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DECONSTRUCTING TERESA O'BRIEN: A ROLE PLAY FOR DOMESTIC VIOLENCE CLINICS

LEIGH GOODMARK* AND CATHERINE F. KLEIN**

Teresa O'Brien is a seventeen year-old single mother of a two-year old boy, Jordan. She is pregnant with her second child. Teresa, a high school student, has been dating Robert Jones for the last three years. Over the course of their relationship, Robert has been verbally, emotionally, and physically abusive, culminating in a recent incident during which he threatened to kill Teresa and her unborn child and shoved her in the stomach. Teresa's parents are not interested in helping her resolve her problems with Robert. Her friends have suggested that she seek legal assistance.

For several weeks of our semester, Teresa is the central preoccupation of our law school clinic's seminar. She is the main character in a role play that we developed for the Families and the Law Clinic at the Columbus School of Law, Catholic University of America, which represents victims of domestic violence in restraining order cases and other related matters, including custody and divorce proceedings. In a case of life imitating art, one of the clinic's recent real clients bore a striking resemblance to Teresa, and our students' understanding of her plight was enhanced by their intensive experience with their hypothetical client, Teresa.

For a number of pedagogical, philosophical, and community service reasons, our clinic has developed a particular focus on domestic violence and teenagers. Teen dating violence is becoming distressingly common; a Harvard School of Public Health study found that 20% of Massachusetts high school girls surveyed were physically or sexually abused by a dating partner.¹ Another study found that 40% of girls aged fourteen to seventeen knew a

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1. Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 JAMA 572, 579 (2001).

victim of teen dating violence.² Often afraid to turn to parents or other authority figures, these girls frequently attempt to negotiate the legal system without assistance. For that reason, we have decided to prioritize teen dating violence cases, and as a result, each year, a number of our clients are teens involved in abusive relationships. In addition, all of our students become involved in prevention work through conducting teen dating violence workshops at Washington, D.C. area high schools.³

In role plays (also known as simulations), students are assigned to act out legal situations. Students at different times are asked to be lawyers, clients, witnesses, and/or judges. We find that role plays are one of the most effective tools for enabling students to develop the client interviewing, counseling, and trial advocacy skills that will prepare them to represent real clients through the clinic.⁴ Through simulations, students confront issues ranging from client trust-building to witness recalcitrance to judicial impatience within the confines of a supportive learning environment. Moreover, through role plays, clients as real people are introduced, perhaps for the first time, into the law students' experience.⁵

One of the principal benefits of using role plays involves their flexibility. A teacher can create situations that are simple or complex and that involve important issues not always raised in individual case loads. Moreover, role plays give the teacher control over timing and sequencing of student learning and permits the class to have a common shared experience, creating more continuity and a sense of common enterprise. In our clinic, the simulations take place in class, although a teacher easily could structure out of class simulations if class time were limited. Moreover, our students are expected to take part in the critique and discussion that follow every simulation, reflecting our goal of clinic students becoming more active, self-directed learners.

For several semesters, clinic students have met Teresa for the first time, interviewed her with an eye toward finding legal remedies for her plight, and counseled her on those remedies. Later in the semester, students are divided into two groups, representing either Teresa or her boyfriend Robert. The

2. See LIZ CLAIBORNE, *LOVE IS NOT ABUSE* at <http://www.lizclaiborne.com/lizinc/lizworks/women/stats.asp> (last visited Jan. 8, 2004) (citing CHILDREN NOW, KAISER PERMANENTE POLL (1995)).

3. That curriculum is discussed in Margaret Martin Barry, Leigh Goodmark & Catherine Klein, *Early Interventions: Domestic Violence Education for Teens*, in *CREATIVE CHILD ADVOCACY: GLOBAL PERSPECTIVES* (forthcoming 2004).

4. See Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1048-49 (1997) (discussing that role playing is one pedagogical technique available to teach domestic violence theory).

5. On the absence of clients from law school discussions, see Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731 (1993).

students then attempt to negotiate a settlement with opposing counsel and ultimately try their cases before a judicial officer. Throughout the semester, Teresa's story serves as a touchstone for the experiences that our students are having as they represent their first live clients and allows them to process experiences and information as it relates to both their real clients and to their simulated client, Teresa.

In this article, we will present and examine the role play that we have used with our students. We will provide the actual text of the role play, with an explanatory narrative about how we integrated the role play into our classroom component. We will outline the reading assignments and pre-class preparation that we require. Finally, we will suggest ways that this role play can be adapted for clinical programs in other jurisdictions or in countries with other legal systems.

I. THE INITIAL CLIENT INTERVIEW

A. *The Text of the Role Play*

In our second class of the semester, our students are introduced to Teresa O'Brien for the first time. Teresa is played by one of our students, who receives the following instructions several days before the actual class. She is told not to share this information with her classmates.

Attached is your confidential information sheet containing a factual background for the role play for the class on domestic violence law and interviewing. Please keep the information confidential from the other students. You will be assuming the role of Teresa O'Brien. Try to get into the role. Feel free to make up minor details that you feel are consistent with your character.

CONFIDENTIAL INFORMATION FOR TERESA O'BRIEN

You are seventeen years old. You have been dating Robert Jones, nineteen years old, for the past three years. You have one child with Robert, a son named Jordan (age 2), and are pregnant with your second child. Robert is the father of this child as well. You are currently living with your aunt at 111 Seventh Street, SE, Washington, D.C. 28011, (202) 999-9999. Your permanent residence is with your parents at 1611 Van Duren Street, NW, Washington, D.C. 28000, (202) 998-8808. Robert works for a construction company and earns approximately \$30,000 per year. He dropped out of Cardozo High School; however, he has earned his general equivalency diploma (GED). He plans to enter the military in the near future. As a father, Robert has been barely adequate; he comes around to see Jordan two or three times a week and occasionally buys disposable diapers and clothes for the child. You are still in school, trying to finish your high school degree. You are a junior at Cardozo High School. You pay fifteen dollars weekly for Jordan's day care, which is located at Cardozo.

Robert has abused you on many occasions in your three-year relationship. He started with verbal abuse, calling you a “bitch” and telling you that you are stupid and worthless. The abuse escalated into physical abuse and threats of abuse over time beginning in January 2001, when you were pregnant with Jordan. He is extremely jealous and possessive, telling you what clothes you can wear and destroying the clothing that he doesn’t like. He has stolen your pager to monitor your phone calls. He accuses you of looking at other boys and has forbidden you to continue friendships with some of the boys you have known all your life. On several occasions, he has slapped you across the face when he thinks you have gotten an “attitude.” He’s also threatened to harm you and members of your family if he sees you with another man. On June 16, 2001, shortly after Jordan was born, Robert went on a rampage when he saw that your friends had bought things for the child. He kicked over the baby’s crib and destroyed it, tore the baby’s clothes, and smashed the baby monitor against the wall. Robert threatened to take Jordan away from you if he ever caught you taking things for his son from other people again. After these incidents, Robert always apologized and told you it would never happen again, that he loved you, and could not live without you. On occasion, you have defended yourself during these altercations, but you have never hit Robert first. In July 2002, Robert gave you a black eye with his fist during an argument over your choice of clothing. You have never called the police or gone to the doctor after a “fight.”

The latest incident has caused you to flee from your parents’ house and go into hiding at your aunt’s. Two days ago, on August 30, 2003, you told Robert that you were pregnant again. Robert immediately became enraged, screaming about how this new child could keep him from going into the military. He told you to have an abortion, and you refused. He then pushed you in the stomach and threatened that he would kill both you and the baby if you did not have an abortion. Your parents came into the house, saw you crying and ordered Robert to leave. After Robert left and you told your parents the story, they sent you and Jordan to stay with your aunt. You would like to return to your home and go back to school, but your friends tell you that Robert has been hanging around the school looking for you.

You are angry that Robert would threaten your unborn child and believe that this time he has gone too far. You are a strong person who does not like to feel fear or admit to feeling fear. You tend to say that you and he had “fights” and “arguments” or that he “harasses” you. You are slow to call it “violence” or “beatings.” You think Robert always wants to be in control and is jealous of your friendships with other boys.

You are a very proud and private person. You are embarrassed about having to go to a legal clinic and are unsure about what a legal clinic can actually do for you in this situation. You want to be able to return to your home and to school and to make sure that you, Jordan, and your unborn child are safe. Your parents are too busy working to get involved and don’t have the

money to get a lawyer. A friend told you about Catholic University's free legal clinic, and you decided to come.

Prior to class, the other clinic students receive only a very little information about Teresa O'Brien and the following instructions:

Your task in class this week is to interview seventeen year-old Teresa O'Brien for a possible Civil Protection Order case against her boyfriend Robert Jones. All you know is that she is staying with her aunt because she had a "fight" with Robert and that he might have been violent. Your main focus should be determining what help she wants and needs and establishing an effective professional relationship with her. Among other things, you should think about how you will describe your role as a student attorney and your relationship with your supervisor. Feel free to explore any areas that would further your goals. During class, most of you will be working in a team with another student attorney to interview Teresa O'Brien. Please think about how your team might best function during this initial interview when you are preparing for class. Teams will be assigned during our next class. Good luck!

B. *The Context for the Role Play*

The Families and the Law Clinic, founded in 1978 and expanded in 1993, is the oldest American clinical legal education program focusing on providing legal services to victims of domestic violence.⁶ An important mission of the clinic is to sensitize students to the legal, sociological, and emotional issues confronting victims of domestic violence while increasing the pool of trained representatives for women who have been abused.⁷ The classroom component of the clinic is designed to give students both the skills and the substantive knowledge they will need to effectively represent their clients.

In our first class, we focus on the dynamics of domestic violence: issues of power and control, the cycle of violence, how survivors minimize the violence or blame themselves, the difficulty of leaving an abusive relationship, and how domestic violence impacts upon subordinated communities of women. The reading assignment includes narratives about actual battered women from

6. We describe Teresa as a victim of domestic violence in this article. Some advocates for battered women prefer to use the term "survivors" rather than "victims," as it conveys the sense of battered women as powerful and resilient, having overcome the violence perpetrated against them. See, e.g., bell hooks, *Violence in Intimate Relationships*, in TALKING BACK: THINKING FEMINIST/THINKING BLACK 84-91 (1989); EDWARD GONDOLF & ELLEN FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO LEARNED HELPLESSNESS 17-18 (1988). Others argue that one cannot be called a survivor until she has fully escaped the violence, which for some women never happens, and that to use the term survivor makes it seem as though the violence has no lasting impact. See Marie Amelia Calaf, *Breaking the Cycle: Title VII, Domestic Violence, and Workplace Discrimination*, 21 LAW & INEQ. 167, 168 n.6 (2003).

7. The American Bar Association recently passed a resolution calling for law schools to promote understanding of domestic violence in their schools. A.B.A., RESOLUTION 120: REPORT ON DOMESTIC VIOLENCE (Aug. 2003).

different ethnic backgrounds. At this point, we deliberately avoid traditional legal material such as statutes and case law. We first want to ground our students with a basic yet critical understanding of the nature of the problem.⁸ Many have no prior experience with domestic violence. Even those students who have prior personal exposure often lack a critical perspective. Domestic violence is a complex, multi-faceted, and often bewildering problem. Students must be knowledgeable and nonjudgmental about the issues in order to be effective lawyers for real domestic violence clients. Students emerge from this class with an enhanced understanding of how battered women are systematically disempowered and why they “don’t just leave.” Frustrated with clients who do not return telephone calls or who choose to return to their abusive husbands or partners, students will reflect on these dynamics throughout the semester to help understand and explain their clients’ actions and to work through their own reactions to their clients.

The role play forces the students to confront a number of the issues we discuss in the first class. First, the role play reinforces the notion that domestic violence is more than simply physical abuse visited upon the victim. Robert’s jealousy, which leads to threats and commands not to see male friends, is a form of emotional abuse. Similarly, his destruction of Terésa’s clothing and the baby’s crib, clothing, and monitor, while not physically abusive, are acts designed to intimidate Teresa, to cause her to fear for her safety.

Secondly, the role play provides an example of the cycle of violence. The cycle of violence was conceived by Dr. Lenore Walker as a means of

8. The reading assignment for this class includes: NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *WHEN I CALL FOR HELP: A PASTORAL RESPONSE TO DOMESTIC VIOLENCE AGAINST WOMEN* (2002); bell hooks, *supra* note 6, at 84-91; Evelyn C. White, *What is Domestic Violence & The Psychology of Abuse*, in CHAIN, CHAIN, CHANGE: FOR BLACK WOMEN DEALING WITH PHYSICAL AND EMOTIONAL ABUSE 9-26 (1985); Myrna M. Zambrano, *Six Women’s Stories*, in MEJOR SOLA QUE MAL ACOMPANADA: FOR THE LATINA IN AN ABUSIVE RELATIONSHIP 143-146 (1985); George Lardner, Jr., *The Stalking of Kristin: The Law Made it Easy for my Daughter’s Killer*, WASH. POST, Nov. 22, 1992, at C1. Students are also given handouts that illustrate the cycle of violence and power and control wheel. These are extremely helpful teaching devices for students and for clients. One version of the Cycle of Violence, a graphic representation of Dr. Lenore Walker’s theory about the phases of an abusive relationship, is available at <http://crisis-support.org/cycle.htm> (last visited on Jan. 8, 2004). The Power and Control Wheel was developed by the Domestic Abuse Intervention Project in Duluth, Minnesota. Based on information obtained in hundreds of interviews with battered women, the wheel depicts the strategies batterers most commonly use to control their victims and is available on a number of Internet sites, including at <http://www.dvc.org.nz/power.htm>. (last visited Jan. 8, 2004). Students also read excerpts from articles on the clinical teaching methodology to help orientate them to the teaching methods and goals of the clinic. See, e.g., David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71-79 (1979); William Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 471-76 (1995).

understanding the dynamics of a battering relationship.⁹ The cycle consists of three phases.¹⁰ During the "tension building phase," an air of heightened anxiety characterizes the relationship.¹¹ The victim feels as though she is walking on eggshells; the batterer is increasingly moody, irritable, and agitated.¹² The second or "acute phase" is marked by the explosion of the building tension and involves actual abuse, whether it be physical, verbal, or emotional.¹³ Finally, during the "honeymoon phase," the batterer is remorseful, promising that he will never act violently again and that he will change.¹⁴ The victim may feel anger, love, confusion, or any combination thereof.¹⁵ When the victim believes the batterer's promises and chooses to stay in the relationship, the cycle begins again.¹⁶ The role play does not describe the tension building stage. However, it provides several examples of the acute phase, the most prominent being Robert's rage when Teresa tells him that she is pregnant once again, at which point Robert both threatens and physically assaults Teresa. The role play also illustrates the honeymoon phase of the cycle of violence. After each battering incident, Robert apologizes, pledges his love, and promises never to harm Teresa again.

Third, the centrality of power and control in an abusive relationship is underscored. The theory of power and control holds that domestic violence is not caused by anger, stress, or drug or alcohol abuse, but rather by the need to maintain power and control over the victim using a variety of tactics, including economic abuse, isolation, verbal and emotional abuse, notions of male privilege, coercion and threats, and physical violence.¹⁷ Many of Robert's actions are designed to control Teresa's behavior: stealing her pager to monitor her calls, telling Teresa what clothing she can wear, threatening to take the child if Teresa accepts gifts from friends. By exercising control, Robert maintains his power over Teresa. Moreover, students see how domestic violence escalates over time through the role play. Robert begins by

9. See LENORE E. WALKER, *THE BATTERED WOMAN* (1979); LENORE E. WALKER, *TERRIFYING LOVE* (1989). See also, SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE* (1982) (discussing that the cycle of violence is common, but not universally present, in battering relationships).

10. See WALKER, *THE BATTERED WOMAN*, *supra* note 9, at 55.

11. *Id.* at 56-59.

12. *Id.*

13. *Id.* at 59-65.

14. *Id.* at 65-70.

15. WALKER, *THE BATTERED WOMAN*, *supra* note 9, at 66-67.

16. *Id.* at 69.

17. See, e.g., Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 986 (1995). Stark explains that women experiencing coercive control are subjected "to an ongoing strategy of intimidation, isolation and control that extends to all areas of a woman's life." *Id.*

threatening and verbally abusing Teresa and destroying her property, later graduating to threats to kill and physical abuse.

Finally, the victim's tendency to minimize or deny the abuse is a central component of the role play. Teresa never goes to the police or the doctor after a fight, even when pushed in the stomach during the early stages of pregnancy. She refers to the battering incidents as mutual fights or arguments, hesitating to label Robert as a "batterer" or herself as a "domestic violence victim."¹⁸

Another significant goal of the role play is to prompt students to begin identifying the legal issues facing Teresa. Prior to enacting the role play, we lead a discussion on domestic violence law in the District of Columbia. Our students have been assigned to read the relevant statutes, court rules, and case law in advance.¹⁹ After that discussion, the students should have the tools to spot the major legal issues facing Teresa as they conduct their simulated interview. In the short term, Teresa may opt to seek a restraining order (known as a Civil Protection Order or "CPO" in the District of Columbia). In the long term, Teresa will have to think about filing for custody and child support, remedies available only on a temporary one-year basis in the context of the Civil Protection Order proceeding.²⁰

One complicating factor in the legal analysis is Teresa's age. At seventeen, she is still a legal minor.²¹ Therefore, there is some question as to whether Teresa can file for a restraining order without the assistance of her parents or a legal representative – either an attorney or a guardian ad litem.²² These concerns are of special interest to our clinic, which has long been involved in teen dating violence issues. Our students conduct teen dating violence workshops in the District of Columbia high schools each semester, engaging local high school students in a dialogue about what domestic abuse is, what the legal remedies are, and how to counsel friends who are abusers and/or victims. We are especially committed to providing representation to

18. It is not unusual for women to resist labeling themselves as "battered." See, e.g., bell hooks, *supra* note 6, at 84.

19. D.C. CODE ANN. § 16-1001 – 16-1005 (1996). We have developed a written assignment on this material which requires students to answer some very specific questions about the law and to provide precise statutory citations for their answers. We ask students to hand in these assignments at the beginning of class. This level of out of class preparation enhances the class discussion and simulation.

20. D.C. CODE ANN. § 16-1005 (c) (1996) (discussing the remedies available in a protection order).

21. D.C. SUP. CT. DOMESTIC VIOLENCE UNIT R. 2(a)(4).

22. Guardians ad litem are attorneys or other professionals who represent the best interests of the child as opposed to the child herself, and therefore are not necessarily bound by the same ethical duties (such as confidentiality and zealous representation of the client's wishes) as an attorney appointed for the child. See Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 323-30 (1999).

teen-aged victims of domestic violence. Our focus on representing teens is enabled by the District of Columbia Code's broad definition of domestic violence, which permits redress for violence in "dating relationships" and does not restrict who can file for assistance by age.²³ The range of remedies provided under D.C. law is also quite broad, allowing the court to direct the respondent "to perform or refrain from other actions as may be appropriate to the effective resolution of the matter."²⁴ Therefore, courts can fashion remedies attentive to the unique dilemmas of teen petitioners (for example, ordering the teen-aged respondent to transfer to a different school).

Our third objective in the initial interview with Teresa is explicitly mentioned in the instructions for the role play. The students are to "think about how you will describe your role as a student attorney and your relationship with your supervisor." Examining both of these issues is critical in the clinical setting. The relationship between the student and the client is a complex one; the student is not quite an attorney but is vested with many of the powers of one under the District of Columbia's student practice rule.²⁵ The

23. D.C. CODE ANN. § 16-1001 (1), (5) (1996) (defining "complainant" as any victim of an intrafamily offense, without regard to age, so long as the victim is related to the offender by "blood, legal custody, marriage, having a child in common, shared or having shared a mutual residence, or having or having had a romantic relationship"). Note that not every state permits teen victims of violence to petition, either because of their age or because of the way that the protected relationships are defined by statute. See Stacy L. Brustin, *Legal Responses to Teen Dating Violence*, 29 FAM. L. Q. 331 (1995).

24. D.C. CODE ANN. § 16-1005(c)(10) (1996).

25. In 1969, the American Bar Association promulgated the Model Student Practice Rule. Since that time, every state, the District of Columbia and Puerto Rico has adopted the Model Rule or created its own rule providing for the limited practice of law by students by statute, court rule or judicial decision. ABA MODEL RULES ON STUDENT PRACTICE (1969), reprinted in BAR ADMISSION RULES AND STUDENT PRACTICE RULES 993-95 (Fannie J. Klein ed., 1978). The ABA rule had two express goals: 1) to increase the availability of legal services for indigent clients, and 2) to encourage existing law schools to expand clinical training in professional skills. *Id.* Student practice rules, like most legal norms, tend to evolve over time. Law professors, clinical teachers and law school deans may exert considerable influence with the legislative, executive and administrative bodies that promulgate the rules. Peter A. Joy & Robert R. Kuehn, *Conflict Of Interest And Competency Issues In Law Clinic Practice*, 9 CLINICAL L. REV. 493 (2002); Robert R. Kuehn, *Access To Justice: The Social Responsibility Of Lawyers: Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33 (2000); Giancarlo Panagia, *A Man, His Dream, and His Final Banishment: A Marxian Interpretation of Amended Louisiana Student Practice Rule*, 17 J. ENVTL. L. & LITIG. 29-30 (2002). The District of Columbia Student Practice Rule, adopted by the Court of Appeals as Court Rule 48, requires the following: the student must be enrolled in an approved law school, must have completed at least forty-one semester credits (or equivalent) including evidence and civil and criminal procedure, must be certified by the dean to be of good character and competent legal ability, must not accept fees for the services provided, must certify that he/she has read the rule of professional responsibility, and must successfully complete an application process and be

student often feels inadequately prepared for her first interaction with her client, being fully aware of the amount of knowledge that she still lacks. This anxiety may be coupled with an intense desire for the client (and the supervisor) to perceive the student as competent.²⁶ The student as attorney is seeking connection with the client, but race, class, and gender may separate her from her client and color how she explains her role as student attorney. The student may not have thought through the role at all, looking at the clinic as an opportunity for real client contact but not considering how she will react when sitting across from a real client. Many students have difficulty explaining that, although they have not yet completed law school, they are permitted to represent the client in her case. Some clients are skeptical about being represented by someone without a degree.²⁷ The role play is designed to give the students an opportunity to explain for the first time what it means to be a student attorney in the context of the relationship with the client.

The student is also specifically asked to think about explaining her relationship with her supervisor to the client. The goal is to have the student examine what her expectations of that relationship are and how those expectations impact upon the student's interaction with her client. The student practice rules in the District of Columbia require that the student have a qualified attorney's supervision throughout her representation of the client but do not specifically define "supervision."²⁸ The supervisor, depending on the pedagogical stance of the clinic, may have a great degree of contact with the client or may only interact minimally with the client. The supervisor may or may not be present during initial client interviews.²⁹ If the choice is made to have the supervisor present, how can the student explain the presence of this third person, whose very presence in some ways suggests that the student is not yet competent to practice law? How should the student react when the client asks the supervisor questions directly, rather than interacting with the student? How should the student expect the supervisor to react? The parameters of the student's relationship with the supervisor are constantly being defined and refined throughout the clinical interaction, but we want our students to be

approved by the court. D.C. CT. APP. R. 46, available at http://www.dcbarr.org/for_lawyers/courts/court_of_appeals/court_rules/index.cfm (last visited Jan. 8, 2004).

26. For one example of how these dynamics played out in our clinic, see generally Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLINICAL L. REV. 167, 176 (1995).

27. This skepticism is similar to that encountered by public interest lawyers and appointed criminal defense lawyers whose clients are suspicious of the value of the services of a "free lawyer."

28. D.C. CT. APP. R. 48(e) (supervision requirements).

29. David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507 (1998).

aware of the issues surrounding supervision from the inception of their relationships with their clients.³⁰

The final goal is by no means the least important: through this exercise, the students should begin to develop interviewing skills. Faced with a "proud and private" Teresa, who is embarrassed about seeking legal advice and unsure about what a lawyer can do for her, the students are tasked with unearthing the information necessary to determine whether and how they can provide legal assistance to Teresa. Completing this task requires students to consider all of the factors discussed previously, as well as exercising the interviewing skills that they have been asked to read about prior to class.³¹

Our clinic operates from a "client-centered" model.³² Students use the role play to develop the skills that client-centered interviewing stresses: open-ended questions, empathetic and nonjudgmental listening, and sensitive follow-up probing. In Teresa, they encounter what Binder, Bergman, and Price refer to as the "difficult" client.³³ We prefer to think of Teresa as a client who is reluctant to discuss the intimate details of her relationship with Robert and unsure about what help a lawyer can provide her. Information gathering against that backdrop is a challenge. Students are uncomfortable asking for details that clearly cause the client pain or discomfort in disclosing and are often hesitant to press the client for greater detail after an open-ended question has provided an ambiguous or seemingly incomplete response. Role playing the process of probing for what can be embarrassing and intensely personal information gives the students an opportunity to confront their uneasiness prior to interacting with a live client. While students' feelings of intrusion may never be completely quelled, they can be abated to an extent sufficient to allow them to become effective interviewers. Teresa's youth again comes into play here. Not only must the students obtain the information, but they must also decode and comprehend the information as presented in Teresa's voice. Finally, equally (if not more) important when working with battered women, the role play is designed to give students the opportunity to begin developing the ability to validate the client's experience through empathetic listening

30. For a discussion of the complexities of supervision, see, e.g., Peter T. Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L. J. 277 (1982); Peter T. Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986); Quigley, *supra* note 8; Halina Niec, *Evolutionary Supervision*, 2 KLINIKA 243 (2000), available at <http://www.juhrc.org/en/articles/niec.htm>; Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. AND SOC. CHANGE 109 (1994). To better understand the issue from the student's perspective, see Howard, *supra* note 26, at 176.

31. For this class, students read a variety of materials on interviewing including DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS* 69-81 (1991); KENNEY HEGLAND, *TRIAL AND PRACTICE SKILLS IN A NUTSHELL* 16-34, 230-248 (2d ed. 1994).

32. See, e.g., BASTRESS & HARBAUGH, *INTERVIEWING, COUNSELING AND NEGOTIATION* 61-75 (1990); BINDER, BERGMAN & PRICE, *supra* note 31, at 16-23.

33. BINDER, BERGMAN & PRICE, *supra* note 31, at 237-258.

without hampering the flow of information or becoming (or sounding) judgmental.³⁴

By the end of this class, our students have begun to discover the information that they will need to represent Teresa. In the next class, they will use that information to prepare pleadings on her behalf.

II. PREPARATION, PROCESS, AND PLEADINGS

A. *The Text of the Role Play*

In preparation for the third class, the clinic students are provided with this summary of their initial interview with Teresa in the form of a hypothetical memorandum to the client's file. We have decided to provide the students with a model memorandum rather than having them prepare their own for several reasons. First, giving students the memorandum helps to ensure that all of the students are working with a uniform set of facts for the simulations that follow. Moreover, students rarely elicit and retain complete information from the first interview during the in-class simulation, and given the constraints of time and structure, it is unlikely that even the best interviewers would bring out all of the information needed for future assignments. We also provide a model memorandum in order to illustrate for our students the type of memo that they should prepare for their case files after each significant client meeting. In fact, many of the students use this hypothetical memorandum as their template for live client memoranda for the rest of the semester.

MEMORANDUM TO THE FILE

Client: Teresa O'Brien

Subject: Initial Interview

Date: September 7, 2003

1. *Background*

Teresa O'Brien is seventeen years old and a full time high school student at Cardozo High School. She is supported by her parents and has no independent source of income. She has been dating Robert Jones for the past three years.

Boyfriend – Robert Jones, nineteen. Employed as construction worker, makes approximately \$30,000 yearly. Dropped out of high school, but has earned a GED, the equivalent of a high school degree.

34. Susan Schechter, *Empowering Interventions with Battered Women*, in GUIDELINES FOR MENTAL HEALTH PROFESSIONALS IN DOMESTIC VIOLENCE CASES 10 (1987).

Children – One son, Jordan O'Brien, age two. Pregnant with second child. Robert is the father of both.

Robert is a barely adequate father; he visits Jordan two or three times a week, occasionally buys disposable diapers and clothes for the child. Teresa, with the help of her parents, has been the child's primary caretaker, caring for all of the child's needs (preparing meals, doctor's visits, clothes purchase and care, outings). When Teresa is in school, Jordan is in a day care located in Cardozo High School for which she pays a small weekly fee (\$15). In addition, her mother often helps care for the child.

Teresa's parents are supporting Teresa, but did not accompany Teresa to the clinic. Teresa says they are very busy with work, and she would prefer not to involve them in any court proceedings if possible.

2. *Conflict Check* – complete, no conflict.³⁵

3. *Contact Information:*

(Current) 111 Seventh Street, SE, D.C. 28011 (Temporary*)

Phone: (202) 999-9999

*Home of Teresa's aunt, Debra Ross

(Permanent) 1611 Van Duren Street, NW, D.C. 28000

Phone: (202) 998-8808

4. *Statement of Problem*

During most of their three year relationship, Robert has abused Teresa. It started with verbal abuse, calling her "bitch" and telling her she was stupid and worthless. At the same time, Robert is extremely jealous and possessive, telling Teresa what clothes she can wear and destroying what he doesn't like, stealing her pager to monitor her calls, and forbidding her to continue being friends with boys she has known throughout her life. The verbal abuse escalated to physical abuse in January 2001, while she was pregnant with Jordan, with slaps across the face and threats to kill her and her family. Since January 2001, there have been one or two incidents of threats or physical abuse (usually slaps, pushes, or punches) each month.

On June 16, 2001, shortly after Jordan was born, Robert went on a rampage when he saw that Teresa's friends had bought things for the child. He

35. The clinic maintains a database of all current and past clients and opposing parties in order to determine whether the clinic may have represented the opposing party previously. During the intake interview with a potential new client, we always conduct a check to see if we have represented the opposing party in a prior matter. If we have a conflict, we try to refer the person to another lawyer for assistance. D.C. R. PROF. CONDUCT 1.7

kicked over the baby's crib and destroyed it, tore the baby's clothes, and smashed the baby monitor against the wall. Robert threatened to take Jordan away if he ever caught Teresa taking things for "his" son from other people again.

One of the most serious incidents occurred on July 2002, when Robert blackened Teresa's eye with his fist during an argument over Teresa's clothing.

Teresa was reluctant to describe the incidents as beatings or violence. She referred to them as "fights" and "arguments" or complained that Robert "harassed" her. Upon questioning her, it appears that she has never struck Robert, other than in an attempt to protect herself or to stop him from assaulting her.

Most recent incident – On August 30, 2003, Teresa told Robert that she was pregnant again. Robert immediately became enraged, screaming about how this new child could keep him from enlisting in the military. He told Teresa to have an abortion; she refused. He then pushed her in the stomach and threatened that he would kill both Teresa and the baby if she didn't have an abortion. Her parents came into the house, saw her crying, and ordered Robert to leave. Her parents then sent Teresa and Jordan to stay with her aunt, Debra Ross.

Teresa has never sought medical help following any incident, including this one. We advised her to seek medical help as soon as possible in order to determine whether any damage was done to her or the unborn child in the incident.

5. *Client's Statement of Goals:*

Teresa wants to be able to safely return to her home and to school, to stop the violence and to get away from Robert in order to protect herself and her unborn child. She would also like Robert's financial help. Her friend, Denise Simmons, suggested that she get legal help and recommended our clinic.

6. *Legal Issues:*

Is a Temporary Protection Order ("TPO") necessary? Civil Protection Order? What remedies are appropriate? Consider: prohibition against threats and assaults, stay away order, child support, custody, supervised visitation, domestic violence counseling, parenting classes. Any others under the "catch-all" remedy provision of the statute?

Authority to represent Teresa, who at seventeen is a legal minor: Teresa would like us to represent her and understands that we need to obtain the court's permission because she is a minor. We need to prepare a motion requesting appointment as her legal representative.

7. *Status:*

Teresa expects to hear from us later today about whether we can go to court with her tomorrow to help her obtain a Temporary Protection Order. She indicated that she would like the court order to include a provision that Robert stay away from her school, temporary custody of Jordan, and child support. She would also like Robert to be ordered to participate in domestic violence counseling and parenting skills classes before he gets any visitation.

8. *Impression:*

Teresa is a proud and private person and can seem to have an "edge." She is embarrassed about having to seek outside help to solve her problems. She seems very alone, because her parents have not come with her to help her resolve this matter. She says she's through with Robert, but she has returned to him after other incidents in the past.

B. *The Context for the Role Play*

In this class, our students are introduced to the process of drafting the legal documents needed to begin a protection order case: in our simulation a Petition and Affidavit for Civil Protection Order, a Temporary Protection Order, and a Motion to Appoint a Guardian Ad Litem or Attorney. Although we provide the students with the necessary preprinted court forms and with sample pleadings from another protection order case, the students still have a difficult time with this assignment. In part, their difficulty stems from separating legally relevant details from compelling, but not actionable ones; Teresa may have strong feelings about being called a bitch, stupid, and worthless, but the students need to evaluate whether those insults constitute grounds for the issuance of a civil protection order under the relevant statute.³⁶ Is stealing a pager or destroying a child's crib an "intrafamily offense" under D.C. law?³⁷ The students must think back to the substantive law presented in the second class and apply the facts of Teresa's case to that law to determine which incidents should appear in the pleadings and which will simply provide supporting detail during the client's oral testimony during court proceedings. The students are forced to confront the legal reality that many acts they consider "domestic violence" are in fact not recognized by District of Columbia law as such. Emotional abuse, which many of the students consider the most insidious form of violence, is not actionable; neither is the economic abuse nor isolation that are such a potent ingredient in the dynamics of power

36. See D.C. CODE ANN. § 16-1001(5) (1996) (defining an "intrafamily offense" as "an act punishable as a criminal offense"). While certainly harmful, being called insulting names without more cannot be classified as a crime.

37. Yes, see D.C. CODE ANN. § 22-3811 (1996) (theft); D.C. CODE ANN. § 22-403 (1996) (destruction of property).

and control.³⁸ Jurisdiction and statute of limitations issues are also highlighted in this exercise.³⁹

In drafting their pleadings, the students must begin to think carefully about the way they use language. Teresa described slaps, shoves, and pushes; often students record this behavior as “the Respondent assaulted the Petitioner.” Students learn that using conclusory terms like “assault” drains the petition of the details necessary to bring the case to life for the judicial officer and are therefore to be avoided when drafting pleadings. Students learn to avoid using words that unduly restrict the petitioner. If the student writes in the petitioner’s pleadings that she was punched (which implies with a closed fist), but Teresa testifies that she was slapped (open hand implied), her credibility can be impeached using the sworn statement of her petition and affidavit for a civil protection order. Similarly, students learn to use caution about including direct quotations on the petition. If the petition quotes the respondent as saying, “I will kill you and your baby if you don’t shut up,” but the client cannot actually recall exactly what was said, the certainty of the quotation in the petition can be used to impeach her.

The students’ theory of Teresa’s case should guide them in drafting their pleadings, and it is in this role play that they first encounter the critically important concept of “case theory.” A case theory is a logical, persuasive story of “what really happened.” Development of a case theory is a process that begins with the first contact with the client and continues to develop as the lawyer researches the law, engages in fact investigation and formal discovery, and consults with his or her client. Trials are often described in large part as a contest to see which party’s version of events the fact finder will accept as true, which party’s version of “what really happened” is more plausible.⁴⁰ In this class we ask our students to do a deceptively simple exercise designed to clarify the concept of case theory. With respect to Teresa’s case, we ask our students to complete the following sentence (in fifty words or less): “This is a case about” This prompts students to consider how the information that they have collected through the interview process supports or detracts from their case theory. Articulating a case theory helps students to narrow or enlarge the scope of the pleadings and the remedies requested, to determine

38. See Leigh Goodmark, *Law is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Responses to Domestic Violence*, 23 ST. LOUIS U. PUB. L. REV. 7 (2004).

39. In the District of Columbia, the Superior Court handles most civil and criminal domestic violence cases. For new cases, generally one of the parties must live in the District or one or more acts of domestic violence must have occurred in D.C. See D.C. CODE ANN. § 16-1001(5)(B) (1996). In addition, the court handles enforcement actions for cases involving protection orders originally issued in other states. See U.S.C. (1994). The statute of limitations is two years in a case involving a romantic or dating relationship. D.C. CODE ANN. § 16-1003(d) (1996).

40. THOMAS A. MAUET, TRIAL TECHNIQUES 466-69 (6th ed. 2002).

which incidents should be included in the court documents, and to determine what information still needs to be gathered. It also forces students to think about how the case theory they craft may or may not correspond with their client's objectives or preferences.⁴¹ The student may want to present the client as the powerless (and therefore sympathetic) victim of domestic violence, while the client wants to focus on her strengths and her resilience.⁴² Working through these issues with the client is an important part of client-centered lawyering and one that students should confront sooner in their cases, rather than later, when the failure to agree on a case theory can complicate the case significantly.⁴³

Finally, the preparation/process/pleadings segment of our role play gives students their first opportunity to simulate a courtroom experience. Students are asked to prepare for a hearing on Teresa's request for a Temporary Protection Order ("TPO"). In the District of Columbia, temporary protection order hearings are held *ex parte* before the judges in the Domestic Violence Unit of the Superior Court.⁴⁴ The TPO is valid for fourteen days, must be personally served on the Respondent accompanied by the Civil Protection Order ("CPO") petition, and a hearing must be scheduled within the fourteen day period on the underlying request for a CPO.⁴⁵

The various Superior Court judges conducting TPO hearings have very different styles. Some judges allow the students to conduct the questioning of the client. Others ignore the students and seek the necessary information themselves by questioning the client directly. In the TPO hearing role plays, clinic faculty serve as judges and present the students with a variety of styles in order to prepare them for whatever judge they might encounter. Regardless of the judge's style, however, some elements of the hearing are relatively constant. Clients are asked (through counsel's questions or directly) to explain what brought them to the court for the emergency order. In the TPO hearing, the judges are not typically interested in an extensive history of violence. They simply want information about the event that precipitated the client's

41. For a discussion on the importance of case theory, see Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994). The exercise using "this is a case about . . ." was developed by Professor Miller.

42. Battered women who do not conform to the prevailing stereotypes embraced by the court system and the wider society may find themselves branded "bad." See Jane Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare "Reform," Family, and Criminal Law*, 98 CORNELL L. REV. 688, 742-45 (1998) (discussing how victims of domestic violence are seen as "bad mothers").

43. See, e.g., Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (describing how failure to consult the client on case theory can lead to unexpected results when clients refused to embrace the chosen narrative).

44. D.C. SUP. CT. DOMESTIC VIOLENCE UNIT R. 7A(a), (b).

45. D.C. SUP. CT. DOMESTIC VIOLENCE UNIT R. 3(b)(2), 7A(a), (b).

appearance in court on this particular day.⁴⁶ Working with the client to help her tell her story concisely but with sufficient detail to persuade the judge that an emergency order is necessary is one of the skills we develop through this role play. Moreover, the client is invariably asked, “Are you in fear of imminent danger of bodily harm (by the Respondent)?” This is the statutorily required standard for the award of a TPO.⁴⁷ The role play helps ensure that students know to listen for this crucial question and to translate that information for the client so that the judge has the legal basis (“good cause”) to issue the TPO.

Learning to prepare a client for her courtroom appearance is a crucial skill for all clinic students, but it is especially important for students working with victims of domestic violence. Our clients often suffer from post-traumatic stress disorder (“PTSD”) and other emotional trauma, and the courtroom experience itself may replicate the experience of being battered.⁴⁸ Part of the students’ role is to protect the client from feeling further traumatized by her ordeal in the courtroom.

From a trial advocacy perspective, the role play also gives the students their first opportunity to begin developing a lawyering style and to become more comfortable with speaking before a judge. More importantly, the role play is the first time the students experience the sensation of representing another person. The significance of this development should be highlighted and discussed with students, who may acknowledge a fear of public speaking but should (and often do) fear failing their client more. Students begin to understand the gravity of what they have undertaken, in that another person’s safety rests in part on the quality of their advocacy. But, the experience should not be used merely to scare students; it should also be used to affirm for students that they can, in fact, be effective advocates for their clients, as they have shown through their performance in the role play.

After students have obtained a TPO for Teresa, they continue to prepare her case in greater depth. The next step in the role play is discussing with the client her alternatives, her preferences, her goals, and her fears – in other words, engaging in client counseling.

46. Students must understand, however, that how the client’s reason for coming to court is conveyed will affect the client’s credibility. Upon hearing that victims have come to court out of concern for their children, for example, judges frequently assume (wrongly) that women are misusing the protection order system to gain advantage in a custody case. See Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. U. J. GENDER SOC. POL’Y & L. 657, 671-75 (2003).

47. D.C. CODE ANN. § 16-1004(d) (2003); D.C. SUP. CT. DOMESTIC VIOLENCE UNIT R. 7(a)(2).

48. See JAMES PTACEK, *BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSE* 146-61 (1999) (discussing abused women’s emotional trauma and the courtroom experience).

III. CLIENT COUNSELING

A. *The Text of the Role Play*

In addition to reading several articles about client counseling,⁴⁹ our students receive the following role play instructions prior to the next clinic class.

COUNSELING ROLE PLAY: TERESA O'BRIEN

Description of Task:

Prepare for a counseling session with your client, Teresa O'Brien. With your assistance, she has recently obtained a Temporary Protection Order ("TPO") granting an injunction against threats and physical abuse, temporary custody, and a stay away order from her person, home, and school. No child support or other financial payments were ordered in the TPO. The hearing seeking a one-year Civil Protection Order ("CPO") is scheduled for next week.

Teresa just called requesting a meeting to discuss her options at this point. This meeting is scheduled for later today. She is uncertain about whether or not to proceed with the CPO and about what remedies are likely if she does proceed.

Teresa is further concerned because Robert called her last night to apologize and told her he would give her anything she wants, including full custody of Jordan and the baby after it is born, if she would drop the CPO. Robert said a CPO would be devastating to his future plans because he said he would not be permitted to join the military if the CPO is granted. Robert begged Teresa to see him, but said that he would understand if she didn't want to and that he would leave her alone as long as she would drop the case. Teresa is very upset and seems unclear about what she wants at this point.

METHOD: Instructions

Divide up into four groups as assigned. *Plan and prepare* for your counseling session with Teresa O'Brien. Please spend time preparing before class. In addition, we will give each group ten minutes in class to collaborate on planning for the session. We will conduct the role play together in one group at the end of the ten minutes. We will begin with Group One and continue through Group Four, allowing approximately ten minutes for each

49. For our client counseling class, students read the following materials: BASTRESS & HARBAUGH, *supra* note 32, at 235-249; DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH 192-210 (1977); Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1215-1226 (1993). Students also read materials about treating batterers for this class.

group's performance, followed by ten minutes of critique and discussion. One of our former clients will be playing Teresa O'Brien.⁵⁰

Group 1: (Designate several students)

Focus on greeting the client and preparing the client for the counseling session. Plan for "preparatory statement" explaining expectations for the client. Focus on identifying and clarifying client's objectives.

Group 2: (Designate several students)

Focus on generating alternatives: What are the different ways to achieve client's objectives?

- How to generate alternatives
- How to get client involved
- Attorney/client relationship issues
- Use open-ended questions
- Use questioning techniques that move from the general to the specific to explore details

Group 3: (Designate several students)

Focus on identifying consequences of each alternative:

- Address legal and non-legal consequences
- Predict likelihood of occurring
- Identify pros and cons

Group 4: (Designate several students)

Focus on decision making: How can you assist Teresa O'Brien in weighing the alternatives and making an action plan?

- Bring together pros and cons
- Think about ways to give structure (written list, summary, list of goals)
- Weighing of immeasurables
- What if lawyer is asked to make decision?

50. We have been lucky to have one of our former clients, a survivor of domestic violence and advocate for battered women, play Teresa for us during this class. Her willingness to share her insights and experience has been invaluable for our students and has given Teresa a texture and realism that she would not have otherwise had.

B. *The Context for the Role Play*

Teresa is confused and frightened. Robert has contacted her and is begging her to dismiss her lawsuit. What should she do? In our fifth class, lawyers and client meet to discuss her case. To highlight the different aspects of client counseling, the exercise divides the counseling session into four component parts. In each part, students are expected to have planned how they will approach their task, using the principles of client-centered counseling they have studied.

In the first component, students greet the client and prepare her for the counseling session. Although this task seems fairly simple, setting the appropriate tone at the outset often dictates the flow of the rest of the session. Students must think through some basic, but crucial, choices such as: Do you address the client by her first name? Do you invite her to address you by your first name? Does Teresa's age change how you might otherwise make these decisions and should it? Do you sit across from each other at a desk, or do you arrange the chairs in a more "egalitarian" setting? What kind of small talk do you make? How much of yourself do you reveal in that exchange? And finally, how do you turn the conversation from small talk to a discussion of the client's objectives? All of these choices have consequences for the future of the attorney/client relationship and should be carefully scrutinized in the role play.

The first group is also tasked with making a "preparatory statement" explaining the students' expectations of the client for the session. In the client-centered model, especially where one of the goals of the representation is empowerment of the client,⁵¹ students and clients must discuss and negotiate the terms of the partnership that will form the basis of their relationship. In our clinic, clients are not simply passive recipients of legal services. Instead, clients, as equal partners, have responsibilities within the relationship: to articulate goals and objectives, to identify legal and non-legal means of reaching those goals, to consider the consequences of each option, to develop a case theory/narrative, and to collect evidence that supports that theory. Clients may be unprepared for this mode of representation, assuming that they will simply hand their problem to the lawyer and be handed a solution in return. Some clients resent being told that they are expected to "work"; others believe that they are not qualified to perform the kinds of tasks that the students describe. The goal of the role play is to have students think about how to explain the theory of client-centered lawyering and what that theory means in practice for our clients.

Finally, the first group will help Teresa identify and clarify her objectives. Too often, students (and lawyers) tend to skip this step, jumping from the

51. BASTRESS & HARBAUGH, *supra* note 32, at 255-57; GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

client's presence in the office to the assumption that the client intends to engage the legal system. Given the information that they have about her, students may assume that they know what Teresa wants: to obtain a restraining order, child support, and custody of her child. But these are alternatives for meeting her objectives; they are not objectives in and of themselves. Teresa's objectives, for example, may be to stop the violence, to get Robert's attention so that he will take her concerns seriously, or to protect her children. Determining her objectives requires probing the nature of her relationship with Robert, her desire to continue that relationship, her concerns about Robert's future with the military, her concerns for her children, her fear and/or mistrust of the legal system, her ambivalence about seeking a restraining order, and the myriad of other factors that affect her decision. Only after the students work through these issues with Teresa can they come to some understanding as to what her objectives are.

Issues of client autonomy pervade this role play. Given the students' tendency to see the client's objectives in legal terms, the client may feel pressured to describe her objectives in these terms, and later, to accede to pursuing legal remedies when other alternatives might better meet her needs. Throughout this role play, we focus on interacting with the client in a way that gives the client room to express her views, goals, and preferences without feeling unduly influenced by the students' often unstated, but usually apparent, desire to take a case to trial.

The second group assists the client with generating alternatives – how can the students and client work together to achieve the client's objectives? Given that Teresa's stated objective is generally to protect herself and her children from further violence, the students must work with Teresa to brainstorm how to reach that objective, while ensuring that Teresa is an equal partner in generating alternatives.⁵² Teresa is relatively young, upset, and unclear about what she wants. These factors make determining a course of action difficult for her. Moreover, other factors such as race, class, and gender differences may make her reluctant to discuss alternatives with her student attorneys. Students must be sensitive to these issues and must determine the best approach for generating alternatives with Teresa. The preferred alternative within the role play will depend, of course, on the way that the client is played, but students should think through a number of options in trying to reach that alternative. Should they ask Teresa for her ideas first, present their ideas first,

52. Designed to generate creative options, brainstorming requires team members to work collaboratively to generate ideas without discarding them as misguided or impractical as they go along – an exercise many of our students (and many lawyers) find difficult. The process allows people to play off the ideas of others but not to judge or evaluate until a later stage. Brainstorming often produces novel solutions that a more guarded, analytical, “lawyerly” discussion would preclude.

or engage in random brainstorming with all participating? Within each approach, students should be sensitive to the way in which they ask questions. Leading or directive questions may suggest to the client that the student favors a particular alternative, while open-ended questions alone may not generate the level of detail needed to tease out the alternatives. At this point, the students' goal should be not to identify one alternative and consider all of its ramifications, but to generate a list of legal and non-legal alternatives from which Teresa can select.⁵³ For students who are stuck within the "box" of legal remedies, this assignment is especially difficult.⁵⁴

We ask the third group to identify the consequences of each alternative. Non-legal consequences are as important as legal ones for the purposes of this exercise. A restraining order may give Teresa the protection she seeks, but it may also alienate the father of her children permanently, a non-legal consequence requiring serious consideration. The student and client work together and determine the pros and cons of each alternative from the client's perspective. For example, seeking a CPO would give Teresa legal protection, but it might keep Robert out of the Army, potentially decreasing his future earnings and her future child support. A privately negotiated contract or out of court agreement between the parties would allow Robert to enter the military, but its enforceability in any meaningful way is highly questionable.⁵⁵ Finally, students are also asked to negotiate the question of how likely the consequences are to occur. They must consider whether they should answer this question at all and what the substance of the answer might be, given their relative lack of experience. Students who are eager to conduct a trial in Teresa's case tend to oversell the likelihood of obtaining a CPO; again, this subtle manipulation must be identified and discussed.

The fourth group focuses on working with Teresa to make a decision. This group assists Teresa in weighing the pros and cons, as well as any intangibles, such as – emotions or gut feelings. Lawyers are often uncomfortable with emotional issues and do not value factoring those feelings into a client's decision-making process. Especially in the domestic violence context,

53. Alternatives identified by our students included seeking a restraining order, entering into a private contract prohibiting Robert from assaulting Teresa, reconciling with Robert, and discussing the problem with Robert without taking legal action.

54. The process is equally difficult for lawyers who reflexively turn to the legal system. See Goodmark, *supra* note 38.

55. In the District of Columbia, violations of protection orders are punishable through criminal contempt, which carries a jail sentence of up to 180 days, a \$1000 fine, or both. See D.C. SUP. CT. DOMESTIC VIOLENCE UNIT R. 7(c), 12(e). In addition, D.C. CODE ANN. § 16-1005(g) (2003) authorizes misdemeanor prosecutions of violations of protection orders, punishable by up to 180 days in jail, a fine of \$1000, or both. A private contract or settlement agreement, in contrast, is usually limited to a civil enforcement action for money damages or specific enforcement.

however, such immeasurable factors may profoundly influence the client's decision-making. How the student reacts when the client says, "But I still love him," or "I don't want my children to grow up without a father," may have profound implications for the future of the attorney/client relationship. Students are forced to confront such emotional issues with our clients; introducing them to the intricacies of such conversations is one of our teaching goals.

Thinking about how to structure the conversation is an important part of this group's task. Until now, students have had a relatively unconstrained conversation with Teresa about objectives, alternatives, pros, and cons. This group's task is to turn that conversation into a basis for decision-making. The group must look at this task from a logistical perspective, (asking will charts, lists, or other visual aids assist the client in making her decision) as well as a philosophical one. As noted earlier, students are asked to plan their counseling session prior to the class; part of that planning might include developing just such a visual aid. But creating that tool without the involvement of the client can be problematic; it could suggest that the lawyer does not really value the client's input and that the time spent in the session was wasted. How students explain their preparation and integrate it into the evolving conversation with the client is an important skill.

Finally, students are faced with the dilemma of a client who cedes her decision-making authority to the lawyer. Because they have read Binder, Bergman, and Price,⁵⁶ they are prepared for the possibility that the client may want the lawyer's personal opinion about what she should do and may ask the lawyer to decide for her. Teresa's youth and her uneasiness with the legal system make this scenario more likely. And for domestic violence victims, the dynamic of power and control is also at play. The client may not have had the opportunity to make decisions on her own for some time. The student risks assuming a controlling position, similar to that of the client's batterer, if she makes decisions for the client. Students must encourage the client to make her own decisions without having her feel as though the lawyer is disinterested or abandoning her. Confronting the client's frustration and even anger at the student's insistence that the client make her own choices is a useful skill to simulate. In the alternative, students need to learn to avoid the temptation of "taking control" of the case, with the client's acquiescence, by making decisions that they believe are best for the client.

Breaking the counseling session into these four parts is admittedly artificial. In a real counseling session, the client and the lawyer are likely to jump between articulating objectives, identifying alternatives, and analyzing those alternatives, rather than methodically following these steps. For the purposes of simulation, however, this structure allows the students to see the

56. BINDER, BERGMAN & PRICE, *supra* note 31, at 197-200.

various steps that they should be taking in counseling their clients and how each step builds on the last. Understanding the structure undergirding the counseling session will give the students the freedom to follow their real clients' leads without losing sight of the need to work through all of the steps in the counseling process.

The students and Teresa have now worked together to determine her optimal position and the alternatives for meeting her objectives. Next, they meet Robert's lawyers and attempt to negotiate a settlement in the case.

IV. NEGOTIATION

A. *The Text of the Role Play*

In preparation for our sixth class, our students are told:

NEGOTIATION: TERESA O'BRIEN AND ROBERT JONES CASE

Return to our ongoing case of Teresa O'Brien and Robert Jones. Teresa O'Brien is seeking a CPO which would include, among other things, temporary custody of her child Jordan and temporary child support. Robert is very concerned about the possibility that a CPO could prevent him from entering the military. If Teresa proceeds with the CPO (which she will if a satisfactory consent CPO is not negotiated in advance of trial), Robert could contest her claim for sole custody and seek joint or sole custody of their child himself. Alternatively, Robert wants generous visitation rights. Robert might also contest the paternity of Teresa's unborn child.

Through their respective counsel, Teresa and Robert will be negotiating regarding the possible entry of a consent CPO. Prepare a negotiation plan for your assigned side prior to class. Your plan should include a strategy for dealing with issues of safety, custody, visitation, and child support.

Please be prepared to participate in a negotiation session in class. A separate assignment sheet for the negotiation role play, assigning you to represent either Teresa or Robert, will be distributed. Develop a negotiation plan.

Prior to the class, all of the students in the class also receive the following memo:

For class on Tuesday, you will be split into two groups: one group will represent Robert Jones, and the other group will represent Teresa O'Brien. Those representing Robert will receive an interview memo regarding Robert's situation. **DO NOT SHARE THIS MEMO WITH TERESA'S LAWYER.** You will be in the same groupings for the trial simulations as you are for this simulation.

Prepare the following:

Both groups should develop a written negotiation plan on behalf of your client. Try to anticipate what the opposing party will be seeking and how you will respond to their demands. Map out your strategy, indicating your opening position, your back-up positions, and your bottom line. This can be in the form of a diagram. Turn in your diagram at the end of class.

Only those students assigned to represent Robert receive the following confidential memo:

DO NOT SHARE

CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE

TO: Robert Jones File

RE: Interview Notes

Robert Jones is nineteen years old. He has been dating Teresa O'Brien for three years and is the father of her two-year old son, Jordan. Teresa is currently pregnant with what she claims is the couple's second child; Robert is unsure as to the paternity of the child. Robert has been working full time for the Uptown Construction Company for the past two years, since he left high school. He earns approximately \$30,000 yearly. Robert got his general equivalency diploma (GED) and is planning on entering the military in order to better himself and provide for his child. He fears, however, that his girlfriend will find some way to deter him from leaving.

His girlfriend, Teresa, is seventeen years old. They began dating when both were students at Cardozo High School. Despite her pregnancy at such a young age, Teresa continued to attend Cardozo and was able to stay with her class, which Robert encouraged her to do. Although Robert did not want to have a child, he respected Teresa's decision to keep the child and has tried to be as supportive as possible. He babysat for Teresa so that she would have time to study for exams and helped lighten the financial load by giving the baby anything he needed, including toys, clothing, diapers, and other baby supplies.

Robert and Teresa's relationship has been rocky for the past two years. Robert had just left school when Teresa announced that she was pregnant. He immediately found construction work and has had to work long hours to provide all of the things that Teresa wanted. Teresa's constant demands have caused Robert a great deal of stress. Additionally, as Robert studied for his GED, he recognized that he wanted more from life than construction work and began developing a strategy for continuing his education. At the time, Teresa became very jealous and possessive, demanding that he promise not to leave until she had finished school. Robert thought that Teresa was being extremely self-centered and unconcerned about his future and his ability to continue to provide for their child.

Shortly after Jordan's birth, Teresa declared her intention to have another child. Robert believed that this would make it more difficult for him to join the service and made her promise to take precautions to prevent pregnancy. This caused a great deal of friction between them. At the same time, Teresa began hanging out with a group of teenagers that Robert did not like because they had a reputation for engaging in criminal activity and using drugs. Robert does not believe that Teresa has used drugs herself, but he has talked to her about hanging around with the wrong crowd. Additionally, Teresa flirts with the boys in the crowd, and Robert believes that she may be sexually intimate with one or more of them. Robert also believes that they have given her stolen items to use for the baby.

A week ago, things got much worse. Robert came to Teresa's parents' home to visit with Jordan. When he entered the house, Teresa immediately began taunting him, telling him that she had a secret. After several minutes of this, Robert became annoyed and told Teresa to just tell him what she was talking about. She then told Robert that she was pregnant again. When he asked whether he was the father, Teresa became angry and started to curse at him. Robert stated that he did not want another child and asked Teresa to consider aborting the child. Teresa then began to cry and scream that she would never abort their child, that he did not love her, and that she wanted him out of her life. Robert explained that having another child would make it difficult for him to enter the military, as he had planned, and if he could not enter the military, he could not make things better for Jordan. Teresa became hysterical. Robert began to walk towards the door, at which point Teresa stood in front of the door and refused to let him leave. Robert pushed Teresa out of the way and started to leave the home. He saw Teresa's parents on the front porch, but he did not speak with them.

Robert called Teresa the next day to try to discuss the matter calmly, but Teresa's parents said she was not there and refused to tell him where she was. He has also looked for her at school, attempting to resolve the matter.

Robert's main goal is to enter the military. He is saddened that Teresa would be so desperate as to bring legal action against him in order to block his enlistment. But he is also extremely angry with Teresa for what he sees as her carelessness in allowing herself to become pregnant again and sees her as the cause of all of these problems. Teresa is seeking a Civil Protection Order. Because he does not know where Teresa currently is, he has not seen Jordan since shortly before the incident. Robert cannot believe that all of his carefully made plans are jeopardized. Our firm has agreed to represent him.

B. The Context for the Role Play

In this phase of the simulation, Robert's side of the story comes to light. Students who have heard only from Teresa for the first part of the semester begin to comprehend the truism that there are two sides to every story, and its legal counterpart: there are three sides to every story – the plaintiff's, the defendant's, and the truth, which is often somewhere in between. For the first time, half of the students in our clinic, who have become accustomed to siding with "victims" of domestic violence, are asked to consider the point of view of an accused batterer and to represent his position in negotiations with the victim's attorney. Students representing Robert often find it difficult to switch their loyalties after engaging with Teresa for so long, and some students express frustration at their inability to believe and therefore to zealously represent their client. We work with students to help them understand their duties as counsel to Robert and to show them that effective legal representation for batterers can help to bring about solutions that benefit all of the parties involved.

The two sides start from vastly different positions. Teresa maintains that there has been ongoing violence in this relationship and has decided that she wants to seek a CPO to protect her and her children from future violence. Robert denies any past violence and is concerned that the issuance of a protection order could bar him from military service.⁵⁷ He believes Teresa's claims are motivated by her fears of his leaving the Washington, D.C. area. Finding a compromise position should be difficult. Moreover, because the classroom instructions tell both sides that Teresa will ultimately seek a protection order if a consent CPO cannot be negotiated, they are aware that Teresa will go forward to trial if a satisfactory agreement is not reached. Working within these parameters gives students an opportunity to develop negotiation skills and to further consider issues of client-centered lawyering and client empowerment.

Negotiation is one of the most difficult skills for students to learn (and frankly, for instructors to teach). Much of negotiation depends on individual

57. Robert's concern about his inability to enter the military is reasonable given the Violence Against Women Act, which, among many other provisions, prohibits a person from purchasing or possessing a gun if a protection order has been issued against him. Because handling a gun is necessary in the military, the protection order's existence might keep him from being able to fulfill his duties and therefore bar him from the military. See Violence Against Women Act, 18 U.S.C. § 922 (g) (2000). Our clinic students called various military recruiters and got a range of answers as to whether Robert would in fact be able to enlist if Teresa got a restraining order against him. Among the answers were that he might have to apply for a waiver of some kind or that the restraining order would not pose a problem. This ambiguity contributes to a challenging and anxiety-producing situation for Robert and Teresa.

style – competitive or cooperative, adversarial or problem solving.⁵⁸ Our simulation is intended to help students determine what style is most effective for them and to see how their choice of style colors the negotiation process. Often, our students start from a very adversarial position, believing that only by “being tough” can they win concessions for their clients. They soon find, however, that such a stance usually makes the other side defensive and impedes communication and problem-solving. Alternatively, the students who start from a more conciliatory position may feel as though they are giving up too much in style, if not necessarily in substance. Learning to strike a workable and comfortable balance before entering actual negotiations with opposing counsel gives students greater confidence when they negotiate on behalf of live clients.

In representing their live clients, our students frequently negotiate with an unrepresented party, which raises an additional set of professional ethical concerns. Students must walk the very thin line between informing the unrepresented party of what they are seeking on behalf of their client and giving legal advice or attempting to persuade the other party to settle, which is not acceptable.⁵⁹ Moreover, students react to batterers in a variety of ways. Some may be charmed or manipulated by the batterer, while others may feel uneasy or afraid when discussing emotionally-charged subjects with the batterer. Preparing the students for the experience of negotiating with an unrepresented party must include not only simulating negotiating skills but also talking through the range of emotional responses they may feel when negotiating with the batterer.

Issues of client autonomy again emerge in this simulation. Teresa, via our materials, has stated a position – she wants a CPO. Nonetheless, in our actual negotiation simulation this semester, at least one group negotiated a private contract (not a consent CPO) with Robert, which, as described above, would lack the enforcement mechanisms of a motion for criminal contempt or a misdemeanor prosecution for violation of a CPO. Students were so eager to reach a consensus position that they abandoned the position articulated by their client, a troubling development.⁶⁰ We asked our students to think through two

58. BASTRESS & HARBAUGH, *supra* note 32, at 389-404. In addition to reading this section from Bastress & Harbaugh, students also read Russell Engler, *Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons*, 85 CAL. L. REV. 79, 101-104 (1997) and Roger Fisher et al., *Getting to Yes: Negotiating Agreement Without Giving In*, in CLINICAL ANTHOLOGY READINGS FOR LIVE CLIENT CLINICS 300-302 (1997) for this class.

59. See Engler, *supra* note 58, at 101-04 (discussing the ethical restraints during negotiation).

60. Some students complained that their respective clients had boxed them into positions that made negotiation impossible – Teresa's insistence that she have a CPO, Robert's belief that a CPO would keep him out of the military. As previously mentioned, however, students who

issues in relation to this settlement: first, was this a good settlement for the client? Second, is this the settlement that the client wanted? Those questions probe very different skills; the first, the ability to craft a remedy that benefits the client; the second, the extent to which students internalized and practiced the concept of client-centered representation.

Ultimately, Teresa's case does not settle. In our next two classes, our students present the case of *Teresa O'Brien v. Robert Jones* to the court.

V. TRIAL PRACTICE SKILLS

A. *The Text of the Role Play*

Prior to our seventh class, our students representing Teresa receive a memorandum regarding the testimony of Debra Ross, Teresa's aunt. They are instructed not to share this information with Robert's lawyers.

DO NOT SHARE

CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE

TRIAL SIMULATION – DEBRA ROSS (TERESA O'BRIEN'S AUNT)

TO: O'Brien File
FROM: Intern
RE: Interview with Debra Ross: Potential Witness

Today we met with Debra Ross, Teresa O'Brien's aunt. Ms. Ross lives at 111 7th Street, SE, Washington, D.C. 28011. Although Ms. Ross is Ms. O'Brien's aunt, Ms. Ross considers Ms. O'Brien more of a daughter. Because Ms. O'Brien's parents are often busy with work responsibilities, Ms. Ross spends a considerable amount of time with her niece. She has no children of her own and thinks of Teresa's child as her grandchild.

Ms. Ross first met Robert Jones approximately three years ago when he and Ms. O'Brien began dating. She never really liked Robert. She thought he was arrogant and always wanted to be in control. But Ms. Ross saw that Teresa seemed to be happy with him, and she welcomed him into her home on several occasions.

We tried to discuss the problems that Ms. O'Brien and Mr. Jones have had and Ms. Ross seemed reluctant to discuss it. She told me that she has never actually witnessed Robert strike or physically harm Teresa although she admitted that Teresa has told her of some of their problems.

researched the policy of the military knew that the CPO would not absolutely preclude Robert from entering the military and therefore had more room to maneuver, a potent argument for researching the law prior to entering into negotiations.

Most recently, Teresa came to her house with Jordan one night a few weeks ago. She was very upset and kept rubbing her stomach. She told Ms. Ross that she and Robert had gotten into a fight and that she needed a place to stay where he could not find her. She did not get into the details. After Teresa stated that she felt a little queasy, Ms. Ross gave her some ginger ale and antacids and told her to lie down. Teresa stayed at the house for about a week; she then got a court order, and she and Jordan went back to her parent's house.

When I asked Ms. Ross if she had ever seen Robert act violently, she told me about one incident which took place approximately eight months ago. Apparently, Robert and Teresa had gotten into an argument. Robert had been accusing Teresa of flirting with one of her male friends. According to Teresa, he got very upset and slapped her across the face. He told her if she ever cheated on him, he would kill her. Teresa ran to her aunt's house for consolation, bringing Jordan.

Robert came to Ms. Ross's house at about 1:00 a.m. that same night. He started yelling up to the bedrooms on the second floor. He wanted Teresa to come down and to bring Jordan with her. She refused to come down. After about fifteen minutes, Robert stopped yelling, and Ms. Ross thought he had left. About a half hour later, she heard a knock on the door. When she went to the door, there was no one there. She opened the door and saw a bag on the front step. On the bag was a note reading, "You're dead." In the bag was a dead squirrel. Ms. Ross did not recognize the handwriting on the note and did not see who left the bag on the porch. She showed the note to Teresa, who did recognize the handwriting and was sure Robert had left the note. She brought me the note, which I kept for possible use at trial.

Ms. Ross could not tell me exactly when this incident took place. After pushing her for more details, she told me that she saw a red mark on Teresa's face that night. Teresa told her that the red mark was caused by Robert slapping her face during an argument.

Aside from this specific incident, Ms. Ross could not give me details on other particular incidents. She said that Teresa had come to her house several times over the last three years after arguments with Robert. Sometimes she brought Jordan; sometimes she said that Jordan was home with her mother. Ms. Ross did finally recall one other incident that disturbed her. A group of Teresa's friends had purchased baby presents for Jordan. Robert destroyed all of the presents, including the baby monitor, which Ms. Ross had purchased. Teresa called Ms. Ross immediately after Robert left, very upset, and described the incident to her. Ms. Ross vaguely recalls that Robert said something on that occasion that upset Teresa very much.

When I asked Ms. Ross about Teresa's parenting abilities, she said that Teresa was a loving and dedicated mother. She believes that Teresa is a little young to be a parent, and sometimes she wishes that she could have a "normal" teen-aged life. She said that Robert visits Jordan, buys him Pampers

and clothes, and takes him to the park or to the doctor. But for the most part, Teresa cares for Jordan on a daily basis.

Ms. Ross is very happy that Teresa is finally separating herself from Robert. She is afraid that Robert might really hurt Teresa or the unborn child.

B. The Context for the Role Play

In our seventh and eighth classes, our students present Teresa and Robert's cases to the court. Often we are able to have an actual judicial officer who is teaching at the law school play the judge for our simulation.⁶¹ During the seventh class, after a discussion of case theory, Teresa and Robert's counsel present their opening statements. In the eighth class, counsel conduct direct examination, cross examination, re-direct examination, and make their closing arguments.⁶²

Some of the skills that we are trying to cultivate in these classes are perhaps more obvious than those previously described. Students are expected to incorporate certain core elements into their openings and closings and to follow the basic rules of open-ended questions on direct examination, leading questions on cross. Because there are now so many good books on trial advocacy, including Mauet,⁶³ that can provide that information, we will not discuss it in detail here. But these courtroom exercises also give students the opportunity to confront a number of other important issues for practice – issues of case theory, of narrative, and of self-control.

Before constructing their opening statements, we ask our students to describe their case in fifty words or less, beginning with the phrase, "This case is about . . ." Developing a case theory, however, is significantly more difficult than simply coming up with a catchy description. As discussed previously, a case theory is designed to provide a lens through which all of the evidence provided by the party can be viewed, a context for consideration of the whole of the case.⁶⁴ Students must integrate their knowledge of the law with the facts as presented by Teresa and Robert and find a theory that is logical, compelling, and persuasive. For Teresa, the case theory usually centers on the ongoing abuse that she has suffered at Robert's hands. Counsel for Robert tends to stress Teresa's motivations for bringing her petition and the consequences to Robert's future. Without a coherent theory of the case,

61. We are grateful to the Honorable Sylvia Bacon for taking the time to preside over the majority of Teresa's trial and for all that she taught our students in the process.

62. For these classes, students read a variety of materials on trial preparation from MAUET, *supra* note 40; as well as JAMES W. MCELHANEY, MCELHANEY'S TRIAL NOTEBOOK (3d ed. 1994); and a number of James McElhaney's columns from the ABA JOURNAL.

63. See generally MAUET, *supra* note 40.

64. See McElhaney, *supra* note 62, at 78.

students flounder in trying to tie together the various elements of their courtroom presentations.

Ultimately, having a simple, persuasive case theory enables the student to develop the client's narrative. The importance of narrative, of telling the client's story in the client's voice, is a central tenet of the clinical education movement. We see ourselves as storytellers, providing an outlet for our clients to relate their unique circumstances and personhood in the context of the legal case. But as Lucie White's story of Mrs. G and a thousand other examples show, the construction of client narrative is not a simple task.⁶⁵ The client's story might not jibe with the available legal theories, or the client might be unwilling to tell her true story for any number of reasons. This is especially true with victims of domestic violence, who are often reluctant to describe what may have been humiliating and degrading incidents of violence in order to receive protection from the court. The standard narrative in a domestic violence case is of an abusive man and a victimized woman, a picture at odds with many women's conceptions of themselves as "survivors" rather than victims.⁶⁶ Teresa, a proud teenager, might not want to admit that Robert has been hitting her for the past two years but that she only recently took steps to stop his abuse. Making such an admission could lead to ridicule from her friends, who claim that they wouldn't let any boy hit them. It might also damage her sense of herself as a strong woman. But her reluctance to describe the abuse would deprive the court of the evidence it needs to find that an intrafamily offense has been committed, the finding required before a CPO can be issued. Working in partnership with the client to develop the narrative is crucial; our goal is for students to learn that imposing a narrative on the client is unacceptable and can lead to client frustration, resentment, and a significantly weaker case.⁶⁷

Case theory and narrative should be infused into all parts of a student's presentation. The opening statement should present the theory of the case and begin to develop the narrative, highlighting for the court the evidence that will form the fabric of the narrative. In direct examination, students should learn to develop the evidence in a way that is consistent with their narrative and that supports their case theory. Extraneous information is a distraction from the story that they should be telling. Cross and re-direct examinations are chances both to bring out evidence that supports the client's story and to minimize or refute information that detracts from the narrative. Closing argument is the student's opportunity to present the constructed narrative as a whole, to

65. See generally John B. Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer To Do When His Two Favorite Theories Collide*, 6 CLINICAL L. REV. 85 (1999); Miller, *supra* note 41.

66. See bell hooks, *supra* note 6.

67. See generally White, *supra* note 8.

identify all of the evidence and inferences that support the case theory and the client's story.

From courtroom simulations we also hope that our students learn the value of restraint. We have all heard of the lawyer who asked one question too many; most of us have done it, at our peril. Simulating a courtroom experience gives students an opportunity to learn the consequences of that mistake without having it harm an actual client. Asking Teresa whether she intended to get pregnant again or how she felt when Robert said he was leaving for the military provides an opening for Robert's counsel to develop the theory that Teresa's jealousy motivated the request for a restraining order. Asking Teresa on cross why she took gifts from her friends gives Teresa the opportunity to develop her charge that Robert is an uninvolved and unsupportive father. Moreover, the introduction of Teresa's aunt, Debra Ross, poses special challenges for the students representing Robert, who have not previously been privy to her testimony. This ignorance as to the opposing party's witnesses is common in CPO cases; discovery is limited and rarely occurs, and often students learn who will testify for the other side only when the witness is called to the stand. Determining what questions to ask Ms. Ross was difficult for those students. When Robert's attorney asked Ms. Ross during cross-examination why Teresa was so upset, the judge interrupted with, "Are you sure you want to ask that?" knowing that Ms. Ross would then have the opportunity to provide Teresa's hearsay statements about the argument that led Teresa to stay with her.

Finally, simulating a courtroom experience (especially with an actual sitting or retired judge) gives students a sense that they have the ability to present the cases of their live clients. By speaking before an audience, responding to a judge's questions, objecting and arguing objections, and reacting to the unexpected elements of the opposing party's case, students bring together the skills that they have developed over the course of the semester and actively engage them in trial practice. This process is a bumpy one; many students came to class unprepared to simulate an effective courtroom experience. One student who brought food into the courtroom was sharply reprimanded by the judge. Students who had not adequately thought through their cases and their questions were taken aback by sustained objections and their inability to respond to the court's queries. In some sense, their failure was a success, as it showed them exactly what they could expect should they approach their live client experiences cavalierly. But the majority of the students, even those whose presentations were dissected by the judge, found the experience beneficial; at the very least, they were humbled to learn how far they had to go before living up to one judge's standards.

VI. ADAPTATION OF THE ROLE PLAY TO OTHER CLINICAL SETTINGS

We believe that this role play can be adapted for use in domestic violence and family law clinics throughout the United States, and indeed, the world. Varying with the development of the law in those jurisdictions, some obvious changes would need to be made. For example, if local law prohibits minors from seeking court protection, or if teen dating violence is not a serious problem within the community, Teresa could easily be made older. Similarly, if civil restraining orders are not available for battered women, Teresa might seek custody and child support, and those issues could form the basis of the counseling, negotiation, and trial portions of the role play. In civil law countries, the differing roles and practices of judges and lawyers could be built into the simulation.

In all localities, the role play can also serve as a tool for discussing whether and how the law needs to be changed to better protect battered women. Looking at the range of barriers Teresa faces in any city or country could help students to examine issues of law reform on behalf of victims of domestic violence. Using Teresa to introduce the need for protection orders, consideration of violence in custody and visitation decisions, or even criminal prosecution of perpetrators of domestic violence could stimulate clinical students to work on legislative efforts when law enabling students to provide direct services for domestic violence victims does not exist. Even in these situations, however, the students still gain valuable experience from interviewing Teresa and from counseling her and assisting her in articulating her available options, as different as they might be from the options she would have in the District of Columbia.

VII. CONCLUSION

Does Teresa receive her restraining order? Does Robert enter the military? Ultimately, as involved as the students become in these two lives, none of that really matters. For purposes of our clinic, what matters is that the students use Teresa's story to develop the skills that they will need to serve their live clients and serve them well. Practicing on Teresa gives them the opportunity to make the mistakes that they would not want to make with a live client, to try out their interviewing and counseling skills, to learn the substantive law, and to think about the theories of client-centered lawyering and client empowerment that we introduce in our class.

Use of simulation and role plays in legal education has become widely accepted as a valuable method of instruction in American law schools. Once found primarily in clinical programs, role plays are now increasingly employed

in many types of law school courses.⁶⁸ It is our hope that this article will encourage teachers to experiment with this exciting and dynamic teaching methodology. We invite and encourage teachers to modify and revise the role plays that we have discussed here and experiment with using them in their classes. We welcome suggestions and feedback on how to make the simulations richer for students and faculty.

68. See, e.g., Philip G. Schrag, *The Serpent Strikes: Simulation in a Large First-Year Class*, 39 J. LEGAL EDUC. 555 (1989) (discussing simulation in a large first year civil procedure course and providing citations to other articles about using simulations to teach administrative law, contracts, constitutional law, bankruptcy, civil procedure, pretrial litigation, legislation, the "lawyering process," and negotiation).

**RESPONDING:
TWO NEW SOLUTIONS**

