Changing the Narrative: Language at the Heart of Justice and Healing

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JUSTICE IDEAS

SUMMARY

In the legal system, mothers navigating the complexities of domestic and family violence too often confront damaging stereotypes, and are characterised as 'mad', 'bad', or 'sad'. This detrimental framing extends beyond mere perception and has profound adverse effects on both mothers and children. Recent Family Law amendments offer an opportunity for lawyers to provide the court with comprehensive accounts of the history of violence, its impact on all parties involved, and the capacity of parents to meet the multifaceted needs of their children.

The skills to solicit and document these critical details, in a manner that is both trauma informed and sensitive to the nuances of domestic violence and sexual assault, are not readily taught in legal settings.

Compounding this challenge is the pervasive societal culture of victim blaming, where lawyers often grapple with ingrained linguistic conventions that inadvertently minimise

> ***"Language has the power to shape our sense of who we are... It defines the relationship between power and pain."***
>
> - Andrea Dworkin, Life and Death: Unapologetic Writings on the Continuing War Against Women (1997)

Fleming A (2025) Changing the narrative: Language at the heart of justice and healing, Justice Ideas Vol 2024(1). Sydney: Law and Justice Foundation of NSW.

ISSN: 2982-3951

This publication was developed as part of the 2024 Law and Justice Foundation of New South Wales Fellowship Program. The project was undertaken with funding and support from the Foundation. The views expressed in this publication are those of the author and do not necessarily reflect the views of the Foundation. The Foundation supports the dissemination of independent research and encourages robust debate to advance access to justice.

SUPPORTED BY

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

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the severity of violence and its enduring repercussions. Even seemingly innocuous terminology, like 'domestic violence relationship', fails to acknowledge the inherent power differentials and control dynamics, perpetuating a narrative that obscures accountability.

Further, many descriptions of violence are rendered in passive voice, devoid of agency ('she was hit'), while instances of normalisation ('an assault took place') further obfuscate accountability. Moreover, narratives of domestic and sexual violence frequently overlook the inherent resistance demonstrated by victims, leading to a gross misunderstanding and misattribution of perpetrator status.

Addressing these linguistic and cultural barriers necessitates a concerted effort to adopt language and practices that illuminate the full scope of domestic violence while centering the experiences and needs of survivors and their children. By fostering a culture of sensitivity and accountability within the legal profession, we can effectively serve the interests of justice and safeguard the well-being of those impacted by domestic violence.

INTRODUCTION

Legal language around violence often labels, obscures and excludes. To address linguistic and cultural norms, lawyers must make a concerted effort to adopt language and practices that explain the full scope of the violence. The experiences and needs of survivors and their children must be centred in the descriptions, and the actions of people who use violence must be clearly documented so that we, as a society, can start to address one of the most pressing issues we face.

> ***"Mutualising language, like "the couple has a history of domestic violence" can increase the survivor's entrapment and make it harder to hold the perpetrator accountable as a parent. Be clear about who did what, to whom, and the impact of those behaviours on functioning."***
>
> - David Mandel, Safe and Together Institute

The latest study into child maltreatment in Australia found that 40% of people across the population have been exposed to domestic violence.[1] Reframing this, we can say that 40% of people have been impacted by violence and suffer from trauma. Often, because of the lack of pathways to accountability and repairing harm, people who have used violence have not addressed their behaviour, or have not had the opportunity to[2] , and have gone on to cause further harm to others.

1 Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E. (2023). The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report. Australian Child Maltreatment Study, Queensland University of Technology.

2 It is widely known that there is a dearth of effective men's behaviour change programs and other interventions for people who use violence across Australia.

Family Court data reveals a stark reality: family violence is flagged as a risk factor in 80% of parenting cases, underscoring its pervasive role in legal disputes involving children.[3] It is vital that practitioners can present accounts of violence, and the impact of the violence in ways that the court can consider when making decisions. Due to the recent changes to the best interest factors the law now requires practitioners to find out more about the history and impact of the violence not only on the children, but on the parents' capacity to co-parent and parent at all.

> ***"Our view is that the discursive practices in question are traditional in the sense that they are so fully integrated into everyday talk that they appear unproblematic until examined in detail and compared to the actions they are presumed to represent."***
>
> - Dr Linda Coates and Dr Allan Wade , Centre for Response Based Practice

This piece will discuss why language matters in a legal context when we are describing violence. It aims to provide examples of how some of the current language used in the legal system operates to obscure harmful behaviour and deny victim-survivors' true experiences. For example, 'the parties have been in a domestic violence relationship' is a common expression in affidavits in family law matters, child protection cases, and apprehended domestic violence order (ADVO) applications; yet it is unhelpful and meaningless.

Primarily, the purpose of this piece is to advocate for an improvement in the way legal practitioners discuss and document accounts of violence. As a lawyer representing victim-survivors, I have read far too many inaccurate, victim-blaming, mutualising and obscuring narratives that put women and children at risk, ignore men as fathers, and deny opportunities for accountability, healing and recovery. My hope is that with a concerted effort to improve practitioners' ability to discuss and document violence, our communities, as well as the judiciary will be better informed and able to make decisions that promote safety and wellbeing and enhance accountability.

By using language that is clear, I believe we can effectively serve the interests of justice, safeguard the well-being of those impacted by violence, provide opportunities for healing, and seek accountability from people who use violence. Legal documents can describe violence in a way that exposes the actions (and inactions) of people who use violence and their patterns of behaviour, while honouring the victim-survivors' actions and experiences. At the same time, it is also crucial to describe acts of resistance and the impact of trauma suffered as a result of the abuse.

I have not written this piece to bolster the criminal legal system's response to violence (because after all violence is an economic, public health, community and human rights problem[4]), but to honour the victim-survivors who I have worked with over the last 20 years

3 Federal Circuit and Family Court of Australia, Media Release, 'Federal Circuit and Family Court of Australia launches major family law reform to improve safety and support for children and families', 2022 (https://www.fcfcoa.gov.au/news-and-media-centre/media-releases/mr051222)

4 Goodmark L. (2018) Decriminalizing domestic violence: A balanced policy approach to intimate partner violence (1st ed). University of California Press.

as a lawyer working in Community Legal Centres and Family Violence Prevention Legal Services. As an activist and a lawyer, I work to bridge the gap between social justice and the legal system. I am a white settler (coloniser) with straight white woman privilege, and I am continuing to work on unsettling[5] myself and being decolonising[6] in all my work, paid and unpaid.

A NOTE ON LANGUAGE AND TERMS USED HERE

I take a gendered lens in this piece, because I am a woman, I have experienced harm, and the statistics show us that women are overwhelmingly the ones who have had various harms perpetrated against us[7]. This means that I will sometimes use gendered language referring to people who have experienced harm as women or mothers, and those who have used violence as men or fathers. However, I am cognisant that *all people* have the potential to cause harm to others, regardless of gender.

I also want to acknowledge that I am writing from a position of knowing that there is rarely only one person who has experienced harm or caused harm to others. I have worked with women who have killed their abuser, women who have been violent to their abuser and women who have been convicted of criminal offences because of their abuser. I have also worked with women who have behaved in ways that are difficult to understand when looked at in isolation from the harm that has been perpetrated on them. This is to say that violence can be complex.

It must also be acknowledged that family members and friends too often cause and exacerbate harm by denying survivors realities, 'turning a blind eye', failing to intervene or support the victim-survivor, making excuses for the person doing the harm, or telling the person who was causing harm details about the survivor that then leads to more harm. Similarly, professionals who fail to believe victim-survivors, and use language that colludes, and perpetuates harmful cultural norms, can put people further at risk.

My experience means that I know how complex the reality of violence is, and how careful practitioners must be in our actions, and our words when dealing with these matters. My experience has also taught me to recognise how much more there is to learn and unlearn. It is because of my experience that I have a preference for shifting the focus from the commonly used terms of 'victim-survivors' and 'offenders/perpetrators', that are sometimes used as identities, to language that is clear about who, and what, we are referring to.

Terms such as *'person who uses violence', 'person who has caused harm',* and *'person who has experienced harm'* allow us to be more specific and focus on behaviours and the impact of that behaviour, rather than fall into the trap of labelling people which can lead to othering[8]. Being specific also allows us to be clear about accountability: the person using violence is

5 Tuck E, Yang W. (2012). 'Decolonization is not a metaphor' in Decolonization: Indigeneity, Education & Society Vol. 1, No. 1, pp. 1-40
6 Land, Clare (2015) Decolonizing Solidarity: Dilemmas and Directions for Supporters of Indigenous Struggles.
7 Australia's National Research Organisation for Women's Safety. (2018). Violence against women: Accurate use of key statistics (ANROWS Insights 05/2018).
8 Denver M, Ballou A, DeWitt SE. (2024). What's in a label? Public use and perceptions of labeling alternatives in criminology. Justice Quarterly, 41(6), 763–789.

the person who is exerting, or attempting to exert, power and control over the victim. The responsibility for the violence lies with the perpetrator.

However, I will use some terms interchangeably throughout this paper. I also use the term intimate partner violence when I am specifically referring to violence that has been perpetrated by one person who was in an intimate partner relationship with another person.

Domestic, Family and Sexual Violence (DFSV) is now the commonly accepted term to describe violence that has been perpetrated by someone against someone else, where there is some kind of relationship, whether that is an intimate one or otherwise. DFSV can be understood to include physical, emotional, psychological, spiritual, and financial abuse, isolation, and deprivation and any behaviour by a person that coerces or controls another person or causes someone to be fearful. Section 4ab of the Family Law Act 1975 (Cth) has an expansive but non-exhaustive list of examples of behaviours that constitute family violence that practitioners should be alert to.

In the other various legal jurisdictions that deal with DFSV in Australia, there are varied definitions and somewhat ambiguous interpretations. It is widely considered that there is a sparse amount of guidance in defining and describing violence and its impacts. It may be considered, though, that there are good reasons for this, given the varied contexts and nature of violence and its impacts which are profoundly and inherently personal.

Recently in Pickford (2024)[9] the Full Court of the Federal Circuit and Family Court Of Australia (FCFCOA) considered the definition of family violence:

> ***"The definition of family violence is necessarily broad and any interpretation that may be perceived to, or actually, create unnecessary hurdles to an alleged victim proving an allegation of family violence should be avoided. Whilst the key feature of coercion or control is that a person is induced (many other words are also apt here) to do as the other wishes, the statutory focus is simply on behaviour that coerces or controls and not the intention of the perpetrator."***
>
> - [Aldridge & Carew JJ: at 50 and 51]

Pickford (2024) is a case that practitioners should be familiar with as it does provide clarification of the principles in parenting matters.

9 Pickford & Pickford (No 2) [2024] FedCFamC1F 500

THE POWER OF LANGUAGE IN LEGAL CONTEXTS

Language plays a crucial role in perpetuating stigma and shame. Labels like 'battered woman' or 'abuser' can overshadow the complexity of individuals' identities and experiences, reducing them to a singular, often negative, narrative. Goodmark critiques how language often pathologises victim-survivors, framing them as weak, passive, or helpless.[10] This reinforces stereotypes about what a 'real victim' should look like and marginalises those who do not fit this idealised mould.

Language that labels victim-survivors as 'hysterical,' 'manipulative,' or 'uncooperative' within the legal and social service systems can lead to harmful biases and further marginalisation. Additionally, narratives of DFSV frequently overlook the inherent resistance demonstrated by victims, leading to a gross misunderstanding and misattribution of 'perpetrator' status. The misidentification of victim-survivors who use violence in self-defence or resistance, and those who simply don't fit the mould of a 'sympathetic victim' is a growing issue of concern.[11]

It is vital that practitioners understand that acts of resistance are not only acts done in self-defence, but they are also often more subtle acts to protect one's dignity. It is a great shame that these actions are often misinterpreted in a way that denigrates victim-survivors.

Table 1: 'Understanding Resistance in Practice'[1]

Resistance	Misinterpretation
Not showing emotions	Emotionally detachment, avoidance
Not doing what the perpetrator wanted	Passive agressive, uncooperative
Doing nice things for perpetrators	Co-dependency
Children agreeing with dad's view of mum	Colluding with violent father

1 Curijo, 'Understanding Resistance in Practice', 2021 on PSP Learning Hub, Department of Communities and Justice (DCJ), (https://psplearninghub.com.au/wp-content/uploads/Understanding-Resistance-in-Practice.pdf)

In the realm of Apprehended Violence Orders (AVO's), family law and child protection, mothers navigating the complexities of DSFV too often confront damaging stereotypes, victim-blaming and are characterised as 'mad', 'bad', or 'sad'.[12] This detrimental framing extends beyond mere perception, as evidenced by an analysis of child protection documents revealing the profound adverse effects on mothers and children. [13]

10 Goodmark L. (2008) 'When is a battered woman not a battered woman? When she fights back', Yale Journal of Law and Feminism, Vol 20, pp 75-128
11 Nancarrow et al.. (2020) "Accurately identifying the "person most in need of protection" in domestic and family violence law'. Research Report, ANROWS.
12 de Simone T, & Heward-Belle S. (2020) Evidencing better child protection practice: Why representations of domestic violence matter. Current Issues in Criminal Justice, 32(4), 403-419. https://doi.org/10.1080/10345329.2020.1840957
13 Note above

Marianne Hester has written about three planets:

> "with their own separate histories, culture, laws and populations (sets of professionals)... the 'domestic violence planet' are those working specifically with domestic violence, such as refuges and... criminal and civil justice agencies that intervene with domestic violence perpetrators... the 'child protection planet'... [and] the 'child contact planet'... where Family Court Advisors and other professionals are focused on parents, and their residence and contact arrangements in relation to children."[14]

Lawyers who practice across criminal law (where women are disbelieved and accused of lying), child protection (where women are 'bad' mothers, are at best blamed for not leaving, and at worst blamed for the violence) and family law (where mental health issues and substance misuse from DFSV are decontextualised and often weaponised against mothers) will appreciate this planet analogy as it is useful to understand the different narrative framing.

There are also consequences for people who hear traumatic accounts of violence regularly. Almost seemingly inevitably, practitioners, and the judiciary, make comparisons of violence: 'it's not high-level DV', while 'severe DV' is usually reserved for cases involving physical violence resulting in physical injuries and hospitalisation. This type of comparison fails to acknowledge the individual impact of violence, minimises violence that is not physical, and shows a lack of a comprehensive understanding of DFSV.

MUTUALISING LANGUAGE IS THE NORM

The language used to describe people who use violence and the circumstances in which the violence occurs often minimises accountability. Mutualising language such as 'domestic disputes' or 'family problems' dilute the seriousness of violence, framing it as a mutual conflict where both parties are responsible rather than one person's choice to use violence. Similarly, terminology such as 'risk of harm' and 'cumulative harm' are used as catch-all phrases instead of describing who caused the harm, and what the actual impacts of the violence and abuse are on child and family functioning.[15]

'Domestic' is often interpreted to mean 'private' which is then often perceived as unimportant or less important. By placing the word domestic in front of the word violence, are we minimising and neutralising the violence by one intimate partner against another?

In my experience, some practitioners become so familiar with describing violence in mutualising ways, that they are not able to assist clients to adequately document the violence and its effects. This can then lead to judicial officers not having the details before them to make properly informed decisions. In a research report on compliance with, and enforcement of, family law parenting orders it was noted that:

14 Hester M. (2001) The three planet model: Towards an understanding of contradictions in approaches to women and children's safety in contexts of domestic violence. British Journal of Social Work, 41(5), 837–853. https://doi.org/10.1093/bjsw/bcr095

15 Goodmark L. (2008) 'When is a battered woman not a battered woman? When she fights back', Yale Journal of Law and Feminism, Vol 20, pp 75-128

> "[s]ome judicial officers... demonstrated awareness that concerns about safety and family violence *may not be revealed* or adequately considered in negotiation or parenting order proceedings, leading to one of the areas where inappropriate orders may be made..." (emphasis added)[16].

'The parties have been in a domestic violence relationship' is an expression that is commonly used in affidavits in the Family Court, in child protection cases, and in ADVO applications. It is an expression that is meaningless; it tells us that something has happened but instantly we are thinking about two people in a relationship where there has been violence. The inference is that both parties are in some way responsible for the violence, simply by 'being in a domestic violence relationship'. It is also a phrase that is used often to describe mothers as previously being in a 'domestic violence relationship', the implication being that she is to blame for exposing herself (and her children) to violence.

The Family Court rules state that applications without notice must include "whether there is a history or allegation of child abuse or family violence *between the parties*" (emphasis added)[17]. And so, lawyers, in drafting affidavits to comply with the rule, repeat this mutualising language which renders the person who has used violence invisible, blames the person harmed, and quite simply does not assist in understanding what has occurred, thereby hindering decision-making.

Many descriptions of violence are rendered in a passive voice, and are devoid of agency (i.e. 'she was assaulted'), while instances of normalisation (i.e. 'an assault took place') do not identify who is responsible and so we are left wondering who should be held accountable.[18] Further, euphemistic language fails to address the power dynamics and structural inequalities that underpin domestic violence. It is not uncommon to hear remarks from lawyers or from the judiciary that fail to hold people to account for their use of violence. For example, 'he lost control', 'lost his temper', 'snapped', or 'it is out of character'.

Indeed, the sample ADVO application on the Legal Aid NSW website ends the narrative description with "The applicant fears for her safety, [this is the required legal test] as the defendant has pushed her in the past and often *loses his temper*."[19] (emphasis added)

Using the same fact scenario the sample statement accompanying the application provides "Since losing his job, Gary has been drinking heavily, often finishing a six-pack of beer every night. This makes him more agitated and aggressive."[20] In this example, we see two mitigating factors (unemployment and alcohol use), being suggested as examples that the victim/person harmed can include in their statement.

This is an example of how we are conditioned to excuse violence because someone lost their job and drinks to excess, as the inference is that this person is perhaps depressed because he can no longer fulfil his responsibility as the male provider for his family and that this is the reason for the violence.

16 Carson R, Kaspiew R, et al. (2022) Compliance with and enforcement of family law parenting orders: Final report. Research report, 20/2022. ANROWS.
17 Federal Circuit and Family Court of Australia (Family Law) Rules 2021 - Rule 5.11 'Applications without notice'.
18 Coates L. & Wade A. (2007) Language and violence: Analysis of four discursive operations. Journal of Family Violence. 22.511-522
19 Legal Aid NSW, (https://www.legalaid.nsw.gov.au/my-problem-is-about/apprehended-violence-order-avo/forms-avo).
20 Legal Aid NSW, Note 20

Other commonly used problematic and mutualising phrases in the legal system:

- 'While in the relationship she suffered physical and psychological DV'
- 'Victim of FDV and sexual assaults'
- 'History of control and emotional manipulation throughout the relationship'
- 'There was DV during the relationship'
- 'She was in an abusive relationship'
- 'There has been a failure to protect the children from violence'
- 'She has a history of abuse'
- 'Child impacted by DV'
- 'Poor parental communication'
- 'High conflict parent dispute'
- 'Parental conflict'
- 'Parental alienation'
- 'Mutual combat'

The above statements do not identify the person who has used violence or describe the impact of violence and readers are left with the impression that the victim/person harmed is to blame for the violence/abuse or at best prone to entering into 'bad relationships'.

In Ransone and Ransone[21] , at [4], Beckhouse J noted that:

> "The use of the vernacular "poor parental communication"... masks and minimises a pattern of behaviour that the father has engaged in, and continues to engage in, to control the decisions of the mother and the lives of both the mother and X. The term also suggests a degree of mutuality, yet there was no evidence that the mother ever communicated or responded inappropriately to the father. The continuance of the father's persistent conduct towards the mother, and his failure to understand its impact, combined with other risk factors, places X at unacceptable risk of harm in the father's care."

21 Ransone and Ransone (No 2) [2024] FedCFamC2F 1161

THE PROBLEM WITH AN INCIDENT-BASED APPROACH

Using 'incident' or 'event', which are commonly used in legal contexts, operates to minimise the specific harm and trauma of abuse by depersonalising it. It also ignores the experiences of victim-survivors and the reality of the impact of, often, long-term abuse.

In Australia, entire systems, and many recording and reporting tools and mechanisms, are predicated on incident-based understandings of FDV. Using specific language and documenting a perpetrator's patterns of behaviours can have important implications for a system's efforts to hold people who use violence accountable across a range of legal contexts. A failure to be specific in our language that seeks to describe people's experiences of violence reduces the system's ability to identify and develop interventions to work towards behaviour change goals over time.

In Western Australia, the template Family Violence Restraining Order affidavit asks for a general description of the respondent's behaviour, but then asks for details of incidents and provides space for only three descriptions, which should be the "most serious and recent incidents".[22] Similarly, the Victorian application for a family violence intervention order asks for information about the "history of family violence incidents".[23]

Kelly and Westmorland argue that adopting an incident-based way of thinking about FDV actually colludes with perpetrator narratives that minimise and justify their behaviour.[24] They argue that the focus of perpetrator intervention systems on incidents, rather than patterns, reinforces perpetrators' descriptions of their behaviour as stemming from isolated "explosions of anger".[25]

The tendency to describe violence in terms of incidents reduces people's experiences and obscures the multitude of behaviours and patterned tactics aimed at controlling the relationship, the family and the entrapment of victims. As Kelly and Westmorland observe:

> "framing domestic violence in terms of incidents…is to adopt the talk of abusive men, which serves not only to minimise domestic violence, but also to explain it in ways that disconnect it from gender, power and control."[26]

The Family Court has, since 2009, published its 'Best Practice principles'. This document has developed over time and has moved away from outdated understandings of "situational couple violence" and "separated instigated violence" which were described in the 2013 edition. The current 5th edition importantly states, "The decision to perpetrate family violence is a decision by the perpetrator about what type of parent they are going to be." The guide attempts to provide an overview of the way that family violence can impact children and

22 https://www.magistratescourt.wa.gov.au/r/restraining_orders.aspx
23 https://www.mcv.vic.gov.au/form-finder/application-family-violence-intervention-order-fvio1
24 Kelly L, & Westmorland N. (2016) Naming and defining 'Domestic Violence': Lessons from research with violent men. Feminist Review, 112(1), 113-127. https://doi.org/10.1057/fr.2015.52.
25 Note above
26 Note above

family functioning. However, it does not provide guidance for lawyers on the use of language in documenting violence.

IMPACTS OF OBSCURING LANGUAGE ON VICTIM-SURVIVORS

In AVO/restraining order or Family Court matters, a failure to describe the violence and its impacts has detrimental effects on the conditions and orders made to protect people and the best interests of children. It denies victim-survivors' experiences and in many cases causes further harms by forcing women and children to maintain unsafe contact with the person who has caused them harm.

There have been few studies of victim-survivors' experiences in the Family Court system. One participant in Lesley Laing's research noted that she had seen lawyers but had been unable to present her documentation to the court.[27] Another participant indicated that when she was asked questions, and became upset, she was treated as if she was wasting time and viewed as weak:

> "women found that their motives were under question and they very commonly encountered assumptions that they were motivated by bitterness towards ex-partners rather than by a desire to protect their children".[28]

Laing concludes:

> "Decision-making was hampered by limited information…Scepticism about women's allegations of violence and abuse, poor or non-existent risk assessment, lack of specialist knowledge about trauma".[29]

Similarly, Jane Wangmann, in her research on cross-ADVOs noted that:

> "professionals interviewed articulated broad definitions of domestic violence, this tended to be lost when responding to practice-orientated questions (here professionals returned to incident-based definitions)."[30]

Unsurprisingly, Wangmann states that "there seems to have been little attention paid to eliciting, and documenting, information that the law requires at a basic level". She notes that practitioners were hampered by the "poor quality of many [police written] complaint narratives", and by "the continuing dominance of incidents… the constraints of the institutional environment and the emphasis on settlement."[31]

There is also a failure within systems to acknowledge that using violence against a mother is a parenting choice. It is a choice that seeks to control and undermine the other's parenting. Adversarial systems put parties at odds with each other where admissions (for example about mental health) can be and are used to the other's advantage. But when we are working with people, with families, there is a great need to avoid matters being a contest.

27 Laing L. (2017). Secondary victimization: Domestic violence survivors navigating the Family Law system. Violence Against Women, 23(11), 1314–1335. https://doi.org/10.1177/1077801216659942
28 Note above
29 Note above
30 Wangmann J. (2009). "She said…" "He said…": Cross applications in NSW Apprehended Domestic Violence Order proceedings.
31 Note above

I would hope that the situation has improved somewhat since 2016 when Kaspiew reported that "46% of parents disagreed that the family law system screened adequately for family violence and child safety concerns'... and [a]bout 30% of parents who used [family dispute resolution], lawyers and courts in 2014 indicated that they had not been asked about family violence and safety concerns."[32]

In a thematic analysis of women's experiences in the Family Court, Roberts et al. sought to understand why women in Family Court were distressed. In that study "women described how lawyers and magistrates expressed surprise when women were reluctant to be in the presence of their ex-partner", and there was a general lack of understanding among the professionals about the violence and its impacts.[33]

The effects of victimisation (self-doubt, vulnerability etc.) and trauma can contribute to women not presenting their evidence in a 'credible' way. It has been expressed that:

> "both perpetrators and victims tend to misrepresent themselves (Scott, 1990). Perpetrators use language strategically in combination with physical or authority based power to isolate and threaten the victim, manipulate public appearances, and avoid responsibility. Victims use language tactically to express or conceal their resistance, evade the violence, avoid negative social judgments, and retain maximum control of their circumstances."[34]

In seeking to understand what has happened, what was said, and who did what to whom, lawyers are often confronted with statements that may cast doubt on the credibility or the veracity of the account. It is not uncommon to hear victim-survivors state 'It was my fault, I made him do that' or 'he didn't mean it, he is a good Dad'. Women also tend to take responsibility for their own and others' actions more easily than men – 'I shouldn't have done XYZ because then he wouldn't have been angry'.

In my experience as a lawyer interviewing victim-survivors, there needs to be great attention paid to not just the verbal answers to questions. Time and rapport are also vital. Women may not identify violence immediately and sometimes will deny and minimise it. The effects of trauma cannot be underestimated. It can be quite difficult to remember many acts of violence experienced over a period of time with any particularity. There may be one or two that stand out for victim-survivors, some will simply say 'it happened all the time'.

It can be difficult for practitioners to understand why victim-survivors cannot identify and describe the violence, yet when we are trauma-informed, we know that a consequence of experiencing violence can be the inability to recall details, clearly, and in a chronological order. When we are domestic-violence informed, we know that survivors are wary and weary of re-telling their stories to strangers, and are unsure of how the details will be received.

32 Kaspiew R, Carson R, et al. (2015). Experiences of separated parents study (Evaluation of the 2012 Family Violence Amendments). Melbourne: Australian Institute of Family Studies.

33 Roberts D, Chamberlain P, & Delfabbro P. (2015). Women's experiences of the processes associated with the Family Court of Australia in the context of domestic violence: A thematic analysis. Psychiatry, Psychology and Law, 22(4), 599–615. https://doi.org/10.1080/13218719.2014.960132

34 Todd N, Wade A, Renoux M. (2004). Coming to terms with violence and resistance. In: Strong T, & Paré D. (eds) Furthering Talk. Springer, Boston, MA.

HOW DO LAWYERS LEARN AND UNLEARN?

Legal education is often still too focused on black letter law, ignoring the social contexts to which the law applies. There is no compulsory DFSV training for lawyers. Despite many calls for it,[35] we still see only guidelines and suggested educative sessions.

In practising family law, I have encountered other practitioners who have undertaken no specific DFSV training at all. Family law remains an elective at law schools and as part of practical legal training programs, and even if chosen, the focus on DFSV is very brief. So, it is possible that lawyers may find themselves suddenly faced with the reality of legal practice involving real people and real lives, and feel ill-equipped to discuss and document violence.

As the Law Council's Family Law Section has noted, "there are many young lawyers working in general firms who are then 'thrown' a family law matter under the misapprehension that anyone can do family law and that it is 'easy'. Nothing could be further from the truth."[36] There have also been some calls for some kind of specialisation/accreditation required for lawyers who are working with people who have been harmed by violence[37] because we need to know more than simply what the law is.

There are of course many resources in relation to risk assessment and screening of DV[38] and in relation to general guidance around legal service delivery[39] to clients affected by DFSV. The latter tend to be well-intentioned guides that provide definitions, a summary of various laws, and some 'best practice principles'. Most recommend that practitioners:

- undertake specific training to 'improve understanding'
- discourage victim-blaming
- promote safety and accountability
- communicate sensitively and
- be trauma-informed.

There is also a comprehensive central resource for judicial officers, the National Domestic and Family Violence Bench Book[40], which considers legal issues related to DSFV but it does not cover each area of law. The challenge with all these resources for lawyers that are focused on the law, is that they are difficult to maintain and many are now out of date.

In contrast, there are very few resources to equip lawyers with the requisite skills and language to elicit and document critical details in a manner that is both trauma-informed and sensitive to the nuances of DFSV. Compounding this challenge is the pervasive societal culture of

35 The Law Council is of the view that family violence education should be mandatory for all legal practitioners (Options for improving the family violence competency of legal practitioners: Consultation Paper Council of Attorneys-General Family Violence Working Group, 2019)
36 Law Council of Australia, Options for Improving the Family Violence Competency of Legal Practitioners: Consultation Paper (2019)
37 Such as the Australian Law Reform Commission (ALRC) – Family Violence: A National Legal Response (2010); the Law Council of Australia – Options for Improving the Family Violence Competency of Legal Practitioners (2019); and Wangmann J, Bartlett F, et al. (2023). What is 'good' domestic violence lawyering?: Views from specialist legal services in Australia. International Journal of Law, Policy and the Family, 37(1)
38 For example, see https://www.1800respect.org.au/resources-and-tools/raft
39 For example, see Law Society of NSW, Working With Clients Affected By Domestic And Family Violence: A guide for family law practitioners, (2021) https://www.lawsociety.com.au/sites/default/files/2021-10/LS3581_PAP_FAM_DomesticFamilyViolence_2021-10-13a.pdf
40 The Australasian Institute of Judicial Administration, National Domestic and Family Violence Bench Book, 2024 (https://aija.org.au/publications/national-domestic-and-family-violence-bench-book/)

victim-blaming, wherein lawyers often grapple with ingrained linguistic conventions that inadvertently minimise the severity of violence and its enduring repercussions. As above, even seemingly innocuous terminology, like 'domestic violence relationship', fails to acknowledge the inherent power differentials and control dynamics, perpetuating a narrative that obscures accountability.

So, due to the lack of training available, lawyers emerging from law school and venturing into legal practice look to examples from our colleagues, the judiciary, and those adjacent to the profession such as police, and we adopt the language they use. We go through a process of acculturation, often uncritically.

It is incredibly rare to read any accounts in affidavits of men/fathers acknowledging their use of violence and its impact on their partner, the children and their capacity to parent. Instead, these accounts, more often than not, either completely deny, falsely describe the violent actions and the impact on the person harmed and the children, or (commonly) blame the person harmed for the violence. Of course, it can be difficult to discuss and document accounts of violence, I do not mean to suggest that it is not. What makes a difficult topic more difficult, is that we are so accustomed in using descriptions that conceal violence and resistance, mitigate responsibility, and blame and pathologise.[41]

It is vital that practitioners are self-reflective and able to question assumptions about gender and DFSV, recognising the potential for bias in existing systems, and actively working to dismantle harmful stereotypes. Heward-Belle and De Simone argue that professionals need to regularly reflect on their own beliefs and assumptions about gender, identity and domestic violence by thinking about how things like sexism, racism, ableism and homophobia might be built into the laws, policies and systems they work within.[42] Practitioners working with victim-survivors need to understand trauma and practitioners working with people who have used violence need to be aware of the tactics that may be used to deny, minimise, and shift responsibility.

Recent Family Law amendments in 2024 have been lauded as ushering in a pivotal shift, where lawyers should be providing the court with comprehensive accounts of the history of violence, its impact on all parties involved, as well as the impact of violence on the capacity of parents to meet the multifaceted needs of their children.

Partnering with victim-survivors to identify and map patterns of perpetrator abuse (i.e. the Safe and Together model[43]) has relatively recently been discussed and used in Australia. However, in my view, we are yet to see the widespread impact of this important work due to the challenges of ingrained language and societal views and the piecemeal approach to training and embedding practices across DSFV systems.

Mandel (2014) stresses, through the Safe & Together model, that expectations for perpetrator accountability need to be based on setting a sufficiently high bar for fathers (and men in general), rather than accepting a highly gendered double standard where fathers (and men

41 Insight Exchange. (2018). Language and Violence Resource Kit. Domestic Violence Service Management (DVSM). Retrieved from https://www.insightexchange.net/language-lab/

42 Heward-Belle S, De Simone T, (2020), Evidencing better child protection practice: Why representations of domestic violence matter. Current Issues in Criminal Justice, 32(4), 403–419.

43 https://safeandtogetherinstitute.com/ ; The Safe & Together model has recently been used to develop particular training for independent children's lawyers.

in general), get away with doing much less than mothers (women) in order to be viewed as a 'good parent' or 'respectful partner'.[44] Applying this to a legal framework, can be challenging in part as some of our systems are reactive and seek to restrain or protect (in the case of AVOs or intervention orders).

In the family law system however, orders are not so constrained, there is some flexibility in the framing and construction. Given the 2024 Family Law Act amendments abandoned the previous formulaic considerations, there may now be an opportunity for more 'bespoke' orders. Perhaps we may start to see orders that not only deal with what the perpetrator needs to stop doing; but also what they need to start doing, or do more of, to increase victim-survivors' and their children's safety.

In my view practitioners should be mindful that many women of course want the violence to stop but they also want the father to 'step up', to be a father, to take some of the load/ weight of parenting which would allow them to work/study and otherwise participate in life. Overwhelmingly, many clients do not wish necessarily for the person who caused the harm to be incarcerated, but rather they want accountability, and for the impact of the harm to themselves, their children, families and the community to be acknowledged. Clients have also expressed with frustration the lack of options for accountability without demonisation of the person who has caused harm: *'I just want him to understand what he did and how it impacted me and the kids, apologise and really mean it, and do better, be a good parent.'*

Practitioners can be responsive to this by asking questions about the capacity of the person who has used violence to accept responsibility and their willingness and capacity to change, in order to be able to co-parent safely. Asking whether the person who has used violence has the capacity to parent the children who have been impacted by the violence is crucial.

Discussions about the parental capacity of men who use violence are beyond the scope of this piece, but I suggest it is vital that legal practitioners understand that someone who uses violence may have reduced parental capacity, and ongoing contact with them may reduce the parental capacity of the person harmed. And so, the person who has used violence may need to do quite a bit of work to not only demonstrate accountability but to demonstrate that they are safe particularly in their parenting.

A NOTE ON RISK ASSESSMENTS AND SEXUAL VIOLENCE

"Assessments that are written… [often] support the idea that when a relationship ends, so too will the violence, despite substantial evidence" [45] that the separation is the most dangerous time for women and children.

> "While tick boxes and the use of actuarial tools to estimate degree of risk can be useful in many circumstances, the presence of particular evidence-based risk factors – without accompanying narrative information – might not be sufficient to indicate the severity of current threat or dangerousness."[46]

44 Vlais R, Campbell E and Green D, 'Foundations for Family and Domestic Violence Perpetrator Intervention Systems', RMIT Centre for Innovative Justice, Stopping Family Violence Inc, December 2019.
45 Humphreys C., Healey L., & Mande, D. (2018). Case reading as a practice and training intervention in domestic violence and child protection. Australian Social Work, 71(3), 277–291.
46 Note 44

The DVSAT[47], the primary tool used by NSW by Police other DV agencies, consists largely of tick boxes with very little space for a narrative. I take particular issue with the way the question about sexualised violence is worded in the DVSAT; "Has your partner ever done things to you, of a sexual nature, that made you feel bad or physically hurt you?"

In my practice of routinely asking women about sexual violence, I start with a warning first, 'can I ask you a difficult question?', and then upon having prepared the client for the question I ask, 'have you ever felt forced to have sex?'[48]. Distressingly, more often than not, the answer is yes. In these moments, I mentally and physically prepare myself for the answer. I ground myself so I can speak calmly, slowly and clearly, and I pause after asking the second, difficult, question.

Not filling the silence allows people to think, to gather the words, and to know it is safe to disclose. Sometimes the 'yes' is followed quickly by a 'but I didn't say no', 'but I didn't fight back', or 'I just laid there and let him do what he wanted'. Women who make these statements have not identified that in fact what they have experienced is sexual assault and that these actions are in fact resistance.

More often than not when I have followed up with 'have you felt forced to have sex more than once?' the answer is again, 'yes'. There are so many women who have experienced multiple acts of sexualised violence that have never disclosed to anyone.

I provide this example because not only is sexual violence the most underreported form of violence that women experience, it is yet another example of how our society and culture has developed to normalise violence, particularly sexual violence against women. So much so that women brush it aside, push it down and don't speak up and yet it is one of the most denigrating and impacting forms of violence.

Why does this matter? I would hope the answer is obvious... Because if we do not ask, for all the reasons you can envisage (it's difficult, it's hard, not relevant, too sensitive, too private) we are not hearing the full extent of the violence, we are not allowing people an opportunity to disclose, and in turn to heal from their trauma. *And we cannot document it.*

There has been great resistance from the domestic violence sector to asking about sexualised violence and there is a still a great divide between the DV and SV sectors. Indeed, the 1800 Respect website in discussing risk screening for professionals states "Routine screening for experiences of sexual assault is not usually recommended for mainstream services" [49] but does not provide any further guidance or discussion on how professionals should deal with sexual violence, which is also listed as a 'red flag.'

Many people suggest that in an effort to not re-traumatise victims we must soften our language and descriptions (hence the use of euphemisms) however, in my experience, people who have experienced harm benefit greatly from having descriptions of violence detailed by asking questions sensitively. The benefit is that women can understand the impact of the

47 NSW Government, Domestic Violence Safety Assessment Tool (DVSAT)

48 This framing and question was suggested to me early in my legal practice career by an Aboriginal woman who pointed out that for many women and in particular Aboriginal women talking about sexualised violence was incredibly difficult, and also that the words sexual assault will not resonate with people who have "given in" under duress to constant demands, or to avoid other types of violence, or in an attempt to not 'wake the children'.

49 https://1800respect.org.au/resources-and-tools/screening

violence on themselves and their children and they can wrest back control of their own lives, seek accountability from the perpetrator and start a journey of healing.

CONCLUSION

Objectivity and neutrality are often held up to be tenets of the legal system, however, we know that terms such as 'reasonable person' are historically rooted in the imperialist, white supremacist, capitalist, hetero-normative, cis-gender, patriarchy, with the result being the marginalisation of many. This knowledge, I argue, provides an imperative to address the language used in the legal system, otherwise we may never see significant cultural change.

We must get better at 'fitting words to deeds'[50] and give up the idea that there are impartial accounts. When we are dealing with intimate partner violence, applying objectivity and neutrality is impossible, as we must look at the social and emotional contexts. The actions of a person who uses violence are not neutral and viewing them through a lens of objectivity only serves to reinforce the patriarchal burden of responsibility placed upon women/mothers. Similarly, the actions of victim-survivors who resist, who take many actions to protect themselves and their children, are not neutral, they are often fighting for their lives.

Intimate partner violence can be complex. Legal interviews with people who have been harmed can be complex. It can be uncomfortable to sit with people who have experienced violence and hear the details, and sometimes more distressing to write these down. Practitioners must seek out education and support to understand the dynamics and complexity of intimate partner violence. We must seek ongoing debriefing and supervision to deal with the effects of vicarious trauma, compassion fatigue, and indeed, moral injury. However, increasing knowledge and looking after ourselves, is never going to be enough. We must be vigilant to collusion, and to becoming complicit in the systems that cause further harm.

The language we use has power, and we have power in the words we choose to use. To effectively represent our clients, and fulfill our duties to the court and to the community more broadly we must expose violence for what it is, clearly attribute responsibility to those who perpetrate it, honour the resistance and resilience of victim-survivors, and actively challenge narratives that blame or pathologise those who experience harm.

For legal practitioners working to promote safety, accountability, and healing, this means unlearning harmful linguistic habits and embracing trauma-informed practices. It also requires a commitment to documenting violence in ways that centre the lived experiences of victim-survivors, rather than diminishing or distorting them. Words matter—let us choose and use them with care, precision, and purpose.

50 Danet B. (1980) Baby or fetus?: Language and the construction of reality in a manslaughter trial. Semiotica, 32, 187–219, pg 189

Practice Guidelines

TIPS FOR INFORMATION GATHERING AND DOCUMENTING

- ☑ Avoid compiling a 'shopping list' of behaviours – detail who did what to whom, when it happened. How many times has it happened? Does it form a pattern of behaviour?
- ☑ Document specific behaviours/actions and their impacts, include survivors' acts of resistance and protective actions.
- ☑ Be aware that if something doesn't make sense, ask what the missing piece is.
- ☑ Think about the patterns in the context of the behaviours.
- ☑ Be mindful of cultural practices.
- ☑ Identify excluding conduct.
- ☑ Are there other matters that elevate the risk e.g. mental health, substance abuse?
- ☑ Shift focus from chronological incident base to consideration of patterns of behaviour.
- ☑ Articulate vulnerabilities.

DOCUMENTATION CHECKLIST

- ☑ Have I focused on specific behaviours rather than generalisations?
- ☑ Have I connected the protective behaviours to specific child outcomes?
- ☑ Have I provided context that explains why behaviours were protective?
- ☑ Have I linked behaviours to one or more Best Interest Factors?
- ☑ Have I addressed potential misinterpretations of protective behaviours?
- ☑ Have I considered cultural context and cultural protective factors?
- ☑ Have I documented patterns over time rather than isolated incidents?
- ☑ Have I included specific dates, times, and details where possible?
- ☑ Have I avoided using language that could be interpreted as "alienating"?
- ☑ Have I focused on the survivor's strengths without minimising risks?

(David Mandel, slide from presentation 'Making it Count: Maximizing the Impact of Family Law Reforms on Children's Safety and Well-Being' at the 2025 Safe and Together Asia Pacific Coercive Control & Children Conference.)

ABOUT THE AUTHOR

Arlia Fleming is the Chief Executive Officer of the Central Tablelands and Blue Mountains Community Legal Centre. She has dedicated nearly two decades to the community legal sector, working with Community Legal Centres across Australia, including Women's Legal Services and Family Violence Prevention Legal Services. Her legal practice has centred on providing holistic, trauma-informed support to individuals who have experienced domestic, family, and sexual violence.

Her lived experience of socio-economic disadvantage informs her dedication to creating inclusive legal services that address the needs of communities who experience deep and persistent disadvantage. Arlia is committed to fostering a culture of sensitivity and accountability within the legal profession, grounded in the belief that justice must centre the dignity and well-being of those impacted by violence.

ACKNOWLEDGEMENTS

Firstly, to all the victim-survivors who have trusted me and shared their stories with me this work is dedicated to you. I hope that my fellow practitioners embark on a journey of re-learning and self-reflection. It has been a joy to return to research and writing, something I haven't had the opportunity to fully engage in since my time at university. I am sincerely grateful to the Law and Justice Foundation of NSW (LJF) for supporting this work and for selecting my topic as part of the Inaugural Justice Fellowship. My deepest thanks to Kerryn Butler, Principal Researcher at the LJF, for her thoughtful and generous feedback throughout the development of this paper. I am also especially grateful to my friend Heidi Guldbaek for her wise counsel, suggestions, and steadfast belief in the importance of this topic. And, my heartfelt thanks to my partner Yanha, for the countless cups of tea, nourishing meals, quiet support, and unwavering encouragement that made this work possible.

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