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# DOMESTIC VIOLENCE AND FEMINIST JURISPRUDENCE: TOWARDS A NEW AGENDA

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## I. WHY A PEER EXCHANGE ON DOMESTIC VIOLENCE AND FEMINIST JURISPRUDENCE?

In the last twenty years, litigation, legislation, activism, and, to a lesser extent, social services for battered women have proliferated. In that time society has moved from virtual denial of the existence of domestic violence to a somewhat grudging acknowledgment that it is a pervasive and serious problem with legal, sociological, and psychological dimensions. Fundamental changes in civil and criminal law and practice have resulted in battered women becoming more visible in the legal system: protective restraining orders are now available in every state; many states have amended their custody statutes to provide for consideration of domestic violence in custody cases; policies for arrest of batterers are increasingly common; prosecutors' offices have begun to prosecute domestic violence cases; and public defenders have begun to recognize the relevance of battering to some of their clients' defenses.<sup>1</sup>

Corresponding to the explosion of legal attention to domestic violence, the subject is receiving increasing attention in law schools. Currently, more than twenty law school clinics and at least six seminars are devoted to representation of battered women.<sup>2</sup> Thus, in the spring of 1994, we organized a Peer Exchange on Domestic Violence to bring together teachers and practitioners to

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The authors wish to thank Barbara Hart, Isabel Marcus, and Jayne Lee for their helpful comments on this article.

<sup>1</sup> See generally *Developments in the Law - Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498 (1993) (overview of legal and policy developments in prosecution of batterers, defense of battered women who kill, civil protection orders, and custody).

Throughout this Article, we refer to the experiences of "battered women" because it is women who are overwhelmingly the victims of ongoing battering. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 10-11 & nn.36-43 (1991) (survey of empirical literature).

<sup>2</sup> The numbers are derived from our own rough survey, and from Mithra Merryman, *A Survey of Domestic Violence Programs in Legal Education*, 28 NEW ENGL. L. REV. 383 (1993).

discuss teaching methods and to further dialogue on the substantive issues.<sup>3</sup> We sought the participation of both clinical and non-clinical teachers in order to further the goal of bridging theory and practice in our teaching.

We also sought to explore and develop the limits and challenges of feminist jurisprudence<sup>4</sup> about domestic violence. As courts have adjudicated more domestic violence cases, new legal issues have arisen and the limitations of prevalent stereotypes about both battered women and abusers have become clearer.<sup>5</sup> Theorists and advocates for battered women are struggling to formulate theories and arguments to respond to these legal and social complexities. Although some explicitly feminist jurisprudence about domestic violence exists, new theories are necessary to address problems that are emerging both

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<sup>3</sup> The following group of individuals, which consisted primarily of clinical and non-clinical law faculty, as well as several non-academic activists, met for two days in April, 1994:

Maria Arias, City University of New York School of Law at Queens College (CUNY)

Stacy Brustin, Catholic University School of Law

Sue Bryant, CUNY

Naomi Cahn, George Washington University National Law Center

Donna Coker, Stanford Law School

Karen Czapanskiy, University of Maryland School of Law

Clare Dalton, Northeastern, visiting at American University, Washington College of Law

Mary Ann Dutton, George Washington University Medical Center and National Law Center

Deborah Epstein, Georgetown University Law Center

Barbara Hart, Pennsylvania Coalition Against Domestic Violence; Battered Women's Justice Project

Yolanda Haywood, George Washington University Medical Center

Catherine Klein, Catholic University

Jayne Lee

Nancy Lemon, Boalt Hall School of Law, University of California, Berkeley

Isabel Marcus, State University of New York at Buffalo School of Law

Joan Meier, George Washington University National Law Center

Mithra Merryman, Georgetown University Law Center

Michele Olvera, Battered Women's Justice Project

Susan Deller Ross, Georgetown University Law Center

Elizabeth Schneider, Brooklyn Law School

Ann Shalleck, American University, Washington College of Law

Because we believed the Peer Exchange should enable a small number of people with some expertise to talk informally to advance understanding and ideas, we chose to limit the size of the gathering. We therefore included only a fraction of the knowledgeable individuals from around the country.

<sup>4</sup> Feminist jurisprudence refers to a developing body of legal thought that is grounded in feminist theories. For an example of the varieties of thought included, see MARY BECKER ET AL., *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* (1994).

<sup>5</sup> See discussion *infra* sections II.B.1, and C.

inside and outside of the courts.

As the Peer Exchange planning process proceeded, a third goal also evolved: to strengthen the links between universities and communities engaged in domestic violence work. While most of the educator-participants already were involved with domestic violence work in the field, we hoped to support their existing activities and to encourage further involvement and collaboration between universities and community institutions and groups.

In structuring the Peer Exchange, we planned five two-hour sessions, each with two or three coordinators to facilitate the session. We entitled the five sessions: "Teaching Domestic Violence," "Domestic Violence and Feminist Jurisprudence," "Interdisciplinary Approaches to Domestic Violence," "Identifying Problems and Solutions in Theory and Practice: Building Bridges Between the Community and the University," and "Future Directions: Planning for a National Conference." The following discussion addresses the primary themes and issues that arose throughout the five sessions.<sup>6</sup>

## II. THEMES THAT EMERGED

The Peer Exchange focused on both pedagogical and substantive issues. With respect to teaching, the key questions posed were: "What do we want to teach?" and "How can we teach it?" In our discussion of the substantive issues, the following themes arose most frequently: (1) issues relating to children (e.g., custody, neglect/failure to protect, and visitation); (2) the importance of dealing with stereotypes, (e.g., how to debunk them in practice while still developing explanatory theories); (3) the need to recognize and explore racial, ethnic, and class differences and similarities; and (4) the challenge of integrating theory and practice, both in developing theory and implementing practice. The following discusses each of these themes in turn. First, however, we briefly survey the types of domestic violence courses taught by Peer Exchange participants.

### A. Overview of Domestic Violence Courses

The Peer Exchange participants represented many different methods of teaching domestic violence issues in law schools. Most of the Peer Exchange participants had some clinical experience in one of the more than twenty domestic violence clinics currently operating nationwide.<sup>7</sup> All seven of the clin-

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<sup>6</sup> This Article does not purport to be a comprehensive survey of the massive social, scientific, and legal literature on domestic violence. Rather it seeks only to highlight some of the cutting-edge issues in the field today. Readers interested in additional resources on any subject raised herein may want to contact the Battered Women's Justice Project (800-903-0111), the National Resource Center on Domestic Violence (800-537-2238), the Resource Center on Domestic Violence: Child Protection and Custody (800-527-3223), the Health Resource Center on Domestic Violence (800-313-1310), or the National Center on Women and Family Law (212-674-8200).

<sup>7</sup> For a full examination of sixteen of these clinics, see Merryman, *supra* note 2. The

ics in which participants currently teach<sup>8</sup> focus on low-income populations and offer representation to battered women seeking or enforcing civil protection orders. The seven clinics differ in many respects, however. For example, at Catholic University's Families and the Law Clinic, in addition to obtaining and enforcing protection orders, students represent their clients in other family law matters including divorce, child custody, and child support. Additionally, the clinic devotes a substantial amount of effort to community education and law reform through teaching in grade schools, working on legislation, and coordinating a support group for battered women.

At CUNY's Battered Women's Rights Clinic, students similarly represent victims of domestic violence who seek both protection orders and other family law remedies.<sup>9</sup> Students also engage in other projects, such as legislative advocacy and community education. More atypically, students helped develop the scope and focus of the services provided by the clinic, based on a survey of community organizations and potential client populations.<sup>10</sup>

At George Washington's Domestic Violence Advocacy Project ("DVAP"), students both represent victims in protection order proceedings and engage in "social change" projects, such as creating and updating a directory of counseling resources in the tri-state area, developing a system for documenting complaints about the police, and developing a legal advocacy program in the Emergency Department of George Washington Hospital. Some students also have worked with public defenders' offices on the defense of battered women who killed their batterers. Perhaps most notably, through collaboration with a clinical psychologist and expert on battered women, the DVAP is pioneering an interdisciplinary approach to lawyering on behalf of battered women and the training of law students.<sup>11</sup>

At Georgetown's Sex Discrimination Clinic, students focus on legal representation in civil protection order cases, as well as on advocacy in related criminal proceedings. At Northeastern University's Domestic Violence Clinic, students work out of a battered women's shelter and a hospital to assist those

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summary here is intended only to give an idea of the spectrum of types of activities offered by the different clinics.

<sup>8</sup> The seven clinics mentioned are the following: American University's Women and the Law Clinic, Catholic University's Families and the Law Clinic, CUNY's Battered Women's Rights Clinic, Georgetown's Sex Discrimination Clinic, George Washington University National Law Center Domestic Violence Advocacy Project, University of Maryland's Clinical Law Office, and Northeastern University's Domestic Violence Clinic.

<sup>9</sup> See Susan Bryant & Maria Arias, Case Study - *A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering That Empowers Clients and Community*, 42 J. URB. & CONTEMP. L. 207 (1992).

<sup>10</sup> See *id.* at 212-14.

<sup>11</sup> See Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOESTRA L. REV. 1295, 1299 (1993).

populations in obtaining and enforcing protection orders. Students also actively seek to advocate for victims in criminal prosecutions of batterers. Finally, students handling domestic violence cases at the University of Maryland's Clinical Law Office represent clients primarily in civil cases, although they occasionally undertake criminal defense work. The students also work on larger projects, such as a successful set of clemency petitions to release battered women who killed their batterers but were precluded from introducing evidence of the history of battering at trial.

The classroom components of most of the clinics generally emphasize an in-depth and critical grasp of the psychosocial dynamics of domestic violence, the pre-trial and trial skills necessary for effective representation, and discussions of lawyering issues that arise in the cases. Most clinical programs also encourage students to think about the law reform implications of their actions.

Several of the non-clinical teachers participating in the Peer Exchange helped develop the first domestic violence seminars in the country,<sup>12</sup> and some are involved in the development of the first textbooks on intrafamily violence.<sup>13</sup> Others have taught about domestic violence in Gender and the Law or Family Law courses. Some participants from outside of the law schools are developing approaches to domestic violence in non-legal settings such as medical treatment or as grass-roots advocates and national policy reformers.

### B. *Goals and Methods of Teaching*

Given the wide range of domestic violence clinical and non-clinical courses taught by Peer Exchange participants, a striking consensus emerged within the group on the fundamental goals and challenges of teaching in this field. Early in the Peer Exchange, participants identified two key goals in teaching about domestic violence: (1) to teach students to let go of preconceptions, to go beyond stereotypes, and to empathize with battered women's realities; and (2) to teach students to think critically about the legal system and to be aware of the need for, and their capacity to affect, social and legal change.

#### 1. *Beyond stereotypes*

Most students, despite their limited knowledge of the field, have strong opinions about domestic violence, often based on widespread stereotypes.<sup>14</sup> These

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<sup>12</sup> See, e.g., Elizabeth M. Schneider, *Violence Against Women and Legal Education: An Essay for Mary Joe Frug*, 26 NEW ENG. L. REV. 843 (1992).

<sup>13</sup> For example, Professors Elizabeth Schneider and Clare Dalton, both Peer Exchange Participants, recently signed a publishing contract for a domestic violence casebook. Additionally, Nancy Lemon, another Peer Exchange Participant, has compiled a set of materials that she hopes to publish. Two professors from the University of Minnesota recently have authored the first full casebook on the subject: BEVERLY BALOS & MARY LOUISE FELLOWS, *LAW AND VIOLENCE AGAINST WOMEN* (Carolina Academic Press, 1994).

<sup>14</sup> See *infra* notes 36-67 and accompanying text for further discussion of those

commonly held stereotypes have contributed to negative outcomes in battered women's cases in many respects. For instance, the notion that battered women are weak, passive, or pathological for "staying" with the abuser fuels society's disbelief and distrust of the women's claims, and resistance to providing protection or criminal prosecution of the abuser. Inaccurate images of abusers as "out of control" monsters often cause judges and other officials to refuse to believe that the polite, calm, and "normal" man in front of them could be guilty of the horrible acts of which he is accused.<sup>15</sup> These same stereotypes can cause students to have difficulty advocating for, or effectively counseling, their clients; the representation may be negatively affected if students perceive the client as dysfunctional or sick. This gap often arises if the client still cares for the abuser, who the students may assume is purely monstrous, and never charming or loving. Moving students (and lawyers) beyond these stereotypes is therefore critical to their effectiveness as advocates.

Many Peer Exchange participants agreed that the goal of dispelling stereotypes is more easily accomplished in a clinical rather than classroom setting. Students in a clinic are confronted with living, breathing people whose personal stories directly challenge common stereotypes. Thus the clinic enables the student to examine how preconceptions about battering play out in practice, to modify these stereotypes in light of the students' experiences, and then to use these new understandings in effective advocacy.

For example, a common negative assumption about battered women is that they "accept" the abuse and do not "leave." When, as often happens, clinic clients drop their legal action, students are understandably frustrated and may find this stereotype reinforced. Often students' initial "explanation" is that battered women are passive or emotionally weak and therefore do not want to leave or take action against their abusers. On further exploration within the clinical setting, however, students can come to understand that a battered woman's ambivalence about taking action against the batterer is not necessarily a function of her individual weaknesses or pathology, but is more a function of her human predicament in which ambivalence is inherent.<sup>16</sup> They may also become aware of the obstacles and deterrents to prosecution of batterers posed by the justice system and other social actors. This deeper understanding

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stereotypes.

<sup>15</sup> See Joan Meier, *The Connection Between Spouse Abuse and Child Abuse: A Study in System Failure* (paper presented at Annual Meeting of the Association of American Law Schools, Family Law Section (Jan. 7, 1994)) (on file with the authors).

<sup>16</sup> Because most batterers are not "monsters," but have nice sides, and are often the father of the woman's children, it is only human for women to feel ambivalent about taking action hurtful to their abuser. See Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 31-47; Mahoney, *supra* note 1, at 29. For further discussion of the "ambivalence" issue in the clinical context, including the objective fact of danger and women's understandable fear as a reason for ambivalence, see Meier, *supra* note 11, at 1343-49.

can reduce students' inclination to blame the victim for her situation, a critical step for advocates in this field.

Most traditional classroom settings do not enable students to achieve the in-depth understanding that comes from practical experience. In this setting, teachers may find it difficult to convey a full understanding of domestic violence because of the problems of overcoming students' preconceptions. Here, even learning more about battered women through innovative theories<sup>17</sup> can be ineffective unless the theories are learned in the context of real battered women's lives. One solution to this problem may be to use films in the classroom; however, while films can convey a sense of reality, they are not a panacea because they too can be seen as portraying exceptional or atypical stories.<sup>18</sup>

The discussants also emphasized that in order to teach students to understand battered women's feelings and to minimize their objectification and blaming of battered women, it is necessary to help students relate the experiences of battered women to their own lives.<sup>19</sup> For example, returning to the problem of battered women's reluctance to leave an abusive situation, a teacher might ask students to think of relationships in which they stayed longer than was good for them or one in which their partners were in some way destructive toward them. This can remind students of their own ambivalence about relationships and the difficulty of ending them, and may increase their empathy for women in violent relationships.<sup>20</sup>

Stereotypes about domestic violence can also be dispelled in both the clinical and classroom setting by means of an interdisciplinary approach. Because domestic violence is, in part, a product of individual psychology and general social and cultural norms, psychosocial insights are critical to an understanding of the problem. To this end it is helpful to teach, as do most participants in the Peer Exchange, psychological and sociological theories and perspectives through readings and "expert" presentations in the course. A solid grounding in these theories can help students grapple with frustrations and confusion when representing their clients, and help them cultivate a stronger connection

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<sup>17</sup> See, e.g., Mahoney, *supra* note 1, at 65, 68-79 (framing the new concept of "separation assault" as violence or coercion exercised by the abuser in order to "prevent her from leaving, retaliate for the separation, or force her to return").

<sup>18</sup> These problems may be less severe in a Gender Discrimination or Women and the Law course. Here, the context of discrimination against women throughout society and the legal system helps students understand that the source of battering is in cultural and historical norms of male domination, rather than the "abnormal" or pathological passivity of women who are victims. See BALOS & FELLOWS, *supra* note 13.

<sup>19</sup> Again, we have found that empathy for the victims is critical for effective advocacy, especially in the face of a resistant and victim-blaming social and legal system.

<sup>20</sup> Of course, as Mahoney points out, women who share children with an abuser are often far more tied to the man than people in a mere dating or cohabiting relationship. See Mahoney, *supra* note 1, at 19-24. The realities, both emotional and practical, of child-rearing can be difficult to convey to younger, childless students.



with their clients.

Thus, in the George Washington University National Law Center's Domestic Violence Advocacy Project, a clinical psychologist collaborates with the clinical law professor by co-teaching, co-supervising, and independently consulting with students concerning their protection order cases. This collaboration assists students in working through problems such as the "ambivalence" issue described above, and also helps them obtain a deeper understanding both of their communication with their clients and of their clients' situations. It broadens the students' understanding of their role as lawyers as well by emphasizing the importance of non-legal concerns in these cases.<sup>21</sup>

Similarly, the "Terrorism in the Home" seminar at SUNY Buffalo School of Law is one component of an interdisciplinary domestic violence program available to students of all levels.<sup>22</sup> Students begin their domestic violence work during the first year when, after receiving training, they escort victims of battering to court and work on a Crisis Hotline in cooperation with the local battered women's shelter. In addition to the seminar, students can enroll in a two-semester domestic violence clinic which places second- and third-year students in community and public agencies concerned with domestic violence. At the request of these agencies, students conduct field research which often involves social work and psychology as well as examination of law enforcement, judicial, and legal practices.

While interdisciplinary approaches can enrich students' views and aid in puncturing stereotypes, it is also important to consider the appropriate boundaries of such interdisciplinary collaboration. For example, in the above-described SUNY Buffalo program, students observe and then participate for two semesters in court-mandated educational groups for batterers. Social workers and a law school professor using the "Duluth model"<sup>23</sup> run the batterers' groups. A feminist psychologist trains the students in group dynamics and psychopathology. This psychologist later works with the students during the academic year to help process their feelings and responses elicited by the experience of working with a batterers' group.

This project generated controversy at the Peer Exchange, where participants questioned the propriety of placing students or other advocates with batterers'

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<sup>21</sup> See Meier, *supra* note 11, for an in-depth discussion of the interdependency of psychological and legal approaches to domestic violence, an overview of the George Washington University program, and a discussion of the concrete ways the psychological perspective can be integrated into a domestic violence legal clinic.

<sup>22</sup> See Isabel Marcus, *Reframing "Domestic Violence": Terrorism in the Home*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* 11-35 (Martha Albertson Fineman & Roxanne Mykitiuk eds., Routledge 1994) (describing this program more fully).

<sup>23</sup> See generally Ellen L. Pence & Michael Paymar, *Power and Control: Tactics of Men Who Batter* (Duluth, Minnesota Program Development, Inc.) (1986). The Duluth Model posits that a batterer's need for power and control is the driving force behind battering and must be understood and confronted in order for a counseling program to be effective.

programs. The two primary questions raised were: (1) In a world of limited resources, should priority go to the needs of victims? and (2) Will those who work with batterers learn to empathize more with their "clients" than with battered women?

Regarding the resource question, even assuming that battered women's needs take priority, the question remains of how best to protect battered women. If batterers' counseling largely succeeded in ending abusive behavior, it might be the best use of resources. The limited data available on this subject suggest, however, that batterers' counseling has had limited success in stopping future abusive behaviors by participants in the groups.<sup>24</sup> On the other hand, since no one knows definitively what actions *will* best protect battered women,<sup>25</sup> continued exploration of the effectiveness of batterers' counseling seems reasonable.

Regarding the second issue of "co-optation," several competing concerns arise. Insofar as students usually have little if any professional experience with battered women or batterers before participating in these programs, they may develop their understanding of domestic violence only from the batterers with whom they work, without developing empathy for battered women, or fully

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<sup>24</sup> See, e.g., Richard M. Tolman and Ghauri Bhosley, *The Outcome of Participation in a Shelter-Sponsored Program For Men Who Batter*, in ABUSED AND BATTERED: SOCIAL AND LEGAL RESPONSES TO FAMILY VIOLENCE 113-22 (D. Knudsen & J. Miller eds., Aldine de Gruyter: Hawthorne, N.Y. 1991) (reporting one study in which 41.5% of the participating men used direct physical aggression within one year after completion; 73.6% used "indirect aggression," including threats and destroying objects; and 92% continued some form of psychological abuse). See generally Richard M. Tolman & Larry W. Bennett, *A Review of Quantitative Research on Men Who Batter*, 5 J. INTERPERSONAL VIOLENCE 87 (1990) (finding that 50-70% of men completing batterer's counseling cease physical abuse in a six to twelve month period; psychological abuse continues for a majority of men). Evidence suggests that one of the strongest deterrents to future violence is the realistic possibility of renewed court intervention. Edleson J. and Syers, M., *The Relative Long-term Effects of Group Treatments for Men who Batter*, (Minneapolis: The Domestic Abuse Project) (on file with the authors).

<sup>25</sup> See generally Kit Kinports & Karla Fischer, *Orders of Protection in Domestic Violence Cases: An Empirical Assessment of the Impact of the Reform Statutes*, 2 TEX. J. WOMEN & L. 163 (1993) (finding that the efficacy of protective orders is limited by problems in implementation and resistance by judicial and law enforcement officers); Adele Harrell, Barbara Smith, and Lisa Newmark, *Court Processing and the Effects of Restraining Orders for Domestic Violence Victims* (Urban Institute Press) (1993) (on file with authors) (finding 60% of protection orders were violated in the following year and that men who objected to orders were more likely to violate). It should be noted that, while there is a great deal of sensational publicity about murders of women who had obtained protection orders, in the experience of the authors, protection orders frequently *do* "work"; they often deter further violence and empower the victims to make further changes for their own safety. Success stories of this kind do not appear in the press because the absence of violence is not considered a newsworthy event.

recognizing batterers' accountability for the violence. A program that is sufficiently clear about the batterers' responsibility for domestic violence, as is the Duluth Model, may minimize this problem.<sup>26</sup>

There can be little doubt that, at minimum, students' work with batterers' counseling programs may help to dispel stereotypes of batterers by exposing students to the human and individual men who batter. The benefits of this deeper understanding of batterers, however, must be weighed against the risks of resource drain and co-optation mentioned above. Interdisciplinary work of this sort inevitably calls for careful consideration of appropriate limits.<sup>27</sup>

One final means of dispelling stereotypes about domestic violence is the integration of the subject throughout the law school curriculum. Currently, outside of the clinical context and feminist jurisprudence, few courses other than family law cover domestic violence. Even within family law, most casebooks devote relatively few pages to the subject.<sup>28</sup> Domestic violence, however, cuts across many different areas of the law, including criminal law and procedure and tort law and remedies, as well as family law. Teaching about domestic violence throughout the curriculum does not necessarily require adding new units to every existing course; teachers can use hypotheticals drawing on battered women's experiences whenever relevant.<sup>29</sup> In contract law, for example, the concept of duress can be taught by using a hypothetical in which a woman is forced to sign a marital contract by her fiancée who has previously used violence against her. This type of hypothetical can help dispel

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<sup>26</sup> A program that holds batterers accountable would require the batterer to terminate any violence, to seek to compensate for harm caused, to recognize the victim's right to autonomy, and to shed his assumptions that he has the right to "own" and control her. Ultimately an effective program must ensure that consequences (usually incarceration) are faced upon recidivism. See, e.g., David Adams, *Treatment Models of Men Who Batter: A Profeminist Analysis*, in FEMINIST PERSPECTIVES ON WIFE ABUSE 176 (Kersti Yllo & Michele Bograd eds., 1988) (distinguishing between traditional psychotherapeutic approaches to batterer's counseling which do not hold batterers accountable for violence or confront underlying expectations of male domination and "feminist" models that do).

<sup>27</sup> See, e.g., Meier, *supra* note 11, at 1359-66 (discussing potential limits of interdisciplinary collaboration between psychologist and law professor in domestic violence clinic).

<sup>28</sup> See JUDITH AREEN, *CASES AND MATERIALS ON FAMILY LAW* (3d ed., 1992). According to the index of this casebook, "spousal violence" covers twenty three pages. The topics included in those pages are: battered woman syndrome and homicide, criminal law enforcement, protective orders, and rape.

<sup>29</sup> Professor Ann Shalleck of American University has presented ideas on how to integrate domestic violence throughout the curriculum. Joint Session of the Sections on Family Law and Women in Legal Education, Annual Meeting of the Association of American Law Schools (New Orleans) (January 7, 1995). Integration of this issue as well as others is one goal of the authors' work in progress, a supplemental textbook for both Criminal and Family Law Courses to be entitled *CRIMINAL LAW AND THE FAMILY*. The book will be co-authored with Mary Coombs.

stereotypes on several levels.<sup>30</sup> Moreover, since one fundamental goal of teaching domestic violence is to reduce social denial of the problem and to educate people as to its prevalence and seriousness, it is important to teach students that domestic violence issues arise in many different areas of legal practice.

## 2. Teaching critical lawyering

Participants at the Peer Exchange identified the second primary goal of teaching about domestic violence as teaching "critical lawyering." In this realm, we seek to ensure that students understand both the injustice of the legal system's treatment of battered women and that responsibility for changing that system rests with all of us. In our experience, it is difficult to teach students social change lawyering, in part because most of legal education focuses on learning how to work within the existing system. Because law students must spend the bulk of their time trying to understand the established legal process, it may be difficult for them simultaneously to develop a critique of the system.<sup>31</sup> Nonetheless, domestic violence provides an excellent vehicle for teaching critical thinking because of the constant flux, revision, and refinement of legal policies, practices, and doctrines in this field. Thus, in the classroom, teachers can discuss efforts to reform the law and create new legal remedies to protect battered women, such as mandatory arrest laws, laws to admit expert testimony on battered woman syndrome in homicide cases, laws allowing evidence of domestic violence in custody cases, and the development of civil protection orders to meet the needs of battered women who had historically been denied legal recognition. In the clinical setting, students also can work on many of these topics or participate in the many ongoing law reform or system-change projects around the country.<sup>32</sup>

Although students often enthusiastically embrace learning about, or participating in, others' law reform efforts to change the system, they usually find it more challenging to take on a critical role in their own thinking and/or lawyering. For instance, students who have never appeared in court are often reluctant to make arguments that may be important for their client's well-being but may elicit a negative reaction from the judge or require an aggressive argument with opposing counsel. Alternatively, they may not see that their advocacy efforts can have lasting effects on the system or the client, perhaps because of their own cynicism about the possibility of change or because of an inability to appreciate their own power. One response available in the clinical setting is role modeling: when the clinical supervisor or another student chal-

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<sup>30</sup> For instance, the image of a battered woman who has signed a pre-marital contract in itself dispels notions that battered women exist only in poor, unsophisticated, or underprivileged communities.

<sup>31</sup> Of course, some students enter law school with a strong critical perspective on the law; however, in the authors' experience, these students are in the minority.

<sup>32</sup> See discussion *infra* section II.C.4. (describing variety of "reform" projects Peer Exchange participants have engaged in with community activists and advocates).

lenges a clerk, opposing counsel, or other person, students learn that they are capable of challenging inequities in the system and that such challenges can be effective.<sup>33</sup> Another method is simply to point out to students when they have used creativity or have challenged an unjust aspect of the system successfully, and to reinforce this valuable behavior.<sup>34</sup>

In sum, Peer Exchange participants from all over the country agreed that two general challenges—teaching empathy and critical lawyering—are fundamental to teaching about domestic violence. The methods raised in the Peer Exchange and those discussed here begin to identify some useful techniques for meeting the challenges.

### C. *Substantive Issues*

Throughout the Peer Exchange, four substantive areas emerged where the participants felt existing legal and psychosocial understandings of domestic violence to be inadequate: the relevance of domestic violence to child visitation decisions; the stereotyping of battered women and batterers; the importance of dealing with difference; and the theory/practice divide.

#### 1. Children and domestic violence

Peer Exchange participants agreed that a primary challenge in litigating custody issues for battered women is to obtain an open-minded consideration of the real needs of the children with respect to visitation with their fathers, without blaming the mothers for being either too accommodating or too resistant.<sup>35</sup> During the first session of the Peer Exchange, we watched a tape of a

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<sup>33</sup> See Michelle S. Jacob, *Legitimacy and the Power Game*, 1 CLINICAL L. REV. 187, 192-94 (1994) (relating story of clinical supervisor who confronted a court clerk about his apparent racism, and the processing of that issue with the students).

<sup>34</sup> Other methods of reinforcement may further empower students. Students could be asked to think of one time in their own lives when they or someone close to them successfully resisted a norm or expectation. The process of thinking about their own power in affecting a change in their life may help them appreciate their power in affecting changes within the legal system. In addition, the process of regular introspection and discussion about students' personal feelings about their cases can be helpful by surfacing the (often personal rather than professional) reasons for their inhibitions and encouraging students to see that challenging the system is sometimes a necessary part of their professional role.

<sup>35</sup> Of course, this issue arises only if the mother is able to obtain custody. Although in the authors' experience this hurdle has diminished somewhat in the recent past, it is by no means automatic for battered women to receive custody. See *Developments in the Law*, *supra* note 1, at 1597-1620; Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 VAND. L. REV. 1041, 1062-82 (1991) (surveying state laws and adjudications pertaining to custody and domestic violence and calling for greater attention to the relevance of domestic violence to custody). The discussion above focuses on visitation because the relevance of domestic violence to custody has, in the past five years, been addressed

clinical student from City University of New York describing her case. One of the most notable moments in the tape occurred when the student, who appeared otherwise quite sympathetic to her client, discussed her client's insistence on liberal visitation for the batterer and reluctance to seek sanctions for his visitation violations. The student's demeanor revealed a deep-rooted frustration with her client.

The student's reaction to her client is indicative of a widespread attitude in society that battered women do not take proper care of their children, and that the mother is responsible for her children's exposure to the batterer's violence. People often seem to perceive battered women as bad mothers by definition because they fail to protect their children from the batterer. At its extreme, this attitude can lead to prosecuting battered women for "failing to protect" their children from abuse.<sup>36</sup> More commonly, in the authors' experience, the attitude manifests itself in legal officials' disbelief of the mother's concern for her children, or in students' or lawyers' dislike of, or distance from, their clients.<sup>37</sup>

Ironically, while criticism of battered mothers for exposing their children to abuse is widespread, courts and social agencies also display a strong bias in favor of batterers' rights to visitation with their children, and are quick to blame the mother who is reluctant to offer such visits.<sup>38</sup> Courts and social workers place great emphasis on fathers' visitation rights, even when the abuser has also threatened the children, and even when some evidence exists that the father has harmed or attempted to harm the children. Indeed, some court officials tend to view a mother's reluctance about visitation as a sign of selfishness and vindictiveness, rather than as an urge to protect the children.<sup>39</sup> Thus, society often blames battered women simultaneously for "subjecting" their children to their abuser and for withholding their children from that same abuser.

In fact, battered women face a far more complicated reality than these simplistic and contradictory social judgments suggest. Many battered mothers take heroic steps to protect their children, often at great risk to themselves.<sup>40</sup>

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extensively in the literature and in legislative reforms, and is at this point somewhat less controversial.

<sup>36</sup> See, e.g., Nancy S. Erickson, *Battered Mothers of Battered Children: Using Our Knowledge of Battered Women to Defend Them Against Charges of Failure to Act*, Vol. 1A, CURRENT PERSPECTIVES IN PSYCHOLOGICAL, LEGAL, AND ETHICAL ISSUES 197-218 (Kingsley, 1991).

<sup>37</sup> See Mahoney, *supra* note 1, at 43-49 (exploring problems with judicial and social service officials' evaluation of battered mothers).

<sup>38</sup> For example, in the District of Columbia, case law indicates both that visitation should be awarded based on the best interests of the child and that visitation should only rarely be denied. See *Jackson v. Jackson*, 461 A.2d 459, 460-61 (D.C. 1983). These principles are often contradictory, especially given the prevalence of violence in families.

<sup>39</sup> See Meier, *supra* note 11, at 1310 n.48.

<sup>40</sup> See Mahoney, *supra* note 1, at 22-23, 66 (telling stories of two mothers who

Some are unable to protect their children for the same reasons they cannot protect themselves: they and their children are at risk no matter what they do. For example, many batterers threaten to kidnap the children or kill the mothers and/or the children if the mothers take the children away or seek custody.<sup>41</sup> Some battered mothers (perhaps correctly) fear that denying the abuser visitation is the surest way to provoke him into further violence.

Furthermore, some battered mothers never have experienced a safe environment in which their children could thrive; the presence of the abuser has always created a context of fear and intimidation.<sup>42</sup> Until such women experience complete safety from the batterer's abuse, they may not realize that their children are unhappy and are profoundly affected by the abuse directed at the mother. When a mother sees her children's emotional transformation after the abuse ceases, she often becomes unwilling to tolerate the abuse which she previously thought only affected her.<sup>43</sup> Finally, many battered mothers who permit the father's visitation merely reflect the messages they receive from society: that the father is entitled to access to his children and that the children "need" their father. Thus, blaming battered mothers for failing to protect their children ignores an extremely complex reality in which battered women, in fact, often do attempt to protect their children's best interests.

In the authors' view, the form of visitation, if any, that is in the best interests of the children is not easily determinable. In our experience, children of battered mothers often have conflicted feelings about their father. On the one hand, the children are terrified and traumatized by the violence; on the other hand, they love their "daddy." Moreover, regardless of the children's feelings, the batterer may pose an objective risk of physical harm or may be emotionally destructive toward the children.<sup>44</sup> Thus, children may need both to be protected from the batterer, as battered women's advocates argue, *and* to see

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retrieved their babies, one from a room where her husband had a gun, and the other from a room where the husband was shooting through a window).

<sup>41</sup> See Cahn, *supra* note 35, at 1072-77.

<sup>42</sup> Even where the parties have separated and the batterer is given only limited visitation rights, in many cases he continues to harass and abuse the mother, frequently in front of or in connection with the children. See Barbara Hart, *State Codes on Domestic Violence: Analysis, Commentary, and Recommendations*, 43 JUV. AND FAM. CT. J., No. 4, at 33-34 (1992).

<sup>43</sup> In one of Joan Meier's clinical cases, the mother had always insisted on liberal visitation for the batterer, in part because "he's their father," and in part because she feared his violence if she restricted visitation. After he was jailed for approximately six weeks for repeated violations of protection orders, she reported that her children had never been so calm, happy, and outgoing. Before the abuser was jailed and the mother was in constant danger, one child was shy, insecure, nervous, and bed-wetting. The client stated that seeing her children thrive outside of their father's threatening presence convinced her that she would be willing to leave the country and return to her homeland to avoid subjecting her children to the fear of their father's violence.

<sup>44</sup> See Hart, *supra* note 42, at 33-34 (providing an overview of studies assessing risk to children from spouse-abusers, including risk after the parents' separation).

their fathers, as the courts so often assume. The best solution for children entangled in this conflicted situation is neither completely clear nor simple.

Certain minimal assumptions regarding interactions between batterers and their children should be clear, however. To begin, visitation should only occur when the mother and the child can be assured of safety.<sup>46</sup> Accordingly, visitation may need to take place at a secure location, such as a specially funded and staffed visitation center offering structured supervision. Ideally, such a visitation center also would provide counseling for the parent and child so they may learn how to interact constructively.<sup>46</sup> Numerous other protective conditions often are advisable, such as requiring counseling for the batterer and prohibiting possession of alcohol or controlled substances, as enumerated by the recently promulgated Model Code on Family Violence.<sup>47</sup> Finally, in some cases visitation should not occur at all until the batterer receives sufficient counseling and treatment to enable him to act appropriately towards his child. Many batterers are emotionally destructive toward their children even when not being physically abusive; this is because physical abusiveness toward a female partner is often accompanied by indifference to the emotional and psychological needs of children. If society truly wants to minimize harm to children in these situations, we must take seriously their needs and feelings and cease to elevate fathers' rights at the expense of children's actual well-being.

## 2. Stereotypes

Two stereotypes are prevalent concerning domestic violence. First, many people believe that battered women are passive, weak victims, and that women who do not conform to this image are not battered or are responsible for the violence. Second, many people assume that batterers are monsters and that men who do not conform to this image cannot be batterers.

### a. Battered women

The stereotype of battered women as dysfunctional, passive, and weak has emerged in part from the clinical concept of the "battered woman syndrome."

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<sup>46</sup> The District of Columbia Council has recently amended its custody and protection order statutes to limit visitation between abusers and children to circumstances where the court finds that the custodial parent and child can be "adequately protected from harm." Evidence of Intrafamily Offenses in Child Custody Cases Act of 1994, D.C. Act 10-270 (July 8, 1994) (to be codified at D.C. CODE ANN. § 16-1001(5)) (on file with authors).

<sup>46</sup> Such supervised visitation centers have been established in Minneapolis under the auspices of the "Domestic Abuse Intervention Project." See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, FAMILY VIOLENCE: STATE-OF-THE-ART COURT PROGRAMS 10 (1992). Senator Paul Wellstone has proposed federal legislation that would provide federal funding for local supervised visitation centers.

<sup>47</sup> See National Council of Juvenile and Family Court Judges, Family Violence: A Model Code § 405 (1994).



The battered woman syndrome was originally articulated in the late 1970s in large part in order to convey the seriousness and devastating impact of domestic violence on some women.<sup>48</sup> While the neatly-framed syndrome did help to show how pervasive and dire battering is, it also contained seeds of the stereotype of "learned helplessness." This aspect of Walker's original concept has distorted society's perception of many women whose reaction to abuse was perfectly rational.<sup>49</sup> Perhaps because it plays into society's pre-existing predisposition toward sexism, the stereotype of battered women as pathologically weak is by now widespread. As a result, when female victims of abuse express anger or exercise strength, power, or aggressiveness, they often are not believed when they say they were beaten, or are blamed for causing the violence or for failing to leave the abusive situation.<sup>50</sup> The alternative, believing the victims, would require people to acknowledge the reality that our society permits many women to be severely and repeatedly victimized by male partners without assuring their safety.<sup>51</sup>

The degree of victimization that ordinary, healthy women can suffer at the hands of abusive men is, at least, profoundly disturbing, and at worst, intolerable. Many prefer to disbelieve or to blame the victim for her sufferings. To some extent, victim stereotyping is also the result of advocates' attempts to puncture other, more derogatory stereotypes. For instance, in countering society's denial of domestic violence, battered women's advocates have found it necessary to convey in stark terms the prevalence and severity of battered women's realities, perhaps furthering the notion that "mere" hits do not constitute battering. Similarly, in response to judges and critics who question why battered women endure abuse so extreme that "no one" would "stay" in such a relationship, advocates have argued that battered women are trapped in their relationships, perhaps contributing to images of such women as weak and helpless.<sup>52</sup> Finally, in order to convince judges and critics that many seemingly

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<sup>48</sup> Dr. Lenore E. Walker, a clinical psychologist, first articulated this theory in her books *THE BATTERED WOMAN SYNDROME* (1984) and *THE BATTERED WOMAN* (1979). See generally Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 *WOMEN'S RTS. L. REP.* 195 (1986).

<sup>49</sup> See Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 *N.Y.U. L. REV.* 520, 531, 561-63 (1992); Schneider, *supra* note 48, at 207, 222.

<sup>50</sup> See Evan Stark, *Framing and Reframing Battered Women*, in *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* 287 (Eve S. Buzawa ed., 1990) (image of pure victim does not fit many battered women, especially women of color whose image of strength and power contradict the stereotype). While battered woman syndrome can be helpful to some women, even those that appear to fit the "learned helplessness" image are frequently criticized or deprecated. Women tend to be blamed either way.

<sup>51</sup> See Meier, *supra* note 11, at 1311.

<sup>52</sup> See, e.g., Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 *FAM. L.Q.* 247, 252 (Summer 1993) (quoting a Maryland judge who stated "[t]he reason I don't believe it

nice, reasonable, and sane men can commit monstrous acts toward women, advocates have emphasized the severity and horror of the abuse and have sought to portray the men as evil, perhaps reinforcing the "monstrous" stereotypes of abusers.

It now seems fair to say that the battered women's movement has successfully elevated social recognition of the reality and severity of domestic violence. Unfortunately, the effort to further this understanding may have given rise to the stereotype of battered women as weak, helpless victims, an inaccurate image for many battered women. In the realm of practice, "[t]he question then becomes whether and how to balance some of the truths behind stereotypes with the damage caused by the stereotypes . . . ."<sup>53</sup> In the realm of theory, the challenge is to continue to explain and describe battered women's experiences without creating new confining stereotypes.<sup>54</sup>

#### b. Men who batter

Several Peer Exchange participants acknowledged the lack of adequate theories about men who batter. In the authors' opinion, so long as advocates portray batterers as purely evil, courts will have difficulty believing many women's claims of abuse.<sup>55</sup> Thus, when a well-dressed, polite man appears in court denying the woman's accusations of violence, courts are inclined to believe him because he does not look like a monster capable of committing abuse.<sup>56</sup>

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is because I don't believe that anything like this could happen to me.").

<sup>53</sup> Naomi Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398, 1417 (1992).

<sup>54</sup> Schneider, *Describing and Changing*, *supra* note 49, at 200. See also Mary Ann Dutton, *Understanding Women's Responses To Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993) (proposing a new psychosocial approach to expert evaluations of battered women which does not require battered women to fit a particular paradigm). Other useful theoretical work on battering includes the psychosocial theories about battered women described in Meier, *supra* note 11, at 1314-22 (describing post-traumatic stress disorder, "entrapment," and "revised battered woman syndrome"). See also MARY ANN DUTTON, *EMPOWERING AND HEALING THE BATTERED WOMAN: A MODEL FOR ASSESSMENT AND INTERVENTION* (1992); EDWARD GONDOLF & ELLEN R. FISHER, *BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS* (1988); Karla Fisher et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 5 (Summer 1993). For a useful new legal theory about battering, see Mahoney, *supra* note 1 (inventing the concept of "separation assault").

<sup>55</sup> Judges and others also will have difficulty understanding battered women's ambivalence: if the men are pure monsters, why would women tolerate them at all, or seek to allow them visits with their children?

<sup>56</sup> See, e.g., Meier, *supra* note 15, at 7, citing WASH. POST, Aug. 15, 1993 (citing *Jenkins v. Jenkins*, C.A. No. 512-569, in which Maryland Judge Borelli denied a woman's request for a protection order and the woman later was killed by her abuser. The judge responded that the abuser did not appear "sick."). Many judges still exhibit

Some signs indicate, however, some change in society's ability to recognize that "decent men" can be "evil batterers." In the O.J. Simpson story dominating the media throughout late 1994 and 1995, the authors have been struck by the public's apparent widespread belief before trial that Simpson had in fact killed his ex-wife and her friend. This belief in his possible guilt seems to illustrate that many people are beginning to recognize that an "All-American hero" can also batter and even murder his ex-wife and another individual. Nevertheless, many people still prefer to see him as a victim of racism or "celebrity abuse."<sup>87</sup> Apparently, in order to accept that an admired person can do heinous deeds, it is necessary for people first to see him or her as a victim, thereby reducing his or her potential responsibility for those deeds. Interestingly, in the case of O.J. Simpson, some people have once again substituted one stereotype—that of victim—for another—that of "good man."<sup>88</sup>

In sum, stereotypes of both battering men and battered women do not adequately portray reality. Clearly, more complex and sophisticated understandings of the dynamics of domestic violence are necessary.<sup>89</sup> Lacking in the social dialogue is an adequate social or political context: until we are prepared to acknowledge that males' power over females in this society has long been—and is still to some extent—the social norm, we will not fully understand how "decent men" can commit these acts, or how "strong women" can be so severely victimized.<sup>90</sup>

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gender bias in their responses to men and women in abuse cases. See Czapanskiy, *supra* note 52.

<sup>87</sup> See Dorothy Gilliam, *Answers to Abuse are Within*, WASH. POST, June 25, 1994, at C1 (expressing view that O.J. Simpson had low self-esteem as a black man and that social and media adulation was a possible reason for his spousal abuse, though still holding him responsible); WASH. POST, June 25, 1994, at A8 (Senate prayer for Simpson's well-being, expressing view that he is the victim).

<sup>88</sup> In criticizing the need to cast as victims people who have committed violence against intimates, we are not agreeing with those who have coined the phrase "Abuse Excuse" to characterize negatively defenses relying on a history of abuse or the battered woman syndrome. See ALAN DERSHOWITZ, *THE ABUSE EXCUSE: AND OTHER COP-OUTS, SOB STORIES, AND EVASIONS OF RESPONSIBILITY* (1994). In fact, since a history of aggression against an intimate is necessarily relevant when that intimate is subsequently charged with violence against the prior aggressor, the notion that "abuse" is merely an "excuse" is simplistic and misleading. See generally Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379 (1991) (arguing that a history of abuse is relevant and admissible under most jurisdictions' traditional conceptions of self-defense).

<sup>89</sup> Although the Peer Exchange did not address many of the new theories which have been propounded in the recent past by legal and social science thinkers, these new constructs will also need to be evaluated with respect to the dilemmas posed above. See *supra* note 54 (discussing some of these new constructs).

<sup>90</sup> Meier, *supra* note 11, at 1311 (noting that acceptance of the fact that "good men" do batter and "capable women" get battered is impossible without recognizing that battering historically has been socially conditioned and accepted behavior).

### 3. Diversity of battered women's experiences

Another aspect of the stereotyping dilemma discussed above is the way the concept of battered woman syndrome has contributed to a culturally, ethnically, socio-economically, and racially stereotypical image of battered women. While the stereotype is of dubious application to heterosexual white victims, it is even less applicable to victims of other races, classes, or sexual orientation.<sup>61</sup> Nonetheless, the legal system and social service agencies often treat abuse that occurs within Asian immigrant families the same as abuse in white, middle class families, without accounting for the potentially different cultural context. Further, female and male homosexual battering, which poses even more difficult challenges to the stereotype, receives very little attention altogether. The following discussion offers just one example of the problem and the beginning of a solution.

#### a. A Cambodian case study

As an example of the importance of cultural difference in battered women's experiences, Jayne Lee, a Peer Exchange participant, told the story of a Mien Cambodian woman who had been battered by her husband for several years.<sup>62</sup> To escape the abuse, the woman tried to kill herself and her three children. She succeeded in killing two of the children and was charged with aggravated double homicide. Her defense attorney wanted to introduce the expert testimony of Dr. Lenore Walker<sup>63</sup> on the battered woman syndrome. Asian-American women activists, however, were worried that expert testimony that focused on the psychological aspects of learned helplessness was inadequate to explain the complexities of this particular woman's experiences. They were troubled that this type of testimony would backfire when presented to a jury; they worried that the jury would not believe that the woman had been battered if her experiences did not conform to the psychological theories presented by Dr. Walker. These activists also argued that the deficiencies in standard battered woman syndrome expert testimony could not be remedied merely by supplementing it with an expert who was to testify on Mien culture. Instead, they

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<sup>61</sup> For discussions of battering within different ethnic and racial communities, see Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (1991); Schneider, *supra* note 50.

For a discussion of lesbian battering, see RUTHANN ROBSON, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* (1992).

<sup>62</sup> The following is drawn from written comments by Jayne Lee on an earlier draft of this article (communication from Jayne Lee dated Nov. 14, 1994) (on file with authors).

<sup>63</sup> Dr. Walker is the clinical psychologist who developed the concept of the battered woman syndrome. See *supra* note 48.

pointed out that the theory of the battered woman syndrome needed to be reformulated.<sup>64</sup>

Expanding on this theme, a participant at the Peer Exchange argued that without cultural and racial specificity, expert testimony on the battered woman syndrome could reinforce practices that exclude women of color and immigrant women. For example, in the case of this battered Mien Cambodian woman, culturally-specific expert testimony could explain that she did not ask for help because most of the immediate Mien community were members of her husband's clan, not hers; the clan would have sided with her husband in any marital dispute. Similarly, this testimony might explain that her inability to speak English, her lack of familiarity with social services and available legal remedies, and her fear of sanctions by the Immigration and Naturalization Service and other authorities contributed to the reasons why she stayed with her husband. Finally, culturally-specific expert testimony might check the tendency of juries to find battered women guilty in cases where the relationship between the woman and her partner did not fit the stereotypical patterns associated with popular understandings of battered woman syndrome.

One response to this problem of cultural difference has been the development of the "Lotus Project" by the Asian Women's Shelter in the San Francisco Asian-American community. The project operates on the premise that cultural differences are the norm and not the exception. Among other things, the Project provides translators and advocates who speak various languages and dialects, and who can accompany battered immigrant women to court. In addition, the Asian Women's Shelter trains and educates advocates to be sensitive to the specific cultures and histories of the various ethnicities and nationalities. For example, support groups, which are often used by both African-American and white women, can be uncomfortable for some Cambodian women who have experienced forced re-education groups in Khmer Rouge camps. Until advocates became aware of this, they had referred women to groups which were, at best, counter-productive and, at worst, emotionally destructive for these women.

Ultimately, while a need for greater understanding of cultural differences, as well as a need for the development of more "Lotus Projects," clearly exists, this understanding could be a double-edged sword. In a number of cases, abusive men who have killed their partners have pointed to their ethnic groups' specific cultural values or norms which purportedly permit or condone this behavior.<sup>65</sup> Relatively little has been said or written on this issue; however, the authors believe that most feminist thinkers in the field would oppose cultur-

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<sup>64</sup> Ultimately, the defendant pled guilty to involuntary manslaughter and avoided a trial.

<sup>65</sup> See, e.g., Rimonte, *supra* note 61; Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57 (1994); Daina C. Chiu, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism,* 82 CALIF. L. REV. 1053 (1994).

ally-specific defenses for abusers.<sup>66</sup>

Thus, activists and legal commentators in this field face a dilemma regarding whether and how to advocate for recognition of the culturally-specific claims of battered women while opposing those of batterers. Further research and exploration of this issue should add depth and breadth to our legal understandings of and arguments about domestic violence.

#### b. Lesbian and gay domestic abuse

The phenomenon of gay and lesbian domestic abuse poses another challenge to the traditional model of battering. While most of the research and theorizing about battering has focused on abuse of women by men, research on homosexual battering is slowly emerging. One perspective suggests that gay male and lesbian battering differs from heterosexual battering because of the different dynamics of the two types of relationships. For example, heterosexual relationships do not include the fear of "outing," while homosexual relationships do not contain the enforcement of male dominance over women.<sup>67</sup> Another perspective argues that the dynamics are similar because battering in both homosexual and heterosexual relationships is about power and control.<sup>68</sup> Future research and theory about domestic violence must incorporate these perspectives and may help to develop a more nuanced understanding of the problem among heterosexual populations as well.

#### 4. Integrating theory and practice

In the domestic violence field, as in feminism in general, theory and practice are symbiotic. First, as was repeatedly noted at the Peer Exchange, much current theory (such as the battered woman syndrome) developed because pre-existing law did not fully account for battered women's experiences in particular cases. Application of these theories to practice has both helped overcome preexisting problems and created new problems, inspiring the development of more sophisticated theories in response.

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<sup>66</sup> See, e.g., Rimonte, *supra* note 61; Chiu, *supra* note 65.

<sup>67</sup> See Mary Eaton, *Abuse By Any Other Name*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE*, 195-223 (Martha Albertson Fineman and Roxanne Mykitiuk eds., 1994).

<sup>68</sup> Barbara Hart, *Lesbian Battering: An Examination*, in *NAMING THE VIOLENCE: SPEAKING OUT ABOUT LESBIAN BATTERING* 173 (Seal Press, Kerry Lobel ed., National Coalition Against Domestic Violence Lesbian Task Force ed., 1986). Again, new community programs may offer a rich source of understanding of this "different" context for intimate abuse. The Whitman Walker Clinic in the District of Columbia, one of the nation's preeminent clinics for AIDS victims, in the early 1990s opened a Victims' Assistance Project for gay and lesbian abuse victims. Unfortunately, in the fall of 1994, the project was terminated for lack of funding. This development emphasizes the importance of the funding issues raised in the Peer Exchange. See *infra* text accompanying n. 72.

Second, interaction between theory and practice also has been a constant in the professional lives of many law professors in this field. Thus, the penultimate session of the Peer Exchange was devoted solely to discussing ways that we as law professors and activists are seeking to bridge the academic work of universities and the practical work of community activists. All participants recited numerous examples of community advocacy that they have undertaken, both alone or with their students. Such activities include participating in local and national domestic violence coalitions and councils, working with local shelters, training criminal justice personnel, litigation, legislative advocacy, community-based research projects, and courtwatching. From these descriptions we can safely assume that few, if any, domestic violence academics are uninvolved with the world of practice. Moreover, for those of us who are clinical teachers, practice constitutes the bulk of our work.

Despite this involvement, some participants at the Peer Exchange expressed concern about "systemic barriers to bridge-building" between universities and communities.<sup>69</sup> In particular, one participant argued that "the work of the academy is often not relevant to the practice of advocates or attorneys working to end violence against women."<sup>70</sup> These barriers included the sometimes incomprehensible language of academic writing; the failure to cite literature from the field in academic publications; the lack of practical empirical evaluations of policies; and the perception that much academic work is not "generated from the critical questions/problems confronted by the movement and practitioners, lay and attorney."<sup>71</sup>

Another potential barrier to university-community cooperation articulated at the Peer Exchange is competition for funding. This problem surely has been experienced by many, if not most, activists in this field, although the problem may be less pronounced in smaller communities. Many of the law school domestic violence programs receive some outside funding. For example, Catholic University's program receives federal money from Title IX; Georgetown's program receives money from foundations and other sources; George Washington's clinic fundraises from private donors and law firms; and SUNY's program has applied for money from the state of New York. Some community groups also seek money from these same sources, sometimes engendering feelings of competition that may inhibit full-scale cooperation. Indeed, funding competition has led to some failures of collaboration among activist organizations themselves, apart from academic programs. Although some domestic violence advocates have found that more money becomes available as more

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<sup>69</sup> Memorandum from Barbara Hart, Director of Battered Women's Justice Project and Legal Director, Pennsylvania Coalition Against Domestic Violence, to Peer Exchange participants, *Identifying Problems/Solutions in Theory and Practice: Building Bridges Between the Community and the University*; My Comments, (April 15, 1994) (on file with authors).

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

<sup>71</sup> *Id.* at 1.

groups work on the issue, finite resources will always give rise to competition.<sup>72</sup> We can only hope that if academics consult and work with community activists, the different programs will accept each other more readily, antagonism over funding competition will abate, and supportive collaboration and available funding will increase.

Although Peer Exchange members reached no consensus at the Peer Exchange on whether the Hart critique<sup>73</sup> or funding competition are indeed overriding concerns, a clear consensus did emerge that more could and should be done to increase communication and collaboration between academics and activists. Such measures could include: commitments to digesting academic articles for dissemination in practice and community publications; acknowledging (in print) the real world experiences that give rise to the opinions, questions, and solutions stated in our articles; and focusing more on case studies and empirical assessments in our scholarship.

### III. CONCLUSION

The Domestic Violence and Feminist Jurisprudence Peer Exchange provided a valuable opportunity for academics and activists from around the country to come together and share ideas. The Exchange helped crystallize a series of issues which should be a part of any future agenda. All of these issues reflect the need to move beyond simplistic stereotypes in our teaching, advocacy, and theorizing. In particular, new theories should be developed to portray the needs and interests of children with respect to their battering and battered parents, the realities of battering and battered parents, and the different cultural and societal lenses through which battering is experienced. These new theories or approaches inevitably require a deeper level of understanding of the realities of the many battered women for whom this work is being done. The dialogue between theory and practice must continue and expand among communities, domestic violence activists, and teachers.<sup>74</sup>

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<sup>72</sup> The newly adopted federal Violence Against Women Act provides new funding to community organizations, shelters, and law enforcement agencies dealing with domestic violence. See Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1807 (codified as amended in scattered sections of 16, 18, 28, and 42 U.S.C.).

<sup>73</sup> See *supra* text accompanying notes 69-71.

<sup>74</sup> At the Peer Exchange, a three-person committee was established to pursue the possibility of a larger conference in the future.



