse involved extremely severe and/or life threatening violence. Some women commented that the physical violence was not frequent but, nonetheless, was enough to maintain control in the relationship. For example, Megan said:

he only probably laid into me about four times in the whole time we were married — like seriously laid into me, but it was enough. I — got like the fear of God into me and basically what he said went and I wouldn't question it and I wouldn't push it too far because I knew that he was capable of snapping any time he felt like it basically...

Pregnancy is a time of particular vulnerability for women and violence during this time can have a serious impact on pregnancy outcomes (Center for Health & Gender Equity 1999:23; Webster et al 1994; Taft 2002:4–5). Although we did not specifically ask the women about violence during pregnancy, eight (20%) volunteered the information that the violence was harder to endure or had worse consequences when it occurred whilst they were pregnant.

Sexual violence was mentioned in eight cases, including what women described as attempted rape and rape.³ As we did not specifically ask the women about sexual abuse these numbers could be an underestimate of what actually occurred (see also Hester & Radford 1996:7).

B. The Relationship Between Spousal Abuse And Child Abuse

Research suggests that spousal abuse and child abuse are inter-related phenomena. For example, witnessing domestic violence perpetrated on one of their parents influences children's behavior detrimentally (Doyle et al 1994; Morley & Mullender 1994; Blanchard 1993), violence by the father to the mother will often have been witnessed by the children (Australian Bureau of Statistics 1996; Indermaur 2001:5), and, violence that is witnessed by the children is often severe (Wearing 1992; Edleson 1999). Research also indicates that children themselves may be directly at risk in situations of domestic violence (Hore, Gibson & Bordow 1996; Rumm, Cummings, Krauss, Bell & Rivara 2000; Pagelow 1990:355; NSW Child Protection Council's Child Death Review Committee 1995:60). Our findings are consistent with this research.

(i) Violence Witnessed By The Children

Twenty-five women (62.5%) commented that their children had directly witnessed the physical violence that occurred whilst they were in the relationship. We are unable to say whether in any of the remaining 15 cases the children had overheard or been aware of the abuse without their mother's knowledge (see Jaffe et al 1990).

Disturbingly, some women said that their partners would deliberately abuse them in front of the children in order to 'get at' them, to terrorise the children or to show off to the children. For example, Tracey said:

he'd get the kids out of bed at two in the morning and have them sitting on the floor while he pushed steel capped boots on at me — and tell them that their mother was nothing but a slut — that's what he used to call me — or whatever in front of the kids...

3 These terms are not used in the criminal law in NSW but remain in common use.

Some women had been beaten whilst they were actually holding their children, breast-feeding, or, in Gina's case changing a nappy:

the first time he hit me was when the eldest was four months old and we were um — I was changing her nappy and I was singing to her and he was on the telephone to a business — a business acquaintance and he put the person on hold and went and got a tea towel, wrapped it around his fist and punched me in the face and told me never to make noise when he was on the telephone again. And then he calmly went back to the telephone conversation.

Some women spoke of their children becoming fearful, emotionally confused, protective of them, or seeking to intervene in an attempt to stop the abuse. For instance, Belinda said that her five-year-old 'would always run up and yell at him, 'stop hitting mummy' or 'stop yelling at mummy' and things like that.' Many of the women also expressed concern about the possible long-term effects on their children of witnessing the violence. Some of the women talked about not wanting their sons to think that it was 'okay to hit and demoralise and humiliate women.' Eight women (20%) commented that their sons had picked up violent behaviors, such as abusing their mother, girlfriend or other children.

(ii) Violence Directed At The Children

The violence against pregnant women provides a clear example 'of the way in which the abuse of women and children may be inextricably intertwined' (Morley & Mullender 1994:33). Other examples included children being abused as a means of abusing their mother, being hit 'accidentally' when the father is hitting their mother, or when they tried to intervene to protect their mother, the mother being hit when she tried to protect a child from abuse, or the mother and children simultaneously and concurrently being targets of the abuse. This inter-relationship is illustrated graphically in Rachel's account:

the other [children] were always beaten as well but — especially the three top — when we left [girl] was a baby although when we left she had a black eye because he'd hit me and accidentally hit her because she was breast feeding ... But — but the others had to — um my husband used to line them up and then beat me in front of them. Because then if — so they knew that if they do anything that that's what would happen to them and that's how a woman should be treated when she's done something wrong. So — and I notice that even the behaviour with each other — they were always — they're violent towards each other.

Thirteen women (32.5%) commented that there had been direct physical violence (often in addition to psychological violence) towards a child or children. For example, Rebecca spoke of a former partner bashing her son (his stepson) with an iron bar. He beat her son, called him a 'poofter' and threatened to kill him when she was not around. She described always watching which rooms her partner was going into to make sure he was not heading towards her son's room. The Family Court awarded this man residence for all the children, including his stepchildren, and they resided with him for three years. Rebecca talks of her son's anger towards her that she was not able to protect him during those years:

[He] says why didn't you help me? You know as simple as that. Why didn't you help me? Why didn't [you] do something about it? Why didn't you come and get us? Because [son] doesn't — even to this day he doesn't know — I was stuck by court laws. I couldn't do a thing about it. You know I wasn't even allowed to visit them ... — you know a few people suggested you know just go and kidnap the kids. You know the chances are you're going to end up in gaol and you'll never see them again. So that was a bad decision. Thank Christ for once I made the right one.

Five cases involved allegations that a father had sexually assaulted a child, (one of which involved allegations against both the father and the paternal grandfather).

In addition, nine women mentioned psychological abuse towards their children *without* any physical violence. Examples of psychological abuse went beyond children witnessing violence against their mothers and included: threatening to kill the child(ren) or their mother; killing children's pets; destroying favorite toys; interrogating the children to discover their address and/or phone number, or details of their mother's life; and name calling.

C. Post-Separation Violence Against the Women

Research has demonstrated that domestic violence may escalate at the time of separation and in the period immediately afterwards (Mahoney 1991). This is illustrated graphically by the fact that nearly half of the women killed by spouses (including de factos) in NSW between 1968–1981 were either separated, or in the process of leaving the relationship at the time of the killing (Wallace 1986; Bonney 1988). The escalation of violence at this point in time makes sense if one of the central features of domestic violence is that it is motivated by the desire to exercise power over, and to control, the target (Mahoney 1991; Ptacek 1999:79).

All but one of the 40 women we interviewed (97.5%) had experienced abuse since separation. This woman had gone to great lengths to avoid any contact with the father of her child. She had moved 'far away' to a secret address, avoided all places she thought he might go, had an Apprehended Domestic Violence Order (ADVO, see further below) in place and used a supervised contact centre.

The domestic violence the women described was somewhat different prior to and post separation. For instance, before separation 6 of the 40 women experienced psychological abuse as the sole form of domestic violence. After separation 16 of the 39 women who had experienced domestic violence said that it was confined to psychological abuse.⁴ Furthermore, the nature of the psychological abuse also changed in some cases. Pre and post separation abuse included threatening death or injury and verbal abuse. However, stealing, stalking, vandalism to homes and cars, harassing phone calls, repeated unwelcome visits, objects being thrown at the house or through windows, and houses being broken into were more commonly described post separation. Some women also recounted post separation harassment that included false reports about their behavior or that of friends or family members to agencies such as the police, landlords, employers or the Department of Social Security.

Fifteen women (36.6%) said that they had experienced an increase in violence since separation. Thirteen women (32.5%) said that violence had decreased recently. Only four women (10%) said that violence had now ceased. Eight women (20%) did not comment on whether or not violence had increased or decreased since separation, although most still described post-separation abuse that was very serious.

The experiences of the thirteen women who said that the violence had decreased varied considerably. For some, violence had decreased on separation, whereas for others it had escalated with separation and then decreased more recently. Nonetheless, women who said that the abuse had decreased still described quite disturbing behavior such as being repeatedly phoned, being assaulted, death threats, being dragged by the hair, pushed against rocks, being slapped across the face, having their house broken into, and being stalked. Nine women explained the decrease in terms of the fact that the accused simply did not have the same amount of access to them since separation.

4 That is not to suggest that psychological abuse is necessarily less serious.

Of the four women who reported that the violence had now ceased, two described immediate increases in violence post separation prior to the subsequent cessation of violence. Two women who reported that the violence had ceased nonetheless said that they were still being verbally abused or threatened.

3. Using Legal and Professional Processes to Address the Violence

This section describes the women's attempts to protect themselves or their children from the violence that they experienced. We found that there was a disjunction between the women's accounts of finding it difficult to reveal domestic violence to professionals and the professionals' beliefs their clients would readily disclose such violence to them. Our research also suggests that many women experience difficulties applying for Apprehended Domestic Violence Orders (ADVO) successfully and that prosecuting breaches of ADVOs is a significant problem. It also suggests that the police responses to victims of domestic violence are inconsistent.

A. Articulating the Violence to Professionals

Women need to tell solicitors, police, mediators and other professionals that they have been the target of domestic violence in order for appropriate action to be taken. Twenty-two of the 31 women (71%) who commented on this issue said that they had found it very difficult to disclose this to professionals, at least initially. Ten women said that this was wholly or partly because they found it hard to talk about something so personal or embarrassing or that they were in denial about it themselves. Twelve said that this was because professional staff had not given them an opportunity to speak about the violence, or did not appear interested, did not understand domestic violence, or did not believe them.

Given that the majority of women in our study said that they had had difficulties telling professionals about the violence, it is disturbing to note that all but one of the professional respondents answered 'yes' to the question, 'do you think that clients would readily disclose to you their experience with domestic violence?' One of the Family Court counselors went so far as to say, 'mostly here it is disclosed, and very openly disclosed. Screamed from the roof tops in many ways.' This belief in frank and easy disclosure was held notwithstanding that many of the professionals also recognised that there might be factors that would impede disclosure in some cases and/or cases where the women concerned might minimise the violence that they experienced (see also Barnett 1999:106).

B. Obtaining Apprehended Domestic Violence Orders

Each Australian State and Territory has legislation under which victims of domestic violence (and sometimes others) can seek an order to protect them from violence. The specific provisions for the protection orders⁵ differ between jurisdictions but they generally place limits on the future behaviour of a defendant. In NSW the order is called an ADVO and may be granted if the person seeking protection has reasonable grounds to fear, and in fact fears, violence, harassment, molestation or stalking by a person with whom they have or have had a domestic relationship (*Crimes Act* 1900 (NSW), s562AE).

5 The *Family Law Act* calls these orders 'family violence orders'. In NSW there are two classes of AVO -- personal violence orders and domestic violence orders. In this article we deal only with domestic violence orders and thus have adopted the acronym ADVO.

Thirty-eight of the 40 women respondents commented on whether they had tried to obtain an ADVO. Thirty-one of these (81.6%) had obtained an ADVO and three women had applied for an ADVO without success. Only three women had not sought an ADVO.⁶ Contrary to the suggestion that ADVOs are easy to obtain (Wright 1994:55–56; Todd 1994:38–39; McMillan 1999:48–56; Nyman 1999:52–55; Shaw 2000:64–66), the majority of the women reported difficulties in obtaining orders. Of the 26 women who commented on the process, only four said that they did not experience difficulties.

Numerous Court Appearances

The most commonly reported difficulty in obtaining an order was the number of times women had to go to court to obtain their final ADVO (11 of the 19 women who reported details of the difficulties). Typically they described going to court on up to five or six occasions. Reasons for so many appearances included difficulties serving their ex-partner (either because of his unavailability or because of failures by police) and their ex-partner not attending court (see also Stubbs & Powell 1989; Katzen 2000a; NSW Ombudsman 1999). For women who were juggling the demands of work and parenthood, attending court so many times was an onerous burden.

Pressure not to Continue with the Application

Women who withdraw from proceedings are often viewed as not being serious about seeking assistance to deal with domestic violence, as wasting police and court resources, or as subsequently lacking credibility in their claims of abuse. Yet empirical studies (such as Fischer & Rose, as cited in Davies et al 1998:77; Ptacek 1999) demonstrate that women actively assess the risks they face and that these risks, and thus the strategies they see as potentially helpful to minimise the risks, may vary over time. The stories of some women respondents illustrate that ‘dropping’ orders may be a response to threats, or fear, or may be a strategic move in ongoing negotiations with the defendant (Hickey & Cumines 1999:73). The withdrawal of the matter also may reflect some of the difficulties women face in getting access to court and legal representation to appear in court (Stubbs & Powell 1989:47).

Some who had eventually obtained an ADVO, and one of the three women who were not successful in applying for an ADVO, commented that they had withdrawn their first application for an ADVO under pressure from, or in negotiations with, their partner or his family. For instance, Nerida said that she had an ADVO revoked after three months because her ex-partner’s father had told her that if she let her ex-partner ‘have his life back’ he would personally make sure that he left her alone. However, if she didn’t then they ‘weren’t signing jack in the Family Court.’ She felt that having the initial ADVO revoked reflected badly on her at other stages in court proceedings.

Experiences of Local Magistrates in the ADVO Hearing

A number of the women specifically commented that they found the magistrate in the Local Court difficult or unhelpful in their ADVO proceedings. For example, Anna said that the police tried to get her ‘an emergency ADVO’⁷ but the magistrate refused on the basis that the incident had taken place on Sunday at 5am and she didn’t go to the police station until Monday night. She felt morally judged and remarked that:

6 Of the 38 women who commented on trying to get an ADVO, one did not indicate what the outcome was. Of the three women who said that they never applied for an ADVO two said that they did not think it would be effective in stopping the violence and one said that it was no longer necessary as the perpetrator was in gaol.

7 This is probably a reference to an interim ADVO that can be made as a temporary measure before the matter is finalized by the court, s526BB *Crimes Act* 1900 (NSW).

You don't want to go around charging people. I had to really think about do I want to charge [sic] the father of my son with an A[D]VO and it's not something that you can decide that suddenly, you know what I mean and so that's what happened.

Anna eventually went to court again to try and get an order herself:

I was... in tears and I'm going 'but, but, but' and he goes 'and why do you want the A[D]VO restricting him from child access?... and why do you want this? and I don't think this' and you know he just had me in tears. I'm... crying my eyes out and there's a lady there... and ... she was actually dragging me out because he had made his judgment. And I said 'but, but, but what about this' and she was dragging me out going 'It's okay, no more, no more' and she dragged me out and I felt so humiliated and embarrassed. Like I felt it was my problem.

She commented that later the court assistance person said she was lucky to have obtained the order because that particular magistrate had 'problems with these issues anyway.'

Cross Applications

Little empirical evidence is available about the use of cross applications in ADVO proceedings but anecdotal evidence suggests that the practice is increasing, and that cross applications are being used by some perpetrators as a form of harassment, and/or as a tactic to undermine the credibility of the other party (Hunter & Stubbs 1999:16; Katzen 2000a:42).

It is noteworthy that 12 of the women that we interviewed (30%) had had ADVO proceedings initiated against them by their ex-partners and in seven cases these applications had been successful. Many of these women commented that they felt that their partner was being dishonest or acting in revenge in initiating the orders. For example, Teresa commented that her ex partner's application against her was 'tit for tat' and that he also tried to 'put one on' her disabled 68 year old mother and her sister in Queensland 'who has only come to visit once or twice'.

A number of women had consented to ADVOS initiated by their ex partners in the hope that it would be effective in keeping their abusive partner away, apparently without recognising that it could have negative consequences for themselves. Ellen, for example, had failed to defend the application that her ex-partner was making on the advice of her solicitor. She did not have the money to travel to the court where the complaint was to be heard and her solicitor advised her to save her money because an ADVO was not a criminal offence and she did not want to go anywhere near him anyway. Unfortunately her ex-partner then used the order he had obtained as part of a pattern of harassment against her. He rang different police stations in Sydney falsely alleging that she had broken the ADVO and she was obliged to go in each time and make statements: 'I had to go to Eastwood police station, Blacktown police station, Castle Hill police station and Pennant Hills police station.'

Fear of the Perpetrator during Court Attendance

Several women spoke of their fear of attending court for ADVO proceedings. For instance, Joyce described her experience in the following terms:

Frightening. It's very daunting because um especially when you go back for the hearing because um if you go by yourself there's no legal representation because I can't afford it. I mean I can't get Legal Aid. Um it's very daunting. It's being in the same room as [husband] is something that I — I really, really don't enjoy. I'm frightened of the man — I don't like it. You know he — because he stares at me and you know he's very — he's a big, big, big man ...

Women had mixed experiences of the safety procedures set in place in some Local Courts for their protection. Some women said that they were not aware of precautions taken to secure their safety, or if precautions were taken they were not adequate. For example, Nerida commented that at the Local Court there was a separate room but she did not feel safe as it was 'staffed by ladies' and there was 'some weasly policeman down the other side of the court house.' Some women, on the other hand, spoke very positively of the support they received through the court support schemes that operate at many of the local courts in NSW, and indicated that they felt they would not have been able to go through with the matter in the absence of that support.

Failure of Process

Some women described experiencing other difficulties in obtaining ADVOs that could be viewed as examples of a failure of process. For example, Joyce said that she had obtained an interim ADVO the day after receiving a death threat but the next day her former partner 'had the interim A[D]VO taken off'. That night he assaulted her and her daughter. Rebecca said that, after a series of phone calls to the police, she finally managed to persuade them to apply for an ADVO. However, she was led to believe that the order 'was dropped' after three days. Both cases may have involved an AVDO in the form of a telephone interim order (TIO). When first introduced into the legislation the TIO would stay in force for three days in order to put the matter before the court at the first opportunity. Following amendments to the legislation the order now remains in force until midnight on the fourteenth day after the order is made, unless it is sooner revoked or it otherwise ceases to have effect (*Crimes Act 1900 (NSW) s562H(9)*). Whatever the circumstance, it seems that Joyce and Rebecca were not given adequate information about the ADVO and its duration. Eventually Rebecca's former partner kidnapped her and threatened her life and, in consequence, was in gaol at the time of the interview. Megan's application to extend an ADVO failed because her ex-partner had not harassed her for the duration of the ADVO. This could have been interpreted as a case in which the order had actually worked to protect her but was instead construed as a situation where the perpetrator was no longer a danger. She said, 'I don't sleep much at night. I'm waiting for him to come knocking at my door because I know what he is like.'

C. The Effectiveness of ADVOs

Measuring the effectiveness of ADVOs is difficult (Egger & Stubbs 1993:9). Women's lives are complex and dynamic, and research suggests that they use a range of different strategies to deal with domestic violence as their needs and circumstances change (Davies et al 1998:77). ADVOs may be more useful at one point in time than at other times, or may work well in combination with some strategies but not others. Some perpetrators may respond positively to having an ADVO while others may not. In some cases ADVOs may even exacerbate the situation. For example, one Family Court counselor noted with concern that:

there's a group of women out there who to disappear off the globe is your best strategy because they know an [ADVO] can't protect you, [ADVOs] work with law abiding people who are scared of consequences and I've known women who have no [ADVOs] because they know the guy's such a nut case that it would flip him out to the point where they really would be at risk and they are the cases you should worry about.

Twenty-three women commented on the effectiveness of the ADVO they had obtained and demonstrated different levels of satisfaction. Seven were reasonably happy with the order. Of the 16 who were less positive, some said that it was completely useless, whilst others seemed to think that it had a limited effect.

The difficulty in drawing any simple conclusions from this result is that the women clearly had different personal markers of effectiveness in their assessments of the consequences of having an ADVO. Some women were primarily concerned with how effective the order had been in stopping or decreasing the violence (generally in conjunction with other strategies). Other women apparently felt that the ADVO had positive effects even if it did not stop the violence or harassment. The range in responses is rendered explicable by research literature that demonstrates that for some women, seeking legal intervention such as protection orders has positive effects independently of the impact of the order on the offender's behavior. Ptacek found that:

By creating a legal crisis, these women challenged the coercive control that men were exercising over them. Most women felt supported by the process and left the court with new resources that placed them in a better negotiating position with their partners or former partners...(1999:166–167; See also Stubbs & Powell 1989:109).

Although it is hard to draw firm conclusions about how effective the ADVOs were, it was clear that many women were not happy with the way that police responded to breaches of the orders. For example, Nerida said she would never apply for an ADVO again as 'I might as well have a string of garlic around my neck.' She said that the police had sought six orders on her behalf but had never taken action for breaches. Her former partner had breached the orders numerous times and she had reported the breaches to the police (at one point she had 000 on autodial) but nothing was done. A solicitor's exasperation with the lack of police action in regard to breaches of ADVOs is evident in the following comment.

I've only had about two women successfully have the police prosecute someone for a breach... I mean my real beef about that is that it's not really, it's not for the police to decide whether or not this person will be found guilty of the breach, that's the duty of the courts. They don't even allow the client that luxury, they don't even charge the bloke with the forty harassing telephone calls and the slashed car tyres — they don't even do anything about it. They don't even take it to the court.

Of the 31 women who had ADVOs, 21 (67.7%) had reported breaches to the police.⁸ The fact that 13 out of 21 (61.9%) reported cases resulted in charges for breach may appear to suggest that orders were enforced effectively. However, most of the women interviewed recounted repeated breaches of orders many of which were not acted on by police. Two women, Kim and Hazel, had lodged formal complaints to the Ombudsman concerning poor police responses to their concerns.

Our findings are consistent with research by Trimboli and Bonney (1997), Katzen (2000a), and the NSW Ombudsman (1999) that demonstrated that the breach of ADVOs is relatively commonplace, and that police failure to take action on breach is a matter of ongoing concern and complaint.

In this context it is disturbing to note that in a survey of NSW Magistrates, all of the magistrates who responded thought that ADVOs were effective (Hickey & Cumines 1999:25–27). Although the criterion used for gauging effectiveness was not specified, it is evident from Magistrates' comments that they believed that breaches were uncommon. A refuge worker who we interviewed suggested that police often faced difficulties in dealing with breaches due to the attitudes of magistrates:

8 A further two women indicated that the orders had been breached but not reported. One said that this was because she was concerned about the possible effects on the children of police arresting their father and because he knew her address and might retaliate against her. A second woman did not report the breaches because she recognised that without a witness the breaches would be difficult to prove in court. In this case the woman's solicitor wrote a letter to the defendant warning him not to breach the order again.

I think the difficult part of it is taking it through the Magistrates Court. So it's not always the police and I'm not excusing the police they have a lot to answer for but because they look at a case and decide whether or not a person is going to get up they quite often decide not do anything. So they take it in their own hands because they feel it's a waste of time taking it before a magistrate because he'll dismiss it.

Some women reported positive outcomes from the prosecution of a breach of an ADVO. Others were dissatisfied with the outcome. Reasons for dissatisfaction included the difficulty of proving that a breach had occurred, and what was perceived to be an inadequate sentence upon conviction.

D. Experiences of the Police

Nineteen women specifically commented on their dealings with the police and they reported very mixed experiences (see also Katzen 2000a:49–65). Three had found the police consistently very helpful, nine had found the police consistently unhelpful and seven had found the police response helpful or unhelpful depending on which officer or station they were dealing with. It is worth noting that a woman's experiences may not only reflect the particular officer(s) she actually has dealings with and their skills and understandings but might also depend on who she is or who the police judge her to be (Katzen 2000a:60–61).

Women who had difficult experiences with the police described problems that included: feeling that the police did not take them seriously unless and until a serious physical assault had occurred; having to practically harass the police to get help; the police failing to charge for breaches of ADVOS; the police identifying more with the violent ex partner than with the woman complainant (Katzen 2000a:171–172, 286); and, the women feeling judged by the police for being in the situation to begin with. By way of example, Rebecca, who had positive and negative experiences with police, described negative interactions that included: ringing the police so often that they told her not to ring them again; having her ex partner stand behind her in the police station but being told by an officer that they could do nothing about it because he was on public property (despite the fact that she had an ADVO); trying to get an escort from work when her former partner was waiting for her and the police refusing to help her; ringing the police to seek their assistance in getting an ADVO and being advised to go to court to get one herself even though her ex partner was on her door step and she was unable to get out of her front door. She also described an incident attended by police in which her ex partner had her on the ground and was kicking her and yet the police told *her* to get off the property and stay 500 meters away. She said:

I just got up and I went psycho. And they said 'keep that up and we'll lock you up.' And I said but you know I'm here to get my kids from a child molester and you're telling me to get out.

Eventually her former partner kidnapped her with a knife and a gun, raped her, and held her hostage for seven hours. It was only the actions of one of her sons who went to the police station and refused to leave until they got her back that resulted in her rescue. Since this incident her former partner had been convicted and gaoled and the police reportedly have been 'terrific.'

The women's accounts of problems experienced in the policing of domestic violence are supported by the findings of several recent reports. For instance, Trimboli and Bonney (1997:35) found evidence of an inconsistent response to domestic violence by police (and chamber magistrates), a diversity of practices in different locations, and marked differences in the satisfaction levels of complainants at different locations. The NSW Ombudsman (1999) raised concerns, *inter alia*, about police attitudes to domestic violence, failures to

provide adequate victim support, delays or inaction in response to initial reports of domestic violence, failure to act on reported breaches of ADVOs or being dismissive of breaches that they perceived to be 'minor' or 'technical' breaches, and the failure to serve summonses or other documents (see also Katzen 2000a:71).

4. Being Caught Between Legal Processes

The fact that our sample consisted of women who were both mothers and targets of domestic violence had two major effects on their attempts to negotiate safety. The first was that arrangements in place for child residence or contact, or negotiations underway concerning these issues, had the potential to undermine the protection offered by ADVOs. The second was that having to stay in contact with the perpetrator for the purposes of negotiating and implementing contact and residence arrangements was often a frightening and/or dangerous experience.

A. The Impact Of Current Family Law Matters On Obtaining and Enforcing Protection Orders

Women can be faced with a complex set of legal interventions, often in more than one jurisdiction, when they seek legal assistance to deal with domestic violence. Most of the women in our sample were involved in matters before State courts (usually seeking an ADVO under State legislation) in addition to their negotiations over residence and contact for the children, which in turn sometimes involved court appearances in the Family Court.⁹ Some also had other matters being dealt with under the *Family Law Act 1975* (such as divorce, property settlements, and orders for the recovery of children). The fact that some Family Law matters may be heard in a State court (Local Court), the Federal Magistrates Service¹⁰⁰ or the Family Court adds to the complexity. Where child protection issues arise the complexities are magnified. Unsurprisingly, not all of the women interviewed for this study were able to identify clearly the details of all the legal interventions they had been involved in.

We found evidence that practices concerning the issue and enforcement of ADVOs and those related to the resolution of child contact and residence disputes can sometimes interact in a manner that significantly undercuts the protection the law offers in respect of domestic violence. Thus, a number of the women we interviewed had experienced problems in obtaining appropriate ADVOs, or in enforcing their ADVOs, due to the fact that they had contact arrangements being negotiated or in place under the Family Law system.

Reforms to the *Family Law Act 1975* and to the relevant provisions of some State and Territory laws (for example, s562FA *Crimes Act 1900* (NSW)) have sought to avoid the potential for confusion and conflict where parties have matters proceeding in, or orders from, both the Family Court and a State or Territory court under specific domestic violence provisions. For example, section 68R of the *Family Law Act 1975* now sets down the procedure to be followed when the Family Court wishes to make a contact order that is inconsistent with a family violence order (a category that includes an ADVO). The court is required to be clear about why it is necessary to make an inconsistent contact order, must make sure that the exact parameters of that inconsistency are spelt out, and must make sure that all of the affected parties are fully informed. This provision is important because

9 Only three women had not attempted to obtain an ADVO at some point.

10 At the time of the interviews none of the respondents had experience with the newly established Federal Magistrates Service.

section 68S provides that Family Court contact orders prevail over inconsistent State family violence orders and that the family violence order is invalid to the extent that it is inconsistent with such a contact order. However, section 68T of the *Family Law Act 1975* gives a magistrate who is making or varying a family violence order the power to ‘make, revive, vary, discharge or suspend’ a Family Court contact order.

Unfortunately these provisions do not seem to be working to remedy the problems that women can experience. Anecdotal evidence and research suggests that magistrates are not using the power contained in section 68T of the *Family Law Act 1975* and that many lawyers are not aware of the provision (Kearney McKenzie & Associates 1998:17). For example, Barb said that when she applied for an ADVO for herself and her children she was told that her interim Family Court orders for supervised contact ‘covered the situation’, that the ‘Family Court was looking at it now,’ and that the Local Court Magistrate ‘couldn’t over rule the Family Court.’ This was incorrect because proceedings in the Family Court do not preclude action being taken for a protection order in a State court (s562FA *Crimes Act* (NSW)) and the contact orders did not, in fact, protect Barb at all. Furthermore, her hearing took place after reforms to the *Family Law Act 1975* and so the magistrate would have had the power to grant the ADVO and vary the contact order appropriately using s68T of the *Family Law Act 1975*.

The apparent reluctance by some magistrates to take advantage of their powers to vary contact orders so as to accommodate ADVOs might be located in a phenomenon that was specifically commented on by a number of the professionals we interviewed. This was that magistrates in the Local Court are ‘very reluctant’ to reduce the ‘rights’ that fathers had to see their children when issuing ADVOs. For example, a domestic violence worker who previously worked for a court support scheme commented that:

I know it’s changed a little now, but I still hear stories of you know, work out the father’s access and then we’ll make this AVO or, how can we include your children on this AVO, you know the father has the right to see the children.

These remarks are supported by a recent survey of NSW Magistrates concerning domestic violence. One disturbing finding from the study was that 90 per cent agreed with the statement that ‘Apprehended Domestic Violence Orders are used by applicants in Family Court proceedings as a tactic to aid their case and deprive their partner from access to children’, although one third did not think that this happened often (Hickey & Cumines 1999:37).

Obviously there is cause for concern if contact is being prioritised over the safety of the women and children in ADVO proceedings. It is also of concern because parents in fact have no ‘rights’ of contact in relation to their children under the *Family Law Act 1975*. Any rights of contact belong to the children (s60B(2)) and, even then, are subject to their best interests (s65E). Finally, the idea that mothers are abusing ADVO proceedings in order to deprive fathers of contact is not supported by an empirical study of Family Law case profiles that concluded that there was strong support for the veracity of allegations of domestic violence in Family Law cases (Hunter 1999a:186).

Some women found that enforcing the ADVO was difficult when there were Family Court contact orders in place. Gina commented that every time she had taken her ADVO in to the police they had said that it was not clear enough to arrest her abuser when considered in conjunction with the ‘Family Law papers’. She disagreed with this view, saying that the Family Court orders were quite specific about the parameters of the contact he was permitted to have. The issue for Gina, like some of the other women interviewed, was that her ADVO was issued with a standard condition allowing the defendant to contact her for

the purpose of arranging or exercising child contact. This meant that when the contact order was made by the Family Court questions of inconsistency between the ADVO and contact orders technically did not arise and so Division 11 did not apply to enable variations of the contact order. It also meant that it was difficult for the police to determine when a breach of the ADVO had actually occurred. Hayley Katzen (2000a:134–135; 2000b:173–8), whose work confirms that these kinds of experiences are a problem, has found that police officers in such cases ‘generally focused on the tangible conditions of the order, such as ‘contact permitted for the purposes of arranging access’ rather than considering the threatening or harassing nature of the reported behavior’ (see also Rhoades et al 2000).

B. The Relevance of Domestic Violence in Contact Decision Making in the Family Court

By definition all of the women interviewed had experienced violence by a former partner. However, several women and some professionals argued that this history of violence was not given due emphasis in the process of resolving the child residence and contact issues, notwithstanding the express reference to family violence in the *Family Law Act* (s 43(ca)) (see also Rhoades et al 2000). For instance, Kim reported that the judicial registrar had said that her ADVO had no implications in the Family Court. She thought that, to the contrary, it was extremely relevant that ‘you have somebody threatening you or you have a fear of them and you have to hand your children to that very same person.’ She also remarked that she was ‘stuck in limbo’ with the Family Court giving no weight to the ADVO, the police refusing to enforce the Family Court orders, and the Family Court Orders overriding the protection that she had under the ADVO. Some professionals agreed that the presence of an ADVO did not necessarily have an impact on the practices of family law professionals but suggested that repeated failures to abide by an ADVO were likely to trigger concerns.

Consistent with the idea that domestic violence is not given due emphasis in contact decision making is the suggestion that ‘standard orders’ are being imposed in residence and contact cases. Several women thought that the outcome of their cases was influenced by some notion of standard, or minimum, orders. Most of the professionals interviewed acknowledged that the orders typically made in domestic violence matters did not differ from those made in cases where there had not been a history of domestic violence, thus raising questions about the extent to which the parties’ safety and interests are given real consideration.

C. Safety In The Negotiation And Implementation Of Child Contact Arrangements

We have documented the impact that domestic violence experienced by the women concerned has on the Family Law processes elsewhere (Kaye, Stubbs & Tolmie 2003a, 2003b). Here we note that the process of negotiating contact and residence arrangements involved numerous safety issues.

(i) Safety During The Process Of Negotiation

Parents can reach agreement about child residence and contact amongst themselves or they can use a range of professionals (such as lawyers, mediators or conciliation counselors) either to facilitate negotiation between the parties or to negotiate on their behalf. If the parents can agree amongst themselves then they can reach an informal understanding, or they can negotiate a registered or unregistered parenting plan (*Family Law Act* 1975, ss63C, 63E), or they can apply for the Court to make a consent order. In the event that the parents of the child are unable to agree on residence or contact arrangements they will need to apply to the court for a parenting order (*Family Law Act* 1975, s64B).

The women interviewed for this study commonly described being very afraid while negotiating contact and residence arrangements privately or through the court, some to the point of fearing for their life or for the lives of their children. For example, Nicole said that she did not feel safe anywhere because no matter what precautions are taken there is nothing that can be done to protect you from abuse — ‘If they want to get you they will get you.’ Pauline commented that it was hard to make arrangements when she was in so much fear. Edwina experienced such fear that she did not even embark on the negotiation process but simply let her ex partner have the children reside with him. Sixteen women commented that they found it extremely intimidating to be in the same room as the father of the children, either during proceedings, or in the foyer or waiting room before the dispute resolution process started, or afterwards. Nine women described their ex-partners’ behavior during the actual negotiations as amounting to active harassment or abuse. Nicole said that her former partner made hand gestures to her during proceedings indicating what he was going to do to her, but no one seeing them would have known what they were about. Rebecca said that her former partner told her that he had smuggled a gun into and out of the Family Court. Women also described being stalked, obstructed, assaulted, and verbally abused before or after proceedings and being tailgated on the way home. Six of the women in our study appear to have experienced the dispute resolution process itself as a form of harassment. These women had very litigious ex partners.

We did not find cause for complete confidence that domestic violence cases were being screened adequately in Family Law proceedings, or that procedures were being put into place to ensure the safety of the women concerned during negotiations (but see Hunter 1999a). For example, twenty five women (62.5%) indicated that they had used counseling in order to resolve their family law dispute at some point, because a counselor was involved in producing a Family Report for the court, or because they had conciliation or relationship counseling. Despite procedures in place for counseling to be conducted separately if the case involves domestic violence, only six women who had counseling (24%) mentioned that they had separate sessions to avoid being in the same room as their former partner. Two others said that they had separate sessions in addition to an unsuccessful joint session — described by one as a ‘slinging match’ and the other as one in which she felt ‘unsafe’ and ‘couldn’t get a word in’. In addition, Alison and Delores each had their counseling sessions over the phone. Ellen remarked that she had asked for separate sessions but ended up doing joint counseling. These findings suggest that counselors might not be as vigilant as they could be in making the option of separate sessions available to women who have experienced partnership violence.

The experiences of the women are reinforced by the views of the professionals we interviewed. For example, six of the seven Family Court counselors we interviewed indicated that they were aware of policies to offer separate counseling where there had been domestic violence but there were differences in how they interpreted the policy. The seventh was not aware of the policy. Two counselors indicated that they had a clear preference for joint counseling and would try and persuade the parties to undertake it. One of these counselors said that practice had changed in that previously where people sought separate appointments that was respected but that now ‘[w]e actually put more pressure on people to try to resolve their disputes even if there is violence.’ Three counselors said that joint counseling would occur if some conditions were satisfied: if it was appropriate, the couple agreed, and it wasn’t precluded by the terms of an ADVO. The final Family Court counselor stressed that if there was an ADVO in place counseling should always be separate, even where the couple didn’t mind joint counseling.

Family Court counselors also differed in their assessments of the procedures in place to screen cases for domestic violence. One counselor indicated that, unlike mediation, there was no structured intake for counseling. Another said that bookings were taken by clerical staff, and that joint counseling might occur where parties failed to disclose domestic violence when making their booking. Others seemed confident that effective screening was in place.

Women described mixed experiences of the physical safety procedures in the Family Court when they attended for counseling, mediation or court cases. Some women were not aware of precautions taken to secure their safety, or said that the precautions taken were inadequate. For example, Nerida commented that at the Family Court there were separate rooms but they were not staffed and there was no one to help her or escort her to her car. At one point she hid behind the tea lady for protection. Several women commented that the safety procedures were as good as they could be but the problem was that nothing was fool proof. Other women described being happy with the efforts that were made to protect them from their former partner, or at least said that they had helped.

(ii) Safety in the Implementation of Contact Arrangements

The overwhelming majority of the women respondents mentioned experiencing violence during child contact visits or at changeover times (see Neilson 2001:51 for similar findings in a Canadian study): of the 35 women who were resident parents facilitating contact with the father, only five (14.3%) said that they had **not** experienced violence at contact changeover.¹¹ It is noteworthy that three of these women nonetheless described intimidating or frightening behavior by the father of the children associated with contact. For example, Barb described experiencing verbal abuse and 'physical changeovers.' By the latter she meant behaviors such as her former partner slamming his fist on the car bonnet, shouting at her, and physically trying to force the children into his car. Of one of these occasions she commented: '[son] was screaming and [daughter] — it was horrible like. The kids were really distraught.'

Many women had tried several options and venues for contact changeover in an endeavor to find workable arrangements. The most common arrangement (18 women, 51.4% of those who were resident parents) was for contact changeover to take place at their residence or the residence of the contact parent. Many of these women expressed dissatisfaction with changeover at their residence as they were frightened of the contact parent or did not want his intrusion, and for a number it had proved to be unsafe.

Thirteen women had used public places for changeover, such as McDonald's (n=5), a railway station (n=2), a tavern car park (n=3), and the street (n=3). None of these arrangements were safe. Two women using McDonalds had been verbally abused during contact changeover. All women using railway stations and tavern car parks had experienced verbal and physical abuse during changeover. Kate, who used to have changeover in the street, described being smacked in the face by her ex partner because he had had an accident on the way and was in a bad mood. In addition, six women had used a police station at some point for changeover, although three of these women nonetheless described experiencing violence during changeover.

11 Of the women who were not resident parents, Edwina was too terrified to try to institute proceedings and thus did not see her children. Ellen, Marcia and Sandra were denied contact with their children by their former partners, and Hazel tried to see her children at school without her partner's knowledge because of her fear of his violence.

Twelve women were using, or had used, a contact centre, or a women's resource centre for contact changeover. Most described this service as very helpful as it meant that they did not have to deal with the contact parent,¹² thus minimising the stress and danger for them and the trauma for the children.¹³

Four women with older children used the children's school as a changeover point with apparent success in minimising the violence, particularly if the contact parent had overnight contact and both collected the children from, and returned them to, the school.

Ten women had used a third party, generally a relative or friend, to effect changeover at some point. Only one of these women, Megan, described this strategy as an unqualified success. She said that, because the father had no history with the third person, the changeover took place in a civilised fashion. However, she noted that she had to organise this herself and that 'there are some women that wouldn't have the means to do that.' Problems experienced with third party changeovers included: the third party being abused by the contact parent; the woman herself being abused when the third party is a relative or new partner of the contact parent; the difficulty of finding someone who is neutral and willing to undertake the task; and the fact that the third party is inconvenienced when breaches occur and might feel resentment towards the woman rather than the perpetrator. Seven women took a support person with them on changeover, as opposed to doing the changeover through this person. This appeared to have the advantage of alleviating their fear but it was no guarantee of safety.

These results raise the possibility that those contact changeover arrangements that work best and are safest for the women (and reduce the chances of children witnessing abuse, although do not necessarily protect the children themselves) are those that do not bring the parents (including in some cases their relatives or new partners) into direct contact with each other. Unfortunately a number of the professionals we interviewed seemed to be unaware of the problems women experienced with contact handover arrangements. For instance, several assumed that third parties such as other family members or friends could be found to assist in contact changeovers, or that changeovers in public places such as shopping centers, police stations or at McDonalds were adequate to secure the mother's safety.

5. Conclusion

Consistently with other research we found that domestic violence had not ceased upon separation for the majority of women that we interviewed, although in some cases the nature of the abuse had changed. We also found that the majority of women participating in this study had experienced difficulties in obtaining ADVOs in order to protect themselves from the violence they faced. Many also expressed frustration about the difficulty of enforcing such orders. Specifically they commented that they struggled to get the police to act on breaches, to prove the breaches in court, and to obtain penalties that sent the perpetrator the message that his behavior would not be tolerated.

12 Those using centres with strict arrival and departure times, and security, were also reassured that they could keep their addresses secret and that the contact parent could not follow them home or lie in wait for them on the way to contact. Unfortunately, however, even a number of the women who used refuges or centres for contact changeover were 'ambushed' or followed home after contact by the contact parent.

13 Potential shortcomings of the centres were the distance that women had to travel to use them, the high turnover of staff so that the children had to be taken between the parents by strangers which was distressing to them, and the short length of time that supervised changeover was sometimes made available because of the level of demand for these services in the community.

The results of this study demonstrate the limitations of examining women's experiences without acknowledging that those experiences are profoundly shaped by their relationship with their children. The relational nature of women's lives permeated every level of our inquiry. Thus we found that the abuse of women and children were inter-related phenomena. At least 62.5% of the children in our study had witnessed the abuse against their mothers, and a third (32.5%) had been the direct targets of physical violence themselves. We also found that the fact that the women we interviewed were mothers had the potential to significantly undercut the legal protection that they were able to obtain in respect of the abuse that they experienced. This was partly because women involved in the negotiation and implementation of child contact and residence arrangements appeared to lack effective mechanisms for minimizing contact with their perpetrator. It also derived from the fact that they had to negotiate different systems of law in order to resolve their complex life circumstances. This meant that having a current family law dispute or contact arrangement had the potential to diminish the protection that they were able to obtain from having an ADVO and at the same time the ADVO was given little or no emphasis in family law proceedings.

Although the sample for this interview based research project was too small to offer definitive findings, it illustrates the need for further empirical research on the post separation experiences of women and children, as well as the need for theory and practice to reflect the complex realities of women's lives.

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