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## The Pedagogy of Domestic Violence Law: Situating Domestic Violence Work in Law Schools, Adding the Lenses of Race and Class

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# THE PEDAGOGY OF DOMESTIC VIOLENCE LAW: SITUATING DOMESTIC VIOLENCE WORK IN LAW SCHOOLS, ADDING THE LENSES OF RACE AND CLASS

SARAH M. BUEL\*

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## INTRODUCTION

Increasingly, domestic violence victims are turning to the courts for protection, too often with poor results. Many lawyers view the relevance and scholarship of domestic violence law as prosaic, although it is an issue of profound social significance, and will impact their professional and personal lives. It is not surprising then that many attorneys, ignorant of domestic violence issues, mishandle the full spectrum of its legal applications. The American Bar Association's Commission on Domestic Violence reports that, overwhelmingly, the technical assistance calls they receive indicate that abuse victims are not receiving adequate representation.<sup>1</sup> States' gender bias reports, including *The Gender Bias Task Force of Texas, Final Report*, verify that improper handling, at all levels of the legal system, can be traced to attorneys' lack of knowledge about domestic violence.<sup>2</sup> Deficient education on the issue can have catastrophic consequences for the parties involved. A Maryland battered woman was murdered by her partner after a judge denied her a protective order.<sup>3</sup> In another case, a judge gave custody to a father who had not only battered the child's mother, but also had a conviction for his previous wife's murder.<sup>4</sup> In Austin, Texas, a battering father was convicted of molesting his own child, as well as several of those in his wife's day care center, yet a judge gave him custody of all three of the couple's children.<sup>5</sup>

1. See ABA COMM'N ON DOMESTIC VIOLENCE, WHEN WILL THEY EVER LEARN? EDUCATING TO END DOMESTIC VIOLENCE: A LAW SCHOOL REPORT I-5 (Deborah Goelman & Roberta Valente eds., 1997) [hereinafter Goelman & Valente], available at <http://www.ojp.usdoj.gov/ovc/publications/infores/etedv/etedvpdf.pdf>.

2. SUPREME CT. OF TEX., GENDER BIAS TASK FORCE OF TEXAS, FINAL REPORT (1995).

3. Civil Protective Order Transcript, Petitioner Helen Jenkins, District Court of Maryland, Prince George's County, Maryland, 1993; as cited in DOMESTIC VIOLENCE EDUCATION IN LAW SCHOOLS, A REPORT BY THE AMERICAN BAR ASSOCIATIONS COMMISSION ON DOMESTIC VIOLENCE I (2002).

4. See *Ward v. Ward*, 742 So. 2d 250, 252 (Fla. App. 1996) (illustrating dangerous decisions of judges in domestic violence cases).

5. See *State v. Denise Murphy Hall* (unpublished opinion) (2001).

Precisely because low income and minority victims tend to be invisible in legal, anti-racist and feminist literature,<sup>6</sup> counsel generally ignore the significant issues implicit in the intersectionality of violence, gender, race and class. For the most part, lawyers and professors are not indolent or malicious, but rather are apathetic because they believe such issues are inconsequential. They are then unable to comprehend the context, nuances and complexity of domestic violence matters, to the detriment of battered and batterer clients. It has become clear that attorney mishandling of partner abuse cases is due, in part, to the dearth of formal education on the topic. In focusing on the pedagogy of domestic violence jurisprudence within law schools, I argue for a thorough and expanded integration of domestic violence jurisprudence into the curricula.

As domestic violence presents itself across a spectrum of legal matters,<sup>7</sup> law schools must take a leadership role in the pedagogy of domestic violence law, in part by integrating relevant issues into existing courses and by developing specialized courses. These issues may arise when our students are assisting a petitioner in obtaining a protective order or suing an abuser in tort; a tax attorney may be responsible for advising a client regarding the innocent spouse defense, or a prosecutor and defense attorney could be at variance in a case of an abused woman who has killed her batterer in self-defense. Each of these cases *requires* at least minimal knowledge of the dynamics and law of domestic violence. Lawyers inadvertently failing to ethically represent abuse victims and offenders, as well as those reluctant to handle the cases at all, could greatly benefit from the inclusion of these issues in continuing legal education and law school courses.<sup>8</sup> Since several states are now adding domestic violence-related questions to bar exams,<sup>9</sup> students not exposed to this

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6. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991) (exploring the dimensions of gender and race in the legal system).

7. See ABA COMM'N ON DOMESTIC VIOLENCE, THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK (Roberta Valente ed., 1996) (including chapters covering the relevance for most fields of law, including Children's; Civil Rights; Contracts; Corporate; Criminal; Elder; Employment; Evidence; General Practice; Health Care; Government and Public Sector; Housing and Homelessness; Insurance; Judiciary; Law Firm Management; Legal Services; Mediation; Military; Poverty; Probate, Estate and Trust; Professional Responsibility and Ethics; Real Property; Safety Planning; Screening; Sexual Harassment; Solo Practitioners; Sports and Entertainment; State and Local Government; Tax; Trial Practice and Torts).

8. See Goelman & Valente, *supra* note 1, at 1-24 (discussing the many advantages of including domestic violence issues in different areas of law school curriculum).

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body of law will be at a loss in yet another arena.

The legal and social challenges faced by battered women must inform the scholarship and pedagogy of law. Some students, like some lawyers, find it uncomfortable to hear details of abuse, as so often victims live with such unimaginable terror, the likes of which lawyers and courts have no concept. Batterers subject victims to a degrading regimen of humiliation, shame and loss of esteem, often demanding total obedience.<sup>10</sup> In addition to the emotional abuse, American women are in nine times more danger of physical abuse in their own homes than they are in the street.<sup>11</sup> Sadly, the legacy of this violence is often passed from one generation to the next. Frequently overlooked, but critical to address throughout the academy's efforts, is a fundamental understanding of the ways in which race and class impact ethical practice, in part by impeding access to legal remedies. Weaving themes of domestic violence, race and class together, we can offer an expansive menu of options, hoping to ultimately reach every law student. It is likely that among our own law students exists the same proportion of victims and offenders as in the larger community. Currently, there is little recognition of this phenomenon, and few, if any, coordinated interventions with those involved. Thus, our concerted efforts will undoubtedly increase the safety of our law students, as well as that of the survivors we serve.

Law schools, bar associations, law firms<sup>12</sup> and foundations<sup>13</sup> should also be encouraged to fund student and attorney practice of domestic violence law. For example, Harvard Law School's Student Funded Fellowships program allowed me to spend the summer between my first and second years of law school working with battered women in prison, through the aegis of the Massachusetts Coalition of Battered

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9. For example, the July 1998 Texas Bar Exam's family law question (one of six essay questions) asked examinees to fully describe the provisions of the state's family violence protective order laws, including application, procurement, enforcement and possible relationship to divorce actions.

10. See, e.g., Sarah M. Buel, *Domestic Violence and the Law: An Impassioned Exploration for Family Peace*, 33 FAM. L.Q. 719, 720 (1999) (explaining the stereotype of the "victim"); SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 17-20* (1982) (describing the use of violence and intimidation by batterers as tools for gaining control).

11. See CTR. FOR DISEASE CONTROL, *FACTS ON DOMESTIC VIOLENCE*, in NATIONAL ORGANIZATION OF WOMEN LEGAL DEFENSE AND EDUCATION FUND LEGAL RESOURCE KIT (1992).

12. For example, the law firm Skadden, Arps, Slate, Meagher & Flom, chooses several recent graduates per year who are provided a stipend while they practice public interest law.

13. Similarly, the Echoing Green Foundation also selects twenty graduating law students for whom they give a grant while they work with a public interest organization for one to two years.

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Women Service Groups. At the University of Texas School of Law, student and faculty-funded grants for students wishing to engage in public interest law during the summers are administered through a student-run organization, Texas Law Fellowships. Each year at least four to six of the participants choose placements involving substantial work on domestic violence cases. Students appear to welcome the opportunity to work with under-served victims, including migrant and immigrant battered women.

### I. THE PEDAGOGY OF DOMESTIC VIOLENCE LAW

Law school presents an opportune environment in which to introduce domestic violence jurisprudence in at least five areas: (1) integrating domestic violence law into existing courses; (2) creating specialized Domestic Violence and the Law courses; (3) implementing clinical programs that represent abuse victims; (4) including domestic violence scholars in law school colloquia and conferences; and (5) supporting student-run victim advocacy organizations. While it may seem overly ambitious early on, an underlying goal must be the institutionalization of such clinics, courses and initiatives. Inclusion of race, culture and class issues must be prioritized if we are interested in promoting catalytic systems change, for the social and legal constructs of domestic violence cannot be rigorously taught in their absence.

#### A. *Inspiring Law Students to be Champions in Eradicating Domestic Violence*

Having now taught a Domestic Violence and the Law course<sup>14</sup> since 1992 and a Domestic Violence Clinic<sup>15</sup> since 1997, I can attest to a particular joy in motivating students to take a leadership role in transforming rhetoric to reality as they assist abuse victims, offenders or their children. A necessary first step is exposing students to the profound trauma and inequities suffered by battered women prior to and throughout their involvement with the legal system. 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. Teaching is deficient if focused solely on black letter law, for

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14. For information on the course see [http://utdirect.utexas.edu/loreg/clap.WBX?ccys=20032&class\\_unique\\_number=24490](http://utdirect.utexas.edu/loreg/clap.WBX?ccys=20032&class_unique_number=24490) (last visited Mar. 25, 2003).

15. For information on the University of Texas School of Law Domestic Violence Clinic, see <http://www.utexas.edu/law/academics/clinics/domestic/index.html> (explaining the work involved in this clinic) (last visited March 25, 2003).

that limited scrutiny omits examination of the intersectionality of race, culture, ethnicity, gender and class. Intersectionality offers a mechanism to locate the position of those whom identity politics is likely to marginalize. Race, class, gender, and sexual orientation interact to shape a person's experiences and construction of the social world. Thus, when anti-racist or feminist jurisprudence theorize in isolation, each fails to fully address the issue of violence against women of color.<sup>16</sup> Theory must be explored for its ability to teach that domestic violence law is not simply an autonomous discipline, but rather, an exciting and burgeoning genre of jurisprudence with illuminating correlates in most areas of the law.

No doubt some of my passion for systems change is rooted in my own less than positive experiences as an abuse survivor attempting to navigate the legal and social services systems while fleeing my ex-husband. Due to the stigma, shame and self-blame, I was not prepared to talk publicly about being a domestic violence survivor. However, while I was training police chiefs in 1977, one commented, "Well, a smart girl like you would never put up with this!" As continued silence seemed hypocritical, I explained that I had recently left a violent husband and would be relying on police protection to keep me safe for the rest of my life. The stunned chief replied, "Well, I guess if it could happen to you, it could happen to anyone." Henceforward he became an ally and allowed me to train his officers. I tell my students, "I'd rather you think of me as the best professor, mother, advocate or writer than 'my formerly battered teacher,' but I am determined that we move past the abstractions and stereotypes of abuse survivors." Thus, although it is still difficult to publicly discuss being a survivor, many students comment in their anonymous evaluations that this revelation forces them to abandon victim blaming and focus instead on remedies.

In my Domestic Violence and the Law course, I remind students throughout the semester that being battered or remaining with an abuser does not evince stupidity, masochism or co-dependence. Rather, such behavior evidences that survivors often do not know to whom it is safe to disclose, or what to do when the shelter is full, or how to pay the rent *and* the babysitter when trying to work. I begin *every* class by asking them, "What does a family of three get on welfare in Texas?" and they respond "\$208!"<sup>17</sup> I then ask, "And what is the

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16. See Crenshaw, *supra* note 6, at 1247 (demonstrating how the system breaks down for immigrants and women of color).

17. During my first semester of teaching in the Spring of 1997, Texas TANF payments were \$188 for a family of three. In 1999, that amount was raised to \$201, until 2002, when it was increased to \$208. See STATE OF TEX. DEP'T OF HUM. SERVS.,

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number of the National Domestic Violence Hotline?” to which they reply, “1-800-799-SAFE.” I infuse this practical aspect because students should not leave law school without understanding the financial sabotage of an illusory safety net (welfare) and a number to which they can refer an abuse victim or offender at any time. I am rewarded when students report their practical use of this information in educating colleagues or assisting victims.<sup>18</sup>

Inspiring in students a prescriptive or normative impulse when approaching domestic violence matters is challenging, but worth the effort. Beginning with the first class of the semester, I emphasize that our goal is to be solution-oriented. We study the incidence of domestic violence within many contexts, but move quickly to elucidate ways in which law students and lawyers can be agents of reform, while utilizing legal remedies to achieve client goals. My students are required to write two reflection essays, one due the second class of the semester and the other on the last day.<sup>19</sup> Students inevitably share their relief, and even delight, with a class focused on the many opportunities for them to take immediate action. They must first understand dynamics of abusive relationships from the perspective of both victims<sup>20</sup> and batterers.<sup>21</sup> Second, students must learn to refrain from victim-blaming<sup>22</sup> (as in asking “Why did she stay?”) and instead ask, “Why does a person beat an intimate partner?” and “Why does the community engage in such high levels of silence, denial and minimization regarding domestic violence?”

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FREQUENTLY ASKED QUESTIONS ABOUT TANF (last visited Apr. 18, 2003) (stating that the maximum monthly TANF grant for a family of three is \$208), *available at* <http://www.dhs.state.tx.us/programs/texasworks/TANF-FAQ.html#limit>.

18. E-mail from Carlos Salinas, law student intern, to Sarah Buel, Clinical Professor, University of Texas School of Law (June 13, 2002, 18:00 EST) (on file with author) (stating that the student who was interning in a District Attorney’s office, had cause to provide the National Domestic Violence Hotline number to a victim in court who needed resource information for another state).

19. In the first reflection essay students are asked to tell me why they are taking the course, what topics they would like to see covered and any suggested readings. For the final reflection essay I want them to describe what they liked best and least about the class, to make suggestions for improvement, and any miscellaneous comments.

20. *See, e.g.*, ANN JONES & SUSAN SCHECHTER, WHEN LOVE GOES WRONG, WHAT TO DO WHEN YOU CAN’T DO ANYTHING RIGHT (1992); Minty Siu Chung & Leslye Orloff, *Cultural Issues and Diversity*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE 11-10 to 11-13 (Deborah M. Goelman et. al eds., 1996).

21. *See generally* NEIL S. JACOBSON & JOHN M. GOTTMAN, WHEN MEN BATTER WOMEN: NEW INSIGHTS INTO ENDING ABUSIVE RELATIONSHIPS (1998) (examining the dynamics of abusive relationships from different perspectives).

22. *See* Sarah M. Buel, *Family Violence and the Health Care System: Recommendations For More Effective Interventions*, 35 Hous. L. Rev. 109, 118 (1998) [hereinafter Buel, *Family Violence*] (explaining that blaming the victim is detrimental to forming a helping attitude).

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Such questions belie the public antipathy toward abuse victims, apparently based on a mistaken notion of volition—the assumption that a battered woman *chooses* to stay with her abuser in spite of appealing options. Law students should understand the dangers of “separation violence,”<sup>23</sup> making safety planning a critical component of their interventions and obviating the need for the “why do they stay?” emphasis. Additionally, students should be taught to respect the courageous efforts of abuse victims as they attempt to flee, only to face demoralizing obstacles such as lack of job skills, money, and affordable child care and housing, in the course of being stalked, beaten and terrorized by the batterer.<sup>24</sup> Toward this end, at least one abuse victim speaks to the class about her experiences in the legal system, what lawyers did that was helpful and what they did that was counterproductive. Often students rate the victim’s presentation as the most compelling class of the semester, with several students then focusing their papers on issues of concern raised by the speaker.<sup>25</sup> As teachers we are role models for our students and, as such, bear a certain responsibility for exposing them to survivors, practitioners, and scholars who are fervent about the remedial applications of law.

The pedagogical approach of passionate, practical teaching defies mainstream legal education and, thus, may be difficult to institutionalize. Most professors do not consciously reject the notion of creative teaching, but instead may adopt the style of their own law school experience without a second thought. If one has only been exposed to teaching through lecture, the concept of expansive student interaction and addressing the ethics of practice in the context of theory may seem incongruous with “real” legal education. While *every* law school course is amenable to being taught in a manner which engages students, it will likely be necessary for

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23. The Dept. of Justice National Crime Victimization Survey (“NCVS”) indicates that, again in 1999, women who had separated from an intimate partner suffered significantly higher rates of violence than any other group. CALLIE MARIE RENNISON, BUREAU OF JUST. STATS., U.S. DEP’T OF JUST., CRIMINAL VICTIMIZATION 1999 8 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cv99.pdf>; ANGELA BROWNE, WHEN BATTERED WOMEN KILL 115 (1987) (noting that the point of separation from the batterer is “one of the most dangerous times for partners in a violent relationship”).

24. See Sarah M. Buel, *Fifty Obstacles to Leaving a.k.a. Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999) [hereinafter Buel, *Fifty Obstacles*] (outlining many reasons why women remain in abusive relationships); SCHECHTER, *supra* note 10, at 232-38 (explaining the logic and reasoning behind battered women’s behavior); JACOBSON & GOTTMAN, *supra* note 21, at 165 (describing “Deterrents to Leaving” as including fear, economic dependency, and love, among others).

25. For example, in the Fall of 2001, after Ms. O. described her ordeal in child support court, five students asked to focus their papers on various aspects of child support enforcement in domestic violence cases. Four of those students have continued their research and writing in this area.

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curriculum committees and deans alike to emphasize the importance of maintaining an open mind when considering teaching style and course content. It would be naive to hope for an enthusiastic reception for such ideas within the academy, but perhaps those professors already embracing alternative teaching styles can expedite the process by sharing the benefits of progressive change.

When Professor Elizabeth Schneider taught *Battered Women and the Law* at Harvard Law School, I had the privilege of serving as clinical supervisor for her students' clinical placements throughout the community.<sup>26</sup> Forty students were enrolled in the class; seventeen of them opted for a clinical placement. As the clinical supervisor, my role was to assist the students in obtaining meaningful placements, and making the most of their clinical experience, in part by ensuring that they had sufficient opportunities to fully discuss the complex legal and social dynamics of their victim-centered work.<sup>27</sup> As a student I took Professor Schneider's Gender Discrimination course and greatly benefited from her modeling this progressive and inclusionary teaching style. Several of the students who participated in clinical placements sought positions, upon graduation, working on issues of domestic violence law.

*B. Addressing Philosophical, Ethical and Political Domestic Violence Matters*

To move students beyond a superficial exploration of the issues, they must be exposed to current debates and conflicting views. The construction of domestic violence involves competing ideologies, with the national conversation focusing primarily on two ideologies regarding the linguistic politics. The first adopts a gender-neutral "family violence" approach, while the second reflects the feminist "violence against women" position.<sup>28</sup> Some feminists argue that since the majority of abuse victims are female, the phenomenon ought to be accurately named to reflect this reality. Those in favor of more expansive, gender-neutral language contend that its terms (e.g., "domestic violence," "family violence," "domestic abuse," "partner abuse") are more inclusive as they do not exclude gay or heterosexual male victims. Hopefully, students engage in reading and discourse that helps them understand that the ideologies are not necessarily

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26. For a more in depth discussion of this effort, see ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* 212-23 (2000) (discussing the course *Battered Women and the Law*).

27. *Id.* at 214 (describing the author's role in developing and administering the class).

28. See RUTH M. MANN, *WHO OWNS DOMESTIC ABUSE? THE LOCAL POLITICS OF A SOCIAL PROBLEM* (2000).

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mutually exclusive, even within the same shelter or community, and are worthy of further reflection.

Two often conflicting theoretical issues emerge from this analysis: the politics of domestic violence versus how victims experience abuse.<sup>29</sup> Attorneys handling domestic violence cases often express tremendous frustration with victims returning to batterers several times prior to leaving permanently. When lawyers more fully understand the extraordinary emotional, legal and financial pressures placed upon victims attempting to flee,<sup>30</sup> they are better able to represent their battered clients. The concept of not judging one's clients is applicable across the legal spectrum and is worthy of review with students preparing for practice. Such topics provide rich material for class discussions and papers, exposing students to opposing views and encouraging critical analysis.

### C. Ensuring Thorough Integration of Race and Class Issues

Situating race and class issues within domestic violence jurisprudence is not only logical, but essential. Effective integration of these topics requires an unflinching recognition of the academy's historic silence and worse, complicity, in ensuring that race and class are not explored in a manner that engenders needed reforms. Incredibly, most of my students report that no previous class has systematically addressed cultural competence<sup>31</sup> from any angle. As people of color and the poor continue to experience disproportionate rates of arrest, prosecution and sentencing,<sup>32</sup> the

29. *Id.* at 197.

30. See Buel, *Fifty Obstacles*, *supra* note 24, at 20-21 (naming fear, financial abuse, and financial despair as reasons why a person in an abusive relationship would not leave).

31. The term "cultural competence" refers to a thorough familiarity with issues of race, ethnicity, and culture.

32. David B. Mustard, *Racial, Ethnic and Gender Disparities in Sentencing: Evidence From the U.S. Federal Courts*, 44 J.L. & ECON. 285, 285 (2001) (finding that Blacks, males, and offenders with low levels of education and income received substantially longer sentences.); Deborah Small, *The War on Drugs is a War on Racial Justice*, 68 SOC. RES. (Oct. 1, 2001), available at 2001 WL 24181757 (explaining that drug laws are enforced against Blacks and Latinos at much higher rates than against Whites); HUMAN RIGHTS WATCH, WORLD REPORT, 1999: DRUGS AND HUMAN RIGHTS, WHO GOES TO PRISON FOR DRUG OFFENSES: A REBUTTAL TO THE NEW YORK STATE DISTRICT ATTORNEYS ASSOCIATION (reporting that while African-Americans constitute just 13% of all drug users, they represent 35% of defendants arrested for possessing drugs, 55% of those receiving convictions, and 74% of those being incarcerated), available at <http://www.hrw.org/campaigns/drugs/ny-drugs.htm>; HOLLY SKLAR, CHAOS OR COMMUNITY?: SEEKING SOLUTIONS, NOT SCAPEGOATS FOR BAD ECONOMICS (1995) (finding that the racial disparity in arrest rates, coupled with media attention, perpetuates the misconception that whites do not use drugs as often as African-Americans, when the opposite is true. Former drug czar William Bennett clarified that, "The typical cocaine user is white, male, a high school graduate employed full

academy—and certainly feminist legal scholars—ought to be teaching racialist law reform. For example, as is typical in many jurisdictions, Milwaukee County, Wisconsin, reports that although African-Americans constitute just 24% of the population, they represent 66% of the domestic violence arrests that find their way to the district attorney's office.<sup>33</sup> Whites are 62% of the populace, but surface in just 32% of the domestic violence cases reviewed by prosecutors.<sup>34</sup> To its credit, Milwaukee County has established a Judicial Oversight Initiative Committee ("JOIC") to address the disparity, in part by studying the city versus suburban police responses. In the more white suburbs, the JOIC found batterers were often issued municipal citations and paid fines, while those of color in the City of Milwaukee tended to be arrested, charged with state crimes and prosecuted. The JOIC Report states that, "The problem lies in the fact that it appears that some people in our community, depending on where they live, their race, ethnicity, income or occupation, are not being held to the same standard of accountability."<sup>35</sup>

While incarceration of all females increased eighty-eight percent from 1990 to 1998,<sup>36</sup> two-thirds are women of color, most of whom are African-Americans.<sup>37</sup> Of further concern, the Bureau of Justice Statistics ("BJS") predicts a *ninety-five percent* increase in the rate of imprisonment for African-American women, at the same time it projects a fifteen percent increase for white women.<sup>38</sup> Overwhelmingly, women's offenses are nonviolent, yet punitive sentencing continues to be the norm.<sup>39</sup> Law students, particularly under the direction of a knowledgeable professor, can greatly improve the experience of battered defendants, as evidenced by several of the clinical problems discussed *infra*.

Some states' records of disparate racial dispositions are even more

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time and living in a small metropolitan area or suburb.").

33. David Doege, *Police Practices are Behind Racial Disparities, Panel Suspects*, MILWAUKEE J. & SENTINEL, Aug. 20, 2001, at 05B (asserting that differing police practices in urban Milwaukee and surrounding suburban areas contributed to the disparate number of domestic violence arrests).

34. *Id.*

35. *Id.* Officials from the District Attorney's office, the Suburban Police Chief's association and key judges have been meeting to review domestic violence intervention practices and plan improved responses.

36. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: WOMEN OFFENDERS 6 (1999) [hereinafter SPECIAL REPORT], cited in PAULA JOHNSON, INNER LIVES: VOICES OF AFRICAN AMERICAN WOMEN IN PRISON 5 (2003).

37. SPECIAL REPORT, *supra* note 36, at 6-7.

38. *Id.* at 10 tbl. 24 (emphasis added).

39. JOHNSON, *supra* note 36, at 6.

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pronounced, as evidenced by seven states in which African-Americans comprise 75-90% of all incarcerated drug defendants.<sup>40</sup> Annually, close to half of the 700,000 marijuana arrests are of Latinos. Such imbalanced practices permeate every phase of the criminal justice system with little redress by powerful legal and legislative stakeholders,<sup>41</sup> and often have disastrous consequences for the convicted men and women of color. Criminal drug and felony convictions can preclude receipt of financial aid for college or technical schools, and result in denial of public housing, emergency financial assistance, the right to vote and apply for civil service jobs, and the military.<sup>42</sup> Currently, 13% of African-American adult males (1.4 million) are disenfranchised by virtue of criminal convictions.<sup>43</sup>

From 1986 to 1991, the nation saw an 828% increase in the number of African-American women arrested on drug charges. Pregnant women of color are also about ten times more likely to be reported for substance abuse, though studies indicate that pregnant white women abuse drugs and alcohol at higher rates. Accordingly, “[R]esearch has shown that drug and alcohol abuse rates are higher for pregnant White women than pregnant Black women, but Black women are about ten times more likely to be reported to authorities under mandatory reporting laws.”<sup>44</sup> Study of disparate practices can help students reconsider substantive legal doctrines and understand misapplication of the law,<sup>45</sup> while designing need reforms.

The criminal justice system’s racial bias contributes to many battered women of color feeling reluctant to call the police for help; therefore, family and community must take precedent as the legal system has proven it is not one upon which she can rely for access to

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40. See Small, *supra* note 32 (indicating that California and New York annually incarcerate more Latino and African-American men than are graduated from universities and colleges). More than 94% of New York inmates serving time for drug offenses are Latino or African-American. *Id.* At least fifteen states incarcerate African-American drug offenders twenty to fifty-seven times more often than white drug offenders. *Id.*

41. See *id.* (indicating that some legislatures, such as New York’s, face staunch opposition to modifying these imbalanced drug laws).

42. See *id.* (describing the multitude of hurdles faced by individuals convicted of drug offenses)

43. HUMAN RIGHTS WATCH, US ELECTIONS 2000-LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS (Nov. 8, 2000), available at <http://www.hrw.org/campaigns/elections/results.htm>.

44. Small, *supra* note 32.

45. See Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 542 (1996).

legal remedies, including those likely to garner safety.<sup>46</sup> It is hoped that more jurisdictions will follow the lead of Milwaukee County to remedy racial inequities. The challenge for law schools, courts and legal professionals is to balance the cultural influences with legal doctrine designed to protect victims, while holding the perpetrators responsible. A variety of law school courses and clinics could tackle this issue of racial disparity within the legal system, offering their community the myriad resources attendant to law student research skills, while greatly enriching the students' academic experience.

Polemical debates within feminist legal studies have not furthered this cause. Some feminist legal scholars locate violence against women within the construct of male oppression and have claimed this construct as sufficient for all victims.<sup>47</sup> Critical Race feminists, however, have found this essentialist analysis deficient for virtually ignoring race, culture, class, sexual orientation and other life-defining factors. By framing the discourse on domestic violence from the perspective of white females, women of color are made invisible, thus explaining the absence of their perspective in traditional feminist jurisprudence, and other analytical legal constructs.<sup>48</sup> Overarching themes may, to an extent, encompass all battered women, but law students must learn the theory and practice disparities that constitute additional barriers for women of color seeking legal remedies. This revisiting of the intersectionality of race, gender and violence is part of the academy's role in taking a proactive stance in addressing the cultural incompetence of white, legal stakeholders, including current and future lawyers.<sup>49</sup>

Critical Race Theory ("CRT") seeks to integrate racial analysis within legal doctrine and opinions, based on the evidence that

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46. See Linda L. Ammons, *Mules, Madonnas, Babies, Bath Water, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003, 1020 (describing a case where the white victim of domestic violence received psychiatric and social services support and was not charged with any crimes while the black victim in similar circumstances was rejected by the same facility and indicted for child endangerment); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1243, 1257 (1991) (explaining that women of color are often afraid to report domestic violence due to a general unwillingness to come under the scrutiny of police forces which are perceived to be hostile and racist).

47. See, e.g., Catharine A. MacKinnon, *Sexuality*, in FEMINISM UNMODIFIED 5 (1987) (stating that the power of men over women in society is evident in various forms of abuse such as rape, battery, sexual harassment, sexual abuse of children, prostitution, and pornography).

48. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 592-93 (1990) (relating that women are measured by a male standard that is inconsistent with the standard women set for each other).

49. See Crenshaw, *supra* note 6.

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traditional doctrinal analysis fails to address the ongoing conundrum of firmly rooted, institutional racism.<sup>50</sup> LatCrit scholarship focuses on infusing Latino experiences into the milieu of legal discourse and jurisprudence, using Latino voices.<sup>51</sup> The distinction of a Latino voice was necessitated by the unspoken meaning of race as “Black,” excluding others of color from the discourse or lumped together as one.<sup>52</sup> Within the pedagogy of domestic violence jurisprudence, CRT and LatCrit scholarship inform the discussion about the construction of race and power in relationships. CRT’s further contribution has been the normalization of narrative as an important mechanism for moving past standard legal text stories. Narrative emphasizes that context is vital for appreciating theory and doctrine.<sup>53</sup> Stock civil rights stories focused on liberating individual Blacks from racist state practices, with an emphasis on courts as the primary means of achieving social justice. Early on, however, Professor Derrick Bell contended that what may fulfill the standard integrationist legal doctrine may not characterize an African-American client’s real interests in school desegregation cases.<sup>54</sup>

This deliberation is particularly relevant for domestic violence scholarship as ethical dilemmas abound when lawyers attempt to discern what is in the best interest of a battered client, while grappling with traditional feminist doctrine on victim empowerment. For example, when a battered, undocumented client is trying to obtain legal permanent resident status, it is necessary to show that she will face extreme hardship if deported.<sup>55</sup> Thus, protecting the client may entail emphasizing stereotypical views of battered women as

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50. See LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEOMCARCY* 34 (2002).

51. See Francisco Valdes, *Under Construction: LatCrit Consciousness, Community and Theory*, 85 CAL. L. REV. 1087, 1093 (1997).

52. See, e.g., GUINIER & TORRES, *supra* note 46, at 35 (explaining that race referred strictly to black individuals).

53. See Neil Gotanda, *A Critique of ‘Our Constitution is ColorBlind’*, in *CRITICAL RACE THEORY* 260 (Kimberle Crenshaw et al. eds., 1995), as cited in GUINIER & TORRES, *supra* note 46, at 35 n.10.

54. See Derrick A. Bell, Jr., *Serving Two Masters: Integraton Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L. J. 470, 507 (1976), as cited in GUINIER & TORRES, *supra* note 46, at 36 n.14.

55. See *Illegal Immigration Reform and Immigrant Responsibility Act*, 8 U.S.C. § 1229b(b)(2) (2002); see also Maurice Goldman, *The Violence Against Women Act: Meeting Its Goal in Protecting Battered Immigrant Women?* 37 FAM. & CONCILIATION CTS. REV. 375, 381 (1999) (discussing extreme hardship as one of the six elements the applicant must prove; the other five requirements are are a showing that (1) the spouse entered into a good faith marriage; (2) she currently lives in the United States; (3) she was the victim of battery in the marriage; (4) she is of good moral character; and (5) she has lived in the United States with her legal or permanent resident spouse).

helpless and reinforcing negative cultural beliefs in order to achieve what a particular battered client wants. In both the Immigration and Domestic Violence Clinics at the University of Texas School of Law, students are troubled by these competing interests and want the opportunity to fully discuss the ramifications of the inevitable policy choices.

The danger for victims of color may be exacerbated by concerns about privacy. This is not to say that white victims are not also embarrassed by public disclosure of the abuse, for they are. It is, rather, recognition that victims of color often face what Professor Linda Ammons has termed “the loyalty trap,”<sup>56</sup> which describes the inherent tensions in feeling torn by loyalty to one’s race and community versus self-protection. Privacy is also seen as a cultural more for some, stipulating that public disclosure of family dissension only serves to reinforce negative stereotypes about people of color. It is thus that a victim of color may feel allegiance not only to her batterer, but also to men of color, generally. Yet some feminist scholars have refused to respect victims who opt for privacy over safety.<sup>57</sup> Legal scholar Kimberle Crenshaw explains, “Feminism has no place within communities of color . . . the issues are internally divisive, and . . . they represent the migration of white women’s concerns into a context in which they are not only irrelevant but also harmful.”<sup>58</sup> However, other African American feminists argue that it is time to talk publicly about the physical and sexual violence perpetrated within all communities, and suggest that the Catholic Church’s sexual abuse scandal ought to be an impetus to shed light on all of the hidden and silenced abuse, which benefits the offender to the detriment of the victims and community.<sup>59</sup> Law students, especially those who are white, are often perplexed by the privacy versus safety dilemmas for victims of color and appear to benefit from open discourse on the topic.

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56. Ammons, *supra* note 42, at 1020. Ammons explains:

The loyalty trap affects the ability of black women to seek protection and effective counseling. African-American women do not feel comfortable discussing their problems in integrated settings. The fear is that disclosure in some way may hurt the community. Therefore, the [cultural] prohibition against airing dirty laundry becomes more important than healing.

*Id.*

57. Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecution*, 109 HARV. L. REV. 1849, 1869 (1996) (arguing that victims should be denied the right to choose whether or not to participate in the criminal prosecution of batterers, regardless of their reasons).

58. Crenshaw, *supra* note 6, at 1246.

59. See Susan Taylor, *In the Spirit*, in *ESSENCE* 12 (June 2002).

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A law professor can integrate teaching tolerance with discourse on racial disparities, as each informs the other regarding ethical practice of law. Racial tolerance, or better yet, celebration, cannot be adequately tested within the vacuum of a heterogeneous student body and faculty,<sup>60</sup> undergirding the arguments for considering race as a factor in determining admission to law school.<sup>61</sup> Law students ought to be afforded the opportunity to discuss the “Diversity Preference” policy being disputed in the University of Michigan Cases,<sup>62</sup> not only for their relevance in the composition of the student body,<sup>63</sup> but also for its implications as the students become practitioners with the power to influence who is hired, retained and promoted within their firms. Diversifying public law offices ought to be prioritized, as victims seeking redress for violation of state or federal law must deal with those entities,<sup>64</sup> and they are funded with public moneys.

Another essential prong in the intersectionality analysis is class, particularly since financial status often predicts one’s ability to access legal remedies.<sup>65</sup> To hone the students’ safety planning skills, we assign exercises in which they simulate the representation of low-income abuse victims. Using an actual case from our Domestic Violence Clinic, students take an abused client’s income and attempt to pay her family’s bills. Students quickly understand why a poor victim may return to the batterer due to her inability to independently provide for her children and herself. Since welfare (now officially called TANF, Temporary Assistance for Needy Families) is the primary safety net for fleeing battered women, it is noteworthy that the majority of states pay less than \$400 per month for a family of three.<sup>66</sup> Fully 85% of Texas victims calling hotlines, emergency rooms and shelters were found to have left their abusers a minimum of five times previously, with the primary reason for

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60. See Samuel C. Damren, *Searching for a Calculus of Diversity: Teaching Tolerance*, 37 NEW ENG. L. REV. 1, 18 (2002).

61. See *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002); *Grutter v. Bollinger*, 137 F. Supp. 2d 821 (E.D. Mich. 2001); *Gratz v. Bollinger*, 122 F. Supp. 2d 811 (E.D. Mich. 2000). These cases are known as the University of Michigan Cases.

62. See sources cited *id.*

63. See Stephanie Francis Cahill, *Going to College to Boost Minority Law Students*, A.B.A. J. REP. 1 (Jan. 17, 2003) (relating that while over 30% of Americans are people of color, only 20% of law students are minorities).

64. See Lawrence R. Baca, *Reflections on Diversity in the Public Law Office by the DOJ Civil Rights Division’s First Indian Lawyer*, A.B.A. PUB. LAW. 5 (Winter 2003).

65. *Id.*

66. See Peter T. Kilborn, *Welfare All Over the Map*, N.Y. TIMES, Dec. 8, 1996, at E3.

returning to the batterer being a lack of financial resources.<sup>67</sup> These victims simply lacked the knowledge about how to access emergency assistance.<sup>68</sup> The batterer may also deprive a once financially self-sufficient woman of her ability to provide for herself by harassing or terrorizing her on the job, for which she may be fired or forced to quit.<sup>69</sup> As one student commented, "It's amazing what these abusers get away with: it's not direct robbery but they figure out how to impoverish the victims one way or the other."<sup>70</sup>

#### D. Assimilating Domestic Violence Law into Existing Courses

Legal interventions are key to ending domestic violence. Whether these interventions occur when a lawyer assists a victim obtaining a child support order, or a tort lawyer sues a police department for failing to properly intervene, or a prosecutor and defense attorney wrangle in court over a case of a battered woman who has committed welfare fraud to feed her children, domestic violence will be a relevant topic. Subsequent to stating that domestic violence cases are improperly handled at all levels of the judicial system, the *Gender Bias Task Force of Texas, Final Report* specifically recommends that law schools improve their offerings regarding gender bias and domestic violence.<sup>71</sup>

Domestic violence law is relevant in a myriad of first year and upper level courses, necessitating assimilation at all levels. As most professors are unfamiliar with the pedagogy of domestic violence law, the American Bar Association's Commission on Domestic Violence has conducted five regional conferences to facilitate course and clinical development in law schools across the country.<sup>72</sup> Participant

67. See Hara Estroff Marano, *Why They Stay: A Saga of Spouse Abuse*, PSYCHOL. TODAY 56, 59 (May-June 1996).

68. See Diane R. Follingstad et al., *The Role of Emotional Abuse in Physically Abusive Relationships*, 5 J. FAM. VIOLENCE 107, 113 (1990) (determining that 51% of battered women lacked access to charge accounts, while 34% could not access checking accounts and 21% had no way of obtaining cash).

69. See Ritchenya A. Shepherd, *Working to Curb Abuse, ABA Project Draws Employers into Effort to Combat Domestic Violence*, 84 A.B.A. J. 80 (1998); Nancy E. Isaac, *Corporate Sector Response to Domestic Violence*, in LEGAL INTERVENTIONS IN FAMILY VIOLENCE: RESEARCH FINDINGS & POLICY IMPLICATIONS 76-77 (1998); James A. Hardeman, *Employee Assistance Programs*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE 10-1 to 10-5 (1996).

70. Student A.C.'s statement to me during Fall semester, 2001.

71. See Goelman & Valente, *supra* note 1.

72. As of March, 2002, regional conferences have been held at law schools in Washington, D.C.; Berkeley, California; Missoula, Montana; Chicago, Illinois; and Durham, North Carolina. Brooklyn law professor Elizabeth Schneider and I have spoken at these conferences, sharing our experiences with the goal of motivating participants to replicate model courses and clinics.

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law schools are provided with comprehensive manuals including sample syllabi for Domestic Violence and the Law courses, as well as hypotheticals and listed objectives for fifteen fields of law, to be used as exam questions or in class discussions.<sup>73</sup>

The hypotheticals are presented in alphabetical order, starting with Alternative Dispute Resolution. The sample scenario starts with “You are the attorney-mediator in a divorce case, set for trial in five weeks . . .” then provides the case details, including domestic violence facts, and asks thirteen pertinent questions. For Civil Procedure, the hypothetical outlines a battered woman obtaining a protective order in which the court provides her batterer with alternate weekend visitation with their children. The five questions focus on the student identifying the applicant’s appellate remedies and potential procedural protections. A creative hypothetical in Contract Law presents a client whose violent husband forced her to sign contracts with the state. In referring to the Restatement (Second) of Contracts and possible policy arguments, students are challenged to articulate a position that balances each side’s competing interests.

Under Criminal Law and Constitutional Criminal Process, Perry Mason is a batterer, accused of stalking his live-in girlfriend, Della Street. Students are asked to identify relevant criminal law statutes, whether the police can seize Perry’s gun, if federal VAWA laws are applicable, and case strategies for both prosecution and defense. The Employment Law hypothetical asks students to assess employer liability for failing to properly intervene in workplace domestic violence situations. In the Evidence scenario, a battered woman kills her husband, then claims self-defense and that she suffers from Battered Woman Syndrome. Students are asked to identify the evidentiary issues raised by these facts. Five hypotheticals are included within the Family Law section, each providing students with an opportunity to assess key legal matters on behalf of the battering partner and the victim, as well as the custody and visitation issues relating to the children.

Insurance Law offers the opportunity for students to analyze the public policy implications of exceptions and coverage in domestic violence matters, in addition to applicable case law. Relevant domestic violence provisions of the Violence Against Women Act, the Illegal Immigration and Immigrant Responsibility Act, and the Immigration and Naturalization Service Regulations are all addressed

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73. See ABA COMM’N ON DOMESTIC VIOLENCE (last visited Mar. 13, 2003) (providing instructions for ordering a copy of the manual or obtaining additional information), *available at* <http://www.abanet.org/domviol>.

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in the Immigration Law scenario. Students must apply several international human rights treaties and doctrines to a domestic violence fact situation in the International Law hypothetical. The Professional Responsibility section provides four hypotheticals in which students employ the Model Rules of Professional Conduct and their state bar rules governing a lawyer's handling of domestic violence cases. The Tax Law hypothetical helps students become familiar with the Internal Revenue Code's ("IRC") protections for battered spouses. The scenario offers Ted Bundy as the batterer who has forced Peg to sign fraudulent tax returns for sixteen years. Peg Bundy is the abused person seeking to avoid joint and several liability by asserting the "innocent spouse" defense under IRC § 6013(e). The ABA's hypotheticals also include two for Torts, prompting students to review tort theories of recovery in domestic violence cases, analyze the duty to report and warn for certain professionals, and review statute of limitations issues, such as the theory of continuous tort and tolling.

First year law courses are ideal starting points to teach future lawyers about the importance of domestic violence in their practices. Civil Procedure Professor Elizabeth Schneider suggests raising issues of domestic relations exceptions to federal subject-matter jurisdiction, the Violence Against Women Act and protective order effectiveness.<sup>74</sup> In teaching first-year Torts, I found domestic violence cases well-suited for coverage of intentional tort issues, in addition to negligence of state actors and third parties (police, employers, physicians and schools) and battered women's self-defense issues.<sup>75</sup> Some of the liveliest discussions of the semester arose when students grappled with balancing the competing interests of victims, offenders, insurance companies, and related stakeholders in domestic violence cases.

I found an especially favorable response to my showing of the documentary *Defending Our Lives*,<sup>76</sup> after which I asked students how many potential tort actions they could identify. As a result of seeing the video, several students began volunteering in various community agencies assisting abuse victims, as they are unable to participate in

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74. Schneider, *supra* note 26, at 224.

75. See generally James T.R. Jones, *Integrating Domestic Violence Issues into the Law School Torts Curriculum*, 47 LOYOLA L. REV. 59, 61 (2001).

76. *DEFENDING OUR LIVES* (Cambridge Documentary Films 1993) (portraying the stories of four incarcerated battered women who were failed by the criminal justice system, first as victims, then when charged with killing their batterers). This excellent film is available in forty-one and thirty minute versions. It is available for rental or purchase from Cambridge Documentary Films (617) 354-3677.

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the Domestic Violence Clinic until the second semester of their second year.

Criminal law courses offer an obvious opportunity to discuss prosecution and defense issues inherent in domestic violence cases, including representation of battered defendants and the perpetrators of domestic violence. Contracts and family law courses can examine implications of prenuptial agreements, marriage, divorce, child custody, visitation and child support agreements. In Property Law, protective and divorce vacate orders raise questions regarding mortgage and rental and cohabitation agreements, and whose rights are recognized or overridden.

In addition to those discussed above, courses on civil rights, property, alternative dispute resolution, gender studies, human rights, feminist jurisprudence, health, international, and poverty law present exciting opportunities to teach applicable domestic violence law.<sup>77</sup> Both constitutional law and federal courts courses could devote time to discussion of the policy implications of the Violence Against Women Act, as well as the cases it has spawned. In *United States v. Morrison*,<sup>78</sup> the majority opinion and dissent provide fertile material for dialogue and scholarship regarding judicial versus legislative powers, the pros and cons of state versus federal legislation, the role of politics in judicial opinions and Fourteenth Amendment interpretations. International and human rights law should address the global recognition of rape and domestic violence as human rights violations in the context of war and home life, while identifying the continuum of legal and social responses. Labor, employment and corporate law necessarily include discussion of liability for employers failing to properly intervene in workplace domestic and sexual violence, and sexual harassment.

#### *E. Specialized Courses*

Domestic Violence and the Law or Battered Women and the Law courses can afford a more thorough understanding of this substantive topic. Having now taught such a course since 1992, I can confirm its popularity with law students in spite of its rigorous requirements,<sup>79</sup>

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77. See Schneider, *supra* note 26, at 224.

78. 529 U.S. 598, 609-13 (2000) (discussing the current status of the Interstate Commerce Clause and its relation to the powers of Congress and the judiciary).

79. Every semester I have had to expand the size of the class and still turn away students wishing to enroll. From 1993 to 1995, I taught Domestic Violence and the Law at Boston College Law School, with enrollment averaging almost fifty students per semester. From 1997 to the present, I have taught this course at the University of Texas School of Law, at first attempting to teach it as a seminar limited to twelve

and attest to its positive impact on students, law schools, community agencies and victims. In my course,<sup>80</sup> we devote time to ethical representation of battered defendants and of the batterers, as well as prosecution practices. One way we do this is to view the Academy-Award winning documentary *Defending Our Lives*,<sup>81</sup> and then role-play the lawyers and defendants. In this, as in every other section of the course, we discuss the implications of race and class. What explanation exists for disparate treatment of defendants and victims of color? How is it different for a litigant of color to approach a mostly white legal system? How accessible is the legal system for low-income litigants? For middle-income? For high-income? This leads to a discussion of other under-served victims, such as gays and lesbians, the elderly, and those with mental, physical, or developmental disabilities. We then discuss what they, as law students and then as members of the bar, can do to facilitate greater access. Students are also required to complete four court watches of domestic violence cases, noting on prepared forms the system's response in protective order, child support and criminal cases.

Knowing that children who grow up in a home with family violence are 78% more likely to be involved in violent delinquency,<sup>82</sup> it is, indeed, vital to teach future lawyers how to better protect both child and adult victims. Under the rubric of civil and criminal law, coupled with core concepts of diplomacy, students can learn how to succinctly tackle the vexing issues inherent in child protection and domestic violence cases. The students' legal research and community-based projects allow immersion into policy, practice and scholarship fraught with unanticipated circumstances and challenges. Once again, we add the lens of race and class to further their understanding of the additional challenges facing children who are poor of color, or both.

Students read about critical race and feminist legal theories in the context of domestic violence, particularly focusing on the intersectionality of race, gender and violence.<sup>83</sup> In class, we then

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students, but in response to student demand I have allowed up to forty-one per class. Each semester graduate students from other departments, as well as LL.M. students, also take the course. It is heartening that, consistently, at least one third of the students are men.

80. See *supra* note 14. Since the Spring of 1997, I have taught a three credit course, Domestic Violence and the Law, at the University of Texas School of Law.

81. See *DEFENDING OUR LIVES*, *supra* note 72.

82. Terence P. Thornberry, *Violent Families and Youth Violence* (1994) (explaining the process that was used to reach this statistical conclusion), available at <http://www.ncjrs.org/txtfiles/fs-9421.txt>.

83. See generally Crenshaw, *supra* note 6.

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debate the premises of such theories and explore the ways in which they can be translated into practice. While many of my students have previously read some form of feminist scholarship, most report that they are unfamiliar with critical race theory and its implications for needed reforms.<sup>84</sup> Both students of color and white students uniformly express appreciation for the chance to explore the complex and varied theories regarding race and the law.

In lieu of an exam, students in my course must write a twenty-five page paper<sup>85</sup> involving substantive legal research of a topic that will benefit lawyers and courts handling domestic violence cases. I provide a thirty-five page list of over 125 possible paper topics, a number of which address ethical practices involving civil and criminal matters from all perspectives. Every paper is required to address issues of race and class, as well as safety planning. Additionally, all papers must provide substantive recommendations based upon the student's exposition of the legal problem, and analysis of legal and policy matters. The suggestions for improving practices and engendering systems change are designed, in part, to train students to meticulously identify both current problems and practical solutions. Several students per semester provide the legal research and necessary document drafting for appellate briefs, and parole petitions for battered women in prison. Students have been instrumental in the release of battered defendants from prison. For example, second year law student Heather Wilson wrote a brief to the Texas Board of Pardons and Parole for Gricelda Moreno, who had received a ninety-nine year sentence for failing to protect her five year old daughter from the child's murderous father. Although Gricelda was not present when the homicide took place, Gricelda was given the same sentence as the killer: ninety-nine years. Ms. Moreno was granted parole in January 2002, thanks to the joint efforts of Ms. Wilson, St. Mary's Law School Professor Stephanie Stevens, and St. Mary's law students.

Then-student Lesley E. Daigle's paper was published as *Empowering Women to Protect: Improving Intervention with Victims of Domestic Violence in Cases of Child Abuse and Neglect: A Study of Travis County, Texas*.<sup>86</sup> Another student, Rob Drummond, wrote formal legal memoranda, one each for Texas defense and prosecuting attorneys entitled *Cases*

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84. Generally those African American and Hispanic students who have read critical race scholarship say they have neither been afforded the opportunity to discuss the various theories, nor to write about them.

85. Student papers discussed *infra* are on file with author unless otherwise indicated.

86. 7 TEX. J. WOMEN & L. 287 (1998).

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*and Authority for the Proposition that a Non-Attorney Domestic Violence Advocate is Eligible to Testify as an Expert with Regard to Battered Woman's Syndrome.* Several years ago, Laura Garcia's paper (later published) on battered women who were denied public housing sparked reforms within our local housing authority, clarifying victims' rights to appeal adverse decisions, particularly when based upon their prior substance abuse. Eliza Hirst updated and expanded this topic in *Housing, Homelessness and Domestic Violence, Disparate Impact Claims and Other Housing Protection for Victims of Domestic Violence*, just published in Spring 2003.

Natalie Regoli drafted a University of Texas protocol for intervening in domestic violence, sexual assault and stalking cases involving students. Lindha Nguyen has done the same for matters in which staff or faculty are the victims or offenders. Both papers are being used as the basis for our University's official policies, and have already been shared with numerous other institutions. David Hinojosa's 1999 paper, *How to Improve Services for Hispanic Victims of Domestic Violence*, has been heralded as tremendously helpful by shelter advocates and court staff alike.

Nooria Faizi, a Muslim student, wrote an excellent paper on the impact of interpretations of Islamic law on the treatment of domestic violence within Muslim communities in America. As a result of conducting in-depth investigative research around the country and her paper's subsequent publication,<sup>87</sup> Ms. Faizi reports being contacted by practitioners seeking guidance. Since the immigration laws change frequently, several students per semester tackle some aspect of these laws' impact on domestic violence victims. For example, Henry Cruz' Spring 2002 paper, *How to Make the U Visa Work: A Cooperative Approach in Cases of Domestic Violence*, provides a thorough analysis of the new nonimmigrant visa created in VAWA II.<sup>88</sup>

#### F. Clinics

Clinical programs encourage the pedagogical goal of melding theory and practice. Students consistently request practical skills teaching, which can easily be combined with opining in legal theory when addressing domestic violence and poverty law issues. Prominent Washington, D.C., attorney Marna Tucker notes that many employers would prefer to hire law students who have participated in clinical

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87. Nooria Faizi, Comment, *Domestic Violence in the Muslim Community*, 10 TEX. J. WOMEN & L. 209, 210 (2001) (analyzing religious and economic texts).

88. Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified at 22 U.S.C. § 7101).

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programs as they have court and client experience.<sup>89</sup> Additionally, law school advocacy and clinical programs reduce recidivism against battered women,<sup>90</sup> while teaching students how artificial versus real conceptions of law inform practice. Such views must be part of an ongoing dialogue within our clinics, whether through class discussions, role-plays, specific readings, guest speakers or, preferably, a combination of a myriad pedagogical formats.

There generally exists a hostile dynamic between those representing batterers versus those representing victims. However, through law school clinics the attorneys can “address the challenge of teaching students who represent victims or perpetrators to be zealous and devoted advocates—but also to care about social and legal injustice on both sides.”<sup>91</sup> Stressing commonalities can mitigate some of the contentiousness that seems rife in our adversarial legal system. This is particularly important in domestic violence cases in which reconciliation between the parties occurs with frequency.<sup>92</sup> Certainly we stress the many valid reasons for victims returning to or remaining with the batterers,<sup>93</sup> but that does not diminish the need for safety planning with the victims and effective intervention programs for the offenders. By recognizing the social context of battering, designing joint trainings and engaging in ongoing discussions on the ethics of each perspective, domestic violence clinicians can foster improved practices in the wider legal community, as well as within the academy.

Over forty law schools now operate clinics providing legal services to battered women.<sup>94</sup> Law school-based domestic violence clinics meet a critical unmet need within their communities and greatly enrich students’ academic experience. Student participants in clinics are more likely, upon graduation, to either handle domestic violence cases on a pro bono basis or as a principal part of their practices. Several clinic models exist, from those limited to assisting abuse victims in procuring protective orders to those fully representing

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89. Goelman & Valente, *supra* note 1, at 77.

90. Margaret E. Bell & Lisa A. Goodman, *Supporting Battered Women Involved with the Court System*, VIOLENCE AGAINST WOMEN, Dec. 1, 2001, available at 2001 WL 3154021.

91. Abbe Smith & Ilene Seidman, *Lawyers for the Abused and Lawyers for the Accused: An Interfaith Marriage*, 47 LOY. L. REV. 415, 421 (2001).

92. For example, in the Quincy (Mass.) District Court, Chief Probation Officer Andrew Klein found that in over 50% of the cases in which we had obtained a criminal, domestic violence conviction against an offender, he and that victim were living together post-conviction. (unpublished study on file with Dr. Andrew Klein and the author).

93. See Buel, *Fifty Obstacles*, *supra* note 24.

94. See Goelman & Valente, *supra* note 1, at A7-A19.

clients in family, criminal and related matters. Though some clinics offer course credit for students, and others rely solely on volunteers, all provide training on effective advocacy and related law.<sup>95</sup> For example, the Harvard Legal Aid Bureau requires that law students make a two-year commitment to devote an average of twenty hours per week in representing their clients. The students handle a variety of civil poverty law cases, with a substantial number of domestic violence matters presented in the context of family, housing, consumer, and public assistance legal problems. While a few students receive clinical court credit for one semester, most do not.<sup>96</sup>

Law school clinics with attorney supervisors available should fully represent abuse victims and not limit their services to assistance with protective orders, which non-attorney advocates or prosecutors can usually handle quite well. There currently exists a crisis in the lack of access to effective legal representation for domestic violence victims across the country. Between Legal Aid funding cuts (the most drastic, a 35% budget cut, occurred in the fall of 1996) and the dearth of pro bono and affordable legal services, too many victims are forced to choose between returning to the abuser, or becoming homeless in an effort to stay alive. Many battered women are losing custody of their children to abusers<sup>97</sup> or are coerced into dangerous visitation arrangements, which is primarily due to their inability to procure competent legal representation. Such victims are similarly disadvantaged in divorce, visitation and other related matters. The dearth of options places victims and children at increased risk for further harm and, sometimes, homicide.<sup>98</sup> Understanding the "tentacles" of family violence means students must be fully educated and committed to translating knowledge into language with which the judges and juries will identify and empathize.

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95. See Mithra Merryman, *A Survey of Domestic Violence Programs in Legal Education*, 28 NEW ENG. L. REV. 383, 387-90 (1993) (describing the components of the clinical programs); Schneider, *supra* note 26, at 212 (discussing the student advocacy work at Harvard Law School).

96. Each year, many students vie for a limited number of openings at the Harvard Legal Aid Bureau ("HLAB"), necessitating a random drawing to determine who is accepted. This information is based on my two years experience within the HLAB (1988-90), and reading the HLAB Annual Reports each year since.

97. REPORT OF THE MASSACHUSETTS SUPREME JUDICIAL COURT GENDER BIAS COMMISSION 73 (1992) (reporting that in seventy percent of custody cases in which the father sought custody, he was successful).

98. See, e.g., TEX. DEP'T OF PUB. SAFETY, CRIME REPORTS (last visited Mar. 30, 2003) (reporting that 160 battered women were murdered by their partners in Texas in 1994, an average of one every fifty-five hours), available at <http://www.txdps.state.tx.us/crimereports>.

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1. *Pennsylvania's Use of IOLTA to Fund Law School Clinics*

In 1996, when the Pennsylvania Supreme Court mandated lawyer participation in the state's IOLTA program, it also compelled inclusion of law school clinics within its sphere of funding.<sup>99</sup> As a result of this \$5.1 million infusion of money, all seven Pennsylvania law schools now offer clinical programs, where previously the range spanned schools with no clinics to those with comprehensive programs. Not only were schools able to extend their services to more abuse victims, but Temple University's Beasley School of Law and Duquesne University Law School were able to increase the work of their community economic development law clinics to assist in handling all aspects in the formation of shelters for battered women and the homeless.<sup>100</sup>

2. *The University of Texas School of Law Domestic Violence Clinic*

A stated goal of the University of Texas School of Law's Domestic Violence Clinic ("Clinic") is to position lawyers as champions in eradicating domestic violence by ensuring that they receive comprehensive education on the issue, and have the opportunity to fully handle cases while in law school. Students must complete a six-question written application to be admitted to the Clinic, including why they are interested in representing abuse survivors, any prior experience with victims and whether they have taken family law, evidence and/or my Domestic Violence and the Law course. Under the supervision of attorney Jeana Lungwitz, the Clinic students engage in limited practice as "student attorneys," handling a wide range of complex cases. Some of the Clinic's clients have mental health and substance abuse problems, in addition to involvement with Child Protective Services, the Department of Welfare, the Public Housing Authority and the criminal courts. In collaboration with the University of Texas School of Social Work, the Clinic now has a full-time graduate level social work student as an intern to assist with the most challenging cases.

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99. Legal Services and pro bono programs are the other intended recipients of IOLTA monies. Carl Oxholm III & Alfred J. Azen, *Law School Clinical Programs Foster Legal Skills and the Pro Bono Ethic*, 6 DIALOGUE, A.B.A. DIVISION OF LEGAL SERVS. ACCESS TO JUSTICE NEWSLETTER 9 (2002) (citing Rule 1.15 of the Pennsylvania Rules of Professional Conduct: requiring that IOLTA funds are to be used for "educational legal clinical programs and internships administered by law schools located within Pennsylvania).

100. *Id.* at 11 ("In these clinics, students have an opportunity to help community-based non-profit organizations form, meet zoning requirements, acquire buildings, and obtain federal non-profit tax status in order to establish shelters for homeless people and for women and children seeking to escape domestic abuse.").

A particularly exciting aspect of our work at the Clinic now involves long-range planning with our battered clients beyond their immediate legal needs. Applying what we loosely term an “Economic Empowerment Plan,” the law student and social work intern help the client secure sufficiently paid employment, affordable housing, medical care, counseling, and child care, and other life needs that, if in order, will greatly diminish the likelihood of further harm to the family. Poverty is an amorphous concept for many of our students, who are easily overwhelmed by the seemingly incessant utility shut-offs, evictions, and lack of adequate food and housing, which are severely compounded by the presence of domestic violence. The vicissitudes of our clients’ lives require a stability that is possible if we individualize the procurement of resources, which is prioritized by the client.

The program works in the following way. As part of intake we ask each client about all aspects of their lives with which we might assist: Are you now receiving food stamps? W.I.C. (Women, Infants and Children Food Program) vouchers? Section 8 housing voucher? Are you interested owning your own home (Habitat for Humanity, First Time Homebuyer programs are discussed) or obtaining a more affordable apartment? Are you having trouble paying your bills? (We can advise on consumer credit counseling.) With regard to employment, we ask: What is your life dream? What have you always wanted to do? With that information, we discuss job training programs, trade school or college, depending on their preferences. We write out the steps to achieve that dream, which might look something like this: (1) secure affordable child care; (2) finish G.E.D.; (3) find transportation to school; (4) obtain money for school books; (5) after obtaining high school diploma, help applying for a grant to attend beautician or computer programming school, or Austin Community College; (6) attend a free support group at the shelter; (7) find counseling for nine-year old son. This list is amended as needed and combined with the client’s Safety Plan, as each step must be reconciled with the safety of each victim and her children. Achieving economic literacy and stability *with* our clients not only teaches them how to navigate the legal and social service system more efficiently, but also to quite literally changes their lives by lifting them from dire poverty and danger.

Certainly, our immediate focus is the client’s legal crisis that has prompted her to call us. We have initiated litigation against the local school district for their insistence upon notifying a batterer of the children’s location, in spite of a court order. Fortunately, upon receipt of the pleadings, the school district agreed to maintain

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confidentiality regarding this family. In another case, Child Protective Services (“CPS”) refused to return two daughters to their mother because the white caseworker thought the African-American mother spent too much time on her children’s hair during visitations. The children were removed because the mother returned to the battered women’s shelter when her ex-boyfriend came back to the area with renewed threats. The student’s scathing memoranda, arguing that this position clearly did not serve the best interests of the children, brought immediate reunification of this family. In a case in which the batterer was a local attorney who had consistently denied any wrongdoing, the student asked him in the deposition, “How many times did you beat your wife since you have been married?” The arrogant lawyer quickly responded, “I never beat her! I only hit her when she pushed my buttons!” Needless to say, the case was settled in our client’s favor, prior to trial.

Another case involved a young, impoverished mother who is attempting to raise her three-year old son, who has cerebral palsy, while fending off the stalking and abuse of her ex-husband. One of our students, Karen Ware, owns a condominium near the Law School, and upon graduation in May 2001, moved to Washington, D.C., to take a position with a large firm. Determined to help, Karen donated the use of her condo to this client, completely free, for a minimum of the next five years.<sup>101</sup> Karen and the client maintain active correspondence, with both marveling at the strength and generosity of the other. These are but a few of the scores of cases in which students not only learn a good deal about relevant law, but assist in transforming the lives of our abused clients with their extraordinary efforts.

We are quite fortunate at the University of Texas to also have an Immigration Clinic, which is run by Attorney Barbara Hines. The Domestic Violence and Immigration Clinics collaborate on cases, assisting each other with legal expertise, document drafting, brainstorming on case strategies and providing joint trainings.

At the Domestic Violence Clinic, students are expected to devote from ten to twenty hours per week to their cases, as well as four hours per week staffing the phones. The classroom component is used to teach trial advocacy skills, as well as substantive and procedural family law.<sup>102</sup> Time is set aside in each class for students to discuss their

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101. Our client says that Karen will not even let her pay the electric and water bills. An additional bonus is that the condominium is on the first floor, making it easier for the mother to navigate her son’s wheelchair.

102. During the first class, Clinic administrative issues are discussed (bar cards, office hours, supervisor meetings, etc.), the role of supervising and student attorneys

cases, whether relating successful outcomes or asking for help in addressing challenging aspects of representation. We provide a Clinic Manual, which includes the syllabus and readings. Students then role-play client interviewing, including short- and long-term safety planning, and steps toward economic empowerment<sup>103</sup> geared to each victim's circumstances. While the Clinic participants represent a range of races and ethnicities, generally students will represent someone of a race or culture different from their own. In addition to devoting a full class session to discussion of race from a micro and macro approach, we also make a point of identifying the intra-racial dynamics of each individual case. In this way, a student's discomfort, confusion, or stereotypical assumptions can be addressed as they arise.

Race and culture matters are further investigated as they relate to the immigration issues faced by our clients.<sup>104</sup> Custody, visitation, child support and health insurance are also prioritized given their relevance to most of our cases. To address children's safety issues, a judge who hears the care and protection docket, a CPS attorney, and an attorney representing the accused parent(s) are invited to offer their perspectives.<sup>105</sup> If the judge and CPS lawyer offer victim-blaming perspectives, the students have proven quite adept at challenging and educating them. Since our county mandates mediation in any family law case estimated to take longer than three hours, it is necessary to review arguments to exempt our clients from this requirement.

Coverage is also given to issues of tort litigation against abusers (and other stakeholders), relevant criminal law, basic understandings of batterers and batterers' intervention programs. We conduct a tour of the courthouse to ensure that the students' first visit is not with

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are explained, and then cases are assigned. Students are also required to attend a one-day "boot camp" prior to handling cases, in which relevant law and clinic practices are covered.

103. Assigned readings include Patricia Cole & Sarah M. Buel, *Symposium Briefing Paper: Safety and Financial Security for Battered Women: Necessary Steps for Transitioning From Welfare to Work*, 7 GEO. J. POVERTY L. & POL'Y 307 (2000); TEX. COUNCIL ON FAM. VIOLENCE, THE 2001 LEGAL ADVOCATES' GUIDE ch. 13 (2001) [hereinafter 2001 GUIDE] (Crime Victims' Compensation chapter).

104. Assigned readings include: G. PENDLETON, NAT'L IMMIGRATION PROJECT, NAT'L LAW. GUILD, IMMIGRATION RELIEF FOR NONCITIZENS SUFFERING DOMESTIC VIOLENCE: 1998 UPDATE (1998); 1999 GUIDE, *supra* note 99, at ch. 10 (Assisting Immigrant Battered Women chapter); Hoan N. Bui & Merry Morash, *Domestic Violence in the Vietnamese Immigrant Community*, 5 VIOLENCE AGAINST WOMEN 769 (1999); Kimberle Williams Crenshaw, *Panel Presentation on Cultural Battery*, 25 U. TOL. L. REV. 891 (1995).

105. The assigned reading is G. Kristian Miccio, *A Reasonable Battered Mother? Redefining, Reconstructing, and Recreating the Battered Mother in Child Protective Proceedings*, 22 HARV. WOMEN'S L.J. 89 (1999).

their clients. Students are taught how to prepare a trial notebook, as well as suggestions for dealing with stress and burnout.

Law school clinics and advocacy programs have proven to spark bar interest, while helping to fill an embarrassingly critical, unmet legal need in our communities.<sup>106</sup> Additionally, a law school-based Domestic Violence Clinic begins the process of training lawyers to provide pro bono and/or paid legal services to a sector of clients who benefit immeasurably from such help. It is encouraging to see the enthusiasm and interest of so many University of Texas law students, who voice a strong desire to learn how they can use their legal skills to help the victims, offenders, and children. Many students participating in such clinics report increased satisfaction with their law school experience, greater pride in being a lawyer, and a feeling that it has helped shape their career aspirations.<sup>107</sup>

Third year law students in Georgetown University Law Center's Domestic Violence Clinic litigate civil cases on behalf of battered partners, including protective order matters. A seminar course accompanies the clinical practice, in which two graduate teaching fellows assist the Clinic faculty. The Clinic students and fellows also take part in Washington, D.C.'s Targeted Offender Program, which provides coordinated civil, criminal, and other advocacy resources to the victims at greatest risk of homicide or felony-level re-abuse.<sup>108</sup>

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106. See Merryman, *supra* note 95, at 384-86. Subsequent to the founding of the Harvard Law School Battered Women's Advocacy Project, eight corporate firms in Boston started domestic violence pro bono projects, a Domestic Violence Council was formed, and key reform legislation enacted. At the University of Maryland School of Law, Professor Karen Czapanskiy's domestic violence course resulted in students collaborating with local defense attorneys to start the first clemency project, and successfully freeing eight battered women in prison. This project was replicated in Ohio, Massachusetts and California.

107. *Id.* at 386, 394, 396.

108. E-mail from Mary Ann Dutton, Professor, Georgetown University Law Center, to Sarah Buel, Clinical Professor, University of Texas School of Law (Aug. 12, 2002, 17:30 EST) (on file with author).

The Team works with those victims at greatest risk of homicide or felony-level re-abuse and consists of (1) Georgetown University Domestic Violence Clinic faculty and students, who represent victims in suits to obtain civil protection orders and child support awards; (2) the D.C. United States Attorney's Office, which provides a felony prosecutor specializing in domestic violence to handle all Team prosecutions; and (3) the D.C. Coalition Against Domestic Violence, which provides crisis intervention counseling services and refers Team victims to needed social, financial, and psychological services. Team members collaborate closely and meet regularly to discuss case strategy and ways to best ensure victim safety. A research psychologist is assessing the impact of the Team's services on victim safety, psychological health, and many other variables every six months over a two-year period, so that any Team successes can be replicated in other jurisdictions across the country.

*Id.*

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Professor Holly Maguigan directs the New York University (“NYU”) Law School’s Criminal Defense Clinic through which a number of students have represented battered women accused of misdemeanor and felony crimes, including assault and homicide.<sup>109</sup>

### G. *Independent Study*

The purpose of an independent study is to afford students an opportunity to conduct focused research, under the supervision of a knowledgeable professor, in an area of study not available in the curriculum. Each semester, I supervise five to ten independent study students writing on some aspect of domestic violence law. Often the students are continuing research started for their course papers or concerns brought to their attention during court watches, with which they have become invested and are eager to pursue further. For example, as a result of students being appalled at the lack of enforcement of child support orders (observed in their court watches), three students in the Spring of 2002 requested that I supervise their independent studies in this area. By dividing the legal issues in child support enforcement into three categories of research, these students have produced a thorough analysis of existing law and the agencies charged with enforcement, and have made specific recommendations to improve practices in the context of domestic violence cases. Other students have written lengthy papers on topics such as legal avenues of protection for child victims of domestic violence, the impact of gun legislation on recidivism of batterers, how the National Basketball Association can improve its interventions with their players who are abusers, the influence of Islam on Pakistan’s rape laws, constitutional law justifications for Texas’ emergency protective order legislation, how immigration laws impact substance abusing Korean battered women, and how prosecutors can better handle cases involving battered prostitutes.

## II. STUDENT-RUN LEGAL ADVOCACY PROGRAMS

Student-run victim advocacy organizations should be fully supported by law schools, with financial and supervisory assistance. A study of Georgetown University and Catholic University of America law schools’ advocacy programs found that battered women with law student advocates reported substantially less repeat psychological and physical abuse than those victims obtaining routine court services.<sup>110</sup>

109. See generally Goelman & Valente, *supra* note 1, at A-58 to A-63.

110. See Bell & Goodman, *supra* note 86 (finding that law students intensively assisting abuse victims in obtaining protective orders also reported improved

Although I had been a battered women's advocate for ten years prior to attending law school, I assumed that course demands would preclude my continuing the work while a student. However, as local shelters and court staff continued asking for help, I placed a notice in the Harvard Law School ("HLS") Bulletin, hoping to attract maybe five or ten volunteers interested in learning legal advocacy for battered women. Professor Martha Minow agreed to serve as our faculty advisor and HLS provided a small office and funding to print our training manual. Cofounder Suzanne Groisser and I wrote the BWAP Training and Resource Manual, using many materials from existing shelter and advocacy programs, while tailoring it for use by law students.<sup>111</sup> Seventy-eight students attended the first meeting of the HLS Battered Women's Advocacy Project ("BWAP"). By the end of the first year, 215 law students had joined, 30% of them men.

The BWAP expanded to include active subcommittees addressing legislation, shelter needs, court advocacy, legal research for the lawyers of abuse victims, and community education. We provided a series of four-hour training sessions, in addition to informal group meetings in which students could debrief about their experiences in court. In response to the courts welcoming student participation in the protection order process, we also wrote a ten-section script outlining areas in which specific information should be provided in the hearing. For instance, if a batterer contests custody of the children, the script offers potential issues to raise, ranging from abuse that has occurred in the presence of the children (including arguments on the adverse impact of witnessing on children) and refusal to obey the protective orders to continuing harassment and nonpayment of child support.

### III. COLLOQUIA, SYMPOSIA AND CONFERENCES

Law schools must include legal scholars with expertise in domestic violence matters in their colloquia, symposia, conferences and related speaking events.<sup>112</sup> To expedite law school adoption of progressive

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emotional support in six-week follow up).

111. SUZANNE GROISSER & SARAH BUEL, HARVARD LAW SCHOOL BATTERED WOMEN'S ADVOCACY PROJECT RESOURCE AND TRAINING MANUAL (1st ed. 1987) (including sections covering background dynamics of abusive relationships, applicable case and statutory law, information and referral resources, and details on specific courts).

112. Law schools should be honored to include in their programs high caliber legal scholars such as Professors Linda Ammons, Maria Arias, Cynthia Bowman, Naomi Cahn, Jane Cohen, Donna Coker, Rhonda Copelon, Kimberle Crenshaw, Karen Czapanskiy, Clare Dalton, Susan Deller Ross, Justine Dunlap, Deborah Epstein, Leslie Espinoza, Zanita Fenton, Ann Friedman, Sally Goldfarb, Julie Goldscheid, Judith Greenberg, Angela P. Harris, Suzanne Jackson, Lois Kanter,

initiatives, the American Bar Association's Commission on Domestic Violence has hosted five regional conferences, *Educating to End Domestic Violence*. More than fifty law schools from across the country sent teams of law professors, students, and administrators to the conferences.<sup>113</sup> Specific instruction was provided in five areas: (1) integrating domestic violence into existing courses; (2) starting specialty courses; (3) establishing domestic violence clinics; (4) supporting student-sponsored projects, such as court advocacy; and (5) increasing the involvement of domestic violence scholars in law schools' symposia, conferences and colloquia.<sup>114</sup>

Additionally, the conferences included two plenary sessions entitled *Recognizing and Dealing With Personal Issues*, and *Overcoming Institutional Hostilities and Barriers*. Each of these preemptively addresses matters that have the potential to sabotage the best of intentions, but can be overcome with careful strategizing and forethought. For example, in *Dealing with Personal Issues*, we discussed possible responses to students' disclosure of abuse in their own lives, as well as how, as teachers, we might self-identify as survivors. The session entitled *Overcoming Institutional Hostilities and Barriers* allows participants to openly share current obstacles to instituting reforms, while speakers and colleagues brainstorm possible solutions. In one case, a law professor explained that a domestic violence clinic had not been seriously considered at his school because it seemed only a trendy topic without legal significance and of no relevance to the majority of students, thereby making it hard to justify funding. This professor said he was seeking cogent arguments of a caliber that would be persuasive to his dean and colleagues. By the end of the conference, he told me he felt sufficiently prepared to make a successful pitch for both a domestic violence clinic and a specialized course.<sup>115</sup>

While a majority of the law schools indicated that domestic violence was covered to some degree in its curriculum, far fewer had

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Laurie Kohn, California Senator Sheila Kuehl, Lenora Lapidus, Nancy Lemon, Holly Maguigan, Martha Mahoney, Isabel Marcus, Joan Meier, Jane Murphy, Jody Raphael, Elizabeth Schneider, Ilene Siedman, Ann Shalleck, Brenda Smith, Leti Volpp, Kathleen Waits, Merle Weiner, and Zipporah Wiseman, among others. Further information about these scholars can be accessed through the Association of American Law Schools ("AALS") Directory at <http://www.aals.org>.

113. See *supra* note 72 and accompanying text.

114. See, e.g., ABA COMM'N ON DOMESTIC VIOLENCE, LAW SCHOOL CONFERENCE: EDUCATING TO END DOMESTIC VIOLENCE CONFERENCE MANUAL (Feb. 18-19, 2000).

115. The professor asked that I not use his name to spare his law school embarrassment; but this law school now has a fully operational domestic violence clinic.

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dedicated courses or clinics.<sup>116</sup> Law schools without sufficient focus on domestic violence attributed this to their underestimation of the issue's magnitude in impact and influence on lawyer's professional and personal lives. Increasingly, scholars, professionals and politicians acknowledge the same basis for their resisting previous initiatives to improve legal remedies and interventions for domestic violence litigants.<sup>117</sup> Thus, toward the end of the ABA conferences, each law school convened on its own—with an experienced facilitator—to create a strategic plan specific to their school, including time lines and necessary action steps to achieve identifiable goals.

The conference's format is modeled on a conference convened by attorney activist Robin Hassler Thompson, when she was the director of Florida Governor Lawton Chiles' Domestic and Sexual Violence Task Force. Thompson obtained a grant from the Florida Bar Foundation to bring together representatives from all Florida law schools for three days of presentations and planning.<sup>118</sup> Ms. Thompson's program was also the prototype for the ABA's successful law school conferences held regionally around the country.<sup>119</sup> Having the benefit of presenting at this conference and witnessing the enthusiastic response of the participants, I was motivated to replicate the conference in Texas. Ms. Thompson readily shared her grant proposal and conference format. In 1999, the Texas Bar Foundation provided part of the funding to bring together the ten Texas law schools, also for three days of similar programming.<sup>120</sup> We added a panel of former Domestic Violence Clinic students who honestly described the range of their experiences in directly representing abuse victims. Students who had taken my Domestic Violence and the Law course sat in on each workshop and offered their opinions

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116. Based on surveys of participating law schools. Each regional conference's manual included the course descriptions, syllabi, and other relevant materials from existing courses in that region's law schools.

117. See M. Isabel Medina, *Justifying Integration of Domestic Violence Throughout The Law School Curriculum: An Introduction to the Symposium*, 47 LOY. L. REV. 1, 9 (2001) (claiming that the wealth of "law" to cover makes it difficult to cover everything in depth).

118. The *Domestic Violence Education in Florida's Law Schools* conference was held September 10-12, 1997 at Florida State University College of Law in Tallahassee, Florida, and was co-sponsored by the Governor's Task Force on Domestic and Sexual Violence and the Florida Bar Foundation.

119. See *supra* notes 108-11 and accompanying text.

120. The *Domestic Violence Education in Texas Law Schools* conference was held April 15-16, 1999 at the Texas Law Center in Austin, Texas, and was co-sponsored by the National Training Center on Domestic and Sexual Violence, State Bar of Texas Legal Services to the Poor in Civil Matters Committee, Texas Lawyers Care/State Bar of Texas, Texas Supreme Court's Gender Bias Reform Implementation Committee, and the Texas Young Lawyer Association's Women and the Law Committee.

regarding various proposals. As a result of this conference, at least two Texas law schools have now established Domestic Violence Clinics, and several more have dramatically increased the integration of domestic violence legal matters into their curricula.<sup>121</sup>

Another model worthy of replication is a symposium, *Confronting Domestic Violence and Achieving Gender Equality: Evaluating BATTERED WOMEN & FEMINIST LAWMAKING* by Elizabeth Schneider.<sup>122</sup> Sponsored by The Women and the Law Program at American University Washington College of Law. This day-long event brought together thirty-four feminist scholars from around the country to consider how theory and practice have shaped domestic violence work. We discussed how Professor Schneider's book,<sup>123</sup> and domestic violence scholarship generally, relate to gender equality and our conceptions of women's lives. By dividing the discourse into four sections, we addressed an expansive range of topics while still allowing each participant to present her work. The first topic heading was *Domestic violence and feminism*; the second, *The importance of race, ethnicity, culture and class in shaping our changing conceptions of and responses to violence against women*; the third, *The law school as a site for theory, education and advocacy*; and fourth, *Changes in understanding and practice*. It is not hyperbole to say that participants found it exhilarating to hear of colleagues' creative, fascinating and state-of-the art research and direct service projects.<sup>124</sup>

#### IV. INSTITUTIONALIZING AN ETHICAL MODEL OF PRACTICE

##### A. Ethical Mandates to Teach Domestic Violence Law

Domestic violence practice often involves an amalgam of legal issues, with some lawyers choosing to represent the victims in

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121. This statement is based on the author's subsequent conversations with representatives of these law schools.

122. Transcript on file with the *American University Journal of Gender, Social Policy & the Law*.

123. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* (2000).

124. In addition to the articles published in this edition of the *American University Journal of Gender, Social Policy & the Law*, participants presentations included: Maria Arias' *The Relationship of Mandatory Arrest Laws and Communities of Color in New York*, Donna Coker's *Dilemmas Created by Involving the State in Women's Lives, Particularly Poor Women and Women of Color*, and Martha Mahoney's *Concepts of Violence and Consent in Welfare Reform: Exclusion of Children from Welfare Receipt*. Chaired by Professor Ann Shalleck, the symposium began with a dinner for participants on the evening of April 19th, with the full discussions taking place throughout the day on April 20, 2002 in Washington, D.C. Professor Shalleck directs the Women and the Law Program of the Washington College of Law, which provided funds to cover travel costs for those whose schools or agencies could not do so.

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criminal, family, estate planning, tort, real estate, and protective order matters, while others handle just one practice area. In either scenario, domestic violence practitioners are not provided with sufficient ethical and substantive guidance by the Model Rules of Professional Conduct<sup>125</sup> or the Model Code of Professional Responsibility.<sup>126</sup> Attorneys have long been governed by ethical rules and standards, with the American Bar Association's Model Rules of Professional Conduct ("ABA Model Rules") clarifying permissive (may) versus mandatory (shall) practices. Noncompliance with the latter can bring about disciplinary action,<sup>127</sup> assuming the client is aware of the standard of care to be expected.

The ABA Model Rules specify: Rule 1.1 Competence: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation."<sup>128</sup> Thoroughness and Preparation: [5]

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.<sup>129</sup>

Maintaining Competence: [6] "To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education."<sup>130</sup>

The above offers a broad framework that may be sufficient for counsel handling legal matters without the complex layering of critical issues inherent in most domestic violence litigation. Even lawyers who are inclined to be diligent and meticulous in their handling of cases may not be aware that battered clients are often severely traumatized even though their public demeanor may not reveal functional difficulties. Some would argue that promulgation of specific standards or rules dictating lawyer practices in domestic

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125. MODEL RULES OF PROF'L CONDUCT AND CODE OF JUD. CONDUCT (1989).

126. MODEL CODE OF PROF'L RESPONSIBILITY AND CODE OF JUD. CONDUCT (1980).

127. RONALD E. MALLIN & JEFFREY M. SMITH, LEGAL MALPRACTICE 36 (4th ed. 1996).

128. MODEL RULES OF PROF'L CONDUCT R. 1.1 (2001).

129. *Id.* at R. 1.1(5).

130. *Id.* at R. 1.1 (6).

violence matters is necessary to motivate necessary changes. Professor Kimberly Kovach says that without adequate incentive, counsel and the organized bar will likely resist the call for much-needed reforms regarding minimum standards of practice.<sup>131</sup> In support of this assertion, Kovach cites the low rates of attendance at continuing legal education seminars prior to the adoption of mandatory requirements with licensure contingent on meeting the annual minimum of hours specified.<sup>132</sup> It thus may fall to law schools to take the lead in assuring that students receive basic knowledge of domestic violence sufficient to meet the standard showing “requisite knowledge and skill.”<sup>133</sup>

### *B. Permanent Funding vs. “Soft” Monies*

Too many of our law schools fund clinics and domestic violence teachers on a year-to-year basis, sometimes with what are termed “soft” funds, as their amounts are unstable. For the following ten reasons, I propose that law schools institutionalize the funding of their domestic violence instructors and clinics.

First, the academic richness of the field affords much opportunity to enhance students’ horizons. Domestic violence impacts virtually every area of legal practice, whether directly or as a tangential issue. Through their representation of abuse victims, law students learn about family, criminal, consumer, tort, property, civil rights, and other areas of law, as discussed *infra*.

Second, clinical programs bridge the gap between theory and practice. For at least two decades the ABA, the American Association of Law Schools and various professional organizations have strongly recommended that law schools offer more practical course and clinic offerings.

Third, clinics afford students the opportunity to fully represent abuse victims. Unlike some clinics in which students are limited to drafting documents, research or other more limited involvement in a

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131. See Kimberlee K. Kovach, *Symposium: New Wine Requires New Wineskins: Transforming Lawyer Ethics for Effective Representation in a Non-Adversarial Approach to Problem Solving: Mediation*, 28 *FORDHAM URB. L.J.* 935 (2001); see also John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 *FORDHAM L. REV.* 83, 84-89 (2000).

132. See Kovach, *supra* note 131, at 954 (citing Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education: The District of Columbia Bar’s Consideration of MCLE*, 8 *GEO. J. LEGAL ETHICS* 1145, 1148-54 (1995); Lisa A. Grigg, *The Mandatory Continuing Legal Education (“MCLE”) Debate: Is it Improving Lawyer Competence or Just Busy Work?*, 12 *B.Y.U. J. PUB. L.* 417, 426-28 (1998).

133. See Baca, *supra* note 60.

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case, the Domestic Violence Clinic students not only draft all their own documents, but also handle every aspect of trial, from oral argument to fashioning settlements.

Fourth, students exhibit extraordinary interest in domestic violence clinics and courses, in spite of the rigorous requirements. At the University of Texas School of Law, both the Domestic Violence Clinic and Domestic Violence and the Law course are greatly oversubscribed every semester, with students literally clamoring for admission.

Fifth, our students report that the clinic and course are life-changing experiences for them. Student evaluations and informal discussions indicate that for many, such exposure greatly impacts their career decisions and lives. A number of students who had previously accepted positions in large firms came to the realization that either representation of domestic violence victims or some other public service was far more appropriate for them. Those students who choose large firm practice call and e-mail to share stories of their pro bono work on behalf of abuse victims, whether in direct case representation, fundraising for a shelter, drafting appellate briefs for incarcerated victims, or otherwise assisting as needed. For example, one former student, Nzinga Hill, recently assumed the role of directing Tulane Law School's new Domestic Violence Clinic and Ellen Josef is director of the South Texas college of Law's Domestic Violence Clinic. Similarly, Annalynn Cox, a previous course and Clinic student, now directs the Travis County (Texas) County Attorney's Domestic Violence Unit, and Sarah Kihneman coordinates all legal services for the Austin, Texas, Safeplace Shelter and Rape Crisis Center.

Sixth, many of us have worked diligently to obtain outside federal and foundation monies, but those are almost always time-limited.<sup>134</sup>

Seventh, even when we expend the time for outside fundraising, the challenges include many funders' view that law schools have their own endowments and should be funding such programs themselves. They have also cited our ability to raise tuition and request assistance from alumni as additional reasons for denying funding.

Eighth, it is arguably not a good use of a professor's time to be writing grants and otherwise begging for outside sources for money.

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134. For example, with our local domestic violence shelter, Legal Aid program and Women's Advocacy Center, our University of Texas School of Law Domestic Violence Clinic secured a Violence Against Women Act ("VAWA") Grant for two eighteen month periods. This grant provided each of us with a full-time attorney and improved service delivery to battered women, as well as the coordination of legal services within our community.

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Our time is better spent writing scholarly and practical articles, advising students, teaching, and running our clinics.

Ninth, such courses and clinics fill a critical, unmet legal need in our communities.

Tenth, our clinics and courses have the potential to be national models, replicable by other institutions of higher education, while instigating positive changes and prestige at our schools.

While soft money may not be the optimal funding source for continuing or new initiatives, it can spark extraordinary efforts within an academy. For example, the presence of the University of Texas Law School's Domestic Violence Clinic was instrumental in the University's receipt of a two-year \$500,000 Department of Justice grant to address violence against women across the entire campus. This grant has allowed us to hire three full time staff members: a coordinator, a community education specialist, and a counselor. While we had previously established a committee to address such issues on campus, the grant allowed us to greatly expand the group, now calling ourselves the Voices Against Violence Committee with members representing most of the administrative sectors, departments and schools.<sup>135</sup> An action-oriented Committee and Program, we have held a well-attended national Institute at the University of Texas on partner violence at colleges, sharing the materials we and other colleges have developed.

In collaboration with our two off-campus community partners (Safeplace Shelter and the Austin Police Department's Victim Services Department), we have implemented a data collection system throughout eight on-campus departments, and two private, off-campus residence halls to record incidents of sexual assault, relationship violence, and stalking affecting students. We have also tripled the number of emergency call boxes across campus, written and distributed three brochures detailing our services and available resources, started a peer educators program in which students conduct community education sessions, presented workshops to over 10,000 students, faculty, staff and partners of students, provided individual and support group counseling to over 200 students and partners of students, engaged the University of Texas School of Social

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135. The goals for the Voices Against Violence Program are: (1) improve data collection related to violence against women on campus; (2) develop a system of comprehensive, coordinated services for victims of sexual assault, relationship violence and stalking; (3) create a coordinated response to violence against women on campus to impact campus cultural norms regarding sexual assault and relationship violence; and (4) review institutional responsibility and abuser accountability and responsiveness to victim safety.

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Work's Research Department to conduct ongoing evaluations of our program, and conducted strategic planning to expand and improve our initiatives. Additionally, we are prioritizing integrating partner violence issues into the curriculum, with the Black Studies and Theatre departments collaborating to offer a Fall of 2002 course on creative uses of theatre and the media to educate about partner abuse. One goal is to institutionalize our many good works to the extent that when the federal funding expires, the University of Texas will fund the Voices Against Violence Program.<sup>136</sup>

*C. Implementing Systems Change with Gentle, Relentless Pressure*<sup>137</sup>

My students' evaluations consistently extol their appreciation for a class focusing on systems change in the context of forging legal and social solutions to family violence. In-depth analysis of legal theory and practice often results in students expressing great frustration at the slow pace of reform, and outrage when credible arguments are advanced but ignored by powerful stakeholders. For example, every semester, students draft significant ameliorative legislation, with persuasive position papers for legislators' review. While several of their bills have eventually become law, it often takes several years and many rounds of meetings to promulgate such legislation. From this experience, students learn how to balance patience, persistence and careful preparation to achieve a goal that requires collaboration within a highly politicized environment.

University of Texas law students have written compelling research papers that have substantially contributed to the passage of key statutes, including the 2001 Texas legislature's expansion of those eligible to apply for a protective order to include victims of dating violence.<sup>138</sup> Another student's comprehensive research on child visitation assisted in the adoption of a landmark bill stating, "It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or physical or sexual abuse by that parent directed against the

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136. E-mail from Jane Morgan Bost, Associate Director, Counseling and Mental Health Center, University of Texas at Austin, to Sarah Buel, Lecturer in Law, University of Texas School of Law (Oct. 3, 2002, 08:00 EST) (on file with author).

137. When Lt. Mark Wynn, formerly head of the Nashville Police Department's Domestic Violence Unit, was asked how they were able to effect a 58% reduction in domestic homicides over a two-year period and bring about substantial, positive changes within their legal system, he replied, "Twenty years of gentle, relentless pressure."

138. See TEX. FAM. CODE ANN. § 71.0021 (2001) (defining dating violence); *id.* § 82.002 (stating that any adult may apply for a protective order).

other parent, a spouse, or a child.”<sup>139</sup> In the 1999 legislative session, a law student’s paper proved to be the catalyst for extending the duration of the protective order from one to two years.<sup>140</sup> In the same year, another student’s paper resulted in the promulgation of a statute stating that a victim may renew a protective order even if there has not been a violation of the order while in effect as long as the victim remains in fear.<sup>141</sup>

### 1. *Court Watches*

In order to pass my Domestic Violence and the Law course, students must complete protective order, criminal and child support court watches, including submission of standardized forms documenting their observations and the court’s adherence to the law. By recording the behavior of judges and prosecutors on forms designed to reflect statutory requirements and minimal practice standards, students learn to evaluate complete cases. Court watches educate law students about the complex realities of the judicial system’s handling of domestic violence cases, while simultaneously accomplishing significant ends.

I began requiring court watches upon realizing that most law students have never set foot in a courthouse, and neither know how to find one nor know what is supposed to happen inside. The process of simply locating the correct courthouse and courtroom, and finding parking or public transportation, helps students better understand the obstacles faced by victims attempting to access the judicial system. Scrutinizing the treatment of victims by key players, from clerks and lawyers to judges and security staff, allows students to witness the disparity between enactment of legislation and its implementation. Students are also taught to follow the treatment ordered for perpetrators, and, in so doing, gain a better understanding of the potentially conflicting interplay between efforts at reform, punishment, and deterrence.

By observing several judges who handle various criminal and civil matters, students are better able to identify those characteristics necessary for fair proceedings, in addition to seeing the application of statutory and case law. Course evaluations indicate that almost all

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139. *Id.* § 153.004(e) (noting that a history of domestic violence will be considered when the court decides whether to issue a conservator for a child).

140. The student’s paper argued for an extension to five years, but in committee a compromise of two years was reached. *Id.* § 85.025(a)(1) (noting that the protective order may be effective for a period of not more than two years).

141. *Id.* § 85.025(b) (allowing for an extension of the protective order).

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students believed the court watches had a tremendous impact on their understanding of the judicial system's multifarious responses to abuse victims. More importantly, many students report being motivated by some of the nefarious behavior they witnessed to get involved with their local bar associations and other involved entities to bring about needed reforms. Some students indicate that hearing victims' stories of terror and torture first hand provided the incentive to start school-based programs or initiated pro bono domestic violence programs at their law firms or bar associations upon graduation. Often they are outraged by the court's inattention to children of domestic violence, engendering research papers which have spawned innovative projects ranging from organized distribution of children's safety plans to developing a court day-care room.

At the beginning of class, students who have completed court watches are often eager to share their observations with their classmates. Such enthusiasm reflects students' appreciation for the exposure to "real life" legal cases and desire to learn a great deal from the rich experience of seeing the law in action. Additionally, the process of sharing students' court watch findings with the judges and prosecutors under scrutiny have resulted in several of those judges and attorneys acknowledging the problematic aspects of their behavior, then improving markedly. In sum, the court watches inform and educate our law students in a manner that only a personal, direct, eyewitness experience can. They are profoundly affected by the close contact with domestic violence victims and offenders, which also teaches them how to progress from identification of a problem to remedial action. Affording students the opportunity to engage in domestic violence court watches<sup>142</sup> enriches their education and improves our legal system.

## 2. *Social Entrepreneur Projects*

In an effort to help battered women's service organizations and survivors attain financial independence, I supervise law students and University of Texas McCombs School of Business Marketing Professor Linda Golden supervises graduate business school students in a collaborative effort to establish and help run a for-profit business within our by shelter. Our primary goal is the creation of a consistent source of substantial revenue, thus obviating the need for the shelter's frenetic funding searches. An important secondary goal is

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142. For further information about court watches conducted in other jurisdictions contact the Battered Women's Justice Project, 1-800-903-0111.

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to provide employment opportunities for shelter residents, including preparation for higher paying jobs, such as those involving computer or other high-tech skills. By publicizing the fact that purchases of the shelter businesses' products and services will benefit abuse victims, we hope to raise community awareness about the issue while garnering additional customers.<sup>143</sup>

The MBA and law students created a Powerpoint presentation detailing the pros and cons of each proposed business, which they showed the very appreciative shelter board. We have now made contact with the Harvard Business School's Alumni Association chapter in our city and they have expressed interest in providing capital to bring this project to fruition. Professor Golden and I plan to continue this project for as long as the shelter finds it useful.

My law students have received course credit for writing papers on the legal issues arising out of such ventures. For example, one student, Joyce Chen, researched the necessary statutes, regulations and city ordinances applicable for these businesses. She also included key information about San Francisco's Delancy Street Foundation, as we hope to replicate their self-sufficient model of establishing businesses to train ex-offenders and building long-term transitional housing. A second student, Adrienne Leder, has researched the tax implications for each type of business, as well as the possible changes to the shelter's by-laws and potential liability issues. Professor Golden's four MBA students each submitted a final paper describing their efforts, including comparison budgets, funding sources, and full analysis of each business proposal.

### 3. *Battered Women in Prison Projects*

As a second year law student in 1988, I was deeply troubled that there was virtually no law student presence at the sole Massachusetts' women's prison, the Massachusetts Correctional Institution at Framingham ("MCI-Framingham"), while there were substantial projects underway at the men's prisons.<sup>144</sup> Thus, male inmates had

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143. Our first project has been to help reorganize the shelter's thrift store, from designing a new floor plan and sorting clothing into designer label, retro, etc. racks, to changing store hours and pricing. Our second project is establishing a gift basket business, through which customers can order the products on-line or by phone. The baskets can be assembled by survivors at the shelter, allowing them to earn money while remaining safe.

144. As a first year student, I volunteered for Harvard Law School's Prison Legal Assistance Project ("PLAP") but, while wholeheartedly supporting their efforts for male prisoners, I was astonished that we had no cases involving female offenders. I was told that we did not handle female prisoners' cases because they did not call for assistance; this was certainly a circular argument, as PLAP had neither placed informational contact information at the women's prison nor had enough of a

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access to law student and lawyer assistance for their disciplinary hearings and other legal matters, but female inmates were largely ignored. I worked on the trials and appeals of several battered women prior to law school, then spent the summer after my first year continuing advocacy work with female inmates. Human rights advocate Stacy Kabat ran a group called “Battered Women Fighting Back” at MCI-Framingham, affording the first support and advocacy group for survivors in the state. At that time, the incarcerated survivors had neither appellate counsel nor access to a law library. We organized shifts of law students to staff a minimal law library, for which we also provided many used law books donated by students. The women inmates were tremendously grateful for even our fledgling research skills, as we were determined to teach them what we knew while assisting in the preparation of their appeals.

Stacy Kabat, a number of dedicated volunteers, and I worked closely for several years to maintain a presence at MCI-Framingham and recruit pro bono attorneys for the survivors. We believed that it was essential to make known the compelling stories of these incarcerated battered women, and enlisted the assistance of a professional film company to create the documentary, *Defending Our Lives*, in order to chronicle the stories of four survivors in prison.<sup>145</sup> Law students were a critical component of our advocacy efforts, not only at MCI-Framingham, but also for their willingness to assist appellate counsel in these matters.

Many more attorneys were willing to take appeals *pro bono* if they had law students to conduct legal research, draft documents, conduct interviews, investigate, and otherwise generally assist. With the assistance of Texas Justice Deborah Hankinson, we are currently starting a similar project with Texas Bar Association’s Appellate Section Pro Bono Committee.

#### 4. *Tenure Matters*

An often-reiterated complaint of course lecturers and clinical teachers for domestic violence programs is that of being excluded from meaningful participation in the running of their law schools, in part through the denial of tenure. While an in-depth discussion of this issue is beyond the purview of this article, it represents an important component of institutionalizing domestic violence jurisprudence.

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presence to generate word of mouth referrals.

145. See *DEFENDING OUR LIVES*, *supra* note 72.

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*D. Law Schools' Role in the Provision of Continuing Legal Education*

Continuing legal education seminars offer attorneys the opportunity to both learn the basics of domestic violence practice and stay abreast of current developments in the law. Lawyers must further educate themselves regarding domestic violence issues because these cases are distinctly different than others in identifiable ways. First, the litigation is both retrospective and prospective. That is, the abusive conduct which precipitates the court action involves events that have already transpired. However, in many domestic violence cases, the dispositions reflect a desire to target prospective behaviors, generally by articulating the sanctions for future violence. Second, the abused partner, whether defendant or accuser in the instant case, is at high risk for further harm, necessitating that counsel integrate short- and long-term safety planning.

## CONCLUSION

It is logical to situate the teaching of domestic violence law in the academy, but only if we ensure that our work is informed by experienced battered women's advocates, *and* if we responsibly address the significant race and class issues. Feminist legal scholars, professors, and concerned students should be celebrating that abuse victims are increasingly turning to the courts for protection from abuse, for they offer us the opportunity to use the law to save lives. Law schools can take a leadership role by modeling the integration of domestic violence law into existing courses, offering specialized seminars, scholarly colloquia, and fully supporting clinics, student run advocacy programs and conferences.