Political Lawyering, One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate

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POLITICAL LAWYERING, ONE PERSON AT A TIME:
THE CHALLENGE OF LEGAL WORK AGAINST
DOMESTIC VIOLENCE FOR THE IMPACT
LITIGATION/CLIENT SERVICE DEBATE

Peter Margulies*†

The definition of political lawyering is one of the few matters on which most right- and left-wing commentators agree. Right-wing critics of the Legal Services Corporation (LSC), in the battle over the LSC's budget, target the impact litigation pursued by LSC lawyers, that seeks to change laws or policies in order to benefit poor people. Such law reform efforts, according to right-wing commentators, amount to a "political crusade by left-wing lawyers and political activists to hold up middle-class taxpayers for unbounded income redistribution and welfare schemes."¹ Left-wing commentators praise impact litigation, agreeing with conservative critics of the LSC that impact litigation is political lawyering, offering "potential for structural change."²

Most right- and left-wing commentators also agree on what is not political lawyering. Commentators on both sides assert that client service work, which focuses not on law reform but on resolving individual client

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† I thank my colleagues at the Immigration Clinic, and the battered immigrant women whom the Clinic represents. Thanks are also due Naomi Cahn, Joan Meier, and Ellen Saideman, who have commented on a previous draft of this paper. In addition, I have benefitted from ongoing conversations with Linda Mills.


complaints, is “apolitical.”\(^3\) The lone voice in the current LSC funding debate to argue against this consensus is Ralph Reed of the Christian Coalition. He claims that client service work in the domestic relations area is political, because LSC “subsidizes divorce and illegitimacy” by paying for the representation of indigents in domestic disputes.\(^4\)

The premise of this Article is that, in his assertion that client service work is political lawyering, Ralph Reed is right. Indeed, Gary Bellow made a similar point about the political content of both impact litigation and client service work in a classic article written almost twenty years ago.\(^5\) Of course, Reed and Bellow are hardly ideological soulmates. Reed disapproves of the political content of service work, while Bellow heartily endorses it. On that point, this Article sides with Bellow. It employs the example of domestic violence lawyering\(^6\) to demonstrate why Bellow and

3. See Abel, supra note 2, at 577. For the conservative view, see Marshall J. Breger, Disqualification for Conflicts of Interest and the Legal Aid Attorney, 62 B.U. L. Rev. 1115, 1137–38 (1982) (contrasting choosing cases because of their “social significance” with choosing cases where the lawyer is the attorney of individual clients rather than “of the poor generally”).

4. See Stephen Labaton, Back From the Brink, the Legal Services Corporation Discovers It’s in Danger Again, N.Y. TIMES, Mar. 31, 1995, at A28 (quoting Ralph Reed).


Reed are correct that client service work has political content, and why Bellow is right that such political content is central to providing legal services to poor people.

This Article situates the impact litigation/client service debate as one of three dichotomies which privilege detachment over connection in legal practice. The other dichotomies in this trio divide the professional from the personal and the public from the private.

Legal education teaches us that personal sentiment is dangerous professionally, because emotion and personal commitment can cloud the exercise of neutral professional judgment. While public interest and poverty lawyering aspire to the integration of professional goals and personal commitments, these forms of lawyering can also dichotomize the professional and the personal. Impact litigators, in particular, feel tension between advancing a cause and safeguarding the interests of individual clients. Indeed, this tension has abetted conservative attacks on the legitimacy of impact litigation and has spurred a debate within progressive circles. A leading philosopher of legal ethics and public interest law, David Luban, believes that the lawyer's "betrayal" of her client

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10. See Breger, supra note 3.
for the cause is in some cases required, not just permitted.\textsuperscript{11} Opposing this view, Bellow and co-author Jeanne Kettleson place a higher priority on the lawyer’s relationship with her client, and are reluctant to permit, let alone require, such manipulation.\textsuperscript{12}

Lawyers representing domestic violence survivors experience different tensions than do other public interest lawyers. The primary peril in this area of practice is not the lawyer’s betrayal of clients, but rather her over-identification with them.\textsuperscript{13} Yet, as the pioneering domestic violence lawyer and theorist Elizabeth Schneider notes, personal connection to clients is central to domestic violence lawyering.\textsuperscript{14} Lawyers representing survivors of domestic violence cannot heed legal education’s directive “to distrust our intuition, to hide who we are and to detach ourselves from our experience of who we are.”\textsuperscript{15}

Feminists, who have targeted the professional/personal split, also critique the public/private distinction, which separates society into a male realm of rational discourse on public issues such as electoral politics, and a female realm of emotional, private issues which include the family.\textsuperscript{16} Even the poverty law theorists of the past thirty years have accepted a variant of the public/private distinction, attaching greater importance to public benefits issues than to family law issues which reflect gender inequality within the “private sphere.”\textsuperscript{17} In contrast, the struggle against domestic violence requires that society lift the veil of the private to deal with the gender inequality beneath.

This brings us back to the impact litigation/client service debate.\textsuperscript{18}


\textsuperscript{13.} See Meier, supra note 6, at 1351. See infra note 60 and accompanying text.

\textsuperscript{14.} Schneider et al., supra note 7, at 115.

\textsuperscript{15.} Schneider et al., supra note 7, at 115.


\textsuperscript{17.} See Margulies, supra note 6.

\textsuperscript{18.} A rich literature on lawyering recently has developed that seeks to move away from dichotomies into a more creative exploration of context. See Gerald P. López, Rebellious Lawyering (1992); Naomi R. Cahn, Inconsistent Stories, 81 Geo. L.J. 2475 (1993); Naomi R. Cahn, Styles of Lawyering, 43 Hastings L.J. 1039 (1992); Clark D. Cunningham, A Tale of Two Clients: Thinking About Law as Language, 87 Mich. L. Rev. 2459 (1989); Herbert A. Eastman, Speaking Truth to Power: The Language of Civil Rights Litigators, 104 Yale L.J. 763 (1995); Stephen Ellmann, The
Because impact litigation can “make law,” poverty lawyers and commentators have viewed it as the most rational, efficient way to address inequality. In contrast, commentators have regarded client service as offering little potential for social change and much risk of a lawyer developing a disabling emotional involvement in client problems. However, as Bellow noted in his classic piece, this view ignores the

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19. See Abel, supra note 2.

transformative potential of service work’s personal dimension. Ultimately, public interest lawyers “make law” not just by overcoming and creating precedents, but through the myriad ordinary interactions which determine whether subordinated people have more power to affect their futures. In client service work, lawyers work through these interactions one case at a time.

Part I of this Article examines how domestic violence lawyering liberates these crucial interactions from the “private sphere.” Part II discusses how domestic violence lawyering, with its focus on the links between the ideology of patriarchy and affective issues in individual clients’ relationships, integrates the professional and the personal. Part III argues that the struggle against the pervasive ideology of patriarchy transcends distinctions between impact and service work. In challenging these dichotomies, domestic violence lawyering realizes Gary Bellow’s vision of a more engaged, less bureaucratic public interest law.

I. The Public/Private Distinction

Domestic violence lawyering poses its most direct challenge to the public/private distinction. Since domestic violence occurs in the traditionally private realm of the family, society has often marginalized it as the product of “individual pathologies,” on the part of both batterers and survivors. In fact, domestic violence is a global form of inequality, generated by “shared social norms and conventions” and buttressed by disparate legal treatment.

Consider how the public norms of immigration law reinforce the subjection of immigrant women. An important basis for legal immi-

21. Bellow, supra note 5.

migration into the United States is family relationships, including marriage.\textsuperscript{25} When a United States citizen marries an immigrant, the couple typically must live together for two years,\textsuperscript{26} and the citizen spouse must submit a petition shortly before the expiration of the two-year period, seeking lawful permanent resident status for the immigrant spouse.\textsuperscript{27} A waiver of these conditions is now available in cases of domestic violence.\textsuperscript{28} But because the waiver does not cover all cases, these immigration conditions become a framework for fear when the citizen starts to abuse his immigrant spouse, knowing that she still depends on him for her immigration status.

One example from the files of the St. Thomas University School of Law Immigration Clinic illustrates how this fear can become a daily ritual for immigrant women.\textsuperscript{29} The husband of one Immigration Clinic client beat her repeatedly because she did not serve dinner at exactly 6:00 p.m. and because she had looked for a job. Our client became despondent because of her husband's relentless physical abuse and his threats of noncooperation regarding her immigration status. Ultimately, she attempted suicide.\textsuperscript{30}


\textsuperscript{26} 8 U.S.C.A. § 1186a (West Supp. 1995).


\textsuperscript{29} I also cited this example in Margulies, supra note 6.

\textsuperscript{30} Statistics illustrate the pervasiveness of the problem of domestic violence, not just for immigrant women but for all women. "Domestic violence is the leading cause of injury to women in the United States." Elena Salzman, Note, The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention, 74 B.U. L. Rev. 329, 329 (1994). We can infer from statistics that two to four million women suffer abuse every year, yielding an average of one incident of abuse every 12 seconds. Salzman, supra, at 329. Between 21\% and 34\% of all women will suffer physical assault by an intimate male as adults. See Mary P. Koss et al., No Safe Haven: Male Violence Against Women at Home, at Work, and in the Community 41, 42 (1994). One authoritative study found that three out of every 100 women surveyed reported that their husbands had "severely assaulted" them during the previous year: the women had been "punched, kicked, choked, hit with an object, beaten up, threatened with a knife or a gun, or had a knife or gun used on them." Koss, supra, at 43. Domestic violence is the cause of homelessness for 50\% of homeless women. See Ellen L. Bassuk, Social and Economic Hardships of Homeless and Other Poor Women, 63 Am. J. Orthopsychiatry 340, 345 (1993); Angela Browne, Family Violence and Homelessness: The Relevance of Trauma Histories in the Lives of Homeless Women, 63 Am. J. Orthopsychiatry 370, 376 (1993); Gretchen P. Mullins, The Battered Woman and Homelessness, 3 Brook. J.L.
The use of immigration law as a weapon against battered immigrant women is only one example of how public norms shape ostensibly private violence. Other examples include the reluctance of law enforcement officials to arrest, detain, and prosecute batterers;\textsuperscript{31} the lack of financial and interpersonal support for women who seek to leave abusive relationships;\textsuperscript{32} and the tendency of courts to overlook domestic violence when making custody determinations.\textsuperscript{33} In addition, the traditional marginalization of family law issues in federal law and federal jurisdiction hampers responses to domestic violence. Domestic violence often assumes an interstate character when survivors flee to another state or when abusers seek an out-of-state divorce and child custody decree.\textsuperscript{34} While reform is proceeding in each of these areas,\textsuperscript{35} each reflects public determinations, tacit or active, about the relative priority of women's claims.

The challenge to the public/private distinction posed by domestic violence work also suggests the need for a shift in the focus of poverty law. Poverty law theorists typically have devoted most attention to public benefits, because of the potential for redistribution of resources. Many have derided family law, including work against spousal abuse, as promoting only "intraclass transfer of resources" among the poor.\textsuperscript{36}

\textsuperscript{31} See Navarro v. Block, 72 F.3d 712 (9th Cir. 1995) (plaintiffs' assertion that Los Angeles County Sheriff violated equal protection clause by assigning lower priority to 911 calls reporting domestic violence stated a claim under 42 U.S.C. § 1983).

\textsuperscript{32} See Mahoney, supra note 6, at 23.


\textsuperscript{35} For example, the Federal Violence Against Women Act of 1994, supra note 24, allows survivors of domestic violence to bring civil rights suits in federal court.

\textsuperscript{36} See Abel, supra note 2, at 609. But see Violence Against Women Act of 1994, supra note 24 (acknowledging the "importance of redressing sexual inequalities"). See also Katz, supra note 20, at 40 ("By the 1950's, Legal Aid had become largely . . . a party to conflicts among the poor, largely in domestic-relations matters.").
This discounting of family law is misguided for two reasons. First, the discounting of family law by the traditional left reflects a simplistic view of power in the lives of poor women. The traditional left sees power as operating one-dimensionally, with government, joined by the market, as the oppressor. More sophisticated accounts of power suggest that this view, while not wrong, is nonetheless incomplete. Poor women experience oppression in a number of dimensions of their lives. One dimension is the cruelty or indifference of government and the market. Another dimension is gender inequality within poor communities, which government and the market do little or nothing to alleviate. Traditional left accounts of poverty ignore this gendered dimension.

The second argument against the traditional left's discounting of family law stems from the linkage of gender and poverty. As the feminization of poverty demonstrates, gender inequality causes poverty in America and the world. As noted earlier, domestic violence is the cause of homelessness for fifty percent of all homeless women in the United States. In addition, fear of domestic violence hinders women from getting and keeping jobs.

Lawyering against domestic violence seeks to address these issues. Lawyers can help survivors through a repertoire of methods, from obtaining orders of protection against violence, to representing battered women in divorce, custody, public assistance, housing, and criminal defense matters. Additionally, lawyers can work with battered women's organizations on governance, financing, and community development issues.

Such a comprehensive approach has public ramifications because it can help empower women, challenge gender inequality, and break the cycle of women's poverty.

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38. See Winter, supra note 37.
41. See Crenshaw, Mapping the Margins, supra note 6.
42. See Mullins, supra note 30.
II. The Professional/Personal Dichotomy

Just as domestic violence lawyering challenges the public/private dichotomy, it questions the opposition of the professional and the personal. By “professional,” this Article refers to a conception of the lawyering role that stresses emotional detachment from clients, and that views “winning” some kind of legal relief as the underlying goal of representation. “Personal,” on the other hand, refers to a conception which values the affective ties between lawyer and client.

The breakdown of the professional and the personal in domestic violence lawyering is a positive development resulting from three factors: the proximity of many domestic violence lawyers to the experience of domestic violence; the intermingling of an oppressive patriarchy and the client’s often deeply felt attachment to her batterer; and the trauma and isolation experienced by the survivor. These interrelated factors make the personal dimension central in domestic violence work. They also change the main risk for the lawyer from betrayal of the client to over-identification with the client.

The proximity-of-experience point is most clear. For many women lawyers doing domestic violence work, the threat or the actuality of domestic violence is a frighteningly real concern which necessarily triggers identification with the client. This point is brought home in Martha Mahoney’s groundbreaking piece, Legal Images of Battered Women, which tells stories of survivors of domestic violence. Mahoney acknowledges, “[o]ne of these stories is my own.” Liz Schneider notes

44. Tony Kronman’s vision of practical judgment, which hinges on the interaction of sympathy and detachment, is a richer version of this view. See Kronman, supra note 8.


46. See Mahoney, supra note 6.

47. Mahoney, supra note 6, at 8.
that woman abuse "was something women experienced in our homes... It happened to people in their personal lives."48

This personal connection in domestic violence representation pushes the boundaries between the personal and the professional. In most other kinds of poverty law work, class issues separate attorneys from clients. Most attorneys have never received AFDC, been evicted from their homes, or filed for bankruptcy. While differences of class and race still occasion alienation in domestic violence lawyering,49 the pervasive, palpable risk of violence against women creates a potential source of connection not present in most other kinds of poverty law.50

This connection offers both promise and peril for domestic violence lawyering. The promise lies in the fact that this connection combats the pressure on the public interest lawyer to betray her client for a cause. The risk of betrayal is most salient in impact litigation,51 notably when a defendant offers a settlement to a plaintiff. The settlement aids the plaintiff but "moots out" the lawsuit. A lawyer who cares about her cause but feels little personal connection to her client may use persuasive techniques bordering on coercion, or disclose less about the proposed settlement than is ethically appropriate, in order to secure the plaintiff's continued cooperation.52


49. See Crenshaw, Mapping the Margins, supra note 6.

50. For male lawyers doing domestic violence work, the challenge is greater. Men must think their way into the experience of women, which is necessarily an incomplete and imperfect endeavor. Men must also come to terms with the reality of domestic violence which they may have committed themselves. That understanding can help them realize why domestic violence is a pervasive phenomenon.

51. See supra note 11.

52. Indeed, in one of this year's most bizarre episodes of political theater, the named plaintiff in Roe v. Wade made just such a claim about her attorney. Cf. 'Jane Roe' Joins Anti-Abortion Group, N.Y. Times, Aug. 11, 1995 at A12 (discussing the apparent change of heart of Norma McCorvey, the "Jane Doe" of Roe v. Wade, who announced that she was joining Operation Rescue, and now opposed abortions after the first trimester). Sarah Weddington, Ms. McCorvey's lawyer in Roe, did little to demonstrate any connection with her client in her remarks about the incident, asserting that "the case was not about her... the case was a class action." See David Behrens, Change of Heart; 'Roe' of Roe vs. Wade Says Abortion Should Be Illegal, Newsday, Aug. 11, 1995, at A5 (emphasis added). In a Nightline interview, Ms. McCorvey asserted that Ms. Weddington should have told her more about the possibility of getting an abortion in Mexico, which Ms. McCorvey said Ms. Weddington herself had done. According to Ms. McCorvey, Ms. Weddington did
The interests at stake are different, however, when domestic violence survivors seek to drop requests for injunctions against abuse. On some occasions, a client may in fact feel safer having dropped the request for an injunction, or that the steps toward independence she has taken thus far will help her cope with a relationship she does not wish to terminate. In other cases, however, the client may be in denial about the prospects for continued or intensified violence if she returns to the abusive relationship. The lawyer may have good reason to believe, based on her experience, what the client denies: that the client faces greater danger upon her return.

In these situations, a lawyer should not hesitate to make a personal disclosure: that she will worry about the client if the client returns to the batterer. The lawyer should make this disclosure for its own sake, to reaffirm her connection with her client, and for the instrumental purpose of getting the client to reconsider her decision. This disclosure is important, even though the lawyer's invocation of personal sentiment for her client goes beyond the traditional client-counseling model of neutral recitation of risks and benefits.

Despite its trespassing beyond established lawyer roles, the lawyer's invocation of her personal relationship with the client is not a betrayal of the kind which arises in the impact litigation context. The lawyer's expression of personal sentiment does not serve the interests of unidentified others in a class or cause, as happens when the lawyer uses her personal relationship to influence a client to stay the course in an impact case. Rather, the lawyer is invoking her personal relationship to protect the client from harm. This invocation of personal ties admittedly is reinforced by the professional power of the lawyer over the client. The lawyer is using her professional power not on a blank slate, however, but on the overwhelming power of patriarchy, which has in part constructed the client's views of "responsible" behavior within the family.

53. See Meier, supra note 6. Cf. Jo Dixon, The Nexus of Sex, Spousal Violence, and the State, 29 Law & Soc'y Rev. 359, 371–72 (1995) (arguing that "women who file but later drop charges are not passive but are engaging in a rational power strategy as they attempt to manage conjugal violence").

54. See Mahoney, supra note 6, at 66.

55. See Alfieri, Reconstructive Poverty Law Practice, supra note 18.

56. I am indebted to Joan Meier for refining this point. Cf. Mahoney, supra note 6, at 38 (noting courts' view that a survivor of domestic violence may return to her abuser because "she may believe that her children need a father" (citing Fennell v. Goolsby,
By warning her client against returning to the abuser, the lawyer's action here clashes with the conventional view that the lawyer's responsibility is to uphold the client's wishes, not to protect her safety. Lawyers typically leave the latter concern to the helping professions, such as social work. Yet, when the power of patriarchy unduly influences the client’s wishes, the distinction between legal neutrality and helping breaks down.

This is not to deny that connection has risks in domestic violence lawyering. While the pervasive risk for impact litigators is betrayal of clients, the defining risk in domestic violence lawyering is over-identification with survivors of domestic violence. Over-identification can often lead the lawyer to equate the client’s interests with the client’s success in living apart from her abusive partner.

The problem with a lawyer viewing her client’s living apart from an abuser as “success” is that this view discounts the value survivors place on intimate relationships, including relationships with abusive partners. Many domestic violence survivors retain emotional attachments to their batterers. In addition, survivors' attachment to their children is a central factor. A child’s nightly question, “Where’s daddy?” will dampen even the most stalwart survivor’s resolve. A lawyer focused solely on the

630 F. Supp. 451, 456 (E.D. Pa. 1985)). Martha Fineman argues that the view of fatherhood as “foundational” for the family is itself an artifact of patriarchy. See FINEMAN, supra note 16, at 113. While the equation of fatherhood and patriarchy is compelling, it may not persuade a mother who has heard from her children about how much they “miss” their daddy.” This intermingling of gender inequality and affective relationships is another example of the merging of the professional and personal in domestic violence lawyering. See supra notes 44–55 and accompanying text.

57. See Margulies, supra note 6.
58. See Meier, supra note 6, at 1349–56 (discussing phenomenon of counter-transference, in which professionals identify too strongly with clients).
59. See Meier, supra note 6, at 1352; Mills, supra note 6. One example of the durability of these ties is the recent trial of Warren Moon, the Minnesota Vikings quarterback, who was charged with spousal abuse, specifically scratching, hitting, and choking his wife, Felicia. Prosecutors had to compel Felicia Moon to testify under a new state law. On the stand, Ms. Moon said that she had been at fault in the incident. A jury took less than half an hour to acquit her husband. The defendant’s lawyer, noting that the couple had been together for almost 25 years, since they were both 16 years old, told the jury, “This is a love story, folks, not an assault.” Kate Murphy, Jury Rapidly Acquits Moon of Spousal Abuse Charges, N.Y. TIMES, Feb. 23, 1996, at B12. A photograph of the scene in the courtroom immediately after the verdict, capturing Felicia Moon’s tearful relief and exhilaration, testifies to the intermingling of affective ties with abuse that makes many domestic violence cases so difficult. Murphy, supra.
importance of the client's separation from her abuser will fail to appreciate the role such attachments play in the lives of survivors. This failure in turn increases the risk that the lawyer will blame her clients when they return to abusive relationships\textsuperscript{60} and reject them when they need her help again.

The dilemma for lawyers doing domestic violence work is that they cannot fully represent a client without subjecting themselves to the risk of over-identification, since the emotional and physical effects of violence on survivors make “getting personal” the most effective way to reach the client.\textsuperscript{61} Commentators have recognized the trauma suffered by domestic violence survivors, drawing connections between domestic violence, terrorism, and torture.\textsuperscript{62} What might seem like professional detachment in other situations can appear to a survivor to be studied bureaucratic indifference. Developing rapport with a domestic violence survivor is necessary for getting information and requires that a lawyer express allegiance with her client.\textsuperscript{63} In other words, when a client expresses guilt about leaving an abusive relationship and in the process separating her children from their father, the lawyer should be prepared to say, “you did the right thing.”

With this declaration, the lawyer also assumes a role necessary for combating the survivor’s isolation: the role of witness.\textsuperscript{64} To emerge from the “private realm,” the survivor must tell her story. Otherwise, like victims of more visible scourges,\textsuperscript{65} she risks oblivion. Telling her story to

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\begin{itemize}
  \item \textsuperscript{60} See Meier, supra note 6, at 1352.
  \item \textsuperscript{61} See Margulies, supra note 6.
  \item \textsuperscript{63} See Stephen Ellmann, Empathy and Approval, 43 Hastings L.J. 991 (1992).
  \item The vision of lawyer as witness is also important in other countries. See Raymond J. Michalowski, Between Citizens and the Socialist State: The Negotiation of Legal Practice in Socialist Cuba, 29 Law & Soc'y Rev. 65, 87 (1995) (quoting a Cuban lawyer working in a law collective who observes that, “A] large part of my work is just being someone my clients can talk with about their problems.”).
  \item \textsuperscript{65} See Terrence Des Pres, The Survivor (1976) (discussing testimony of survivors of the Holocaust).
\end{itemize}
even one other person allows the client to affirm her humanity—the very quality the batterer seeks to extinguish in his quest for control. This affirmation is inherently a form of political action, \(^{66}\) even though it involves a personal revelation, and, in the context of a conversation with a lawyer, a revelation in the course of communications to a professional.

Having told her story to the lawyer, the survivor of domestic violence may not follow up with action of a more instrumental kind. She may not seek an injunction against further violence. Alternatively, if she has sought an injunction, she may seek to vacate it. A client’s decision not to follow up does not render the lawyer’s effort to listen useless from a professional point of view. As Hannah Arendt notes about the Holocaust, when there are witnesses, “nothing can ever be ‘practically useless,’ at least, not in the long run.” \(^{67}\) The witnessed story persists as an emancipatory moment in the survivor’s remembrance, suggesting that things can be different. A survivor may need to gather many such moments together over time to achieve independence, if that is her goal. But a lawyer can help most effectively by placing less priority on short-term professional goals—did her client keep the injunction in place?—and more priority on witnessing the survivor’s slow, painful, and uncertain process of empowerment.

Consider the story of “Anna Novo,” another client of the St. Thomas Immigration Clinic. Ms. Novo, who was from Thailand, had married a United States citizen. After prolonged psychological and physical abuse by her husband, she left with the two children from the marriage. Many members of the Thai community, including potential employers, said she caused the problem, because she “talked back” to her husband. Indeed, to many members of the Thai community, Ms. Novo’s leaving her husband denoted a kind of insanity. Her husband, with whom she maintained contact, said the same thing. Ms. Novo felt powerless in the face of this pervasive disapproval. The Immigration Clinic worked with Ms. Novo in 1994 to obtain an injunction against her husband that, among other relief, barred him from committing further abuse and awarded her custody of the children. On the way out of the courthouse, Ms. Novo turned to the students in the clinic, and asserted, “Now, I have power.”

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The clinic's latest contact with Ms. Novo matches the affirmation of that moment at the courthouse, but only after some twists and turns along the way. On a positive note, Ms. Novo received a battered spouse waiver from the Immigration and Naturalization Service which led to her obtaining lawful permanent resident status in the United States. But Ms. Novo, like many survivors of domestic violence, also asked the clinic to vacate the injunction she had obtained against her husband. Subsequently, her husband was granted a divorce and custody of their children, based on his fraudulent representations to a court in another state. Mr. Novo, who previously had been convicted of kidnapping children from a prior marriage, planned to change the names of his and Anna's children and take them to Costa Rica. At the last moment, the lawyers who were helping Ms. Novo with her divorce and custody problems secured an injunction barring Mr. Novo from leaving the country. Mr. Novo was arrested, and Ms. Novo and her children were reunited.

It is tempting to dismiss Ms. Novo's moment of self-assertion at the courthouse in light of the events that followed. One could conclude that Ms. Novo surrendered her power when she had the first injunction vacated. Such a dismissal, however, would privilege a short-term, narrowly instrumental perspective on lawyering over a perspective which integrates instrumental and affective concerns over time. Ms. Novo's story to date suggests that, despite the provisional nature of her moment of power at the courthouse, the experience was nonetheless crucial. In the bleak days which followed Mr. Novo's kidnapping of their children, that moment, no less than the more tangible benefit of lawful permanent resident status, showed that power can flow in more than one direction. This destabilization of hierarchy made Ms. Novo's ultimate empowerment possible.68

III. The Impact Litigation/Client Service Dichotomy

Lawyering against domestic violence breaks down the impact litigation/client service distinction in public interest law. This dichotomy, like the public/private and professional/personal dichotomies, privileges detachment over connection. In addition, like the others, the impact/service dichotomy has a gender subtext.

The gender subtext emerges because of the salience of family law as a source of service work. While service work can arise in any substantive area, including public benefits, housing, or consumer law, commentators typically have linked family law practice with the stereotype of service work as routine and apolitical. Commentators have critiqued family law as being apolitical because of its supposed tendency to produce “intraclass transfer of resources” from poor men to poor women.

While poverty law programs have always done a significant amount of family law, a traditional concern among poverty lawyers is that family law does not lend itself to an impact case agenda. This view holds that such individual service work is not merely apolitical, but is also counterproductive, draining resources away from impact work. Since the 1960s, the preferred method of dealing with this problem has been to separate service work from impact work bureaucratically by establishing specialized centers focusing on impact work in centralized, “downtown” locations, while leaving the service component to neighborhood offices.

The geographic and functional separation of specialized impact litigation offices and service offices is an apt metaphor for two other kinds of detachment. First is poverty law’s detachment from other disciplines, particularly the “helping professions” such as social work. Second is the lawyers’ detachment from clients. Each of these separations has robbed poverty law of empowering sources of connection.

Such separations reflect an exaggerated belief in the efficacy of changing “the law on the books” in the emancipation of subordinated groups. The lawyers in the century’s most significant impact case, *Brown v. Board of Education,* did not hold to this view; they recognized that litigation, interdisciplinary collaboration, and community organization had

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69. See, e.g., Abel, *supra* note 2, at 609.
70. See, e.g., Abel, *supra* note 2, at 609.
71. See Abel, *supra* note 2, at 566, n.565 and accompanying text.
73. See Bellow, *The Legal Aid Experience,* *supra* note 5. Of course, this separation had antecedents decades older than the 1960’s, including most notably the NAACP lawyers who ultimately formed the NAACP Legal Defense and Education Fund, Inc.
to proceed together. However, the 1960s poverty lawyers focus on “New Property” rights to public benefits, the trend toward specialized law reform offices which did no service work, and the chilling effect of Legal Services Corporation guidelines in the 1970s impeded the coordination of litigation, interdisciplinary collaboration, and community mobilization.

The procedural safeguards won by welfare recipients in the “New Property” cases such as Goldberg v. Kelly, together with the rationalization of anti-poverty programs away from hands-on social worker practice, made interdisciplinary collaborations more difficult in anti-poverty work. The development of separate offices for law reform litigation dovetailed with the critique of caring professions in the “New Property” movement—in part a reaction to the overreaching of social workers, with their midnight searches and “man in the house” rules. For the “New Property” poverty lawyers, social work was a form of social control. Establishing legal rights for welfare recipients was a way to break the power of the social work discipline over the lives of people in poverty. Collaboration with social workers and other members of the “caring” disciplines was viewed as a step backward.

The geographic and functional separation of impact work from client service work also led to detachment from clients. In the rarefied atmosphere of law reform offices, lawyers became used to thinking of the client abstractly, as a “source of issues.” Lawyers who reduce clients to mere sources of issues do not have to spend much time with

76. African-American school teachers were a vital constituency for the NAACP’s legal campaign against segregation. See Mark V. Tushnet, The NAACP’s Legal Strategy Against Segregated Education, 1925-1950, 42-43 (1987). In addition, Kenneth Clark’s testimony in the desegregation cases about his famous doll experiments, in which African-American children preferred white dolls to Black dolls, is still the most prominent use of social science in law. See John Monahan & Laurens Walker, Social Science in Law: Cases and Materials 138-40 (1994).

77. See Margulies, supra note 6.


80. See Davis, supra note 20, at 84-86.


82. See Bellow & Kettleson, supra note 12, at 362.
their clients. As a result, the "immediate, personal aspects of the lawyer-client relationship that are basic to providing legal or any other human service" become a distraction; they "cause delay and make things 'too messy.'"

This wariness toward clients obscures the fact that, while changing the law on the books is crucial, it is only a first step. Intensive service work, which Gary Bellow described almost twenty years ago as a "focused case" strategy, is necessary to vindicate a legal right established on the books. Service work must complement partnerships with social service agencies and activists.

This is particularly true when vindication of a legal right defies a ubiquitous paradigm, such as patriarchy. This paradigm embodies negative images of women, that work from the inside out, undermining women's self-worth. Patriarchy derives power not just from law but also from discourse in families, our smallest units of social life.

Within the family, gender inequality seems so natural that we frequently do not recognize it. It manifests itself in "routine" family decisions about responsibility for child care, cleaning, and food. Similarly, the struggle against domestic violence challenges practices viewed by men and women throughout the world as "the way things are, and the way that things will always be." Women who resist, like Anna Novo, are viewed as insane. The power of patriarchy is such that even women who resist often share that view.

Because of this power, changing the ideology of patriarchy, as opposed to the law on the books, requires attention to each case in which a batterer challenges the credibility and resolve of a domestic violence survivor. Only attention to each case can support the consciousness and mobilization which an initial "impact" victory triggers.

83. Bellow & Kettleson, supra note 12, at 362.
84. López, supra note 18, at 15.
85. See Bellow, supra note 5, at 121–22.
87. Ofei-Aboagye, supra note 30, at 262.
88. See supra pp. 507–08.
89. "[I]t is meaningless to win a principle and then not vindicate it with lawyers . . . . There are countless laws on the books today that are beautiful in their symmetry . . . that don't mean a thing because there are no lawyers to vindicate them." Harold Rothwax, Address at Proceedings of the Harvard Conference on Law and Poverty, 63–64 (Mar. 17–19, 1967) (quoted in DAVIS, supra note 20, at 35). Harold Rothwax succeeded poverty law pioneer Ed Sparer as head of New York City's MFY Legal Unit, the oldest federally-funded legal services program in the country.
Every domestic violence representation which reinforces the credibility and resolve of a survivor is another step toward supplanting patriarchy with a more emancipatory way of life.\(^9\) This work is not easy. However, as Anna-Novov’s case demonstrates, patriarchy’s constitutive role in cultural norms and relationships with loved ones makes a personal approach imperative.

The domestic violence movement was built on this personal approach to social change. A central virtue of the movement has been its grounding in the experience of survivors, and its continued commitment to matching litigation with mobilization and interdisciplinary work.\(^9\) Groups such as AYUDA,\(^9\) in Washington, D.C., have combined legal advocacy and community organization. In AYUDA’s Hermanas Unidas (Sisters United) program, battered immigrant women form groups to help each other solve problems.\(^9\) The provision of social services in domestic violence shelters and other sites complements this community mobilization by offering survivors resources to fight the social isolation which fuels violence against women.\(^9\) While lawyers for domestic violence survivors are not immune to the lure of a narrow, legalistic approach,\(^9\) their connection with their clients makes it easier to correct for a legalistic bias. As a result, lawyers for survivors are more likely to view legal rights, community organization, and interdisciplinary collaboration as “interdependent.”\(^9\) This interdependence is crucial for truly political lawyering.

\(^9\)I am indebted to Louise Trubek for helping me crystallize this point. See Sally E. Merry, Resistance and the Cultural Power of Law, 29 LAW & SOC’Y REV. 11, 19 (1995); cf. Winter, supra note 37 (interpreting the work of Michel Foucault).

\(^9\)See Schneider, Rights and Politics, supra note 6, at 647. For an essay on the interaction of litigation and community organization, see Lucie E. White, To Learn and Teach: Lessons from Driefontein on Lawyering and Power, 1988 WIS. L. REV. 699.


\(^9\)See Brustin, supra note 92. For a discussion of mutual aid efforts abroad, see Betty H. Morrow, A Grass-Roots Feminist Response to Intimate Violence in the Caribbean, 17 WOMEN’S STUD. IN’T’L F. 579 (1994) (analyzing role of Women’s Coalition of St. Croix).

\(^9\)See Joan T. Pennell, Ideology at a Canadian Shelter for Battered Women: A Reconstruction, 10 WOMEN’S STUD. INT’L F. 113, 119 (1987). But see Fraser, supra note 68, at 213–15 (arguing that professionalization of battered women’s shelters has shifted focus from issues of gender oppression and socio-economic deprivation to self-esteem of “client”).

80. See Meier, supra note 6.

86. See Schneider, Rights and Politics, supra note 6, at 650.
Conclusion

While lawyer-client connections can empower clients, they also disrupt professional routines. Cynics will argue that self-interest, rather than concern for clients, has established detachment as a professional norm. Domestic violence lawyering demonstrates the importance of transcending role limitations.

Detachment engenders the three dichotomies discussed here. It fosters engagement with the public realm of rationality and neglect of the private realm of emotion. It thereby neglects the way in which public norms construct the private realm's gender inequality. Detachment also posits a separation of professional judgment and personal commitment that fails to meet the needs of vulnerable clients. Finally, detachment privileges the abstractions embodied in law on the books, at issue in impact litigation, over client service work's accumulation of small victories on the ground.

The small victories of domestic violence lawyering, such as the victory of Anna Novo, reveal the artificiality of these dichotomies. In the realm of law on the books, Ms. Novo lacked impact. Yet in the more concrete realm of violence against women, Ms. Novo accomplished much. Like all battered immigrant women, she exemplified the influence of the public sphere of immigration law on the private sphere of the family. Breaking down the public/private dichotomy also involved bridging the professional/personal divide: the legal representation of Ms. Novo required not only standard professional skills of drafting and advocacy, but also the empathy of the lawyer as witness. A parallel bridge links impact litigation and service work. While Ms. Novo made no new law, her resistance to patriarchy demonstrated the possibility of emancipation. With an ideology as pervasive as patriarchy, each demonstration is a political act.

The political content of domestic violence work in turn demonstrates the ultimate futility of conservative attacks on legal services for the poor. Conservatives seek to silence political lawyering for the poor by hobbling impact litigation, even as these same conservatives promote political lawyering by the rich by delegating legislative drafting to lobbyists and high-powered law firms. However, as Ralph Reed of the

97. See supra pp. 507–08.
98. See, e.g., Stephen Engelberg, Conflict of Interest is Cited in Regulatory Bill Lobbying, N.Y. Times, Apr. 5, 1995, at A23 (describing how a major law firm, on behalf of
Christian Coalition acknowledges with his assertion that family law legal services practice subsidizes divorce, decimating impact litigation will not put an end to political lawyering for poor people.

Political lawyering for the poor will survive because politics, as a bridging of public and private, and professional and personal, emerges with every small victory in domestic violence representation and in other legal services for people living in poverty. The cumulative, low-visibility character of these victories may in fact be salutary, as camouflage in our current unforgiving climate. Witnesses to such victories should recognize them as emblems of hope for an emancipatory sea-change to come.

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