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# **CLINICAL COGNITIVE DISSONANCE: THE VALUES AND GOALS OF DOMESTIC VIOLENCE CLINICS, THE LEGAL SYSTEM, AND THE STUDENTS CAUGHT IN THE MIDDLE**

*Leigh Goodmark\**

After the Massachusetts Commission Against Discrimination found probable cause to believe that Harvard University had discriminated against her by denying her tenure, Clare Dalton could have done any number of things. What Professor Dalton ultimately chose to do, however, was to start a law school clinic to meet the legal needs of women subjected to abuse. The settlement Professor Dalton negotiated required that Harvard fund Northeastern University School of Law's Domestic Violence Institute ("DVI"), which she directed until 2005. The DVI educates law students about domestic violence and gives them the opportunity to learn from and about women subjected to abuse through various clinical components. The DVI's programs include a partnership with the Boston Medical Center, through which first

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\* Associate Professor, Director of Clinical Education, and Co-Director, Center on Applied Feminism, University of Baltimore School of Law. My thanks to Professor Lois Kanter and Northeastern University School of Law for inviting me to participate in this event honoring Clare Dalton and giving me the opportunity to think about Professor Dalton's contributions in light of clinical pedagogy, and to Professors Zanita Fenton, Cheryl Hanna, and Elizabeth Schneider for helping me to develop those views as we planned our panel. Professor Margaret E. Johnson, as always, provided me with a wonderful sounding board for testing these ideas, and Peggy Chu provided essential research support. Thanks to the editors of the Brooklyn Journal of Law and Policy for their input on this piece; their work and their thoughts improved it significantly. Most importantly, thanks to the clinic students who have left our clinic and devoted themselves to practice on behalf of women subjected to abuse—you are the change I see in the world.

year students interview women seeking help in the emergency room, and the Domestic Violence Clinic, which focuses on protective order advocacy in the Massachusetts District Courts. The DVI also provides students with litigation opportunities in the Massachusetts Probate and Family Courts.<sup>1</sup> At the time Professor Dalton created the DVI, domestic violence clinics were relatively rare. They are much more common now, thanks to efforts by the American Bar Association's Commission on Domestic Violence and others to promote the need to teach domestic violence in law school curricula.<sup>2</sup>

Like many domestic violence clinical programs, the DVI embraces a set of philosophical and pedagogical principles for teaching students to work with women subjected to abuse. Those principles include working collaboratively with clients subjected to abuse, client-empowering advocacy, maximizing options for women subjected to abuse, and looking beyond the legal system to redress woman abuse.<sup>3</sup> These values, which are essential elements of what is taught in domestic violence clinics throughout the country, are at odds with much of mainstream domestic violence law and policy, which stresses the importance of state intervention, prioritizes the legal response to domestic violence, and focuses on separation of women from their abusive partners. Moreover, the legal system established to effectuate that law and policy further widens the gap between the principles domestic violence clinics strive to teach students and the reality of the system's treatment of women subjected to abuse. Clinics teach a model of client-centered, collaborative lawyering intended to help clients generate

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<sup>1</sup> See generally Lois H. Kanter, V. Pualani Enos & Clare Dalton, *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) (discussing the Institute's guiding goals and community context and describing the program's various academic, clinical, internship, and fellowship offerings).

<sup>2</sup> See generally DEBORAH GOELMAN & ROBERTA VALENTE, ABA COMM'N ON DOMESTIC VIOLENCE, WHEN WILL THEY EVER LEARN?: EDUCATING TO END DOMESTIC VIOLENCE: A LAW SCHOOL REPORT (1997) (reporting recommendations from a two-day meeting of experts on how law schools can better prepare lawyers to serve the needs of women subjected to abuse).

<sup>3</sup> Kanter, Enos & Dalton, *supra* note 1, at 365.

and decide among a wide range of options based on their own needs, goals, and interests. The legal system, however, offers women subjected to abuse a narrow range of options based on assumptions about who those women are and how they should react to their abuse. Clinics teach client empowerment; the legal system deprives women of autonomy and dictates women's choices. Clinical programs urge students to look beyond the law to meet their clients' needs. In contrast, the mainstream legal response to domestic violence is premised overwhelmingly on legal intervention.

This disconnect between the goals of domestic violence clinics and the realities of domestic violence practice has implications for the ways in which law students understand domestic violence and experience lawyering on behalf of women subjected to abuse. While some students might be motivated to change the system based on their experiences, others will almost certainly internalize the system's view of women subjected to abuse and the appropriateness of state intervention into women's lives. The gap between what we teach and what students will see in the world should give domestic violence clinicians pause. It should also cause us to question what we teach students about the realities of the legal system's response to domestic violence and how we have contributed to the development of that response. Given the role that feminists, clinicians, and feminist clinicians played in the development of domestic violence law and policy, we need to think carefully about whether endorsing the current legal regime undermines our pedagogical and client service goals.

This essay is an attempt to begin that process. It begins by articulating the goals of domestic violence clinics, as explained in the clinical literature, highlighting the important role that client-centered lawyering plays in domestic violence clinics. The essay then juxtaposes the values that students are taught in domestic violence clinics against the realities of practicing domestic violence law as most attorneys experience it, arguing that domestic violence law and policy is at odds with much of what students in domestic violence clinics are taught. The essay concludes by considering how students might react to this "clinical cognitive dissonance" when they go out into the world to represent women subjected to abuse.

## I. THE VALUES-DRIVEN GOALS OF DOMESTIC VIOLENCE CLINICS

While variation from clinic to clinic certainly exists, many domestic violence clinics have embraced a common set of values and goals and a pedagogy designed to further them. Believing that women subjected to abuse should formulate and control any response to their abuse, domestic violence clinics teach students to practice client-centered, collaborative lawyering; to empower their clients; to maximize client options; and to look beyond the law to assist women subjected to abuse.

*A. Client-Centered Lawyering*

Like many clinics, the DVI stresses lawyering that is “client-centered” and “client-empowering.”<sup>4</sup> The theory of client-centered lawyering—first introduced by law professors David Binder and Paul Bergman in their groundbreaking book, *Lawyers as Counselors: A Client-Centered Approach*<sup>5</sup>—rests on a number of core principles. Client-centered lawyers believe that clients are the “autonomous ‘owners’ of their problems” and that clients are better placed to assess both the non-legal consequences of potential solutions to problems and the level of risk they are willing to accept.<sup>6</sup> Moreover, the theory holds that clients want to, and are able to, participate in the counseling process and to make important decisions about their lives. That collaboration between lawyers and clients, in turn, will lead to better results.<sup>7</sup> To actualize these principles, client-centered lawyers must explore both legal and non-legal consequences of potential solutions and engage clients in developing those solutions. Client-centered lawyers encourage clients to make key decisions, advising clients based on the clients’ own values and acknowledging and recognizing the

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<sup>4</sup> V. Pualani Enos & Lois H. Kanter, *Who’s Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 84 (2002).

<sup>5</sup> *Lawyers as Counselors* is now in its second edition, and has added authors Susan C. Price and Paul R. Tremblay. DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (2d ed. 2004).

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 4–8.

importance of clients' feelings in the counseling process.<sup>8</sup>

Clinicians working with women subjected to abuse have refined the concept of client-centered lawyering to respond specifically to the context of an abusive relationship.<sup>9</sup> As in other contexts, client-centered lawyers work collaboratively with clients to develop, weigh, and select legal and/or non-legal options that best meet their clients' goals, whatever those goals might be.<sup>10</sup> DVI faculty have described client-centered lawyering as "focused on identifying and assessing experiences, risks, values, judgments, capacities and limitations from the client's perspective."<sup>11</sup> Working with women subjected to abuse adds an additional layer of complexity to the client-centered lawyering relationship. Women subjected to abuse are assumed to want immediate separation from their partners. This normative assumption sometimes conflicts, however, with women's desires to continue their relationships, albeit without the abuse. These assumptions also overlook the reality that women subjected to abuse must sometimes tolerate continued relationships with their partners in order to maintain their safety, economic security, housing, child care, or other

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<sup>8</sup> *Id.* at 9–11.

<sup>9</sup> See Sue Bryant & Maria Arias, *Case Study: A Battered Women's Rights Clinic; Designing A Clinical Program Which Encourages A Problem Solving Vision of Lawyering*, 42 WASH. U. J. URB. & CONTEMP. L. 207, 212–15 (1992) (describing the Battered Women's Rights Clinic of the City University of New York, where students conducted a needs assessment of the service area and developed an intake and referral system tailored to those needs); Enos & Kanter, *supra* note 4, at 107–21 (discussing the training that student participants in the Boston Medical Center Domestic Violence Project receive on client-centered lawyering); Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1033 (1997) (arguing that the lawyer should create an opportunity for the client to explore multiple legal possibilities in order to positively affect her changing concepts of her life and herself).

<sup>10</sup> See Enos & Kanter, *supra* note 4. A number of clinics representing women subjected to abuse, including the clinics at the DVI, University of Baltimore, The Catholic University of America, the Washington College of Law, American University, City University of New York, and Georgetown Law Center, teach students the principles of client-centered lawyering. See Mithra Merryman, *A Survey of Domestic Violence Programs in Legal Education*, 28 NEW ENG. L. REV. 383 (1993).

<sup>11</sup> Enos & Kanter, *supra* note 4, at 84–85.

material needs. Client-centered lawyers working with women subject to abuse must generate options and counsel clients subjected to abuse with an awareness of these norms, but without allowing them to color the lawyers' contribution to the collaboration. Moreover, more than many clients, the goals of women subjected to abuse may change quickly and often, in response to variations in their relationships.<sup>12</sup> Law professor Ann Shalleck explains that the client-centered lawyer representing a woman subjected to abuse "needs to see his or her role not as furthering a stable goal of the client, but as creating an opportunity for a client to explore multiple possibilities, as well as her own changing desires to further any of them."<sup>13</sup> Such representation must be

non-judgmental . . . . If the woman can experience a space within which she can examine multiple possibilities and shift among them freely without fear of being judged as unstable or indecisive, she is then better able to figure out, within the contours of that relationship, what she thinks is best for her to do.<sup>14</sup>

Client-centered lawyering recognizes that both the lawyer and client have knowledge and skills to bring to the table as they generate and consider options.<sup>15</sup> Lawyers have legal knowledge; clients have, among other things, life knowledge. This is particularly true of women subjected to abuse: "the client is the best, and often the only, person to provide the critical information on the danger posed by the batterer, his likely response to a particular course of action, and the implications for her and her children."<sup>16</sup> Moreover, client-centered lawyering recognizes that in the end, the client will have to live with the consequences of any decision she might make, which will have financial, social and emotional ramifications for her, her partner, and her children. Given their importance, "these are not decisions that can be made

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<sup>12</sup> Shalleck, *supra* note 9, at 1032–33.

<sup>13</sup> *Id.* at 1033.

<sup>14</sup> *Id.* at 1034.

<sup>15</sup> BINDER ET AL., *supra* note 5, at 282–85.

<sup>16</sup> Kanter, Enos & Dalton, *supra* note 1, at 366.

by an outsider, no matter how well-intentioned.”<sup>17</sup>

Listening is an essential component of client-centered lawyering, and one that the DVI, like most domestic violence clinics, teaches its students explicitly. The DVI’s credo is “less lawyering and more listening.”<sup>18</sup> The DVI’s approach to women seeking services at Boston Medical Center

shifts the interviewing focus from talking to listening, from asking a list of questions to initiating and facilitating a discussion relating to intimate partner violence with a patient purely for the purpose of learning about her experiences, interests, and perspectives. [Its] goal is to impress upon the students that it is through listening and being responsive to a client in a less directive way that more accurate and relevant information relating to the problem and potential solutions is gained.<sup>19</sup>

Client-centered lawyering enables a woman subjected to abuse to analyze her full panoply of options prior to making a decision about how to address the abuse in her relationship. That decision, when made, may be informed by legal information and expertise offered by the lawyer, but will be the client’s alone.<sup>20</sup> Client-centered lawyering gives student attorneys the tools to avoid “the most dangerous and unhelpful thing an advocate can do” when working with a woman subjected to abuse—“give a victim of domestic violence advice and instruction about how to best ensure her safety and that of her children.”<sup>21</sup> The approach embraces the

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<sup>17</sup> *Id.*

<sup>18</sup> William Kirtz, *Students Helping Victims of Domestic Violence; Institute Teaches Ways To Reach Battered Women*, BOS. GLOBE, Aug. 12, 2001, at B8.

<sup>19</sup> Enos & Kanter, *supra* note 4, at 91.

<sup>20</sup> Binder, Bergman, Price and Tremblay acknowledge that there may be times when a client asks what the lawyer would do if in the client’s position. They believe that a client-centered lawyer can answer that question because it “satisf[ies] clients’ legitimate requests for relevant information.” BINDER ET AL., *supra* note 5, at 369. They caution, though, that lawyers should give clients not only their opinions, but also the attitudes and values underlying those opinions, so that clients can compare the values and attitudes underlying the attorney’s opinion with their own. *Id.*

<sup>21</sup> Enos & Kanter, *supra* note 4, at 96; *see also* GOELMAN & VALENTE, *supra* note 2, at I-1, 71.



idea that women subjected to abuse are the experts on their own lives, with the strongest ability to predict the impact of the decisions they make in terms of their safety and well being.<sup>22</sup>

*B. Empowerment and Autonomy*

"[A]ttorneys do not save—they empower,"<sup>23</sup> was the first lesson that law student Jennifer Howard learned during her time as a student attorney in Catholic University's Families and the Law Clinic, although the lesson didn't immediately take. Howard describes her struggle to understand why her clients didn't seem as concerned—even obsessed—with their cases as she was, explaining that only later was she able to balance her empathy for her client with her professional role. Describing her interactions with a client, Howard notes:

Early in my relationship with Ellen, I lacked a necessary level of objectivity and as a result felt as though it was indeed my job to 'save' her. I think that finally, in my second semester of representing battered women, I have achieved the necessary balance. I say this because I no longer feel it is my job to save my clients—I truly believe my role is to empower them to save themselves.<sup>24</sup>

Putting aside the question of whether women subjected to abuse need to be saved, Jennifer Howard's experience is similar to that of many students who enter domestic violence clinics. Law students often find representing a woman subjected to abuse to be a stress-inducing, daunting task. They are terrified by the enormity of the stakes involved—the immediate safety of women and their children as well as their long-term physical and economic security—and have limited practical legal experience when they

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<sup>22</sup> Social science bears this out. See Sascha Griffing et al., *Domestic Violence Survivors' Self-Identified Reasons for Returning to Abusive Relationships*, 17 J. INTERPERSONAL VIOLENCE 306, 315 (2002); Lori A. Zoellner et al., *Factors Associated with Completion of the Restraining Order Process in Female Victims of Partner Violence*, 15 J. INTERPERSONAL VIOLENCE 1081, 1095–96 (2000).

<sup>23</sup> Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLINICAL L. REV. 167, 167 (1995).

<sup>24</sup> *Id.* at 189.

begin their time in clinic. In addition to experiencing fear and frustration, student lawyers struggle to understand why the legal action that they are so diligently pursuing might not be the client's first priority. Given all of these variables, it is not surprising that students sometimes come to believe that they must save their clients.

Clinics, however, teach students to empower, not save. Empowerment has been a central tenet of the battered women's movement since its inception,<sup>25</sup> and is no less important in domestic violence clinical education. The DVI defines empowering a client as

an effort by her advocate, reaffirmed in every stage of the relationship between them, to ensure that the client has the information, capacity, and opportunity to articulate her needs, determine what course of action will best meet those needs, and obtain from others the resources and cooperation necessary to keep herself and her children safe.<sup>26</sup>

Definitions of empowerment frequently incorporate the ideas of controlling one's environment; self-determination; and identifying, evaluating, and making choices. These characterizations of empowerment link the concept to another central value of domestic violence clinical education, client-centered lawyering.<sup>27</sup>

The decision about how to present themselves to others is a particularly important aspect of self-determination for women subjected to abuse.<sup>28</sup> Stereotypes of women subjected to abuse as meek, weak, passive, powerless, and without control pervade the public sphere and the legal system.<sup>29</sup> But some women subjected to

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<sup>25</sup> Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 31 (2009) [hereinafter Goodmark, *Autonomy Feminism*].

<sup>26</sup> Enos & Kanter, *supra* note 4, at 94; *see also* Kanter, Enos & Dalton, *supra* note 1, at 366.

<sup>27</sup> *See, e.g.*, Bryant & Arias, *supra* note 9, at 216–17, 220.

<sup>28</sup> Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 78–82 (2008) [hereinafter Goodmark, *When is a Battered Woman Not a Battered Woman?*].

<sup>29</sup> *Id.* at 77.

abuse reject being characterized in this way.<sup>30</sup> Women who self-identify as strong and resilient may not see themselves as victims and may be unwilling or unable to present themselves as such.<sup>31</sup> Law students frequently come to domestic violence clinics with internalized stereotypical images of women subjected to abuse, and as a result, have difficulty reconciling these stereotypes with the experiences of the women they represent.<sup>32</sup> The divergence of stereotype and reality “can encourage students to distrust clients’ own accounts of their experiences and interpret their clients’ understandings of their experiences through the filter of the dominant stereotypes,” which can “impede students in listening to and hearing, let alone respecting, women’s own interpretations of their experiences of intimate violence.”<sup>33</sup> Clinics encourage students to explore how these stereotypes color their interactions with clients. Students are asked to examine the disconnect between the stereotypes and their clients as they actually are and as they wish to be seen. Students then must learn to support and actualize their clients’ decisions about how they are to be portrayed in interactions with system actors; other sources of assistance; and their partners, families, and community networks.

It is particularly important for women subjected to abuse to have empowering relationships with lawyers. These relationships counterbalance the controlling behavior and deprivation of power that women subjected to abuse may experience with their partners.<sup>34</sup> As the DVI faculty explain,

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<sup>30</sup> BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 46 (2d ed. 2000).

<sup>31</sup> See Goodmark, *When is a Battered Woman Not a Battered Woman?*, *supra* note 28, at 103, 106.

<sup>32</sup> See, e.g., Enos & Kanter, *supra* note 4, at 98. We regularly have this conversation with students enrolled in our clinic, most recently after our students saw what they considered “atypical victims” during a court observation this fall. Conversations about the stereotypical victim regularly happen when our students begin representing clients in domestic violence cases and find that those clients do not present or behave in the ways that our students expect.

<sup>33</sup> Shalleck, *supra* note 9, at 1041–42.

<sup>34</sup> See Leigh Goodmark, *Law is the Answer? Do We Know That For Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 24–25 (2004) [hereinafter Goodmark, *Law is the Answer?*].

one cannot underestimate the psychological harm to a victim when service providers fail to encourage her to make her own decisions or undermine her efforts to do so . . . . To the extent that service providers replicate the disempowering behavior of the perpetrator, they are reinforcing the victim's powerlessness and further disabling her in her struggle to prevent her abuse.<sup>35</sup>

Respect for client autonomy is paramount in the clinical setting, especially when the client makes a choice with which the student attorney (or supervising attorney) disagrees or feels uncomfortable.<sup>36</sup> Such choices give students a chance to surface assumptions and judgments they make about women subjected to abuse and consider how those assumptions and judgments color their client counseling. Moreover, such choices help student attorneys to understand that domestic violence is not a monolith—women subjected to abuse experience that abuse very differently.

### *C. Maximizing Options*

Once students recognize the diversity of experiences among women subjected to abuse, they also begin to see that maximizing these women's available options is an essential component of their role as attorneys. Students frequently come to clinics with the sense that they are limited to legal solutions to address domestic violence, which "prevents most students from recognizing solutions available through non-legal services or informal or formal networks unrelated to service institutions."<sup>37</sup> Moreover,

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<sup>35</sup> Kanter, Enos & Dalton, *supra* note 1, at 366.

<sup>36</sup> See Tricia P. Martland, *From Classroom to Courtroom: The Legal Advocacy Clinic as a Collaborative Effort to Address Domestic Violence Issues in the Community*, 3 FAM. & INTIMATE PARTNER VIOLENCE Q. 101, 103 (2010).

<sup>37</sup> Enos & Kanter, *supra* note 4, at 87; *see also* Merryman, *supra* note 10, at 400–01 (quoting CUNY clinical law professor Susan Bryant). In fact, the DVI stopped offering its Domestic Violence Education and Training program to first year law students in 2000 in part out of concern that the course focused too much on legal proceedings and

failed to convey our conviction that domestic violence is a complex social problem that must be addressed by community-based, multidisciplinary advocacy—not solely, or even primarily, through

students working with women subjected to abuse frequently assume that separation from their partners is or should be the goal of the women with whom they are working.<sup>38</sup>

Domestic violence clinics often teach student attorneys about the concept of intersectionality.<sup>39</sup> Looking at a woman's experiences through the lens of intersectionality enables students to see how a woman's placement at the center of one or more identities—race, class, sexual orientation, geographic location (urban, suburban or rural), disability status, religion, immigration status—affects her experience of abuse. A woman's various identities may make her more or less able or willing to separate from her partner, use formal legal and social service delivery systems, or take other actions that the student attorney might assume would benefit her.<sup>40</sup> “For example,” writes law professor Susan Bryant and former professor (now Judge) Maria Arias, “if a student represents an orthodox Jewish woman on public assistance, the student must ask how being orthodox Jewish, being a woman,

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legal representation and resolution. We were concerned that these messages must be conveyed early in law students' careers, before their approach to client advocacy mirrors the more traditional relations of a lawyer to a client and a court.

Kanter, Enos & Dalton, *supra* note 1, at 384. The DVI's Boston Medical Center project, by contrast, gives students the opportunity to learn from the stories of women

who are not, for the most part, actively seeking legal assistance or intervention for abuse, and who may or may not have tried to use the legal system to make themselves safer from abuse in the past. These women can teach us about strategies for coping with violence that do not involve legal action, and about why women choose or do not choose to take legal action.

*Id.* at 387.

<sup>38</sup> LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 81 (2011) [hereinafter GOODMARK, A TROUBLED MARRIAGE]; see Sally L. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1542–44 (2008).

<sup>39</sup> Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1262 (1991); see also Bryant & Arias, *supra* note 9, at 216.

<sup>40</sup> See Crenshaw, *supra* note 39, at 1262; see also Bryant & Arias, *supra* note 9, at 216; Goldfarb, *supra* note 38, at 1542–44.

being battered, and being on public assistance affect this woman's options, both from her perspective and the student's."<sup>41</sup>

Domestic violence clinics stress the importance of exploring a broad range of options with clients.<sup>42</sup> Examining the role that the legal system can play in an individual client's case is a part of that exploration, but only one part. Students are taught to consider not only the usual options offered women subjected to abuse—separation, as facilitated by legal remedies including protective orders, criminal prosecution, or divorce, and social services like shelter—but also other remedies that might better meet the needs of their individual clients in their individual contexts.<sup>43</sup> As Professor Dalton explained to the *Boston Globe*, students must “take off their legal hats” and help clients to think through the negative consequences of invoking the legal system.<sup>44</sup> Such consequences might include a partner's deportation, the loss of a partner's economic or parenting support, and the loss of family or community support as a result of seeking assistance. Students must also explore whether and how they can help clients secure the other kinds of services, like child care, housing, education, job training, drug treatment, or transportation, which might best meet their clients' goals.<sup>45</sup>

Clinics also help students to recognize that separation may not be the safest or best option for every client. Clinics encourage students, in response to the oft-heard question “Why didn't she leave?”, to respond “What makes you think that would have made her safer?”<sup>46</sup> Domestic violence clinics challenge students to recognize that turning to the legal system is only one option, and may be a problematic or even dangerous option, for their clients.<sup>47</sup> The goal of client representation “is not just to direct her toward what she might file in court, but towards examining what is going on in her life and what she might need to make the whole situation

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<sup>41</sup> Bryant & Arias, *supra* note 9, at 216.

<sup>42</sup> Kanter, Enos & Dalton, *supra* note 1, at 366.

<sup>43</sup> Enos & Kanter, *supra* note 4, at 84.

<sup>44</sup> Kirtz, *supra* note 18, at B8.

<sup>45</sup> *Id.*

<sup>46</sup> Clare Dalton, *Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities*, 31 NEW ENG. L. REV. 319, 338 (1997).

<sup>47</sup> See Merryman, *supra* note 10, at 402.

better.”<sup>48</sup>

Accepting the limitations of the law can be difficult for students who come to clinics motivated to use the legal system to improve the lives of women subjected to abuse. Most students enter clinics believing that “their role will consist solely of pursuing legal solutions through applying their knowledge of the law and legal systems to the client’s legal problems.”<sup>49</sup> Embedded in that orientation is the assumption that the law will provide solutions. Students’ resistance to the idea that law is an imperfect remedy grows from their need to protect “their ideas of law, and the conception that law will fix things, and that law is not a tool of oppression.”<sup>50</sup> But, as Bryant and Arias note, “One of the challenges of any public interest clinical program is to help students practice in a particular area of law, while at the same time, be able to criticize it . . . . A critical perspective is especially necessary when representing battered women . . . .”<sup>51</sup> Domestic violence clinics help law students see that invoking the power of the state is but one option for women subjected to abuse, and that, in order to address abuse, lawyers for women subjected to abuse must think beyond the legal system about what their clients really need.

Ann Shalleck has written that, ideally, a legal practice for women subjected to abuse

promotes awareness of the multiple visions of the client that are operating throughout her experience in the legal system . . . attends to the consequences of any vision that is unselfconsciously or self-consciously adopted by lawyer and client . . . enables a client to convey, in the forums she chooses and to the extent she wishes, the vision of herself that she decides, after consultation with her lawyer, to project . . . recognizes that the interaction between lawyer and client plays a part in shaping the client’s understanding

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<sup>48</sup> *Id.* at 401 (quoting clinical law professor Ann Shalleck).

<sup>49</sup> Enos & Kanter, *supra* note 4, at 86.

<sup>50</sup> Merryman, *supra* note 10, at 408; *see also* Bryant & Arias, *supra* note 9, at 222. As law professor Martha Mahoney argues, “[I]t is very hard to shake these ideas without discouraging student optimism about using the law as a means of bringing about social change.” Merryman, *supra* note 10, at 408.

<sup>51</sup> Bryant & Arias, *supra* note 9, at 210.

of her needs and her experience . . . enables the client to make informed decisions about the multiple consequences of the visions of herself conveyed through the legal proceeding; . . . and assists a client in understanding the possibilities that she has within her situation to make changes that are meaningful to her and in taking those actions that she decides are desirable.<sup>52</sup>

Domestic violence clinics—using the principles and techniques of client-centered, collaborative lawyering intended to maximize client empowerment and autonomy and the options available to clients—prepare students for the kind of practice Shalleck envisions.

## II. THE REALITIES OF DOMESTIC VIOLENCE PRACTICE

Domestic violence clinics teach students a host of important values and skills that are essential for representing women subjected to abuse. But by stressing client centeredness and empowerment, domestic violence clinics prepare law students for a practice on behalf of women subjected to abuse that is fundamentally at odds with the realities of the legal system's response to domestic violence. The system of law and policy erected over the last forty years to address domestic violence—which students confront when they represent women subjected to abuse through domestic violence clinics—is anything but client-centered. The system stereotypes women subjected to abuse, making judgments about what they need without considering the needs, goals, and priorities of the individual women seeking assistance from the system.<sup>53</sup> The legal system substitutes the judgment of its actors for that of women subjected to abuse, causing many women to perceive the system as disempowering.<sup>54</sup> The disproportionate reliance on a legal response to domestic violence constrains women's options and steers women towards predetermined interventions.<sup>55</sup> The system that women subjected to

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<sup>52</sup> Shalleck, *supra* note 9, at 1062–63.

<sup>53</sup> GOODMARK, A TROUBLED MARRIAGE, *supra* note 38, at 139–41.

<sup>54</sup> *Id.* at 152–53.

<sup>55</sup> *Id.* at 153–54.



abuse—and the student attorneys who represent them—experience simply does not reflect the values taught in domestic violence clinics.

*A. System-Centered Lawyering*

The legal system does not share client-centered lawyering's focus on the importance of individuality. Instead, the legal system operates using a set of stereotypes that color how judges hear the narratives of women subjected to abuse and, therefore, the relief that is available through the legal system. Trained to look for a cycle of violence<sup>56</sup> in any relationship where claims of domestic violence are made, and schooled in the paradigmatic victim of Battered Woman Syndrome,<sup>57</sup> judges expect to hear women subjected to abuse tell stories about their passivity, their submission, and their inability to break free of the cycle of violence.<sup>58</sup> Women who fail to conform to these stereotypes or to tell the types of narratives that legal system actors are conditioned to hear may find it difficult to secure relief through the legal system.<sup>59</sup> Rather than attempting to elicit the details of each woman's individual story of abuse, the legal system looks for a stock narrative, and in the absence of that stock narrative, withholds its benefits.<sup>60</sup>

In a system in which individual stories are less important than conforming to a stock narrative, listening is devalued. Police, lawyers, and judges listen, but often only for those details that will satisfy their internal checklists. Physical violence—check. Threats to kill accompanied with past physical abuse or the presence of a

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<sup>56</sup> See generally LENORE E. WALKER, *THE BATTERED WOMAN* 55–70 (1979) (describing the three phases of the cycle of violence: the tension-building stage, the acute battering incident, and the exhibition of kindness and contrite loving behavior).

<sup>57</sup> See generally *id.* at 3–15 (providing an overview of Battered Women Syndrome).

<sup>58</sup> Goodmark, *When Is a Battered Woman Not a Battered Woman?*, *supra* note 28, at 91–92.

<sup>59</sup> *Id.* at 81–82.

<sup>60</sup> GOODMARK, *A TROUBLED MARRIAGE*, *supra* note 38, at 76–77, 101–04, 126–28, 153.

weapon—check. Fear of their partners—check. But concern about a child’s safety, anger at being assaulted, subtle threats whose malevolence is unclear without an understanding of the broader context of the relationship—these are signs to legal system actors that the story isn’t worth hearing.<sup>61</sup> Overburdened police officers, prosecutors seeing witnesses for the first time minutes before a trial, and judges facing ever-increasing dockets simply do not or cannot take the time to tease out the details of a story of abuse that is convoluted, non-linear, or in another language. Too often, legal system actors fail to listen to the stories that require closest attention, because those stories fail to conform to legal system expectations about abuse.<sup>62</sup>

Even where the system does entertain a story and intercedes, it offers only a constrained set of options and deprives women of choices about how to use those options. The legal system is premised on the belief that women subjected to abuse should want—and do want—to separate from their abusers. Accordingly, the relief the legal system provides is largely centered around separation, using—among other tools—protective orders, arrest, prosecution, and divorce. What such an orientation ignores, of

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<sup>61</sup> See, e.g., *id.* at 76–77 (discussing anger); Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL’Y & L. 657, 686 (2003) (discussing custody proceedings).

<sup>62</sup> In 2008, against the backdrop of a hotly contested custody hearing, Dr. Amy Castillo sought a protective order against her estranged husband, Mark Castillo, who had threatened her life and her children’s lives. He first told her that he would kill her and the children, but then threatened “actually worse than that would be [killing] the children and not [his wife] so that [she] would have to live without them.” Editorial, *The Castillo Case: Maryland’s Legislature and Judiciary Must Face the Tragedy of Three Murdered Children*, WASH. POST (Apr. 3, 2008), [http://www.washingtonpost.com/wp-dyn/content/article/2008/04/02/AR2008040203055\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/04/02/AR2008040203055_pf.html). Judge Joseph A. Dugan denied Dr. Castillo’s request for a protective order. Shortly thereafter, Mark Castillo drowned his three children in the bathtub of a Baltimore, Maryland hotel. *Id.* Like many mothers who seek protective orders, Castillo may have faced skepticism about the veracity of her claims given the existence of a custody case; judges seem to believe that domestic violence claims made in the context of custody or divorce actions are inherently less credible. Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between “The Truly National and the Truly Local,”* 42 B.C. L. REV. 1081, 1122 (2001).

course, is that separation does not necessarily provide safety for women subjected to abuse and that not all women want to separate from their abusers, for myriad reasons. The research on separation assault confirms what women subjected to abuse have long known; that separation can make a woman less safe, rather than more, and that abuse frequently continues long after a woman has separated from her abuser, and often takes on new forms or finds new targets (abuse of children as secondary victims, for example).<sup>63</sup>

Moreover, as noted above, women remain in abusive relationships for a variety of reasons, some created by external constraints—economic instability, lack of community support upon separation, concern about children—and others that women actively choose, such as maintaining their relationships with their partners.<sup>64</sup> A separation-based system is responsive to neither of those concerns, providing little assistance to women who either cannot separate or do not want to separate from their partners. Women who choose not to separate from their abusers invite suspicion and condemnation, as if by choosing not to separate, for whatever reason, they are asking to be abused, reviving myths of the masochism of women subjected to abuse.<sup>65</sup>

Moreover, some of the tools that the system uses to enforce separation—arrest and prosecution—are beyond the control of women subjected to abuse, which allows the state to intervene in relationships without the woman's desire or consent.<sup>66</sup> Mandatory arrest policies—which require police to make an arrest any time they have probable cause to believe that domestic violence has occurred—and no drop prosecution policies—which mandate that

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<sup>63</sup> GOODMARK, A TROUBLED MARRIAGE, *supra* note 38, at 83–84; Goldfarb, *supra* note 38, at 1519–21; Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 75–76 (1991).

<sup>64</sup> See, e.g., Goodmark, *Autonomy Feminism*, *supra* note 25, at 38 (“[T]he economic resources their partners provide might be more important than a cessation of the battering at a particular point in time.”).

<sup>65</sup> GOODMARK, A TROUBLED MARRIAGE, *supra* note 38, at 96–100.

<sup>66</sup> As Kanter, Enos & Dalton write, “Law enforcement, traditionally operating in a masculine, hierarchical and authoritarian fashion, may want the client to provide information but reserve to itself the right to assess the situation and its implications, and decide upon a ‘proper’ course of action.” Kanter, Enos & Dalton, *supra* note 1, at 367.

prosecutors pursue any domestic violence case in which they have sufficient evidence to proceed—compel state actors to pursue criminal interventions regardless of an individual woman's desire to do so.<sup>67</sup> In their most stringent iterations, no drop prosecution policies might even require prosecutors to subpoena unwilling women to testify or request their incarceration pending their testimony, a position prosecutors have defended as upholding the state's responsibility to vigorously enforce the law, regardless of the relationships between the parties, in order to reinforce the message that domestic violence is unacceptable.<sup>68</sup> As clinic students adapt to their role as lawyers who partner with clients, they and their clients confront a system that regularly decides how best to address the abuse the client is experiencing, substituting this judgment for the client's own. This is the polar opposite of client-centered lawyering.

### *B. Disempowerment*

The legal system can be profoundly disempowering for women subjected to abuse. It listens poorly, presupposes women's goals, and prevents women from making choices about how to address the abuse in their lives. Domestic violence clinics may empower their clients, but the legal system is dedicated to "saving" them, and, as Jennifer Howard realized in her first semester as a student attorney, the difference between those orientations has profound implications for women subjected to abuse.

These differences between how we teach students in domestic violence clinics and the realities they and their clients face when using that system would matter less if there were viable alternatives other than the legal system for women subjected to abuse. But the disproportionate funding and attention the legal system has received has both created a societal expectation that the legal system is where women should turn when dealing with abuse and stunted other avenues of response. The legal system is now the primary mode of response to domestic violence in the United

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<sup>67</sup> Goodmark, *Autonomy Feminism*, *supra* note 25, at 3–4, 11–13.

<sup>68</sup> Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1862–63 (1996).

States, for better or for worse.<sup>69</sup> When clinic students look for other ways to address domestic violence with their clients, they do so in the context of a societal response to domestic violence based largely on legal system intervention. Millions of dollars go towards funding police, prosecutors, courts, and civil legal assistance at the expense of other services women subjected to abuse might need and that might be more useful than state intervention.<sup>70</sup> Moreover, some non-legal services are only available if women subjected to abuse are willing to engage with the legal system—which is too high a price for some women to pay for access to counseling, financial support, and government services. In some communities, the legal response is the only avenue of relief available to women subjected to abuse;<sup>71</sup> in others, engaging the legal response is a precondition to the availability of other services.<sup>72</sup> Even without hard and fast requirements that women engage with the state, the expectation certainly exists in most communities that the legal system is best placed to intervene in cases of domestic violence, and that women who choose not to use that system are not serious about ending their abuse.

### III. TEACHING CLIENT-CENTERED STUDENTS IN A SYSTEM-

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<sup>69</sup> GOODMARK, A TROUBLED MARRIAGE, *supra* note 38, at 18–22.

<sup>70</sup> *Id.*

<sup>71</sup> Through the Violence Against Women Act, the federal government has poured millions of dollars into police, prosecution, and courts. Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902–55. Funding for shelters and other services has not been as generous. As a result, the National Network to End Domestic Violence reported that on one day in 2010, 9,541 requests to domestic violence programs for services went unmet; 5,686 (60%) of those requests were for shelter or transitional housing. NATIONAL NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2010: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES (2011), *available at* [http://nnedv.org/docs/Census/DVCounts2010/DVCounts10\\_Report\\_Color.pdf](http://nnedv.org/docs/Census/DVCounts2010/DVCounts10_Report_Color.pdf).

<sup>72</sup> A battered immigrant woman cannot apply for a U Visa, for example, without providing assistance to law enforcement. Crime victim compensation fund monies may be unavailable to women who choose not to engage the legal system. Statutes intended to protect women subjected to abuse who experience employment or housing discrimination may require that those women seek protective orders in order to invoke those provisions. GOODMARK, A TROUBLED MARRIAGE, *supra* note 38, at 101–04.

## FOCUSED WORLD

Law students enrolled in domestic violence clinics see the contradictions between the theories and methods they are taught in clinics and the realities of domestic violence practice. Students bring “images of the ideal lawyer” with them into the clinic—lawyering that uses “directive, hierarchical, and individualistic methods of advocacy that limit the interest and responsibility of the lawyer to client problems that can be solved exclusively through available legal mechanisms.”<sup>73</sup> Despite the best efforts of faculty in domestic violence clinics, the beliefs that students already have about lawyering are reinforced by students’

observation of other legal practitioners and of systems that encourage and reward hierarchical practices through which court personnel, lawyers and judges control interactions and outcomes for clients. This traditional model of lawyering not only separates legal professionals from other non-legal service providers, but also assumes that the legal system knows and will provide what the victim needs, rather than work collaboratively with her to define her needs and fashion appropriate remedies.<sup>74</sup>

Moreover, helping students see the need for system change can be difficult, according to law professors Naomi Cahn and Joan Meier, “because most of legal education focuses on learning how to work within the existing system.”<sup>75</sup> Essentially, domestic

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<sup>73</sup> Enos & Kanter, *supra* note 4, at 85–86. A lawyer from a prominent family law practice was invited to my clinic to model a client counseling session. His presentation followed my discussion of client-centered lawyering with my students. After he finished a very traditional, directive session in which he neither inquired about the client’s goals nor attempted to engage the client in problem solving, but instead told the client his options and strongly recommended the one he thought best, one of my students raised his hand and said, “Was this a demonstration of how not to do client-centered lawyering?” The student recognized the disconnect between what we teach and how many lawyers practice—how the student subsequently resolved that tension in his own practice, I do not know.

<sup>74</sup> *Id.* at 86.

<sup>75</sup> Naomi Cahn & Joan Meier, *Domestic Violence and Feminist Jurisprudence: Toward a New Agenda*, 4 B.U. PUB. INT. L.J. 339, 349 (1995).

violence clinical professors often find themselves attempting to persuade students that everything they believe they know about lawyering and the legal system is wrong, and that they must re-learn how to lawyer to be effective advocates for women subjected to abuse—not an easy paradigm shift for students to accept.

The disconnect between the skills domestic violence clinics teach and how domestic violence legal systems operate has the potential to influence how students learn and use what they have learned in domestic violence clinics in their lawyering careers. Domestic violence clinicians hope to motivate students to devote themselves to changing the system, making it more responsive to the clinicians' vision of practice for women subjected to abuse. This certainly happens; seeing students who espouse the values of client-centered lawyering, empowerment, and maximization of options begin a legal practice on behalf of women subjected to abuse is among the most rewarding aspects of clinical teaching, and allows the instructor to see the ripple effect of sending students out into the world to do good work.

But the reality is that most students will not take the difficult position of challenging the status quo they encounter within the legal system. Perhaps the easiest, and most troubling, route for new lawyers to take once they leave the clinical setting and enter practice is to reject what they have been taught and to accept that the stereotypes of women subjected to abuse in the legal system are accurate and that the legal system knows best when it comes to addressing domestic violence. The new lawyer is freed from having to challenge existing institutional structures and the received wisdom of those who operate the legal system, enabling them to take the path of least resistance, to “go along to get along” within a system that rewards such behavior. Others might acknowledge the value of what they have learned in their domestic violence clinic, but nonetheless spurn the clinic's values in order to work with the system as it is. These lawyers might recognize that systemic change is slow, difficult, and often quite frustrating and, as a result, reject the clinic's teaching that “responsibility for changing that system rests with all of us.”<sup>76</sup> As professor Abbe Smith has written in the context of criminal defense clinic students

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<sup>76</sup> *Id.*

becoming prosecutors, “I have seen the role consume the person.”<sup>77</sup> The context within which lawyers practice shapes their beliefs and their actions; that students might conform to the expectations of what Smith calls “time and place” is hardly surprising.<sup>78</sup> Students more committed to the values they have been taught might fight to have the system change to accommodate the needs of women subjected to abuse as they understand those needs, but find that the system does not change despite their best efforts. Some of these students may become so disillusioned by the inability of the system to serve women subjected to abuse that they avoid the system altogether. Each of these responses is a very real, albeit very disappointing, possibility.

#### IV. CONCLUSION

The legal system’s response to domestic violence is flawed in a number of ways, and there are many reasons to work for change—most importantly, to better serve women subjected to abuse. But another reason for working to change the current system is to bring the system in line with the principles, values and goals that many of us have for practice with women subjected to abuse—the same principles, values and goals that are taught in domestic violence clinics every day. Eliminating the cognitive dissonance that students experience when the realities of the system are juxtaposed against what they have learned in clinic can only benefit the women that we hope to serve.

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<sup>77</sup> Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?*, 14 GEO. J. LEGAL ETHICS 355, 397 (2001).

<sup>78</sup> Professor Smith’s comment centers more on the societal context within which prosecutors practice, but is, I believe, equally applicable to the context of the courthouse and the larger system that domestic violence attorneys must negotiate. *Id.* at 396.