

The Importance of Understanding Love and Other Feelings in Survivors' Experiences of Domestic Violence

Kate Paradine

When responding to situations involving domestic violence,¹ legal actors often have difficulty understanding the complex emotions with which they are faced.² This article uses extracts from in-depth interviews with women who have experienced domestic violence.³ It is argued that legal actors need to listen to survivors⁴ and understand their stories so that legal responses to domestic violence maximize safety, condemn violence, and do not have negative or "anti-therapeutic" effects on survivors' emotional and psychological well-being.⁵ This article does not consider the possibilities and dangers of mandatory interventions in cases of domes-

tic violence.⁶ Instead, the focus is on ways in which the words, attitudes, and personal responses of legal actors can have therapeutic and anti-therapeutic effects on a woman's process of survival when she is voluntarily involved in the legal process.

LOVE AND OTHER FEELINGS IN THE PROCESS OF SURVIVING DOMESTIC VIOLENCE

A woman's survival of domestic violence is a complex process of changing feelings.⁷ A perpetrator can exploit his partner's feelings as part of the pattern of control that often constitutes domestic violence.⁸ Many women are trapped in violent rela-

Footnotes

1. The term "domestic violence" refers here to a pattern of behaviors (including physical, sexual, verbal, and emotional abuse) in an intimate relationship used by one partner against another in order to exert power and control. Examples include threats, intimidation, humiliation, ridicule, isolation, withholding money, jealousy, possessiveness, minimization, denial, and blaming of the victim for the violence. See R.E. DOBASH & R. DOBASH, *VIOLENCE AGAINST WIVES: THE CASE AGAINST PATRIARCHY* (1979); M. PAGELOW, *WOMAN BATTERING: VICTIMS AND THEIR EXPERIENCES* (1981).
2. R. Busch, "Was Mrs. Masina Really 'Lost'?" *An Analysis of New Zealand Judges' Attitudes Towards Domestic Violence* 7 OTAGO L. REV. 17 (1993); R. Busch, "Don't Throw Bouquets At Me. . . . (Judges) Will Say We're in Love": *An Analysis of New Zealand Judges' Attitudes Towards Domestic Violence*, in *WOMEN, MALE VIOLENCE AND THE LAW* (J. Stubbs ed., 1994).
3. Extracts are taken from seven women's stories. A total of 30 in-depth interviews were conducted in England, with women who had experienced violence from their male partners. For these reasons this article is written using language that refers to female survivors and male perpetrators. For a discussion of the dangers in using social science as the basis of legal rules (such as bias, methodological problems, and generalizing from the limited to the universal) see M. Fineman & A. Opie, *The Uses of Social Science Data in Legal Policymaking: Custody Determinations at Divorce*, WISC. L. REV. 107-158 (1987).
4. The term "survivor" is used in preference to "victim" because it reflects the strength and resourcefulness shown by those who survive domestic violence. See E. Gondolf & E. Fisher, *BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS* (1988). No one term adequately reflects the experiences of all those who have experienced domestic violence. Each

person will have a unique experience and "survivors" do not constitute a single, homogenous group.

5. See D. Wexler, *Some Thoughts and Observations on the Teaching of Therapeutic Jurisprudence* 35 REVISTA DE DERECHO PUERTORRIQUENO 273 (1996) for a useful introduction to therapeutic jurisprudence. See also, L. Simon, *A Therapeutic Jurisprudence Approach to the Legal Processing of Domestic Violence Cases*, 1 PSYCHOL., PUB. POL. & LAW 43 (1995).
6. See Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996); Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505 (1998); L. Mills, *Intuition and Insight: A New Job Description for the Battered Woman's Prosecutor and Other More Modest Proposals*, 7 UCLA WOMEN'S L. J. 183 (1997); L. Mills, *Mandatory Arrest and Prosecution Policies for Domestic Violence: A Critical Literature Review and the Case for More Research to Test Victim Empowerment Approaches*, 25 CRIM. JUST. & BEHAV. 306 (1998); L. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 551 (1999).
7. J. Brown, *Working Toward Freedom from Violence: The Process of Change in Battered Women*, 3 VIOLENCE AGAINST WOMEN 5 (1997).
8. In Walker's theory of "learned helplessness" she describes the final stage of the cycle of violence when a violent incident is followed by the abuser being loving and apologetic and promising his partner that there will be no further violence. See L. WALKER, *THE BATTERED WOMAN SYNDROME* (1984). This theory does not apply to all experiences of domestic violence and the pattern of violence may change over time. See M. Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993).

tionships by the fear of further violence if they try to leave,⁹ their financial dependence, their perception that there are no other options, and their low self-esteem.¹⁰ Some may also remain because of love and attachment¹¹—to the partner, family, children, and home.¹² Christine Littleton says that when women give reasons for not leaving, such as absence of options or “love, faith, and fear,” the law hears only fear.¹³

It is crucial for legal actors to understand the experience of fear and real danger¹⁴ as well as the feelings of connection and commitment of women living through domestic violence.¹⁵ This article focuses primarily on feelings of connection, like love and faith, that are often intertwined with fear, financial dependence, and lack of self-esteem.¹⁶ Feelings of connection need to be understood in the context of the power and control of perpetrators, so that legal actors do not misunderstand the complex realities of survivors of domestic violence.¹⁷

Love appears in some survivors’ stories as faith in the partner tied up with the hopes and dreams of marriage and family life. Love of children and home play an important part in women’s decision making during the experience of surviving domestic violence. Love is also entwined with feelings of loss, hate, anger, pity, guilt, and grief during the process of separation.

FAITH IN PARTNER

One ideal of love is that it does not insist on perfection.¹⁸ All relationships require acceptance, patience, and perseverance. However, a woman experiencing domestic violence who continues to have faith and hope¹⁹ in her partner is more likely to be considered a weak victim and irresponsible mother²⁰ rather

than someone trying to make her relationship “work.”²¹

Some participants in this research described how hard it was to believe that someone whom they loved could also have such a violent side. This sometimes led to self-blame, denial,²² and minimization of the violence, as well as excuses and explanations, as ways of coping with the perpetrator’s behavior. Violent men may also use denial, minimization, excuses, justifications, and blame of the partner as a means of controlling her.²³ Caroline²⁴ tried to explain her partner’s violence as affected by alcohol.²⁵ She said,

He’s never been verbally violent—can’t even say a nasty word to me when he’s sober. I wish I’d have taken a video of him. I had him out in the kitchen baking cakes with the kids, you know. When he’s been sober he’s been fabulous, bathed them, put them to bed for me. He’s somebody else when he’s sober.

In order to escape domestic violence a woman may have to leave aspects of her partner, which she sees as positive, and begin the painful process of separation.²⁶ To avoid undermining this process, legal actors must be careful to understand some women’s ways of coping with domestic violence, which often entail continued denial, while refusing to accept the denial, excuses, and justifications for violence offered by perpetrators.

The belief that a perpetrator will change is important for

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9. This common form of violence is termed “separation assault” in M. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991).

10. The effects of domestic violence on survivors include fear and terror, depression, anxiety, anger, shame, self-blame, denial, minimization, and low self-esteem. See O. BARNETT & A. LA VIOLETTE, *WHY BATTERED WOMEN STAY: IT COULD HAPPEN TO ANYONE* (1993); K. Ferraro & J. Johnson, *How Women Experience Battering: The Process of Victimization*, 30 SOC. PROB. 325 (1983); TRAUMA AND RECOVERY (1992).

11. D. Dutton & S. Painter, *Traumatic Bonding: The Development of Emotional Attachments in Battered Women and Other Relationships of Intermittent Abuse*, 6 VICTIMOLOGY 139 (1981); D. Graham et al., *Battered Women, Hostages and Stockholm Syndrome*, in FEMINIST PERSPECTIVES ON WIFE ABUSE (K. Yllo & M. Bograd eds., 1988); V. Goldner et al., *Love and Violence: Gender Paradoxes in Volatile Attachments*, 29 FAM. PROCESS 343 (1990); L. Lempert, *Women’s Strategies for Survival: Developing Agency in Abusive Relationships*, 11 J. HERMAN, TRAUMA AND RECOVERY (1992). FAM. VIOLENCE 269 (1996).

12. These may be similar reasons why people do not end unsatisfactory relationships where there is no violence. See M. TYSOE, *LOVE ISN’T QUITE ENOUGH: THE PSYCHOLOGY OF MALE-FEMALE RELATIONSHIPS* 180 (1992).

13. C. Littleton, *Women’s Experience and the Problem of Transition: Perspectives on Male Battering of Women*, U. CHI. LEGAL FOR. 23, at 29, 44 (1989).

14. Homicide statistics show that women are in grave danger from their abusive partners and often experience increased risk of violence and murder when separating from a violent partner. See M.

Wilson et. al., *Lethal and Nonlethal Violence Against Wives*, CAN. J. CRIM. 331, 340-341 (1995); See also Mahoney, *supra* note 9.

15. Littleton, *supra* note 13, at 52.

16. See notes 10 and 11.

17. For examples of such misunderstanding by members of the judiciary, see Busch, “Was Masina Really ‘Lost?’”, *supra* note 2; Busch, “Don’t throw bouquets at me. . . .”, *supra* note 2.

18. The Western ideal of love has its roots in Christianity. One biblical definition, from 1 Corinthians 13: 4-8, is sometimes taken as the model of perfect love:

Love suffers long and is kind; love . . . bears all things, believes all things, hopes all things, endures all things. Love never fails.

19. M. Marden & M. Rice, *The Use of Hope as a Coping Mechanism in Abused Women*, 13 J. HOLISTIC NURSING 70 (1995).

20. Mahoney, *supra* note 9.

21. Lempert, *supra* note 11, at 282.

22. It has been suggested that hope can be a form of denial. See Marden & Rice, *supra* 19, at 77.

23. See J. Ptacek, *Why Do Men Batter Their Wives*, in FEMINIST PERSPECTIVES ON WIFE ABUSE, (Yllo & Bograd eds., 1988).

24. The names of the research participants have been changed to protect their identities.

25. There are many competing explanations for domestic violence ranging from a focus on individual psychology to issues of gender and power. Use of alcohol has had a very limited role to play in the search for explanations of domestic violence. A useful analysis of some of these debates can be found in CURRENT CONTROVERSIES ON FAMILY VIOLENCE (Gelles & Loseke eds., 1993).

26. Mills, *supra* note 6, at 598.

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many women who do not leave violent relationships.²⁷ Faith in her partner played an important role in Ann's story. She said, "If you've still got strong feelings for your partner you will be optimistic about things getting better."

Emma said,

All my friends say I wouldn't put up with it if a man did that to me. But when you love and trust somebody it isn't as easy as that. Your feelings don't just stop as soon as they hit you.

It is necessary for legal actors to understand that a particular relationship can seem to a survivor to be warm and loving, with the violent nature of it only gradually overtaking the loving one.²⁸ This process often takes a lengthy period of realization and adjustment and legal actors should not doubt a woman who remains in her relationship or is silent about the violence for a long time.

It is also important that legal actors consider how their responses may play an anti-therapeutic role in encouraging a survivor's hope and faith in her partner.²⁹ It has been suggested that domestic violence perpetrator programs and other legal interventions can offer false hope for changes in the partner's behavior, which never happen.³⁰ Research suggests that a woman is most likely to remain with her abuser if he attends treatment and men may use attendance as a way of manipulating both survivors³¹ and legal actors.³² This is one reason why it is considered crucial for domestic violence perpetrator programs to run alongside support services for survivors.³³

It is important that legal actors give a woman realistic information about the potential effects of perpetrator programs and other responses³⁴ so that she is able to make informed choices rather than decisions based on false hope. Such choices are complex and it may be appropriate for legal actors to support verbal information with written material so that a woman is able to reflect in her own time. Women should also be encouraged to continue the ongoing process of safety planning³⁵ by being given information about all the options available, including shelter, support, and advocacy services.

Another aspect of the feelings described in the women's stories was their hope for the relationship itself and their dreams of falling in love, marrying, and building a family.

HOPE IN THE RELATIONSHIP

The family, particularly for women, is often idealized as the site of altruism, sacrifice, care, patience, and all-forgiving love.³⁶ This can remain a powerful image even when a woman is experiencing violence in her family. Emma said,

I think I only ever put up with it because I was married and I had taken marriage seriously and tried to work at it. I kept it all to myself for a long time. I'd married so young and had wanted the marriage to work so much. I'd wanted a family. I thought that bad times like good ones were just a part of marriage. I thought that things would get better.

For Emma, commitment to the vision of family life encouraged her to persevere with the relationship.

Amelia said,

I think you need to be ready in yourself to give up on the relationship that you're in, that it's not going to work no more. That you've tried so many times that you can't keep giving him these chances.

Often, legal actors fail to understand this complex process. Caroline was very distrustful of a particular police officer who she felt had "judged" her, dismissed her views, and pressured her to take steps for which she was not ready. She compared him with her solicitor, saying,

She's very, very nice . . . very understanding. . . . And again she listened—she listened to what I wanted and what I was saying and didn't try to tell me what I should be doing. She took me for what I was.

This non-judgmental support and understanding encouraged Caroline to continue seeking advice from her solicitor, whereas she was reluctant to trust the police officer.

The challenge for legal actors is to condemn domestic violence while understanding the complex journeys of survival, so that women are not judged or blamed for their situation. Showing understanding of the woman's position while condemning her partner's behavior may help her gain confidence in herself and trust in legal responses.

The secrecy and shame surrounding the failure of marriage and intimate relationships was another important feature of some women's stories of domestic violence.³⁷ Talking about the violence or seeking help was often seen as not just risking further violence and breaking the confidence of the relationship,

27. Pagelow, *supra* note 1; Barnett & La Violette, *supra* note 10.

28. Ferraro & Johnson, *supra* note 10, at 334; L. Lempert, *The Line in the Sand: Definitional Dialogues in Abusive Relationships*, in *GROUNDING THEORY IN PRACTICE* 164 (A. Straus & J. Corbin eds., 1997).

29. Hanna, *supra* note 6.

30. Gondolf & Fisher, *supra* note 4, at 87.

31. *Id.* Pagelow, *supra* note 1; R. Busch & N. Robertson, *The Gap Goes on: An Analysis of Issues Under the Domestic Violence Act 1995*, 17 N. Z. U. L. REV. 337 (1997).

32. Busch & Robertson, *id.*

33. R. Busch & N. Robertson, "Ain't No Mountain High Enough (To

Keep Me from Getting to You)" *An Analysis of the Hamilton Abuse Intervention Pilot Project*, in *WOMEN, MALE VIOLENCE & L.*, 50 (J. Stubbs ed., 1994).

34. Hanna, *The Paradox of Hope*, *supra* note 6, discusses some of the limitations of present research into the effects of domestic violence perpetrator programs.

35. J. DAVIES & E. LYON, *SAFETY PLANNING WITH BATTERED WOMEN: COMPLEX LIVES/DIFFICULT CHOICES* (1998).

36. See F. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, in *FEMINIST JURISPRUDENCE* (P. Smith ed., 1993).

37. Lempert, *supra* note 11.

but as admitting to yourself that your marriage had failed. Rachel described this desire to solve her own problems and her reluctance to admit the extent of her partner's violence,

I kept everything to myself. . . . I suppose I tried to hide the fact that it was actually happening. You know, my idea of, you know, you get married and have children and you stay there. You know, basically it's for life and, you know, really that's what I wanted. . . . I think just really why I did keep it in for so long was because I didn't want to accept the fact that my marriage was failing.

Rachel's story shows that hope in the relationship and the reluctance to end that hope by talking about the violence, coupled with the sense of failure, shame, and fear, helps to keep domestic violence hidden.

It is important that legal actors are aware of how important this hope and sense of failure may be to a woman who is trying to cope with domestic violence. Blaming a woman for the violence or reprimanding her for her attempts to make the relationship work can only add to her sense of shame and isolation. Encouraging reconciliation between the parties is also extremely dangerous and may have a detrimental affect on a woman's personal efforts to come to terms with the violence and end the relationship. Legal actors are in a good position to convey the message to the perpetrator and survivor that violence is not acceptable regardless of the relationship between the parties. Encouraging the hope for the future that a woman can survive outside the violent relationship³⁸ may be one way of having a therapeutic effect on her emotional well-being.

LOVE OF CHILDREN

Love of their children featured heavily in mothers' decisions to stay and to leave a violent relationship. Kate's story is an example of how such decisions may appear contradictory. Kate suffered severe violence while pregnant:³⁹

He was a pig but I was pregnant, and I've got two children with him. I really wanted to try and make a go of it. And I stood an awful lot of behavior but not for very long, I mean we're talking about a year. He then turned on the children, which was when I phoned my mum. Because he turned on the children, that gave me the impetus to go.

Kate's desire to keep her children with a father led her to continue in the relationship, yet later it was her desire to keep her children safe that drove her to leave.⁴⁰ The perpetrator may use the threat of harming the children or a custody battle to prevent a woman from leaving,⁴¹ and some men use legal pro-

ceedings and contact with children as a way to control a woman after separation.⁴²

A mother suffering domestic violence is likely to be driven in different directions by love of her children, knowing that leaving and staying with her partner may have potentially negative effects. Legal actors need to be sensitive to the role that love of their children plays in women's decision making and understand that choices in a situation of domestic violence are rarely straightforward.

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ATTACHMENT TO HOME

Love is a word that is not limited to the context of relationships with people. For many of us, the home is a private place of intimacy, safety, memories, and love that can center us amidst family, friends, school, and work. The privacy of the home means that it is not unusual for a woman's experience of domestic violence to be kept secret for a long time. Also, in decisions to end a relationship, women often have to consider leaving their own and their children's home. Legal actors need to understand the painful nature of such decisions.

It is also important for legal actors to realize the damaging effects of experiencing invasion and violence in a place that is usually relied upon for its safety and security. Emma said,

I hate this house because of all the memories. . . . I could never settle here. I won't stay here, it's haunted for me.

Some women's feelings of attachment may make it important for them to remain at home. For others, separation from the home may be a crucial, albeit painful, step in the process of survival. Feelings about the home change throughout the process of surviving domestic violence. Legal actors need to understand those changes, particularly when making decisions and giving advice which has a direct impact on the home and its occupation.

FEELINGS DURING THE PROCESS OF SEPARATION

The need for safety and their changing feelings lead many survivors of domestic violence to begin a process of separation⁴³ from their partner and sometimes from their home. Acknowledging the need for separation often had far-reaching consequences for the women interviewed, including increased danger and determined efforts by the perpetrator to maintain

38. Marden & Rice, *supra* note 19, at 79.

39. See N. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 *VAND. L. REV.* 1041, at 1047 (1991), for a discussion of how violence often begins and becomes acute during pregnancy.

40. For a summary of the impact of domestic violence on children see Cahn (1991) *ibid.* at 1055-1058; A. Holtzworth-Munroe, et al., *A Brief Review of the Research on Husband Violence on Battered Women and Their Children*, 2 *AGGRESSION AND VIOLENT BEHAV.* 179 (1997).

41. Davies & Lyon, *supra* note 35, at 86.

42. Cahn, *supra* note 39; Mahoney, *supra* note 9, at 43-49.

43. Mahoney, *supra* note 9, at 5 discusses the different meaning of separation in domestic violence. Separation is not always an appropriate choice for women. Separation may not be permanent and may be one of many repeated temporary separations. Separation may also mean increased violence rather than an end to violence. See note 14.

Guilt is another important aspect of women's decision-making

control over his partner.⁴⁴ The separation process often meant that a woman had to re-examine her own sense of self, sometimes shaking confidence in her ability to make choices and decisions. It also meant coming to terms with the loss of a relationship, a home, and all the hopes and dreams of that relationship, including

the hopes for her children's future.

Trust can be an important part of negotiating a relationship after separation. Feelings of distrust and fear may make it very difficult for a woman to accept contact between her children and her former partner.⁴⁵ In the lead-up to separation, many women were implicitly and explicitly advised by legal actors and others not to trust the perpetrator or to believe his promises. In later child contact disputes, women were sometimes encouraged by lawyers and judges to trust the perpetrator and to act "in the best interests" of their children by facilitating contact. Legal actors need to be aware of the difficulty a woman may face in overcoming her fear and regaining trust in her former partner, particularly when the safety of her children is at stake.

Guilt is another important aspect of women's decision making—the guilt of the partner going to prison, the guilt of him losing his job, the guilt of the children losing a father, and the guilt of a father being separated from his children. Kate said,

I felt so guilty for leaving him, even after everything, I felt really guilty, I'd taken his baby girl away and he told me how much that hurt and I felt really guilty.

Lucy's partner spent two weeks in jail while awaiting trial and was later acquitted of attempted rape. Lucy said,

All my friends were [saying], "Why are you feeling so guilty?" I said, "You know, I loved this person once and now I've put them in prison."

The process of separation includes coming to terms with guilt, which contributes to the pressures under which women stay and return to violent relationships. Guilt also helps to explain why women may find it difficult to take the punitive action, which legal responses tend to require. It is crucial for legal actors to understand these feelings of guilt. Words spoken in court should try to avoid exacerbating such feelings by reinforcing the perpetrator's responsibility for the violence and acknowledging the strength it takes to leave a violent relationship.

Survivors of domestic violence are often afraid of experiencing further physical and emotional abuse from their partner in legal forums. For Caroline, the prospect of actually seeing her partner in court after a period of separation was a source of

real concern because she was uncertain of how she would feel when she did see him. Legal proceedings may be an opportunity for the perpetrator to exploit and manipulate that emotional uncertainty in very subtle ways.⁴⁶ This emotional dimension of legal proceedings often goes unrecognized by legal actors. Describing her mixed feelings at the court hearing in which she applied for an injunction against her ex-partner, Yvette said,

Obviously the solicitor and the judge deal with this every day but it was happening to me and to think that it was Tim, the father of Beverly [their daughter] and the bloke that I was gonna marry. It was all sort of emotional and I thought, God, I can't do this.

She continued with the application and the injunction was granted by the judge. She described her reaction,

After that, after we came out of the room my solicitor said, "How do you feel?" I said, "A bit relieved, scared, and upset. A bit mixed up really."

It is important that legal actors are aware of how legal proceedings can prompt a complex range of confusing feelings for a survivor of domestic violence. It should come as no surprise when women are sometimes reluctant to continue along certain legal routes and legal actors should *encourage* a woman by emphasizing the perpetrator's responsibility for the violence and acknowledging her courage in taking legal action.

Legal actors should always be aware of the dangers of intervening in the complex process of surviving domestic violence. Emma said,

There was one point during the divorce hearings when the barristers had to move me in the court because he [her husband] was getting aggressive and abusive. The barristers said it's because he's still in love with you. I thought they just don't understand, that's the last thing I needed him to say. I needed him to say, "Don't put up with it." I used to tell myself that he didn't mean to hurt me and he loved me.

At this point Emma needed support in separating from her abuser and space in which to overcome her feelings of attachment. Legal actors need to understand that feelings like love can be used by perpetrators and others to defend and explain the actions of violent men and to manipulate survivors and legal actors⁴⁷ in ways that can undermine a woman's efforts to free herself of the violent relationship.

This research showed that legal actors often met women with incomprehension and sometimes condemnation, appearing not even to attempt to understand the complex feelings and demands with which many survivors of domestic violence struggle. Emma referred to her perception of the limits of the law and legal actors,

I said to my doctor, the legal team was OK but I

44. Mahoney, *supra* note 9.

45. Cahn, *supra* note 39.

46. K. Fischer, et al., *The Culture of Battering and the Role of Mediation*

in Domestic Violence Cases, 46 SMU L. REV. 2117 (1993).

47. Pagelow, *supra* note 1, at 197

didn't really like any of them. They know the law, but I suppose you can't expect them to put themselves in someone else's shoes. The law doesn't have any emotion.

Is law incapable of responding to human emotions as complex as those involved in domestic violence or does it have a future as a therapeutic agent?

THE FUTURE OF LAW AS A THERAPEUTIC AGENT RESPONDING TO COMPLEX STORIES OF SURVIVING DOMESTIC VIOLENCE

Law is "founded on the fictions of formal equality and mutual free agency."⁴⁸ Therefore, the legal understanding of choice in domestic violence is usually fairly simple⁴⁹—she leaves or she stays.

The reality is that most choices facing survivors of domestic violence involve ambivalent feelings. Leaving is lonely and dangerous and painful. So is staying. Leaving can be an act of hope for a better future. So can staying. Children may be harmed by leaving. They may also be harmed by staying. Choices faced by survivors of domestic violence, like many decisions, are limited by economic, social, religious, cultural, and legal considerations. Decisions are also shaped by many different emotional forces, including fear and feelings of attachment.

When emotional factors like love and attachment are ignored, legal products are not usually flexible enough to meet individual needs. Also, interactions between survivors and legal actors are likely to be based on misunderstanding and distrust. Flawed understandings of domestic violence may also prevent a woman from identifying herself as a sufferer of domestic violence,⁵⁰ because she does not think the law has anything to offer her or because the negative image of a victim is not one with which she identifies.⁵¹

When a woman seeks legal assistance, there is often a contradiction between legal actors' definitions of success and failure and women's own definitions. For the legal actor, success is usually defined in terms of a legal product—an arrest, a conviction, an injunction, or a favorable divorce settlement.⁵² The existence of an identifiable legal product or process in relation to domestic violence is very rarely a simplistic and unqualified "success" for the survivor involved. The legal processes required usually involve a great deal of trauma and pain and

most legal products are limited in how far they respond to women's actual needs.

In this study it was found that women measured success in complex ways, which had to do with how they were treated as people, what was said to them, how it was said, and how carefully they were listened to,⁵³ as well as whether the law helped them to feel safer. Rather than focusing on the legal decisions, survivors tended to concentrate on the impression they had of the legal actors as human beings. Proceedings involving legal actors who were "cold," "distant," and "impersonal" were sometimes perceived negatively, even when the result was a legal success. The legal actors who listened, responded on a personal level, and showed thoughtfulness and human concern could give a woman the encouragement to continue her struggle. Interaction with a legal agency can be a true success if a woman feels as if the balance of power between herself and the perpetrator has been altered,⁵⁴ or she returns to her partner knowing that she can go back to a lawyer or judge for help.⁵⁵ When a woman's story is ignored, ridiculed, dismissed, or misunderstood by legal actors, she is not likely to feel comfortable to ask for help in the future.

For the legal actor, success is usually defined in terms of a legal product

EMPATHY

Knowledge of the lives of others is necessary for meaningful justice⁵⁶ and it has been suggested that connection provides the legal process with the "potential for transformation."⁵⁷ Empathy is the specific psychological phenomenon of feeling the emotion of another⁵⁸ and requires that one affectively and cognitively imagine oneself in the position of someone else,⁵⁹ analogizing with similar experiences of one's own.⁶⁰ To allow meaningful empathy, it is important for legal actors to see stories of domestic violence in the context of their own lives in order to understand, for instance, how difficult it is to end any relationship.⁶¹

Displays of empathy can have a therapeutic effect on survivors of domestic violence and can help legal decision makers to make informed choices in their responses.⁶² Empathy begins the process of meeting a survivor where she is rather

48. M. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, at 1317 (1992).

49. N. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475, 2524 (1993).

50. Mahoney, *supra* note 9, at 24-26.

51. K. Bumiller, *Victims in the Shadow of the Law: A Critique of the Model of Legal Protection*, 12 SIGNS 421 (1987); Littleton, *supra* note 13; Mahoney, *supra* note 9.

52. Cahn, *supra* note 49, at 2491.

53. For a general discussion of the importance of procedural justice, see T. TYLER, *WHY PEOPLE OBEY THE LAW*. (1990).

54. Walker, *supra* note 8, at 143; D. Ford & M. Regoli, *The Criminal Prosecution of Wife Assaulters: Process, Problems and Effects*, in LEGAL RESPONSES TO WIFE ASSAULT: CURRENT TRENDS AND

EVALUATION (N. Hilton ed., 1993); Mills, *supra* note 6.

55. Pagelow, *supra* note 1, at 219

56. R. WEST, *CARING FOR JUSTICE* (1997).

57. N. Cahn, *Styles of Lawyering*, 43 HASTINGS L. J. 1039, 1061 (1992).

58. L. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574, 1579 (1987).

59. *Id.* at 1579.

60. *Id.* at 1581-1582.

61. Barnett & La Violette, *supra* note 10 at xxii-xxv; D. Loseke & S. Cahill, *The Social Construction of Deviance: Experts on Battered Women*, 31 SOC. PROBLEMS 296 (1984).

62. Henderson, *supra* note 58.

Displays of empathy can have a therapeutic effect

than where we might wish her to be.⁶³

UNDERSTANDING LOVE AND CONNECTION

While a woman should never be encouraged to stay in a violent relationship, we need to develop ways of under-

standing the attachment described by women and support those who remain with their partners. Both staying and leaving can be normal responses to domestic violence.⁶⁴

We need flexible packages of responses that fit the stage each individual has reached in her journey to escape domestic violence.⁶⁵ We also need to “find ways of embracing battered women, of hearing their painful stories, of accepting that they might go back.”⁶⁶ Most legal responses assume a woman is leaving her relationship.⁶⁷ Injunctions often demand complete and permanent separation of the partners, ignoring the particular circumstances of the relationship from the woman’s point of view. Home alarms and emergency mobile telephones may only be available to women living separately from their partners. Some domestic violence perpetrator programs require a criminal justice system referral, which excludes men whose partners do not wish to use criminal sanctions. The move towards state criminal prosecution and enhanced evidence gathering, which does not rely on victim testimony, begins to acknowledge the difficulties faced by women in cooperating with criminal prosecutions.⁶⁸ However, universally applied, inflexible application of criminal sanctions risks disempowering and alienating some survivors, and may ignore their own assessment of their lives.⁶⁹

There are some indications that the legal system is beginning to acknowledge the complex reality for women experiencing domestic violence. Domestic violence support groups and victim advocacy services provide a safe environment for a woman to work through her feelings and make decisions.⁷⁰ Encouraging a woman to speak about her emotions may build trust and overcome her feelings of isolation. Talking itself can be empowering and healing,⁷¹ and allowing a woman to

describe positive connections to the abuser may enable her to reflect critically on her relationship and begin the process of separation.⁷² Legal actors can listen to a woman’s story and acknowledge the complexity of her situation while condemning the violence of her partner. It is also important that referrals to sources of support are made that enable a survivor to explore her complex feelings and make decisions about her future.

SUPPORTING SEPARATION

Many women enter the legal system when they are trying to separate, temporarily or permanently, from their partners. Separation was necessary at different stages for all of the women who participated in this research, but it was rarely the final end to violence that the legal system seems to envisage. Separation often increases violence⁷³ and is unlikely to end the relationship because of continued emotional commitment or attachment to the partner through a shared history, home, and children. The experiences of the women in this research suggest that the legal system and legal actors were rarely able to appreciate this complexity.

The barristers who told Emma that her ex-partner was intimidating her in court because he loved her failed to understand the dynamics of domestic violence or the tactics of perpetrators. By the time Emma had reached the stage of divorce, she had decided that ending her hope in the relationship was the only way to carry on. She needed support and reassurance in following this difficult decision through.

It has been argued that the recovery and grieving process of divorce may require acknowledgement and revisiting of the pain of the past,⁷⁴ and that some degree of conflict, polarization, and imputation of blame is necessary for a true psychological separation from the former partner.⁷⁵ The use of divorce mediation and restorative justice conferences in cases of domestic violence may endanger a woman’s physical safety, reproduce unbalanced power relationships, and give an abuser another opportunity to threaten, manipulate, control, blame, beg, and cajole his partner by exploiting her feelings of attachment.⁷⁶ This could be potentially destructive at a time when she may be attempting to overcome feelings of love and fear.

63. L. Mills, *On the Other Side of Silence: Affective Lawyering for Intimate Abuse*, 81 CORNELL L. REV. 1225 (1996).

64. Loseke & Cahill, *supra* note 61; Mahoney, *supra* note 48, at 1285.

65. Brown, *supra* note 7.

66. L. MILLS, THE HEART OF INTIMATE ABUSE - NEW INTERVENTIONS IN CHILD WELFARE, CRIMINAL JUSTICE AND HEALTH CARE SETTINGS 4 (1998).

67. Davies & Lyon, *supra* note 35.

68. See Hanna, *supra* note 6.

69. L. Mills, *supra* note 66, especially ch. 3; Mills, *Mandatory Arrest*, *supra* note 6; Mills, *Killing Her Softly*, *supra* note 6.

70. Busch & Robertson, *supra* note 33.

71. See J. Pennebaker, OPENING UP: THE HEALING POWER OF EXPRESSING EMOTIONS. (1997).

72. Mills, *Killing Her Softly*, *supra* note 6, at 598

73. Homicide statistics show that women are in grave danger from their abusive partners and often experience increased risk of violence and murder when separating from a violent partner. See M.

Wilson, et al., *Lethal and Nonlethal Violence Against Wives*, CAN. J. CRIM. 331, 340-341 (1995); See also Mahoney, *supra* note 9.

74. S. Day Sclater, *Narratives of Divorce*, 19 J. SOC. WELFARE & FAM. L. 423, 424 (1997).

75. *Id.* [citing to D. VAUGHAN, UNCOUPLING: TURNING POINTS IN INTIMATE RELATIONSHIPS (1987)].

76. H. Astor, *Swimming Against the Tide: Keeping Violent Men Out of Mediation*, in WOMEN, MALE VIOLENCE AND THE LAW (J. Stubbs ed., 1994); Fischer, et al., *supra* note 46; N. Hilton, *Mediating Wife Assault: Battered Women and the “New Family,”* 9 CAN. J. FAM. L. 29 (1991); B. Hudson, *Restorative Justice: The Challenge of Sexual and Racial Violence*, 25 J. L. & SOC. 237(1998); L. Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN’S L. J. 57 (1984); J. Stubbs, *Shame, Defiance, and Violence Against Women: A Critical Analysis of “Communitarian” Conferencing*, in WOMEN’S ENCOUNTERS WITH VIOLENCE: AUSTRALIAN EXPERIENCES (S. Cook & J. Bessant eds., 1997).

Legal actors must understand the potential role of fear, love, and other emotions in the process of surviving domestic violence. The question remains whether the legal system and legal actors can appreciate the complexity of domestic violence and respond creatively to stories like those of Ann, Emma, Caroline, Amelia, Lucy, Yvette, Rachel, and Kate in ways that are safe, therapeutic, and loving.



Kate Paradine graduated from the University of Southampton, Faculty of Law, with a first class law degree in 1995. She is currently in the process of completing her Ph.D. thesis under the supervision of David Carson. She is also a part-time lecturer in the faculty and coordinates the law and discrimination course for undergraduate and post-graduate students. In the spring, she is due to

take up a post as lecturer for national police training in Hampshire, England.

AMERICAN JUDGES ASSOCIATION

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- * Gerald VandeWalle, chief justice of the North Dakota Supreme Court
- * William Ray Price, chief justice of the Missouri Supreme Court
- * Charles Whitebread, USC School of Law

TOPICS TO BE COVERED INCLUDE:

- * Public trust and confidence in the courts
- * Community-focused courts
- * Using the Trial Court Performance Standards
- * Implementing a judicial outreach program
- * Judicial ethics and domestic violence updates
- * Diversity and ethnic equality in the courts

Plan to join us!

The tentative conference schedule and other information are on page 53 of this issue.

For registration materials, contact Shelley Rockwell at the National Center for State Courts, (757) 259-1841. Also watch for updates on the AJA Web site (<http://aja.ncsc.dni.us>) and on the special AJA Conference 2000 Web site (<http://www.law.umkc.edu/aja>).