

CONVERGEing Around the Study of Gender Violence: The Gender Violence Clinic at the University of Maryland Carey School of Law

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The Gender Violence Clinic at the University of Maryland Francis King Carey School of Law recently received a referral from a legal services provider in Baltimore. The client seeking assistance was a transgender woman who was prohibited from using a women's restroom in a restaurant. I asked my students whether we should take the case. The key question, of course, is whether this case involves gender violence.

My students thought about the question for a moment and then responded yes. The case involves gender, they explained, because it revolves around the client's gender identity.¹ While no physical violence occurred, the deep emotional pain and humiliation that the denial of access to the restroom caused the client certainly qualified as emotional and psychological violence. The students concluded that we should take the case.

* Professor of Law, University of Maryland Francis King Carey School of Law. My thanks to my CONVERGE! co-chairs, Donna Coker and Marcia Olivo, for making me part of the most enriching and thought-provoking conference I have ever attended, and to my wonderful students, for the dedication and compassion you show for our clients. Thanks to Cameron Connah for editing assistance. All mistakes are, of course, mine. Professor Goodmark participated in several of the panels at the CONVERGE! conference and co-authored the following article as an introduction to the CONVERGE! issue: Donna Coker, Leigh Goodmark & Marcia Olivo, *Introduction: CONVERGE! Reimagining the Movement to End Gender Violence*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 249 (2015).

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¹ Gender identity “refers to one’s internal sense of being male, female, both, or neither.” Benjamin L. Jerner, *Culturally Competent Representation*, in *TRANSGENDER FAMILY LAW: A GUIDE TO EFFECTIVE ADVOCACY* (Jennifer L. Levi & Elizabeth E. Monnin-Browder eds., 2012).

When I got the opportunity to start a new clinic in 2013, I thought hard about the kind of work that I wanted to do. I had been working with students for the last ten years in a general family law clinic, where we took all kinds of family law cases, with a particular focus on intimate partner abuse. Frankly, I was bored with family law. But more importantly, in thinking and writing about and practicing domestic violence law for the last twenty years, I had become increasingly concerned about the ways in which gender violence was siloed. I was an expert in domestic violence who knew almost nothing about other forms of violence against women, like rape and trafficking. Moreover, I had not thought deeply about the ways in which larger structural factors, like economic inequality or the hyper-incarceration of both men and women of color, contributed to various forms of gender violence.² I had done some work with lesbian, gay, bisexual, and transgender (“LGBT”) clients, but had not incorporated violence and discrimination other than intimate partner abuse against those communities into my teaching. Starting this clinic gave my students and me an opportunity to move beyond the silos, to look at the places where gender and violence intersect, and to consider the cumulative impact of multiple intersecting forms of violence and abuse on our clients.

To determine where gender and violence are intersecting (for the purpose of deciding what materials to teach and which clients to represent), it is important to define terms. For the Gender Violence Clinic’s purposes, gender is implicated whenever the legal system is acting, or refusing to act, in part as a result of the client’s gender, or when the client’s gender has some impact on the case or on the circumstances leading to the legal system’s intervention. Gender is also at issue when the social harm that requires remedying turns, in part or entirely, on a gender hierarchy or gender-related privilege or oppression.³

Violence is a trickier term. During CONVERGE!⁴, I was asked why I started a *gender violence* clinic, rather than, for example, a *gender*

² Caroline Bettinger-Lopez et al., *VAWA Is Not Enough: Academics Speak Out About VAWA*, FEMINIST LAW PROFESSORS (Feb. 27, 2012), <http://www.feministlawprofessors.com/2012/02/academics-speak-about-vawa-reauthorization/> (discussing, inter alia, how economic inequality and mass incarceration lead to higher rates of domestic violence).

³ Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553 (2009) (linking gender violence to “gendered social arrangements”). My thanks to Donna Coker for articulating the definition that I adopted for the Gender Violence Clinic at the University of Maryland Carey School of Law.

⁴ For more information regarding CONVERGE! Reimagining the Movement to End Gender Violence, please visit <http://www.law.miami.edu/academics/converge/>. To explore full issue of articles and transcripts of panels on CONVERGE! please visit Volume 5 Issue 2 at <http://race-and-social-justice-review.law.miami.edu/>.

justice clinic. It is a fair question. Over the last few years, I have begun to talk about intimate partner abuse rather than domestic violence, recognizing that the term “domestic violence” is limiting both in its conception of the sphere in which abuse occurs and in the assumption that the word “violence” means physical violence.⁵ Many of the speakers at CONVERGE! discussed the importance of reframing, of using language that better conveys our mission and concerns.⁶ I share that inclination. But I have also come to believe in the importance of reclaiming violence. Expanding the scope of the word violence rather than abandoning it could help to underscore the reality that violence is more than just the physical—and more than that which is captured by the law. The Gender Violence Clinic’s goal is to identify the various kinds of violence our clients endure and the injuries (physical, emotional, economic, and otherwise) that result from that violence and to help the client achieve some form of justice. We do not always succeed in finding justice through law; sometimes the violence our clients experience is not recognized by the law and sometimes the law turns a blind eye to their plight. One student, for example, worked with an undocumented client for a year trying desperately to find some way to help her secure legal immigration status, but ultimately found that despite the woman’s suffering, there was no legal basis for a claim. I have had to tell several clients who were victims of cyberabuse that no law currently exists to protect them from various forms of abuse, including the online posting of intimate photos. But even in cases like these, where we cannot provide legal redress, we can provide the client with the knowledge that we have listened, that we care about the injury that has been done, and that we have sought a remedy—and sometimes the validation we can give is sufficient.⁷

⁵ See LEIGH GOODMARK, *A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM* 40–45 (2012).

⁶ Professors Julie Goldscheid and Margaret Johnson both discussed the importance of reframing and of using language at CONVERGE! Professor Goldscheid argued for the reframing of “violence against women” as “gender violence,” and Professor Johnson argued for the reconsideration of safety as security. See Margaret Johnson et al., *Panel on Intersections of Gender, Economic, Racial, and Indigenous (In) Justice*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 357 (2015); Julie Goldscheid, *Gender Neutrality and the “Violence Against Women” Frame*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 307 (2015).

⁷ Leigh Goodmark, *Law and Justice Are Not Always the Same*, 42 FLA. ST. U. L. REV. (forthcoming 2015). One client who we were not able to assist wrote, “I had one of your best student [sic] who took me with consideration, patience and understanding. I wished we had a success story, but I know you did your best, and time will come.” Anonymous Client, Gender Violence Clinic, University of Maryland Carey School of Law, in Baltimore, Md.

The scope of the Gender Violence Clinic's work is quite broad.⁸ Students might find themselves handling cases involving domestic violence; sexual assault; discrimination and violence against LGBT individuals; trafficking; and hyper-incarceration.⁹ Students have worked on domestic violence protective and peace orders, divorces, custody cases, Violence Against Women Act self-petitions,¹⁰ U visa and T visa applications for undocumented people subjected to abuse,¹¹ asylum claims, parole or commutation requests, expunging arrests and convictions for clients whose abusive partners used the criminal system against them, and petitions to the public accommodations commission. We might someday tackle cases involving vacating convictions related to being sex trafficked, landlord/tenant matters, employment issues, or consumer debt. Our only requirement for taking a case is that the matter involves both gender and violence in some way. In addition to litigation, students are engaged in legislative advocacy, testifying on behalf of bills that would forbid the shackling of pregnant inmates,¹² for example, or that would end Maryland's cooperation with immigration detainers, which have disastrous consequences for undocumented people subjected to intimate partner abuse.¹³ Students are also working on community

⁸ JoNel Newman, *Re-Conceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 *FORDHAM URB. L.J.* 1303 (2007) (discussing the advantages of a "generalist" clinical model).

⁹ We have represented only those clients who have been harmed or negatively affected in some way by gender violence. Although our only requirement for case selection is that gender and violence be involved, there are other considerations in case selection. Those considerations include, but are not limited to, the complexity of the matter, the appropriateness of the matter for handling by student attorneys, and the potential costs associated with the case.

¹⁰ 8 U.S.C. § 1154(a)(1)(A)-(B) (2012) (enabling undocumented immigrant women subjected to abuse who are married to U.S. citizens or legal permanent residents to petition for legal status as a result of the abuse they have experienced without relying upon their abusive partners to petition on their behalf).

¹¹ 8 U.S.C. § 1101(a)(15)(U)(III) (2012) (providing undocumented victims of crime with temporary legal status in the U.S. so long as they are assisting law enforcement with investigation and prosecution of crimes); 8 U.S.C. § 1101(a)(15)(T) (2012) (creating T-visas to provide legal status to undocumented victims of trafficking).

¹² *See generally* H.B. 27, 2014 Leg., 434th Sess. (Md. 2014) (codified at 2014 Md. Laws Ch. 212 (H.B. 27)) (forbidding the shackling of inmates during labor and postpartum recovery).

¹³ Despite the work of a broad coalition, including students from the Gender Violence Clinic, the Maryland General Assembly refused to follow the several other states which have passed such legislation. *See generally* Sirene Shebaya, *Restoring Trust: How Immigration Detainers In Maryland Undermine Public Safety Through Unnecessary Enforcement*, *ACLU OF MD.* 11 (Nov. 19, 2013) http://www.aclu-md.org/uploaded_files/0000/0472/immigration_detainer_report.pdf (responding to "the negative impacts of local compliance with immigration detainer requests . . . a number of states, cities, and counties, including California, the District of Columbia, Connecticut, New Orleans, LA,

education projects, participating in trainings on intimate partner abuse in the LGBT communities, and working towards the passage of local government resolutions declaring freedom from domestic violence a fundamental human right.¹⁴

Expanding the Gender Violence Clinic's focus beyond domestic violence could potentially diminish its impact. Feminist academics worked for years to attempt to ensure that domestic violence was adequately represented in the law school curriculum, and many would argue that domestic violence in and of itself is sufficiently complex and multifaceted to deserve a dedicated clinic and curriculum. Some might argue that diluting the discipline of domestic violence by employing a broader gender violence frame could jeopardize those gains and undermine the legitimacy of domestic violence as a distinct field of study.¹⁵ While I am cognizant of those concerns, I believe that the benefits of deploying the wider lens that I have described far outweigh any possible negative consequences. In fact, breaking down the silos between various forms of gender violence could increase the legitimacy of each of those areas of study, spur more creative thinking as ideas are shared among specialists, and increase the pool of resources available to study all of these issues.

Students in the clinic learn about various forms of gender based violence and about how violence intersects and reinforces other forms of oppression. A transgender woman leaves her home country to escape violence and bigotry against transpeople, enters the United States without documentation, and is trafficked by the person she turns to for support once she arrives. A teenager joins a gang to give her the family she desperately wanted, is abused by her gang-member boyfriend, and becomes an accessory to a serious crime, leading to a crushing jail sentence. Moreover, students see how structural factors like economics

Newark, NJ, New York City, NY, and Champaign County, IL have enacted laws or policies eliminating or strictly limiting their entanglement with ICE detainees").

¹⁴ Following the Inter-American Commission on Human Rights' decision in *Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11 (2011), law clinics across the country, led by the University of Cincinnati School of Law, worked with local legislatures to enact resolutions recognizing the Commission's finding that freedom from domestic violence is a fundamental human right. To date, twelve cities and counties, including Baltimore, have passed such resolutions. *See also* University of Miami School of Law Human Rights Clinic and Columbia Law School Human Rights Clinic, *Recognizing Freedom From Domestic Violence as a Fundamental Human Right: Local Resolutions Across the United States* (August 14, 2014), <http://www.law.miami.edu/human-rights-clinic/pdf/2014/local-resolutions-2014.pdf> (listing resolutions from the nine cities and counties across the United States recognizing freedom from domestic violence as a fundamental human right).

¹⁵ My thanks to Donna Coker for this observation.

affect the choices their clients make when they encounter women who beg judges not to incarcerate the men who they depend upon for economic survival, even as those same women acknowledge that the violence done to them was severe and should be criminally punished. Intersectionality comes to life in our cases.¹⁶ Students come to understand that the interplay of personal and structural factors has a profound impact on the choices our clients are able to make to address the violence in their lives.

I have not previously worked with clients on many of the legal issues that we confront in our clinic. During the first year of the Gender Violence Clinic, for example, we handled an expungement, a U visa case, and a complaint before the Baltimore City Human Relations Commission—none of which I had ever done before starting the Clinic. In many ways, that makes me a more effective clinical teacher than when I was teaching the Family Law Clinic after handling family law cases for the last twenty years. Students resent clinical instructors when they believe that we are “hiding the ball.”¹⁷ They assume that we have all of the answers to a question and are (maliciously and gleefully) withholding that information from them. In many of the cases litigated by the Gender Violence Clinic, however, my students and I are starting from essentially the same position—we do not know the law in the area and we have not done this kind of case before. The students have come to understand that lawyers do not have all the answers—they just know how to find them. My students learn that lesson not just because I tell them so all the time, but because they see me looking for the answers right beside them.

The seminar component of the Gender Violence Clinic follows the progression of a case involving issues of domestic violence, trafficking, and sexual assault.¹⁸ The students first meet Brenda Robards (a simulated client played by a former clinic student) when she is considering her options after her boyfriend, Andre Jones, has kicked in the locked door to their bathroom and threatened to kill her if she ever locks a door against

¹⁶ Intersectionality is the study of the ways in which different forms of oppression are interconnected and the notion that they cannot be examined separately from one another. The concept first came from legal scholar Kimberlé Crenshaw in 1989. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). See also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

¹⁷ Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 162 (1994).

¹⁸ The basic structure for the clinic seminar was adapted from the curriculum developed by Professor Margaret Johnson and from the Family Law Clinic at the University of Baltimore School of Law.

him again. Brenda has good reason to fear Andre; he has been physically and emotionally abusive to her in the past, once holding her at gunpoint for an hour before ordering her not to move from where she was sitting until he returned. Andre has also been controlling from the inception of their relationship, insisting that Brenda does not need to work because Andre can take care of both of them, buying Brenda a cell phone with which he tracks her movements, isolating Brenda from her friends and family, and pressuring Brenda to tattoo his name on her neck. In the initial client interview, students learn most of these facts, depending upon how well they craft their questions and identify and pursue the hints that Brenda drops. What only the most intrepid students learn, though, is that Brenda is pregnant. Andre has been selling Brenda to his friends for sex for some time, and Brenda does not know who the father of her child is. Brenda was hiding in that bathroom, in fact, because she did not want Andre to know she was experiencing morning sickness. Brenda is adamant that Andre not know about the pregnancy, at least until she has some sense of what her options are.

Over the next twelve weeks, the students will learn how to craft a case theory (in Brenda's case, as well as in their live client cases), how to tell a persuasive story, and how to find the facts to flesh out that story. Students counsel Brenda when, after receiving a temporary protective order that excludes Andre from their shared home, she finds herself without the means to pay her rent or buy food. The students are forced to struggle with the reality that in the short term, Brenda may be better off without the protective order and with Andre, who has promised to curtail his abusive behavior, back in the home, at least until she can find a job or some other source of income. Seminars focus on evidentiary issues and the basics of trial advocacy—opening statements, closing arguments, direct and cross examination. The simulation culminates in a protective order hearing based on a new allegation of abuse. During that hearing, half of the students are representing Andre; students learn how a change in perspective affects their lawyering. For the first time, Andre is fully represented, and the stories that Brenda and Andre tell about what happened in her apartment on the night in question are dramatically different. Lawyers for Brenda receive a memo detailing her account of the incident; lawyers for Andre receive his recollection, and the case is tried based on those facts. A retired Maryland state court judge presides over the trials, ruling at the end and sharing her insights about lawyering strategy and performance with the students.¹⁹

¹⁹ I offer my thanks to retired Baltimore City District Court Judge Nancy B. Shuger, as she provides the students with invaluable experience and advice in this role.

In both the seminar and in their individual representation of clients, the students are guided by the principles of client-centered lawyering.²⁰ Most clinics teach client-centered lawyering, which turns the traditional top down, lawyer/client dynamic on its head and instead posits an equal partnership between lawyer and client based on the skills and experiences each partner brings to the relationship.²¹ Client-centered lawyering recognizes that clients can best understand and assess the non-legal consequences of any option and stresses the importance of active collaboration between lawyers and clients to achieve client goals.²² Learning client-centered lawyering in the context of gender violence cases has particular challenges, however, as students are forced to question their closely held but largely unexamined beliefs about how people subjected to abuse should respond, what they should want, and what the legal system has to offer.²³ For example, students quickly find that while protective orders sound good in theory, they may be severely limited in practice: unavailable for certain forms of gender violence (like “upskirt” photos taken by strangers), restricted in the remedies they provide, particularly for clients who want to remain in their relationships, and available only when sometimes skeptical judges believe that they should be granted. The Gender Violence Clinic’s cases have offered similarly thorny questions. How does a client-centered lawyer counsel her client when her client wants to pay the bail for her abusive husband, but doing so could negatively affect the case that child protective services has brought against her for failing to protect her child from her husband’s abuse? When her client dismisses her protective order without informing the lawyer, then wants the lawyer to help her obtain a new order after the abuse resumes? When an undocumented trafficking client turns back to prostitution because it is the only work she can find? Helping clients to identify and evaluate options can be challenging in any type of case; it is certainly more challenging when the client takes an action with which the student disagrees on moral or ethical grounds or when the student fails to recognize the judgments and assumptions that are coloring option generation and evaluation.

²⁰ See generally DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2012); see also Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J.L. & POL’Y 301 (2012) (describing the problems with using a client-centered approach in gender violence cases).

²¹ See BINDER ET AL., *supra* note 20, at 4.

²² *Id.* at 5.

²³ The students’ views mirror those found in society more generally. GOODMARK, *supra* note 5, at 81–83.

In addition to the weekly seminar, the Clinic meets each week to discuss a variety of issues during case rounds. Case rounds have been described as signature pedagogy of clinical legal education, providing a forum for students to work collaboratively with their peers to reflect on their work, explore professional identity, find support, and test lawyering theories.²⁴ Topics for case rounds range from specific issues in individual cases to larger systemic questions. Among the questions we have confronted this year: What is a lawyer's responsibility when a client decides she would rather lie to a government agency than admit to being abused? Is the criminal justice system the best way to address domestic violence? What are the commonalities and differences among the forms of violence that our clients experience?

Some students come to the clinic with a history of interest in and work on gender violence issues; others choose this clinic because it provides litigation experience but are less interested in the subject matter. Students leave with an understanding of various bodies of substantive law and exposure to a range of people and problems that they had not encountered before. Students come to understand both the importance of and the limits of the services they provide. As one student wrote of his experience:

[B]eing in law school and being raised in a well-off community kind of kept me in a bubble and prevented me from seeing how essential legal services can be to everyday people in Baltimore by directing the focus away from appellate decisions and focusing on the real people in our cases. The people we help have no way of paying for legal services but are in desperate need of them. Some of them are not only intimidated by the legal system, but would not have any legal recourse or legal assistance without our help. Given the nature of the clinic, our help will have significant impact on the outcomes and well-being of our client's lives. The clinic helped me step out of my safety bubble and see our clients as individuals rather than abstracts learned from a text book. It made me realize how important a legal education can be and how many people and legal fields are affected by gender violence.²⁵

²⁴ Susan Bryant & Elliott Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195, 206–07 (2007).

²⁵ E-mail from Shuoren Li, J.D., University of Maryland Francis King Carey School of Law (Mar. 31, 2014, 2:57 P.M.) (on file with author).

Students also begin to recognize the limitations of the legal system's response to gender based violence:

I see the system much more as a collection of individuals than ever before. The clinic helped me to understand that the legal process depends on many individuals, including clerks, judges, attorneys, clients, defendants. That means that the outcome of cases can be impossible to predict. It also means that mistakes happen, professionalism matters, and that as an attorney you have to stay on top of your cases at all times.²⁶

Finally, my students come to recognize the role that larger structural factors played in their cases, identifying power and economic instability as the two factors common to all of the forms of gender violence we see over the course of the semester.

The first year of the Gender Violence Clinic has exceeded my expectations. We have been able to secure protective orders for women subjected to physical and sexual abuse; sought immigration relief for clients who have been abused and trafficked; obtained sole custody for a mother whose child was sexually abused; worked with the client mentioned at the start of the article to seek an apology and damages from the restaurant that barred her from its bathroom, and been part of a successful legislative campaign. Student response to the clinic has been quite positive; as one student wrote, "The clinical experience really restored my faith in why I am becoming a lawyer . . . I really do feel like a completely different person having had this experience. I am now more empowered, dedicated and strong as a lawyer and a person and I will never forget this experience as the catalyst that really helped me along this path."²⁷ Over the next several years, the Clinic will continue to litigate cases in a broad array of fora and to work on legislation and other systemic advocacy projects. Moreover, the Gender Violence Clinic is situated on a university campus that is primarily dedicated to health sciences, which provides unique opportunities for cross-disciplinary partnerships. My hope is that the Gender Violence Clinic will develop partnerships with professors and students from the schools of Medicine, Dentistry, and Social Work, enabling the clinic to expand from providing holistic legal representation to those subjected to gender violence to providing holistic services more generally.

²⁶ E-mail from Lisa Piccinini, J.D., University of Maryland Francis King Carey School of Law (Mar. 26, 2014, 4:59 P.M.) (on file with author).

²⁷ Memorandum from Jessica Phillips, Third Year Law Student, University of Maryland Francis King Carey School of Law (April 14, 2014) (on file with author).

CONVERGE! focused on the ways in which our work to eradicate gender violence can create fundamental change in our communities. By helping the next generation of lawyers to understand the scope of gender based violence, the structural and intersectional factors that create and reinforce oppression, and the promise and limitations of the legal system's response to gender violence, the University of Maryland Carey School of Law's Gender Violence Clinic is educating sensitive and skilled professionals who will help make that change.