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CORRECTING MYOPIA IN DOMESTIC VIOLENCE ADVOCACY: MOVING FORWARD IN LAWYERING AND LAW SCHOOL CLINICS

CAMILLE CAREY*

ABSTRACT

Lawyers and law school clinics have become myopic in their approach to civil domestic violence lawyering. This article argues that domestic violence lawyering should expand beyond its current focus on family law to move domestic violence law and practice forward. Drawing on theoretical frameworks from criminal law and feminist legal theory, this article proposes a lawyering model that expands individual representation across a wide spectrum of case types while also challenging systems that enable battering or do not support victims in their efforts to secure safety. Holistic representation in family law, public benefits, immigration, housing, mortgage foreclosure, tort, and financial matters, among other substantive areas, better serves domestic violence victims and reveals systemic problems facing victims. By taking a dual approach—broad holistic representation of individual victims combined with law reform efforts directed at systemic issues revealed through broad direct representation—lawyers and law school clinics can move domestic violence advocacy forward.

INTRODUCTION

We have become myopic in our approach to domestic violence, and it is time to move civil domestic violence lawyering forward. Currently, most domestic violence lawyering focuses on family law matters. While family law representation

meets an important need for victims,¹ it is only one set of the multitude of potential needs for victims of domestic violence. Our focus on family law has routinized domestic violence advocacy and stymied understanding of its broader effects and possibilities. To move domestic violence law and advocacy forward, we need to more actively engage in dialogue about priorities for civil domestic violence advocacy and take braver and broader steps on behalf of victims.

I propose a model of civil domestic violence lawyering that seeks to better serve individual clients while also challenging structural barriers that impede our efforts to reduce domestic violence. Under this model, we broaden the scope of civil assistance to domestic violence victims toward the margins of possible advocacy and combine this “holistic” advocacy with reform efforts. Domestic violence practitioners should move away from overly-specialized family law practices, and individual assistance should include advocacy on behalf of victims in a breadth of cases, including but not limited to public benefits, immigration, housing, mortgage foreclosure, tort, and financial matters. This holistic approach includes representation in a wide variety of legal matters and advocacy in matters that some may regard as “non-legal.” Such a model allows us to more effectively assist victims and develop new or underdeveloped areas of domestic violence advocacy. Equally as important, this advocacy can inform efforts on the systemic

* Assistant Professor of Law, University of New Mexico School of Law. I would like to thank Robert A. Solomon, April Land, Elizabeth S. Saylor, Jefferson Decker, Julie Wilensky, Stephen Wizner, Hope Metcalf, Christopher N. Lasch, Diana Reiter, J. Michael Norwood, Nathalie Martin and Dana Dillon for their generous assistance with this article. I would also like to thank Erin Phillips and JoEtta Toppah for their excellent research assistance and Dean Kevin Washburn and The University of New Mexico School of Law for the research grant provided in support of this article. Finally, I would like to thank the staff members of the Columbia Journal of Gender and Law, especially Ariel Toft and Derek Russell-Kraft, for their valuable comments and assistance.

¹ For consistency, I refer to persons subjected to domestic violence as “victims.” I am not entirely satisfied with this term. Calling a person who has endured domestic violence a victim essentializes them as such, denying the other aspects of their selves. However, I find the term “survivor” to be similarly problematic and also to be somewhat patronizing. The term “domestic violence” is also problematic, as it places the focus of intimate abuse on violence, when abuse can take many forms—emotional, financial, and sexual for example.

level. Holistic representation exposes us to and educates us about the systems and challenges victims face. We can then use this knowledge to challenge systems that enable battering or do not support victims in their efforts to secure safety. This simultaneous engagement of the individual and the systemic can help move our efforts to address domestic violence forward.

In framing this approach of simultaneously engaging the individual and systemic levels, I draw on two theoretical frameworks. The first framework is provided by the debate about domestic violence-related mandatory arrest and mandatory prosecution policies in criminal law. In that debate, there are conflicting ideologies about whether individual domestic violence victims' interests or society's interest in addressing domestic violence should predominate. The second framework is that of the tension between "particularity" and "generality" in domestic violence work, or individual victims' interests on the one hand and broader societal constructs that affect domestic violence on the other. Drawing from these theoretical frameworks, I argue for a model of civil domestic violence lawyering that simultaneously addresses individual victims' interests and societal interests in reducing battering. This model of domestic violence lawyering clearly identifies the goals of civil domestic violence lawyering and implements a broader spectrum of legal advocacy to serve individual victims while challenging systemic issues that enable domestic violence or fail to support victims in their efforts to obtain safe and independent lives.

To provide examples of this model in practice, I discuss *MKB v. Eggleston*, a case filed to ensure immigrant access to public benefits in New York City. I also discuss the development and design of the Domestic Violence Clinic ("DV Clinic") at Yale Law School. The DV Clinic serves not only as a model for this approach to domestic violence advocacy, but is also relevant because the process of developing the DV Clinic forced us to set priorities for efforts on behalf of domestic violence victims in a broader context. As in the development of the DV Clinic at Yale, law school clinics can and should serve as effective workshops to explore and develop innovative strategies for addressing domestic violence.

Part I of this paper briefly discusses the lawyering priorities of domestic violence practitioners, including the focus on family law, and looks at the existing literature on priority-setting for domestic violence clinics in law schools. Part II examines theoretical structures around which civil domestic violence lawyering priorities may be set, including the debate about domestic violence priorities in the criminal context and tensions between serving individual victims and combating domestic violence systemically. Part III proposes a framework for civil domestic violence work, including holistic representation and advocacy at the margins on behalf of individuals as well as advocacy aimed at systems. Part IV gives examples of holistic representation, including advocacy at the margins, and efforts at systemic reform through descriptions of *MKB v. Eggleston* and the DV Clinic at Yale Law School. Part V argues that a law school clinic is an effective forum within which to push forward domestic violence lawyering.

I. Current Priorities of Domestic Violence Lawyering: Practitioners and Clinics

A. Practitioners

Civil domestic violence lawyering primarily focuses on family law cases. In this context, I define “family law” as divorce, child custody, visitation, child support, alimony, paternity, and division of marital property cases. I also include civil restraining order cases, sometimes called protective order or order of protection cases.² Domestic violence lawyers generally provide only family law assistance and sometimes

² For consistency, civil orders of protection, protective orders, restraining orders, and protection orders are referred to as “restraining orders.” The term varies by jurisdiction.

even specialize within family law.³ While the focus of domestic violence lawyering on family law is limiting, individual legal assistance to victims in this area undoubtedly provides valuable assistance and meets client needs and demands. Before moving to a discussion of advocacy beyond family law, I would like to acknowledge some of the many benefits provided to victims by family law representation.

Representation of victims, especially low-income victims, in family law cases fulfills a significant unmet need. Victims most commonly seek assistance from lawyers in family law matters. For domestic violence victims seeking to end their relationship with their abuser, family law representation helps to facilitate that separation. Child support and alimony generally aid in providing some additional financial stability to separating or separated battered women. Divorces provide a host of important possible outcomes: a change in legal status, custody of children, division of assets and debts, even a fresh start. Restraining orders serve a very important function in providing

³ Before entering law teaching, I was a domestic violence lawyer in New York City. I was surprised by the narrow specialization of the domestic violence attorneys I encountered. Almost all of the lawyers practiced family law exclusively, and they specialized within family law. New York State has a bifurcated family law system, with two forums for family law matters: Family Court, which has jurisdiction over matters involving children and families, and New York State Supreme Court, which is the trial court of unlimited jurisdiction and hears cases that are outside the jurisdiction of specialized trial courts. See N.Y. CONST. art. VI, §§ 1, 7; N.Y. FAM. CT. ACT §§ 114, 115. Divorce cases may be brought only in the Supreme Court, where ancillary issues of custody, visitation, restraining order, paternity, child support, and alimony may also be heard. The Family Court can hear all family matters—except for divorce cases—including but not limited to custody, visitation, restraining order, paternity, child support, and alimony matters. Many domestic violence attorneys in New York City have a focused family law practice and appear in Family Court or Supreme Court, but not both.

additional safety to abused women.⁴ Also, victims are often defendants in lawsuits filed by their abusers and need representation. Finally, providing a buffer between the client and her abuser in court and in out-of-court negotiations regarding family matters is also an important act.

The history of the battered women's movement offers some explanation for this focus on family law. Early movement efforts concentrated on establishing domestic violence shelters and reforming the criminal justice system.⁵ Individual domestic violence victims, supported by the movement's efforts to provide

⁴ There has been debate about the efficacy of restraining orders in ensuring victims' safety. See generally Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of "Efficacy,"* 11 S. CAL. INTERDISC. L.J. 361 (2002). Some studies have reported dramatic reductions in reports of violence after victims obtain a civil restraining order. See Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 617 (2004) (showing that "irrespective of whether or not a 2-year protection order was granted, abused women who sought a protection order reported significantly lower levels of threats of abuse, physical abuse, stalking, work harassment, and risk factors for femicide . . ."); Victoria L. Holt et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?*, 24 AM. J. PREVENTIVE MED. 16, 18 (2003) (finding that civil restraining orders are associated with decreased likelihood of subsequent intimate partner violence); Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 JAMA 589, 593 (2002) (finding that permanent, but not temporary, protection orders are associated with a significant decrease in the risk of violence reported to the police against victims by their intimate partners); Matthew J. Carlson et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. FAM. VIOLENCE 205, 214 (1999) (showing significant decrease in violence after acquisition of civil restraining orders). Other researchers, however, have argued that their studies prove that civil restraining orders are not effective. See Andrew R. Klein, *Re-Abuse in a Population of Court-Restrained Male Batterers: Why Restraining Orders Don't Work*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 192, 207 (Eve S. Buzawa & Carl G. Buzawa, eds., 1996) (finding that "the mere issuance of an RO fails to prevent future abuse against the same victim in almost half of the cases"); Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 214, 240 (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (reporting that "[s]ixty percent of the women who received temporary orders of protection stated that their partners violated the order in the year following the order").

⁵ See SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 53-112, 157-83 (1982).

immediate safety through shelter and police protection, flooded into the family courts to deal with longer term issues regarding their children, marital relationships, and child and spousal support. Domestic violence victims also began relying on family courts because of the failure of law enforcement to offer protection. Police officers would fail to respond to calls, or, if they did respond, would refuse to arrest the abuser and would instead refer victims to family court, arguing that the violence was a “personal matter.”⁶ Victims sought civil restraining orders in family court, which was sometimes the only forum for such relief, as some states historically only provided restraining orders as a remedy in divorce cases.⁷ Victims went to family courts because these courts provided important remedies relating to their children—custody and visitation—and the potential for economic support: child support, alimony, and equitable distribution of marital property. Family courts also provided women with the legal tools to end their relationships, including these aforementioned remedies and divorce.⁸

Legal remedies for addressing domestic violence also became focused on family law due to court evolution and design. Family courts and juvenile courts began emerging in the first two decades of the twentieth century as a result of Progressive era reforms.⁹ These courts were developed to handle criminal acts committed against children and spouses outside of the criminal courts.¹⁰ The goal of establishing family courts was

⁶ *Id.* at 158.

⁷ *Id.* at 162.

⁸ As Richard Abel correctly notes, family law representation will be necessary so long as women’s subordination is sustained and caregiving is gendered. The state, through its laws and funding of family law legal services attorneys, must seek to equalize sexual inequalities and assist financially disadvantaged parties, usually wives and children, in obtaining support from advantaged parties, usually husbands and fathers. Richard L. Abel, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA L. REV. 474, 608–09 (1984).

⁹ ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* 126, 136 (1987).

¹⁰ *Id.* at 126.

to preserve family unity rather than punish the perpetrator of violence.¹¹ Family courts sought to decriminalize domestic violence and encourage reconciliation.¹² The design of family courts framed domestic violence as a family matter rather than a criminal matter and as an issue of private rather than public importance. Thus legal responses to domestic violence were channeled into family courts where restraining orders, child custody, child support, and divorces became the primary remedies available to victims.

The focus of domestic violence lawyering on family law also arose in part because of the location of domestic violence work within legal services offices. The domestic violence movement is fairly young, and attorney participation in the movement is even more recent. Domestic violence representation has been provided primarily by attorneys employed in legal services offices, which tend to maintain heavy family law caseloads. By the 1950s, family law cases between indigent parties constituted a large percentage of caseloads in legal services offices,¹³ and family law matters have continued to dominate legal services offices.¹⁴ With an established focus on family law, legal services attorneys who took on the cases of domestic violence victims were understandably comfortable channeling domestic violence issues into family law cases. Early legal services attorneys who focused on domestic violence were typically family law attorneys who incorporated representation of victims into their work. Today domestic violence attorneys tend to be lawyers with family law backgrounds who are housed in family law units of legal services offices.

The victims themselves also helped to establish the role of legal services offices in providing family law representation to domestic violence victims. Studies show that individuals decide whether to seek legal services within the context of existing laws

¹¹ *Id.* at 126, 138.

¹² *Id.* at 137.

¹³ JACK KATZ, POOR PEOPLE'S LAWYERS IN TRANSITION 40 (1982).

¹⁴ Abel, *supra* note 8, at 474, 564–70, 608.

and remedies.¹⁵ Because family law remedies featured so prominently in the practices of legal services offices, victims began seeking family law representation to solve their problems related to domestic violence. Individuals perceive the types of problems for which a lawyer's assistance would be helpful or necessary based on the availability of legal services.¹⁶ Additionally, when individuals have access to legal services, they are more likely to perceive a greater need for the intervention of lawyers in their problems.¹⁷ In the context of domestic violence, victims began to see issues with their families and partners as appropriate problems to bring to attorneys and increasingly saw lawyers as helpful or necessary for dealing with these problems because of the growing availability of legal services. As representation of victims by legal services lawyers in family law cases became more common, victims began seeking this representation more frequently. And as more victims began successfully addressing problems through family law remedies with the assistance of legal services attorneys, the practice became more common.

In recent years, domestic violence law practice has become regularized as more funding has become available for full-time domestic violence attorney positions. Since the inception of federal funding for domestic violence lawyering in the Violence Against Women Act of 1994 and reauthorizations in 2000 and 2005 (VAWA), dedicated domestic violence attorneys in legal services offices are becoming more commonplace. This funding

¹⁵ *Id.* at 567 (citing ROYAL COMM'N ON LEGAL SERVICES IN SCOTLAND, CMD. 7846, REPORT 38 (1980) at 57–58; William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980–1981); Felice J. Levine & Elizabeth Preston, *Community Resource Orientation Among Low Income Groups*, 1970 WIS. L. REV. 80 (1970)).

¹⁶ F. RAYMOND MARKS ET AL., *THE SHREVEPORT PLAN: AN EXPERIMENT IN THE DELIVERY OF LEGAL SERVICES* 47–49, 77–80 (1974). The findings of the Shreveport Plan study are based on the perceived need for lawyers of union members covered by a legal insurance plan. Some but not all of the participants studied used the legal services made available to them through the plan. *Id.* at 59–61. Therefore, I use data from this study to discuss availability and access to legal services as opposed to prior utilization of legal services.

¹⁷ Abel, *supra* note 8, at 567 (citing Marks et al., *supra* note 16, at 49, 79); Marks et al., *supra* note 16, at 47–49, 77–80.

is channeled through the Legal Assistance for Victims (LAV) Grant Program maintained by the Office on Violence Against Women at the U.S. Department of Justice. The stated purpose of this program is to increase the availability of civil and criminal legal assistance for adult and youth victims of domestic violence, sexual assault, stalking or dating violence who are seeking relief in legal matters arising as a consequence of that abuse or violence.¹⁸

The LAV Grant Program requires that grantees address a “demonstrated need in their communities by providing services that promote the dignity and self sufficiency of victims, improve their access to resources, and create options for victims seeking safety from perpetrator violence”¹⁹ Interestingly, the grant does not dictate which specific services the lawyers must provide, and in no way specifies that grantees should focus on the provision of representation in family law cases. Instead, the grant application states that the Department of Justice prioritizes applicants who propose to provide holistic representation, stating that holistic representation extends beyond obtaining restraining orders and “includes representation in other legal proceedings directly related to a client’s experience of violence which are likely to increase the victim’s safety and security, such as: child support, child custody, legal separation/divorce, unemployment compensation, immigration matters, and/or housing.”²⁰

¹⁸ U.S. DEP’T OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN, OMB BULL. No. 1122-0020, OVW FISCAL YEAR 2011 LEGAL ASSISTANCE FOR VICTIMS GRANT PROGRAM, 3 (2011).

¹⁹ *Id.* at 14.

²⁰ *Id.* at 7. While the Department of Justice’s priority for funding holistic representation implies comprehensive legal assistance beyond family law matters, most of the examples provided—except for unemployment, housing assistance, and immigration—fall within traditional family law boundaries. The LAV Grant application also specifies that grant funds cannot be used to support legal representation in tort cases, child sexual abuse cases, cases involving the child protection system, victim service employee cases, and criminal defense of victims charged with crimes. Additionally, grant funds cannot be used to support lobbying, fundraising, research projects, or physical renovations of office space. *Id.* at 9. Prohibiting grantees from representing clients in tort cases eliminates an important avenue of relief that has been underexplored by domestic violence lawyers.

Despite the flexibility of the LAV Grant Program and its endorsement of holistic services, grantees continue to concentrate on family law matters. A study of LAV grantees conducted by the Institute for Law and Justice reveals the dearth of legal services other than family law representation provided to victims under the grant.²¹ The study shows that, of the grantees studied, in the first year of a grantee's LAV funding each grantee on average provided legal assistance other than family law assistance in only 68.6 (or 14%) of 488.2 cases.²² In subsequent years of the grant, the percentage decreased even further, with the average grantee providing assistance in non-family law cases in 68.6 (or 11%) of 619.3 cases.²³

Financial factors for attorneys who are not federally-funded also affect the focus of domestic violence lawyering on family law. Private attorneys who represent victims benefit from the billing potential of family court. Family law matters tend to be heard in dedicated courtrooms or family courts. Attorneys with fee-generating cases can simultaneously represent multiple clients in these courtrooms, maximizing financial benefits. Some states also appoint and pay private attorneys to represent domestic violence victims in family courts. For example, New York State appoints and compensates private counsel to represent indigent parties in contested custody cases and civil restraining order cases.²⁴

On the other hand, flexible funding streams have led to some broadening of domestic violence advocacy beyond family law advocacy. Domestic violence attorneys who move beyond family law are often recent law school graduates supported by post-graduate law fellowships. These post-graduate law fellowships, including the Equal Justice Works Fellowship and

²¹ INST. FOR LAW AND JUSTICE, NATIONAL EVALUATION OF THE LEGAL ASSISTANCE FOR VICTIMS PROGRAM: EXECUTIVE SUMMARY (2005).

²² *Id.* at 5.

²³ *Id.*

²⁴ N.Y. FAM. CT. ACT art. VIII; N.Y. FAM. CT. ACT §262; N.Y. COUNTY LAW, art. XVIII-B (McKinney 2011); *In re Rhonda Smiley*, 330 N.E.2d 53 (N.Y. 1975) (holding that parties in matrimonial actions do not have a right to assigned counsel in divorce cases).

the Skadden Fellowship, fund innovative projects that meet an unmet need of a client population. Interestingly, attorneys who are supported by these fellowships move beyond family law through an increased specialization within domestic violence advocacy.²⁵

B. Clinics

Domestic violence clinics are not uncommon in today's law schools, and the focus of these clinics tends to be family law.²⁶ There is a rather small body of scholarship about priorities for law school civil domestic violence clinics.²⁷ A few scholars who have written on this topic have presented a progressive vision of domestic violence law practice. It is a positive development that lawyering in some law school clinics is progressive in many ways. I present an overview of this scholarship, but note that the literature lacks an updated account of the work currently being done in domestic violence clinics.

²⁵ For instance, as an Equal Justice Works Fellow from 2001–2003, I represented immigrant victims of domestic violence holistically, but with a focus on immigration law. At that same time, there were two fellows in New York City—one Skadden Fellow and one Equal Justice Works Fellow—who focused on public benefits advocacy on behalf of domestic violence victims with a focus on working with immigrant victims. As these fellowship attorneys progress in their careers and influence law offices and attorneys with which they have contact, the landscape of domestic violence lawyering will change.

²⁶ By “clinics,” I mean in-house clinics where student legal work is supervised by a faculty member, as opposed to an externship program where student legal work is supervised by an attorney at the hosting law office. There has not been a study about the number of domestic violence clinics in the United States or the specialty or practice areas of these clinics. However, the websites of law schools with domestic violence clinics evince a focus on family law. Results on file with the author.

²⁷ In addition to the articles discussed, see Ann Shalleck, *Pedagogical Subversion in Clinical Teaching: The Women and the Law Clinic and the Intellectual Property Clinic as Legal Archaeology*, 13 TEX. J. WOMEN & L. 113 (2004); Melissa Breger & Theresa Hughes, *Advancing the Future of Family Violence Law Pedagogy: The Founding of a Law School Clinic*, 41 U. MICH. J.L. REFORM 167 (2008); Mary Ann Forgey & Lisa Colarossi, *Interdisciplinary Social Work and Law: A Model Domestic Violence Curriculum*, 39 J. SOC. WORK EDUC. 459 (2003); Sara R. Benson, *Beyond Protective Orders: Interdisciplinary Domestic Violence Clinics Facilitate Social Change*, 14 CARDOZO J.L. & GENDER 1 (2008).

Four articles offer particularly thoughtful discussions of the priorities of specific domestic violence law school clinics.²⁸ In the first article, Susan Bryant and Maria Arias describe the design and teaching choices of the Battered Women's Rights Clinic of the City of New York's Law School at Queens College ("CUNY").²⁹ In the second article, Sarah Buel describes the practices and scope of the University of Texas School of Law ("UT") Domestic Violence Clinic. In the third article, Margaret Martin Barry looks at priorities for law school clinics within the context of the Catholic Law School's Domestic Violence Clinic. In the fourth article, Lois H. Kanter, V. Pualani Enos, and Clare Dalton describe the priorities of Northeastern University School of Law's Domestic Violence Institute.³⁰ I will address each of these articles in turn.

Bryant and Arias describe the CUNY Battered Women's Rights Clinic and discuss how the design and teaching choices of the clinic reflect a vision of the role of lawyers in representing

²⁸ Elizabeth Schneider's writings provide accounts of her Battered Women and the Law Course at Harvard Law School. Her course incorporated an externship component (which she refers to as the "clinical placement component") supervised by Schneider and Sarah Buel. ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 211-27 (2000) [hereinafter BATTERED WOMEN]; Elizabeth M. Schneider, *Violence Against Women and Legal Education: An Essay for Mary Joe Frug*, 26 NEW ENG. L. REV. 843 (1992). Schneider suggests that law schools can successfully use the study of domestic violence as a lens for understanding experiences of family and intimate relations generally, to foster greater opportunities for legal representation of domestic violence victims, for examining the role of law and social change, and for exploring the relationship between theory and practice and the interplay between activism and scholarship. BATTERED WOMEN, at 211-27.

²⁹ The CUNY Battered Women's Rights Clinic is no longer offered as of the Fall 2009 term. At its conclusion, the clinic was co-taught by the Honorable Maria Arias and Professor Donna Lee. In this Article, I rely on Bryant and Arias's depiction of the CUNY Clinic in their publication.

³⁰ Lois H. Kanter et al., *Northeastern's Domestic Violence Institute: The Law School Clinic as an Integral Partner in a Coordinated Community Response to Domestic Violence*, 47 LOY. L. REV. 359 (2001).

battered women.³¹ They situate their description of the clinic within the specific mandates of CUNY's clinical programs.³² While at first blush most of the mandates of CUNY's clinical programs seem to focus on student needs, Bryant and Arias emphasize both student and client needs throughout their discussion of the Battered Women's Rights Clinic. The clinic uses a "comprehensive approach to service delivery" and offers a "full range of services, not simply family law representation."³³ Bryant and Arias do not specify which kinds of cases beyond family law representation the students handle,³⁴ but note that the clinic provides clients "with the help that they need."³⁵ Additionally, they specify that the clinic has expertise in

³¹ Susan Bryant & Maria Arias, *Case Study, A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering That Empowers Clients and Community*, 42 WASH. U. J. URB. & CONTEMP. L. 207, 207 (1992).

³² *Id.* at 209 ("CUNY's clinical programs are designed to fulfill several purposes: (1) to address the surrounding communities' needs by providing service to persons who have difficulty obtaining legal representation; (2) to provide students with the opportunity to enhance the skills acquired through prior simulation and fieldwork in a faculty supervised, live client legal setting; (3) to allow students and faculty to make substantive contributions to developing areas of law; (4) to prepare students for careers in public interest practice; and (5) to encourage students to pursue public interest careers or participate in pro-bono representation after graduation.").

³³ *Id.*

³⁴ The Battered Women's Rights Clinic currently embraces a "full service" model. Students represent clients in family court in restraining order, custody, visitation, and child support cases. They also represent clients in uncontested divorce cases in matrimonial cases in New York State Supreme Court. The students provide assistance and the faculty provide representation in contested matters in Supreme Court, as the student practice rules in New York do not allow for students to appear in Supreme Court. The students also represent clients in immigration cases, including VAWA self-petitions and applications for U visas. Some students are also placed in local law offices, including the Brooklyn Family Defense Project, inMotion, and the District Attorney's Office, where they receive exposure to a wide variety of cases. In addition, the clinic conducts seminars on domestic violence and family court at the Taconic Women's Prison. Telephone Interview with Donna Hae Kyun Lee, Associate Professor, CUNY Law School, and co-teacher of the Battered Women's Rights Clinic (Oct. 8, 2008) (notes on file with author).

³⁵ Bryant & Arias, *supra* note 31, at 209.

serving battered immigrant women.³⁶

Bryant and Arias address the pedagogical goals of having students learn to develop critical perspectives on law and to solve client problems.³⁷ They discuss the difficulty of having students think critically about an area of law while at the same time learning how to practice within it.³⁸ They also write of teaching students to solve problems for clients through expanded service projects, law reform work, and group representation.³⁹

Finally, Bryant and Arias describe how their clinic follows a “client-empowerment model.”⁴⁰ They seek to teach students “the importance of working with clients in a manner that allows the clients to choose what they want from lawyers and the legal system.”⁴¹ To that end, the clinic focuses on client empowerment through its approach to interviewing and client counseling. Bryant and Arias describe how lawyers and law students tend to translate client stories into legal frameworks too quickly, narrowing their questions on legal issues rather than on issues that the client might find more important and relevant.⁴² The clinic’s interviewing skills component seeks to change students’ focus during interviews from the law to the clients.⁴³ Additionally, the clinic’s client-empowerment model requires students to act as problem solvers who let clients make their own decisions rather than recreating the power dynamics of the battering relationship.⁴⁴

³⁶ *Id.*

³⁷ *Id.* at 210.

³⁸ *Id.*

³⁹ *Id.* at 210, 216.

⁴⁰ *Id.*

⁴¹ Bryant & Arias, *supra* note 31 at 210, 216.

⁴² *Id.* at 218.

⁴³ *Id.* at 216–18.

⁴⁴ *Id.* at 216.

Sarah Buel's discussion of the UT Domestic Violence Clinic fits into her broader discussion of the pedagogy of domestic violence jurisprudence within law schools. While Buel discusses the UT Domestic Violence Clinic, she also argues that law schools should integrate domestic violence issues into the mainstream law school curriculum and offer specialized non-clinical courses on domestic violence law. Buel's philosophies on domestic violence lawyering are woven throughout. For instance, she focuses on the importance of situating issues of race and class within examinations of and approaches to domestic violence law. She also addresses the importance of client empowerment, stating that "students must learn the role of lawyers in helping indigent battered clients to empower themselves and that legal remedies alone may be insufficient to propel victims to self-sufficiency and freedom from abuse."⁴⁵

In addition, Buel specifically addresses the design and aims of the UT Domestic Violence Clinic. She reports that a stated goal of the clinic is "to position lawyers as champions in eradicating domestic violence by ensuring that they receive comprehensive education on the issues, and have the opportunity to fully handle cases while in law school."⁴⁶ As Buel describes it, the UT clinic has an ambitious and unique approach to serving clients. The clinic responds to the client's immediate legal crisis but also engages in long-term planning with clients.⁴⁷ To assist with long-term planning, the clinic uses an "Economic Empowerment Plan" to assist clients with employment, housing, medical care, counseling, and child care.⁴⁸ Buel does not delineate the scope of litigation assistance provided to clinic clients, but notes that law school clinics should not limit their services to assistance with restraining orders.⁴⁹ In discussing

⁴⁵ Sarah M. Buel, *The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 309, 313 (2002).

⁴⁶ *Id.* at 334.

⁴⁷ *Id.* at 335.

⁴⁸ *Id.*

⁴⁹ *Id.* at 333.

domestic violence pedagogy generally, she states that her classes “move quickly to elucidate ways in which law students and lawyers can be agents of reform, while utilizing legal remedies to achieve goals.”⁵⁰ To achieve the goal of being solution-oriented, Buel invites an abuse victim to speak to her class about her experience with the legal system, including actions taken by the victim’s lawyer that were helpful or counterproductive.⁵¹

In *A Question of Mission: Catholic Law School’s Domestic Violence Clinic*, Margaret Martin Barry argues for deprioritizing litigation in law school clinics, using the Catholic Law School’s Family and the Law Clinic (FALC) as a framework. She argues that clinical education is obsessed with litigation and that this obsession fails both clients and students. She states that there is a tension between litigation and systemic solutions,⁵² and that the litigation paradigm of most law school clinics, “which places the good of a solitary client before the good of the overall community,”⁵³ is insufficient to productively achieve broader systemic solutions and social justice objectives.⁵⁴ She goes even further, stating that “there is cause to wonder whether *ad hoc* litigation can ever have a significant impact on improving life in a poor community.”⁵⁵

FALC, which is focused solely on domestic violence,⁵⁶ combines direct representation of clients with a “community

⁵⁰ *Id.* at 315.

⁵¹ Buel, *supra* note 45, at 316.

⁵² Margaret Martin Barry, *A Question of Mission: Catholic Law School’s Domestic Violence Clinic*, 38 How. L.J. 135, 142 (1995).

⁵³ *Id.* at 142.

⁵⁴ *Id.* at 142–43.

⁵⁵ *Id.* at 143 (citing Jule Kreyling, *Limits on Protest Effectiveness*, in Derrick Bell et al., *Racial Reflections: Dialogues in the Direction of Liberation*, 37 UCLA L. REV. 1037, 1095–96 (1990)).

⁵⁶ *Id.* at 155.

project requirement.”⁵⁷ According to Barry, FALC provides direct representation in family law matters, including restraining order, divorce, custody, and support matters.⁵⁸ Barry does not indicate that legal representation is offered outside of family law matters. In addition to direct representation, the FALC students take on a community project of their own choosing.⁵⁹ The community project requirement aims to help the students engage with and understand the broader social context of clients and community.⁶⁰ Some examples of the community project requirement include managing a client support group, teaching children in local schools about domestic violence, and assisting with *pro se* clinics.⁶¹

Lois H. Kanter, V. Pualani Enos, and Clare Dalton describe Northeastern University School of Law’s Domestic Violence Institute (“DVI”).⁶² DVI is a community-based and multidisciplinary program that serves the Boston community but also maintains a national focus.⁶³ It has many components, including legal services, a legal/medical collaborative, and a coalition of community-based service providers working to create a coordinated community response to domestic violence.⁶⁴ Kanter, Enos, and Dalton are explicit about the primary goals of DVI. They prioritize the education of advocates in the domestic violence field who will engage in service provision and research that will lead to better approaches to and an improved understanding of domestic violence prevention.⁶⁵ They identify

⁵⁷ *Id.* at 155–56.

⁵⁸ Barry, *supra* note 52 at 155.

⁵⁹ *Id.* at 156.

⁶⁰ *Id.*

⁶¹ *Id.* at 156–58.

⁶² Kanter et al., *supra* note 30.

⁶³ *Id.* at 362.

⁶⁴ *Id.*

⁶⁵ *Id.* at 365.

client empowerment, multidisciplinary collaboration, and increased community funding for domestic violence advocacy as basic principles of DVI.⁶⁶ Kanter, Enos, and Dalton also prioritize community programming, which involves incorporating community values and cultures, as well as domestic violence victims' needs and priorities.⁶⁷

The Northeastern law students work with domestic violence victims in the emergency room at the Boston Medical Center and at an on-site office at the Dorchester District Court.⁶⁸ At the Boston Medical Center, students interview clients and provide immediate assistance, including safety planning, advocating with police to seek arrest of the batterer, pursuing a restraining order, obtaining shelter, making legal referrals, and working collaboratively with medical personnel on ensuring well-documented medical records.⁶⁹ At the Dorchester District Court, students assist with safety planning, case preparation, and obtaining relief authorized under the state's restraining order legislation.⁷⁰ Through the Family Law Litigation Seminar, law students provide direct representation in a family law case under the supervision of a senior family law practitioner.⁷¹ Students can also provide advice and same-day service to domestic violence victims in an office maintained in the family and probate court by Greater Boston Legal Services. This assistance extends to representation in court if the issues are heard the same day.⁷² While Northeastern's program is creative in its multidisciplinary approach and its cooperation with domestic violence medical services, its advocacy—at least according to this literature—does not extend beyond family law matters.

⁶⁶ *Id.*

⁶⁷ *Id.* at 370.

⁶⁸ Kanter et al., *supra* note 30 at 370.

⁶⁹ *Id.* at 388.

⁷⁰ *Id.* at 390.

⁷¹ *Id.* at 392.

⁷² *Id.* at 393–94.

The clinical programs at CUNY and UT described above are atypical in that they provide services beyond the traditional family law paradigm. The programs at Catholic and Northeastern, at least as described in these articles, provide representation in family law matters only. Most domestic violence clinics do not extend beyond family law parameters. Mithra Merryman's "A Survey of Domestic Violence Programs in Legal Education" examines seventeen programs at sixteen law schools, finding that few civil domestic violence clinics provide advocacy in issues beyond family law matters.⁷³ Thirteen of these programs include a criminal component or require direct client contact.⁷⁴ Of the thirteen programs, nine focus solely on civil litigation, two focus solely on criminal litigation, and two combine criminal and civil litigation.⁷⁵ In those programs involving civil litigation, only three allow students to work on a range of civil legal services work in addition to civil restraining orders.⁷⁶ In other words, of the seventeen programs Merryman examined, only three work on civil matters other than restraining order cases.

As the scholarship about domestic violence clinical programs suggests, some law school clinics have moved beyond an exclusive focus on family law matters. However, domestic violence clinics tend to specialize in just family law cases, or more narrowly, just restraining orders. Family law cases do serve an important pedagogical role in law school clinics, as they provide great opportunities for hands-on training for students. Family law cases often require frequent court appearances, giving law students opportunities for oral argument, presentation of testimony and other evidence, and negotiation at court conferences and in mediation. Family law

⁷³ Mithra Merryman, *A Survey of Domestic Violence Programs in Legal Education*, 28 NEW ENG. L. REV. 383, 387 (1994). It is important to note that this article was published in 1994, and the results are not current. At the time of this Article's publication, there does not appear to be a more current scholarly survey about the agendas of in-house law school domestic violence clinics.

⁷⁴ *Id.* at 387.

⁷⁵ *Id.*

⁷⁶ *Id.*

cases also provide opportunities for frequent client contact involving extensive interviewing and counseling and an ongoing client relationship.

Focusing efforts solely on family law cases, however, can limit student learning. Students learn to litigate family law cases, but may do so without critically examining whether family law remedies are the best approach to the problem of domestic violence. This focus also distracts students from analysis of the systems in which family law cases unfold and larger societal and systemic issues that exacerbate and often lead to the problems litigated in family law cases. Family law representation should be paired with critical analysis of family law substance and procedure as well as examination of client problems and domestic violence in a broader sense. Clinics should continue to dissolve the boundaries around limited-service provision to domestic violence victims.

II. Stretching the Margins of Advocacy: Theoretical Structures for Priority Setting

I propose that we use a model that simultaneously employs individual representation across a broad spectrum and systemic advocacy to push domestic violence lawyering forward. I draw primarily on two theoretical frameworks in thinking through priority setting. The first framework is that of the debate around methods and outcomes in the domestic violence criminal context. This debate, focused on whether mandatory arrest and prosecution are the correct normative policies, should serve as a guide for thinking through civil domestic violence lawyering priorities. The second theoretical framework is that of the "particular" and "general," or individual client needs and the systemic issues that enable battering or fail to support a victim in her efforts to obtain safety.

A. Civil Domestic Violence Priorities Within the Context of the Criminal Debate

Attorneys, scholars, and clinicians need to more actively and explicitly engage in debates about priority setting for civil domestic violence lawyering. There is a well-established and thoughtful debate about domestic violence priorities in the criminal context. Surprisingly there is not a fully developed

parallel body of scholarship about priorities in the civil context.⁷⁷ We can use the debate in the criminal context as a model to frame examination of civil domestic violence priorities, while tailoring it to the specific contours of civil law—generally private party versus private party as opposed to the state against a private party.

Scholars and practitioners who focus on civil remedies for domestic violence victims are thoughtful about their approaches to addressing domestic violence. Their inquiries, however, tend to focus on refining current approaches rather than identifying goals and analyzing means to achieve those goals. For example, conferences for civil domestic violence practitioners tend to focus on how to most effectively litigate a divorce or custody case, rather than questioning whether we should be focusing primarily on family law matters and, if not, what other types of lawyering we should be doing. There is a body of work about restraining orders, including whether they are an effective remedy to pursue and whether law enforcement can be relied upon to enforce them. Beyond the question of efficacy and enforcement, however, are the greater and perhaps more important questions of why we do what we do, and how to achieve greater progress

In contrast, the literature about domestic violence in the criminal context explicitly identifies the objectives of addressing domestic violence through the criminal justice system and the practices that are most likely to result in these objectives.⁷⁸ The mandatory policies debate is highly relevant to our articulation of priorities for civil domestic violence lawyering. Scholars in this area clearly identify possible goals including reducing recidivism in abusers, deterring domestic violence, empowering victims, and setting societal norms. Much of this discussion is situated in relation to these goals and takes place within theoretical frameworks, including feminist legal theory and pragmatism. It is not surprising that the criminal literature is more developed because domestic violence reform efforts have

⁷⁷ See Linda G. Mills, *On the Other Side of Silence: Affective Lawyering for Intimate Abuse*, 81 CORNELL L. REV. 1225, 1226 n.5 (1996).

⁷⁸ See Deborah Sontag, *Fierce Entanglements*, N.Y. TIMES, Nov. 17, 2002, (Magazine), at 52.

historically focused on criminal remedies.⁷⁹

The literature on priorities for domestic violence in the criminal context primarily centers on mandatory arrest and mandatory prosecution policies (collectively “mandatory policies”). Mandatory arrest policies require police to arrest when there is probable cause to believe that a domestic violence crime has occurred. Mandatory policies largely remove police discretion and eliminate the victim’s choice about whether she wants an arrest to be made. Mandatory prosecution policies generally require prosecutors to prosecute cases, even if the victim requests discontinuance of the case or withdraws her participation.

Proponents of mandatory policies argue that such policies further the public good in fighting domestic violence. They argue that jurisdictions should increase their commitment to holding batterers criminally responsible through these mandatory policies.⁸⁰ The state, in its role as protector of the public interest, should seek to protect all domestic violence victims and potential domestic violence victims as a population. Proponents focus on traditional goals of the criminal justice system, including punishing criminal conduct and deterring future domestic violence.⁸¹ Mandatory policies also serve a norm-setting role by sending the message that domestic violence is not tolerated by the state and that violations will be treated no differently than crimes that do not involve intimate partners. Explicit aims of such an approach include minimizing the societal costs of violence and seeking to redress women’s subordination in society.⁸² Framed as a conflict between serving

⁷⁹ Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 801 (2007) (stating that “[a]lthough there were salient reasons for feminists to reform the criminal justice system, once they engaged state power, it became the primary if not singular focus of the movement” (internal citations omitted)).

⁸⁰ Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1856 (1996).

⁸¹ *Id.* at 1855.

⁸² *Id.* at 1877.

public and private goals,⁸³ proponents argue that public goals should take priority as “the societal benefits gained through this criminal justice response to domestic violence far outweigh any short-term costs to women’s autonomy and collective safety.”⁸⁴

Proponents also argue that mandatory policies protect individual victims while simultaneously furthering societal efforts to combat domestic violence. They argue that such policies shift the responsibility of deciding whether to arrest or prosecute from the victim to the police or prosecutor. This shifting of responsibility helps shield victims from pressure from their abuser to discourage arrest or drop the charges. It also arguably lessens the chances of retribution from the abuser once criminal charges are filed because the state carries the blame for arrest and prosecution.

Cheryl Hanna, a leading voice in support of mandatory policies, cites feminist theory and pragmatism as foundations for her arguments. For Hanna, feminist theory does not resolve the dilemma between respecting a woman’s preference in whether a criminal case proceeds and taking a position that domestic violence is not a private matter immune to state intervention. She opts for pragmatism and argues that we must choose between two non-ideal solutions.⁸⁵ She explicitly identifies a conflict between serving the greater good by pursuing the traditional public goals of punishing criminals and protecting society on the one hand, and furthering the private desires and

⁸³ *Id.* at 1873.

⁸⁴ *Id.* at 1857.

⁸⁵ *Id.* at 1885–86 (citing Margaret J. Radin; *The Pragmatist and the Feminist*, 63 S. CALIF. L. REV. 1699, 1702 (1990) (“The dilemma of mandated participation might be resolved by Margaret Radin’s combination of feminism and pragmatism. Radin argues that in every gender dilemma there are two solutions, each of which contains good and not so good elements—a double bind. For example, the legal system can either afford women special treatment or treat them the same way it treats men, but it cannot do both in any one case. Ultimately, either choice has some costs and may be met with backlash. From a feminist perspective, it would be ideal to eliminate the oppressive circumstances that create the gender dilemma, but from a pragmatic perspective, we accept that we have to choose between two less than perfect solutions.”)).

personal safety of victims on the other.⁸⁶ Her pragmatic approach is to choose the greater societal good.

Opponents of mandatory policies argue that, while seeking to protect society, these policies often do so at the expense of domestic violence victims themselves. Opponents prioritize the individual victim, and their goals are generally individual victim empowerment and protection. Linda Mills is a leading opponent of mandatory policies. Mills prioritizes the healing process of each survivor, citing it as the most important goal of domestic violence advocacy in the criminal context.⁸⁷ She proposes that actors in the criminal justice system assume each victim's perspective by listening, attending to her needs clinically, and acknowledging her emotional relationship to the experience.⁸⁸ Privileging this clinical perspective—Mills has a background in both law and social work—she argues that the state's preoccupation with protection is conceptually narrow and inappropriate.⁸⁹

Mills maintains a distinction between individual women's interests and broader feminist objectives. She states that individual women's interests should come first, but that attention to individual women's needs is a necessary step toward larger feminist objectives. She argues that victims are more likely to become engaged in the larger struggle against domestic violence and women's oppression if they receive individualized attention from the criminal justice system.⁹⁰ Mills explicitly states that feminist objectives should be considered only after each victim's emotional needs are addressed.⁹¹ Mills's cornerstone is victim

⁸⁶ Hanna, *supra* note 80, at 1855.

⁸⁷ Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 577 (1999) [hereinafter Mills, *Killing her Softly*]. See also Linda G. Mills, *The Justice of Recovery: How the State Can Heal the Violence of Crime*, 57 HASTINGS L.J. 457 (2006).

⁸⁸ Mills, *Killing Her Softly*, *supra* note 87, at 569.

⁸⁹ *Id.* at 583.

⁹⁰ *Id.* at 569.

⁹¹ *Id.*

empowerment, and arrest and prosecution of the abuser may or may not be integral to that empowerment.⁹² Mills proposes that state interventions can recreate the power dynamic of the battering relationship.⁹³ As Mills defines it, empowerment is about each victim's ability to consider choices and make decisions.⁹⁴

Even though the criminal and civil legal systems differ in structure and purpose—with prosecutors representing state interests and civil attorneys representing client interests—there is much to take from the criminal debate. Both sides of the argument are concerned with victim safety, but the range of other priorities reveals the complexity of priority setting for domestic violence advocacy and the richness of a conversation that can be explored for civil lawyering. Those who discuss mandatory policies explicitly identify and support certain objectives for the criminal justice system's efforts to address domestic violence. Proponents of mandatory policies identify specific goals including punishment, deterrence, norm-setting, and redressing women's subordination in society. Opponents of mandatory policies identify aims such as victim empowerment and healing. In addition to identifying goals, those engaged in the debate also address the means of achieving those goals. For example, Mills proposes that state actors embrace clinical principles and engage in a "healing relationship"⁹⁵ with the victim to produce the goals of client empowerment and healing.

This debate around goal setting for domestic violence policies in the criminal law context should inform our examination of best priorities for civil domestic violence lawyering. The existence of the debate itself is instructive. Scholars and practitioners have actively engaged in the process of setting criminal justice priorities. In their conversation, they have named the policies followed, set goals, suggested methods,

⁹² *Id.* at 578.

⁹³ Mills, *Killing Her Softly*, *supra* note 87, at 554 (citing LAW'S VIOLENCE (Austin Sarat & Thomas R. Kearns eds., 1992)).

⁹⁴ *Id.* at 577.

⁹⁵ *Id.* at 570–82.

and analyzed the effects of various policies. By debating the positive and negative implications of these policies, they have brought attention to nuanced facets of addressing domestic violence.

A similarly extensive debate in the civil context would allow us to acknowledge and name the policies we pursue in our practice and scholarship. By actively grappling with our goals and the question of whether these policies and our advocacy methods match these goals, we would place civil domestic violence lawyering on the table for more thorough and thoughtful examination. Varying and well-articulated positions would surface. As a result of this examination, we may completely reorder our priorities for civil domestic violence lawyering. Regardless, our objectives and methods should be explicitly identified before they are followed.

In our examination of civil lawyering priorities, we should look to the tension in the criminal justice debate between serving individual domestic violence crime victims and pursuing broader state interests in eradicating domestic violence. We should examine the policy rationales used on both sides of the criminal debate as a basis for more clearly identifying and prioritizing outcomes for civil lawyering. For instance, civil representation of individual clients offers possible outcomes similar to those embraced by opponents of mandatory policies, including empowerment, healing, and safety for an individual victim and legal action based on an individual's preferences and needs. This approach to representation of individuals has been referred to as "client-centered" lawyering.⁹⁶ Through our primary focus on representation of individual victims in family law cases, we have—either explicitly or by default—privileged the choices of individual clients over broader societal interests. Even if prioritizing the choices of individual victims were our only aim, however, we would be falling short. When focusing on family

⁹⁶ See, e.g., Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Robert M. Bastress, *Client Centered Counseling and Moral Accountability for Lawyers*, 10 J. LEGAL PROF. 97 (1985).

law to the exclusion of other problems, we fail to engage in client-centered lawyering by not assisting with other problems identified by the victim. Additionally, family law remedies may not be sufficient to create outcomes like empowerment, healing, and safety for the immediate client. At its most simplistic, our focus on family law reveals that the current objectives most revered by domestic violence lawyering are maintaining parental relationships, obtaining child support and alimony, dividing marital property, and dissolving the legal relationship between the victim and the abuser.

Importing the policy considerations embraced by proponents of mandatory remedies clarifies a set of objectives that are underprioritized by civil domestic violence lawyering. Aims identified by mandatory policy proponents—such as deterrence, accountability, and norm setting—should play a larger role in civil domestic violence lawyering. Accountability is a particularly rich area for reform in civil advocacy. While incarceration may be an obvious method of accountability, there are many methods of integrating greater accountability for abusers into civil lawyering. We should expand possible financial accountability for abuse, including financial sanctions for violations of restraining orders, greater distribution of marital property to abused spouses, and financial liability through tort suits. Accountability for abuse would also be present in remedies that require civil-court-ordered batterer's counseling or intervention programs. Courts could also increase accountability in civil domestic violence cases by allowing victims to present evidence of domestic violence in evidentiary proceedings when they want to do so rather than encouraging them to settle before the hearing or trial. Many of my clients have wanted basic accountability for their abusers, for example by having a judge acknowledge the abuse and tell the abuser that what he has done is wrong. Deterrence should also play a more active role in civil lawyering, and we should frame remedies that will more effectively deter abuse.

B. Civil Domestic Violence Advocacy: The Particular and the General

Central to the criminal debate is the question of whether an individual victim's interests are different from greater societal

interests in addressing domestic violence, and if there is a difference, which interests should receive priority. This question is also inherent to civil domestic violence lawyering. Most civil domestic violence lawyering focuses on individual victims, and more specifically focuses on the family law needs of those victims. Is this focus on family law aligned with greater societal interests in addressing domestic violence? Society surely values the safety of individual victims and their children and the financial support that family law remedies provide. But society also has an interest in reducing domestic violence generally, an aim broader than facilitating the separation of individual victims from abusers. This distinction between individual victims' interests and the interests of society in addressing domestic violence should be accounted for in our priority setting for civil domestic violence advocacy.

The terms "particularity" and "generality" represent individual victims' needs on the one hand and society's greater interests in addressing domestic violence on the other. Elizabeth Schneider coined these terms in her work on the tension between individual and societal needs in the domestic violence context.⁹⁷ Particularity is the personal experience of individual domestic violence victims.⁹⁸ Particularity represents the importance of describing the complexity of individual victim's experiences non-simplistically, accurately, and in greater detail.⁹⁹ Generality is the broader understanding of the problem of gender and violence.¹⁰⁰ Generality signifies how domestic violence must be viewed as linked to women's subordination in general.¹⁰¹

The dual engagement of the particular and the general can move domestic violence advocacy forward. Development of a

⁹⁷ Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 527 (1992).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

more complex understanding of the particular can illuminate and give more inclusivity to the general.¹⁰² The general can also give context and depth to the particular.¹⁰³ Engagement with both the particular and the general creates a theoretical framework that can inform civil domestic violence law practice. This framework is valuable for civil domestic violence lawyering because it both accounts for individual women's experiences and also promotes change.¹⁰⁴ This framework connects theory¹⁰⁵ with individual women's narratives and daily realities.¹⁰⁶ Put into practice, the framework identifies and articulates individual victims' legal problems and then translates these problems into legal and public arenas of change.¹⁰⁷

In the criminal context, the goals for individual domestic violence victims such as victim empowerment (particularity) compete with broader societal goals such as deterrence, punishment, and expression of an anti-violence message (generality). In exploring priorities for civil domestic violence lawyering, we should examine the range of possibilities not only for serving individual clients but also for addressing domestic violence issues on a broader scale. Possible goals for individual clients in the civil context include safety, empowerment, economic self-sufficiency, facilitation of separation from a battering partner, and maintaining parent-child relationships. Potential goals for broader social change include empowering women as a group, reducing domestic violence, addressing women's subordination, combating societal violence, punishing or deterring batterers or otherwise holding batterers accountable, and challenging institutions that disadvantage domestic violence victims.

¹⁰² *Id.* at 528.

¹⁰³ Schneider, *supra* note 97, at 528.

¹⁰⁴ *Id.* at 526.

¹⁰⁵ *Id.* at 521 (citing Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25 (1990)).

¹⁰⁶ *Id.* at 521, 526.

¹⁰⁷ *Id.* at 549–50.

Domestic violence advocacy should fully engage particularity by accounting for difference between individual victims. *Difference* means an individual's realms of experience, including but not limited to gender, race, ethnicity, religion, culture, immigration status, class, sexual orientation, and physical community—rural, urban, or suburban. An individual victim is an *individual* and differs from every other woman who has been subjected to abuse. Additionally, each individual has complex intersecting realms of difference that affect her experience of violence. One victim may be, for example, a woman, an immigrant, an undocumented person, low-income, Chinese, a Christian, and monolingual. These realms of experience will affect her experience of abuse and her needs. Factors of difference can also exacerbate other aspects of difference and vulnerability in a woman's experience of domestic violence.¹⁰⁸

By accounting for difference in our approach to domestic violence lawyering, we can develop a broader spectrum of advocacy that will be more inclusive and reflective of the needs of the populations we serve. In accounting for difference, the variety of needs of individual victims and larger challenges they face become clearer. We can best learn about the needs of victims from individual victims themselves, and must be mindful that we do not filter out problems for which we do not yet have well-worn legal solutions.

Even in well-established modes of domestic violence advocacy like family law, consideration of difference creates better and more nuanced lawyering. For example, if the victim is a Mandarin-speaking immigrant who has a pending custody case, issues of translation need to be addressed. Does the family court have any interpreters? If so, are only Spanish-speaking interpreters provided by the court? On the immediate client level, you may need to ensure that the court provides a Mandarin interpreter, or if not, determine whether you can bring your own interpreter and locate a qualified interpreter. On a systemic level, you may need to advocate to increase the languages offered by

¹⁰⁸ See Cecilia Menjivar & Olivia Salcido, *Immigrant Women and Domestic Violence, Common Experiences in Different Countries*, 16 GENDER & SOC'Y 898 (2002).

court interpretation, or if there is no right to court interpretation, engage in legislative advocacy to establish this right.

As another example, if a victim lives in a rural community, her custody case might present a very different set of possible advocacy areas. Is the courthouse that hears family law cases accessible by public transportation? Sometimes lawyers in insular communities will not take contested family law matters. Are lawyers in that community willing to take on contested custody cases? Are there any entities that provide supervised visitation in that community? Are there any forensic evaluators in that community that could make a recommendation as to custody? These are all possible advocacy areas that may need to be addressed for that particular victim, but would also likely affect many victims in that community.

Accounting for difference has produced some of the most progressive domestic violence advocacy. Specifically, advocates who serve immigrant victims have made great strides in domestic violence lawyering. This is in large part because they have focused on the needs and challenges faced by a particular community of victims and examined how immigrant-specific factors exacerbate other vulnerabilities faced by individual domestic violence victims.¹⁰⁹ One of the greatest successes of domestic violence advocacy was the creation of immigration remedies for victims under VAWA.¹¹⁰ Another great success was the expansion of public benefits eligibility for certain immigrant domestic violence victims and their children under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

¹⁰⁹ *Id.*

¹¹⁰ See Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95 (2001); Deborah M. Weissman, *Addressing Domestic Violence in Immigrant Communities*, 65 POPULAR GOV'T, Spring 2000, at 13. The Violence Against Women Act of 1994, passed as Title IV of the Violent Crime Control and Law Enforcement Act of 1994, established a remedy for battered or abused spouses of U.S. citizens and lawful permanent residents such that they could self-petition for immediate relative status. Immediate relative status enables undocumented aliens to apply for lawful permanent residency, which provides them with a green card. Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 136 (1994). See generally 8 U.S.C. § 1154 (2011); 8 C.F.R. § 204.2 (2011).

("IIRIRA").¹¹¹ Accounting for the specific needs of immigrant victims, the immigrant domestic violence advocacy community has examined issues such as access to court interpreters,¹¹² the shortcomings and challenges posed by VAWA,¹¹³ access to police protection,¹¹⁴ and other matters related to access to medical care and social services for immigrant victims.¹¹⁵ These advances on behalf of immigrant victims serve as an example of how advocacy on behalf of individuals can reveal systemic issues affecting victims that need to be addressed—in this case, issues related to immigration law, public benefits, law enforcement, health, and social services.

In using generality as a theoretical framework for moving domestic violence lawyering forward, we should examine social structures that make women especially vulnerable to battering relationships. From a gender standpoint, the power imbalance between the sexes both publicly and privately makes women more vulnerable to battering relationships. Women's role as primary caretakers, their disadvantages in the workplace, their traditional place in the hierarchy of the nuclear family, and their lower earning power make them more likely to be dependent in relationships and endure abusive relationships because of fewer

¹¹¹ Orloff & Kaguyutan, *supra* note 110, at 95, 118. See generally 8 U.S.C. § 1641 (2011).

¹¹² See, e.g., Nancy K.D. Lemon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?*, 21 BERKELEY J. GENDER L. & JUST. 38 (2006).

¹¹³ See, e.g., Lauri J. Owen, *Forced Through the Cracks: Deprivation of the Violence Against Women Act's Immigration Relief in San Francisco Bay Area Immigrant Domestic Violence Survivors' Cases*, 21 BERKELEY J. GENDER L. & JUST. 13 (2006); Zelda B. Harris, *The Predicament of the Immigrant Victim/Defendant: "VAWA Diversion" and Other Considerations in Support of Battered Women*, 14 HASTINGS WOMEN'S L.J. 1 (2003).

¹¹⁴ See, e.g., Leslyc E. Orloff et al., *Recent Development: Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA WOMEN'S L.J. 43 (2003); Deborah A. Morgan, *Access Denied: Barriers to Remedies Under the Violence Against Women Act for Limited English Proficient Battered Immigrant Women*, 54 AM. U. L. REV. 485 (2004).

¹¹⁵ See, e.g., Mary Ann Dutton et al., *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. ON POVERTY L. & POL'Y 245 (2000).

exit opportunities.¹¹⁶ Domestic violence victims report that the most effective tool for preventing an incident of violence is a credible threat to leave the abuser.¹¹⁷ However, if victims cannot afford to leave, they cannot make credible threats to end male violence.¹¹⁸ Systems that should facilitate separation from an abusive relationship are also often flawed. Public assistance grants are largely insufficient to support a household, public housing often has long waitlists, and shelters often have restrictive policies, such as bans on older male children and time limits on residence. Immigration policies often tie victims to their abusers. These systems can disproportionately affect women and present additional obstacles to victims.

To more fully address domestic violence, we need to look at these broader issues. Directly fighting gender subordination is a tall order, but it is important to thoroughly examine the larger social structures that permit abuse in relationships and make departure from abusive relationships difficult. Improved housing, shelter, and public assistance policies would enable women to leave relationships before they escalate to more violent and damaging levels. Such policies would also support women and their children after their separation from abusive partners. Women, as the primary caretakers of children and as lower wage earners, are more likely to be disadvantaged after separating from an abuser.¹¹⁹ Job training and employment opportunities, government support for families, free or affordable child care, and enforceable generous child support, alimony, and marital property orders can be critical to the success of a victim after separation. We also need to look at possible solutions for women who are not ready or do not wish to leave an abusive relationship, including batterers' counseling and possibilities for non-criminalized admonishment of

¹¹⁶ SCHECHTER, *supra* note 5, at 558.

¹¹⁷ Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspective on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 52 (1989) (citing LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 33 (1984)).

¹¹⁸ *Id.* at 54.

¹¹⁹ *Id.* at 53.

batterers. Finally, to address domestic violence on a larger scale, we need to determine what batterers fear most and integrate that information into our strategies.

III. Stretching the Margins: Priority Setting in Practice

In practical terms, the particularity and generality framework and the individual versus societal debate in the criminal context can inform best practices for civil representation of domestic violence victims. In terms of particularity (or individual client interests), we should continue representing individual battered women in civil cases based on their specific legal needs and circumstances. This representation should continue to include family law but should also extend to other civil matters. Application of the generality principal (or societal interests) in practice would involve identifying areas for systemic reform work related to domestic violence, including impact litigation, legislative advocacy, or other advocacy efforts seeking systemic change. The best practice would be to combine both approaches, with direct representation of individuals informing and driving systemic reform work. By combining individual representation with systemic reform efforts, we can simultaneously support individual victims and combat domestic violence more generally. This model can succeed in law practice and law school clinics, and both will be addressed later in this section.

A. Lawyering at the Margins: Holistic Representation

Ideally, family law representation would be just one component of a broader, holistic model of client representation. We should seek to meet individual client needs as fully as possible through comprehensive legal representation. To represent a client holistically means advocating on behalf of the whole client in as many of her legal matters as practicable and effective, often simultaneously.¹²⁰ A holistic approach emphasizes the importance of the client's entire reality and respects the interdependency of a client's issues. True holistic representation involves assisting clients with their needs across a

¹²⁰ Of course one of the challenging aspects of a holistic law practice is that it requires that the attorney be competent to provide representation in a large number of substantive areas.

broad spectrum, including with their "non-legal" or non-litigation needs and in matters atypical for victims.

Holistic representation can also improve the character and quality of the delivery of legal services to domestic violence victims.¹²¹ The spectrum of possible legal advocacy, including the types of problems handled by lawyers, is in part constructed and limited by lawyers and is by no means fixed. The issues individuals present to lawyers, perceived as legal problems solvable through intervention by a lawyer, are also defined by the structure of the legal services available. Definitions of legal needs are flexible, and as lawyers begin responding to new problems, prospective clients will seek assistance from lawyers in these new areas.¹²² By increasing the continuum of advocacy available to domestic violence victims, new and positive areas of advocacy helpful to victims will emerge out of a malleable range of possibilities. An expanded spectrum of possible domestic violence advocacy better serves clients with different realms of experience.

The spectrum of possible advocacy one could offer to a domestic violence victim is vast. Family law cases—divorce, custody, visitation, child support, alimony, paternity, and restraining orders—are the most common type of civil representation offered to victims. These cases would be in the center of the spectrum of possible advocacy. Other types of representation occasionally offered to domestic violence victims—such as immigration, public benefits and landlord-tenant cases—would also appear on the spectrum but a little more toward the margins. Those issues at the margins would include problems specific to an individual victim that may not be typical for most

¹²¹ Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 106 NLADA BRIEFCASE 110 (1977) ("The 'delivery' of legal assistance is not comparable to providing vacuum cleaners. What is made available when lawyers are paid to represent the poor is not a commodity but a relationship—a relationship in a system of relationships—in which roles, possibilities, and patterns of action are continually being defined, altered and given new form. Such relationships are invariably subject to influences which shape their character and quality.").

¹²² Gary Bellow & Jeanne Kettleison, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. Rev. 337, 380 (1978).

victims and matters not usually addressed by domestic violence attorneys but perhaps endemic to many victims.

Holistic representation offers potential for the highest quality of service to the client. *Pro bono* attorneys are in short supply, and providing representation in multiple matters maximizes the benefit to a victim who would likely go without assistance in some matters. Holistic representation is effective because a victim's issues and legal matters often overlap and affect one another. Holistic representation by one attorney can also be more efficient than assistance by multiple advocates in multiple matters. This is important not only so that the attorney can obtain the best remedies available to the client by coordinating cases but also because information for one case is often needed for other cases. The victim can be spared the difficulty and inconvenience of repeating information, including private details about the abuse, by providing it to one attorney. The attorney can then use and ensure the consistency of this information across case types.

Comprehensive representation is vital in bringing particularity to representation of individual victims. Providing representation for an individual victim's specific needs better serves that individual. It accounts for difference and the complexity of her individual situation and her experiences, and it can provide meaningful change for her across a range of possibilities. Holistic representation also allows for maximum coordination of legal remedies. For instance, the immigration status of an individual determines eligibility for public benefits. An attorney who maintains fluency in both immigration and public benefits law and represents a client in both of these matters will have a better understanding of the client's immigration status and its effect on the client's eligibility for cash assistance, food stamps, and Medicaid. The attorney will also have a better understanding of how the client's receipt of public benefits will affect her immigration case.

Holistic representation of domestic violence victims should expand to the margins of legal representation to include non-litigation matters that some may consider "non-legal." By "non-legal," I mean advocacy that is not generally engaged in by lawyers on behalf of clients or advocacy that occurs outside of

or not in anticipation of a court case.¹²³ Domestic violence victims, especially low-income victims, usually have a number of problems that do not fit squarely into legal categories. Such problems may include difficulties in finding temporary housing in a shelter, acquiring permanent housing, and dealing with creditors for debt acquired jointly with the batterer. Examples of non-litigation assistance include advocacy with welfare center workers, advocacy with public housing authorities, and assistance in negotiating with creditors. Often, assistance with these matters is important to the client's well-being and to the success of a legal matter. As will be discussed below, assisting clients with non-legal, or extra-judicial, needs also allows for better identification of systemic issues that can be addressed through broader reform efforts.

In expanding our services to domestic violence victims toward the margins of practice, we should also develop new and underdeveloped areas of advocacy. With desired outcomes in mind, we should work to tailor new remedies, including forms of relief repeatedly requested by victims that are currently unavailable. We should also handle matters not usually addressed by domestic violence attorneys but perhaps endemic to many victims. One such area is tort litigation on behalf of victims. Many victims have potential civil damages suits for claims including but not limited to assault, battery, intentional infliction of emotional distress, negligent infliction of emotional distress, stalking, and false imprisonment. While rarely litigated, victims should be advised about and represented in their civil tort claims. This underdeveloped area of civil domestic violence law provides the possible outcomes of deterrence, retribution, and punishment, much like criminal law. However, unlike in criminal cases, the victim is a party to the action and can decide whether and how to proceed in the case. Tort law offers the possibility of victim empowerment at the same time it offers economic benefits if recovery is available. Representation of individuals can have a significant impact, and domestic violence lawyers should mindfully pursue underdeveloped areas of the

¹²³ Even though I use the term "non-legal," I believe that most of the examples I give of "non-legal" advocacy are in fact part of a comprehensive scheme of legal advocacy that should be pursued on behalf of clients. Often, this "non-legal" advocacy involves reference to and analysis of law and navigation of legal systems.

law and approach more developed avenues with ingenuity.

B. Systemic Challenges

By embracing the broad continuum of challenges faced by individual victims (particularity or individual victim needs), we can gain a fuller understanding of domestic violence and better calibrate our efforts for systemic reform (generality or societal interests). Domestic violence occurs in context—within society, social systems, bureaucracy, legal systems, and laws. When domestic violence is not being addressed in these contexts, it is being permitted. Systemic reform is an important aspect of moving domestic violence eradication efforts forward. Assisting one victim at a time, while important, is insufficient for true progress. The needs and experiences of individual victims are crucial to guiding our efforts for progress on a grander scale.

Advocacy across a broad spectrum of possible practice is particularly vital for identifying areas for systemic challenges. With a limited family law practice, domestic violence attorneys are only exposed to a subset of challenges faced by victims. With a broader spectrum of advocacy, including advocacy related to non-legal needs, domestic violence lawyers have more exposure to the constraints and problems faced by victims. This understanding of constraints and problems encountered by victims can then inform litigation, lobbying, and other traditional legal efforts for systemic change. For those interested in non-traditional forms of advocacy for lawyers, this understanding can also guide them in their efforts to establish non-profit organizations, create shelters or other service agencies, develop housing, or provide other non-legal assistance to victims. This coordination of direct service and systemic work is vital to ensuring that systemic work benefits victims and reflects their priorities. There is often a tension between individual client service work and impact litigation.¹²⁴ Coordination of efforts on these two levels works against this separation.¹²⁵

¹²⁴ Peter Margulics, *Political Lawyering, One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate*, 3 MICH. J. GENDER & L. 493, 495–96 (1996) (citing DAVID LUBAN, *LAWYERS AND JUSTICE* 317–40 (1988)). See also LUBAN, *supra*.

¹²⁵ *Id.* See Margulics, *supra* note 124, at 508–12.

Our efforts for systemic change should be tailored for accountability for perpetrators and systems. Holding domestic violence perpetrators accountable should be a top priority of systemic efforts. Too often, domestic violence perpetrators are not held accountable in civil cases. Most civil domestic violence cases are family law matters, and family law cases tend to end through mediation or settlement. Even when state laws provide for domestic violence as a factor in custody determinations or distribution of marital property, the high incidence of settlement or mediation in family law cases means that the domestic violence is rarely presented before a judge. We need to bring more accountability to abusive behavior, be it through financial repercussions, accountability to community, increased sanctions, having abuse be a greater factor in the outcomes of family law matters, or other innovations.

For systemic change, we also need to hold accountable those aspects of society that enable battering or do not support victims in their efforts to obtain safety. Domestic violence occurs in the context of sex discrimination (different treatment because of sex), gender oppression (pressure to conform to expected sex roles), and sexual subordination (devaluation of what is associated with women).¹²⁶ We should not lose sight in our efforts of the gendered aspects of abuse. We also need to examine institutions, systems, and practical realities that affect victims—including child care, shelter and housing policies, public benefits law and policies, welfare centers, employment and job training, law enforcement, medical benefits, and immigration—and challenge those that fall short. Sex discrimination, gender oppression, and sexual subordination often create or exacerbate troubling aspects of these areas. When women are also facing domestic violence, the gendered aspects of flawed systems can present insurmountable obstacles. Examples of challenges to flawed systems are provided in the discussion of *MKB v. Eggleston* and the Yale DV Clinic that follows.

We should also work to reform law to reflect the realities of abusive relationships. Domestic violence can include physical,

¹²⁶ Littleton, *supra* note 117, at 51 (citing Christine A. Littleton, *Equality and Feminist Legal Theory*, 48 U. PITT. L. REV. 1043, 1045–46 (1987)).

sexual, emotional, psychological, and financial abuse. Violence is present in some but not all domestic violence situations, and it may not be the most serious form of abuse a victim suffers. Reform to reflect the power and control in domestic violence situations will make law more responsive to the particulars of victims' situations. Such challenges are important for moving domestic violence lawyering forward.¹²⁷

**C. Lawyering at the Margins and Systemic Challenges:
*MKB v. Eggleston*¹²⁸**

The case of *MKB v. Eggleston* provides an example of how holistic representation, including advocacy that may be thought of as non-litigation or non-legal work, can lead to systemic change in the domestic violence context. In that case, a coalition of attorneys,¹²⁹ including myself, sued the City and State of New York for their failure to provide public benefits to eligible immigrants. The case was a federal class action lawsuit, with immigrant domestic violence victims comprising most of the

¹²⁷ Sexism, gender subordination, and male entitlement anchor domestic violence, and a drastic shift in social attitudes and women's subordination must be made for domestic violence to be meaningfully eradicated.

¹²⁸ *M.K.B. v. Eggleston*, 445 F.Supp.2d 400 (S.D.N.Y. 2006).

¹²⁹ The litigation team was comprised of The Legal Aid Society of New York; Hughes, Hubbard & Reed LLP; The New York Legal Assistance Group; Sanctuary for Families; and the Empire Justice Center. Elizabeth S. Saylor, who worked at Legal Aid but now works at Emery, Celli, Brinkerhoff & Abady LLP in New York City, was lead counsel and was primarily responsible for the case.

class.¹³⁰ The case arose out of systemic issues encountered by lawyers assisting clients with what some might term non-legal work. When asked, many immigrant domestic violence victims reported problems obtaining cash benefits, Medicaid, and food stamps for themselves and their children from the New York City and State agencies that administer these benefits. Victims described a number of related problems, including being turned away by welfare workers when attempting to apply for benefits, being given inaccurate information about eligibility rules, having their applications incorrectly denied, having benefits improperly discontinued or reduced, and not receiving timely or adequate notice of denial of benefits.

A handful of attorneys in New York City began trying to assist clients in dealing with these public benefits issues. We represented clients within a traditional litigation model at administrative hearings when they had been improperly denied public benefits, when their benefits had been improperly reduced or incorrectly budgeted, or when they had received inadequate notice. We also assisted clients in a non-litigation capacity by preparing packets, including letters explaining a client's

¹³⁰ The class was defined in the Complaint as:

All Affected Immigrants who are, have been, or will be eligible for state or federally funded public assistance, Medicaid, or food stamps, and who either (a) have been or will be denied public benefits in whole or in part; (b) had or will have benefits discontinued or reduced, (c) have been or will be discouraged or prevented from applying; (d) have been or will be encouraged to withdraw an application by a New York City job center because of a misapplication of immigrant eligibility rules. For purposes of the foregoing paragraph, the term 'Affected Immigrants' means (1) battered spouses and battered children of U.S. citizens or lawful permanent residents, who are Qualified Aliens as defined in 8 U.S.C. § 1641(c); (2) their immigrant children or, in the case of battered children, their immigrant parents, provided that they too are Qualified Aliens as defined in 8 U.S.C. § 1641(c); (3) lawful permanent residents who have been in that status for less than five years; and (4) persons who are Permanently Residing Under Color of Law (PRUCOL).

Complaint at 7, *M.K.B. v. Eggleston*, 445 F.Supp.2d 400 (S.D.N.Y. 2006) (No. 05 Civ. 10446).

eligibility for public benefits and a copy of the relevant laws, to send with clients when they went to the welfare center to apply for benefits. We called the welfare center workers in attempts to have the center correct errors they were making on a client's public assistance budget. We sent law students with clients to the welfare centers to advocate on behalf of the clients and to better comprehend the systemic problems.

After identifying a long list of systemic problems faced by immigrant domestic violence victims trying to obtain public benefits in New York City, the coalition filed a federal class action lawsuit against the City and the State of New York under 42 U.S.C. § 1983. There were thirteen named plaintiffs, and the class was comprised primarily of immigrant domestic violence victims married to abusive U.S. citizens or lawful permanent residents who had filed Violence Against Women Act (VAWA) self-petitions on their own or whose spouses had filed a Petition for Alien Relative on their behalf. The class also included individuals who had pending or approved applications for U visa interim relief as victims of crime, including crimes of domestic violence.

After a nine-day evidentiary hearing, we were granted a preliminary injunction requiring the City and State to refrain from unlawfully denying, discontinuing, or reducing benefits on account of immigration status; refrain from deterring or discouraging class members from applying for benefits or encouraging them to withdraw applications; and refrain from issuing misleading notices that make it difficult or impossible to determine whether public benefits were correctly denied or provided in the proper amount and/or whether the client needed to appeal the determination. The final settlement of the case incorporated similar injunctive relief, as well as requiring better training of welfare agency employees, correction of errors in the agencies' policy and procedure manuals and training materials, and correction of the agencies' computer systems that were contributing to a number of the problems. The settlement also provided for ongoing "quality assurance," or monitoring of City and State success in correcting their errors, including failing to provide proper notice.

Cases like *MKB v. Eggleston* have great potential to

simultaneously address the particular and the general in domestic violence work. Direct contact with clients should generate knowledge of important systemic issues and drive reform efforts. In terms of the particular, *MKB* advocated on behalf of individual immigrant domestic violence victims to obtain public benefits that were crucial to support themselves and their families. We assisted the thirteen named class members and their children and countless other individual clients in obtaining and maintaining the public benefits to which they were entitled, based on their individual needs and preferences. We were already representing many of these clients in other matters, including family law and immigration cases. The litigation and non-litigation public benefits advocacy was one piece of our holistic representation of these individuals.

In terms of generality, *MKB* sought systemic reform on behalf of domestic violence victims as a group and called attention to social structures and institutions that make women especially vulnerable to battering relationships. The litigation addressed the City and State of New York's failure to provide public benefits to domestic violence victims, frustrating their ability to separate or sustain a more economically stable life apart from abusers. We helped create systemic solutions to problems affecting thousands of class members and their families in New York City. On a broader level, the need for our advocacy efforts arose from larger problems of women's subordination. The public and private power imbalances between the sexes make women more vulnerable to abusive relationships. Women tend to be the primary caretakers of children, are more likely than men to stay home to take care of children, and are likely to earn less if they are employed. These factors make women more likely to be financially dependent on a partner and thus more likely to need public benefits after a separation. In the case of *MKB*, we sought to address a systemic problem that exacerbated these issues of women's financial disempowerment and to correct the government's failure to support immigrant domestic violence victims in their efforts to obtain safety and financial stability.

**D. Lawyering at the Margins and Systemic Challenges:
The Yale Domestic Violence Clinic**

The development and design of the Domestic Violence Clinic at Yale Law School ("DV Clinic") offered an opportunity to actively engage in priority setting for domestic violence advocacy, including structuring individual and systemic work.¹³¹ Robert A. Solomon, Director of Clinical Studies and Clinical Professor of Law at Yale Law School, and I established the DV Clinic in the spring of 2008.¹³² While I have left Yale to teach at the University of New Mexico, Professor Solomon continues to run the DV Clinic.¹³³ The Clinic was structured to provide holistic representation across a broad spectrum, incorporating non-legal advocacy and underdeveloped remedies. The Clinic

¹³¹ The DV Clinic is housed in the Jerome N. Frank Legal Services Organization, the umbrella body for most of Yale Law School's clinical programs. This law school "firm" is named after Jerome N. Frank, an early proponent of clinical education. See Jerome N. Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 913 (1933); Jerome N. Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).

¹³² The DV Clinic grew out of the Community Lawyering Clinic, a subgroup of a poverty law clinic, which provided legal services to the greater New Haven community for twenty-one years. Student interest and faculty support for work on behalf of battered women supported an ongoing commitment to domestic violence work in the clinical programs at Yale, initially in the Community Lawyering Clinic and now in the DV Clinic. For years, students had regularly requested a clinic serving battered women. At first, Professor Solomon integrated domestic violence advocacy into the Community Lawyering Clinic, beginning sometime in 2005. In response to community need, student interest, and our own commitment to this work, Professor Solomon and I created the DV Clinic. The Clinic was made possible due to the foundational work of the faculty and students of the Community Lawyering Clinic. The focus of the Community Lawyering Clinic shifted over time between populations and substantive legal areas. Most recently, it provided outreach and legal services focused on domestic violence victims and immigrant communities. That clinic was offered for the last time in the fall of 2007, co-taught by Professors Solomon, Stephen Wizner, Carroll Lucht, and myself. In 2008, the Community Lawyering Clinic was retired, and two new clinics—The Domestic Violence Clinic and Legal Services for Immigrant Communities—were formed. Professors Solomon, Wizner, and Lucht and other faculty members who previously taught the Community Lawyering Clinic created wonderful pedagogical and service models.

¹³³ I am deeply indebted to Professor Solomon for many of the concepts in this paper and the individual and collective victories of the DV Clinic. He has been the genius behind the Clinic's innovative work. The design of the Clinic, as well as my own understanding of the possibilities of lawyering for individual clients and social change, is the result of his excellence as a teacher, lawyer, and mentor.

provides individual representation of victims while also seeking systemic change. In this way, the Clinic seeks to simultaneously engage the particular and the general.

The DV Clinic serves victims of domestic violence in the greater New Haven community. The Clinic provides comprehensive legal representation to domestic violence victims in wide range of civil cases. Family law cases—including divorce, child custody and visitation, child support, paternity, alimony, division of marital property, and restraining orders—constitute the largest number of cases. Immigration cases are the second largest category of cases and include U visa applications,¹³⁴ VAWA self-petitions,¹³⁵ employment authorization applications, adjustment of status applications, consular processing issues, and removal defense matters. The Clinic provides civil legal assistance in other traditional substantive areas like public benefits and housing law. The students advocate on behalf of clients in public benefits cases with a focus on immigrant eligibility issues. The Clinic approaches housing law work in traditional and more unconventional ways. The students represent clients in landlord-tenant matters and in Section 8 and housing authority cases. But they also file eviction proceedings creatively, seeking to remove batterers from the home.

The Clinic also advocates in matters rarely addressed by domestic violence attorneys but perhaps endemic to many victims. For instance, the Clinic has developed a small but substantial mortgage foreclosure practice. A number of the Clinic's clients were swept up in the foreclosure crisis that is facing the nation, with the domestic violence exacerbating or

¹³⁴ The Victims of Trafficking and Violence Protection Act of 2000 (sometimes referred to as VAWA 2000), created a non-immigrant visa available to undocumented victims of crime who cooperate with law enforcement officials in the investigation and/or prosecution of that crime. Pub. L. No. 106-386, 114 Stat. 1464 (2000). This non-immigrant visa, called the U visa, requires the alien to have suffered "substantial mental or physical abuse as a result of having been a victim of criminal activity." An applicant also must have "information concerning criminal activity" and must be helpful to federal or state law enforcement authorities in their investigation or prosecution of that crime. *See* 8 U.S.C. § 1101(a)(15)(U) (2011); 8 C.F.R. § 214.14(c)(2)(i) (2011).

¹³⁵ *See generally* sources and accompanying text *supra* note 110.

causing the potential foreclosure. Victims who had obtained mortgages based on dual incomes—theirs and that of their abusive partners—were no longer able to afford the mortgage after separating because of the abuse. If an abuser was not making court-ordered child support, alimony, or mortgage payments, mortgage foreclosure was particularly likely to occur. Also, we saw financially abusive partners purposely failing to make mortgage payments despite their financial ability to do so, causing the home to go into foreclosure. While beyond the scope of representation generally provided by domestic violence attorneys, the Clinic added this area to our continuum of advocacy.

The Clinic also assists clients with issues specific to an individual victim that may not be typical for most victims. A student filed for innocent spouse relief with the IRS for one victim. In another example, one client had retained a law firm to assist her with filing an immigration case. The firm never filed the case on her behalf, continued billing her thousands of dollars, and engaged in a harassment campaign against her. The student sent a demand letter in preparation for an unfair trade practices claim. After efforts to negotiate failed, the student filed the claim and received a favorable outcome for the client. This situation, while not uncommon for immigrant victims, is not among the most common faced by victims generally. But for this particular client, this issue was exacerbating the stress she felt due to the domestic violence, and she feared that it would affect her credit and thus her financial self-sufficiency moving forward. We added this case to the family law matters our clinic was already handling for her in order to provide her with the best assistance possible.

The DV Clinic students also provide non-litigation or non-legal advocacy assistance to clients to aid them in their dealings with law enforcement, government agencies, and private creditors, among others. Students also negotiate with creditors on clients' behalf. For example, several students advocated with utility companies to set up payment plans to prevent victims' heat and hot water from being turned off. Students have assisted a victim in getting the locks changed on her home after the abuser was ordered to move out of the home. Clinic students have also provided advocacy related to criminal cases. In one

instance, a student advocated on behalf of a client with the prosecutor to request that the batterer be released from jail with a global positioning system (GPS) tracker. Students frequently assist clients with navigating the child support enforcement arm of the Department of Social Services. This non-litigation advocacy assistance is extremely helpful for clients and is often critical to the success of litigation efforts on behalf of the client.

Finally, the Clinic has been working in the underdeveloped area of tort litigation on behalf of domestic violence victims. The Clinic successfully litigated its first tort case in 2009, seeking damages for intentional infliction of emotional distress, negligent infliction of emotional distress, stalking, and violation of a restraining order. Tort litigation is often at or even beyond the extreme margins of a standard civil domestic violence practice. This tort case was one component of holistic representation of a client for whom we were also providing representation in a complex family law matter. Through coordination of both the divorce and tort cases, we were able to recover the abuser's share of the marital property in damages, thus providing our client with nearly one hundred percent of the marital property. The Clinic continues to pursue civil damages suits.

I consider domestic violence tort litigation to be both holistic and systemic advocacy. Victims frequently have viable civil damages suits, even though they are rarely brought. For individuals, adding this claim to the spectrum of advocacy can provide possible financial gain and empowerment. Tort litigation also constitutes systemic advocacy because the filing of individual tort suits reminds courts and society that domestic violence victims have such claims, brings domestic violence out of family law dedicated courtrooms, and puts domestic violence wrongs on the same field as wrongs between strangers or other non-intimate parties. By filing more tort claims, we can accustom courts to adjudicating such claims, encourage more attorneys to file domestic violence tort actions, and create awareness for victims of the existence of these actions. Ideally we will create a new system in which these cases are frequently litigated. Tort cases also introduce deterrence into civil domestic violence lawyering. On the systemic level, if tort claims become commonplace, they may have a deterrent effect on abusive

behavior society-wide. On the individual level, a tort suit or the threat of a tort suit can deter abusive conduct. For instance, in the tort case filed by the DV Clinic, despite a decade of family law litigation, the tort suit was the only legal action that succeeded in stopping the abuser's egregious behavior.

The DV Clinic's work on the Housing Authority of the City of New Haven's domestic violence policies is an example of systemic reform that arose out of holistic representation, in this case non-legal advocacy. While representing a client in a divorce case, a student identified the client's housing situation as a barrier to the client's ability to separate from her abuser. The client and her husband were living in an apartment supported by a Section 8 voucher in her husband's name. The student began advocating with the local Housing Authority to bifurcate the couple's Section 8 voucher so that the client could move into her own Section 8 apartment. During the course of this advocacy, the student discovered that the Housing Authority did not have a domestic violence policy as required by the Violence Against Women Act reauthorization of 2005.¹³⁶ The Clinic formed a group of students who were interested in working on this issue. They began collaborating with the Housing Authority's attorneys and eventually offered substantive language and commentary for what would become the Housing Authority's VAWA policy for housing victims of domestic violence. The Clinic is now assisting individual domestic violence victims in their applications for public housing through the Housing Authority's VAWA policy that the students helped to create. This partnering of individual and broader advocacy efforts has served not only immediate clients but also the greater community of victims.

Other Clinic efforts for systemic reform arose out of

¹³⁶ On January 5, 2006, President George W. Bush signed VAWA 2005 into law. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006). Section 603 of the law amends Section 5A of the U.S. Housing Act, 42 U.S.C. § 1437c-1, to require Public Housing Authorities' five-year and annual Plans to contain information regarding any goals, activities, objectives, policies, or programs of the PHA that are intended to support or assist victims of domestic violence, dating violence, sexual assault, or stalking. Pub. L. No. 109-162, § 603, 119 Stat. 3030 (2006). On March 16, 2007, a Federal Register Notice was published regarding the applicability of VAWA to HUD programs. 72 Fed. Reg. 12,696-10 (Mar. 16, 2007).

holistic advocacy. Students were having a difficult time getting U visa law enforcement agency certifications signed by prosecutors. We began coalition-building around this issue, and had a series of meetings with individuals in the district attorney's office, finally establishing a successful procedure for contacting a designated official for obtaining certifications. Our experiences with mortgage foreclosure actions revealed systemic problems with how counsel for banks handle and bill out mortgage foreclosure cases. The Clinic is contemplating addressing this problem, including its negative effects on victims, through impact litigation. The Clinic has worked to establish case law and modify judges' perceptions of the impact of domestic violence on the equitable division of marital property, with more marital property being awarded to victims. The Clinic has also explored alternate remedies for violations of restraining orders, including requiring the perpetrator to pay a fine to the victim when incarceration has proven to be inadequate and the abuser responds to financial deterrence.

The Clinic's efforts and educational mission extend well beyond the advocacy outlined above. For the purposes of this paper, I have focused on the client representation offered by the Clinic. However the Clinic is comprised of many important

components, including the classroom component,¹³⁷ community

¹³⁷ The DV Clinic's weekly seminar component focuses on the substantive, policy, and theoretical issues involved in domestic violence lawyering. Unlike many clinical seminars, the Yale DV Clinic's classroom component does not focus on lawyering skills such as conducting depositions or eliciting oral testimony. Instead the class addresses questions of policy and theory through the substantive laws related to domestic violence lawyering and related scholarship. The seminar focuses on the substantive law comprising most of the DV Clinic's caseload, including family law, immigration law, public benefits, and housing. The students study the psychological dynamics of domestic violence and the family court system. The curriculum also includes theoretical and policy examinations of domestic violence lawyering, including the history of the domestic violence movement, state interventions in domestic violence in the criminal context, feminist legal theory, and priority setting for domestic violence work. The Clinic also integrates psychological and psychiatric aspects of domestic violence lawyering. It has worked with the Law and Psychiatry Division of the Department of Psychiatry at Yale University, collaborating with faculty and fellows of the Forensic Consulting area of the Residency Training Program in Psychiatry. It has also collaborated with the Director of the Family Violence and Research Programs in the Yale University Department of Psychiatry. Through ongoing working relationships with counselors, social workers, and domestic violence advocates, the Clinic is able to provide more comprehensive services to its clients.

outreach,¹³⁸ community education,¹³⁹ community

¹³⁸ Community outreach is an integral aspect of the DV Clinic's mission. The Clinic has conducted weekly outreach sessions at two community-based organizations, Junta for Progressive Action and the Coordinating Council for Children in Crisis ("4Cs"). Junta provides services such as afterschool programs, immigration assistance, and community organizing to the Latino community in New Haven. The 4Cs provides counseling and parenting assistance to at-risk families and advocacy and counseling to victims of domestic violence. Through this outreach, the Clinic seeks to target domestic violence survivors with children and domestic violence victims in New Haven's predominately immigrant neighborhoods.

¹³⁹ Community education has also been an important aspect of the DV Clinic. Students have identified prospective sites and target audiences for community education, developed curricula, and then presented community education workshops. For example, during the Clinic's first semester, one group of students identified a specialized high school, developed a curriculum on teen dating violence, and taught this curriculum to the high school students. Another group developed, proposed, and conducted a workshop on domestic violence-related immigration law for advocates at a domestic violence and child advocacy organization with which the Clinic regularly partners on cases. A third group developed bilingual informational brochures about domestic violence-related immigration law and then distributed them in local immigrant communities and at community-based organizations.

investigation,¹⁴⁰ and supervision.¹⁴¹ While beyond the scope of this paper, these other components are integral to the Clinic's success in providing assistance to victims and in working with communities, including marginalized communities.

¹⁴⁰ The DV Clinic has also engaged in what we call "community investigation." The students and faculty have identified local issues with which they would like to gain more familiarity, which would assist in better meeting the needs of clients. In the first semester, the Clinic investigated New Haven area law enforcement, the criminal courts, and public benefits. The criminal courts group observed criminal court proceedings and met with prosecutors, public defenders, and victim advocates. The law enforcement group met with the police department and went on "ride-alongs" with patrol officers. The public benefits group visited welfare centers, met specialists in public benefits law, and learned about state eligibility rules and procedures for administrative hearings. Each group presented a report to their classmates and developed written materials to contribute to the institutional knowledge of the Clinic. As a new clinic and service provider, we decided that it was essential that we become aware of the needs in the community. Community investigation has also allowed advocates, lawyers, and agencies to meet students from the DV Clinic and learn more about the Clinic as a community resource.

¹⁴¹ Yale's clinical program uses a tier system that encourages student investment and leadership in a particular clinic and issue area. Students who continue in a particular clinic can serve as student supervisors or directors. Student supervisors assist the new students with interviewing, research, drafting and reviewing of pleadings and briefs, and other matters related to their clinical work. See Stephen Wizner & Dennis Curtis, "Here's What We Do": *Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 682 (1980). Student directors contribute to the vision and priorities of the clinic and aid in the daily operation of the clinic, including coordinating client intake, facilitating community outreach, assigning cases to students, and monitoring student caseloads. Incorporating student involvement into the core functioning of the DV Clinic develops student leadership and creates student lawyers who can handle complicated legal matters and appear in court with confidence and experience. *Id.* The continuity of students' involvement and commitment allows for a deeper understanding of domestic violence law and an ability to identify and address systemic issues that arise over time. Because students are able to participate in the Clinic for as long as two and a half years and experienced students overlap, there is greater potential for long-term projects, including identifying systemic problems and engaging in reform work. Students work individually on three to five cases. They attend small group weekly supervision sessions with their student supervisor and a faculty member. Supervision sessions focus on case strategy and skills. Students also prepare court cases by, for example, practicing witness examinations, under faculty supervision. Students learn skills through their casework. Skills are best learned in a real-life context rather than through simulation or role-play.

IV. The Law School Clinic as a Site for Exploring Domestic Violence Lawyering Priorities

Law school clinics should serve as innovators and engines of change in addressing domestic violence, and they are well situated to do so. First, law school clinics have flexibility in their structure that supports approaching domestic violence outside of traditional lawyering models. Second, clinics conducting domestic violence work within law schools can integrate the theory and practice of law to produce progressive thinking about domestic violence. Third, clinics can shape and support future lawyers in creating innovative and sustainable careers in the domestic violence field and beyond.

A. The Flexibility of Law School Clinics

Clinical programs have flexibility that allows for innovative and transformative domestic violence lawyering. Unlike legal services offices that operate on a triage model,¹⁴² clinics generally are not constrained by particular service models. Crisis management and a focus on representation of individual clients have been the dominant paradigms in serving low-income communities. Early legal services providers focused on representing individual clients on a first come-first serve basis in the legal problems presented by those individual clients, and this model continues today.¹⁴³ Prospective clients tend to contact legal services offices only when in crisis—for example because they are facing eviction, have been denied public benefits, or have a family crisis.¹⁴⁴ As a result, legal services offices maintain a focus on emergencies, often to the exclusion of determining the larger community's most pressing problems

¹⁴² Paul Tremblay defines triage as “a practice of distinguishing among several clients in determining which should receive what level of service, acknowledging that each cannot receive unlimited delivery of service.” Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101, 1104 (1990).

¹⁴³ Deborah J. Cantrell, *A Short History of Poverty Lawyers in the United States*, 5 LOY. J. PUB. INT. L. 11, 12–13 (2003).

¹⁴⁴ Jack Katz, *Lawyers for the Poor in Transition: Involvement, Reform, and the Turnover Problem in the Legal Services Program*, 12 LAW & SOC'Y REV. 275, 279 (1978) [hereinafter Katz, *Lawyers for the Poor in Transition*].

or investigating opportunities for systemic change.¹⁴⁵ At its most basic level, the mandate of a legal services office is to serve as many clients as efficiently and effectively as possible. Legal services offices are also constrained by the objectives of their funding sources, and funding imperatives limit the clients they serve and the types of problems chosen for service.

These models of representation have to some extent been incorporated into clinical legal education. The early clinical movement drew its clinicians from legal services offices, and many contemporary clinicians, myself included, hail from a background in legal services work. It is difficult to avoid importing the models of advocacy under which we practiced in legal services offices into our clinical models. But clinical programs should be structured differently. While some law school clinics operate on soft money, most clinics are not shaped by short-term funding requirements. For the most part, clinics—guided by client and community needs and combined with the interests and goals of clinical faculty and students—have great freedom in program design.

We should take advantage of this freedom to produce effective and innovative domestic violence lawyering. Clinics can thoughtfully consider and adjust approaches to domestic violence advocacy, shifting the allocation of effort between emergency and non-emergency legal representation and reform or impact work. Clinics can choose the types and range of cases they take and apportion the ratio of different case types. Clinics also can purposefully balance individual representation with systemic work. Clinical programs have the flexibility to strategically allocate efforts in litigation, legislative advocacy, coalition building, community outreach, community education, media advocacy, policy work, and organizing. They can choose to serve smaller numbers of clients more thoroughly.

Clinics are uniquely positioned to intentionally strike a balance between emergency and non-emergency cases. Unlike legal services offices that often operate on an emergency basis, law school clinics should not be structured solely to respond to

¹⁴⁵ Cantrell, *supra* note 143, at 12. See Katz, *Lawyers for the Poor in Transition*, *supra* note 144.

emergencies.¹⁴⁶ If a clinic represents individuals only in the immediate emergency matter, it is not treating its clients holistically and fails to address other crucial problems that clients are likely facing. Students should be encouraged to acknowledge and address client problems beyond the immediate issue. Responding to emergencies can also keep clinics in a constant state of crisis, limiting their ability to approach simpler cases complexly or provide representation in complex cases.¹⁴⁷ Primarily handling emergencies also takes the focus off of the structural problems that led to or compounded the emergency and impedes examination of social problems and the effectiveness of remedies.¹⁴⁸ Student learning should be situated within the context of social problems and a broader understanding of situations that lead to emergencies. Clinics should mobilize this broader understanding into systemic advocacy when particular problems are endemic to their clients. Unlike some public interest organizations that engage in legal impact work, clinics have clients that they represent in individual matters, and the clinic's impact work can and should derive directly from the clients the clinic serves.

In clinical work on domestic violence, striking the right balance between cases is particularly challenging and important, especially in regard to emergencies and non-emergencies. Domestic violence victims are frequently in crisis—their ability

¹⁴⁶ See generally Barry, *supra* note 52. Barry strongly opposes structuring law school clinical programs around responding to emergencies. Barry also argues that there is a genuine tension between individual representation and systemic solutions. By favoring individual representation, law school clinics privilege the individual client (the “good of a solitary client”) over the public good (“the good of the overall community”). *Id.* at 135–37. In making this argument, she assumes that individual and societal interests are at odds. Interestingly, Barry’s argument echoes much of the debate over mandatory interventions in the criminal context, as well as Schneider’s particularity and generality framework. See *supra* Part II.

¹⁴⁷ Law school clinics generally are not structured to respond to emergency matters, and in fact, often are not equipped to do so. The practical realities of law school clinics—including heavy student course schedules, limited supervisor availability and the overall greater time required to prepare students who are handling new matters for the first time—militate against handling only emergencies.

¹⁴⁸ Barry, *supra* note 52, at 136–37.

to stay safe is always the primary concern. Victims may need emergency assistance in safety planning and obtaining restraining orders, shelter, emergency custody orders, or financial support. Clinics should assist clients with these vital needs. But clinics are also in a position to assist clients with other needs simultaneously or after the emergencies subside. At the same time, clinics are well-situated to bring many minds to complex questions of systemic problems and broader and braver approaches to domestic violence advocacy.

Finally, clinics must capitalize on their flexibility to try new approaches to problems, take risks, and push the boundaries of advocacy. Clinics, while they face some restraints in design, have capacity and freedom that legal services offices and private attorneys rarely have. In this space, domestic violence clinics should step up as innovators and change-makers. For example, clinics should take a leading role in domestic violence tort litigation. Legal services offices rarely file domestic violence tort claims, and some are prevented from doing so by their funding sources.¹⁴⁹ Private attorneys have little incentive to file tort claims when the possibility to collect attorney's fees is constrained by the abuser's limited resources. Even if a private attorney could collect fees, those fees would likely reduce the victim's recovery. Clinics can fill the void in this area of litigation that is ripe for further development. Similarly, clinics should approach standard domestic violence cases in new ways, pushing for relief sought by clients but generally not offered by laws or courts. Clinics should expand and enrich the spectrum of domestic violence advocacy, including taking on problems endemic to many victims but rarely handled by attorneys as well less typical problems, the solutions for which would provide meaningful relief for clients.

B. Theory and Practice in a Law School Clinic

Because they are positioned within law schools, domestic violence clinics have unique opportunities to advance understanding of domestic violence and the law through the interplay between theory and practice. Clinical faculty and

¹⁴⁹ U.S. DEP'T OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN, *supra* note 18, at 11.

students are constantly reflecting upon aspects of the clinic's work. In addition to regular reflection about discrete aspects of cases, which is part of the clinical process, each semester is a new opportunity to modify the design and goals of the clinic's work. This ongoing examination and readjustment encourages in-depth engagement with setting lawyering priorities.

Clinics should serve as laboratories in which students and faculty study domestic violence in depth and generate strategies for individual representation and reform work.¹⁵⁰ By combining focused practice in and learning about particular segments of the legal system, clinics can produce complex and informed understanding of the legal theory, practical implications, and social dynamics of their practice areas.¹⁵¹ Through representation of victims, students in domestic violence clinics learn the substance and practice of domestic violence law and are able to identify systemic problems facing victims. Through reading, casework, and seminars, students examine doctrine, legal theory, and policy issues. Faculty, and to some extent students, tend to be current with the scholarly literature on domestic violence. (Domestic violence attorneys are often too busy to remain up-to-date.) The facility within clinics with practice, theory, and scholarship creates a particularly good site for reworking priorities and implementing strategies for domestic violence lawyering.

Clinical programs are uniquely positioned to contribute to the development of domestic violence law and practice by bridging theory and practice. Clinics situate law practice within an academic setting that examines legal institutions and doctrine. Faculty and students can intellectually engage domestic violence theory in connection with direct representation of victims. They can examine how theory does or does not match their understanding of domestic violence from practice. They can also explore whether the practice reflects the theory and, if not, strive to improve the theory to be more reflective of the situations of their clients and client needs. Through this dialectical process between theory and practice, the clinic can seek an improved

¹⁵⁰ Wizner & Curtis, *supra* note 141, at 678–79.

¹⁵¹ *Id.*

understanding of the role of law in addressing domestic violence. The fresh perspective students bring to practice under the supervision of experienced faculty can also lead to new approaches to advocacy.

Domestic violence clinics should capitalize on the wealth of resources often offered within law schools. Most law schools have an active group of students who are committed to advocacy on behalf of domestic violence victims.¹⁵² Often there are non-clinical faculty members interested in issues of gender and violence who can add interesting perspectives to domestic violence practice. Additionally, domestic violence clinics offer a refuge to students who seek opportunities to explore feminist theory and practice and issues of gender and family. These clinics also offer a supportive environment in which female law students can hone legal advocacy skills to help them excel in a traditionally male profession.

C. Fostering Growth in the Next Generation of Advocates

While providing service to clients and being innovators in their field, domestic violence clinics can also help develop great lawyers who will move domestic violence lawyering forward. Many law students establish their lawyering habits in law school clinics. We should teach students to be technically excellent lawyers, but we should situate skills teaching and client representation within critical examinations of the law and its institutions as well as broader goals for our work. If we teach only substantive law and procedure, we communicate that lawyers are simply legal technicians who apply fixed rules.¹⁵³ Focusing only on skills also ignores the justice implications of the application of these rules and treats law and institutions as neutral.¹⁵⁴ In the domestic violence context, this means that clinics should examine and critique the efficacy of available remedies in addressing domestic violence victims' problems, the

¹⁵² BATTERED WOMEN, *supra* note 28, at 212.

¹⁵³ Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 7 (1997).

¹⁵⁴ *Id.* at 7.

institutions that support and compound victims' disadvantages in society, and the gendered nature of society and its institutions. Teaching only the skills required to represent domestic violence victims in family court conveys that the remedies available, the institutions that oversee those remedies, and the societal context in which abuse occurs are acceptable. Situating work on domestic violence within a social justice mission will lead to clearer efforts and goals for future domestic violence lawyering.

Social justice in clinical legal education is a concept that has been explored by scholars.¹⁵⁵ Within the context of domestic violence clinics, I conceive of teaching social justice in a number of ways. First, we should teach students to perceive and assist clients holistically, incorporating the principles of particularity. This includes prioritizing and addressing issues of difference in serving individuals. Second, we should encourage students to examine their clients' problems in context—within the institutions and social structures they navigate, within the context of gender and subordination, and as related to laws and courts that may be gendered or do not promote justice. This examination should be accompanied by strategy and actions to systemically address domestic violence. Third, we should encourage students to critically examine the efficacy of current remedies to assist victims and to develop a broader spectrum of advocacy. Finally, we should instill in students the seriousness of their task in addressing violence as the next generation of lawyers.

Many students in domestic violence clinics will work on issues related to domestic abuse during their careers — as domestic violence attorneys, prosecutors, defense attorneys, policymakers, or politicians. Students in clinics tend to self-select based on interests and career aspirations, and some enroll in a clinic knowing that they will pursue this work in their

¹⁵⁵ Commentators have provided guidance about the definition of social justice for the purposes of clinical legal education. Jane Harris Aiken states that justice is "about the exercise of power." *Id.* at 10. Antoinette Sedillo Lopez defines the pursuit of social justice as "working to provide access to justice and understanding and addressing inequities in our justice system." Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 316–17 (2001).

careers. Others have or will develop a commitment to domestic violence issues that they will carry with them into their professional roles as private attorneys, *pro bono* attorneys, public interest attorneys, board members, policymakers, politicians, or academics. For all of these students, the approach of the clinic will shape their theoretical frameworks and practice strategies and ultimately will influence the practice of law generally and domestic violence law specifically.

Law school clinics can incite new waves of domestic violence advocacy.¹⁵⁶ Law students are constantly thinking about law and are curious and energetic about their chosen profession. Faculty should capitalize on this momentum to propel domestic violence lawyering forward. While law students (like most members of society) come with many preconceived notions about domestic violence, their freshness with the field allows for creativity and rethinking of best practices. Situated within broader conversations about gender, race, immigration status, and poverty, academic discussions based on direct experiences with clients can translate into new models of legal representation for domestic violence victims that these students may implement when they are in practice. By examining domestic violence issues within larger frameworks of subordination, faculty and students can generate clearer goals for domestic violence work and strategies for attaining those goals, and the next generation of attorneys can move this area of lawyering forward.¹⁵⁷

Clinicians also have an opportunity to prepare future public interest lawyers, including domestic violence attorneys, for sustainable and enriching legal careers. Ensuring that lawyers feel that they are challenged and making a difference and that they do not burn out early in their careers is important.¹⁵⁸ New domestic violence lawyers enter their careers eager to effectuate

¹⁵⁶ See Gruber, *supra* note 79, at 827–30 (describing how law students and new practitioners are often unfamiliar with domestic violence victims' reluctance to participate in the criminal justice system and arguing that law students should be taught to be critical of the role of the state in addressing domestic violence).

¹⁵⁷ *Id.* at 830.

¹⁵⁸ See generally Katz, *Lawyers for the Poor in Transition*, *supra* note 144 (discussing turnover and burnout in legal services attorneys).

change. They tend to represent clients in family law cases, and given the great need for domestic violence representation, they represent large numbers of clients in voluminous family law caseloads. Family law matters tend to be very emotional for the client and taxing for the attorney. In child custody, visitation, divorce, alimony, and equitable distribution of property issues, one party rarely “wins”; instead the outcome is generally one of compromise in a private and affecting matter. The domestic violence attorney has provided representation in an immediate dispute and moves on to represent a seemingly endless pool of domestic violence clients in similar matters. The client is left to deal with issues to which the court could not fully attend, including complications arising from court-ordered visitation or issues of post-judgment enforcement of orders. The client must also deal with crucial life issues of financial stability, care for children, housing, and ongoing safety. Personally, I have been overwhelmed by the concern that even as I secure separation and legal protections for one client, her abuser is likely to enter a new relationship with another woman, and replace the abusive relationship that was just ended with another abusive relationship.

One way to combat burnout is to foster the development of domestic violence lawyers who remain engaged in the larger struggle that brought them to domestic violence lawyering. Social justice lawyers need examples, personal success, and a developmental orientation to their work to balance out the frustrations, defeats, and overwhelming caseloads they face.¹⁵⁹ Encouraging law students to situate their efforts within larger struggles and in relation to broader goals in domestic violence lawyering and other fields can support the development of future attorneys who will have more sustainability and energy in their work. The broader approaches to addressing domestic violence set forth in this article can generate more challenging and complex work for attorneys but also provide more comprehensive assistance for domestic violence victims. Longevity in the careers of domestic violence attorneys serves both lawyers and clients, as sustained talent and expertise in domestic violence lawyering is needed to better assist victims and move this area of law forward.

¹⁵⁹ Bellow, *supra* note 121, at 121.

CONCLUSION

Domestic violence lawyering seeks to reduce domestic violence in individual relationships and society but has become short-sighted. To move domestic violence law and practice forward, we need to rethink our approach and expand beyond our focus on family law matters. We should engage the flexibility we have as lawyers to broaden the range of problems we address so as to improve legal strategies that simultaneously benefit individual victims and society. There is a broad range of possible outcomes for civil domestic violence work that goes beyond obtaining restraining orders, maintaining parental relationships, divorcing spouses, and obtaining child and spousal support orders. We can elicit a clearer articulation of these other outcomes by further developing and exploring the theoretical underpinnings of this work. We should identify and prioritize objectives for civil domestic violence lawyering—including deterrence, norm setting, accountability, empowerment, and correcting systems that enable battering or fail to support victims—in formulating and pursuing these outcomes. With these objectives in mind, we should take innovative, bold, and brave approaches to combating domestic violence.