

THE ROLE OF THERAPEUTIC JURISPRUDENCE IN THE DOMESTIC VIOLENCE ORDER PROCESS: A STUDY OF COURT PRACTITIONERS

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Interactions between court practitioners and domestic violence survivors in the domestic violence order (DVO) court process can have a significant effect on a survivor's emotional and psychological well-being and recovery. Through the lens of therapeutic jurisprudence (TJ), this study examines whether court practitioners understand the therapeutic and anti-therapeutic effects that their practices can have on survivors and whether they currently incorporate techniques that could positively impact emotional and psychological well-being. While extensive TJ literature explores the awareness and therapeutic practices of judicial officers, this study extends the literature by providing insight into the knowledge and practices of nine court practitioners (both judicial and non-judicial) interacting with survivors on any given day in court. This study is grounded in the theory that court practitioners can practise 'compassionate witnessing' and contribute to survivors feeling supported and secure in the DVO court process. When therapeutic practices are effectively employed by court practitioners who interact with survivors within the DVO court process, the negative impacts of court engagement may be minimised. Survivors are less likely to feel alienated and more likely to experience a sense of validation and empowerment as an essential initial step in their emotional recovery.

I INTRODUCTION

A domestic violence order (DVO) is an order made by a magistrate to stop a person (the respondent) from committing acts of domestic violence against a person who has received threats of violence or had violence perpetrated against them (the aggrieved). The court may set out specific conditions the respondent must obey depending on the circumstances. DVOs are the most common civil legal remedy sought by, or on behalf of, those experiencing domestic and family violence (DFV) in Queensland,

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Australia.¹ This is evident through the nearly 30,000 DVO applications that are submitted either directly by the police following an incident or by the survivor themselves in Queensland.² While applications are lodged by the aggrieved (typically by a female) against the other party, the respondent (typically a male),³ in some cases both partners seek protection from each other. This article will specifically focus on women as the aggrieved, given the present and wide-reaching debate about how well (or otherwise) the DFV system responds to gendered harms. However, this is not intended to diminish the experiences of those survivors who are male or whose identities are gender non-binary.

There is debate as to the appropriate terminology to describe the pattern of abuse experienced in spousal, partnered and familial relationships.⁴ Generally, DFV refers to acts of violence that occur between people who ‘have or have had, an intimate relationship in a domestic setting’.⁵ In this article, ‘survivor’ refers to a survivor of DFV, and ‘court participant’ is used more broadly to encompass respondents to DFV court matters. There is usually an ongoing pattern of behaviour by one person in a relationship that is intended to instil fear in the other person, to control that person. Abusive behaviours can include but are not limited to acts causing physical, emotional, sexual, financial, psychological, cultural/spiritual and/or reproductive harm to the person, damage to property, and/or threats of such

¹ Robin Fitzgerald and Heather Douglas, ‘The Whole Story: The Dilemma of the Domestic Violence Order Narrative’ (2019) 60(1) *British Journal of Criminology* 180. The study reported in this article took place within a non-specialist Magistrates Court hearing DV matters in Queensland, Australia. Domestic violence orders in different state and territory jurisdictions in Australia may be called protection orders, apprehended domestic violence orders or intervention orders.

² Queensland Police Service, *Annual Statistical Review 2016–2017* (Report, 2017) 24.

³ Heather Douglas and Robin Fitzgerald, ‘Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Protection Orders’ (2013) 36(1) *UNSW Law Journal* 56.

⁴ Evan Stark and Marianne Hester, ‘Coercive Control: Update and Review’ (2019) 25(1) *Violence Against Women* 81; *Domestic and Family Violence Act 2012* (Qld) ss 11, 12.

⁵ The Australasian Institute of Judicial Administration Inc., ‘National Domestic and Family Violence Bench Book’ *The Australasian Institute of Judicial Administration Inc.* (Web Page, 11 June 2023)

< <https://dfvbenchbook.aija.org.au/dvbb/docs/NDFVBB-June-2023.pdf>>.

harm/damage.⁶ The long-term mental health consequences of DFV have been consistently reported throughout the literature.⁷ It is also well accepted that many survivors who pursue legal action against the perpetrator experience a second traumatisation due to the multiple legal processes they must navigate, which usually involve the perpetrator and take significant time before a final outcome is reached.⁸

Applying for a DVO within a Queensland Magistrates Court generally involves the following steps: first, a DVO application must be lodged by the police or the ‘aggrieved’ person. If the application is private (i.e., in the latter situation), a Justice of the Peace must witness an accompanying statutory declaration.⁹ The first court mention is set for approximately three to four weeks (unless it is an urgent matter) after the application is lodged. If a woman feels unsafe being at court with her abuser, she may fill out a form to sit in the designated ‘women only’ safety room. Once checked into the court complex, a woman may elect to see a pro bono duty lawyer and social worker or use her private lawyer; forms must be filled out to access both services. Following this, the woman will meet with these court practitioners. All matters are listed for the same time, so people often have to wait a considerable amount of time before the matter is heard. If the respondent agrees to the order being made in court, the magistrate may grant a final protection order.¹⁰ If the respondent disagrees, the matter may be set down for a contested hearing, and the magistrate may make a temporary protection order.¹¹ If the court does not make a final protection

⁶ Michael Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* (Northeastern University Press, 2008).

⁷ Paula Nicolson, *Domestic Violence and Psychology: Critical Perspectives on Critical Partner Violence and Abuse* (Taylor and Francis Group, 2019); Judith Herman, *Trauma and Recovery* (Basic Books, 1992); Heather Douglas, ‘Domestic and Family Violence, Mental Health and Well-Being, and Legal Engagement’ (2018) 25(3) *Psychiatry, Psychology and Law* 341.

⁸ Fitzgerald and Douglas (n 1) 184; Heather Douglas, ‘Legal Systems Abuse and Coercive Control’ (2018) 18(1) *Criminology & Criminal Justice* 84.

⁹ ‘Applying for a Domestic Violence Order’ *Queensland Courts* (Web Page, 27 July 2023)

<<https://www.courts.qld.gov.au/going-to-court/domestic-violence/domestic-violence-orders/applying-for-a-domestic-violence-order>>.

¹⁰ ‘Domestic Violence Orders’ *Queensland Courts* (Web Page, 29 May 2018) <<https://www.courts.qld.gov.au/going-to-court/domestic-violence/domestic-violence-orders>>.

¹¹ *Ibid.*

order, the matter is adjourned to allow the parties to obtain legal advice or for the respondent to be served with the application.

The Queensland Magistrates Court, where this study took place, is not a Specialist Domestic and Family Violence Court. The Specialist Domestic and Family Violence Court at Southport became Queensland's first court of this kind in September 2015. After a trial period of 2 years between 2018 and 2023, this specialist approach was implemented in Townsville, Beenleigh, Mount Isa and Cairns, Townsville, Palm Island, and Brisbane. Waterworth suggests there is an opportunity for mainstream therapeutic jurisprudence (TJ) practices within Magistrates Courts across Southeast Queensland, particularly in problem-solving court programs such as the DFV specialist courts.¹² Arguably, TJ practices underpin the Specialist Domestic and Family Violence Court model as some of its features include dedicated magistrates, a court coordinator to oversee operations, a specialist DFV court registry with specialist court staff training, specialist DFV court supported services, infrastructure and security features to support safety and specialist DFV duty lawyers.¹³ The study reported here provides insight into the perceptions and experiences of court practitioners in a non-specialist Queensland Magistrates Court relating to their interactions with DFV survivors. Examining their knowledge and whether they believe that they can incorporate therapeutic practices into their roles provides a helpful baseline for future comparisons and any arguments to be advanced that mainstreaming TJ practices across all Magistrates Courts in the DFV space is feasible and appropriate.

From the moment a DFV survivor contacts the police to the granting of a final protection order, they may interact with dozens of court practitioners.¹⁴ This study defines court practitioners as the judicial and

¹² Rhonna Waterworth, 'Development of a Measurement Tool for Courtroom Legal Actor Contributions: A Delphi Study Consulting the Experts' (2021) 31 *Journal of Judicial Administration* 71. See also Penelope Weller, 'Mainstreaming TJ in Australia: Challenges and Opportunities' (2018) 3(1) *International Journal of Therapeutic Jurisprudence* 81; David B Wexler, 'Moving Forward on Mainstreaming Therapeutic Jurisprudence: An Ongoing Process to Facilitate the Therapeutic Design and Application of the Law' (Arizona Legal Studies Discussion Paper 15, University of Arizona, 2014).

¹³ 'Specialist Domestic and Family Violence Court' *Queensland Courts* (Web Page, 13 September 2023).

<<https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>>.

¹⁴ Louise Ellison, *The Adversarial Process and the Vulnerable Witness*, (Oxford University Press, 2002).

non-judicial actors involved in the DVO court process, whether directly employed by the court or by an affiliate organisation (for example, Legal Aid and support services). When attending court, a party to a DFV matter is likely to engage with registry staff (including court liaison officers and counter clerks), police prosecutors, legal professionals (lawyers and paralegals), social workers and security guards before and after their matter is heard before a magistrate. Interactions with court practitioners can influence whether a DFV survivor has a therapeutic or anti-therapeutic court experience or an interaction with the court process that has had a neutral impact.¹⁵

TJ is the study of the law's healing potential. It proposes that by adopting a mental health lens when applying and critiquing the law, the law can improve the psychological well-being of those in the system.¹⁶ TJ suggests that the attitudes and behaviour of court practitioners assisting those navigating court processes ultimately contribute to all court participants' experience of the justice system.¹⁷ Here, we concentrate on survivors and suggest that therapeutic interactions with court practitioners during the DVO court process can foster feelings of empowerment and the confidence to go on and forge new connections as an essential step in a survivor's emotional recovery.¹⁸ There has already been a substantial investigation into the relevance of TJ in the DFV legal setting.¹⁹ However, the focus has

¹⁵ Ann Freedman, 'Fact Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses' (2003) 11(2) *Journal of Gender, Social Policy & the Law* 567; Bruce Winick, 'Applying the Law Therapeutically in Domestic Violence Cases' (2000) 69(1) *UMKC Law Review* 33; James Ptacek, *Battered Women in the Courtroom: the Power of Judicial Responses* (Northeastern University Press, 1999); Clare Dalton and Elizabeth Schneider, *Battered Women and the Law* (Foundation Press, 2001); Martha Minow, 'Words and the Door to the Land of Change: Law, Language, and Family Violence' (1990) 43 *Vanderbilt Law Review* 1665, 1671.

¹⁶ Winick (n 15) 34.

¹⁷ Pauline Spencer, 'From Alternative to the New Normal Therapeutic Jurisprudence in the Mainstream' (2014) 39(4) *Alternative Law Journal* 222.

¹⁸ Freedman (n 15) 577.

¹⁹ See, eg, Winick (n 15); Peter Johnsen and Elia Robertson, 'Protecting, Restoring, Improving: Incorporating Therapeutic Jurisprudence and Restorative Justice Concepts into Civil Domestic Violence Cases' (2016) 164(6) *University of Pennsylvania Law Review* 1557; Rachel Field and Eugene Hyman, 'Non-Adversarial Approach to Domestic Violence: Putting Therapeutic Jurisprudence Theory into Practice' (2017) 26 *Journal of Judicial Administration* 27; Mary Finn, 'Evidence-Based and Victim-Centered Prosecutorial Policies: Examination of Deterrent and Therapeutic

been primarily on judicial demeanour in the realm of judge-litigant interactions and how it can be improved to decrease recidivism and contribute to the psychological recovery of DFV survivors.²⁰ This study aims to advance this line of inquiry by investigating whether court practitioners actively incorporate therapeutic practices into their interactions with DFV survivors and whether they believe doing this can positively impact emotional and psychological well-being.

This study is premised upon the seminal work of trauma scholars such as Herman, who proposes that a supportive environment in court can have therapeutic outcomes. In contrast, a hostile experience can have anti-therapeutic consequences for a survivor in the process of recovering emotionally from abuse.²¹ To align with TJ, court practitioners must act as 'compassionate witnesses' by incorporating therapeutic verbal and non-verbal techniques into their interactions with survivors.²² A compassionate witness is highly conscious of their professional relationship and obligations while also remaining considerate of the human realities of the situation and the associated trauma being experienced by the victim. For example, the central role of a magistrate is to judge legally, but in doing so, they can take into consideration a victim's trauma when, for example, assessing their credibility. Conversely, a lawyer's role is testing their client's case to ensure they are across all possible issues. When doing this, they can employ, for example, interview techniques that minimise further trauma. A compassionate witness can respond appropriately to both the substantive and emotional aspects of raised problems, depending on the structure they are operating within.²³

Fortunately, TJ techniques are not necessarily innate – they can be taught and developed. The literature overwhelmingly shows that therapeutic interactions with court practitioners can be fundamental to survivors'

Jurisprudence Effects on Domestic Violence' (2013) 12(3) *Criminology & Public Policy* 443.

²⁰ Jane Wangmann, 'Incidents v Context: How does the NSW Protection Order System Understand Intimate Partner Violence?' (2012) 34(4) *The Sydney Law Review* 695, 713.

²¹ Judith Herman, *Trauma and Recovery* (Basic Books, 1992); Judith Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 574–575; See also Terrence Keane, Amy Marshall and Casey Taft, 'Posttraumatic Stress Disorder: Etiology, Epidemiology, and Treatment Outcome' (2006) 2 *Annual Review of Clinical Psychology* 161.

²² Freedman (n 15) 574.

²³ *Ibid* 617.

emotional and psychological well-being in the DVO, or equivalent, court process.²⁴ Studies illuminating the survivor perspective will play an essential role in future reform.²⁵ We know that there is ongoing recognition that lawyers lack training about DFV.²⁶ Given this, the importance of documenting the voices and experiences of court practitioners and their understanding of TJ is an integral part of the narrative. There is growing debate about whether there is a difference between lawyers being trauma-informed and DFV-aware.²⁷ Wangmann et al. suggest that being informed

²⁴ See, eg, Edna Erez and Joanne Belknap, 'In Their Own Words: Battered Women's Assessment of the Criminal Processing System's Response' (1998) 13 *Violence & Victims* 25; Joseph Gillis et al, 'Systemic Obstacles to Battered Women's Participation in the Judicial System: When Will the Status Quo Change' (2006) 12(12) *Violence Against Women* 1150; Lauren Bennett, Lisa Goodman and Mary Dutton, 'Systemic Obstacles to the Criminal Prosecution of a Battery Partner: a Victim Perspective' (1999) 14(7) *Journal of Interpersonal Violence* 761; Lucinda Jordan and Lydia Phillips, *Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong, Victoria* (Report, Centre for Rural and Regional Law and Justice, Deakin University, 2013); Lauren Cattaneo and Lisa 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; Ellen Gutowski and Lisa Goodman, "'Like I'm Invisible": IPV Survivor – Mothers' Perceptions of Seeking Child Custody Through the Family Court System' (2020) 35 *Journal of Family Violence* 441.

²⁵ See, eg, Heather Douglas, *Women, Intimate Partner Violence and the Law* (Oxford University, 2021); Margaret Bell et al, 'Battered Women's Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcome and Process' (2011) 17(1) *Violence Against Women* 71; Angela Ragusa, 'Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors: Perceptions of Criminal Justice Support Services' (2012) 28(4) *Journal of Interpersonal Violence* 685; Lesley Laing, *It's like this maze you have to make your way through: Women's experiences of seeking a domestic violence protection order in NSW* (Report, Faculty of Education and Social Work, University of Sydney, 2013); Rosemary Hunter, *Domestic Violence Law Reform and Women's Experiences in Court: The Implementation of Feminist Reforms in Civil Proceedings* (Cambria Press, New York, 2008).

²⁶ See, eg, Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* (Final Report 135, 2019) [13.70]–[13.73]; See also Queensland Women's Safety and Justice Taskforce, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Report, 2022) 222–25 and 596–98.

²⁷ Wangmann et al, 'What is 'good' Domestic Violence Lawyering?: Views from Specialist Legal Services in Australia' (2023) 37(1) *International Journal*

about DFV is essential to being a competent lawyer.²⁸ Research is beginning to illuminate the practical application of TJ practices within the DVO court process and court practitioners' awareness of TJ, and this study contributes to this research in the context of non-specialist Magistrates Court hearing DFV matters.²⁹ An important future focus will also be the experiences of court practitioners in specialist Domestic and Family Violence courts in Queensland. Domestic and Family Violence specialist courts have been recognised as an essential initiative³⁰ and arguably this problem-solving court model incorporates TJ principles, or at the very least feminist tenets.³¹

Before describing the study of court practitioners' experiences in a non-specialist Magistrates Court and its methodology, this article will provide an overview of the DFV-TJ literature, with a focus on current

of Law, Policy and the Family 1; See generally Colin James and Nicola Ross, 'Did he ever hit you? Exploring the Attitudes of Lawyers in the Assessment of the Seriousness of Threats and Violent Histories of Domestic Violence Cases' (2017) 30(3) *Australian Journal of Family Law* 205.

²⁸ Wangmann et al (n 27) 1.

²⁹ Rachael Field and Eugene Hyman, 'Non-adversarial Approaches to Domestic Violence: Putting Therapeutic Jurisprudence into Practice' (2017) 26(4) *Journal of Judicial Administration* 275.

³⁰ Queensland Department of Justice and Attorney-General, *Southport Specialist Domestic and Family Violence Court: Process and Outcomes Evaluation 2017-2021* (Final Report. December 2021); Robyn Holder, 'A Cross-National Data Collaboration of Domestic Violence Specialist Courts: A Research Note' (2020) 44(3) *International Journal of Comparative and Applied Criminal Justice* 231; Julie Stubbs and Jane Wangmann 'Australian Perspectives on Domestic Violence' in Eve Buzawa and Carl Busawa (eds), *Global Responses to Domestic Violence* (Springer International Publishing, 2017) 167; Elizabeth Moore, 'The Pilot Domestic Violence Intervention Court Model (DVICM): Toward Evidence-led Practice in Wagga Wagga in Rural Australia' (2009) 8(1) *Currents (University of Calgary. Faculty of Social Work)* 1; Therese McCarthy, 'MCV: Specialist Model Targets Family Violence' (2023) 97(9) *Law Institute Journal* 14; Mandy Burton, 'Judicial Monitoring of Compliance: Introducing 'Problem Solving' Approaches in Domestic Violence Courts in England and Wales' (December 2006) 20(3) *International Journal of Law, Policy and the Family* 366.

³¹ Carrie Petrucci, *A Qualitative and Quantitative Analysis of a Specialized Domestic Violence Court That Utilizes Therapeutic Jurisprudence* (ProQuest Dissertations Publishing, 2002); Field and Hyman (n 29); Du Plessis Anel and Ingrid Sinclair, 'Therapeutic Jurisprudence: An Assessment of Its Possible Application to Cases of Domestic Violence in Magistrates' Courts' (2007) 18(1) *Stellenbosch Law Review* 91.

understanding of the therapeutic role that judicial officers can play in the DVO court process. Next, the article will consider existing literature examining the role that TJ can play in the treatment of survivors by court practitioners and how these interactions can impact their experience in court when applying for a DVO. Examined through the lens of TJ, survivors' feelings about court processes have contributed to a growing acceptance that re-traumatisation of survivors is a persistent effect of court processes. The findings of the present qualitative study will then be presented and discussed.

II THE ROLE OF THERAPEUTIC JURISPRUDENCE IN THE DOMESTIC VIOLENCE ORDER PROCESS

A *Therapeutic jurisprudence*

The term 'therapeutic jurisprudence' was developed by Winick and Wexler,³² when they were studying the impact of legal processes on the well-being of participants in mental health courts.³³ TJ claims that the law has the potential to be an agent of 'healing, harmony or optimal human functioning.'³⁴ However, TJ does not propose that judicial officers and court practitioners should act as therapists; instead, it offers that better practice requires court practitioners have the knowledge that their actions have an impact and an understanding of how significant this is for participants in legal processes.³⁵

³² Winick (n 15); See also Bruce Winick, 'The Jurisprudence of Therapeutic Jurisprudence' (1997) 3 *Psychology, Public Policy and Law* 184; David Wexler, 'Therapeutic Jurisprudence: An Overview' (2000) 17 *Thomas M. Cooley Law Review* 125.

³³ David Wexler and Bruce Winick, 'Therapeutic Jurisprudence as a New Approach to Mental Health Law Policy Analysis and Research' (1991) 45 *University of Miami Law Review* 979; Sarah Kopelovich et al, 'Procedural Justice in Mental Health Courts: Judicial Practices, Participant Perceptions, and Outcomes Related to Mental Health Recovery' (2013) 36(2) *International Journal of Law and Psychiatry* 113.

³⁴ Susan Daicoff, 'Law as a Healing Profession: The Comprehensive Law Movement' (2006) 6(1) *Pepperdine Dispute Resolution Law Journal* 1, 4.

³⁵ Michael King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' (2008) 32 *Restorative Justice and Therapeutic Jurisprudence* 1096.

From early on, it was suggested that interactions of court participants and court practitioners within the DVO court process with a TJ mindset could be transformative for survivors, children and perpetrators of abuse.³⁶ Given this, it is imperative that we are attuned to the significant role that all court practitioners play within the DVO court process. Court practitioners are positioned to influence the experience of court participants positively and negatively. TJ provides an opportunity to answer the question, ‘How can we help the legal system to turn victims into survivors?’³⁷

B *Therapeutic jurisprudence and judicial officers in the DVO process*

A DVO being granted can provide survivors with increased feelings of safety and control over their lives.³⁸ Wright and Johnson examined whether the granting of a civil protection order (the United States equivalent of a DVO) could also improve survivors’ mental health and psychological recovery.³⁹ They found that a civil remedy to reduce contact with an abusive partner could foster survivor empowerment and liberation.⁴⁰ Importantly, however, they called for further research into whether therapeutic benefits are less derived from the substantive legal outcomes and more from the interactions within the legal process itself.⁴¹ Ptacek, in his analysis of judicial demeanour in domestic violence cases, highlighted that judicial language denouncing abuse as ‘injustice’ offers support ‘at a critical point in the process of victimisation.’⁴²

³⁶ Daicoff (n 34) 1; Michael King, ‘Roads to Healing: Therapeutic Jurisprudence, Domestic Violence and Restraining Order Applications’ (2003) 30(7) *Brief* 14; Michael King and Stephen Wilson, ‘County Magistrates’ Resolution on Therapeutic Jurisprudence’ (2005) 32(2) *Brief* 23; Winick (n 15).

³⁷ Winick (n 15).

³⁸ Karla Fischer and Mary Rose, ‘When “enough is enough”: Battered Women’s Decision Making Around Court Orders of Protection’ (1995) 41 *Crime and Delinquency* 414, 423.

³⁹ Caroline Wright and Dawn Johnson, ‘Encouraging Legal Help Seeking for Victims of Intimate Partner Violence: The Therapeutic Effects of the Civil Protection Order’ (2012) 25 *Journal of Traumatic Stress* 675.

⁴⁰ *Ibid.*

⁴¹ *Ibid* 680; Wangmann (n 20) 713; Tristan Wayte et al, ‘Psychological Issues in Civil Law’ in James Olgoff (ed), *Taking Psychology and Law into the Twenty-First Century* (Springer, 2002) 325.

⁴² James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (Northeastern University Press, 1999) 157.

The present study seeks to explore whether various court practitioners are cognisant that their interactions with survivors in the legal process can lead to therapeutic or anti-therapeutic outcomes. In responding to the need to unpack the therapeutic and anti-therapeutic outcomes produced by the process, TJ scholars have primarily focused on interactions between judicial officers and litigants in the DVO (or equivalent) process. Through court hearing observations and interviews with judicial officers, Person et al. suggested that 'judicial demeanour' influences whether survivors feel empowered and as though they have achieved a sense of justice.⁴³ Petrucci observed factors, including the judge's body language, tone, correct pronunciation of litigants' names and active listening, to determine whether a 'shared respect' between a judicial officer and respondent was an indicator of future behaviour.⁴⁴ While Petrucci's study was inconclusive and focused on respondents, it provides an impetus for further examination of whether TJ techniques could be effective for all court participants if employed throughout the court process. Potentially, there is little or no difference in the positive impact that observing TJ practices can have on applicants and respondents.

Hyman and Aldrich contend that judicial officers hearing DVO applications should refrain from adopting the role of 'arbiter' to foster therapeutic outcomes.⁴⁵ If a judicial officer is hostile, unsympathetic, judgmental, uses clumsy language and trivialises a survivor's experience, it can provide an insurmountable barrier to survivors feeling as though they achieved a true sense of justice, regardless of the substantive outcome.⁴⁶ Further, judicial demeanour, body language, tone of voice and demonstrated empathy are fundamental to how survivors perceive their

⁴³ Cara Person et al, "I Don't Know That I've Ever Felt Like I Got the Full Story": A Qualitative Study of Courtroom Interactions Between Judges and Litigants in Domestic Violence Protective Order Cases' (2012) 24(12) *Violence Against Women* 1474; Ptacek (n 15).

⁴⁴ Carrie Petrucci, 'Respect as a Component in the Judge-Defendant Interaction in a Specialised Domestic Violence Court that Utilizes Therapeutic Jurisprudence' (2002) 38(2) *Criminal Law Bulletin* 199, 263.

⁴⁵ Eugene Hyman and Liberty 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.

⁴⁶ Bennett, Goodman and Dutton n (24); Lisa Goodman, Lauren Bennett and Mary Dutton, 'Obstacles to Victim's Cooperation with the Criminal Prosecution of Their Abusers' (1999) 14 *Violence & Victims* 427.

experiences in court.⁴⁷ Hyman and Aldrich recognise that judicial officers can work to reduce emotional trauma following abuse.⁴⁸ Daicoff similarly suggested that a judicial officer who does not adequately recognise the severity of the abuse and reprimand the respondent's behaviour can be anti-therapeutic.⁴⁹ Douglas' study highlighted that the language chosen by judicial officers can be vital to women's experiences being discredited within the legal system.⁵⁰

A study by Johnsen and Robertson analysed some of the recurring difficulties in civil domestic violence cases, including congested court lists, insufficient resources, unrepresented litigants and the burden of emotionally fuelled subject matter.⁵¹ This may result in a judicial officer in DVO matters electing to favour efficiency when managing their court list out of necessity. Additionally, in the United States, interviews and observations of judicial officers in DVO hearings revealed that perceptions of court participant credibility influenced judicial decision-making.⁵² This is obvious, given that assessing a witness' credibility is at the heart of decision-making regarding DVOs. Understanding how trauma can manifest in victims of DV is an essential aspect of appropriate credibility assessment. In that study, some judicial officers appeared unaware of typical behaviours exhibited by traumatised DFV survivors. This meant that, at times, judicial perception of a lack of credibility could have been ill-founded.⁵³ It is evident from studies such as Person et al. that judicial officers are willing to engage in reflective practice and analyse their practices and decision-making.⁵⁴ However, what remains unclear is whether judicial officers are consciously aware that their interactions can influence whether survivors have a therapeutic or anti-therapeutic court experience.⁵⁵

⁴⁷ Ptacek (n 15); Donna Roberts, Peter Chamberlain and Paul Delfabbro, 'Women's Experiences of the Processes Associated with the Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis' (2014) 22(4) *Psychiatry, Psychology and Law* 599.

⁴⁸ Hyman (n 45).

⁴⁹ Daicoff (n 34) 11.

⁵⁰ Douglas (n 25) 190.

⁵¹ Johnsen and Robertson (n 19) 1565.

⁵² Person et al (n 43).

⁵³ Ibid 1490.

⁵⁴ Ibid.

⁵⁵ See, eg, Waterworth (n 12).

*C The impact of interactions with court practitioners on survivors’
emotional recovery*

Following the terrorisation and isolation of DFV, many survivors experience post-traumatic stress disorder, anxiety, depression and a dramatic reduction in self-esteem.⁵⁶ Herman outlines that ‘disempowerment’ and ‘disconnection’ are hallmarks of a DFV survivor experiencing psychological trauma.⁵⁷ The consequence is that a survivor’s emotional recovery is contingent on their empowerment and ability to forge new connections.⁵⁸ It is critical that court practitioners possess empowering attitudes and behaviours to ensure the effectiveness of any legal remedy that may be awarded.⁵⁹ Court practitioners should be trained to have an acute understanding of the sensitivities particular to DFV survivors and be equipped with techniques to deal with them effectively.⁶⁰ If not, a survivor’s vision of justice may never be satisfied within the legal system.⁶¹

Physical and mental health issues can be exacerbated when survivors experience a lengthy and complex court process to obtain a DVO. Re-traumatisation is a persistent limitation of the court system due to survivors having to relive the abuse and face their abuser in court.⁶² The needs of survivors can be incompatible with the structure of legal proceedings.⁶³ Herman argues that if ‘one set out intentionally to design a system for invoking symptoms of traumatic stress, it might very much look like a court

⁵⁶ Winick (n 15) 38.

⁵⁷ Judith Herman, ‘Recovery from Psychological Trauma’ (2002) 52(1) *Psychiatry and Clinical Neurosciences* 98, 98.

⁵⁸ Freedman (n 15) 577; Denise Wilson et al, ‘Becoming Better Helpers: Rethinking Language to Move Beyond Simplistic Responses to Women Experience Intimate Partner Violence’ (2015) 11(1) *Policy Quarterly* 25; Robyn Holder and Kathy Daly, ‘Sequencing Justice: A Longitudinal Study of Justice Goals of Domestic Violence Victims’ (2018) 8(4) *British Journal of Criminology* 787; Robyn Holder, ‘Untangling the Meanings of Justice: A Longitudinal Mixed Method Study’ (2018) 12(2) *Journal of Mixed Methods Research* 204.

⁵⁹ Ibid.

⁶⁰ Winick (n 15); A good example of where this is implemented in practice is Specialist Domestic and Family Violence Courts in Queensland.

⁶¹ Herman *Justice from the Victim’s Perspective* (n 21) 575.

⁶² Roberts (n 47) 610.

⁶³ Herman *Justice from the Victim’s Perspective* (n 21).

of law.⁶⁴ A discussion of the systemic change necessary to facilitate a more holistic, empathetic and fair process is beyond the scope of this article. However, positive interactions with court practitioners may assist survivors in their healing process⁶⁵ or at least not create further trauma.

When Bell et al. asked DFV survivors to describe their court experiences, they often discussed their treatment by court practitioners.⁶⁶ While there was no reference to who those people were, participants expressed that being in a caring environment was, at times, a powerful healing mechanism in and of itself.⁶⁷ Participants with negative experiences described ‘feeling like a criminal’ or ‘a number standing in line.’⁶⁸ Several participants in that study reflected positively about their experiences with court staff, commenting on how ‘nice’, ‘friendly’, and ‘polite’ they were and that some went ‘beyond their jobs to be supportive and wanted to see it [the abuse] stopped.’⁶⁹ Here, court practitioners, despite their power and authority, or potentially even because of it, were able to make a substantial difference to participants’ experiences through their interactions.

DFV survivors place great emphasis on verbal and non-verbal techniques used by court practitioners, including tone of voice, body language, denunciation of a perpetrator’s violence, fair treatment, politeness, sincerity and validation.⁷⁰ For survivors to regain an adequate sense of self-worth and trust, it is critical that their experiences are heard by court practitioners.⁷¹ This can only be achieved through being given the opportunity to tell their story to listeners who will convey genuine empathy and forgo moral judgment.⁷² When a survivor is navigating the DVO court process, many of the court practitioners they interact with can assist victims in feeling seen, heard, and supported.⁷³

Easteal has reported that the reasons why survivors may not report abuse can include ambivalent responses from court practitioners and

⁶⁴ Ibid 574.

⁶⁵ Gillis (n 24).

⁶⁶ Bell (n 25).

⁶⁷ Ibid.

⁶⁸ Bell (n 25) 79.

⁶⁹ Ibid 78.

⁷⁰ Ibid; Ptacek (n 15); Roberts (n 47).

⁷¹ Winick (n 15) 77.

⁷² Bennett (n 24); Erez (n 24).

⁷³ Spencer (n 17).

bystanders.⁷⁴ The conduct of court practitioners can be instrumental in how a survivor views the success or failure of the legal outcome of court proceedings.⁷⁵ Cattaneo and Goodman discovered that an empowering experience in court was connected with DFV survivors experiencing less fear and depression, improved quality of life, and a greater likelihood that they would use the system if required in the future.⁷⁶ Fleury Steiner et al. also found that if women were satisfied with their treatment in the court system, they planned to use it in the future if required.⁷⁷ A negative court experience can be counter-productive as it may lead survivors to withdraw applications or not attend court dates due to their previous treatment within the system. In Queensland, where a breach of a DVO is a criminal offence,⁷⁸ it is imperative that survivors feel confident they can report violations and inform the court of any relevant issues that may arise during legal proceedings. This literature has informed current understanding of how survivors feel about court processes and has been pivotal in highlighting the impact that both verbal and non-verbal interactions can have on a survivor's experience within the DVO system.

While studies that analyse survivors' perspectives are critical to any future system reform, the impact of the attitudes and approaches employed by court practitioners is also essential. Previous studies have identified the benefits of judicial officers acting as 'therapeutic agents' who adopt collaborative and interdisciplinary methods to promote outcomes centred on justice and the well-being of all court participants.⁷⁹ This literature describes the instrumental role that judicial officers can play in reducing trauma and facilitating the healing process for survivors.⁸⁰ However, Weller expressly acknowledges that existing research has not adequately

⁷⁴ Patricia Easta, 'Violence Against Women in The Home: How Far Have We Come? How Far to Go?' (1994) 37 *Family Matters* 86.

⁷⁵ Herman *Justice from the Victim's Perspective* (n 21) 575.

⁷⁶ Cattaneo (n 24) 497.

⁷⁷ Ruth Fleury-Steiner et al, 'Contextual Factors Impacting Battered Women's Intentions to Reuse the Criminal Legal System' (2006) 34(3) *Journal of Community Psychology* 3.

⁷⁸ *Domestic Violence and Family Protection Act 2012* (Qld) s 117.

⁷⁹ Bruce Winick, 'Therapeutic Jurisprudence and Problem-Solving Courts' (2003) 30(3) *Fordham Urban Law Journal* 1055, 1065. See especially Douglas (n 25) Chapter 8; See also Alexa Bejinariu et al, 'Civil Protection Orders and their Courtroom Context: The Impact of Gatekeepers on Legal Decisions' (2019) 34(3) *Journal of Family Violence* 231; Ptacek (n 15).

⁸⁰ Daicoff (n 34) 11.

addressed how TJ could enhance the role of non-judicial court practitioners within the DVO court process – this study addresses this gap.⁸¹

III THE STUDY

This exploratory case study was designed to capture the insights of court practitioners (both judicial and non-judicial) operating in the DVO court process regarding their awareness of TJ.⁸² Data was drawn from nine semi-structured interviews collected from May to June 2021 in a non-specialist Magistrates Court hearing DFV matters in Queensland.⁸³ The name and location of the court complex have been removed from the reporting of this study to provide participants greater protection. Each interview was approximately 30 to 60 minutes long.⁸⁴ The questions were designed to elicit the personal experiences of court practitioners to determine whether the DVO court process can enhance its therapeutic potential rather than to discover their grievances with the system itself.⁸⁵ The questions targeted the specific techniques that practitioners may employ consciously or subconsciously, whether they believe their interactions can make a difference to the court experience of survivors, perceived adequacy of training and how they look after their mental health while practising in the DFV space.

Studying court practitioners in a single complex provides rich qualitative insights whilst also facilitating an examination of where their perspectives directly align and/or differ. The case study method (of court practitioners operating in one Magistrates Court) was necessary to provide a holistic perspective on how a group of court practitioners operate within the DVO court process. While this study provides a helpful initial benchmark, it does

⁸¹ Weller (n 12).

⁸² Ethical clearance was obtained for this study from the Human Ethics Research Committee (UHREC No. 2021000224). The study complied with Queensland, national and international guidelines, regulations and legislation concerning the ethical conduct of research involving humans.

⁸³ Anonymity of the court is required for confidentiality due to the close professional working environment of the court.

⁸⁴ Michael King et al, *Non-Adversarial Justice* (Federation Press, 2nd ed, 2014).

⁸⁵ Nigel Stobbs, 'Therapeutic Jurisprudence as Theoretical and Applied Research' in Nigel Stobbs, Lorana Bartels and Michel Vols (eds), *The Methodology and Practice of Therapeutic Jurisprudence* (Carolina Academic Press, 2019).

not necessarily represent what happens within every Queensland Magistrates Court, especially within specialist Domestic and Family Violence Courts.

The primary goal was to investigate court practitioners' self-perceptions and whether they believe they actively incorporate therapeutic practices into their interactions with DFV survivors engaged in the DVO court process and, if they do, whether they believe that their practices can have a positive impact. Participants were asked a series of open-ended questions in semi-structured interviews to gauge whether a trauma-informed approach guided their practice when interacting with survivors. The flexibility of a semi-structured interview provided an environment conducive to participants sharing personal experiences and beliefs while also providing the context surrounding them.

They were prompted to describe any relevant techniques they incorporated into their verbal and non-verbal interactions with survivors. Insight was sought into whether participants consciously or subconsciously employ these techniques to maximise the therapeutic effects and minimise the anti-therapeutic impacts of the court experience. Finally, they were asked whether they felt their practice was subject to any constraints on the way or degree to which they could incorporate therapeutic practices into their interactions with survivors.

A Methodology

A purposive sampling technique was adopted to recruit participants who could provide in-depth, nuanced information about their experiences working with survivors. As this study was interested in court practitioners' interactions at any stage of the DVO court process, the only selection criterion applied was that the participant's professional role required them to interact with survivors within the court process. As set out in Table 1, interviewees performed a range of roles. Approximately 20 court practitioners work in the court, and this study interviewed a sample of (n=9). Demographics such as gender, age and length of service were excluded to minimise the potential for participants to be identified because of the small sample size and the fact that they work in one Magistrates Court in Queensland.

Table 1: List of participants interviewed:

Participant Number	Role
Participant 1	Duty Paralegal
Participant 2	Duty Lawyer
Participant 3	Duty Lawyer
Participant 4	Court Liaison Officer
Participant 5	Social Worker
Participant 6	Counter Clerk/Administrative Officer
Participant 7	Duty Lawyer
Participant 8	Magistrate
Participant 9	Assistant to the Registrar

This study targeted participants representing the various ‘touchpoints’ survivors will likely encounter. Although quantitative studies have measured survivors’ perceptions of how they were treated in court, an in-depth qualitative study of court practitioner awareness was appropriate for a pilot investigation of this nature.⁸⁶

The interview transcripts were analysed using qualitative research software,⁸⁷ which assisted in coding data. Deductive coding, a top-down approach that involves analysis based on a predefined set of codes, was adopted.⁸⁸ Various toolkits and measures have been developed to provide an empirical basis for measuring therapeutic skills within the legal

⁸⁶ Person (n 43); Bell (n 25); Cattaneo (n 24).
⁸⁷ ‘Software to Analyze Qualitative Data’, *Delve* (Web Page, Januaty 2018) <<https://delvetool.com/>>.
⁸⁸ Carol Rivas, ‘Coding and Analysing Qualitative Data’ in Clive Scale (ed), *Researching Society and Culture* (Sage Publications, 2012).

system.⁸⁹ The coding process began with reference to the Canadian National Judicial Institute's TJ Handbook, a manual for judges relevant to the practice of TJ internationally and extra-judicially.⁹⁰ The Handbook characterises TJ skills as: 'empathy, respect, active listening, a positive focus, non-coercion, non-paternalism and clarity'.⁹¹ Therefore, any transcripts that referred to these techniques explicitly or implicitly were tagged with a code labelled 'TJ skills.'

This study aimed to go a step further, to explore the subjective perspectives of court practitioners, and determine their understanding of TJ principles. For that reason, in addition to 'TJ skills', the following codes were also informed by the existing literature and the areas not covered by previous research: 'awareness that interactions can be therapeutic', 'awareness that interactions can be anti-therapeutic', 'lack of awareness that interactions can be therapeutic/anti-therapeutic', 'clear understanding of trauma', 'lack of understanding of trauma', 'understanding of vicarious trauma', 'the ability to use TJ techniques is confined by the system/resources', 'clear moral stance on creating therapeutic outcomes'.

The apparent limitation of empirical TJ research is that the principles of TJ are often challenging to translate into a measurable framework.⁹² A further limitation of the study is that it took place in a single court complex, which means that care must be taken with the results, as they are not necessarily an accurate representation of each Magistrates Court and court practitioners across Australia. The study was also conducted in a non-specialist Magistrates Court hearing DFV matters rather than in one of the specialist Queensland Domestic and Family Violence Courts. Future investigations could include studying the efficacy of TJ practices implemented by court practitioners in those specialist courts. In addition, it was outside the scope of this study to undertake observations of

⁸⁹ Anna Kawalek, 'A Tool for Measuring Therapeutic Jurisprudence Values During Empirical Research' (2020) 71 *International Journal of Law and Psychiatry* 101581:1–16, 6.

⁹⁰ See, eg, Michael King, *Solution-Focused Judging Bench Book* (The Australian Institute of Judicial Administration Inc, 2009) 7; Lorana Bartels and Kelly Richards, 'Talking the Talk: Therapeutic Jurisprudence and Oral Competence' 38(1) (2013) *Alternative Law Journal* 31, 33.

⁹¹ Susan Goldberg, *Problem Solving in Canadian Courtrooms: A Guide to Therapeutic Jurisprudence* (National Judicial Institute, 2011) 60.

⁹² Kawalek (n 89); Waterworth (n 12).

interpersonal behaviour to corroborate the interviews with court practitioners. Of course, this could be a worthwhile initiative in the future.

IV RESULTS AND DISCUSSION

The data showed that the court practitioner participants engaged in reflective practice regarding their interactions with DFV survivors. It is worth noting that TJ principles can be applied to how court practitioners engage in reflective practice regarding both survivors and respondents. However, the focus of this study is survivors. Court practitioners' understanding of trauma and the impact that their interactions can have varied according to their role. This is not surprising, given the diverse tasks they perform. Each participant could articulate the verbal and non-verbal techniques they used in a court setting. However, their reasons for employing these techniques were varied and only sometimes trauma-informed. While court-employed practitioners were satisfied with the level of service they could provide, the externally employed practitioners, solicitors, paralegals, and social workers were not. The findings are presented in the following parts: awareness of trauma and vicarious trauma, awareness that interactions in the DVO court system can have therapeutic and anti-therapeutic effects, the verbal and non-verbal techniques adopted by court practitioners, and any constraints that court practitioners may have on their ability to engage in therapeutic practice.

A *Awareness of trauma and vicarious trauma*

To implement a trauma-informed service effectively, an understanding of both trauma and vicarious trauma is essential.⁹³ Freedman suggested that the practice of 'compassionate witnessing' can assist court practitioners working in the DVO process to respond better to individuals undergoing or recovering from trauma inflicted by DFV.⁹⁴ Compassionate witnessing involves the ability of professionals to look after their mental health, remain conscious of the suffering of others, and make 'wise and compassionate choices' about how to react to the circumstances, given their

⁹³ Sarah Katz and Deeya Haldar, 'The Pedagogy of Trauma-Informed Lawyering' (2016) 22(2) *Clinical Law Review* 359, 363; Peggy Hora, 'The Trauma-Informed Courtroom' (2020) 32(2) *Judicial Officers' Bulletin* 11; See also Judicial Commission of New South Wales, *Trauma-informed Handbook* (Judicial Commission of NSW, 2022).

⁹⁴ Freedman (n 15) 574.

role and resources.⁹⁵ Arguably, this can be difficult to do effectively if there is not a sufficient understanding of trauma. When asked about their knowledge of trauma and how it manifests, there was a disparity in how participants articulated their response to trauma. The solicitors, paralegals and social workers could succinctly describe how their understanding of trauma informed their practice, as they had all undergone specific training.

For example, Participant 5 (social worker) was able to clearly articulate how trauma in DFV survivors can manifest in an unusual manner:

Often, these women have acquired brain injuries from being concussed; they may have hearing loss or burst eardrums and are undiagnosed. Some women present as intoxicated or drug-affected, but sometimes they are traumatised. A lot of trauma responses can come across as incongruent – for instance, you could talk to a woman about a really serious situation, and she will laugh.

Without an understanding of the various ways trauma can present, it is difficult for court practitioners to provide a response that does not risk the re-traumatisation of a survivor in the DVO court process, which could ultimately be anti-therapeutic.⁹⁶ Court practitioners' explanation of how they implemented therapeutic practices arguably correlated with their understanding of trauma and the nature of domestic and family violence, TJ methods and level of training.

When asked whether trauma informs their interactions with court participants, Participant 8 (magistrate) shared:

I think it's fundamental, so yes, if someone is very traumatised, in tears, or just breaking down, then the approach needs to be far simpler.

It's essential to recognise that when performing their role, a magistrate often has little time with the victim, which can necessitate reliance on simple and brief cues to assess trauma and determine how best to apply a TJ-informed approach to the interaction. When contrasted with the social worker's response, there is a noticeable difference in how they articulate

⁹⁵ Ibid.

⁹⁶ Denise Elliot et al, 'Trauma Informed or Trauma Denied: Principles and Implementation of Trauma-Informed Services for Women' 33(4) *Journal of Community Psychology* 461, 462.

how trauma may manifest. Social workers benefit from more time with victims outside of the courtroom setting. It is well accepted within psychological practice that trauma does not just present as emotional and tearful outbursts.⁹⁷ This discrepancy may be explained by the fact that these practitioners perform diverse roles within the DVO process. When participants were asked about their approach to trauma that presents more subtly, their responses included:

Well, it's harder to spot (Participant 8, magistrate).

Participant 1 (junior paralegal) had a similar view:

Obviously, I can tell when someone is upset or distressed, but I am not sure if I can tell if they are suffering from trauma.

Likewise, Participant 2 (solicitor) expressed:

I don't know the exact signs to look out for—I don't think there are any. Everyone has different reactions and triggers.

Court practitioners were candid about the challenges faced trying to recognise trauma. Their responses also reflect the complex nature of trauma. Only Participant 5 (social worker) articulated a comprehensive overview of the different ways that trauma may manifest, which is unsurprising given their professional role, the time they have with victims, and the nature of their role and training.

While it is clear that each participant did their best to respond appropriately and empathetically, formal training based on the sensitivities particular to DFV survivors would ensure their interactions support rather than hinder the healing process.⁹⁸ Without a comprehensive understanding of the subtle signs of trauma, it can be challenging for a court practitioner to tailor both verbal and non-verbal interactions appropriately to each survivor. The DFV-TJ literature emphasises factors such as emotional recovery and survivors' psychological well-being in the court process.⁹⁹ However, to date, it has not targeted potential gaps in the knowledge of those facilitating the DVO court process, especially when it comes to trauma.

⁹⁷ Cathy Humphreys and Stephen Joseph, 'Domestic Violence and the Politics of Trauma' (2004) 27 *Women's Studies International Forum* 559, 561.

⁹⁸ Douglas (n 25) 190.

⁹⁹ Johnsen (n 19) 1565.

Secondary traumatic stress, also referred to as vicarious trauma, can affect anyone who has any contact with trauma, even if once removed.¹⁰⁰ The unsettling nature of DFV can evoke feelings of anger, despair, fear and grief in those exposed to it. Freedman proposes that court practitioners avoid these emotions and replace them subconsciously with impatience, frustration, irritation, blame, judgment and/or energy loss.¹⁰¹ Without adequate personal mental health strategies, these reactions can be detrimental to how they interact with DFV survivors in the DVO court process. It was evident throughout the interviews that court practitioners were in tune with the impact of working in the field on their mental health and implemented strategies to deal with its effects.

Eight participants mentioned that they valued working in a professional culture, where they were encouraged by their workplaces and colleagues to reflect on and unpack their experiences with each other and were provided with resources to seek professional psychological help where required.

Participant 2 (solicitor) said:

I feel like if I am not looking after myself or having my own problems, it's going to be a lot harder to try to solve someone else's problems.

Likewise, Participant 6 (administration officer) shared:

As someone who wants a career in this space, I think you have to find a way to support someone without taking on that person's stress.

Participant 9 (administration manager) was highly cognisant of the phenomenon of vicarious trauma in both herself and her staff. She mentioned:

We have an employee assistant program here, which I attend quite a lot and also encourage my staff to attend.

Of course, for these professionals to effectively serve survivors, they must prioritise their mental health. Throughout the interviews, it was reassuring to hear that court practitioners had adequate strategies and support

¹⁰⁰ Hora (n 93).

¹⁰¹ Freedman (n 15) 610.

networks to rely on. Maintaining court practitioner mental health should remain a key priority for courts and DFV support services.

B Awareness of therapeutic and anti-therapeutic effects of interactions

Court practitioners were aware of the DVO court process' potential therapeutic and anti-therapeutic effects (even if not explicitly stated). They understood their role in shaping those effects to varying degrees. This may be a product of court practitioners being cognisant of the purpose and limits of their role within the DVO court process and the team in which they work. In the DFV setting, solicitors and social workers tend to be advocates, support staff have an operational focus, and the magistrate administers the law. However, during the performance of each of these diverse roles, it is still possible for each court practitioner to influence whether a survivor finds their interactions with them empowering (or at least not disempowering).

Participants shared the following observations when asked whether they believed their interactions with DFV survivors could positively impact their court experience.

Participant 2 (solicitor) stated:

I make them feel comfortable, answer all their questions, and tell them what is likely to happen in the courtroom. Generally, clients tell me that after speaking with me, it makes a lot more sense and that they were a lot more relaxed going before the magistrate.

This solicitor explained that most women came to court carrying a significant amount of trauma and stress, that she was aware of this, and adjusted her approach accordingly. This led to the development of a trusting relationship with her clients. This provides survivors with the therapeutic outcome of feeling more prepared for court.

When asked whether they believe their interactions with survivors could make a difference in how they view their court experience, Participant 1 (junior paralegal) responded:

It can make a really big difference. I was talking to my friend about this the other day and it reminded me of the Maya Angelou quote, "people don't remember what you did but how you made them feel."

This participant was acutely aware of how short-lived and seemingly inconsequential their interactions may be. Nevertheless, while they could not do anything substantive for someone, they believed their helpfulness could still have a therapeutic effect.

Similarly, Participant 6 (counter clerk/administration officer) commented:

I do think our court seems comforting to people that they are being taken seriously and that something is being done. I hope that they would remember, if not me, the atmosphere maybe.

Participant 4 (court liaison officer) was more specific about the impact of their interactions than the above participants. This participant expressed that their interactions are often fleeting and procedural. Nevertheless, they still indicated that they think they could positively impact a court participant's experience:

They may say thank you to us when they go out, or they may not, in acknowledgement of the fact that we just talked to them like human beings.

About a tense situation involving a couple with a young child in the waiting room, this participant stated:

We broke the ice. I poked a face in front of the baby, and it screamed. Everyone laughed. You cling on to anything that will help ease the tension.

Richardson, Spencer, and Wexler suggest that the range of legal actor roles involved in the DVO court process, including court staff, judicial officers, lawyers, and support staff, can apply TJ principles to improve the well-being of those in court.¹⁰² TJ is not reserved only for those with discretionary decision-making power (i.e., the magistrate). This is evident from the comments of court participants being reported here.

While the DFV-TJ literature has consistently demonstrated that one-on-one interactions between judicial officers and court practitioners can impact whether the court process is therapeutic or anti-therapeutic for a participant,

¹⁰² Elizabeth Richardson, Pauline Spencer, David Wexler, 'The International Framework for Court Excellence and Therapeutic Jurisprudence: Creating Excellent Courts and Enhancing Wellbeing' (2016) 25 *Journal of Judicial Administration* 148, 156.

it has not considered the impact that good role modelling by professional staff can have. The collegiate behaviour exhibited by professionals in the DVO court process can be a highly therapeutic aspect of the court experience for survivors. Participant 5 (social worker) explained:

When aggrieved women are in the safe room, they see a group of women (lawyers, paralegals, and social workers) working together to ensure their safety and well-being. We are modelling to women that we can support each other and be strong together when they have been so terribly let down by the law, police, and society. That's why it should never be taken just as a professional courtesy that we all get along—it has a bigger purpose.

It is unlikely that the image of DFV survivors sitting for hours in a court waiting room would conjure a therapeutic view of the court process. However, this example demonstrates that therapeutic consequences, such as having felt heard and trauma minimisation, are more likely to follow when a group of people actively incorporate empathy, tolerance and camaraderie into their role and interactions within the legal process. The insight of this participant shows that court practitioners often do intimately understand how their practices within the existing DVO court process can positively impact wellbeing.¹⁰³

TJ does not propose that the promotion of well-being and healing should be placed above legal practitioners' paramount duty to the court and the administration of justice.¹⁰⁴ While their values can conflict, Wexler proposes that the law should, at the very least, intend to 'do no harm.'¹⁰⁵ Minow also suggests that both judicial action and inaction can be violent in and of themselves if they cause further damage to a survivor's health and well-being.¹⁰⁶

The solicitors, paralegals and social workers in this study recognise this and offer that, while legal principles must prevail, a therapeutic approach to implementing those principles is beneficial. Participant 2 (solicitor) shared a story about a case they had previously acted in, where there was

¹⁰³ Kawalek (n 89).

¹⁰⁴ Law Council of Australia, *Australian Solicitors' Conduct Rules* (2021) r 3; King (n 35) 1113.

¹⁰⁵ David Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (1990).

¹⁰⁶ Minow (n 15) 1670.

insufficient evidence for an aggrieved to be awarded certain conditions that she was hoping would be listed on her DVO:

While I understand that the magistrate didn't have enough evidence to award the no-contact or no-approach conditions, the way the magistrate explains it to clients can have a huge effect on how they walk away. For instance, the magistrate [hearing this particular case], in a frustrated tone, said, 'Why do you think he shouldn't come in 100m of you? It's a small town – that's not practical.' It was like the magistrate was telling them off for feeling afraid.

Survivors interviewed by researchers about their interactions with judges consistently mention how they were treated, the language used and how that made them feel.¹⁰⁷ Anti-therapeutic consequences can arise following such treatment when survivors feel blamed, abused, guilty and not believed.¹⁰⁸ Fortunately, the solicitors interviewed in this study were aware of these potential consequences. They offered suggestions for how judicial language and demeanour could be improved within the bounds of the system. Referring to the above case, the solicitor said:

On the other hand, the magistrate [hearing this particular case] could respectfully say, 'I can see what you said he did, but what I am going to do is give you an order which states that no matter where you are, he's not allowed to commit DV and he must be of good behaviour. There is not enough information to justify stronger conditions at this stage. Look, that's not to say in the future there might be a change of circumstances and that something might happen. If it does, you can reapply, and we can vary the order (Participant 2).

This solicitor clearly recognises that, by simply adjusting the language, tone and framing of the court order, her client would have been able to leave court more optimistically – despite not receiving the conditions she

¹⁰⁷ Douglas (n 25) 190; Hunter (n 25).

¹⁰⁸ These comments highlight the anti-therapeutic consequences for many women in the legal system. See Deborah Epstein and Lisa Goodman, 'Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences' (2019) 167 *University of Pennsylvania Law Review* 399, 403; Christine Agnew-Brune et al, 'Domestic Violence Protective Orders: A Qualitative Examination of Judges' Decision-Making Processes' (2017) 32(13) *Journal of Interpersonal Violence* 1921.

sought.¹⁰⁹ Empowerment is a fundamental component of any intervention for DFV survivors.¹¹⁰

The magistrate in this study had a different perspective about the impact of their interactions on participants in the DVO court process. Following a description of the verbal and non-verbal techniques they adopt in the courtroom, the magistrate was asked whether they believed those practices could affect how participants feel about the court experience. In response, they said:

Not really. I'd like to think so, but in reality, no. People are taking away some very limited impressions in the short time they are in court.

Those experiencing trauma may indeed be less likely to comprehend and internalise the information that is being presented to them, which will be discussed below.¹¹¹ This magistrate believed that court participants and DFV survivors would not be internalising their behaviour. Perhaps the magistrate's view that court participants and DFV survivors do not remember their verbal and non-verbal interactions is a reflection of them seeing their role as impartial arbiters above all else. However, Mack and Roach suggest impartiality may require more than the conventional passive, detached judicial approach. It may entail some degree of empathy or emotion.¹¹²

C Therapeutic verbal and non-verbal techniques adopted by court practitioners

Every participant was strongly aware of the techniques they employ when communicating with DFV survivors and court participants more broadly in

¹⁰⁹ Tom Tyler and Huo Yuen, *Trust in The Law: Encouraging Public Cooperation with the Police and Courts* (Russell Sage Foundation, 2002).

¹¹⁰ Lauren Cattaneo, Jessica Grossmann and Aliya Chapman, 'The Goals of IPV Survivors Receiving Orders of Protection: An Application of the Empowerment Process Model' (2016) 31(7) *Journal of Interpersonal Violence* 2889, 2894; Lisa Goodman and Deborah Epstein, *Listening to Battered Women: a Survivor-Centred Approach to Advocacy, Mental Health and Justice* (American Psychological Association, 2008); Aarati Kasturirangan, 'Empowerment and Programs Designed to Address Domestic Violence' (2008) 14(12) *Violence Against Women* 1465.

¹¹¹ Humphreys (n 97) 560.

¹¹² Kathy Mack and Sharyn Roach Anleu, Submission No 20 to Law Reform Commission, *Review of Judicial Impartiality* (29 June 2021).

the DVO court process. Naturally, these techniques differed depending on the role of the court practitioner. The reasoning behind the implementation of specific techniques was sometimes diverse. For example, court-employed participants were more likely to use specific techniques to ensure they presented as fair and unbiased. Alternatively, solicitors, paralegals, and social workers were more inclined to identify that they adopted verbal or non-verbal practices to make their clients feel calm and supported. This is not surprising, as court-employed practitioners are required to serve all community members in court while solicitors, paralegals, and social workers advocate for their specific clients.

The verbal techniques included using people's names and humour, explaining legalese, asking if the person has questions, speaking with clarity and positivity, affirming what people are saying and reassuring them that they are available to help. It was evident from seven out of the nine interviews that the court practitioners' beliefs regarding these techniques were derived from a solid moral foundation guiding how people, aggrieved or respondent, in this process should be treated – above all else, with dignity and respect.

Participant 3 (solicitor) described how they do not focus on presenting formally but try to make the client feel seen and heard. They explained how they will say:

'I am really sorry, I have to ask you a whole lot of questions about what's happened. I know it's going to be horrible to relive it'. I am aware of that and apologise. 'Unfortunately, I need the words he said to you and the dates things happened. If you would like to sit with a support worker and write things down, you are more than welcome to do that.'

While not mentioning it specifically, this solicitor demonstrated that they are cognisant of what Bruce Winick has labelled 'psycho-legal soft spots', where legal procedures may invoke distress.¹¹³ The solicitor is endeavouring to ensure the fact-finding process avoids secondary victimisation as much as possible. Additionally, many of the key

¹¹³ Daicoff (n 34) 414.

characteristics of the Canadian National Judicial Institute's TJ Handbook are present in this interaction, including empathy, respect, and clarity.¹¹⁴

Another solicitor (Participant 7) explained that she focuses on making her clients feel reassured in a system that is intimidating and complex:

I talk about the law like a strange theoretical thing to clients. I say the law is reactionary, this is how it works and there's a lot of things that need to be changed. I think separating out the law makes it easier for clients to not take adverse decisions that don't go in their favour as personally.

This reassurance is vital in cases involving cross applications, where the respondent to a DVO application files a sham application in retaliation.¹¹⁵ While a woman may be pleased that a DVO was awarded to her, it can be diminished because she is named as a respondent on an application against her. Such an outcome is a system paradox, highlighting that even a favourable legal outcome can have anti-therapeutic consequences.

Non-verbal techniques used by the participants were diverse and creative. The interviews also revealed that this was not the first time that court practitioners had reflected on their behavioural characteristics. For instance, typical techniques such as eye contact, body language, tone of voice, not interrupting someone, and smiling were frequently mentioned. These were also highly dependent on the role of the court practitioner and how they viewed their contribution to the process. The duty paralegal (Participant 1) explained:

When we require clients to fill out forms in the safety room, I either sit down next to them or squat – so it's more of an interaction than me standing over and talking down to people. I find this a helpful way of building rapport. It doesn't have to be verbal to make a connection with someone. Even offering them a tissue or glass of water, it doesn't take much to make someone feel comfortable. If it removes their stress by 0.1%, it's better than nothing.

This participant may be recognising the limitations on how therapeutic the process can be when commenting that removing stress is a positive

¹¹⁴ Susan Goldberg, *Problem Solving in Canadian Courtrooms: A Guide to Therapeutic Jurisprudence* (National Judicial Institute, 2011) 60.

¹¹⁵ Douglas and Fitzgerald (n 3).

outcome. The assistant to the registrar (Participant 9) shared that they had campaigned for funding for a 'safe waiting room' for women and an accompanying bathroom and kitchenette so that women would not have to encounter their (alleged) abuser before or after the court hearing. They explained that often when women lodge applications, they take them on a brief tour of the court so that they know what to expect. They remarked:

When I show women around the safety room, they ask, 'why are there so many seats?' and I say, 'they get packed' and they respond 'what do you mean they get packed? You mean this happens to a lot of people? And are you sure they are all for women in DV matters?' I say, 'Yes, we hold this court once a week, and we've created this space so that you can feel safe.' They often are shocked that we've gone to this much trouble to keep them safe.

These practices specifically align with Herman's perspective that survivors of DFV require an opportunity to tell their stories, need limited exposure to the sources of the trauma and any direct confrontation with the perpetrators of the abuse should be avoided.¹¹⁶ While the approach that this court complex has taken regarding therapeutic outcomes is positive, within the court community, it is considered as going above and beyond other non-specialist domestic and family violence courts. Both court staff interviewed said that when they had attended training days and meetings with stakeholders from other magistrates' courts, they learned that the same level of diligence facilitating a more therapeutic court process was not ubiquitous. Similarly, the court practitioners not employed by the court (the lawyers, paralegal and social worker) repeatedly mentioned that the working environment within the court was friendly, collegiate and set up well logistically relative to other non-specialist domestic and family violence magistrates' courts that they had worked with in Queensland.

D *Constraints on court practitioners' ability to implement therapeutic practices*

The DVO system has a myriad of competing priorities. These include efficient resource use, time limitations, different law enforcement philosophies, responding to those with imminent safety risks, and more.¹¹⁷

¹¹⁶ Herman *Justice from the Victim's Perspective* (n 21) 574.

¹¹⁷ King (n 35).

Where resources are finite, court practitioners may be left dissatisfied with the level of service they can offer to DFV survivors.

The court participants in the study consistently identified lack of time as a roadblock to delivering an all-encompassing trauma-informed service. At the Magistrates Court, where the study occurred, court practitioners agreed that DVF list days were the busiest and most intense. Compared to the court-employed participants, the solicitors, paralegals, and social workers who were not employed by the court were more likely to find that they were constrained by limited time.

Even though most court practitioners knew how to create therapeutic outcomes, they often felt they needed more time due to the sheer number of people in court on a given day. Participant 3 (solicitor) commented:

I know what trauma-informed service should be, and I wish I could do it.

Because the solicitor, paralegal and social worker participants deal with ad hoc clients on DFV court days, they are subject to more intense time pressure when performing their role. Lawyers, paralegals and social workers may find this particularly challenging because they see clients outside of court and, therefore, have a more comprehensive understanding of and connection with their trauma and the contextual circumstances surrounding their court matter.

The court where the study took place performs efficiently, with Participant 8 (magistrate) stating that:

We hear 30 matters a day, which sounds like a lot. In other jurisdictions, this has been recognised as the maximum that the court can realistically get through, working hard.

When asked whether they felt that they would benefit from more time with victims, the magistrate responded:

It's a challenge; if we had more time, we could spend more time with people. I am not convinced that this would result in a higher degree of satisfaction with the outcomes.

The magistrate did not believe that more time spent in court would necessarily correlate with court participants' satisfaction with the outcome they received. This aligns with the TJ notion that output should not purely

be driven by efficiency and effectiveness.¹¹⁸ Measures such as the perceived helpfulness of the court should also be considered.¹¹⁹

V CONCLUSION

This study examined court practitioners' perceptions of their awareness of TJ in their interactions with DFV survivors during the DVO court process. To date, literature has frequently flagged TJ's role in treating DFV survivors and court participants more broadly by court practitioners and how these interactions can impact their experience in the DVO court process. By focusing on a single Magistrates Court, this study provides insight into court practitioners' awareness of TJ based on their professional roles and in contrast to one another. All participants could articulate all or most of the verbal or non-verbal techniques they incorporate into their practice. Whether these techniques were used to create therapeutic outcomes consciously depended on the court practitioner's knowledge of TJ and their professional values. To practice TJ, court practitioners must act as 'compassionate witnesses' by consciously incorporating therapeutic verbal and non-verbal techniques into their interactions with DFV survivors. This article sought to provide a basis for court practitioners' awareness of TJ to be acknowledged in future considerations on creating therapeutic outcomes for court participants and DFV survivors in the DVO process

¹¹⁸ Richardson (n 102) 161.

¹¹⁹ Bell (n 25).

