

ESSAYS

USING A *JURY OF HER PEERS* TO TEACH ABOUT THE CONNECTION BETWEEN DOMESTIC VIOLENCE AND ANIMAL ABUSE

By
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I.

Susan Glaspell's 1917 short story *A Jury of Her Peers*¹ takes place at the scene of a domestic homicide, a "lonesome"² farmhouse where Mr. Hale discovers his neighbor, Mr. Wright, dead in his marital bed. When Mr. Hale asks what happened, Mr. Wright's widow, Minnie, whom he found sitting passively in the kitchen, calmly explains: "He died of a rope around his neck."³ Minnie is arrested for the killing, but the men investigating the crime struggle to come up with her motive. They bring their wives, Mrs. Hale and Mrs. Peters, along to the farmhouse. While the men tromp around looking for evidence, the reader remains with the women in the kitchen, where they come upon a birdcage with its door forcibly broken. They then discover a small box. Inside the box is a canary with its neck broken. Wordlessly, the two women agree to hide the bird from the men, who are left without a

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¹ Susan Glaspell, *A Jury of Her Peers*, *The Best American Short Stories of the Century* 18 (John Updike & Katrina Kenison eds., Houghton Mifflin 1999) [hereinafter *A Jury*] *A Jury of Her Peers* was first published on Mar. 5, 1917, in *Everyweek* Magazine. There is also a film, *A Jury of Her Peers* (Films, Inc. 1981) (motion picture). Glaspell's play *Trifles* (1916) tells the same story. Susan Glaspell, *Trifles*, in *Plays* 1 (Small, Maynard & Co. 1920).

² The word "lonesome" is used repeatedly to describe the homestead: "[The] Wright place . . . looked very lonesome this cold March morning. It had always been a lonesome-looking place." Glaspell, *A Jury*, *supra* n. 1, at 19.

³ *Id.* at 22.

motive for the killing. The women thereby act as a jury of Minnie's peers as they decide her fate at a time when only men were permitted to serve on actual juries.⁴ Mrs. Hale cries: "Oh, I *wish* I had come over here once in a while! . . . That was a crime! That was a crime! Who's going to punish that?"⁵

A Jury of Her Peers has more staying power than the Energizer Bunny. The story has received a warm reception in the legal academy,⁶ a place not known for its fondness of fiction.⁷ Law teachers assign the story in many different courses including Criminal Law, Family Law, Evidence, Law and Literature, and Women and the Law.⁸ A number of legal scholars, most prolifically Marina Angel,⁹ have written about it.¹⁰ Legal scholars have also written about Glaspell's inspi-

⁴ As late as 1961, the all-male United States Supreme Court held that the exclusion of women from serving on juries did not violate the Constitution because of a woman's "family responsibilities"—in other words, her special duties as a wife and mother. *Hoyt v. Florida*, 368 U.S. 57, 62 (1961) (*Hoyt* involved a woman who killed her husband in the heat of passion, and she claimed she was denied equal protection of the law by the fact that it was virtually impossible for a fellow woman to serve on her jury.). Finally in 1975, the U.S. Supreme Court held that the exclusion of women from serving on juries was a denial of their Sixth Amendment right to a jury of peers. *Taylor v. Louisiana*, 419 U.S. 522, 537 (1975) (Ironically, *Taylor* involved a rapist who claimed his rights were denied by not having any women serving on his jury.).

⁵ Glaspell, *A Jury*, *supra* n. 1, at 35.

⁶ See e.g. Richard A. Posner, *Conservative Feminism*, 1989 U. Chi. Leg. Forum 191, 210 (1989) (Posner maintains that rigid law and cold application have been reshaped by the introduction of women's perspectives. The legal thought and practice has been shaken from its formalism and is much more welcoming of human emotional elements.).

⁷ See generally Marijane Camilleri, Student Author, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 Cath. U. L. Rev. 557 (1990) (asserting that today's field of law and literature resulted from countless complaints from legal scholars and practitioners).

⁸ See e.g. Marina Angel, *Criminal Law and Women: Giving the Abused Woman Who Kills A Jury of Her Peers Who Appreciates Trifles*, 33 Am. Crim. L. Rev. 229, 246 (1996) (Angel uses it in both her Criminal Law and Legal Decision Making: Judges, Legislators, Regulators courses); I use it in my Women and the Law course, and recently in my Animal Law seminar; Richard Posner has used it in his Law and Literature seminar; Robin West uses it in her Law and Humanities law school seminar. http://www.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=1490 (last accessed Nov. 9, 2008).

⁹ *Id.*; Marina Angel, *Teaching Susan Glaspell's A Jury of Her Peers*, 53 J. Leg. Educ. 548 (2003); Marina Angel, *Classical Greek Influences and American Feminist: Susan Glaspell's Debt to Aristophanes*, 52 Syracuse L. Rev. 81 (2002); Marina Angel, *Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context*, 45 Buffalo L. Rev. 779 (1997).

¹⁰ See Orit Kamir, *To Kill a Songbird: A Community of Women, Feminist Jurisprudence, Conscientious Objection, and Revolution in A Jury of Her Peers and Contemporary Film*, 19 L. & Lit. 357 (1997) (developing the dynamics a woman's perspective brings to various levels of academia); Robin West, *Invisible Victims: Herman Melville's Bartelby the Scrivener and Susan Glaspell's A Jury of Her Peers*, in *Caring for Justice* 218, ch. 4 (N.Y.U. Press 1997) (building a sense of justice through English literature); Patricia Bryan, *Stories in Fiction and Fact: Susan Glaspell's A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack*, 49 Stan. L. Rev. 1293 (1997) (aligning the real facts and people involved in the *Hossack* case and the fictional story line and characters created in Glaspell's *A Jury of Her Peers*).

ration for the story: her experience as a journalist covering a domestic homicide that resulted in the decision *State v. Hossack*.¹¹ In *Hossack* the Iowa Supreme Court reversed the conviction of a battered woman who was accused of killing her abusive husband while he slept.¹² Unlike the story, the real case did not center on violence against the woman's companion animal as the motive for the husband's death; instead it focused on whether the past violence against the woman herself provided the motive for her killing her husband.¹³ Glaspell's decision to change the woman's motive from domestic violence to violence against her companion animal makes the story more open-textured than the real events in *Hossack*. The discovery of the strangled canary presents ambiguities about what went on in the household that caused Minnie to take such an extreme course of action. This in turn enables a teacher to successfully use *A Jury of Her Peers* for more than one purpose, including, as I discovered, teaching about the connection between animal abuse and domestic violence.

II.

In the spring semester 2008, I was scheduled to teach an upper level Animal Law seminar for the first time. One of the topics that I planned to cover was the impact of law on animals and women. A major aspect of this topic is the growing recognition of the connection between domestic violence and animal abuse.¹⁴ Various studies show that a batterer often harms or threatens to harm the human victim's companion animal. For example, a widely cited study by Frank As-

¹¹ *State v. Hossack*, 89 N.W. 1077 (Iowa 1902). During the trial in *Hossack*, a dog played an important role. The prosecutor used the behavior of the family dog as evidence that Mrs. Hossack murdered her husband. He argued that the dog usually barked when strangers approached but was quiet on the night of the killing. The defense suggested the dog appeared lethargic that night and may have been drugged shortly before the murder. See Margaret Raymond, *Book Review*, 57 J. Leg. Educ. 293 (2007) (reviewing *Midnight Assassin: A Murder in America's Heartland*).

¹² Angel, *Susan Glaspell's Trifles and A Jury of Her Peers*, *supra* n. 8; *Hossack*, 89 N.W. at 1081.

¹³ The facts upon which *A Jury of Her Peers* and the *Hossack* case were based are set out in full in a nonfiction book, *Midnight Assassin*, which is entirely devoted to examining this homicide. See Patricia L. Bryan & Thomas Wolf, *Midnight Assassin: A Murder in America's Heartland* (Algonquin Books 2005).

¹⁴ See e.g. The Humane Society of the United States, *Animal Cruelty and Family Violence: Making the Connection*, ¶ 1, http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/animal_cruelty_and_family_violence_making_the_connection/ (last accessed Nov. 9, 2008) (information and statistics linking domestic violence, animal abuse, and the varied levels of impact both types have on the family members); see also Diana Wempen, *Four-Footed and Largely Forgotten: Exploring the Connections Between Animal Abuse and Domestic Violence*, <http://www.abanet.org/domviol/eneewsletter/vol8/expertWempen.html> (last accessed Nov. 9, 2008) (maintaining that domestic pets and animals hold a very intimate place in the lives of their families, and this position is oftentimes a channel for acts of domestic violence targeted at certain family members).

cione found that of the thirty-eight battered women whom he surveyed at a shelter, 74% were pet owners. These women reported as follows:

Nearly three-quarters . . . reported that their male partner had threatened to hurt or kill and/or had actually hurt or killed one or more of their pets. . . . Actual harm or killing of animals was reported by 57% of the women with pets.¹⁵

More recently, upon comparing 101 women surveyed in shelters to an equal number of women who had not been battered by their partners, Ascione and his colleagues found that the battered women were nearly eleven times more likely to report that their domestic partners had physically abused a pet than the women in the control group.¹⁶ The researchers also found that “[the] vast majority of the shelter women described being emotionally close to their pets and distraught by the abuse [their] family pets experienced.”¹⁷ A 2004 study provided statistics on women and animal abuse based on a survey of thirty-four domestic violence victims who had pets, as well as a thorough overview of the related literature.¹⁸ Fifty-three percent of the battered women surveyed said their partners also physically abused their pets.¹⁹ Ninety percent of these women revealed that the animal abuse involved violence rather than neglect.²⁰ The researchers also reported:

Of those families where pet abuse had occurred, 48% of the respondents reported it occurred “often” during the past [twelve] months and another 30% reported that abuse to the family pet had occurred “almost always” during the past [twelve] months. Victims whose pets had been abused reported that abuse to the family pets occurred an average of 51% of the time violent outbursts had taken place over the past year.²¹

Forty-eight percent of the battered women reported that they delayed leaving out of fear for the welfare of their pets.²² Of those situations where the batterer had previously abused a pet, 65% of the battered women delayed leaving out of concern for their animals.²³ The researchers also found the batterers’ animal abuse often adversely affected battered women’s children. They found that 61% of the women

¹⁵ Frank R. Ascione, *Battered Women’s Reports of Their Partners’ and Their Children’s Cruelty to Animals*, in *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application* 290, 296 (Randall Lockwood & Frank R. Ascione eds., Purdue U. Press 1998).

¹⁶ Frank R. Ascione et al., *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13 *Violence Against Women* 354, 361 (2007) (available at <http://vaw.sagepub.com/cgi/content/abstract/13/4/354>) (last accessed Nov. 9, 2008).

¹⁷ *Id.* at 365.

¹⁸ Pamela Carlisle-Frank et al., *Selective Battering of the Family Pet*, <http://www.firepaw.org/selectiveBattering.doc> (last accessed Nov. 9, 2008) (also published in 17 *Anthrozoos* 26, 34 (2004)).

¹⁹ *Id.* at 12.

²⁰ *Id.*

²¹ *Id.* at 18.

²² *Id.* at 17.

²³ *Id.* at 16.

reported that their children had witnessed animal abuse.²⁴ The authors also summarized other research, including a study finding that children of women in battered women shelters were “twenty times more likely to have witnessed pet abuse than children from a control group.”²⁵

The findings and statistics in these studies are representative of what other studies have found.²⁶ While not all batterers abuse pets,²⁷ it is apparent that battered women often fear not only for their own welfare and the welfare of their children, but also for the welfare of their pets. Their concern for their pets frequently leads battered women to suffer additional stress and distress and to delay leaving.

III.

Many students enrolled in an animal law seminar or course may not be familiar with or interested in the dynamics of domestic violence. I therefore searched for a vehicle that would help students understand the special impact that violence against a pet might have on a battered woman in terms of terror, despair, anger, and sadness. A number of law review and newspaper articles discussed this connection between family and animal abuse²⁸ and recommended changes to the law.²⁹ However, I did not find any article or case that effectively enabled students to empathize with a battered woman or with any of her animals that were hurt, killed, or at risk.

For years I have used *A Jury of Her Peers* in Women and the Law to teach about women and juries, domestic violence, and the history of separate spheres for men and women.³⁰ In teaching the story in Women and the Law, the plight of the canary serves mainly as a metaphor for the isolated (caged) abused wife, who sang in the choir as a

²⁴ Carlisle-Frank et al., *supra* n. 18, at 16.

²⁵ *Id.* at 5 (citing Ascione et al., *Childhood Cruelty to Animals: Assessing Cruelty Dimensions and Motivations*, 10 *Anthrozoos* 170 (1997)). There has been a substantial amount of research done on the impact of animal abuse on children. See Sonia Waisman et al., *Animal Law: Cases and Materials*, 529–30 (3d ed., Carolina Academic Press 2006) (citing studies regarding the link between family violence and animal cruelty).

²⁶ See generally Ascione’s studies, *supra* nn. 15–16; see also the articles cited in Carlisle-Frank et al., *supra* n. 18.

²⁷ *Id.*

²⁸ See generally Angel, *Susan Glaspell’s Trifles and A Jury of Her Peers*, *supra* n. 9 (illustrating the influence of *A Jury of Her Peers* over legal thought and analysis); Humane Socy. of the U.S., *Animal Cruelty and Family Violence*, http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/animal_cruelty_and_family_violence_making_the_connection/ (last accessed Nov. 9, 2008) (providing statistics and information about the connection between the occurrence of animal abuse and domestic violence).

²⁹ *Supra* nn. 9–10.

³⁰ I have also used *A Jury* to segue into the topic of whether men and women think about moral issues differently; I then have students read Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Harv. U. Press 1982) (describing an ethic of rights mainly held by men and an ethic of care mainly held by women).

girl.³¹ Upon finding the birdcage, Mrs. Hale described Minnie as “kind of like a bird herself. Real sweet and pretty, but kind of timid and—fluttery. How—she—did—change.”³² Upon discovering the bird with its neck wrung, Mrs. Hale said, “[Mr.] Wright wouldn’t like the bird . . . a thing that sang. She used to sing. He killed that too.”³³ While preparing to teach my Women and the Law seminar Spring Semester 2008, I realized that including *A Jury of Her Peers* in my Animal Law seminar might effectively teach students about the connection between domestic violence and animal abuse.

I decided to assign *A Jury of Her Peers* to my Animal Law students for the class period devoted entirely to domestic violence and animal abuse. While I also assigned an article³⁴ addressing the connection between the two forms of violence, most of class time was spent examining *A Jury of Her Peers*. Professor Angel, in describing how a caged bird symbolizes “the constraints that surround the lives of women,” observes that “[the] dead canary is central to Susan Glaspell’s story and to the reality of women’s lives.”³⁵ In Animal Law we focused on the dead bird’s centrality to the story as the catalyst that led to Minnie killing Mr. Wright. The violent outcome of Mr. Wright’s killing the bird illustrates that batterers’ abuse of companion animals can have further dire consequences.

Assigning *A Jury of Her Peers* to Animal Law students proved to be an effective vehicle for teaching and eliciting a thoughtful discussion about how abusers use animals to get at their human victims and why battered women might be especially affected by threats of violence or actual violence against their companion animals. It enabled students to empathize with battered women and better understand why battered women may respond in ways that, without context, might seem inexcusable. I got the impression from the students that the story affected them both viscerally and psychologically by letting them see the impact of animal abuse on a victim of domestic violence through the eyes of two women who understood.

Pondering the birdcage with its broken door, the women in the story engage in the following conversation:

“Look at this door,” [Mrs. Peters] said slowly. “It’s broke. One hinge has been pulled apart.”

Mrs. Hale came nearer.

³¹ See Angel, *Susan Glaspell’s Trifles and A Jury of Her Peers*, *supra* n. 9, at 548 (“Minnie was symbolically caged, confined in her isolated home and her abusive marriage. John Wright was rough with her. In the course of the story Minnie never appears in person; she is imprisoned—caged—in jail.”).

³² Glaspell, *A Jury*, *supra* n. 1, at 32.

³³ *Id.* at 34.

³⁴ ABA Animal Law Comm. & Joan Schaffner, *Linking Domestic Violence, Child Abuse, and Animal Cruelty*, *newsltr.* ABA-TIPS Animal Law Committee (Fall 2006) (available at <http://ssrn.com/abstract=1001255>) (last accessed Nov. 9, 2008).

³⁵ Angel, *Susan Glaspell’s Trifles and A Jury of Her Peers*, *supra* n. 9, at 806.

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“Looks as if someone must have been—rough with it.”

Again their eyes met—startled, questioning, apprehensive.

. . .

“Not having children makes less work,” mused Mrs. Hale, after a silence, “but it makes a quiet house—and Wright out to work all day—and no company when he did come in. Did you know John Wright, Mrs. Peters?”

“Not to know him. I’ve seen him in town. They say he was a good man.”

“Yes—good,” conceded [Mrs. Hale] grimly. . . . “But he was a hard man, Mrs. Peters. Just to pass the time of day with him—” She stopped, shivered a little. “Like a raw wind that gets to the bone.” Her eye fell upon the cage on the table before her, and she added, almost bitterly: “I should think she would’ve wanted a bird!”³⁶

When the women discover the bird itself, the following discussion occurs:

“There’s something wrapped up in this piece of silk,” faltered Mrs. Hale.

. . .

Her hand not steady, Mrs. Hale raised the piece of silk. “Oh, Mrs. Peters!” she cried, “It’s—”

Mrs. Peters bent closer.

“It’s the bird,” she whispered.

“But, Mrs. Peters!” cried Mrs. Hale. “*Look* at it! Its *neck*—look at its neck! It’s all—other side too.”

She held the box away from her.

The sheriff’s wife[, Mrs. Peters,] again bent closer.

“Somebody wrung its neck,” said she, in a voice that was slow and deep.

And then again the eyes of the two women met—this time clung together in a look of dawning comprehension, of growing horror. Mrs. Peters looked from the dead bird to the broken door of the cage. Again their eyes met.³⁷

IV.

One commentator reports that “[very] few people are more attached to their pets than victims of domestic violence.”³⁸ A batterer exercises his control by taking advantage of the close relationship be-

³⁶ Glaspell, *A Jury*, *supra* n. 1, at 31–32.

³⁷ *Id.* at 33.

³⁸ Ashley Wood & Sarah Speed, *Dogs, Cats, Birds and Even Horses Have Their Day in Sacramento*, 24:1 *The Advocate* 12 (Univ. of S.D. Sch. of Law, Summer 2007), (available at <http://www.sandiego.edu/usdlaw/docs/pubs/advocate/Su07advocate.pdf>) (last accessed Nov. 9, 2008). Wood offers a psychological explanation. She maintains that battered women need to have a loving and compassionate relationship with another living being—one that offers unconditional affection. She also suggests that pets offer a means for battered women to gain control over some part of their lives.

tween his often intentionally isolated³⁹ human victim and her animal companion.⁴⁰ In *A Jury of Her Peers*, we can infer that the violence against Minnie's pet canary was used to terrorize, emotionally abuse, punish, and degrade Minnie, and that it precipitated the killing of her tormentor.

In class we discussed whether the law should view egregious animal abuse as a mitigating factor when the animal's owner responds violently. In another passage of the story, Mrs. Peters reacted to the discovery of the bird by saying:

"When I was a girl . . . my kitten—there was a boy took a hatchet, and before my eyes—before I could get there—" She covered her face an instant. "If they hadn't held me back I would have"—she caught herself, looked upstairs where footsteps were heard and finished weakly—"hurt him."⁴¹

This passage implies that Mrs. Peters wanted to do more than merely hurt the boy who killed her kitten. It prods the reader to consider what responses to intentionally killing one's companion animal are reasonable and justifiable both with and without the additional factor of the kind of emotional or physical abuse that Minnie experienced.

We also discussed how the story's time and place severely limited Minnie's and other abused women's options in ways that, thankfully, do not occur as often today. Minnie literally had nowhere to go. Battered women's shelters were not available until the 1970s, and the norms before that time were such that women were expected to stay with their abusive husbands, to "draw the curtain, shut out the public

³⁹ Mr. Wright prefers isolation, and this is clearly supported by the fact that he was "accidentally" discovered by his neighbor Mr. Hale. Hale simply stopped in at the Wrights' to ask about installing a telephone line. Mr. Hale said:

I'd spoke to Wright about it once before; but he put me off, saying folks talked too much anyway, and all he asked was peace and quiet. . . . But I thought maybe if I went to the house and talked about it before his wife, and said all the women-folks liked the telephones, and that in this lonesome stretch of road it would be a good thing—well, . . . I didn't know as what his wife wanted made much difference to John.

Glaspell, *A Jury*, *supra* n. 1, at 21.

⁴⁰ Professors can ask students in an Animal Law class to come up with the reasons that batterers hurt or threaten to hurt pets. The Humane Society of the United States lists the following reasons:

To demonstrate and confirm power and control over the family. To isolate the victim and children. To eliminate competition for attention. To force the family to keep violence a secret. To teach submission. To retaliate for acts of independence and self-determination. To perpetuate the context of terror. To prevent the victim from leaving or coerce her/him to return. To punish the victim for leaving. To degrade the victim through involvement in the abuse.

The Humane Society of the United States, *supra* n. 14.

⁴¹ Glaspell, *A Jury*, *supra* n. 1, at 34.

gaze, and . . . forgive and forget.”⁴² In contrast, today many communities have both battered women’s and animal shelters. It is not uncommon for women’s shelters to work closely with animal shelters to provide care for a battered woman’s animal companions,⁴³ thereby making it easier for battered women with pets to leave their abusers.⁴⁴ The class discussed whether the existence of more options for leaving safely makes a difference as to how the law should view a battered woman who kills in part because her batterer harms her animal companion.

V.

Although Minnie certainly suffered long-term emotional abuse, Glaspell does not tell the reader whether Minnie’s husband physically abused her. Glaspell also leaves unsaid whether Minnie witnessed the killing of the canary and the circumstances that led up to and surrounded this violence. Professors may ask students to consider how criminal law would apply to various hypotheticals based on the story. Perhaps Mr. Wright repeatedly beat Minnie in the past. Perhaps his abuse was purely emotional. Perhaps he threatened to kill her next. Perhaps she killed him solely in response to his killing her canary.

Students can discuss whether today, under any of these scenarios, Minnie could successfully argue common law provocation⁴⁵ or the Model Penal Code’s Extreme Emotional Disturbance⁴⁶ as a defense in a criminal trial. For these partial excuses that reduce murder to manslaughter, Minnie would have to demonstrate the adequacy of the provocation.⁴⁷ Under the common law, because her husband was killed

⁴² *Abbott v. Abbott*, 67 Me. 304, 307 (1877). The facts contained in *State v. Hossack* demonstrate the turn of the century social expectation that a woman was to remain in the home: Mr. Hossack attacked Mrs. Hossack, she left the house and sought help from her neighbors, and they counseled her to return to him and to simply forgive and forget. *Hossack* 89 N.W. at 1078.

⁴³ Greenhill Humane Socy., SPCA, *Domestic Violence Assistance Program*, <http://www.green-hill.org/emergency.html> (last accessed Nov. 9, 2008); see also Humane Society of the United States, *Online Directory of Safe Havens For Animals Programs*, http://www.hsus.org/hsus_field/first_strike_the_connection_between_animal_cruelty_and_human_violence/safe_havens_for_animals/ (last accessed Nov. 9, 2008) (providing a list of shelters that will house pets of domestic violence victims).

⁴⁴ ABA Comm. Domestic Violence & Phil Arkow, *Expanding Domestic Violence Protective Orders to Include Companion Animals*, 8 eNewsletter (Summer 2007), <http://www.abanet.org/domviol/enewsletter/vol8/expertArkow.html> (last accessed Nov. 9, 2008).

⁴⁵ See Caroline Forell, *Book Review, Homicide and the Unreasonable Man*, 72 Geo. Wash. L. Rev. 597, 607 (2004) (discussing the class of cases that are considered provocations, thereby reducing the severity of homicidal actions).

⁴⁶ The American Law Institute, *Model Penal Code* § 210.3(1)(b) (1962).

⁴⁷ *Id.* The Model Penal Code requires that the defendant prove that she killed “under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse. The reasonableness of the explanation or excuse shall be determined from the viewpoint of a person in the actor’s situation under the circumstances as he believes them to be.”

while he was sleeping, she would also face the problem that she failed to kill him immediately, “in the heat of passion.”⁴⁸

Today, could Minnie successfully argue the complete defense of self-defense instead of provocation, based on a reasonable fear of her own death or severe bodily harm?⁴⁹ Generally, those battered women who, like Minnie, kill sleeping husbands have had a difficult time successfully arguing that their fear of severe bodily injury or death was sufficiently imminent.⁵⁰ If instead, upon witnessing Mr. Wright kill her canary, she grabbed the gun present in the house and shot him,⁵¹ would she likely succeed with these defenses? Should the intentional killing of a companion animal ever be deemed as adequate to fully or partially excuse anyone, even a battered woman, who kills another human being?

VI.

To further bring home the reality of the connection between woman and animal abuse, I also had the students read news articles about actual cases involving violence against both women and their pet birds. One news headline reads: “Lawyer Charged with Wife’s Death.”⁵² The story reported that in New Hampshire, “[in] January 1996, Vicki Bader came home to find her two pet parakeets roasting in a pan in her oven. Both had their necks broken.”⁵³ As a result of this “bizarre harassment” police reported that she “had lived in fear before she disappeared” in mid-1996.⁵⁴ Her body was discovered eight months later with a single gunshot to her head.⁵⁵ Her ex-husband, a criminal defense lawyer, was charged with murdering her.⁵⁶ Another news report described the arrest of a man in Longview, Washington, for “felony animal cruelty and misdemeanor assault after his girlfriend

⁴⁸ Forell, *supra* n. 45, at 604 (Common law provocation typically requires that “the defendant did not cool off,” and “the reasonable person in defendant’s shoes did not cool off.”).

⁴⁹ According to the Model Penal Code, “the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.” Model Penal Code § 3.04(1).

⁵⁰ Caroline Forell & Donna Matthews, *When Battered Women Kill*, in *A Law of Her Own: The Reasonable Woman as a Measure of Man*, 200-06, (N.Y.U. Press 2000); Elizabeth Schneider, et al., *Domestic Violence and the Law: Theory and Practice*, 454-55 (Foundation Press 2d ed. 2008).

⁵¹ Mrs. Peters conversing with Mrs. Hale: “No, it’s *strange*, . . . they think it was such a—funny way to kill a man. . . . There was a gun in the house. He says that’s what he can’t understand.” Glaspell, *A Jury*, *supra* n. 1, at 28.

⁵² Associated Press, *Lawyer Charged with Wife’s Death* (Aug. 1996) (copy on file with the author and *Animal L.*).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

was assaulted and her parakeet killed.”⁵⁷ The “parakeet had been put inside an oven and fatally burned.”⁵⁸ Another story reported that in California, “[an] abusive boyfriend responded to a woman’s announcement that she was leaving by wrestling her pet bird from her hands and breaking its neck.”⁵⁹ He was charged with animal cruelty and did jail time.⁶⁰ When he was released, he broke into the woman’s home and stole the bird’s cremated ashes; he was arrested and convicted of burglary and breaking and entering.⁶¹ In February 2008, the Arizona Daily Sun reported that a man was arrested for beating his girlfriend and his cousin and for killing his girlfriend’s two pet birds. His charges included “misdemeanor assault, and assault, criminal damage and animal cruelty, all per domestic violence.”⁶²

These incidents of actual pet killings demonstrated to students that batterers do not limit their animal abuse to cats and dogs as a means of terrorizing their victims.⁶³ Any animal companion is fair game. The charges brought against the perpetrators in these news articles also show that the penalties for animal cruelty are often more serious than for battering women. At least forty-three states have felony provisions for animal cruelty,⁶⁴ while most cases of domestic violence are prosecuted as misdemeanors.⁶⁵ When both domestic violence and animal cruelty are present, prosecutors should consider focusing on the animal abuse to take advantage of the more serious penalties and, sadly, the possibility of greater judge or jury sympathy for the

⁵⁷ *Man Held for Hitting Woman, Killing Bird* (Mar. 3, 1997) (copy on file with the author and *Animal L.*).

⁵⁸ *Id.*

⁵⁹ Wood & Speed, *supra* n. 38, at 16.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² The Arizona Daily Sun, *Police log for 02/21/08: Domestic Violence, Animal Cruelty*, http://www.azdailysun.com/articles/2008/02/21/news/police_log/20080221_police_log_49.txt (Feb. 21, 2008) (last accessed Nov. 9, 2008); see also *State v. Smith*, 791 P.2d 836, 848 (Or. 1990) (defendant found guilty of murdering his third wife also abused animals including killing his first wife’s ducklings in front of her); Pam Belluck, *Battered Wives’ Pets Suffer Abuse, Too*, 155 N.Y. Times A10 (Apr. 1, 2006) (batterer wrung the necks of his human victim’s prized turkeys).

⁶³ Sometimes it is unclear whether birds or other non-mammals were intended to be included under animal cruelty and other animal protection laws. See e.g. *People v. Baniqued*, 101 Cal. Rptr. 2d 835 (Cal. App. 3d. 2000) (court held in a cockfighting case that birds were covered by the term “animal” under the animal cruelty statute); *People v. Garcia*, 777 N.Y.S.2d 846, 850 (2004) (court held goldfish were covered under “animal” in a protective order case). To avoid having to litigate this issue, legislatures should expressly include non-mammals.

⁶⁴ Phil Arkow, *Expanding Domestic Violence Protective Orders to Include Companion Animals*, 8 ABA Commn. on Dom. Violence ENewsletter, Animal Abuse Issue ¶ 6 (Summer 2007), <http://www.abanet.org/domviol/enewsletter/pdfs/arkow.pdf> (last accessed Nov. 9, 2008).

⁶⁵ Elizabeth Schneider, Cheryl Hanna, Judith Greenberg & Clare Dalton, *Domestic Violence and the Law: Theory and Practice* 281 (3d ed., Foundation Press 2008).

animal than the human victim.⁶⁶ Potential legislative action that can be discussed includes amending anti-cruelty statutes to increase the penalty where the perpetrator is also a batterer or child abuser, and enhancing the penalty for domestic violence committed in conjunction with cruelty to animals. Similarly, there could be more serious penalties for child abuse or animal abuse if the child witnessed animal abuse.⁶⁷

Today the law can make it easier for battered women and their pets to escape. In class we discussed statutes that permit a battered woman's pet to be included as her property in a protective order. Like a number of states,⁶⁸ California recently amended its protective order statute to allow the order to grant a petitioner the exclusive care, possession, or control of her pet and order that a respondent stay away from the pet.⁶⁹ Violation of this order would result in a misdemeanor.⁷⁰ It was inspiring to students when I pointed out that the moving force behind this statute was a woman who was a law student at the time.⁷¹ A related remedy that could be added to a battered woman's arsenal would be amending the protective order statute to make animal abuse that is intended to emotionally harm a human family member grounds for obtaining a protective order.⁷² Furthermore, the legislature could require veterinarians to report to police cases of aggravated animal abuse in an attempt to prevent that abuse from spreading to humans in the home.⁷³

⁶⁶ For an unusual example of this see *Garcia*, 777 N.Y.S.2d at 847 (court held that a batterer who crushed three pet goldfish with his foot could be found guilty of the felony of aggravated cruelty to an animal, in addition to less serious crimes against humans including attempted assault and assault).

⁶⁷ See e.g. Or. Rev. Stat. § 167.320 (2007) (raising first-degree animal abuse from a misdemeanor to a felony if the accused "knowingly commits the animal abuse in the immediate presence of a minor child").

⁶⁸ Phil Arkow, *Animals in Protection Orders*, http://www.abanet.org/domviol/docs/Animals_in_Protection_Orders_9_2007.pdf (Sept. 2007) (last accessed Nov. 9, 2008).

⁶⁹ Cal. Fam. Code Ann. § 6320(b) (West 2008).

⁷⁰ Cal. Penal Code § 166 (West 2008) (New York enacted a similar statute in 2006, N.Y. Fam. Law § 842 (McKinney 2006), and it was recently used to grant an order of protection for "Circles," a Peking duck and against a man who had shot Circles with a pellet gun. In this instance, the protective order was granted even though there was no evidence of domestic violence. Editorial, *Real Protection*, *Newsday* A49 (Apr. 6, 2008)).

⁷¹ Wood & Speed, *supra* n. 38, at 15.

⁷² ABA Animal Law Comm. & Schaffner, *supra* n. 34. Many commentators emphasize the importance of setting up effective cross-reporting procedures so that authorities are alerted to the risks to animals, women, and children when a person abuses a member of any of these groups. There also is a need for cross-training among personnel who deal with these kinds of harms.

⁷³ See e.g. Or. Rev. Stat. § 686.442 (2007) (stating:

The Legislative Assembly finds that there is a direct link between the problems of animal abuse and human abuse and further finds that for the purposes of identifying and prosecuting individuals who have committed crimes against animals, preventing further abuse of animals and preventing animal abuse from escalating to abuse against humans, it is necessary and in the public interest to require mandatory reporting of aggravated animal abuse by veterinarians).

In Animal Law we also considered the tort remedies that may be available in the cases such as those described above where a battered woman's companion animal is deliberately injured or killed. Because animals are categorized as personal property, an action for conversion would be available for the injuring or killing of a pet.⁷⁴ However, awardable damages are usually limited to the fair market value of the "chattel."⁷⁵ A few jurisdictions allow juries to consider other factors. For example, in Oregon, a 1914 appellate court determined that the value of a dog was its "special value" to the owner⁷⁶ and upheld an award of \$200 (\$4,150 in 2007 dollars) for the intentional killing of the dog.⁷⁷ One wonders how a jury today would address the value of a canary to a human companion like Minnie. A jury would likely be sympathetic to a battered woman's claim that her pet was worth far more than its fair market value if a jurisdiction allowed this argument, but few do.

Another claim that pet owners have brought is loss of companionship/consortium of their pets. However, such a claim has never succeeded at the appellate level.⁷⁸ A more viable alternative is a tort claim for intentional infliction of emotional distress.⁷⁹ In a recent Oregon case, the court awarded a family \$56,400 against a neighbor who intentionally ran over their dog with his truck: \$400 was for the value of the dog; \$6000 was for the emotional distress; and \$50,000 was for punitive damages.⁸⁰ Similarly, if a batterer tortured or killed his

See also Or. Rev. Stat. 609.650 (noting link between animal cruelty and domestic violence and therefore encouraging reporting of animal cruelty).

⁷⁴ *Restatement (Second) of Torts* § 222A(1) (1965) (Conversion is defined as: "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.").

⁷⁵ David Favre, *Animal Law: Welfare, Interests, and Rights* 136–37 (Aspen Publishers 2008).

⁷⁶ *McCallister v. Sappingfield*, 144 P. 432, 434 (Or. 1914).

⁷⁷ The judge writing for the majority in *McCallister* displayed a great fondness for dogs by including the following poem in the court's opinion:

But the poor dog, in life the firmest friend,
The first to welcome, foremost to defend,
Whose honest heart is still his master's own,
Who labors, fights, lives, breathes for him alone,
Unhonour'd falls, unnoticed all his worth,
Denied in heaven the soul he held on earth:
While man, vain insect, hopes to be forgiven,
And claims himself a sole exclusive heaven.

Id. at 433.

⁷⁸ Favre, *supra* n. 75, at 156–57. *See e.g. Lockett v. Hill*, 51 P.3d 5 (Or. App. 2002).

⁷⁹ *See Restatement (Second) of Torts* § 46 (1965) (enumerates the elements for the tort of intentional infliction of emotional distress as: "extreme and outrageous conduct that intentionally or recklessly causes severe emotional distress").

⁸⁰ Associated Press, *Family Gets \$56,400 in Dog's Death*, <http://www.nrtoday.com/article/20060601/NEWS/60601003> (June 1, 2006) (last accessed Nov. 9, 2008). The family's claim of loss of companionship was not permitted to go forward. Their neighbor also served three months in jail.

human victim's companion animal, she could sue him for intentional infliction of emotional distress. It seems likely that a jury today would find Mr. Wright's conduct in killing Minnie's bird to be outrageous and intended to cause her severe emotional distress, justifying compensatory damages. There might also be a good chance of recovering substantial punitive damages.

VII.

Legal responses to the problem of animal and woman abuse have come a long way since when Susan Glaspell wrote *A Jury of Her Peers*. Much of this can be attributed to the entry of women into the public sphere and law practice. However, the violence, mostly committed by men and boys against women and animals, has not abated. Although I did not have my Animal Law students engage in the difficult conversation about the fact that boys and men are far more likely than women to abuse animals,⁸¹ and men are far more likely than women to commit domestic violence,⁸² I plan to do so in the future. As a society and as lawyers we need to continue to confront this reality.⁸³

A Jury of Her Peers is a story about how men and women see and experience things differently. Referring to their discovery of why Minnie killed Mr. Wright, Mrs. Hale comments: "we live close together and we live far apart. We all go through the same things—it's just a different kind of the same thing! If it weren't—why do you and I *understand*? Why do we *know*—what we know this minute?"⁸⁴ Today, women make up almost half the law students in the country.⁸⁵ That many law schools now teach *A Jury of Her Peers* and offer courses in Women and the Law, Domestic Violence, and Animal Law⁸⁶ is directly connected to the different perspectives and experiences women bring to the law.⁸⁷ The women in Glaspell's story still have much to offer all

⁸¹ Suzanne R. Goodney-Lea, *Guns, Explosives, and Puppy Dog Tails: Animal Cruelty and Anti-Social Behavioral Patterns Among American Boys*, http://www.allacademic.com/meta/p_mla_apa_research_citation/0/1/9/9/8/pages19983/p19983-1.php (last updated Jan. 14, 2005) (last accessed Nov. 9, 2008); see also Clifton P. Flynn, *Battered Women and Their Animal Companions: Symbolic Interaction Between Human and Non-human Animals*, 8 Socy. & Animals 101 (2000) (providing findings and data that offer an insight into dynamic relations between humans and their domestic animals and abuse).

⁸² Schneider et al., *supra* n. 65, at 219–20.

⁸³ Of course, there are women who abuse humans or animals, as well as women who abuse both. Dianna J. Gentry, *Including Companion Animals in Protective Orders: Curtailing the Reach of Domestic Violence*, 13 Yale J.L. & Feminism 97, 103 (2001).

⁸⁴ Glaspell, *A Jury*, *supra* n. 1, at 35.

⁸⁵ Law School Survey of Student Engagement, http://www.lssse.iub.edu/2008_Law_School_Report/LSSSE%202008%20Overview.pdf (last accessed Nov. 9, 2008).

⁸⁶ Angel, *Criminal Law and Women*, *supra* n. 8.

⁸⁷ Differences between men and women may matter when they serve as judges or on juries assessing the conduct of men who abuse animals and women and women who violently respond to such abuse. Should the law, in this case, the United States Supreme Court, heed the dynamics between men and women as illustrated by Glaspell's depiction of Minnie and Mr. Wright, and permit gender to be considered during *voir dire*

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USING A JURY OF HER PEERS

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students of the law, in an Animal Law seminar or course, as well as in many other law school courses. *A Jury of Her Peers* just keeps on going and going and going.

in domestic violence and animal abuse cases? *See e.g. J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994) (exercising preemptory challenges based solely on gender violates the equal protection clause); *but see id.* at 156 (Scalia, J., dissenting) (stating that juries “[strike] on basis of gender,” and it is not stereotyping gender to say differences in gender produce different outlooks in the jury room, which prompts a genuine use for preemptory challenges based on gender).

