

# Why Are We Still Talking About Domestic Violence?

By Ashley Lowe and Rebecca Shiemke



Why is this month's issue of the *Michigan Bar Journal* devoted to domestic violence? Put another way, why are we still talking about domestic violence? It's clear from scanning news events that incidents of domestic violence continue seemingly unabated, as exemplified by the following recent headlines:

- In May, Odubel Herrera of the Philadelphia Phillies was placed on administrative leave by Major League Baseball following his arrest in a domestic violence case.
- In April, the body of a woman was found and her husband was charged with her murder. She had previously separated from her husband, citing domestic violence, and filed for divorce.<sup>1</sup>

These examples of intimate partner violence are borne out by national statistics. According to a recent study by the United Nations Office on Drugs and Crime, 58 percent of the women murdered worldwide in 2017 were killed by intimate partners or family members.<sup>2</sup> The numbers equate to about six women killed every hour by someone they know. The numbers show an increase from the last U.N. study in 2012, which found that 47 percent of all female homicides were at the hands of intimate partners or family members.<sup>3</sup> Statistics indicate that women are victimized more often than men by their intimate partners, although men also can be victims of intimate partner violence.<sup>4</sup> Despite legislation and programs aimed at homicide reduction, intimate partner violence has not ended. So we continue to talk about domestic violence and, more importantly, about what we need to do differently to create safe homes for domestic violence survivors and their children.

### Domestic violence defined

Domestic violence, or intimate partner violence, "is a pattern of behaviors used by one partner to maintain power and control over another partner in an intimate relationship...[It] includes the use of physical and sexual violence, threats and intimidation, emotional abuse and economic deprivation."<sup>5</sup> The Centers for Disease Control and Prevention define intimate partner violence as "physical violence, sexual violence, stalking and psychological aggression (including coercive tactics) by a current or former intimate partner (i.e., spouse, boyfriend/girlfriend, dating partner, or ongoing sexual partner)."<sup>6</sup>

### What can we do?

Each time a public figure is charged with domestic violence, media coverage is replete with exhortations to hold batterers accountable. This uproar soon fades and the next

wave of abusers is excused and covered up. The response to violence must change for this pattern to cease.

If the #MeToo movement taught society anything, it is that in order to make bad behavior stop, everyone must hold perpetrators accountable.<sup>7</sup> The media has to stop giving famous and likable public figures a pass. Employers, including professional sports teams, must institute zero-tolerance policies, implementing sanctions even when star players are abusive to intimate partners. Individuals can show their disapproval when institutions fail to respond to abuse by not buying their products, seeing their shows, or listening to their music. Celebrity role models must show respect for human dignity, particularly the dignity of their intimate partners.

So what can *lawyers* do to end domestic violence? The judicial system plays a significant role. When courts impose and enforce certain sanctions, particularly jail time for violating protection orders, batterers reduce abusive behavior.<sup>8</sup> Judges can create safe courtrooms by making sure that batterers cannot intimidate or harass their victims in the courtroom. In addition to physical safety and emotional support, judges can create an environment where victims are provided an opportunity to share their stories. When judges understand that survivors of trauma often tell their stories in a non-linear manner, forget certain details, and may have an affect that does not match the words the survivor is saying, they are more likely to get better information from witnesses.<sup>9</sup> In addition, victims report feeling supported and able to testify accurately when judges ask questions with a concerned and congenial tone, lead courtroom procedures, provide direction and guidance, and engage in consistent eye contact with witnesses.<sup>10</sup>

Individual lawyers can make a difference, too. Lawyers can provide critical legal representation to survivors in domestic violence cases. When survivors are represented by counsel, they are much more likely to keep a protection order in place.<sup>11</sup> Lawyers can encourage survivors to come forward and tell their stories by believing them, learning about the impact of trauma on memory, and helping them to present their stories to the court. Even lawyers who represent alleged batterers can make a difference. Rather than presuming that an allegation of domestic violence in a divorce case is a tactical ploy to get the upper hand in a custody battle, lawyers should listen critically to the claims, consider whether these might be true, and conduct the case with the potential victim's safety and dignity in mind.

The questions lawyers ask clients can support and empower survivors or shame and humiliate them. A victim should not have to justify remaining in a relationship with a batterer. Survivors stay in, or return to, abusive relationships for myriad reasons—lack of financial resources, children in common, cultural and religious pressures, or fear of retaliation, to name a few. Staying does not indicate that abuse is not severe or

dangerous. When lawyers question victims about why they stay in relationships, it improperly places responsibility on the victims of abuse rather than the perpetrators. Lawyers should also avoid asking questions that suggest a victim caused the abuse, such as, “What did you do that led to this incident?” or “Why did he/she hit you?”

Lawyers and judges have a responsibility to hold batterers accountable, support victims, and set an example for treating everyone with dignity and respect. The articles in this issue are intended to help practitioners address a wide range of legal remedies available to survivors. Civil and domestic relations practitioners should consider whether a client has a tort claim arising from the batterer’s use of domestic violence. Learn about innovative criminal practices intended to hold batterers accountable and reduce intimate partner homicides. Survivors of domestic violence seeking asylum in the U.S. face new legal challenges. Learn what they are and how to fight them. Finally, in this age of technology, it’s necessary to stay abreast of the ways in which a batterer may use undetectable methods to electronically monitor the survivor.

On behalf of the Domestic Violence Committee of the SBM Family Law Section, we hope these articles will provide tools to all practitioners so that one day, domestic violence becomes a social ill of the past. ■



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## ENDNOTES

1. See, e.g., *Domestic Violence*, New York Post <<https://nypost.com/tag/domestic-violence/>> [<https://perma.cc/4GGA-89U8>]; Campbell, *N.Y. Attorney General Resigns After 4 Women Allege Physical Attacks*, NPR (May 7, 2018) <<https://www.npr.org/sections/thetwo-way/2018/05/07/609254381/n-y-attorney-general-resigns-after-4-women-allege-physical-attacks>> [<https://perma.cc/ER5C-QTAD>]; Anderson, *Phillies' Odubel Herrera Placed on Leave After Arrest*, The New York Times (May 28, 2019) <<https://www.nytimes.com/2019/05/28/sports/odubel-herrera-arrest-phillies.html>> [<https://perma.cc/HQ4A-JQ68>]; Gold and Schweber, *Body Found in Storage Unit Is Identified as Missing Teacher. Her Husband Is Charged With Murder*, The New York Times (April 4, 2019) <<https://www.nytimes.com/2019/04/04/nyregion/teacher-missing-staten-island.html>> [<https://perma.cc/YM7A-69T7>]; and Miller, *Florida city bar association president accused of throttling wife*, New York Post (May 28, 2019) <<https://nypost.com/2019/05/28/florida-city-bar-association-president-accused-of-throttling-wife/>> [<https://perma.cc/3YDN-UHJU>]. All websites cited in this article were accessed May 31, 2019.
2. *Home, the most dangerous place for women, with a majority of female homicide victims worldwide killed by partners of family*, UNODC study says, UN Office on Drugs and Crime (November 25, 2018) <<https://www.unodc.org/unodc/frontpage/2018/November/home-the-most-dangerous-place-for-women-with-majority-of-female-homicide-victims-worldwide-killed-by-partners-of-family-unodc-study-says.html>> [<https://perma.cc/3S6R-QVSE>].
3. *Global Study on Homicide*, United Nations Office on Drugs and Crime (2013), pp 13–14 <[https://www.unodc.org/documents/gsh/pdfs/2014\\_GLOBAL\\_HOMICIDE\\_BOOK\\_web.pdf](https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf)> [<https://perma.cc/L7BQ-N3YX>].
4. *The National Intimate Partner & Sexual Violence Survey: 2015 Data Brief—Updated Release*, CDC and NCIPC (2015), p 11 <<https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>> [<https://perma.cc/AF2Y-N3Q3>].
5. *What is Domestic Violence?*, The National Domestic Violence Hotline <<https://www.thehotline.org/is-this-abuse/abuse-defined/>> [<https://perma.cc/374W-RU22>].
6. *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements*, Centers for Disease Control and Prevention (2015), p 11 <<https://www.cdc.gov/violenceprevention/pdf/intimatepartnerviolence.pdf>> [<https://perma.cc/N38M-D265>].
7. *History & Vision*, me too. <<https://metoomvmt.org/>> [<https://perma.cc/VR82-MJSD>].
8. *Civil Protection Orders: A Guide for Improving Practice*, Nat’l Council of Juvenile and Family Court Judges (2010), pp 3–4 <[https://www.ncjfcj.org/sites/default/files/cpo\\_guide.pdf](https://www.ncjfcj.org/sites/default/files/cpo_guide.pdf)> [<https://perma.cc/Z2SU-3S7V>].
9. Cara Person for the Battered Women’s Justice Project, February 12, 2019, presentation on “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, Person et al, 24 Sage J Vol 1474, 1487–1489 (2018).
10. Id. at 1479.
11. Id. at 1487–1489.