Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice

Joan S. Meier
NOTES FROM THE UNDERGROUND:*
INTEGRATING PSYCHOLOGICAL AND LEGAL PERSPECTIVES ON DOMESTIC VIOLENCE IN THEORY AND PRACTICE

Joan S. Meier**

CONTENTS

I. INTRODUCTION .................................................. 1296

II. THEORY—THE EVOLVING INTERACTION OF PSYCHOLOGICAL AND LEGAL PERSPECTIVES ON DOMESTIC VIOLENCE ................................. 1299
   A. Historically—From Legally Normative to Psychologically Pathological .................. 1300
   B. The Battered Women’s Movement—Seeking Justice ........................................... 1303
      1. The Limits of Enlightenment:
         The First Social Science Theories .......... 1305
      2. New Social Science Approaches .......... 1312
         a. Post-Traumatic Stress Disorder ...... 1312
         b. “Revised Battered Woman Syndrome” .... 1314
         c. Entrapment or Coercive Control .......... 1317

III. PRACTICE—THE VALUE OF AN INTERDISCIPLINARY APPROACH TO TEACHING A DOMESTIC VIOLENCE LEGAL CLINIC .............................................. 1322

* Full appreciation of the triple entendre intended here may require familiarity with the fact that law school clinics such as my own are typically housed in basements. See, e.g., Marjorie McDiarmid, What’s Going on Down There in the Basement: In-House Clinics Expand Their Beachhead, 35 N.Y.L. SCH. L. REV. 239 (1990).

** Associate Professor of Clinical Law, George Washington University National Law Center. I wish to thank Anne Spielberg, Evan Stark, Mary Ann Dutton, Chip Lupu, and Naomi Cahn for their thoughtful comments on previous drafts of this Article. I also thank Cynthia Finn, Sarah Latz, and Martha Spice, three non-lawyers with whom I have enjoyed a wonderful dialogue about the psychological dimensions of clinical supervision and domestic violence cases, and Yvette Brown and Tanya Schierling for their superb research assistance. Most importantly, I thank the anonymous donor who made the interdisciplinary clinic possible, the students in the Domestic Violence Advocacy Project from whom I have learned as much as I have taught, and Mary Ann Dutton, who has made the project enlightening, stimulating and fun, and with whom I look forward to continued collaboration in the future.
A. Overview of the Domestic Violence Advocacy Project .......................... 1325
   1. In General ............................................. 1325
   2. Psychological Components ............................. 1326
B. Teaching Students Effective Advocacy:
   Psychological Contributions to Legal Arguments in Domestic Violence Cases .................. 1328
   1. Strengthening Development of Case Theory ........................................... 1328
   2. Learning to Work with or Critique Expert Witnesses ............................. 1330
C. Teaching the Psychological Dimensions of Lawyering: The Intangibles of the Lawyer-Client Relationship .................. 1332
   1. Psychology of Lawyering—In General ...................... 1333
      a. Interviewing and Counseling Skills .......................... 1333
      b. Lawyering Role ............................................. 1338
   2. Psychology in the Representation of Battered Women ...................... 1342
      a. Battered Women’s Ambivalence ............................... 1343
      b. Assessing Danger and Providing Strategic Counseling .................. 1347
   3. The Personal Dimension: Dealing with Counter-Transference ...................... 1349
D. Challenges and Limitations ............................................. 1356
   1. Integrating Psychology into Legal Training ...................... 1357
   2. Maintaining a Clear Definition of the Lawyer’s Role ...................... 1359
      a. Goals and Methods of Information-Gathering .......................... 1361
      b. The Need for Lawyers to Take Action on Behalf of Clients .................. 1363
      c. The Need for Clients to Make Decisions ............................... 1364
IV. CONCLUSION ............................................. 1366

I. INTRODUCTION

Practice as a lawyer often requires some degree of conversance with other disciplines—at the least, an ability to know when to seek
the assistance of other types of professionals or experts.\footnote{Interdisciplinary work is especially common in family law. See, e.g., Barbara Woodhouse, \textit{Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life}, 91 Mich. L. Rev. 1977 (1993) (adequate teaching and practicing in family law requires grasp of other disciplines, especially psychology); Noel Zaal, \textit{Family Law Teaching in the No-Fault Era: A Pedagogic Proposal}, 35 J. Legal Educ. 552 (1985) (arguing for a family law program which would include the study of social science and other relevant disciplines). \textit{But cf. infra} notes 13-19 regarding the detrimental impact some psychological approaches to family law have had, both in denying and minimizing domestic violence and in undercutting the rights of women and children in family law cases.} The need for an interdisciplin ary approach is especially compelling in the field of domestic violence, an issue which cuts across psychology, sociology, public policy, criminology, medicine, public health, and law.\footnote{Indeed, domestic violence was initially seen as a hodgepodge of pre-existing disciplines, unworthy of treatment as a single field. \textit{See, e.g.}, Lloyd Ohlin & Michael Tonry, \textit{Family Violence in Perspective}, in \textit{FAMILY VIOLENCE 7} (Lloyd Ohlin & Michael Tonry eds., 1984). However, in the last ten years domestic violence has acquired the status of a recognized “field” in the social sciences. \textit{See, e.g.}, Brief of Amicus Curiae of American Psychological Association in Support of Defendant-Petitioner in New Jersey v. Kelly, 478 A.2d 364 (N.J. 1984) (stating that study of battered women is “well-developed” in “scientific community”). It remains relevant to many different types of legal practice, including criminal prosecution, criminal defense, civil protection, tort law, and family law.} In practice, psychologists and social workers who work with battered women or batterers often need to learn about and interact with the legal system, which may define the framework within which treatment will be administered, or may be needed to protect a victim against further violence. Conversely, lawyers representing battered women in both civil and criminal cases often need to consult with psychological experts, as expert witnesses or court examiners in their cases, or to obtain assistance for the client or her children. More fundamentally, society’s growing awareness of the pervasiveness and severity of domestic violence has been the combined result of the socio-political movement for women’s rights and a process of social re-education about the psychology of women, men and families. A changing political climate has made new understandings of the psychology of domestic violence possible; these new theories and perspectives have also informed social mores and the law.\footnote{As is discussed \textit{infra} part II, both contemporary and historical social attitudes toward domestic violence have been shaped profoundly by the psychological professions. However, cultural norms are also a function of personal and social attitudes and beliefs.}

As a result of the increased publicity about domestic violence over the past ten years, both the legal and social science professions’ attention to this field has exponentially multiplied.\footnote{\textit{See Developments in the Law: Domestic Violence}, 106 Harv. L. Rev. 1574 (1993) [hereinafter \textit{Developments}] (surveying developments in the law regarding domestic violence);} There are now...
more than a dozen scholarly social science journals devoted to family violence and a vast published literature.\textsuperscript{5} In the legal field, the literature has also exploded, and changes in the law on both the state and federal level are now a constant occurrence.\textsuperscript{6} Not surprisingly, the subject has also become increasingly visible in law schools. As of this writing, at least eighteen schools teach courses on domestic violence: the majority of these courses are clinical programs.\textsuperscript{7}

This Article examines the integration of psychology into legal thought and practice concerning domestic violence. Part II briefly surveys the interaction between law and psychology in the development of social and legal perspectives on domestic violence. This history demonstrates both that politics and law affect psychological perspectives and that psychology informs the law. Because it is increasingly clear that psychological theories about domestic violence must take into account its legal and socio-historical context, it is particular-


6. This Symposium is indicative of the growing interest in domestic violence in legal academia. However, this attention is not limited to academia. For instance, in the last four years, the National Council of Juvenile and Family Court Judges (the "NCJFCJ") has commissioned and published a series of cutting edge reports on domestic violence and state civil, criminal, and statutory law. See, e.g., \textit{Barbara Hart, State Codes on Domestic Violence: Analysis, Commentary and Recommendations} (1992) (prepared for the NCJFCJ); NCJFCI, \textit{Family Violence: Improving Court Practice} (1990); NCJFCI, \textit{Model State Code on Domestic and Family Violence} (1994). The New York-based National Center on Women and Family Law has long provided extensive legal resources and materials on domestic violence. In addition, four "special issue" and national resource centers on domestic violence have recently been established pursuant to federal grants. These include the National Resource Center, located at the Pennsylvania Coalition Against Domestic Violence (the "PCADV"), and three other resource centers: one spread among the PCADV, the National Clearinghouse for the Defense of Battered Women, and the Duluth Domestic Abuse Intervention Project (all three harboring the Battered Women's Justice Project); the San Francisco Family Violence Prevention Fund (health care); and the NCJFCI (child placement). These centers should expand the growth and dissemination of many kinds of information concerning battering.

7. These numbers are based on research by Mithra Merryman, and my own informal survey of domestic violence courses in law schools. See Mithra Merryman, \textit{A Survey of Domestic Violence Programs in Legal Education}, 28 \textit{New Eng. L. Rev.} 383, 387 (1994). Included in this statistic are civil or family litigation clinics which teach about domestic violence as one of several subject areas, e.g., the "Families and the Law" Clinic at Catholic University and the "Family Law Clinic" at University of Baltimore Law School. Merryman, a more recent graduate than myself, decries legal education as "virtually ignoring" domestic violence. \textit{Id.} at 383. One's perspective on this issue undoubtedly depends on one's frame of reference.
ly important that the social science and legal professions continue to communicate and collaborate in developing further understandings of domestic violence.

The remainder of the Article discusses the benefits of applying this integration to legal practice, in the form of the interdisciplinary teaching of a domestic violence legal clinic by a lawyer and psychologist. In part III, I offer a description of one model of such an interdisciplinary program, the George Washington University National Law Center's Domestic Violence Advocacy Project (the "DVAP"). I then describe the contributions of psychology to both substantive advocacy and lawyering skills in the training context. The interdisciplinary approach can teach students to be strong advocates in domestic violence cases by providing them with a richer substantive understanding of the dynamics of domestic violence and by exposing them firsthand to the use of social science experts in such cases. The psychological perspective is also extremely helpful in the development of students' lawyering skills, both in representation of battered women, and in general. Incorporation of this perspective into the clinical teaching context can also assist teachers and students in navigating the personal and professional challenges inherent in this work.

I end by discussing some of the challenges and limitations inherent in the integration of psychology into the clinical legal setting. I conclude that thoughtful consideration of the differences between the disciplines and the limits of an effective interdisciplinary approach to teaching young lawyers is a beneficial means of clarifying both our concept of the lawyering role and the potential contributions of psychology to that role.

II. THEORY—THE EVOLVING INTERACTION OF PSYCHOLOGICAL AND LEGAL PERSPECTIVES ON DOMESTIC VIOLENCE

The history of the development of legal and psychological understandings of domestic violence over time is a study of law as both
product and generator of social norms. Although the following discussion does not purport to be comprehensive, an overview of the interaction between psychological and legal approaches to this subject demonstrates that each has always informed the other. As the legal and political context has both changed and resisted change with respect to womens’ rights and domestic violence, however, psychological and social science perspectives have increasingly moved away from a neutral scientific or “medical model” to a variety of more interdisciplinary “psychosocial” models which explicitly take into account the socio-historical context, increasingly including the reality of gender oppression. In turn, these broader socio-political perspectives on battering offer significant potential for reducing gender bias in the legal treatment of domestic violence, as long as they continue to be informed by the experiences of battered women in the courts.

A. Historically—From Legally Normative to Psychologically Pathological

The history of legal approval of wife-beating in western culture is by now fairly well-known. As eloquently stated by Dobash and Dobash, “[t]he use of physical violence against . . . wives is not the only means by which they are controlled and oppressed but it is one of the most brutal and explicit expressions of patriarchal domination.” Dating back to the Roman Empire, western laws and social mores called for “chastisement” of wives by husbands when their patriarchal authority or female restrictions were challenged. The right of physical control, gradually outlawed in the British and American common law by the turn of the century, was only a concrete extension of the lengthy history of social norms legitimating male authority and female subordination in the family and society generally.

Martha Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 24-30 (1991). These connotations are inaccurate for many women who have experienced violence from male intimates. Id. at 30 & n.119 (feminists and “strong” women also get battered). Many writers prefer “wife” abuse or “wife beating” as a more accurate reflection of the gendered nature of domestic violence and its historic normative roots in the law governing the family. Recognizing the problematic connotations of most terms in this field, I reluctantly take the path of least resistance and use the simplest, most recognizable labels. My use of “wife abuse” is intended to include unmarried partners. 10. I am grateful to Evan Stark for his help in formulating the shift from “medical” models to more “psychosocial” models.


12. Id. at 62-64, 74. This thumbnail sketch does not reflect the far more complex ebb and flow of social and legal changes and attempted changes concerning wife-beating over the
The removal of official legal permission for wife-beating did not mean its elimination, however. In this century, precisely because it was no longer legally dictated behavior, the existence, nature and causes of domestic violence all became contested. In this context, psychological theories about women, men and the family have played a significant role in shaping legal and social views. Thus, in the 1930s, the rise of Freudian psychoanalytic thought, while viewing family violence as deviant and unhealthy, focused on female “masochism” as the reason for women’s victimization.13 The “pathologizing” of domestic violence reflected and reinforced the societal belief that spouse abuse was an isolated problem in unusually disturbed couples in which the violence was viewed as “fulfilling masochistic needs of the wife and necessary for the wife’s (and the couple’s) equilibrium.”14

Although Freudian concepts of “female masochism” are less in favor today,15 modern psychiatric evaluations still frequently diagnose battered women as “paranoid,” or having any of a number of character disorders such as “Schizoid Personality Disorder,” “Borderline Personality,” “Dependent Personality Disorder,” etc.16 Other psycho-

last century and a half. As both the Dobashes and other noted historians of society’s response to family violence have described, various efforts were made by different segments of society at different times to reduce family violence, punish wife-beaters, and protect women and children. See id. at 1-74; Linda Gordon, Heroes of Their Own Lives: The Politics and History of Family Violence (1988); Elizabeth Pleck, Domestic Tyranny: The Making of American Social Policy Against Family Violence from Colonial Times to the Present (1987); see also Elizabeth Pleck, Criminal Approaches to Family Violence, 1649-1980, in Family Violence 19-53 (Lloyd Ohlin & Michael Tonry eds. 1989). The consistent theme throughout this time has been, however, society’s unwillingness to accept the fundamental changes in the status and independence of women which would be necessary to truly minimize or end male violence toward women and children in the family. Id.

13. See Pleck, supra note 12, at 158. Pleck points out that Freud himself, author of the concept of female masochism, never applied the concept to wife-beating. Strikingly, it was a female disciple of Freud, Helene Deutsch, who first propounded the theory that female masochism explained some violence against women. Id. at 158-59 (citing Helene Deutsch, The Significance of Masochism in the Mental Life of Women, 11 Int’l J. Psychoanalysis 48-60 (1930)).


15. But cf. Laura Crites and Donna Coker, What Therapists See that Judges May Miss, Judges’ J., Spring 1988, at 42 (psychotherapists unfamiliar with domestic violence often label victim as having "self-defeating (masochistic) personality disorder").

16. These were the labels applied by a forensic psychiatrist appointed by the court to examine the parties in a custody and visitation case I have been litigating for two years. The case will be referred to hereafter as “Custody Case” to protect the privacy of the parties. See also Jones, supra note 9, at 149 (describing story of woman who was diagnosed as "para-
logical approaches to the family, such as “family systems therapy,” have similarly avoided blaming the aggressor, emphasizing that every familial interaction is explainable as the product of the interactive “family system,” with no one person responsible. This approach, which has also informed judicial perspectives on family violence, treats violence between spouses as a deviant malfunction in the mutual interaction between the parties.17

Until quite recently, the psychological professions have paid little attention to wife-beaters.18 However, when subject to evaluation, batterers have typically tested psychiatrically normal on standard psychiatric tests.19 Thus, while batterers’ victims are frequently seen as pathological, the batterers themselves are often seen as mentally normal. Little better evidence exists that, although the letter of the law has changed, the underlying normative values, whereby mens’ violent domination of women in the family is socially accepted behavior, remain.20
Nonetheless, by characterizing family violence as aberrant and victims as psychologically flawed, or at least equally responsible, these psychological models have lent "scientific" validity to societal denial of the pervasiveness and socially determined aspect of domestic violence. These views have also supported society's reluctance to treat domestic violence as a crime, and its tendency to fault victims as much as (or more than) the perpetrators. Thus, prior to the 1970s, little legal recourse was available for female victims of intimate violence. Police would rarely, if ever, arrest for a "family disturbance." Divorce was unavailable or economically and socially infeasible.21 This is not to say that no interventions or social services were ever obtained by battered women.22 However, such interventions continued to treat the violence as a "marital" problem, and, because of the emphasis on maintaining family unity and women's subordinate role, little if any legal intervention was brought to bear which actually enforced an end to violence.

B. The Battered Women's Movement—Seeking Justice

With the coming of the civil rights movement and the women's rights movement, both the legal and psychological approaches to domestic violence began to change. Without recognition of women's rights to equality, their victimization had been invisible.23 As the

Because the man did not appear "sick" to him; the man subsequently killed the woman) (on file with author).

21. See, e.g., GORDON, supra note 12, at 160 (social service agencies in 1950s hostile to divorce); PLECK, supra note 12, at 141.

22. Elizabeth Pleck and Linda Gordon both detail a spectrum of "social" interventions which battered women over the past century could sometimes obtain: for instance, child protection agency social workers would sometimes seek arrest or counseling for a wife-beater, or threaten the removal of the children. GORDON, supra note 12, at 46-58; PLECK, supra note 12, at 69-87. Pleck also writes that after the turn of the century, complaints of domestic violence could be brought before the new "family" or "domestic relations" courts, which explicitly sought to cultivate a non-criminal, non-legal approach to family cases. Such courts would typically respond to complaints of violence with recommendations to "reconcole," or orders for marital counseling. Id. at 125-44. Despite the progress since then toward legal recognition of women's legal rights in connection with the family, domestic relations courts today still retain more than a little of the early courts' patronizing and non-rights-based attitude toward family litigants. See, e.g., Martha Fineman, Dominant Discourse, Professional Language and Legal Change in Child Custody Decisionmaking, 101 HARV. L. REV. 727 (1988).

23. In her path-breaking work on society's responses to survivors of man-made traumas such as war, incest, and battering, Judith Herman notes that a social context which recognizes the injustice done to victims is necessary before the reality of victims' severe psychological traumas can be acknowledged. JUDITH L. HERMAN, TRAUMA & RECOVERY: THE AFTERMATH
political culture changed, domestic violence began to be recognized as both much more prevalent than previously thought and severe enough to be treated as criminal behavior for which the perpetrator is responsible.24 Over the past twenty years battered women’s activists have successfully fought, through lawsuits and legislation, for increased arrest and criminal prosecution of batterers, for civil laws in all states providing for civil protection orders (with criminal penalties for violation), for elevated consideration of domestic violence in custody litigation, and for incorporation of psychological knowledge about battering into the criminal defense of women charged with homicide for killing their batterers.25 As a result of this massive increase in legal remedies for and attention to domestic violence, battered women’s stories are now frequently heard in the legal system; and their needs, their rights, and those of their children and their abusers are routinely adjudicated. However, as the following suggests, the societal resistance to victims’ stories and needs for protection has not disappeared: the battle has simply moved to new, and more complex, planes.

---


25. See generally Developments, supra note 4.
1. The Limits of Enlightenment: The First Social Science Theories

The legal reforms described above were fueled in large part by an infusion of psychological and sociological research, which has provided an empirical, psychological and sociological basis for activists' contentions that domestic violence is in fact widespread and severe.26 The first and most famous of these theories was the “battered woman syndrome,” coined by psychologist Lenore Walker based on a study of several hundred women, to describe the psychological effects of longterm exposure to a battering relationship. Walker’s articulation of the “cycle of violence” and “learned helplessness” posited psychological interpretations to explain the destructive psychological impact of longterm abuse, and how it is that women can remain subject to such abuse over an extended period of time. Analogizing to scientific research on dogs, Walker theorized that the experience of repeated and un-preventable abuse, along with social conditioning of women for subservience, created in battered women a state of “psychological paralysis” which rendered them unable to seek escape or help, even when it might be available.27

The battered woman syndrome was a watershed in social and legal understandings of domestic violence. Walker’s research offered numerous powerful examples of extreme long-term abuse of women by their male partners, and conveyed the hopelessness and demoralization of such victims. Unlike past psychological theories, Walker showed that women’s difficulties were a natural response to the abuse, rather than the result of any innate psychological tendencies toward “masochism.” Moreover, Walker’s research highlighted the extreme terrorizing to which some battered women are subjected. Thus, whereas in the past, women’s killing of their abusers had typically only been legally defended as a form of “insanity,” expert testimony about the “syndrome” now offered the opportunity to tell the woman’s story in such a way that the jury would understand that the killing was “reasonable” self-defense, because it would show that the woman understandably believed she had to kill to save herself.28

26. See, e.g., Dutton, supra note 4, at 1209-14 (literature survey).
28. See, e.g., Developments, supra note 4, at 1574-80; Elizabeth Schneider, Describing and Changing: Women’s Self-Defense Work and the Problem of Expert Testimony on Battering, 9 Women’s RTS. L. REP. 195, 215 (1986). In the past five years, several states have also adopted legislation explicitly making expert testimony about the “battered woman syndrome” admissible in certain cases, and several governors have granted clemency petitions on
Nonetheless, invoking the battered woman syndrome has not always advanced justice for battered women. The problems with the syndrome have been extensively discussed in the recent legal and social science literature. In brief, the focus on the victim’s “learned helplessness” and psychological “syndrome” to explain battering relationships has been turned around and used by judges, prosecutors, and juries, as another means of “blaming the victim.” In some criminal cases, the focus on the woman’s internal psychic state has been used to show that her killing was not “reasonable,” especially if the danger to her was not obviously “imminent.” In custody or neglect/abuse cases it has been used to show she is an “unfit” parent, because she suffers from the “syndrome” of “learned helplessness.” More fundamentally, the very concept of learned helplessness creates a narrow stereotype of the archetypal woman entitled to claim victimization as a “battered woman.” When the facts of individual cases portray women with some capacity for action, aggressiveness, or independence, as so many do, the theory has been used to argue that they did not have “learned helplessness,” did not suffer from the battered woman syn-

29. See Mahoney, supra note 9, at 34-43; Schneider, supra note 28, at 215; Elizabeth Schneider, Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse, 67 N.Y.U. L. REV. 520 (1992); Stark, supra note 19, at 277-88; Dutton, supra note 4, at 1194-1201.

30. See infra note 175 and accompanying text (discussing phenomenon of blaming the victim as a form of denial which makes observer feel less threatened).

31. Charles Ewing’s review of twenty-six cases in which expert testimony on battered woman syndrome was admitted, found seventeen in which the defendant was convicted of murder, manslaughter, or reckless homicide. CHARLES EWING, BATTERED WOMEN WHO KILL (1987). Ewing cites a New York case in which the prosecutor successfully argued that “the very ongoing nature of the abuse proved that [defendant] was under no imminent danger . . .” the night she killed her batterer. Id. at 3.

32. See Stark, supra note 19, at 283 (citing In re Betty J., 371 S.E.2d 326, 332 (W.Va. 1988)) (judge removed child from mother on ground that she suffered from battered woman syndrome, and is likely to reconcile with the abuser, thereby putting child at risk); Hearings on H.R. Con. Res. 172 Before the Subcomm. on Admin. Law & Governmental Rel. of the Comm. of the Judiciary, 101st Cong., 2d Sess. 86, 101, 109 (testimony of Carla Goodwin and Donald A. Gordon); Karen Czapskiy, Domestic Violence, the Family, and the Lawyer- ing Process: Lessons from the Studies on Gender Bias in the Courts, 27 FAM. L.Q. 247, 257 & n.30 (1993) (several jurisdictions reported judges giving custody to batterers where mothers’ behavior was seen as “unstable” or “erratic”); Mahoney, supra note 9, at 46-47 (noting contradiction between “image” of battered women as “helpless” and image of her as “fit” mother).
drome, and therefore the battering could not justify their killing, e.g., they could not have acted in self-defense.\textsuperscript{33} As a result, many women continue to be convicted of murder and manslaughter for killing the person who repeatedly brutally attacked and promised to kill them,\textsuperscript{34} because either the expert testimony is excluded,\textsuperscript{35} or it is admitted but turned against the victim when she deviates from the image of the perfect victim.\textsuperscript{36}

A similar pattern can be seen in the impact of social science research addressing the connection between spousal abuse and harm to children. Although it has seemed to many to be self-evident that

\textsuperscript{33} Since Walker's study was based primarily on the experiences of white, middle class women, the battered woman syndrome has been a particular problem for minority or working class women, who do not appear to juries to fit social images of "helplessness." See Sharon Allard, Rethinking Battered Woman Syndrome: A Black Feminist Perspective, 1 UCLA WOMEN'S L.J. 191 (1991) (African-American women unlikely to benefit from battered woman syndrome because of widely held stereotypes of women of color as, e.g., aggressive and strong); Stark, supra note 19, at 281-82 (most battered women are aggressive in fighting back and seeking safety, and many are angry, contradicting social images of "helplessness"; poor or non-white women are least likely to "fit" the stereotype).

\textsuperscript{34} I do not mean to suggest that all battered women who kill their abusers should be fully acquitted. Holly Maguigan argues that a fair trial is one in which the defendant can put before the jury the information which would put her actions in their "social context," i.e., the history of abuse and threats, and show the connection of that context to her claim of self-defense. Maguigan, supra note 28, at 383. I question whether juries are capable of "fair" assessments of women who kill their batterers without some explicit balancing of the scales to negate the gender bias implicit in social conditioning concerning, e.g., the "reasonableness" of women's and men's use of force. For instance, it appears that battered women who kill their abusers receive far harsher treatment in the criminal justice system than batterers who kill their wives. Sarah M. Buel, The Dynamics of Domestic Violence Cases in the United States: An Overview, in AMERICAN BAR ASSOCIATION, DEFENDING BATTERED WOMEN IN CRIMINAL CASES 13-16 (1992). However, the point is theoretical, since even the Maguigan standard of fairness is often not met. Maguigan, supra note 28, at 387-88.

\textsuperscript{35} Syndrome evidence has been excluded on a variety of legal grounds, including the ground that the defendant does not fit the "reasonable battered woman" standard which some jurisdictions have adopted as an alternative to traditional, general "reasonableness." See Maguigan, supra note 28, at 439-42.

\textsuperscript{36} The need to portray battered women as completely helpless in order to "merit" victimhood, is one unfortunate result of the use of "learned helplessness" to define battered women. However, Walker's use of this phrase clearly tapped into a widespread conviction that only a completely paralyzed person would be unable to escape or end violence at the hands of an intimate partner. Unfortunately, the reality is otherwise, as a result of a virtual absence of social support or protection from family violence. See infra part II.B.2.c (describing "entrapment" theory of battering). Concern about the ways that the "victim" image has been used against many battered women, and seems to ignore their many strengths, has led many to question use of the term "victim" altogether. See, e.g., Schneider, supra note 28, at 529-30. However, in my view, "victimization" still describes anyone who has been unjustly harmed by another; many strong, capable and aggressive people can be "victimized." Indeed, a natural response to being victimized is rage. HERMAN, supra note 23, at 189-90.
when a father violently attacks a mother, the children will suffer, custody courts routinely reject battered women's claims of abuse as fabrications, exaggerations, or irrelevant to the welfare of the children. Thus, one (typical) court stated "[a] person may be violent and vindictive towards a spouse and yet be the best, most loving, caring, parent in the world." Courts have even awarded custody to fathers who killed the children's mother, on the ground that the violence against the children's mother was not directed toward the children and did not indicate the father would be a poor parent.

Social science research on the impact of spouse abuse on children, has been helpful in countering this dismissiveness. The studies consistently show what common sense dictates: that living in homes where domestic violence takes place is profoundly traumatic and destructive for children, and that men who beat their female partners are more likely to abuse their children, both violently and sexually. The research has been even more successful in affecting

37. See Meier, supra note 20, at 1, 4-9.
39. Meier, supra note 20, at 8 (citing In re Lutgen, 532 N.E.2d 976 (Ill. App. 1988)).
40. This is especially necessary with respect to visitation. Even in cases where the abuser has threatened repeatedly to kill the child, has assaulted the child, etc., courts are loath to deny non-custodial fathers visitation. In the custody case mentioned above, we attempted to counter the great reluctance of the court to restrict or terminate visits, with expert testimony by sociologist Evan Stark. Dr. Stark testified that the studies show extensive harm to children from spouse abuse, the abuser's need to dominate and control the mother and child, and his lack of empathy for child and mother represent a risk to mother and child, and that the child's psychological health requires a mother who is safe and secure. Report of Evan Stark, Custody Case, supra note 16, at 5. Dr. Stark also noted that research indicates that such men often use access to their children as simply another means of extending their control over and torture of the mother, conduct he termed "tangential spouse abuse." Id.; see also Stark, supra note 19, at 287 (describing successful use of "tangential spouse abuse" theory in another custody case). My custody case had not been finally resolved as this Article went to press, but supervised visits continued to be ordered.
41. See Hart, supra note 6, at 29-36; NATIONAL CENTER ON WOMEN AND FAMILY LAW, THE EFFECT OF WOMAN ABUSE ON CHILDREN (1991); Cahn, supra note 38, at 1055-58; see also Developments, supra note 4, at 1609-11. Children are frequently caught in the cross-fire or harmed when trying to protect their mother; and their emotional torment from witnessing such abuse is evidenced by behavioral, somatic and emotional problems similar to those experienced by abused children. Moreover, the research suggests that approximately half of the men who beat their wives also abuse their children. Lee Bowker et al., On the Rela-
legislative policymaking: Numerous states and the United States Congress have in the last few years passed legislation calling for state courts to consider evidence of spouse abuse in custody determinations, thereby mandating a transformation in traditional judicial approaches to the issue.42 In many instances, the statutes have explicitly cited the social science findings concerning harm to children from spouse abuse.43

Unfortunately, this research too, can be turned against battered women. Thus, evidence of the harm to children from spouse abuse is sometimes pointed to as another reason to criticize the victim of battering, for "subjecting the children" to it. Legally, a batterer's abuse of children is more likely to be held against the mother than the father in an action for neglect or abuse, even if the mother is a co-victim along with the children.44 Although battered women frequently valiantly struggle to protect their children from abuse, if they cannot protect themselves they are unlikely to be able to protect or adequately nurture their children.45 Despite the failure of the community to provide protection to women who are battered and stalked, to sanction abusers, or even to adequately protect children,46 criminal sanctions against mothers who are co-victims of violence are common.47

42. Congress’ House Concurrent Resolution 172 actually calls for adoption of a presumption against custody to batterers, as do some states; others merely require courts to consider domestic violence as a factor in custody decisions. See HART, supra note 6, at 32 (chart of custody codes, indicating that a sizeable majority require consideration of domestic violence); NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE (1994) (establishing presumption and requiring visitation only if safe).


44. See Schneider, supra note 28, at 551-52 & n.155; Stark, supra note 19, at 286. Child protection social workers have historically tended to hold women rather than men responsible for most problems affecting children in the family. GORDON, supra note 12, at 73; Fineman, supra note 22, at 101. Thirty-five states include omissions or "failure to protect" in their definition of child abuse; only three state codes provide an affirmative defense based on risk to the parent or child from intervention. HART, supra note 6, at 79.

45. See Stark, supra note 19, at 287 ("[C]hildren's best interest is served by ending the entrapment process typical of battering . . . a woman's physical and psychological security is a minimal precondition for the nurturance and continuity of care children require.").

46. See, e.g., Deshaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189 (1989) (child who was known by child protection agency to be at risk, and was beaten into permanent brain damage, had no substantive due process right to protection by state from father's violence).

47. Schneider, supra note 28, at 553 n.143 (citing cases). This issue is not an easy one. I do not mean to suggest that all criminal actions against mothers for failure to protect are
This recasting of theories and arguments intended to demonstrate the battered woman's victimization by the abuser, into a vehicle for blaming the victim, is merely one aspect of a larger pattern of resistance to battered womens' claims. Gender bias studies, as well as the common experience of lawyers in the field, make clear that courts in all kinds of domestic violence cases continue to treat claims of domestic violence with disdain, disbelief and disincliveness. Courts, police and prosecutors frequently reject claims of violence and pleas for help, on the ground that if the violence were real the woman would have left; if she stayed, it must not be true. Women embroiled in custody disputes with their abusers are frequently accused of "abandoning" their families, "kidnapping" their children or having "emotional instability" when they flee violence, and punished by being denied custody.

unjust, although I believe some are; for purposes of this discussion, the essential point is that social science evidence of harm to children can be and is used against battered women as well as on their behalfs.

48. See Czaplasky, supra note 32 (summarizing numerous examples of courts' rejections of battered womens' claims as non-credible or exaggerated); Meier, supra note 20, at 4-11 (describing courts' rationales for rejecting claims of domestic violence in custody context, and drawing on numerous examples from literature and experience). In my custody case, my client's claims of years of terrorizing by the father were characterized as "exaggerated" and "bizarre" by the psychiatric evaluator, based purely on an interview. The judge characterized the allegations of violence as "mudslinging" and expressed disgust with both parties for their completely contradictory stories. The judge's attitude continued despite medical records and stabwounds proving my client was stabbed in the face and shoulder, numerous police reports, petitions for protection, and at least one witness corroborating threats by the abuser to kill the mother, child and himself.

49. See, e.g., Blair v. Blair, 575 A.2d 191, 193 (Vt. 1990) (reprimanding trial court for finding that "the strangling with the hands and violence and threats that were described . . . have been blown way out of proportion as evidenced by the fact that she stayed throughout the four years of marriage"). Unlike the Blair case, most trial court opinions expressing this sentiment are not appealed. See Czaplasky, supra note 48, at 252 (citing Maryland judge who told a woman seeking a protection order "I don't believe anything that you're saying . . . because . . . [i]f I was you and someone had threatened me with a gun, there is no way that I would continue to stay with them. There is no way that I could take that kind of abuse from them. Therefore, since I would not let that happen to me, I can't believe that it happened to you").

50. Angela Browne tells of a woman who decided to leave her husband with their infant son, after three incidents of violence or threats. After she left, the husband filed for custody, claiming his wife was "emotionally unstable" as exemplified by her "unexplained disappearance" (the woman had written him a letter telling him why she left and that she and the child were fine). When the woman appeared in court for a protection order, her son was removed from her, and placed in foster care with the abuser's family. The woman's access to her son was increasingly restricted as the husband continued to make unfounded allegations of neglect against her. In private the husband warned her that if she did not come back to him, she would lose her son completely. ANGELA BROWNE, WHEN BATTERED WOM-
The widespread skepticism with which battered women’s claims are received by social agencies and courts suggests that less has changed than might have appeared from the massive legal reforms of the last two decades. At a fundamental level, the resistance to battered women’s claims evidences society’s continued unwillingness to believe that “normal” healthy human beings can be, without their own complicity, so frequently and so severely victimized and traumatized by men who appear “normal.”\(^{51}\) It is easier to believe that these women are sick, strange, or malevolent enough to fabricate extensive false allegations of violence by men. Alternatively, it appears to be preferable to blame the victim for having “put up with it” on the incorrect assumption that she could have ended the abuse by leaving.\(^{52}\) Either form of denial is far easier than acceptance of the reality that so many men are so dangerous, and that there is little (or nothing) many women can do on their own to be safe. At root, acceptance of this terrible reality would necessitate recognition that male domination over women is culturally conditioned and condoned; that gender injustice is real, present, and dire.

\(^{51}\) See supra notes 18-20 and accompanying text.

\(^{52}\) The question “why didn’t she leave” underlies virtually all ambivalence about claims of abuse. The question itself is based on two fallacies: the idea that battered women don’t leave; and the idea that “leaving” ends the violence. In fact, the vast majority of battered women do leave at some point; their departure is often the trigger for worse violence. See Mahoney, supra note 9, at 6. Since battering is primarily a means of exercising power and control over the victim, serious abusers do not allow their victims to simply walk away. Thus, my client’s abuser attempted to stab her to death (breaking into her home in the middle of the night) after she evicted him from the apartment; subsequently, pending trial, he stalked her and repeatedly threatened to kill her and the child. He has never been held accountable for any of this behavior, and she and her child remain at risk. Although separated or divorced women comprise 10% of all women, they report 75% of partner violence. Evan Stark & Anne E. Flitcraft, Violence Against Intimates: An Epidemiological Review, in HANDBOOK OF FAMILY VIOLENCE 308 (Vincent B. van Hasselt et al. eds., 1988).

Moreover, studies consistently indicate that approximately fifty percent of homeless women with children are fleeing domestic violence. Joan Zorza, Woman Battering: A Major Cause of Homelessness, CLEARINGHOUSE REV. 421 (Special Issue 1991). In other words, many women don’t have anywhere else to live with their children. Finally, help for battered women who seek safety is rarely forthcoming, from official or unofficial sources. See EDWARD GONDOLF & ELLEN FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988) (more than 70% of women studied had left home at some time in response to violence; substantial numbers sought help of various kinds, which help was not forthcoming); Dutton, supra note 4, at 1227 (“[b]attered women utilize an impressive array of strategies for attempting to stop the violence in some way”).
2. New Social Science Approaches

The pervasiveness of this stubborn resistance to the reality of victimization of women by violent male partners\(^{53}\) means that it is critical for social science experts who seek to help battered women's stories be accurately heard in court, to address their analyses to the real social context which makes repeated battering possible. In the specific case, this means that such analyses must counter the factfinder's inclinations to believe that (1) the battered woman is anything other than "normal," and (2) the battered woman is responsible for the continuation of the abuse. The following briefly describes three relatively new approaches which begin to offer assistance along these lines. Although no one approach is necessarily applicable or sufficient in any given case, aspects of each may be helpful to consider.

a. Post-Traumatic Stress Disorder

Post-Traumatic Stress Disorder ("PTSD") was first conceived to explain the long-term impact on war veterans of being exposed in combat to traumatic events "outside the range of usual human experience."\(^{54}\) Of the three essential symptoms of PTSD, "hyperarousal"\(^{55}\) refers to the survivor's state of "constant alert" for danger, which may take the form of excessive irritability and explosive aggression. "Intrusion" describes the reliving of the horror of the original violence through flashbacks and nightmares.\(^{56}\) And "constriction" refers to the phenomena of "dissociation," "trance," or "numbness" which is a natural human response to massive terror. The protective numb or detached state may continue after the original event to protect against experiencing the horrific memory.\(^{57}\) All three symptoms have been found to be common among battered women.\(^{58}\)

\(^{53}\) Intimate violence also occurs in homosexual relationships. As Mary Ann Dutton notes, "while a gender analysis of power is necessary, it is not sufficient to understand the dynamics of violence and abuse in all intimate relationships." Dutton, supra note 4, at 1211.

\(^{54}\) HERMAN, supra note 23, at 33.

\(^{55}\) Id. at 35-36.

\(^{56}\) Id. at 37-42.

\(^{57}\) Id. at 42-47.

\(^{58}\) Id. at 28-32. Lenore Walker now defines battered woman syndrome in terms of PTSD. See Lenore Walker, Battered Woman Syndrome and Self-Defense, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321 (1992). Judith Herman actually argues that survivors of prolonged abuse experience a more extreme form of PTSD, which she proposes to call "complex post-traumatic stress disorder." HERMAN, supra note 23, at 119. Another name being considered by various professional entities is "disorder of extreme stress not otherwise specified"
If an individual battered woman suffers from PTSD, that information can be quite helpful in the litigation context, in two respects.59 First, the symptoms of hyperarousal, intrusion and constriction may profoundly affect the woman’s demeanor and interaction with people and events, and thereby her credibility, in the eyes of observers. For instance, “dissociation” may cause her to be numb when describing her abuse, thereby appearing “plastic” or “fake.” “Hyperarousal” may cause her to be extremely excitable in response to a minor incident, such as an insult from her abuser.60 Outbursts of anger to the abuser or others, behavior which frequently destroys battered woman syndrome defenses,61 may also be partly explainable by PTSD.62 In my custody case described above, my client’s seemingly “plastic” affect, her inappropriate giggling, and her racing speech, all consistently provoked observers to see her as “weird,” “crazy” or insincere. Thus, Dr. Stark’s testimony about PTSD was helpful in offering the judge an alternative interpretation of her demeanor on the stand, as well as her demeanor in the psychiatric interview, which had resulted in the “diagnosis” of various forms of character disorder.63 Since this case, like most battered women’s cases, was cast as a credibility battle, this expert testimony which directly related to credibility was potentially key.64

Second, the concept of PTSD is an improvement over battered woman syndrome in that it shifts the focus away from the “personali-
ty" or "character" of the battered woman, and describes her behaviors as a natural human response to trauma imposed from external sources. Application of PTSD to domestic violence also makes explicit the profound "trauma" which battered women or abused children suffer. It is difficult, while not impossible, to hold a victim of "trauma" legally responsible for the effects of the trauma. Even if a woman's parenting has in fact been negatively affected, once she is characterized as a "trauma victim," it becomes clear that she (and her child) should be assisted in recovering, not penalized by being separated.

However, PTSD also has liabilities. First, if an individual experiences some but not all of the criteria for PTSD, the diagnosis cannot be made. To the extent that PTSD has been defined as simply another form of "battered woman syndrome," if the full diagnosis cannot be made, it may appear that the woman does not "fit" the syndrome, with all of the associated negative consequences. Moreover, PTSD still treats the battering victim as suffering from a "clinical" condition and "disorder." As such, the diagnosis may still be used against battered women in a custody or neglect/abuse context, although presumably less so than the battered woman syndrome.

b. "Revised Battered Woman Syndrome"

In light of progress in the social science understandings of domestic violence since the battered woman syndrome was first conceptualized and then reformulated, Mary Ann Dutton has developed a much expanded "redefinition" of the battered woman syndrome. This redefinition offers a conceptual framework which experts can use to


66. Of course, if the child's welfare were in jeopardy as a result of her mother's PTSD, removal could be appropriate (but not to the batterer). Presumably, assisting the mother in reducing the destructive impact of the PTSD would be better for child and mother, however.

67. Although Lenore Walker currently uses PTSD as her definition of the battered woman syndrome, see supra note 58, it is not necessary to so define it. An expert could presumably present evidence about PTSD and state that the victim exhibited some of the symptoms, regardless of whether a full diagnosis can be made or not. For instance, in my custody case, PTSD was described and posited, but not diagnosed. See Dutton, supra note 4, at 1199-1200, 1221-26.

68. Clinical psychologist, and collaborator in the Domestic Violence Advocacy Project described in the rest of this Article. See infra note 97.
examine cases in which intimate violence is an issue.\textsuperscript{69} The model responds to two perceived limitations of the "battered woman syndrome" currently in use. First, it seeks to make explicit the need to expand the focus beyond the woman's psychology, to include more contextually the pattern and nature of the violence and abuse, including patterns of dominance and control; the woman's strategies and responses to her abuser's violence, and the outcomes of those strategies; and other contextual dimensions within which she coped with the abuse.\textsuperscript{70} Secondly, the model is structured so as not to define any single set of characteristics or profile of a "battered woman" or battering experience. Dr. Dutton seeks quite explicitly to provide a way of analyzing individual cases which can do justice to each case but does not require a case to fit a particular profile in order to shed light on the woman's actions.\textsuperscript{71}

Specifically, the model calls for expert witnesses to examine "four key components" of the battered woman's experience in any given case: (1) the cumulative history of violence and abuse, including the scope and severity (e.g., attacks on children) or "pattern" of psychological terror and control which many victims endure;\textsuperscript{72} (2) the battered woman's psychological responses to violence, including "psychological distress or dysfunction, cognitive reactions, and relational disturbances;"\textsuperscript{73} (3) the strategies used (and not used) by the battered woman for responding to violence and abuse, and their consequences, including attempts to escape, to placate, to get help for the abuser, to seek alternative living places, physical self-defense, legal action, calling the police, etc.;\textsuperscript{74} and (4) the intervening factors which influenced her strategies for responding and psychological reactions, such as fear of retaliation, economic resources, children, sources of social support, etc.\textsuperscript{75}

Dutton's formulation is helpful in a number of respects. First, as noted, rather than defining the "battered woman" or a particular set of responses to battering, it calls for evaluation of every case in a comprehensive manner, but one which is framed by the issues in the legal case. Thus "learned helplessness" may apply in some cases, but it

\textsuperscript{69} Dutton, supra note 4, at 1194.
\textsuperscript{70} \textit{id.} at 1231-32.
\textsuperscript{71} \textit{id.} at 1196-97.
\textsuperscript{72} \textit{id.} at 1202-15.
\textsuperscript{73} \textit{id.} at 1226-31.
\textsuperscript{74} \textit{id.} at 1218-26.
\textsuperscript{75} \textit{id.} at 1231-40.
need not be present in order for the expert’s evaluation to be relevant. If elements of PTSD are present but the full diagnosis is not met, the expert assessment can so state.\textsuperscript{76} If the abuser only utilized severe violence once or twice, but engaged in other psychologically abusive or controlling behaviors throughout the year, the expert can describe the “state of siege” that existed while no overt violence was occurring.\textsuperscript{77} In short, cases that do not fit the stereotype (as most do not) can still benefit from the expert assessment.

Second, Dutton’s construct clearly invites attention to the context within which the battered woman experienced the abuse. Rather than just considering the woman’s psychological response to particular incidents of violence, the assessment includes her entire social context, including her efforts to seek help or escape, the existence of children, the batterer’s threats to kill or remove the children, the responses of others, economic factors, etc. For instance, if, as in my case, the battered woman had repeatedly sought criminal prosecution and the courts had repeatedly failed to prosecute, this fact, and the fact that non-prosecution of domestic violence is a common phenomenon which does not negate the reality of the violence, could also be addressed. Thus, while based on a “scientific” assessment of the woman and the relevant literature, Dutton’s model is not a purely “medical” model of a “disorder” which exists in a vacuum. The reasons for the battered woman’s choices, perceptions, and behaviors can be fully explored, and those reasons need not mimic any particular syndrome or pattern. This flexibility may offer the clarity and accuracy which the battered woman syndrome has sometimes obscured, and should reduce the likelihood of “blaming the victim” by neglecting to portray her reality and the context within which she lived.

The redefined battered woman syndrome model may also have limitations. First, precisely because it does not articulate a particular theory or concept by which to understand or assess the impact of battering on a woman litigant, it offers less guidance for experts and counsel, and for juries. With sophisticated counsel and experts, this may not be a problem; with others it may be. Second, because it still contemplates ample emphasis on individual psychology, including childhood history or other experiences, the same risks could attend it as have attended battered woman syndrome: judges, prosecutors and juries may not find a woman’s psychological responses “reasonable”

\textsuperscript{76} Id. at 1222-23.
\textsuperscript{77} Id. at 1208.
for purposes of self-defense, merely because they were understandable in light of her past experiences. Third, especially in custody cases, the model's focus on the woman's response to battering, as opposed to the abuser's motives and the impact on the children, may again lead to "blaming the victim" rather than focusing on the perpetrator of the violence. Nonetheless, overall, because the framework expressly contemplates inclusion of the larger context in expert analyses, it invites as fair as possible a portrayal of the battered woman's experience.

c. Entrapment or Coercive Control

In the last few years, there has been a growing emphasis in the literature and community on understanding battering not as violence, per se, but rather, as a larger pattern of dominance and control. The focus on power and control is arguably critical for a number of reasons. First, it can help to recast the omnipresent question, "why did she stay?" As Martha Mahoney points out, portrayal of the

78. See, e.g., id. at 1220 (describing relevance of woman's childhood experience of futility of calling the police for beatings of her mother, as relevant to her adult perception of the existence of alternatives to killing abuser). Most jurisdictions utilize a mixed "subjective" and "objective" reasonableness test for self-defense, whereby the defendant's decision that she needed to kill to defend herself must be a reasonable one for a person with her experience and perceptions. Maguigan, supra note 28, at 379 & n.105. Although this may incorporate a defendant's experiences or perceptions from her past, it seems unlikely that prosecutors, judges and juries will be prepared to let battered women's personal psychology negate culpability, particularly when that psychology is judged to be different than that of a "healthy" or "normal" woman. Indeed, consideration of childhood or other experiences in explaining a defendant's assumptions about available options, etc., comes perilously close to the theory that adults who had painful childhoods should not be held criminally culpable for crimes they commit.

79. Although the model is presented as applying to all kinds of cases, it is clearly driven by Dr. Dutton's experience in homicide cases where the battered woman defendant's state of mind is the critical legal and factual issue.

80. SUSAN SCHIECHTER & ANN JONES, WHEN LOVE GOES WRONG 13-14, 29 (1992) (discussing "coercive control" of abusers); Mahoney, supra note 9, at 53-71; Schneider, supra note 29, at 537-38; Stark, supra note 19, at 282-83. The emphasis on power and control is not new: The Dobashs' analysis of the patriarchal roots of wife-beating is a classic expression of the same thing. DOBASH & DOBASH, supra note 11, passim. Strong domestic violence programs, such as the Duluth Abuse Intervention Project, have always stressed "power and control" in their models for batterers' counseling, and advocates' programs around the country use the "Power and Control" wheel, to educate victims to the dynamic operating in their relationship. See ELLEN PENCE & MICHAEL PAYMAR, POWER AND CONTROL: TACTICS OF MEN WHO BATTER (1986), cited in Mahoney, supra note 9, at 34. Mary Ann Dutton, in the "redefined battered woman syndrome" includes assessment of "power and control" tactics as part of the expert's assessment of the nature and severity of the abuse. Id. at 1206.

81. Mary Ann Dutton's "redefined battered woman syndrome" similarly seeks to replace
abuser’s exercise of power and control over the woman implicitly shifts the attention away from her psychology to his motivations for his violence.\(^2\) When it is clear that his violence, and everything else he does to her, is directed at controlling and possessing her, it is harder to blame her for what she did or didn’t do. Moreover, understanding the pattern of control makes it easier to understand how she “didn’t leave” during the time when he “wasn’t violent.” Second, as Evan Stark points out, focusing on power and control can counter the tendency of the courts to focus on specifiable incidents of physical violence (usually meaning injury), which often trivializes the severity of abuse relationships in which little or no physical injury occurs, yet the abuse is profound, severe, and extensive.\(^3\) Finally, the abuser’s need for power and control may bring to the surface a dynamic which is common in these cases in court, but rarely identified: the courts’ intimidation by batterers and the framing of compliant responses so as to avoid provoking his rage and possible violence.\(^4\)

Evan Stark, a sociologist and social worker, has coined the term “entrapment” to best summarize the experience of battered women. In his words,

[w]hat creates a battered woman is neither violence per se nor the psychological status of either party, but the mix of social and psychological factors that make it seemingly impossible for the victim to escape or to effectively protect herself from abuse—what we

\(^{2}\) Pence & Paymar, supra note 80, at 1226-27.

\(^{3}\) Mahoney, supra note 9, at 57. Thus, Martha Mahoney urges recognition of “separation assault” as a term to describe the extraordinarily common violence aimed at preventing a woman’s departure. Naming this violence “separation assault” makes the motivation explicit, replacing the previous assumptions that battered women only get assaulted as a function of conflict in their relationship. Anecdotal evidence suggests that women get beaten for assertive behavior and resistance to control. Id. at 29 (citing Lenore Walker, The Battered Woman at xi (1979)).

\(^{4}\) In my experience, many court personnel, including judges and social workers appear to bend over backwards to placate batterers, and are careful to give them respect and positive reinforcement. This is quite different from their treatment of the women whose expressions of anger frequently lose them the case. There appears to be a strong dynamic in the courtroom against denying a belligerent abuser what he wants. Expert testimony about this dynamic may not only help a judge recognize his instinct toward placating an abuser, but also offers the best possible explanation of what the battered woman did or did not do: i.e., everything she did was an effort to minimize danger to self and children.
have termed “entrapment.”

Stark and others point out that the batterer engages in a pattern of control that “extends structural inequalities in rights and opportunities to virtually every aspect of a woman’s life,” such as food, money, friendships, personal appearance, relationships with children, extended family, etc. The control exercised by the batterer and his violence is strengthened by the failure of external, social sources of help to intervene or provide any assistance, e.g., when police fail to arrest, doctors fail to inquire about abuse, and child protective services remove a child from her mother rather than help make mother and child safe. For use in court by an expert, Stark suggests a checklist of factors identified by Angela Browne and others, charting the nature and severity of the violence, intimidation, coercion, isolation, threats, and other means of control.

Whether an expert relies on the specific factors Stark suggests, or expands the framework, the “coercive control” theory provides a coherent framework for a psychosocial assessment of a battered woman’s experiences in connection with a legal case. First, the theory seems to enhance the search for justice for battered women by focusing on the batterer’s power and control, and on society’s collusion with the batterer in leaving his victim to her fate. Rather than relying primarily on the woman’s psychological responses, it focuses on the more objective parameters describing the batterer’s behavior. In so doing, it invites a wider range of social science expertise than the traditional psychological expert. Second, the “entrapped” construct

85. Stark, supra note 19, at 290.
86. Id. at 282; see also SCHECTER & JONES, supra note 80, at 17-22.
87. Stark, supra note 19, at 283; see also GORDON, supra note 12, at 285 (“One assault does not make a battered woman; she becomes that because of her socially determined inability to resist or escape.”).
88. Stark, supra note 19, at 290 (listing serial assault, weapons, threats to kill, sexual assault, assaults on children, among others). Mahoney’s “separation assault” would seem to be an obvious item for inclusion in this assessment. Stark also emphasizes Charles Ewing’s theory of “psychological self-defense” as a basis for a self-defense claim which flows from the “entrapment” construct. In essence, psychological self-defense refers to the battered woman’s killing to end her constant state of terror and dread, the “state of siege” described by Sue Osthoff and Mary Ann Dutton. CHARLES EWING, BATTERED WOMEN WHO KILL (1987); Dutton, supra note 4, at 1208. Women who kill, not because they knew they would die that night, but because they knew that if not then, they would die soon thereafter at their batterer’s hands, usually cannot avail themselves of traditional self-defense. Yet when one hears their stories of “entrapped,” or captivity, it seems they had little choice. See cases cited infra note 90. The appropriateness and viability of such a defense is, however, beyond the scope of this Article.
89. This may be the primary difference between Stark’s “entrapped” theory and
can help crystallize clearly how some battered women endure effectively forced captivity and hostage conditions. This theory also counters the notion that if the woman hit the man she could not have been in need of self-defense; it demonstrates that the "hits" per se are not the issue; it is the context of power and control (and terror) that counts. Finally, because the theory starts from a position of consciousness about gender inequality, it assists the factfinder in seeing that her assumptions about "reasonableness" should start from a position of gender equality: since the abuser allows no such equality, it is easier to identify the victimization from the start.

The entrapment theory's greatest strengths may be its greatest weaknesses: First, insofar as it takes an affirmative position about "justice" and injustice, it sounds more like advocacy and less like science. The theory's helpful emphases on the batterer's motivation and behavior, the children's needs, and the social context of non-assistance or condoning the abuse, within which the battered woman's responses to the abuse are put in perspective, can also open the testimony up to attack. Unlike the Dutton model, which retains the paradigm of an expert psychological assessment of the battered woman, this model relies to a large extent on assertions about the psychology of the batterer and children, not necessarily base on interviews with them. Such testimony may be seen as inadequately "scientific," arguably invading the jury's province of judging credibility and finding the facts. However, to date admissibility does not appear to have

Dutton's "redefined battered woman syndrome" model. Dutton emphasizes the importance of an individual assessment of the battered woman. Dutton, supra note 4, at 1202. Stark's theory contemplates non-psychological experts speaking in some depth about behaviors and motivations of individuals they have not interviewed, i.e., batterers (and sometimes children). However, although they are described very differently, the differences are apt to shrink in practice, as under both approaches, experts would analyze psychological conditions as well as external and social impacts and constraints.

90. Women who kill their abusers often live through incredibly harrowing tales of being tracked down like animals and forcibly returned to captivity, or threatened with having the rest of their family killed, etc., if they don't return. See, e.g., State v. Stewart, 763 P.2d 572 (Kan. 1988) (holding that defendant had no right to a jury instruction on self-defense because she shot her husband while he was asleep, after being tracked down, once again severely abused and threatened, and defendant's thoughts of "kill or be killed"); see also State v. Norman, 378 S.E.2d 8 (N.C. 1989) (similar).

91. While some studies have appeared to show equal numbers of violent acts by male and female partners, without distinguishing between acts of aggression and of self-defense, numerous studies show 95% of assaults are by males against females. There is in any event little dispute regarding who inflicts the serious violence and injuries. See Frieze & Browne, supra note 24, at 182-83.

92. See supra note 89.
been a problem; this kind of critique is most likely to arise in cross-examination.93

A second possible limitation of the entrapment theory is the risk that a simplistic use of it could backfire. As with the "battered woman syndrome," to the extent that this theory offers a specific construct and rationale for battering, it may be capable of being used against some women whose stories do not fit the model perfectly. Over-emphasis on "entrapment" might in some cases be used to argue the woman was not trapped (and therefore is responsible for the continuation of the violence). In practice, Stark's use of the theory is more subtle, typically emphasizing coercion and control, and not necessarily "entrapment" per se.94 So long as the expert focuses on the ways the abuser constrained and coerced his victim, it will serve the purpose of keeping attention on the perpetrator, reducing courts' tendencies toward victim-blaming.

In sum, expert testimony and social science theories have increasingly been utilized to counter some of the stereotypes, myths, and assumptions which have made it impossible for battered women to receive a fair hearing in many kinds of cases. At root, these theories have sought to educate the courts and public about the realities of battering so that women's stories may be heard and justly adjudicated. Although the first generation of research has broken ground in this area, it has also met with resistance from deep-rooted denial of the victimization experienced by women at the hands of men. Several of the newer approaches, post-traumatic stress disorder, "redefined" battered woman syndrome, and "entrapment" or "coercive control" offer new hope for battered women. By expanding the psychological approach to explicitly take battered women's social context into ac-

93. Evan Stark states that his approach has been used successfully in "dozens" of cases (sometimes under the rubric of "battered woman syndrome"). Telephone Interview with Evan Stark (Feb. 1994). In State v. Borrelli, Dr. Stark's expert testimony was admitted without needing to pass the Frye test of "general acceptance in the relevant scientific community" precisely because it was not so technical and "scientific" as to be incapable of being evaluated by common sense and independent judgment. 227 Conn. 153, 164 (1993). In Borrelli, Dr. Stark did not examine the defendant but merely provided general testimony about battering.

94. In my custody case (a bench trial), Dr. Stark's testimony was admitted without objection. Here he did interview the client, and his testimony included a finding that she was a battered woman. It also emphasized the abuser's need for power and control, the presence of several severe risk factors, and the risk to the child. Because the issue was visitation and not homicide, the worst violence had occurred since the parties were separated, and the main focus was "the best interest of the child," the concept of "entrapment" was not centrally relevant.
count, they implicitly demonstrate the unfairness of victim-blaming and the assumptions of male prerogative which underlie that tendency. These theories have developed in part as the result of a process of interaction between the social sciences and law whereby each informs the other. This process of collaboration has been beneficial both to society's understanding of battering and to the goal of achieving justice for battered women, and should continue.

The integration of legal and psychosocial perspectives on domestic violence is valuable, not only in the realm of theory, but also in practice. In particular, collaboration between lawyers and psychologists in cases on behalf of battered women has been fruitful in developing the kinds of substantive theories described above. However, such collaboration in the actual lawyering process in battered women's cases is far more rare. The remainder of this Article discusses such collaboration in the clinical teaching context.

III. PRACTICE—THE VALUE OF AN INTERDISCIPLINARY APPROACH TO TEACHING A DOMESTIC VIOLENCE LEGAL CLINIC

In light of the extensive integration of psychology into the substantive law and procedures governing legal cases concerning domestic violence, it seems clear that an interdisciplinary approach to teaching about domestic violence in a legal clinic makes sense.

95. A high percentage of social science researchers and clinicians in the field of domestic violence, e.g., Lenore Walker, Mary Ann Dutton, and Evan Stark, consult with attorneys and work as expert witnesses on cases. To some extent, this experience has helped to shape their understandings of how battered women's experiences are resisted and distorted in the courts. The opportunity for interdisciplinary cross-fertilization has been enhanced by two conferences in the last two years sponsored by the American Bar Association Criminal Justice Section on "Defending Battered Women in Criminal Cases," each of which was well-attended and included presenters from both social science and legal professions.

96. See Merryman, supra note 7, at 393 (interdisciplinary approach inherent in teaching domestic violence). The benefit of explicitly interdisciplinary approaches to law has long been debated. Most recently, Judge Edwards of the U.S. Court of Appeals for the D.C. Circuit lambasted the recent trend toward interdisciplinary scholarship and teaching, as reflecting a disdain for legal practice and an overly theoretical approach to law. Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992). Regardless of the merits of his critique, which provoked a flurry of opposing articles (see Symposium, Legal Education, 91 Mich. L. Rev. (1993)), I believe the approach advocated herein would be applauded by Judge Edwards in any event. First, as has been pointed out by Barbara Woodhouse in describing her innovative family law course, it is precisely through an interdisciplinary approach to the field, with use of "clinical" simulations, that students can learn the most about ethical, creative lawyering. See Woodhouse, supra note 1, at 1981-93. Secondly, family law has long been seen as an appropriate subject for interdisciplinary collaboration, both because psychological understanding is integrally connected to the
Toward that end, I have sought to integrate a psychological viewpoint and materials into the domestic violence legal clinic I teach at George Washington University National Law Center. In my first year of teaching this clinic, that integration has been implemented through collaborative teaching with Mary Ann Dutton, a well-known clinical psychologist who specializes in domestic violence, particularly as an expert witness in legal cases.  

Drawing upon my experiences in this clinic, as well as some additional—but as yet untired—teaching ideas, the discussion below reflects my thoughts on the value of an interdisciplinary approach in this field, and offers one model for an interdisciplinary approach to a clinical course on domestic violence. While I do not claim that this

---

applicable legal standards, and because of the obvious need for psychological skill in lawyers dealing with children or emotionally charged parties. See Noel Zaal, Family Law Teaching in the No-Fault Era: A Pedagogic Proposal, 35 J. LEGAL EDUC. 552 (1985). A significant proportion of law school interdisciplinary programs concern family law. As just one example, the University of Nebraska-Lincoln boasts an interdisciplinary “Center on Children, Families and the Law,” which, among other things, oversees seven joint degree programs in “psychological studies.”

97. See discussion supra part II.B.2.b for discussion of Dr. Dutton’s proposed “redefined battered woman syndrome,” see Dutton, supra note 4. In addition to her extensive record of publication and expert testimony, Dr. Dutton founded and directed for fourteen years a Family Violence Clinic at Nova University, in which clinical psychology graduate students received live-client training and supervision as part of their degree program.

98. This model differs from others in two respects. First, it entails greater actual collaboration than most interdisciplinary programs, where actual co-teaching by different professionals is rare. More often law school “interdisciplinary” teaching takes the form of joint degree programs and mixing of professional students in courses taught by one professional. See, e.g., Ken Myers, Help for Children, NAT’L L.J., Oct. 4, 1993, at 4 (describing new three-year course of study at Loyola-Chicago). Many interdisciplinary clinics utilize a variety of models of interdisciplinary work in, e.g., disability law, housing law, immigration law, and juvenile law, but do not typically include ongoing joint teaching and supervision. See, e.g., Jean K. Peters, NEWSLETTER, AALS SECTION ON CLINICAL LEGAL EDUCATION, Dec. 1993, at 17 (on file with author) (describing Yale Law School interdisciplinary clinics). Second, the DVAP model involves a lesser collaboration than at least one other model of co-teaching established in the Family Law course which was collaboratively taught by a psychoanalyst (Joseph Goldstein) and law professor (Jay Katz) at Yale Law School in the 1950s-60s. Each class session consisted of a debate between the two professionals as a lead-in to discussion; the co-teachers constantly locked horns about various theoretical issues in the field. The rewards and difficulties of this highly engaged collaboration are discussed in a moving and revealing essay by Joseph Goldstein, The Silent World of Collaborators from Different Disciplines, 16 L., MED. & HEALTH CARE 248 (1988). This kind of intensive engagement goes beyond what Dr. Dutton and I could contemplate. Among other things, in a live-client legal clinic, the commitment must be to training students to act competently as lawyers, and the teaching of psychology must be subordinated to that goal. Moreover, Dr. Dutton’s position at the law school was limited to one day per week, whereas teaching the clinic constitutes my full-time job.
model is ideal or fully successful, I believe it suggests ways to incorporate the contributions of psychology into the legal teaching of domestic violence, both with and without the assistance of a social science expert as a co-teacher.

After providing an overview of the DVAP and Dr. Dutton's co-teaching role, I discuss the potential contribution of the interdisciplinary approach to both students' substantive advocacy on behalf of their clients and to their lawyering skills outside the courtroom. Social science knowledge can strengthen students' legal arguments and advocacy; working with an actual psychologist can teach them how to both use and challenge expert witnesses or evaluators in domestic violence cases. More fundamentally, outside the courtroom, some basic psychological knowledge can enhance students' interviewing and counseling skills, and their formulation of an appropriate definition of their role as lawyer. Particularly in domestic violence cases, psychological understanding about domestic violence can be critical to students' ability to develop a meaningful lawyer-client relationship and effectively counsel their clients. I focus specifically on three aspects of working with battered women which can be difficult for lawyers: identifying and addressing clients' ambivalence about legal action, which may not be clearly stated; identifying and assessing the degree of danger and the risks or benefits of taking legal or other action; and dealing with the often strong emotional responses to domestic violence cases for all players, including attorneys, judges, and other professional personnel. Understanding "counter-transference" can help students learn to recognize their own and others' personal reactions which inhibit professional responses to their cases, and to interpret and manage these reactions. Finally, I discuss some of the challenges and limitations of the interdisciplinary approach to teaching a domestic violence clinic.

99. Martha Fineman has powerfully critiqued the legal system's over-reliance on social sciences rather than legal rights, in family law cases. See MARTHA FINEMAN, THE ILLUSION OF EQUALITY 149 (1991); Fineman, supra note 22. Fineman views family courts' reliance on psychological experts as an abdication of legal decisionmaking which, in the name of gender equality and "therapeutic" process, masks a dramatic shift in substantive rights to benefit men and hurt women and children. As supra part II illustrates, I share her critique of the distortive potential of psychology in the legal context; I also agree that courts too often treat family cases as implicating emotions and not rights, and place excess reliance on non-legal evaluators, all of which often work to the detriment of women and children. However, as I hope this Article demonstrates, it is possible for the legal profession to work with the social science professions in a way which enhances lawyers' and courts' understanding and protection of women and children in violent families.
A. Overview of the Domestic Violence Advocacy Project

1. In General

The Domestic Violence Advocacy Project is a full-year clinical program emphasizing lawyering for social change with particular focus on the problem of domestic violence. Eight to 10 students take the clinic for 4 credits. Students attend a weekly two-hour seminar, in addition to devoting 14-18 hours per week to their clinical work.

For the bulk of their clinical work, students represent battered women in court cases seeking civil protection orders ("CPO’s") and seeking their enforcement through contempt proceedings. These cases, which are expedited by the court, give students superb experience in representing individual clients, including interviewing and counseling, legal problem-solving, and trial skills. In addition, in the DVAP’s first year, two students have assisted the public defender service in an ongoing homicide case brought against a battered woman who killed her batterer.100

In addition to the casework, most students101 are also required to participate in an ongoing larger project seeking to reform the justice system’s response to domestic violence. In its first year, the clinic’s primary reform project involves a study of the use of expert testimony on battering for self-defense claims in criminal cases in the D.C. court system. Students will survey homicide cases in which battered women killed their batterers, in order to make recommendations to the legislature concerning the appropriateness of proposed amendments concerning admissibility of expert testimony. In addition, those students who are not working actively on the study are required to participate in one other non-litigation project to improve the system’s response to battered women. These projects were formulated directly from our experiences with systemic problems arising in clinic cases.102 Students’ project work also includes participation with other...

100. In light of the expressions of interest from other Public Defender Offices in the region, our long-term plan is to develop a regional resource center for criminal defense counsel seeking consultation or assistance in criminal cases brought against battered women in which domestic violence is relevant to the defense. Such cases might include the classic homicide case in which the battered woman claims self-defense, or other crimes in which the defendant claims duress by her abuser.

101. Because the homicide case has proven to be very consuming for the students involved, they were excused from participating in the system reform projects.

102. The projects students chose between included: (1) developing a complete Referral List of Resources for battered women, including shelters, various kinds of counseling services, legal services in nearby jurisdictions, batterers’ programs, etc; (2) establishing a systematic...
community agencies working on domestic violence through the Domestic Violence Coordinating Council of the D.C. Superior Court.

Through this combination of civil and criminal work for battered women, students can learn about both sides of the legal system, gain exposure to both the prosecutorial and defense roles, and gain a richer perspective on the legal system's response to domestic violence. Moreover, through their simultaneous work on individual cases and larger system reform issues, it is my hope that students will learn about lawyers' ability and obligation to both shape the law and work within it, and about the need for individual representation to inform broad policies, and vice versa.

The DVAP weekly seminar focuses on the interaction of theory and practice, teaching about the substantive law, psychology and sociology of domestic violence, trial skills, and system reform lawyering. Classes involve numerous simulations, roleplays, and discussions of the dynamics of domestic violence, the lawyering role, and ethical issues, with frequent reference to the students' (and teachers') ongoing cases. Classes occasionally utilize socratic dialogue or problem analysis to teach substantive law. Classes also include "Grand Rounds," in which students share issues from their cases and jointly strategize and problem-solve, and guest appearances from other community organizations or experts.

2. Psychological Components

In the first semester,¹⁰³ the psychological perspective was integrated into the structure and content of the clinic in a number of different ways, including classes taught by Dr. Dutton, other classes focusing on psychosocial material, co-supervision, and Dr. Dutton's independent consultations with students.

Dr. Dutton taught two classes on developing psychosocial perspectives on domestic violence. In the first of these classes, Dr.

---

¹⁰³ Method for collecting complaints about police responses to battered women's calls, including establishing communication with the police regarding these complaints; and (3) establishing a system of legal referrals for battered women, including analyzing the current logjam between shelters, courts, police and other community entities, in connecting up needy clients with pro bono attorneys.

Because funding was not obtained and Dr. Dutton's availability was not confirmed until after the semester began, her role was initially developed as we went along, and had an experimental quality. In the second semester, we have been able to apply what we learned from the first semester, and have been more conscious and confident in defining Dr. Dutton's participation in the clinic. That participation is limited to the equivalent of one day per week, however.
Dutton outlined her new framework for psychological evaluations of battered women in legal cases.\textsuperscript{104} As noted supra part II, this model sets out four areas for expert assessment, including the nature of the violence, the victim’s psychological responses, her strategies for coping with violence, and other relevant contextual information. In the second class, Dr. Dutton described two cases in which she has been retained as an expert to assess a battered woman in a legal case. She focused on the profiles of the two women which she developed from her interviews, emphasizing the psychosocial aspects of who they are, and how they might be perceived by the jury. In both classes, Dr. Dutton and I encouraged the students to make connections between her analyses and the students’ ongoing cases. These classes were intended to sensitize the students to the psychosocial context of their clients’ lives, to enhance the depth of their understanding of their clients’ motivations, choices, and needs, and to develop their capacity for empathy and the strength of their advocacy for their clients.\textsuperscript{105}

In addition to the two classes she led, Dr. Dutton co-taught the class on interviewing. As is discussed further infra part III.C.1, the psychological perspective was particularly valuable here. She also participated in most of the other class sessions, lending her own experiences, insights and questions to class discussions. Her inputs frequently assisted the class, e.g., in Grand Rounds, in keeping sight of the clients’ perspectives in context of the students’ discussions of legal procedures and issues.

In addition to her classroom contributions, Dr. Dutton also played a substantial role in student supervision. She and I jointly supervised the two students working on the criminal self-defense case. She also independently consulted regularly with all students on their protection order cases. These consultations have included analysis of students’ taped interviews with new clients, which have provided valuable material for feedback and learning. The benefits of Dr. Dutton’s supervisory roles are also discussed further below.

Finally, psychosocial perspectives\textsuperscript{106} were also integrated into a number of other class sessions taught by myself, such as one on the criminal justice system’s response to domestic violence, one on devel-

\footnotesize{\textsuperscript{104} This model is set forth in full in Dutton, supra note 4, and is summarized at supra part II.B.2.b.}

\footnotesize{\textsuperscript{105} See infra part III.D.1 (regarding need to socialize law students into seeing psychological material and approach as part of their lawyering role).}

\footnotesize{\textsuperscript{106} By this I mean that psychological, sociological, or other non-legal readings were assigned and the issues raised were discussed in class.}
oping the "theory of the case," and one on custody and domestic violence.

In the discussion that follows, I focus only on the particular aspects of our interdisciplinary collaboration and approach which I believe illustrate the central benefits of integrating psychology into a domestic violence legal clinic.

B. Teaching Students Effective Advocacy: Psychological Contributions to Legal Arguments in Domestic Violence Cases

1. Strengthening Development of Case Theory

As is described supra part II, psychology and the social sciences have contributed substantially to the development of legal theories and claims in cases where domestic violence is an issue. An understanding of social science research is frequently helpful to advocacy on behalf of battered women. On a basic level, even without the use of expert witnesses, understanding why a battered woman may not be able to achieve safety by separating from the batterer, may help a lawyer explain to the court why the woman's continuation of a relationship with her abuser does not negate her need for legal protection. Understanding what the studies show about the danger which batterers pose to children may help the lawyer argue for supervised rather than unsupervised visitation.

Substantive knowledge about the psychological impact of post-traumatic stress disorder ("PTSD") can also be crucial to a lawyer's understanding and advocacy on behalf of a severely battered woman. As noted earlier, survivors of violent trauma may be "triggered" by speaking about past events or by other events, even trivial ones, which may evoke the past traumas. If a client is, e.g., strangely numb when speaking of violence, or highly emotional when speaking of relatively minor matters, the lawyer may be helped in coping with her client by recognizing the signs of PTSD. PTSD may be triggered by merely being in court for a case, let alone testifying about the traumatic events. As in my custody case described supra part II.B.2.a,

---

107. See Dutton, supra note 4; Dutton & Goodman, supra note 59, passim (discussing use of post-traumatic stress disorder in battered women's legal cases).
108. See supra note 52.
109. See supra note 41.
110. This appeared to be the case in one or more cases I have worked on. Apparently the experience of the distant and impersonal powerful male authority of a courtroom can be reminiscent on an emotional level of the experience of being helpless and physically over-
the client's credibility may be undermined by her "strange" or unconvincing demeanor. Evidence and understanding of PTSD may help the court interpret the client's demeanor as traumatized, rather than flip-pant, fake, or hysterical.111

In the DVAP, the students received some general background in these matters (as described above), but, with the exception of the self-defense case, none of the CPO cases required use of an expert witness or social science research.112 As a result, our treatment of these materials was somewhat limited. The teaching of psychosocial material could hypothetically extend well beyond the classes we devoted in the DVAP solely to these issues. For instance, separate classes could focus on traditional and evolving concepts of the battered woman syndrome, post-traumatic stress disorder in battered women and their children, the psychology of batterers, or the impact of domestic violence on children. Classes could also be devoted to the role of social science knowledge in particular types of cases, e.g., custody battles, neglect or abuse cases, homicide cases, or tort cases. At a more sophisticated level, classes might analyze the strengths and weaknesses of social science research, conflicts within the field, and ways such research may be subject to challenge in legal cases.113 Such classes could be taught with or without a social science expert, although they would undoubtedly be enriched by such participation.

In the clinical setting, two obstacles to teaching this material are worthy of mention. The first is the common problem of time constraints which can cause trade-offs between the teaching of substance and skills. In a live-client clinic, the adequacy of the client represen-

powered by a violent exercise of male authority and power. See Dutton, supra note 4, at 1222 n.185.

111. See supra notes 54-67 and accompanying text (discussing use of PTSD in a variety of types of domestic violence cases). Such a claim would of course require expert testimony to at least define PTSD, and ideally, to diagnose the client. In my custody case, Dr. Stark suggested the possibility that the client and child suffered from PTSD, but did not attempt to "diagnose" them.

112. These cases are relatively informal and expedited, designed for pro se litigants. Moreover, the indigent clients and clinical setting mean that funds to retain experts are not commonly available for the bulk of the clinic's caseload. In my custody case described above, however, the case was co-counseled with a large law firm, Crowell & Moring, which itself funded the hiring of an expert.

113. See Goldstein, supra note 98, at 250 (emphasizing the importance of having family law students engage in critical analysis of both the relevance and the reliability of such materials); Zaal, supra note 1, at 564 (describing the "second stage" of an ideal three-stage family law program as focusing on the contributions of other disciplines, learning to do social science research, and to analyze and critique such materials).
tation must be the priority. Thus, substantive or theoretical material which is not always directly applicable to individual casework, is sometimes sacrificed in favor of the teaching of lawyering skills which students unquestionably need to minimally represent their clients. This problem may be solvable to some extent, but most live-client clinics cannot be expected to teach as much of this kind of material as a non-clinical seminar.

The second difficulty is more centrally related to the teaching of interdisciplinary material in a law school: It is the challenge of teaching students to make use of the social science materials in their lawyering work. Our experience in the DVAP’s first year was that students did not naturally apply these materials to their legal cases. This was true for more than one team, even where they were urged to make the connection between materials on domestic violence and custody/visitation, and their requests for limited or no visitation in their cases. This and other forms of resistance by law students to incorporating social science materials into their casework, are discussed further infra part III.D.1.

2. Learning to Work with or Critique Expert Witnesses

Of course, the importance of social science knowledge to domestic violence cases means that expert witnesses can be critical. Although most civil protection order cases do not warrant expert witnesses, as discussed above, two students in the DVAP have, with supervision, assisted the Public Defender Service (“PDS”) in its representation of a battered woman who killed her batter. The role of the DVAP in assisting the PDS has been to develop the legal and scientific arguments supporting admission of expert testimony on battering, and to offer input regarding both the subject-matter of such expert testimony, and the relevance of domestic violence at various other

114. A common way of reducing time pressure in live-client litigation clinics is to hold an orientation day, days or week, prior to the beginning of the year, in which fundamental skills or substance are taught. More full seminars on domestic violence are needed; they could supplement the clinical experience. See generally Merryman, supra note 7, at 398-99.

115. Depending on how central or controversial the claim being made is, courts will sometimes permit counsel to make reference to social science knowledge without requiring testimony of an expert. For example, a lawyer may argue in a closing argument that “studies show” that batterers do not cease abusing their victims after the parties separate, to support her claim that the client needs protection. However, where the social science knowledge is critical to the success of the legal claim and is disputed, expert testimony will normally be required.

116. See supra note 112.
stages of the criminal process.\textsuperscript{117} To this end, the students have conducted extensive research, reviewing traditional legal authorities and interviewing practitioners around the country, and tapping other resources.\textsuperscript{118} They have also been among the first to grapple with the implications for this field of the Supreme Court's latest decision on admission of expert testimony.\textsuperscript{119} This area of the law is currently in transition and offers substantial challenge to students' legal analytical capabilities, as well as requiring some conversance with relevant social science research.\textsuperscript{120}

Dr. Dutton's role on this case has been multi-faceted. As a clinical psychologist with extensive experience as an expert witness in battered womens' self-defense cases, she has assisted with strategizing on the case as a whole, making contact with other experts and resources across the country, and alerting students and counsel to the pitfalls of certain strategies and approaches. As she is not the expert retained to testify on the case, she has functioned more as a "consultant" than an "expert witness" on the case. At the same time, Dr. Dutton, along with myself, also acts as a co-supervisor, critiquing

\begin{enumerate}
\item Other such uses include the possible use of expert testimony before the Grand Jury, modification of jury instructions to take account of the domestic violence context, etc. See Julie Blackman, Potential Uses for Expert Testimony: Ideas Toward the Representation of Battered Women Who Kill, 9 WOMENS' RTS. L. REP. 231, 231-38 (1986) (describing uses of expert testimony at various pre-trial stages of a criminal homicide case).
\item The National Clearinghouse for the Defense of Battered Women, located in Philadelphia, Pennsylvania, is an invaluable resource for anyone working in the area of battered womens' self-defense.
\item Daubert v. Merrill Dow Pharmaceuticals, Inc., 113 S. Ct. 2786 (1993) (adopting new test which arguably calls for greater scientific expertise on the part of courts and lawyers).
\item The Daubert decision provides new grist for the academic mill by adopting a rather amorphous new standard for admissibility of expert testimony, which will necessarily be subject to extensive testing and refining in the lower courts. Daubert instructs federal judges to assess the "scientific validity" of proffered expert testimony, and suggests, but does not require, application of several "factors" by which to measure such "validity." 113 S. Ct. at 2796-98; see Edward J. Imwinkelried, The Daubert Decision: Frye is Dead, Long Live the Federal Rules of Evidence, TRIAL, Sept. 1993, at 60, 64 (warning that the purportedly more "liberal" standard adopted in Daubert may be double-edged).
\item In addition, changing state laws on the admissibility of expert testimony in domestic violence cases raise many interesting policy and legal issues. See Maguigan, supra note 28 (reporting results of empirical study of battered womens' self-defense cases and arguing for caution in adoption of special statutes on the grounds that such statutes often backfire, and expert testimony is admissible under existing substantive and procedural law). Analysis of these laws can involve students in in-depth legislative advocacy and policy analysis. The DVAP's study of local court practice regarding the admission of expert testimony on domestic violence is one example of a project requiring legal, legislative and policy analysis on this fairly technical issue. See supra text accompanying notes 101-02.
\end{enumerate}
written drafts and making suggestions about the students' approach to
and management of their work on the case.

In addition to assisting as a consultant and co-supervisor on a
particular case, a social science expert can assist in teaching all stu-
dents about other disciplines and working with expert witnesses. One
exercise successfully utilized in the DVAP involved the expert play-
ing herself in class, while students were assigned the roles of counsel
seeking to introduce her testimony, and to cross-examine her. In
particular, the cross-examination can help students acquire a sense of
how one can critique a court-appointed "expert" or an adverse expert
witness. Discussions with the expert herself offered a valuable oppor-
tunity to learn about the strengths and weaknesses of a social science
approach "from the horse's mouth." Where an expert is not directly
available as a co-teacher in a clinic, it may be possible to bring in
someone to appear in class, and/or to consult occasionally on case-
work. To a lesser extent, knowledgeable lawyers can provide some of
the same guidance, perspective, and roleplaying.

C. Teaching the Psychological Dimensions of Lawyering:
The Intangibles of the Lawyer-Client Relationship

Because the representation of clients involves interaction with
and persuasion of human beings, the psychological dimension of
lawyering is substantial. Some basic understanding of psychological
processes affecting human motivations and interaction can assist law-
yers in developing an appropriate rapport with the client and sense of
their professional role, as well as their interviewing and counseling
skills, and their problem-definition and problem-solving abilities,
among others.

The psychological aspects of lawyering are all too rarely articu-
lated, taught or understood in law schools or offices.121 However, in

121. The importance of teaching these skills along with a wide spectrum of other lawy-
ering "skills and values" is the subject of a recent American Bar Association Task Force Re-
port which criticized traditional legal education in this respect. See ABA Section of Legal
Education and Admissions to the Bar Task Force on Law Schools and the Profession, Nar-
rowing the Gap: Statement of Fundamental Lawyering Skills and Professional Values (1992)
(the "MacCrate Report"); see also Naomi Cahn & Norman Schneider, The Next Best Thing:
Transferred Clients in a Legal Clinic, 36 CATH. L. REV. 367, 377-78 (1987) (noting the
minimal attention to interpersonal aspects of lawyering in legal literature, and quoting Justice
Fortas for the proposition that lawyers' relationships with "clients, witnesses, judges and ju-
rors" are at least as important as knowing the law) (citing Abe Fortas, The Legal Interview,
15 PSYCHIATRY 91 (1952)).
approximately the last five years, clinical legal educators have focused more attention on these issues.\textsuperscript{122} The need for interpersonal skills is especially great in the representation of battered women, which can pose particular challenges to lawyers’ capacity for empathy and powers of psychological understanding. The following discussion illustrates, with frequent reference to our experience in the DVAP, the value of the psychological perspective in the teaching of interviewing and counseling, and professional role definition in general. It further addresses three common issues in the representation of battered women for which psychological sophistication is especially valuable: client ambivalence; danger assessment and strategic counseling; and management of “counter-transference,” i.e., the strong personal feelings evoked by these cases, in lawyers, judges, and all of the players in a case.

1. Psychology of Lawyering—In General
   a. Interviewing and Counseling Skills

Competent legal interviewing and counseling requires fundamental human and intellectual skills, such as empathy, connection, clarity and focus. To be effective counselors, lawyers also need human and professional judgment to discern what the client wants/needs from the lawyer, e.g., advice or direction, and to determine how to advise her without usurping her autonomy and decisionmaking. While to some extent these “human skills” may be intuitive and a function of individual personality, a grasp of certain psychological concepts can be very helpful in developing these sensitivities. As Binder, Bergman & Price point out, every lawyer-client interaction is shaped by human motivation and the needs of both lawyer and client.\textsuperscript{123} To cultivate the full and open communication which is necessary for effective

\textsuperscript{122} The two primary texts examining in depth the central role of “counseling” in a “client-centered” approach to lawyering, and the importance of psychological understanding in competent counseling, are \textsc{David Binder et al., Lawyers as Counselors: A Client-Centered Approach} (1991) and \textsc{Robert M. Bastress & Joseph D. Harbaugh, Interviewing, Counseling, and Negotiating: Skills for Effective Representation} (1990); see also \textsc{Thomas L. Shaffer & James R. Elkins, Legal Interviewing and Counseling in a Nutshell} (1987); \textsc{Stephen P. Ellman, Empathy and Approval}, 43 Hastings L.J. 991 (1992) (discussing the need for and differences between “empathy” for and “approval” of clients by lawyers); \textsc{Robert D. Dinerstein, Clinical Texts and Context}, 39 UCLA L. Rev. 697 (1992) (critiquing the Binder et al. and Bastress & Harbaugh texts as failing to adequately consider socio-economic and political differences in the “contexts” of clinical representation).

\textsuperscript{123} \textsc{Binder et al., supra} note 122, at 4-5.
representation, lawyers should understand the potential psychological obstacles to communication such as ego threats, role expectations, and the impact of trauma, among others; as well as psychological facilitators of communication, including empathic understanding, fulfillment of expectations, and affirmation, among others.\(^1\)\(^2\)\(^4\)

Perhaps the single most important psychological ingredient to developing an effective lawyer-client bond, is empathic understanding on the part of the lawyer. People consulting lawyers are often in distress, most obviously in family law and domestic violence cases. Even the need to consult or depend on an “expert” can be in itself disturbing. The confidentiality of lawyer-client communications also invites greater confidence, and hence greater intimacy and vulnerability.\(^1\)\(^2\)\(^5\) Empathy from the lawyer is critical to ease communication for the client, maximize trust, and avoid disruptions in the lawyer-client relationship and joint decisionmaking.\(^1\)\(^6\)

In essence, empathic understanding requires recognition of the importance of peoples’ feelings in affecting what they say or do, and how and when they say or do it.\(^1\)\(^7\) This includes the knowledge that peoples’ feelings are often not articulated directly but are conveyed through nonverbal cues such as body language, or through what people do not say (or do).\(^1\)\(^8\) Once the client’s feelings are rec-

---

124. Not surprisingly, Binder, Bergman and Price rely heavily on psychology and human behavior analysts for their “crash course” in the primary psychological inhibitors and facilitators of interviewing and counseling. See id. at 32-45.

125. Although many of these principles are universal, there are inevitable differences in the power relationships and relative vulnerability of clients, depending on the type of client, e.g., corporate clients vs. legal aid clients. See generally Dinerstein, supra note 122, at 719-21 (emphasizing difference in psychological dynamic of lawyer-client relationship depending on socio-economic “context” of clients).

126. Although they and other authors draw heavily on an analogy to the psychotherapist-client relationship for their discussion of the need for empathy in the lawyer-client relationship, Binder, Bergman and Price take pains to distinguish between the “elementary psychological principles” on which competent legal counseling is based, and the provision of psychological counseling, or uncovering of “unmet needs and conflicts,” which is reserved for trained mental health professionals. BINDER ET AL., supra note 122, at 34-35. It should be noted that many aspects of the authors’ discussions of psychological principles relevant to legal counseling are also applicable to trial skills, such as the presentation of an effective direct examination or persuasion in argument.

127. In response to the oft-voiced objection that “feelings are for ‘shrinks,’ not lawyers,” Binder, Bergman and Price emphasize that “how people react emotionally to situations and to proposed solutions strongly influences the nature and amount of information they provide and the decisions they make.” Id. at 62. They further note that “active listening” is not used to “analyze feelings” as would be the case with a mental health professional, but to express empathy for the client by “acknowledging” a problem’s emotional aspect when a client raises it.” Id.

128. Id. at 54-59; see infra note 157 (describing case in which the client repeatedly said
ognized (or inferred), empathy is expressed by active listening, including the explicit acknowledgement of the client’s feelings, whether stated or unstated.129

Because interviewing and counseling draw so directly on psychological and linguistic knowledge, the teaching of these skills is potentially a very fruitful area for psychological input. This was borne out by our experience in the DVAP. In the seminar we taught interviewing and counseling through a roleplay in which pairs of students interviewed (students acting as) battered women clients who were seeking protection orders.130 In addition, in the second semester we have provided ongoing feedback to students in the supervision context, by reviewing tapes of their client interviews.

In both of these contexts I found the joint critiques by myself as the lawyer and Dr. Dutton as a psychologist to be very complimentary. As a lawyer, my critique of the student interviews tends to focus on the development of the case theory and necessary evidence, holes in the information they obtained, their ability to counsel the client regarding the available and applicable remedies, etc. As a psychologist, Dr. Dutton focuses on miscommunication, unspoken meanings, unintended messages, and strengths and weaknesses in the students’ questioning modes. Key to her approach to interviewing is the notion of the “meta-message.” This concept derives from the psychology of communication and the premise that many statements have implicit unspoken messages. Sensitivity to the meta-message means maintaining awareness of the difference between what the speaker may intend and what the listener may hear (by reading between the lines, observing body language, intonation, context of question, etc.). The lawyer needs awareness of the meta-messages being sent in both directions:

129. Id. at 46-58. Stephen Ellman suggests that legal proponents of “client-centered” counseling may have over-emphasized the psychological counseling metaphor in their emphasis on pure non-judgmental “empathy.” Ellman, supra note 122, at 1011-15 (citing Binder et al., supra note 122, at 60). Pointing out several important differences between mental health and legal professionals’ functions and methods, he suggests that some express judgment or “approval” of client goals and feelings may be more justified and appropriate in the legal context than in the psychological one. Id. at 1011-12. I agree that approval is an important means of demonstrating loyalty and commitment to the client and her goals. My use of the word “empathy” is intended more broadly to include some expressions of approval. See infra part III.D.2 for a discussion of the implications in the interdisciplinary teaching context of this and other differences between lawyer-client and psychologist-patient relationships.

130. In the second semester, this classroom exercise was repeated quite successfully with two new students in a “supervision” setting.
in the clients' communications to the lawyer, and the lawyer's communications to the client.

The importance of the meta-message surfaced during both the roleplay and the live interviews. In one roleplay, one interviewer asked the battered woman client if she had thought about marital counseling. The interviewer may only have intended to assess whether the client is certain she wants to end the marriage, or whether she may return to her partner. However, the psychological critique pointed out that a client may well hear the question as an implicit suggestion that she "should" attempt to preserve the marriage. This "meta-message" could make the interviewee feel defensive, insecure and/or judged. Moreover, by suggesting that a non-legal intervention might be appropriate it may also weaken her commitment to pursuing legal intervention.

The tapes of live client interviews were similarly revealing: In one case, the client asked the students whether her abuser would go to jail if she pursued a criminal prosecution, noting that she thought he really needed mental help. The students responded by "assuring" her that jail was the usual result in these cases. In reviewing the tape, it was apparent that the client did not want to "send" her abuser to jail. The students' response, even if accurate, instead of reassuring her, may have worried her, and deterred her from pursuing the criminal action. This exchange presented a meta-message which the students missed: that the client did not want her attacker to go to jail. Had they recognized the message, they might have explored different responses. For example, they might have more fully discussed why the client felt that way, the pro's and con's of jail in this case, as well as the possibility of obtaining the client's desired outcome, mental treatment.

The psychological perspective also proved helpful in highlighting the need to express empathic understanding, in several ways. For instance, in the roleplays we have identified questions which may put clients off or make them uncomfortable, particularly in context of a client who has been physically and emotionally abused. Such questions might concern whether the abuse has been going on throughout

131. In fact, first offenders in D.C. rarely if ever serve time in jail for domestic violence assaults.
132. Possibly, there was also a meta-message in the students' response: that jail is the "appropriate" disposition.
133. This perspective was not unique to Dr. Dutton, but she was able to identify and frame the interchanges in helpful ways.
the relationship, whether the woman has ever left, why she has returned, etc. Each of these questions may seem helpful to the interviewer who seeks to fully understand the relationship, but to the client may contain hidden criticism, e.g., that she should not have stayed as long as she did. Feeling criticized can only undercut the development of a strong and open lawyer-client relationship.

Similarly, a classic instance of the need for empathic expression by lawyers was revealed in an interview tape: In this case, after the client finished a ten-minute harrowing description of the single instance of violence she had experienced from her former lover, there was complete silence. Then one of the students inquired as to the type and size of the knife used in the attack. This instance was painful to hear on the tape, as the story seemed to cry out for an expression of human sympathy or horror. The lack of such an expression is not a reflection of unfeeling students.134 Their non-response may have been a function of a sub-conscious need to distance themselves from the horror of the client's story.135 It may also have been a reflection of an attempt to “act like a lawyer” by clinically investigating the facts. If so, this story demonstrates the importance of the clinical experience for helping students unlearn two years of learning to think and act “like lawyers,” and teaching them the importance of acting “like a human being” while being a lawyer.

In sum, in listening to Dr. Dutton’s critique of student interviews, I have found that she is able to hone in on and name interactions which I might have found troubling but lacked the vocabulary to explain. As we have worked together I have acquired some of the vocabulary and a better ability to frame these kinds of problems in interviews. Since most lawyers have not been trained explicitly in these counseling skills or psychological concepts, the participation of a psychological expert can be invaluable in training students in these skills. However, it is clear that the concepts can, at least to some extent, also be mastered and taught by lawyers.136

134. These students—as has been true of all DVAP participants—are extremely kind, caring individuals.
135. This need to distance oneself is often at the source of lawyers’ “clinical” behavior toward their clients. See infra part III.C.3 (discussing countertransference); SHAFER & ELKINS, supra note 122, at 55-60 (discussing The Lawyer Persona and the Feelings It Disguises).
136. Of course many lawyers are excellent interviewers or counselors, although only some of them are conscious about the skills they employ in the doing. See DONALD SCHON, THE REFLECTIVE PRACTITIONER 49-69 (1983) (describing the tacit “knowing-in-action” which all competent professionals utilize in practice). However, psychological experts are by definition
b. Lawyering Role

One of the most valuable but mercurial aspects of live-client clinical training is the opportunity for students to begin to test out their identity as lawyers. Issues and struggles surrounding the assumption of the lawyer's role are as many and varied as the people involved. For our purposes, I will focus on two particular instances in the DVAP in which role definition was at issue, and for which the psychological perspective was especially helpful. The first concerned gender and race differentiation, the second concerned expanding the definition of the lawyer's role to include non-legal advice and referrals.

Case 1: One of the student pairs in the DVAP representing battered women in civil protection order cases consisted of an African-American woman and a white man. Their first client, like most DVAP clients, was African-American. Although the man had worked with clients to some extent in his part-time job, the woman had never worked with a client before. Both students came from working-class families; the woman from D.C., and the man from Baltimore. The students and I met the client for the first time down at the court, where she was meeting with the prosecutor's office to press criminal charges against her abuser. He had assaulted her the night before and had been arrested. We interviewed her while she was waiting to meet with the prosecutor. She consented to our representation to seek an immediate temporary protection order ("TPO") (lasting two weeks) and then to represent her at a hearing for a one-year civil protection order. Only one of the students could take the lead in the TPO hearing; with little discussion it was agreed that the man would do this.

specialists in these types of skills, are given explicit substantial training in them, and have been taught to be conscious about their use, all of which make them more natural teachers of such skills. Indeed, communication, listening, and counseling are the core elements of a psychological clinician's professional work. Thus, in her previous work as director of a domestic violence training program for graduate students in psychology, Dr. Dutton's supervision and teaching focused on developing precisely these skills.

137. See infra part III.C.3 for a brief discussion of the role of gender in judges' responses to cases.

138. Pursuant to court rules, the clinic is permitted to provide student representation only to "indigent" clients who would not otherwise be represented by the private bar. D.C. Sup. Ct. Civ. Pro. R. 101(e); Ct. App. R. 48. In the District of Columbia, the vast majority of indigents are African-American.

139. TPO hearings are conducted informally in a judge's chambers. Nonetheless, the decision as to which student should handle the proceeding was easy because the man was
The students (and myself) seemed to develop a strong and positive rapport with the client. She would kiss and hug them (and myself) when saying goodbye after meetings, as would her children. Not until after the case had ended did I learn that the female student had been irritated by her client's treatment of her. The client had more than once asked the woman for non-legal assistance, such as rides to and from meetings, chauffeuring of her children from place to place, etc. The student had not felt comfortable turning these requests down, yet she felt offended by them.

In a class session of "Grand Rounds," in which students shared accounts of lawyering issues arising in their cases, the female student's feelings surfaced. She cited her client's imposition on her for rides, etc., as an example of unreasonable demands by clients, and characterized her own consent as an example of a misguided playing into her client's assumption of a "helpless" role. The class discussion explored the "lawyering role," how one might draw appropriate boundaries, and our hypotheses as to why clients request—and we sometimes comply with requests for—non-legal assistance. Some intense debate was generated by the female student's strong feelings that our clients are "just poor, not helpless." The issues were not fully resolved in the class session.

Subsequently the students met with Dr. Dutton for their first consultation. Partly as a result of this meeting and partly as a result of their own discussions together, they recognized something which had not surfaced in the class discussion: that the client had treated the woman as her "friend" and the man as her "lawyer." For example, the night after the TPO was obtained, when the abuser returned to the home in violation of the Order, the client called the male student. Even after the male student gave her his partner's phone number, she typically did not call her with legal questions. Yet she seemed very open and confiding toward the woman student, and seemed to feel free to ask her for non-legal help. What became evident to the students in retrospect was that the client's response was partly a function of their gender and race. It was easier for the client to perceive the white male as the "real" lawyer, and the Black female as her "friend."

dressed in a suit and the woman was wearing blue jeans. I believe the students had the same instincts concerning which of them would be the appropriate spokesperson with the judge. In later discussions, the female student stated that she had worn casual clothes deliberately because she thought that would be less intimidating to the client than formal attire, and she had not realized we might go before a judge that day. The assumptions underlying this decision were also elucidated in our discussions of the "lawyer's role."
On further discussion with the supervisors, the students also became aware that this differentiation may have been facilitated by their own behaviors. For example, the woman wore very casual clothes in the first meeting with the client, and she told the client that she had grown up quite near to where the client lived. The client’s differentiation was also somewhat “natural” in light of the female student’s naturally more comfortable and casual way of interacting, as compared to the male student’s more formal style of interaction.

The exploration of these and other factors which may have led to the client’s discriminatory treatment was useful for the students in mapping out strategies for the future. The students made conscious efforts to avoid playing into the stereotypes with their next client. Different types of clothing were worn, they agreed that the woman would assume the lead in the interview, and she consciously tried to assume a style of interacting with the client which was more “professional” but still friendly. Whether because of these adjustments or for other reasons, the same issues have not arisen in the students’ work with subsequent clients.

The point of this story is not to suggest that only a psychologist can be expected to surface hidden issues of gender, race, and attorney-client relationship. Certainly, insightful and skilled lawyers can and do identify similar issues with students and in their own practice. However, the psychological analytic process is better suited to getting at hidden, perhaps subconscious issues of interpersonal relationship and feeling. Psychological professionals are also trained, at least to some extent, to address sensitive interpersonal issues, such as those related to race, gender, or class. In contrast, legal training is sadly

140. See supra note 139.
141. Relatively few people from this neighborhood, in which most residents are poor, grow up to be lawyers. The student later stated that she revealed her own background as a means of making connection with the client and minimizing any “intimidation” of the client by herself.
142. By this example I do not mean to suggest that non-legal forms of help are inappropriate for lawyers. On the contrary, as the second case example demonstrates, I consider certain types of non-legal assistance to be in certain circumstances an important aspect of legal representation. Indeed, non-legal actions are inevitable in most types of legal representation, such as corporate practice in which the lawyers are known to “wine and dine” their clients in order to cement the lawyer-client bond. In the case discussed above, however, the appropriateness of the help requested was questionable, and, more importantly, that help appeared to be sought on a gendered and/or racial basis. These factors required the students to examine and work out what they felt to be appropriate boundaries and roles, and to make conscious efforts to assume those roles in the future.
lacking in the explicit development of such interpersonal skills. 143 Moreover, more often than I like to admit, I find that the demands of legal supervision of many students on active cases are such that the "interpersonal" issues may be pushed to the background while more immediately pressing lawyering and legal strategy issues are discussed. Having a co-teacher I can count on to assist students with these issues strikes me as a sensible and effective division of labor. Of course, as the legal supervisor I also endeavor to facilitate similar "processing" of interpersonal issues with students.

Case 2: Psychosocial knowledge has also been important in broadening DVAP students' developing notions of the lawyer's role. Although as a lawyer I am strongly committed to the use and effectiveness of legal remedies for "family problems," it is nonetheless undeniable that many forms of non-legal assistance are also helpful and sometimes preferable to the client. It is critical in many forms of practice, including domestic violence, for lawyers to develop awareness of their clients' needs for non-legal assistance, and to play some role in addressing them. 144

The active input of a psychologist in the DVAP has naturally helped students to broaden their perspective to include non-legal sources of help for their clients. For example, in one case in which the client is an elderly mother of an abusive adult son, the client was extremely ambivalent about seeking an order excluding her approximately forty-year-old son from her home. For the first two months the students focused on interviewing the client and counseling her gently concerning her options. One option identified with the help of Dr. Dutton was the possibility of psychological counseling to assist the client in learning to say "no" to her son, and not to give in under his constant wheeling and pressure. The students expended extensive time and energy in tracking down possible counseling services for elderly indigent clients. In part motivated by this casework, this team of students also decided to make a comprehensive non-legal resource

---

143. See supra note 122 and accompanying text.

144. Although I share many writers' skepticism about the substitution of non-legal remedies for legal remedies in family law cases, see supra note 99, it is still true that various forms of counseling and other social services can also be necessary for clients with many levels of stress and difficulty, and in some cases they may find these preferable to legal action. Other types of practice where lawyers need to cultivate other resources such as counseling, include employment discrimination, AIDS, mental health law, and criminal defense and juvenile law. In the criminal field, treatment for substance abuse or other forms of counseling can be critical to both the individual and to the legal case.
and referral list their “non-litigation” project for the clinic.

The image of the “lawyer as social worker” sometimes causes scorn for legal service or family law work. In fact, lawyers in most types of practice engage in many activities and forms of counseling which are not strictly legal but are an inherent part of the lawyer-client relationship. In any event, in my opinion, especially if one works with an underprivileged population such as the poor, one must be willing to engage in “non-legal” activities for the client’s welfare. If the client is unable to get to and from meetings because of a lack of transportation, providing the transportation may be necessary to effect the goals of the representation. If the client cannot make decisions and follow them through because of emotional obstacles, or if a client has a substance abuse problem and is seeking rights of access to children, finding her treatment or counseling may also be appropriate. In the law school clinic, what is essential is that these questions of role definition be surfaced and addressed, regardless of the particular resolutions which may be reached in particular cases. The participation of a psychologist has been helpful in broadening our focus to include exploration of different non-legal options and services.

2. Psychology in the Representation of Battered Women

In the representation of battered women, there are certain issues which regularly arise, which pose a challenge to lawyers’ counseling and psychological skills. In essence, in dealing with domestic violence, available legal remedies are frequently inadequate and never

---

145. “I’m a lawyer, not a social worker” is a familiar refrain among some lawyers.

146. See supra notes 142 & 144. To me, working with and assisting human beings, and being exposed to the complexities of their lives, is part of the reward of family law and legal service work. An example of non-legal client assistance in the realm of private practice, was aired in one installment of the television show L.A. Law. Family lawyer Arnie represented a sexually inexperienced and despondent client who was caving in to unreasonable demands by his wife in the divorce. Arnie introduced him to an attractive and sexually sophisticated woman. When she initiated a relationship with the client, it gave him new self-esteem, and he decided to stand up for his rights in the divorce.

147. The same is probably true of work representing the mentally ill, people with AIDS, and many criminal defendants, among others.

148. In the future we anticipate this expanded vision to be furthered by a collaborative working relationship with the Emergency Medicine Department of the George Washington University Medical School. Dr. Dutton, as a new Research Professor and Director of that Department’s “Violence Program” will be working to develop a protocol for the Emergency Medicine Department’s response to victims of battering. One longterm goal is to bring medical and law students together to work with battering victims.
ideal. Because the fear of retaliation hovers over virtually any action they may take, battered women are often (understandably) ambivalent about what to do. Moreover, as supra part II suggests, being subjected to chronic violence, and society’s failure to intervene to stop it, can be so demoralizing and disempowering that some clients feel that nothing will help while everything may hurt.149

This context gives rise to the need for particular sensitivity and skill in counseling battered women with respect to at least two issues: (1) identifying and coping with client ambivalence; and (2) assessing dangerousness and providing strategic counseling. In addition, some psychological awareness is also important to deal with counter-transference in the responses of all players to the client and case. The following discusses the value of psychological understanding in teaching students to manage these three aspects of the representation of battered women.

a. Battered Womens’ Ambivalence

Perhaps not surprisingly, the relevance of the psychosocial aspects of domestic violence comes into much sharper focus in context of students’ struggles with their individual cases. When representing individual women, whom they need to understand, strategically counsel, and advocate for, students are forced to confront and examine many of their and society’s assumptions about the meaning and context of their clients’ experiences. These issues very often converge around the problem of clients’ ambivalence about pursuing legal action.150

In the DVAP, at some point during the first semester, all students working with women in civil protection order cases experienced a client’s withdrawal, disappearance, or backing off of all or some part of the initially-intended legal action.151 This phenomenon—and

149. As described supra part II.B.1, Walker’s concept of “learned helplessness” as a psychological phenomenon has increasingly been re-cast in terms of “actual helplessness” because of social “entrapment” and lack of protection. A client’s sense of futility may also be greater if she is poor, young, and/or not economically self-sufficient, as is true of many battered women. See Dutton, supra note 4, at 1231-40 (calling for examination of socio-economic and other “context” in expert evaluations of battered women).


151. In four cases handled by three different teams, the clients pursued and then withdrew from pursuing civil protection orders. One of these was a mother of an abusive son, rather than the usual intimate partner. In a fifth case, a client initially wanted to pursue con-
the challenge it poses for would-be service providers—has not been satisfactorily addressed by advocates for battered women, in part because they are reluctant to contribute to society’s tendency to blame battered womens’ ambivalence for the system’s failures to take action.

In fact, it is my view that the ambivalence of these women is largely a response to society’s persistent messages to the victim that (a) her experiences of domestic violence are trivial, (b) her allegations are untrue, (c) the violence is her fault, and (d) there is nothing that can be done. In short, battered womens’ ambivalence about their situation and choices is simply a direct reflection of society’s own ambivalence about domestic violence.\(^{152}\)

Nonetheless, there is also a discernible and genuinely personal component of many battered women’s ambivalence about taking legal action: In many cases they love the man, don’t want to hurt him, and are reluctant to give up the relationship. Putting aside many socio-

---

\(^{152}\) See supra part II.B.1; GONDOLF & FISHER, supra note 52, at 22-23, 28; Czapanskiy, supra note 32, at 253-58; Dutton, supra note 4, at 1220; Meier, supra note 20, at 4-5, 7-8. This phenomenon is exquisitely demonstrated by a story told by one of my (non-clinical) colleagues of his experience as a prosecutor. He was assigned the prosecution of a man who had shot at his lover. The case was charged as a misdemeanor (presumably because it was a “domestic” case). The female victim subsequently requested to have the case dropped. The prosecutor’s office refused, and subpoenaed the victim’s appearance on the trial date. She appeared, hand in hand with the defendant. When the prosecutor asked the office’s permission to dismiss the prosecution, he was ordered instead to continue with it. In frustration, he did so. To his surprise, in the middle of jury selection, the defendant announced that he wished to plead guilty rather than go to trial. The case was quickly converted into a sentencing hearing. When the judge asked the victim what sentence she sought, the prosecutor was dismayed, assuming she would request no punishment. To his shock, she asked the judge to incarcerate the defendant. (He was then sentenced to 30 days.)

The key moral of this story (which is rich in other strategic, policy issues) is this: battered women’s ambivalence about “hurting” their abuser by taking legal action against him, and their emotional attachment to the abuser, is in part a response to society’s own ambivalence about violence in relationships. When society—in the form of the criminal justice system—speaks firmly and affirmatively against domestic violence, and treats it as a crime, battered women are empowered to stand up for their own right not be abused even by someone they may love. When society consistently recognizes and acts in accord with “justice,” both victims and offenders will be more likely to do the same. This is one of the most important—and most difficult to teach—lessons students can learn in a domestic violence clinic.
economic reasons why many women attempt to make their relationship work,\textsuperscript{153} women's personal ambivalence may also be explainable by several psychological phenomena. For instance, a woman may love her abuser because he has only hit her once and they have had an otherwise loving relationship, because they have had children together, because he is the first man who has ever loved her, or for any number of other "normal" reasons to love someone.\textsuperscript{154} Battered women may also develop greater dependency on their abusers as a result of the batterer's abuse and forced isolation. In especially severe hostage-like cases, a woman may develop a kind of "traumatic bonding," in which the batterer's threats to harm and the victim's isolation and inability to escape, in conjunction with occasional kindnesses from her "capto"	extsuperscript{r}, makes her more psychologically as well as physically dependent upon him.\textsuperscript{155}

Ambivalence about pursuing legal action can also stem from other very realistic concerns: Some women may correctly fear retaliation by the abuser, based on their knowledge of the abuser's personality and psychology. Others who are suffering from PTSD may avoid talking to their legal representatives, miss appointments, or avoid going to court because they cannot bear to re-invoke the traumatic experiences by talking and thinking about them.\textsuperscript{156}

Because social understanding of the psychology of domestic violence is limited, inexperienced lawyers often either fail to register signs of their clients' ambivalence, or react critically to those signs they do notice. Either of these responses can be damaging to their ability to represent their client. For example, a lawyer may push a case forward when it is not in the client's best interest, because the lawyer fails to identify and appropriately weigh the client's fear of

\textsuperscript{153} For example, the existence of children in common, lack of economic ability to support herself and her children, lack of anywhere else to live, etc.

\textsuperscript{154} See Hara Estroff Marano, \textit{Inside the Heart of Marital Violence}, \textit{Psychology Today}, Nov.-Dec. 1993, at 48 (discussing new psychological research and treatment which is beginning to show the complexity of battering relationships, including loving aspects, ultra-dependency of abusive men, the fact that women are typically "the more functional" members of the relationship; and also development of new form of feminist couples therapy in which batterers are held completely responsible for their abuse and abuse must stop before therapy begins).

\textsuperscript{155} Dutton, \textit{supra} note 4, at 1224-25. It is important to bear in mind that women's ambivalence about taking steps adverse to the abuser is not the same thing as ambivalence about the violence itself. I have seen little or no support years of litigation such cases for the old theory that battered women don't "choose" to "end" the violence because they masochistically like it. \textit{See} Marano, \textit{supra} note 154, at 52.

\textsuperscript{156} Dutton, \textit{supra} note 4, at 1198 n.35.
retaliation, where the client has stated that she wants to go forward.\textsuperscript{157} Alternatively, a lawyer may feel critical of a client's ambivalence, because she feels that battered women need to take action against their abusers, and that their ambivalence is a form of self-destructiveness.\textsuperscript{158} The lawyer's feelings may well be sensed by the client even when they are not expressed directly; this will make some clients even less direct and open about their feelings, or more likely to say whatever they think their lawyer wants to hear. In one DVAP case, the client sensed the students' criticism of her own ambivalence about taking legal action, and suddenly became unreachable by telephone. Eventually, when the students sent a more empathic and non-judgmental message to her neighbor (whose phone she used), stating that the students were perfectly comfortable with whatever the client wanted to do, the client miraculously materialized on the other end of the telephone and informed them that she did not currently want to proceed.\textsuperscript{159}

\textsuperscript{157} In one DVAP case, the client was pursuing a civil protection order because the shelter required her to obtain such an order before she could move into their transitional housing. She told the students that her mother was advising her not to take the man to court, since he was leaving her alone now, and taking legal action might provoke him. However, she stand that she wanted to go ahead with the action because she had to get into the transitional housing. Nonetheless, she did a number of things which may have signaled her deeper ambivalence, including being impatient with the students on the phone, avoiding talking to them, and promising to have a friend serve the papers, but week after week failing to have them served. After two continuances had been obtained and the papers were still not served, the students asked her to return the papers so they could hire a professional process server. Within a day after the client was informed that the process server had been hired, she left the shelter, returned briefly to pack up, and then disappeared completely. Unfortunately, the students did not learn of her disappearance before the papers were served. Because the students were responding to her explicit expression of her wishes (that she wanted the CPO despite her ambivalence), and she had never expressly asked the students not to serve the papers, the depth of her inner resistance to going forward (presumably based on her fear) was not recognized or addressed. Apart from the obvious questions this scenario raises regarding mandatory policies of shelters regarding CPOs, it is a compelling example of the importance for lawyers of developing some psychological sophistication in representation of battered women.

This is not intended to suggest that lawyers should be expected to second-guess express instructions from a client. However, a greater range and depth of counseling abilities can enable lawyers to identify the client's ambivalence, to surface the issue with the client, and to assist her in clarifying and making her own explicit decision. In the case described, regardless of the choice made, an explicit determination would have been better for all concerned. If the client feared legal action would put her at greater risk, ideally that risk would have been assessed jointly and weighed, before the papers were served and the "milk spilt."

\textsuperscript{158} This attitude is omnipresent in society, including among feminists who strongly advocate against domestic violence. To some degree hostility toward ambivalent clients is probably also a form of counter-transference. See infra part III.C.3.

\textsuperscript{159} A client's desire to appear un-ambivalent to a lawyer can be fatal at trial, e.g.,
In short, it is critical that a domestic violence legal clinic educate the students about the sources of battered women's ambivalence, and assist the students in developing their abilities to read between the lines of what their clients may tell them explicitly, i.e., to hear the meta-message. Basic psychological concepts, such as the nature and reasons for human ambivalence in these contexts, the phenomenon of "denial," and the nature and effects of PTSD, can be very helpful. Ultimately, students' ability to empathize with the ambivalence inherent in their clients' situations, will most likely determine their capacity to assist those clients.

b. Assessing Danger and Providing Strategic Counseling

Given the possible ambivalence of many battered women, as well as the usual confusion and misinformation plaguing many laypeople concerning the legal system, lawyers for battered women often need to play a relatively affirmative counseling role, which may not come naturally to some students. Such counseling might include providing the client with some perspective on her situation, e.g., assuring her that it is not her fault, that her experiences are not uncommon, and that without significant social or legal intervention the cycle of violence is likely to continue. This type of feedback seeks to reduce the client's sense of fault and inadequacy which an abusive relationship fosters, to strengthen her morale and to support her tentative decision to take action.166

However, a crucial dimension of client counseling for any service provider in this field is the danger assessment. In seeking to help a woman who has been chronically violently attacked by someone in a close relationship to her, every step considered must include an assessment of whether it will increase or decrease the danger she faces. This assessment requires a degree of fine-tuned, nuanced comprehen-

---

166 In one DVAP case, both students commented that after one of them told the client in the initial interview that her story sounded like "a classic case" of the cycle of violence, the client visibly relaxed and appeared greatly comforted and relieved. See Herman, supra note 23, at 68 (victims of abuse often blame themselves).
sion of the client's situation which is often not intuitively grasped by new lawyers.

The danger assessment is complicated by the fact that many peoples' assumptions about the nature of abusive relationships vastly over-simplify the reality. This was illustrated in an early class session of the DVAP. We were discussing the availability of ex parte "temporary protection orders" ("TPOs") which may be obtained on an emergency basis without notice to the respondent, when the petitioner fears imminent danger from him. In the midst of our discussion of the legal proof required to obtain a TPO, one student asked "why wouldn't you always get a TPO? Wouldn't these women always be in imminent danger?" The simple answer is "[n]o, women in these relationships are not always in imminent danger; they are not beaten 24 hours a day, 7 days a week; in fact, abusers are people; they are sometimes nice." However, I found it harder than I expected to answer this question. This was because the articulation of the question itself suggested a host of (inaccurate) assumptions about who batterers and their victims are, how and when the abuse occurs, and what life is like for such people.161 Assumptions such as these are widespread.

Adequate education about the psychosocial context of domestic violence is essential to give the student-lawyer a more accurate basic framework of assumptions within which to assess the information provided by the client. At a minimum, understanding of the "cycle of violence" tells us that violence does not occur twenty-four hours a day. A more in-depth understanding might entail education about what is known about abusers, including their ability to be charming, appealing, and needy, and recognition that abusive relationships are, like all relationships, complex, and held together by a web of connections.162

A reasonably accurate perception of the client's situation is vital to a lawyer's ability to help the client assess the degree of danger she

161. The other side of the coin of the notion that people in battering relationships share nothing but violence, is the pervasive social misconception that a "normal" woman who experiences violence in a relationship would and should immediately end all contact with the perpetrator, and that women who remain in the relationship are "asking for it." This view reflects the fallacious notion that relationships are either all bad or all good, leaving no room for the human reality that we all make compromises in relationships, and frequently tolerate pain in the hope that problems in a relationship can be improved.

162. See Mahoney, supra note 9, at 19-24 (emphasizing ways in which motherhood complicates questions of "staying" or "leaving").
is in, and decide what—if any—action to pursue. In determining whether a TPO, a CPO, possible criminal prosecution, or no legal action is preferable, lawyers and clients must differentiate between imminent and non-imminent danger, and identify what kinds of events may trigger violence. If the client fears legal action will provoke more violence, the lawyer and client must decide if protection can be found, or if the risk is not worth the potential gain. Lawyers must also assist clients in assessing whether the degree of danger suggests that the client’s first priority should be fleeing to a shelter, out of state, etc. Alternatively, the lawyer can explain to the client why legal action is often beneficial, and give the client some hope, which she undoubtedly needs. In short, because many battered women have been living entrapped in fear for some time, the lawyer’s support and outside perspective can be very helpful in helping the client break through the fears and make constructive decisions about strategy.

Finally, while providing the client with some perspective on the utility of legal interventions—and likelihood of future violence—lawyers must be able to walk the fine line between “counseling” the client and “deciding” for her. One must be able to go beyond clients’ often self-protective quick answers, and offer competing perspectives, but at the same time clearly communicate that the decision on how to weigh all the competing factors is the client’s to make. This type of in-depth, nuanced counseling may be more than is reasonable to expect most students to achieve quickly. Experience is undoubtedly needed to learn to recognize and entertain simultaneously many overlapping, potentially conflicting, and uncertain options and outcomes. Psychosocial education about domestic violence and interpersonal counseling skills can provide an intellectual foundation and some rudimentary skills; over time, experience must supply the rest.

3. The Personal Dimension: Dealing with Counter-Transference
In addition to understanding clients and basic elements of interpersonal interaction, psychological understanding can help a lawyer understand the personal dimensions of their own responses to their client and those of other players in the case. In domestic violence cases, personal psychological responses by all players—judges, lawyers, and others—to victims and their problems are often intense and often affect their professional responses. Some of these feelings help performance of the professional role; some interfere with professional performance. Understanding counter-transference and learning to identify it in oneself and (be prepared for it in) others is important for
lawyers who seek to practice in this field.

The training setting provides students the opportunity to learn sensitivity to these issues in a context where they can safely explore the personal psychological aspects of lawyering without professional consequences. Although in the DVAP we did not explicitly teach about counter-transference, Dr. Dutton in her consultations frequently focuses on the students’ feelings about the lawyering process (as do I to a lesser extent in supervision). Because I believe that even without explicitly teaching the concept, an understanding of it is valuable in teaching and supervision, the following discusses counter-transference and its application in the context of representation of battered women, and briefly describes its relevance in context of one DVAP student’s experience.

Ever since the Oedipus complex made its way into popular culture, the Freudian concept of subconscious motivations for conscious adult behaviors has been part of much ordinary discourse, if often in a jocular mode. Far less well known are the Freudian concepts of “transference” and “counter-transference,” which are essential elements of the psychology of all human relationships, and especially those between professionals and clients. These concepts evolved from the psychoanalytic discovery that one’s most important early relationships, typically with parents or siblings, create “blueprints” that remain inside us as adults. Frequently, other people evoke feelings in us which are driven more by our early emotional experiences than by the current person or situation. In the therapeutic relationship, the patient’s imposition of past emotional experiences on the patient’s present-day relationship with the doctor was called “transference” by Freud. Somewhat later, the equal vulnerability of doctors to having their own personal histories affect their responses to their patients, was recognized and termed “counter-transference.”

The importance of counter-transference in the therapeutic treatment of patients has been recognized to some degree in the psychological professions. Writers in the psychological field have ac-

163. Tom Lehrer, Oedipus Rex, on AN EVENING WASTED WITH TOM LEHRER (Reprise Records 1994) (about a boy who “loved his mother”).


165. Id.; J. Sandler et al., Basic Psychoanalytic Concepts: IV. Counter-Transference, Brit. J. Psychiatry 83, 83-88 (1970). The term “counter-transference” is subject to varying usages which can extend broadly to all personal responses of one person to another. For purposes of this Article I use the term in its broader sense.

166. For just a sample of the existing articles in the psychology literature, see Patricia
knowledged that counter-transference sometimes causes emotional reactions which hinder the professional's effectiveness by, e.g., causing her to identify too strongly with one or another of the players in the patient's life, or causing her to be overwhelmed with feeling which may cloud judgment or inhibit rational responses, etc.\textsuperscript{167} At a more basic level, it has been noted that therapists who have conflictual personal feelings about patients may withdraw from the engagement, becoming overly detached and indifferent.\textsuperscript{168} Problematic forms of counter-transference have been most frequently identified in child abuse and neglect cases, which are apt to evoke very passionate responses, but sometimes render otherwise competent professionals surprisingly incompetent.\textsuperscript{169}

There can be little doubt that counter-transference operates also in the attorney-client relationship.\textsuperscript{170} Moreover, because counter-transference operates in any relationship between a professional and lay person, it is also at work in the reactions to the parties of all the players in a case, including the judge, social worker, bailiffs and clerks, as well as the attorneys. Family law and domestic violence cases in particular often invoke intense emotional responses in the professionals involved because they tap into such fundamental feelings about women, men, and families.\textsuperscript{171}


\textsuperscript{168} Reynolds-Mejia & Levitan, supra note 166, at 56-59 (describing dysfunctional reactions of professionals in in-home treatment of child abuse cases); Tobin, supra note 166, at 130-42 (describing complex history of mental health workers' failure to help foreign co-worker/patient having mental breakdown).

\textsuperscript{169} Sara Latz, J.D., M.D., Counter-Transference in the Treatment of Child Abuse, Presentation to the Family Law Section at Annual Meeting of the AALS (Jan. 7, 1994). Dr. Latz described a child neglect case in which very competent therapists and attorneys reacted with vehemence and passion, but failed to reach appropriate dispositions because they had overlooked basic and critical information in the child's records. \textit{See also} Reynolds-Mejia & Levitan, supra note 166, at 57.

\textsuperscript{170} SHAFFER \\& ELKINS, supra note 122, at 66-71 (discussing counter-transference and stating that it is vital in all kinds of cases to be self-aware and conscious of one's own needs, resentments and mixed signals in interacting with clients); Cahn & Schneider, supra note 121, at 381-83; I. Gene Schwartz, \textit{The Attorney/Client Relationship from a Psychotherapist's Perspective}, 20 \textit{COLO. LAW.} 1837 (1991).

\textsuperscript{171} In fact, as Martha Mahoney points out, assuming an incidence rate of at least one incident in 25\% of households, "at least four of the fifteen or more actors in an average criminal action—judors, judge and attorneys—probably will have experienced or committed at
Since counter-transference includes all personal feelings in reaction to a client, it is inherent in all relationships, and is not something which can be avoided.172 And in many ways, counter-transference is positive. In psychology, the therapist’s counter-transference feelings are often a valuable clue to understanding the patient and may be essential to the success of the treatment.173 In the legal profession, counter-transference is operating beneficially wherever people are personally committed to their work due to strong empathy for the population they serve. For instance, women’s identification with women’s rights issues such as domestic violence can fuel a strong empathy for battered women clients, conviction about their cause and strong advocacy on their behalf.174

On the other hand, identification with (or “empathy for”) a victim does not always result in benign and supportive responses. It may be counter-intuitive to realize that sharing a common experience or fear of victimization with a party may create antipathy rather than sympathy in the observer. For instance, not infrequently a female judge or attorney will react critically to a battered woman, e.g. blaming her for “not leaving” the abuser. While this hostility might be interpreted as a lack of empathy or ignorance of the victim’s situation, it is a least as likely that a harsh response reflects the strong need the observer has to separate herself from the victim and to believe that she would never be, or was not in the past, such a victim.175

---

172. Because counter-transference reactions can interfere with professional effectiveness when not examined, people often assume that counter-transference is “bad.” In fact, counter-transference is inherent in all human interaction, and is only “bad” when it is unexamined and causes personal responses to overtake professional ones in a destructive way. Telephone Interview with Sarah Latz, M.D. (Feb. 28, 1994).

173. See Wilson, supra note 166, at 24-25 (describing the progress made by social workers who felt frustrated by their clients, when they understood that their angry feelings were not a sign of professional failure but rather were “pointers toward understanding their clients’ problems”).

174. Feminists’ empathy and identification can also take more complex forms, as is described in Abbe Smith’s article about what it means to be a feminist public defender, Rosie O’Neill Goes to Law School, 28 HARV. C.R.-C.L. L. REV. 1 (1993).

175. The human need to distance oneself from victims by “blaming the victim” is not limited to battered women. A friend told me that when his apartment was burglarized, his neighbors questioned him insistently about what he or his wife could have done to be responsible for the break-in. As the burglars had knocked a hole through the wall to get in, the neighbors were unsuccessful in identifying some act or failure on the part of my friends that they could point to as causing the crime—therefore they could not comfort themselves that this would not happen to them. See Frieze & Browne, supra note 24, at 165-66 (blam-
The presence of negative counter-transference among judges in family law cases is inerferable from the well-known phenomena that the family docket is anathema to most judges, and that judges in family court frequently express disrespectful attitudes towards the parties and the cases.176 Where such disparagement has been directed selectively at women, it has been (appropriately) described as gender bias.177 This kind of personal bias against female victims of domestic violence is unquestionably pervasive, particularly among male judges, and needs little extra analysis. However, it is far more counter-intuitive to realize that some hostility to victims (particularly from female judges), may reflect, not a lack of empathy, but rather, too much: i.e., over-identification.178 And even a sympathetic response borne of the urge to help abuse victims can sometimes backfire, if it creates an overly personal need to "rescue" the victim which pushes the professional beyond the boundaries of her role and causes her to have too personal a stake in the outcome.179

176. In the District of Columbia the problem of judicial discomfort with family cases was recently and insightfully acknowledged by the incoming presiding Judge of the Family Division of the local court in a speech to the Bar Association. She emphasized the importance of good judging in these cases, and stated that some competent psychological consultation or training for the bench might be of assistance in helping judges separate their intense personal feelings from their professional task, thereby improving their approach to cases. The Honorable Susan Winfield, Address to the Family Law Section of the District of Columbia Bar (Sept. 30, 1993).

177. Especially in the early days of domestic violence litigation for civil protection orders, the examples of judicial abusiveness to battered women were legion and shocking. See, e.g., Joan Meier, Battered Justice, WASH. MONTHLY, May 1987, at 37, 43-45 (detailing several stories of judges' abusive treatment of battered women in courts in Massachusetts, Chicago, and other jurisdictions). One Massachusetts judge, Paul Hefferman, was eventually removed from the bench in the wake of a major scandal over the murder of a woman who had sought protection in his court and been treated abusively by him. This caused an investigation, and his history as a wife-beater was discovered. Another judge sat for two years on domestic violence cases after it was discovered that he had severely beaten his wife at least three times. He retired with an unblemished record. Id. at 45. This problem is far from eliminated, as recent gender bias studies disturbingly indicate. See Czapaniak, supra note 48, passim (describing "negative synergy" between judicial bias against battered women and female lawyers).

178. Judith Herman, Father-Daughter Incest 177-89 (1981) (describing different forms of counter-transference between female and male therapists when treating victims of child sexual abuse including distance or overwhelmedness, helplessness and anxiety for women, who identify with the victim, and titillation or lack of empathy for the victim by males, who identify with the perpetrator).

179. Reynolds-Mejia & Levitan, supra note 166, at 56, 59 (the "human urge to help the afflicted and helpless . . . can actually block the therapeutic process" if it creates in the therapist an inability to help the victim process her destructive feelings, or produces an unre-
While there is little that can be done to eliminate professionals' experience of counter-transference, it is possible for lawyers, judges and other professionals to minimize the detrimental effects of such responses. Not surprisingly, the psychological professions are far more advanced than the legal profession in their recognition of, and approach to dealing with, this issue. Peer support, feedback, and professional "supervision" are routinely recommended means of coping with and understanding counter-transference in mental health professions. In the legal profession, however, the term "counter-transference" is little known, and acknowledgement of personal or emotional reactions to legal cases is not a staple of professional dialogue. However, recognition of this issue may be slowly emerging, as evidenced by increasing public forums devoted in part to this subject.

All legal professionals, but especially those in the domestic violence field, need to learn to recognize and separate out those of their personal responses which may interfere with professional efficacy. There is an irony to this prescription, since the women's movement in this country was built on—and feminism in most of its forms starts from—the recognition that "the personal is the political."

alistic need to "rescue" the victim).

180. Id. at 61 (recommending that in-home child abuse therapists make use of "abundant peer support and feedback to manage and reduce countertransference anxiety, helplessness, grandiosity, and anger").

181. The few legal sources discussing counter-transference in the legal context that this author was able to identify are cited in supra notes 164 and 170. Indeed, because of the aggressively intellectual and unemotional nature of the legal profession and law schools, vulnerable dialogue of this sort among professionals or students may not be possible in traditional settings, such as the classroom. However, in some gatherings, such as one-on-one supervision, or the recent forum at the 1994 Annual Meeting of the American Association of Law Schools, greater intimacy is possible. This forum, titled Our Experiences of Harm: Teaching About Painful Subjects, was sponsored by the American University "Women and the Law Project" and was very well-attended. Several law professors shared stories of experiences of being forced to deal with student comments or inquiries touching on issues of extreme vulnerability due to the teachers' personal histories, including experiences of spousal abuse, child abuse, racial or gender discrimination and homophobia. Not all the comments concerned painful pasts; some participants spoke of the pain of working with dying AIDS patients.

Some writers in the field have recently acknowledged a personal history of abuse, in a context where the purpose appears to be to puncture stereotypes and bring family abuse "out of the closet." See, e.g., ANN JONES, Preface to NEXT TIME SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT (1994); MAHONEY, supra note 9, at 8.

182. The principle is still true in many respects and remains a core belief of most feminists, including myself. See Michele Bograd, Feminist Perspectives on Wife Abuse: An Introduction, in FEMINIST PERSPECTIVES ON WIFE ABUSE 23 (Kersti Yllo & Michele Bograd eds., 1988) (stating that feminist researchers reject the role of neutral detached observer, and instead bring their feelings into the research process); Schneider, supra note 29, at 520 (1992).
may be that our ability to go beyond the first recognition of the connection, to a more multi-dimensional understanding of the interaction between "personal" and "political," is a sign of feminism's growing maturity. This more complex understanding would contemplate that to the extent that our personal feelings produce empathy and commitment consistent with professional role, "the personal" is consistent with "the professional."\(^{183}\) However, when the personal interferes with professional role, the boundary between the two identities should remain distinct.\(^{184}\)

In light of the foregoing, it would be desirable to educate law students in the clinical setting about counter-transference,\(^{185}\) a concept which will stand them in good stead throughout their career. Because law students, unlike students studying to be mental health professionals, are not necessarily believers in psychological introspection, let alone in the notion that their childhoods have profoundly shaped their adult existence, and because lawyers and law professors are themselves barely aware of the concept of counter-transference, I have not made it a priority to teach the concept in a formal way. However, as noted above, both Dr. Dutton and I encourage students to talk about their personal reactions to their lawyering experiences. Enabling students to gain some clarity about their motivations and personal issues in regard to work with battered women is an important goal of the DVAP, which has been at least partly successful.

Thus, in the course of the year, there were times when personal

\(^{183}\) Once the professional has "worked through" his or her counter-transference reactions, he or she is best situated to form a professionally "empathic relationship" with the patient. Herman, supra note 178, at 184, 188. In contrast, professionals who deny that they have any personal responses to clients, and therefore do not work them through, are likely to be somewhat handicapped in their professional interactions with the client. Reynolds-Mejia & Levitan, supra note 166, at 55.

\(^{184}\) Discerning when personal involvement leads to appropriate empathy, and when it disrupts professional efficacy is not always easy. However, one signal is the eruption of an unprofessional hostility toward a case or party. See Wilson, supra note 166, at 24-25. Frequently such hostility has its source in over-identification or over-involvement. Because this is somewhat counter-intuitive, I have found this cue to be helpful in discussing with students why they feel hostile toward a client.

\(^{185}\) Cahn & Schneider, supra note 121, at 381-82 (emphasizing intense counter-transference issues which arise for student lawyers dealing with their first clients). Cahn and Schneider imply that counter-transference is a particular problem for new clinicians. \textit{Id}. Although there may be personal issues particular to new clinicians, counter-transference exists to some extent for all professionals in all cases.
histories appeared to get in the way of fully effective advocacy for battered women clients and their children. In one such instance, a very bright, committed and empathic student became more reticent and passive as she entered into active representation of her first client. More specifically, although advised by me to give some thought to and discuss with the client the issue of risk to the children from visitation with their alcoholic, violent father, she more than once neglected to address the issue. Eventually she acknowledged that her personal history of growing up with an alcoholic, abusive father, made it difficult for her to advocate strongly for these children.

In this case, the student was able to see that her ambivalence toward the case and reticence as an advocate was partly due to the inhibiting impact of her own past. This type of understanding is rare, but valuable. Awareness of one’s own “blocks” can enable one to compensate for unconscious inhibitions, by means of conscious actions. Moreover, this kind of self-knowledge is important to students’ decisions about their future careers.186

D. Challenges and Limitations

Inevitably, there are challenges and difficulties in integrating the approach of another discipline into a professional training program. Some of these issues which have surfaced in the DVAP this year can be essentially summarized as the challenges of integrating psychology into legal training, and are discussed infra part III.D.1. In addition, both because questions of role are implicit in the collaboration of two professionals in the training of lawyers, and because legal interviewing and counseling is so frequently compared to psychological interviewing and counseling,187 infra part III.D.2 offers some preliminary thoughts on the differences between the two professional roles. Although issues of this sort arose little if at all in the DVAP, probably because of the particular backgrounds and approaches of Dr. Dutton and myself, as a general matter, interdisciplinary supervision of the sort recommended herein suggests the importance for both supervisors and students of being conscious about the definition of the lawyer’s role, and possible differences between that and the role of psychological professionals.

186. In this case, the student felt confirmed in her commitment to work on domestic violence issues, but also decided that she would avoid individual casework in the near future.
187. But cf. supra note 129.
1. Integrating Psychology into Legal Training

As described earlier, the goal of the DVAP's "psychosocial" classes is to introduce the students to case analysis from a psychosocial perspective, i.e., to develop their understanding of the battered woman's participation in the legal process in context of her personal history, the social and psychological context in which she lives, and the interpersonal context defining the attorney-client relationship. Ideally, this perspective can better equip the students to deal with potentially difficult aspects of lawyering for battered women, such as their frequent apparent lack of cooperation in the case, ambivalence about proceeding, ambiguity in their communications, etc.188 However, because the broader "psychosocial" approach differs profoundly from standard "legal" discourse, any interdisciplinary clinic needs to give some thought to how to "socialize" students into this new way of thinking.189

This became quickly evident when, in the beginning of the year, a number of students in the DVAP were less enthusiastic than I about the prospect of a psychologist co-teaching the clinic. In private, one student said "I thought I was learning to become a lawyer; why do we need a psychologist?" In class, another expressed difficulty seeing any connection between Dr. Dutton's psychosocial model and the students' cases. Finally, as noted earlier, several students seemed unwilling or unable to incorporate social science readings into their arguments in their cases, even when they were directly relevant.190 Although these responses may well have been situation-specific,191

188. See generally supra part III.C.1, for some examples of these issues arising in DVAP cases.

189. I am grateful to Mary Ann Dutton for her clarification and crystallization of this approach. Supervising lawyers need some "socializing" into the psychosocial approach as well!

190. See supra part III.B.1.

191. Some of the comments may have been partly a function of the fact that because we had not been certain we would receive the necessary funding, we had not mentioned Dr. Dutton's participation until it was a fait accompli. This was one month into the semester, and took the students by surprise.

It is also possible that some student resistance to this approach may stem from students' discomfort with psychological issues generally. The typical law student, like the typical person, is not necessarily psychologically introspective. Educating students to the importance of understanding both their own and others' psychological responses requires cultivating an openness and willingness to risk the vulnerability inherent in dealing with personal feelings. In the DVAP, this process begins only after two years of legal education has inculcated students into the importance of setting aside their own feelings in order to become lawyers. It is thus likely that the degree to which the psychological approach "takes" will be ultimately determined by the individual students' own predispositions.
they alerted me to the need to be more explicit in setting the stage for an interdisciplinary clinic. Based on our experience this year, for those considering adopting a similar model, I offer the following suggestions.

First, as in most teaching, the degree to which students will "learn" this material is at least partly a function of clearly stating at the outset what they are expected to learn, how, and why. It is thus critical to introduce the interdisciplinary concept up front, to articulate why both disciplines are so relevant to this work, and to spell out concrete ways that they can utilize a collaborating psychologist. For instance, students should be told that psychological questions will crop up in their cases, e.g., whether a client might suffer from PTSD, whether she is adequately caring for her children, whether she or the abuser is mentally ill, how visitation with the abuser may affect the children, what kinds of psychological counseling or assessment might be available, etc. Such issues are prime issues to discuss with a consulting psychologist. Assuming separate consultations with the psychologist are part of the clinical plan, students should be told this and given concrete examples of the purposes of those consultations, e.g., (1) to consult on the psychosocial issues in the case, e.g., the client's intentions, needs, and wishes, her social context, personal history, etc., counseling or treatment issues for either the client or the abuser, the needs of children, etc; (2) to discuss issues of lawyer-client communication, interviewing and counseling, e.g., understanding the meta-message, understanding and dealing with client ambivalence, understanding and counseling about safety, etc.; and (3) to discuss the students' perspective on the clinical experience, their personal struggles with how to relate to the clients, the lawyering role, etc. Finally, if social science materials are considered to be useful to legal issues in students' cases, it may help to structure class exercises around precisely that: e.g., utilizing mock arguments or drafted motions which use these materials.

In addition to being as explicit and concrete as possible up front about the uses of a psychological professional, it is necessary throughout the course to tie in psychosocial material to the students' casework as much as possible. To a large extent, the psychological issues arise naturally in the course of casework, as students find

---

192. For reasons that remain unclear, DVAP students did not always naturally raise these issues with Dr. Dutton on their own, even when we discussed them in our legal supervision sessions.
themselves struggling to understand what the client does and doesn’t want, what is best for her, and how to relate to her. In the classroom, the connection between psychological material and lawyering needs to be more explicitly articulated. Thus, most non-legal material should be presented in context of problems and issues confronted by lawyers in these cases.

For example, in one class, a pair of students roleplayed the direct examination they were preparing in their case. The class spontaneously raised the issue of whether testimony about sexual abuse would ultimately benefit or hinder the client’s case, in light of various possible implications it might raise in the mind of the judge.\textsuperscript{193} This discussion offered the opportunity to explore (informally) psychosocial understandings of sexual abuse, of pregnancy, and of family violence.

When attempting to convey somewhat abstract material, it is critical to tie it in to the students’ experience with their cases. Thus, when in the first “psychosocial” class, one student questioned the relevance of Dr. Dutton’s psychosocial model, we identified several points of intersection between aspects of the model and the students’ cases. For instance, one pair of students had described their clients as ambivalent and passive, in connection with their lack of follow-through on legal action. Yet when we pushed, they identified many instances of these clients utilizing a variety of non-legal “strategies for coping,” one element of the model. By looking beyond the purely legal framework, we could see how the clients were not passive and, rather than being ambivalent about stopping the violence, were ambivalent about taking legal action, for a number of good reasons.\textsuperscript{194}

2. Maintaining a Clear Definition of the Lawyer’s Role

The DVAP model for integrating psychology into lawyering for battered women incorporates insights from both forensic psychology

\textsuperscript{193} Specifically, the discussion revolved around whether the judge would be likely to be more or less impressed by the abuser’s violence, if the client stated that her current pregnancy was the result of rape. The class was divided between those who felt the visible pregnancy would magnify the severity of the violence, and those who thought it would soften it, because of the benign associations the judge might have to pregnancy.

\textsuperscript{194} Dutton, supra note 4, at 1226-31. Even though we identified some of the clients’ coping strategies, the students may have retained their view that the client’s failure to take legal action meant she was passive and ambivalent. A certain degree of conviction that legal action is all that matters, is too often cultivated in law school. Unpacking notions such as this is part of the “unlearning” process which clinical programs and practice experience can offer.
(i.e., substantive psychological knowledge about domestic violence) and clinical psychology (i.e., interviewing, counseling, understanding clients and oneself). With respect to the latter, most writers about the psychology of lawyer-client interaction have relied extensively on an analogy to "helping" or therapeutic relationships, i.e., the relationship between a psychotherapist and patient.195 However, few have explored the differences between the therapist-client and lawyer-client relationship. In our experience in the DVAP, any such differences have been of little consequence because Dr. Dutton and I share similar conceptions of the lawyering role, presumably due to her extensive experience with legal cases, legal thought on these issues, and lawyering in the field, as well as my knowledge of the psychology field. However, this may not be the case for all psychological and legal professionals in our positions. Moreover, even where it is the case, the process of thinking through the differences between the lawyer's and therapist's roles can help to clarify many aspects of the lawyer's role as well. This clarification is important in the training context: law students need a meaningful conception of the lawyer's role in order to productively incorporate the insights of psychology into that role.

Presumably because in-depth examinations of interdisciplinary work in law schools are still relatively rare, the difference between the disciplines of law and psychology has barely been explored in the literature. Stephen Ellman, in his exploration of the difference and overlap between "empathy" and "approval" in the lawyer-client relationship, suggests that the oft-cited analogy of lawyer-client relationships to therapeutic relationships may be overblown. The differences which Ellman briefly explicates include the contrast between the therapist's lack of need for (most) decisions and the lawyer's need for decisions; the lesser need for vulnerable expression of the client's most intimate personal feelings in the legal interview than in the therapy context; the different source of vulnerability between therapy patients (whose vulnerability toward the therapist is fundamentally

195. See supra note 129. Perhaps because application of psychological models was so new when they were writing, those clinical writers advocating the analogy have tended to focus merely on the points of parallel, and not on the differences which might weaken the utility of the therapeutic model. See, e.g., BASTRESS & HARBAUGH, supra note 122, at 19-57 (describing different psychiatric treatment models); BINDER ET AL., supra note 122, at 60-63 (citing psychologist Goodman's work); Cahn & Schneider, supra note 121, at 378-79 (analogizing the transfer of a legal client from one lawyer to another to the transfer of a psychiatric patient from one therapist to another and applying a psychiatric model).
psychological) and legal clients (whose vulnerability toward the lawyer is more likely to derive from socio-economic or contextual differences); and the fact that lawyers must involve themselves in actions affecting third parties at the behest of clients, whereas therapists typically are expected to take no action on behalf of their patients.196

In this Article, my discussion is necessarily tentative and incomplete, as such differences can be expected to surface (or disappear) increasingly over time. Nonetheless, building on Ellman’s analysis, I would identify at least three pertinent areas where differences in the roles of psychological and legal professionals give rise to differences in how they need to interact with their clients, and which should inform the interdisciplinary approach to a clinical program.

To identify the differences one must start by defining the two professional roles. The analogy between therapists and lawyers stems from their common commitment to “helping” or serving individuals who are their clients. This commonality is profound; indeed, the lawyer’s role as “advocate” for the client is probably the most essential aspect of her role, and the fundamental attribute of the therapeutic role is the therapist’s unconditional acceptance of and commitment to the patient on a psychological level. Nonetheless, the methods which lawyers and therapists use to help their clients differ profoundly. At root, the lawyer’s role is to act as an advocate for the client vis a vis other people and institutions in the world. The therapist’s role is characterized primarily by his or her limitation to private, confidential communication only with the patient, as a supportive listener in an isolated one-on-one interaction, without communication or advocacy in the larger world on the patient’s behalf. From this fundamental difference flow several potential differences in the way the professional roles must be played out with clients.

a. Goals and Methods of Information-Gathering

First, the difference in methods means that psychologists and lawyers need information for different purposes. Psychological professionals need information to a large extent as an end in itself. Their goal is to gain a full understanding of the patient’s psychological and emotional makeup and processes, to help the patient express his or her feelings, and see or understand enough to be able to make desired personal changes or cope with their life.197 Lawyers, on the other

---

197. See HAROLD I. KAPLAN, M.D. & BENJAMIN J. SADOCK, M.D., SYNOPSIS OF PSY-
hand, need information so that they may take legal action on the client’s behalf in the legal system to achieve the client’s goals. Archetypally, in the trial context, lawyers need information to prove the facts necessary to obtain the desired remedies from the court.

This difference in the need for and uses of information necessitate differing approaches to “interviewing” or interacting with clients. Whereas psychological professionals are likely to be minimally interventionist in guiding the interchange with the patient (precisely because whatever the patient raises is relevant by definition), lawyers often need to be able to focus the client on particular questions or issues which need to be addressed in order to achieve the legal goals. Lawyers also need to probe clients for the truth more aggressively than do therapists. Often they need to play devil’s advocate, or challenge (even hypothetically) the client’s version of the facts, in order to bring out conflicting information which may obstruct the case. Lawyers also need to press their clients for the existence of other corroborating or contradicting sources of information, such as third party witnesses, documentary corroboration, etc. In contrast, the therapist must take the client’s word for most things, as, even where the facts may differ from the client’s description, the therapeutic focus is the client’s perspective and feelings about things, more than the actual facts.

In short, the lawyer’s role in “interviewing” the client is both narrower and broader than the therapist’s role. It is narrower in that only a limited portion of the client’s life, feelings, or concerns are relevant to the legal matter. It is broader in that the lawyer needs to go beyond the client, to explore other sources of information.

These differences can be important in how one trains students. With respect to the narrower aspect, clinical students must learn the ability to focus an interview to obtain useful information as efficiently as possible, and to distinguish between useful and less useful information, while also not unduly restricting the discussion. This requires a clear conception of what information is useful to their legal representation of the client. A psychological professional’s ideal interview may range far more broadly, in ways that are at best tangentially relevant the legal representation.198

---

198. For example, a therapist may be expected to see inquiry into the client’s childhood
With respect to the broader aspect, i.e., the lawyer's need to search for "proof," corroboration, and contradictions of the client's point of view, the lawyer's investigations into the external facts is potentially more alienating to the client than the ideal therapeutic exchange. The lawyer must confront the client with the weaknesses in her case, must present her with the opposing party's or judge's potentially opposing perspectives, and must second-guess the client to some extent. In the clinical teaching context, this means that law students need to learn not only "client-centered" interviewing and empathy for the client, but also an ability to stand back from the client's perspective, to second-guess it, to critique it, and to prepare a case which might withstand certain attacks. In short, in the legal context, unlike the therapeutic context, confrontations of the client (albeit sympathetic and gentle ones) are often necessary. This is far less appropriate—if at all—in the therapeutic contest.

b. The Need for Lawyers to Take Action on Behalf of Clients

As Stephen Ellman points out, the roles of therapists and lawyers also differ profoundly with respect to the need for action by both the client and the professional. Insofar as the lawyer's role requires her to act "expressively" on behalf of the client, in ways that both affect her own reputation and professional relationships, and also affect third parties, she is personally involved in and affected by client decisions far more than the typical therapist. The lawyer thus frequently must discuss decisions, actions, and tactics with clients, sometimes engag-

upbringing as critical to the therapeutic endeavor. Such information is unlikely to serve any useful purpose in the legal representation, although it might help the lawyer understand the client's personality. Because in my experience law students in clinical training programs typically have the most trouble learning how to work with facts, including both developing the facts from interviews, and learning how to marshal and interpret pertinent facts, it would be easy for students to become side-tracked if they were encouraged to imitate the broader inquiry of therapists. In one DVAP case, the students were encouraged to explore the presence of "sexual abuse" in the history of abuse of the client. They did so, and learned of a number of examples. However they uncritically incorporated those instances into their direct testimony, without any conscious analysis of how they were relevant or helpful to their case. Subsequently, they decided to leave them out because they posed more problems than help for the case. My view is not that the inquiry was irrelevant, but that students must be taught to pursue any inquiry with an understanding of its use and relevance to the legal representation.

199. Many trial lawyers have experienced at some point being asked "whose side are you on?" by a client, after they have attempted to explain the weaknesses in her case to prepare her for cross-examination, or to explain the benefits of a compromise settlement.
ing in persuasion or expressing her own views. In addition, the morally engaged lawyer may need to engage the client in "moral dialogue" with respect to actions desired by the client but about which the lawyer feels moral qualms. 200

Moreover, the "active" role of the lawyer is in some ways less well-defined than the purely "passive" role of the therapist; as a result lawyers, at least in some fields, must constantly define and re-define the boundaries of their role. The issue which arose with the student whose client repeatedly asked her favors such as driving her children to a party, is one example. 201 While most legal clients do not make such requests of their lawyer, questions of role boundaries constantly arise. Therapists are unlikely to be required to define and re-define their roles to so great a degree. 202

In the clinical context, this means that students must learn to grapple consciously with questions of role boundaries, and with endlessly ambiguous moral and ethical dilemmas. Thus, whether supervision is by a psychological professional or by a lawyer using the therapeutic paradigm, it is critical that students be educated as to the range of choices they must make in defining their role, which is potentially far broader than in the therapeutic context.

c. The Need for Clients to Make Decisions

The action orientation of legal representation also means that a central part of the lawyer-client relationship entails assisting clients in

200. Binder et al., supra note 122, at 358 (encouraging communication with client about "immoral" decisions); see generally Gerald J. Postema, Moral Responsibility in Professional Ethics, 55 N.Y.U. L. Rev. 63 (1980) (arguing for a conception of legal ethics in which lawyers assume personal moral responsibility for the consequences of their professional conduct).

201. See supra part III.C.1.b ("Case 1").

202. This is not to suggest that therapists do not have to engage in boundary-drawing and re-definition; they certainly do. See Herman, supra note 23, at 149-51 (discussing the need for perhaps unusual flexibility in role boundary definition in therapists' work with abuse survivors who may require certain gestures, signs, or actions from the therapist or themselves, in order to obtain the trust and security to be able to heal). However, it is virtually universally accepted that a therapist's job entails meeting her clients in her office for a defined period of time, typically at regular times, and sitting still and listening to them. Lawyers, particularly those working with legal aid clients, must often negotiate whether and where meetings will take place, whether to assist the client in transportation, whether the children can be there, how many meetings will be held, how long they will last, who else will be interviewed, whether they will put certain witnesses on the stand, etc. etc. The extent to which one should befriend a client is also a frequent question. In other words, the range of conduct entailed by the role is far clearer for the therapist than for the lawyer.
making decisions, often quickly. This is in complete contrast to the therapeutic relationship in which decisions regarding action by the client are, if not discouraged, certainly not considered an integral element of most mainstream types of psychotherapy.\textsuperscript{203} Most directly, this means that the lawyer-client relationship typically entails far more "counseling" or input by the lawyer, than the typical therapist-patient relationship. Lawyers must, at a minimum, describe and interpret legal procedures and options, and the risks and consequences of different tactics, so the client can make a timely "informed" choice about these actions. Stephen Ellman suggests that one consequence of this greater involvement of the professional in client decisions is that overt expression of "approval" may be more appropriate and beneficial in the lawyer-client relationship than it has traditionally been considered to be in the therapeutic relationship.\textsuperscript{204} It may be posited that another consequence is, very simply, the need for greater input by the legal professional than the psychological professional. In short, lawyers must learn how to "advise" clients. This means they must develop their own abilities to assess legal options and consequences, but also means developing a sensitivity to the boundaries between appropriate "informing," "counseling" or "advising" and inappropriate control over decisions which should be made by the client.

Taking all of these differences into account when there is interdisciplinary collaboration in a clinical program means that both the collaborating psychologist and lawyer should be conscious of these differences. The psychological professional needs to be able to identify for herself and the students, how her instincts or suggestions may differ from those of a lawyer. The lawyer needs to be clear about the differences so she does not adopt too uncritically the "therapeutic" model of interviewing and counseling. Without conscious attention to these differences, excess reliance on the therapeutic model may teach law students to avoid second-guessing the client; to explore numerous issues which are very relevant in the therapeutic or psychological

\textsuperscript{203} Strict Freudian analysts traditionally were trained to require the analysand to commit to making no major life changes during the course of the analysis. See, e.g., Kaplan & Sadock, supra note 197, at 573 (describing the rule of "abstinence" in psychoanalysis, whereby patient postpones gratification of instinctual wishes so as to discuss them in treatment). Freud considered this necessary because analysis can bring up intense emotions which may fuel desires which may ultimately be fleeting or not in the patient's best interests. Modern analysts tend not to require such a commitment, but often discourage patients from taking action in immediate reaction to various stages of the analysis. Id.

\textsuperscript{204} Ellman, supra note 122, at 1011-12; see supra note 122.
context, but are minimally if at all relevant in the legal context; and may discourage a level of proactive, affirmative counseling which is not part of the therapeutic interaction, but is necessary for effective legal representation.

This discussion does not purport to be comprehensive or conclusive. Undoubtedly many more differences exist between the lawyer-client and therapist-patient relationship than are identified here, with many more implications. However, at the least, it is clear that the lawyer-client relationship calls for more of an active alliance between lay-person and professional than the paradigmatic therapeutic "helping" relationship, on which many recent discussions of legal interviewing have been modeled. The ethical and practical aspects of the relationship are necessarily different. These differences should be taken into account in designing an interdisciplinary approach to teaching a legal clinic.

IV. CONCLUSION

It is my belief that an interdisciplinary approach to domestic violence is both valuable for battered women and increasingly inevitable. Lawyers and psychologists have collaborated extensively in domestic violence cases, and to a lesser extent in the literature, for quite some time, and with very beneficial effect. However, the occasional consultation with or retention of a psychological "expert" in a case is only a fraction of the benefit to lawyers and their clients which can be obtained from collaboration. Not only are lawyers for battered women in need of a psychological framework for understanding domestic violence; sensitivity to psychological issues is also a significant part of all effective lawyering, particularly lawyering for individual clients in the family law field. Bringing these vital aspects of lawyering for battered women into the teaching of a legal clinic can greatly enrich the students' learning processes, making them both better advocates for battered women and better lawyers. At the same time, the continual process of clarifying boundaries between the psychological model and the lawyering role can be enriching for both lawyers and the psychologists who work with them. Ultimately, the interdisciplinary collaboration can only help better society's understanding of battered women's lives.