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## ***Transforming Domestic Violence Representation***

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# Transforming Domestic Violence Representation

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## ABSTRACT

*The dominant theories used in the law to explain domestic violence, namely, the Power and Control Wheel and the Cycle of Violence, provide only limited insight into intimate partner abuse. Both theories focus exclusively on the abusive partner's wrongful actions, consistent with recent decades' concentration on criminalization, but fail to educate about the survivor's needs and efforts to end violence. The Stages of Change Model, conversely, reveals that domestic abuse survivors seek an end to relationship violence through a five-stage cyclical sequence and identifies the survivor's needs and actions at each stage. This critical information should inform the representation of abuse survivors; however, this model remains unknown in the legal profession, and this article is the first scholarship to apply this model to lawyering. This article evaluates the contributions and shortcomings of the dominant models. It examines how the Stages of Change Model fills a significant void and how insights from the Stages of Change Model can transform the representation of abuse survivors.*

*Domestic violence representation presents unique challenges to lawyers as they struggle with limited conceptions of their role, assumptions about abuse victims and how they should respond to violence, and feelings of fear and frustration when clients return to abusive partners. The Stages of Change Model can concretely illuminate the general client-centered model of legal representation and suggest multiple lawyering lessons for representing domestic violence survivors. The Stages of Change Model is widely accepted in the field of psychology, has been validated by numerous social science studies, and has the potential to achieve more client-centered legal representation with greater safety outcomes. As I explore the enormous implications this model has for client representation in domestic violence law, I draw on my experience teaching domestic violence clinics and the transformation my students report when they learn and apply this model.*

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## INTRODUCTION

WITH the advent of civil and criminal justice system responses to domestic violence and the creation of shelters and community-based resources<sup>2</sup> for abuse survivors,<sup>3</sup> rates of intimate partner violence have declined over the past several decades.<sup>4</sup> Nevertheless, domestic violence remains pervasive, and legal and social responses have failed to achieve safe outcomes for countless survivors.<sup>5</sup> While legislators and

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<sup>2</sup> See, e.g., LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 1 (2008) (detailing the legal remedies and community-based responses achieved by the battered woman's movement).

<sup>3</sup> In this article, I use the term "survivor" because I view my clients as active agents who work mightily to survive and move past the violence. There are, however, limitations to this choice in that the term may not feel accurate for those who are continually targeted by an abusive partner and are engaged in an ongoing struggle to achieve freedom from violence. There is much discussion in academic literature about the terms used to identify people who have experienced intimate partner abuse. See generally Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1023–27 (1997) (discussing the connotations and implications of the terms "battered woman," "victim," and "woman who has experienced abuse"). Above all, I allow clients to self-identify.

In recognition of gay, lesbian, bisexual, straight, and transgender survivors' experiences of abuse, I have chosen to use gender-neutral pronouns. The majority of domestic violence is experienced by women at the hands of men. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FAMILY VIOLENCE STATISTICS INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES 1 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvs.pdf> ("Females were 84% of spouse abuse victims and 86% of victims of abuse at the hands of a boyfriend or girlfriend."). However, violence occurs in same-sex relationships at the same rate as in heterosexual relationships. Joanna Bunker Rohrbaugh, *Domestic Violence in Same-Gender Relationships*, 44 FAM. CT. REV. 287, 287–88 (2006). Most social science research on domestic violence, including the studies referenced in this article, only examines heterosexual relationships, which is a limitation that should be corrected in future studies.

<sup>4</sup> See SHANNAN CATALANO ET AL., U.S. DEP'T OF JUSTICE, FEMALE VICTIMS OF VIOLENCE 2–6 (2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf> (reporting that data from the Bureau of Justice Statistics' National Crime Victims Survey reveals that the rate of intimate partner violence against women and men declined by approximately 53% between 1993 and 2008; while overall victimization rates have decreased, women continue to be the vast majority of victims of domestic violence assault, rape, and homicide); CALLIE MARIE RENNISON & SARAH WELCHANS, U.S. DEP'T OF JUSTICE, INTIMATE PARTNER VIOLENCE 1 (2000), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv.pdf> (finding that between 1976 and 1998, the number of male victims of domestic partner homicide fell 4% per year, while the number of female victims fell 1% per year); see also Larry Bennett et al., *Effectiveness of Hotline, Advocacy, Counseling, and Shelter Services for Victims of Domestic Violence*, 19 J. INTERPERSONAL VIOLENCE 815, 826 (2004) (finding that access to shelter services leads to a reduction in incidence and severity of re-assault during the following year as compared to women who did not seek shelter and reporting beneficial effects of hotline, advocacy, and counseling services).

<sup>5</sup> See NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2010: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES 3 (2011), available at [http://www.nnedv.org/docs/Census/DVCounts2010/DVCounts10\\_Report\\_Color.pdf](http://www.nnedv.org/docs/Census/DVCounts2010/DVCounts10_Report_Color.pdf) (reporting that

courts should continue to improve substantive and procedural laws,<sup>6</sup> the legal representation of domestic violence survivors should also be critically examined in the interest of survivor safety, along with the theories that inform such representation. This article is about transforming both the theoretical models that depict domestic violence and the legal representation of domestic violence survivors.

Representation of abuse survivors is rare<sup>7</sup> and is informed by theories that help legal actors identify abuse but fail to educate about survivors' needs.<sup>8</sup> The dominant models used in the law to explain domestic violence, namely, the Power and Control Wheel<sup>9</sup> and the Cycle of Violence,<sup>10</sup> provide only limited insight into intimate partner abuse.<sup>11</sup> The Wheel illustrates a multitude of behaviors that abusive partners use to gain and maintain power and control over the survivor, in addition to perpetrating physical and sexual violence. These behaviors include economic control, threats, intimidation, isolation, emotional abuse, and using the children in the

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in a 24-hour period, local domestic violence programs across America answered 22,292 calls for assistance and that the National Domestic Violence Hotline answered 1230 crisis calls); RENNISON & WELCHANS, *supra* note 4, at 1 (stating that the percentage of female murder victims killed by intimate partners has remained at about 30% since 1976); PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY at iii (2000) (finding that in the United States, one in four women experiences domestic violence in her lifetime).

6 See discussion *infra* Part IV.C. The author has previously recommended legal reforms, including expanded definitions of domestic violence to enable the law to respond to more varied experiences of abuse, procedural protections for litigants' privacy interests, procedural reforms to enable abuse survivors to access the system designed to protect them, and substantive law advancements to provide more meaningful relief to achieve an end to violence. See generally Jane K. Stoever, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303 (2011) [hereinafter Stoever, *Freedom from Violence*]; Jane K. Stoever, *Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS*, 87 N.C. L. REV. 1157 (2009) [hereinafter Stoever, *Stories Absent from the Courtroom*].

7 See Beverly Balos, *Domestic Violence Matters: The Case for Appointed Counsel in Protective Order Proceedings*, 15 TEMP. POL. & CIV. RTS. L. REV. 557, 567 (2006) (reviewing civil protection order cases in a jurisdiction in Illinois and finding that neither party was represented in 83.4% of cases); D.C. ACCESS TO JUSTICE COMM'N, JUSTICE FOR ALL? AN EXAMINATION OF THE CIVIL LEGAL NEEDS OF THE DISTRICT OF COLUMBIA'S LOW-INCOME COMMUNITY 7, 83 (2008), available at [www.dccaccessjustice.org/files/CivilLegalNeedsReport.pdf](http://www.dccaccessjustice.org/files/CivilLegalNeedsReport.pdf) (reporting that in the District of Columbia, 98% of litigants in domestic violence cases are pro se). New York is the only state that guarantees a right to counsel for petitioners and respondents in domestic violence proceedings. See N.Y. JUD. CT. ACTS LAW § 262(a) (McKinney 2008).

8 See discussion *infra* Part III.A.

9 *Power and Control Wheel*, THE DULUTH MODEL.ORG, <http://www.theduluthmodel.org/pdf/PowerandControl.pdf>.

10 For an explanation of the Cycle of Violence, see LENORE E. WALKER, THE BATTERED WOMAN SYNDROME 95-97 (1984) [hereinafter WALKER, THE BATTERED WOMAN SYNDROME].

11 See *infra* Part III.A.

abuse by threatening to harm or kidnap them.<sup>12</sup> The Cycle maintains that abuse proceeds in tension–building, acute abuse, and honeymoon phases.<sup>13</sup> While these two models may help people understand the abuser’s wrongful actions, they fail to describe what the abused individual does in response to the violence. They do not convey the survivor’s process for ending the relationship or the violence in the relationship, nor do they illustrate the survivor’s needs or the many actions the survivor takes to live through the violence.

By focusing on the abuser’s actions, both the Wheel and Cycle are consistent with the trend toward criminalizing domestic violence offenses. Following historic inaction,<sup>14</sup> responses to domestic violence have been centered in the criminal justice system in recent decades, beginning with the criminalization of domestic violence and realized through mandatory arrest and prosecution policies,<sup>15</sup> along with specialized domestic violence prosecution units and courts.<sup>16</sup> These mandatory policies remove discretion not only from police and prosecutors, but also from survivors, who are merely unrepresented complaining witnesses in the State’s case.<sup>17</sup> Although research shows that survivors’ safety and autonomy increase when their input is used in decisions about criminal intervention, the current practices disregard survivors’ wishes regarding arrest and prosecution, as well as their assessment of the effect of State action on their safety.<sup>18</sup> This heightened

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<sup>12</sup> *Power and Control Wheel*, *supra* note 9.

<sup>13</sup> WALKER, THE BATTERED WOMAN SYNDROME, *supra* note 10, at 95–97.

<sup>14</sup> See Emily J. Sack, *From the Right of Chastisement to the Criminalization of Domestic Violence: A Study in Resistance to Effective Policy Reform*, 32 T. JEFFERSON L. REV. 31, 31–38 (2009); Deborah Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959, 969–71 (2004).

<sup>15</sup> See 42 U.S.C. § 3796hh(c) (2006) (stating a federal goal and requirement for funding the implementation of local mandatory arrest policies and laws); Sally Engle Merry, *New Legal Realism and the Ethnography of Transnational Law*, 31 LAW & SOC. INQUIRY 975, 984 (2006) (discussing the response to domestic violence in the United States as beginning with criminalization and implementing mandatory arrest and no-drop prosecution policies, and how this approach is being transplanted globally).

<sup>16</sup> See, e.g., CAL. PENAL CODE § 273.81 (West 2008) (establishing procedures for specialized prosecution units for domestic violence cases).

<sup>17</sup> One exception is Maryland, which permits crime victims to have counsel in the criminal proceedings. MD. R. 1–326.

<sup>18</sup> See David A. Ford & Mary Jean Regoli, *The Criminal Prosecution of Wife Assaulters: Process, Problems, and Effects*, in LEGAL RESPONSES TO WIFE ASSAULT 127, 142, 156–57 (N. Zoe Hilton ed., 1993) (finding that giving women the choice of whether to drop criminal charges against the abuser gives women bargaining power that enhances their safety); David Hirschel & Ira W. Hutchison, *The Voices of Domestic Violence Victims: Predictors of Victim Preference for Arrest and the Relationship Between Preference for Arrest and Revictimization*, 49 CRIME & DELINQ. 313, 313–14, 333 (2003) (finding a significant association between an abuse victim’s desire for arrest and subsequent violence experienced and recommending that police take into account the victim’s requests regarding arrest). Feminist critics point to aggressive criminal responses as reinforcing the dangers posed to battered women, particularly in poor and minority com-

criminal justice involvement has failed to target the root causes of domestic violence or to account for different contexts,<sup>19</sup> resulting in greater incidence of mutual arrests<sup>20</sup> and adversely affecting communities of color.<sup>21</sup> Similar to these incomplete responses by the criminal justice system, neither the Wheel nor the Cycle addresses the survivor's response to violence or seeks information from survivors about what measures they believe would effectively end the violence.

Against this backdrop, I strive to teach my Domestic Violence Clinic students to be client-centered and client-empowering advocates who provide representation that enhances survivors' safety and autonomy.<sup>22</sup> We most commonly represent domestic violence survivors in civil protection order<sup>23</sup> cases in local superior court and in immigration matters under the Violence Against Women Act.<sup>24</sup> We broadly aim to find legal and non-legal solutions to meet clients' needs, which often entails assisting clients with housing and public benefits matters and connecting clients to community

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munities. See Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801 (2001).

19 See Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1856 n.45 (2002) (discussing opposition to criminal justice system mandates that inhibit the system's ability to respond to abuse survivors in light of the particular contexts of their individual lives, and how one-size-fits-all responses to the complex and dangerous situation of domestic violence endanger women).

20 See Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1680 (2004) ("Arrests of abused women have increased because officers have been either unable or unwilling to determine the initiator of the violence."); Jessica Dayton, Student Essay, *The Silencing of a Woman's Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZO WOMEN'S L.J. 281, 287 (2003) (discussing a Los Angeles study that found that three times as many women were arrested for domestic abuse after a mandatory arrest statute was adopted).

21 See Jenny Rivera, *The Violence Against Women Act and the Construction of Multiple Consciousness in the Civil Rights and Feminist Movements*, 4 J.L. & POL'Y 463, 506 (1996) ("Dependence on initiatives which are strategies for authorizing state involvement in individual relationships have proved debilitating for communities of color and women."); Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 59-60 (2007) (discussing how increased criminalization intrudes on the lives of minority women).

22 In addition to exposing students to the Power and Control Wheel and Cycle of Violence, I teach models from psychology and lawyering theory, namely the Stages of Change Model and the method of client-centered representation. See *Infra* Parts I and III.B.

23 Protection orders typically prohibit abusers from contacting, coming near, or committing acts of domestic violence against the survivors and their children. Courts may also award child custody, require the respondent to vacate a shared residence, mandate that the respondent participate in the domestic violence perpetrator treatment program, and provide other relief necessary to prevent violence. See, e.g., D.C. CODE §§ 16-1005 (2001); WASH. REV. CODE § 26.50.060 (2008).

24 The Domestic Violence Clinic regularly represents clients in Self-Petition, Battered Spouse Waiver, and U Visa cases. See Immigration and Nationality Act, 8 U.S.C. §§ 1101, 1154, 1186a(c)(4)(C) (2006).

resources.<sup>25</sup> Under my supervision, students represent several clients during the semester, assist clients with their immediate safety needs, help clients consider both legal and non-legal remedies, problem-solve concerning the barriers to leaving an abusive relationship or to ending abuse, and evaluate the benefits and limits of these interventions in the complex problem of domestic violence.<sup>26</sup> Because civil protection orders are the most frequently employed legal remedy<sup>27</sup> and because they have the potential to eliminate violence and enhance survivor autonomy,<sup>28</sup> this article primarily focuses on representation involving protection orders, while also advocating that attorneys engage in holistic representation extending to other legal and non-legal remedies.

In my early work teaching students to represent abuse survivors, I saw students experience many common challenges as they entered the clinic with narrow conceptions of their responsibilities and assumptions about their clients. As one clinic alumna recollected,

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25 Several scholars recommend broad based treatment to aid clients with both legal and non-legal solutions. See Camille Carey, *Correcting Myopia in Domestic Violence Advocacy: Moving Forward in Lawyering and Law School Clinics*, 21 COLUM. J. GENDER & L. 220, 220–22 (recommending that domestic violence lawyering expand beyond specialized family law cases to encompass a wide spectrum of case types to more fully address systemic issues facing victims); V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 133 (2002) (stressing “the importance of finding solutions that meet the client’s needs rather than shaping problems to fit the legal relief available”).

26 Leigh Goodmark & Catherine F. Klein, *Deconstructing Teresa O'Brien: A Role Play for Domestic Violence Clinics*, 23 ST. LOUIS U. PUB. L. REV. 253, 257 (2004) (describing the Catholic University of America Columbus School of Law’s Families and the Law Clinic and explaining, “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.”).

27 Susan Keilitz, *Improving Judicial System Responses to Domestic Violence: The Promises and Risks of Integrated Case Management and Technology Solutions*, in HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES 147, 149 (Albert R. Roberts ed., 2002) (finding that domestic violence survivors are more likely to seek relief solely through protection orders, as compared to using the criminal justice system); see also Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 JAMA 589, 589 (2002) (stating that protection orders are “widely available” and finding that approximately twenty percent of the 1.5 million women who experience intimate partner violence every year obtain a civil protection order).

28 Stoeber, *Freedom from Violence*, *supra* note 6, at 318–22 (describing the potential of protective orders to reduce violence and increase survivor autonomy, and how agency is linked to safety); see also Victoria L. Holt et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?*, 24 AM. J. PREVENTIVE MED. 16, 16, 19–20 (2003) (concluding that domestic abuse survivors who obtain civil orders for protection experience an eighty percent decrease in subsequent police-reported physical violence and generally experience significantly decreased likelihood of subsequent physical and non-physical domestic violence, including significantly decreased risk of weapon threats, injuries, abuse-related medical treatment, and contact by the abusive partner).



I know in the beginning of class[,] I was in awe of the fact that women would not just leave and be done. Before I got in the [Domestic Violence] [C]linic, when I would hear about a domestic violence situation on the news or read about it, I would immediately say she should've just left. It was so simple in my mind.<sup>29</sup>

The students struggled to define their roles, experienced fear and frustration when clients returned to abusive partners, and worked in a court system that operated in a conveyor-belt, cookie-cutter fashion that was not designed to respond to individual survivors' complex and unique needs.<sup>30</sup> The students' experiences illustrate broader phenomena in domestic violence representation in general. I realized that attorneys representing abuse survivors could benefit from a framework for understanding the survivor's decision-making process, actions, and needs, and I started teaching my clinic students the Stages of Change Model from the field of psychology to help them understand the complex actions and needs of domestic violence survivors.<sup>31</sup>

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<sup>29</sup> E-mail from Anonymous 1 (Feb. 8, 2012, 17:39 PST) (redacted copy on file with author); see *infra* note 40 and accompanying text.

<sup>30</sup> See *infra* Part II; see also Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment?*, 11 WASH. U. J.L. & POL'Y 157, 159 (2003) ("The legal systems and policies that impose the 'one size fits all' approach do women a psychological disservice by either forcing them to get an Order of Protection, punishing them for failing to do so, or denying them a voice and recognition if they fail to comport with the current agenda."); Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379, 1399 (2005) (stating that "[f]or too long, courts and legislatures have taken a one-size-fits-all approach to domestic violence").

Domestic violence courts are not unique in taking a perfunctory approach to justice. Housing, small claims, bankruptcy, child support, and drug courts, along with other "poor peoples' courts," similarly process people through in a mechanized way. See Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1804 (2001).

<sup>31</sup> The Stages of Change model was developed by James Prochaska and Carlo DiClemente based on psychotherapy and behavior change theories that examine how people make changes in their lives. It is also referred to as the Transtheoretical Model of Behavior Change. James O. Prochaska & Carlo C. DiClemente, *Transtheoretical Therapy: Toward a More Integrative Model of Change*, 19 PSYCHOTHERAPY: THEORY, RES. & PRAC. 276, 282 (1982). The model grew out of research on smoking cessation and has been applied to a variety of conditions and behavior change areas, in addition to the intimate partner violence context. See, e.g., Julia H. Littell & Heather Girvin, *Ready or Not: Uses of the Stages of Change Model in Child Welfare*, 83 CHILD WELFARE 341 (2004); James O. Prochaska et al., *Stages of Change and Decisional Balance for 12 Problem Behaviors*, 13 HEALTH PSYCH. 39 (1994); James O. Prochaska, Letter to the Editor, *Stages of Change Model for Smoking Prevention and Cessation in Schools*, 320 BRIT. MED. J. 447 (2000); Katreena L. Scott, *Stage of Change as a Predictor of Attrition Among Men in a Batterer Treatment Program*, 19 J. FAM. VIOLENCE 37 (2004); Emily M. Simonavice & Matthew S. Wiggins, *Exercise Barriers, Self-Efficacy, and Stages of Change*, 107 PERCEPTUAL & MOTOR SKILLS 946 (2008); Layne Stromwall, Book Review, 18 AFFILIA 94 (2003) (reviewing GERARD J. CONNORS ET AL., *SUBSTANCE ABUSE TREATMENT AND THE STAGES OF CHANGE: SELECTING AND PLANNING INTERVENTIONS* (2001)).

Extensive quantitative and qualitative research supports the applicability of the Stages of

The Stages of Change Model describes the actual process that survivors go through as they seek to end violence,<sup>32</sup> thereby filling the void left by the Wheel and Cycle. The Model includes five distinct stages—(1) pre-contemplation, (2) contemplation, (3) preparation, (4) action, and (5) maintenance—and posits that progress through the stages occurs in an iterative sequence.<sup>33</sup> According to the Model, people experiencing domestic violence will generally revisit earlier stages as they move toward “maintenance.”<sup>34</sup>

Although the Stages of Change Model is widely accepted in the field of psychology and has been validated by numerous studies,<sup>35</sup> it remains unknown in the legal profession.<sup>36</sup> Indeed, this is the first scholarship to apply the Stages of Change Model to lawyering. By extending the Stages of Change Model from psychology to the legal realm and a specific practice context, lawyers can become more cognizant of the needs of their clients who have survived abuse. Understanding the survivors’ process and perspective has led to breakthroughs for many of my students in ways that

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Change Model to ending relationship violence. *See, e.g.*, Pamela C. Alexander et al., *Predicting Stages of Change in Battered Women*, 24 J. INTERPERSONAL VIOLENCE 1652 (2009); Melanie J. Bliss et al., *African American Women’s Readiness to Change Abusive Relationships*, 23 J. FAM. VIOLENCE 161 (2008); Jody Brown, *Working Toward Freedom from Violence: The Process of Change in Battered Women*, 3 VIOLENCE AGAINST WOMEN 5 (1997); Jessica Griffin Burke et al., *Defining Appropriate Stages of Change for Intimate Partner Violence Survivors*, 24 VIOLENCE & VICTIMS 36 (2009) (describing quantitative research and findings consistent with earlier qualitative studies); Jessica G. Burke et al., *Ending Intimate Partner Violence: An Application of the Transtheoretical Model*, 28 AM. J. HEALTH BEHAVIOR 122 (2004) [hereinafter Burke et al., *Ending Intimate Partner Violence*]; Jessica G. Burke et al., *The Process of Ending Abuse in Intimate Relationships: A Qualitative Exploration of the Transtheoretical Model*, 7 VIOLENCE AGAINST WOMEN 1144 (2001); Kelly H. Burkitt & Gregory L. Larkin, *The Transtheoretical Model in Intimate Partner Violence Victimization: Stage Changes Over Time*, 23 VIOLENCE & VICTIMS 411 (2008); Sondra Burman, *Battered Women: Stages of Change and Other Treatment Models That Instigate and Sustain Leaving*, 3 BRIEF TREATMENT & CRISIS INTERVENTION 83 (2003); Judy C. Chang et al., *Understanding Behavior Change for Women Experiencing Intimate Partner Violence: Mapping the Ups and Downs Using the Stages of Change*, 62 PATIENT EDUC. & COUNSELING 330 (2006); Pamela Y. Frasier et al., *Using the Stages of Change Model to Counsel Victims of Intimate Partner Violence*, 43 PATIENT EDUC. & COUNSELING 211 (2001); Lois A. Haggerty & Lisa A. Goodman, *Stages of Change–Based Nursing Interventions for Victims of Interpersonal Violence*, 32 J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 68 (2003); Lyndal Khaw & Jennifer Hardesty, *Theorizing the Process of Leaving: Turning Points and Trajectories in the Stages of Change*, 56 FAMILY RELATIONS 413, 413–14 (2007); Alice Kramer, *Stages of Change: Surviving Intimate Partner Violence During and After Pregnancy*, 21 J. PERINATAL & NEONATAL NURSING 285 (2007); Therese Zink et al., *Medical Management of Intimate Partner Violence Considering the Stages of Change: Precontemplation and Contemplation*, 2 ANNALS FAM. MED. 231 (2004).

<sup>32</sup> See Brown, *supra* note 31, at 10.

<sup>33</sup> *Id.*; see *infra* Part III.B.

<sup>34</sup> See Brown, *supra* note 31, at 10.

<sup>35</sup> See sources cited *supra* note 31.

<sup>36</sup> See *infra* notes 180–81 and accompanying text.

have positively impacted their client representation, as described within this article.

There are multiple means by which the Model can transform how lawyers represent survivors. First, the Model helps lawyers understand their clients' choices and behaviors. Student attorneys and lawyers are often dismayed and distressed that domestic violence survivors frequently dismiss cases or return to an abusive partner. However, the Stages of Change Model teaches that survivors often leave many times, take numerous steps in the interest of safety, and follow a process to end violence. By understanding this process, attorneys are better equipped to work with domestic violence survivors in a client-centered manner and understand the complexities of the relationship and the decisions that confront the client.

Second, the Model encourages attorneys to meet their clients where they are in the process of ending violence. For example, a person experiencing abuse may be in the preparation stage and may speak to an attorney about available legal and social resources, but may not wish to move forward with a legal case. The seemingly small step of gathering information is so important to the survivor's process and safety that its successful navigation can be viewed as a fruitful moment in the attorney-client relationship, even if it is the only interaction at that point in time.

Third, by conveying what survivors need at each stage in their pursuit of safety, the Model helps attorneys recognize and respond to the limitations of the legal system during the action stage. Such shortcomings include the limited types of relief, short duration of court orders, and challenges of the courtroom atmosphere.

Finally, focusing on the preparation and maintenance stages encourages attorneys to be aware of the client's non-legal, emotional, and economic needs. Regarding the maintenance stage, a court order alone fails to address the compound relational, community, economic, and emotional barriers to ending violence. Overcoming those barriers requires both legal remedies and connection with social services.

Clinic graduates have reported that their client representation continues to be affected by the Model as they practice law. A clinic alumnus who is now a family law attorney recounted a recent case in which his client experienced extremely high levels of violence. When his client wished to dismiss her protection order case, he abided by her wishes: "I knew not to get frustrated with my client. I told her that she could come back to me if anything else happened in the future."<sup>37</sup> The client's husband further abused her in the months following the protective order dismissal. The former student wrote, "In this scenario, I faced every stage of the [Stages of Change Model]. If I did not understand this model, I would have treated my client as irrational and indecisive. I would likely have refused to see her

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<sup>37</sup> E-mail from Anonymous 2 to author (Feb. 6, 2012, 14:16 PST) (redacted copy on file with author).

a second time.”<sup>38</sup> By understanding that survivors go through a process to achieve safety and autonomy, the alumnus respected his client’s choices and was able to better represent her interests and remain available to her.

This article illustrates how the Stages of Change Model enables attorneys to be client-centered and better represent their clients. Part I describes clinical legal theory’s commitment to client-centered representation. The client-centered lawyering approach is applicable across subject areas; however, it is particularly appropriate in domestic violence cases because it has substantial implications for the survivor’s safety and autonomy. Part II discusses significant challenges to being client-centered that clinic students and attorneys routinely have when representing domestic violence survivors, such as focusing exclusively on legal solutions, limiting their role to courtroom advocacy, and making assumptions about how abuse survivors will present and how they should respond to the violence in their lives. Part III more fully explores the dominant theories used to teach about domestic violence, along with their benefits and limitations. Part III also argues that application of the Stages of Change Model provides a concrete conceptualization of client-centered representation, thereby guiding students and lawyers in being more client-centered. Further, Part III elaborates upon the Stages of Change Model, discusses methods for teaching the Model, and analyzes the limitations of the Model. Finally, Part IV explores some of the benefits of teaching the Stages of Change Model, including new ways of theorizing the lawyer’s role and a deeper understanding of clients’ needs based on the crucial information the Model conveys.

The discussion in this article is equally applicable to student attorneys and practicing lawyers and is intended to inform legal actors in general. However, the article is situated in the site of law school domestic violence and family law clinics, intentional educational environments that encourage high levels of reflection on every aspect of representation and the law.<sup>39</sup> The specialized clinic is dedicated to serving survivors of

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<sup>38</sup> *Id.*

<sup>39</sup> See Ann Shalleck & Muneer Ahmad, *Toward a Jurisprudence of Clinical Thought*, (Oct. 1, 2010) (unpublished manuscript) (on file with author) (discussing teaching about the law in clinical education and how faculty encourage students to consider what law is, why it has power and legitimacy, how the law operates and fails to operate, how the law is much more than what is written, and that what happens to clients in court is the law in action).

Regarding reflection on representation, because students are learning to lawyer, they handle a small volume of cases, which allows them to take great care with their lawyering and be highly reflective about the representation. See, e.g., Victor M. Goode, *There Is a Method(ology) to This Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223, 244 (2000) (identifying that the standard law clinic model is to handle a limited number of cases which are chosen with educational goals and with a preference for serving marginalized or underserved populations); cf. Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 333 (2009) (describing a higher-volume community lawyering model).

domestic violence, and, as the supervising faculty member, I am devoted to discovering how best to teach student attorneys to provide exceptional representation to their clients. This article is grounded in the insight I have gained into student attorneys' understanding of their clients, the dynamics of domestic violence, and their lawyering experiences based on their direct reports and reflections and revelations in supervision, seminar, case rounds, journal entries, and other interactions. I asked several classes of clinic alumni to report on (1) the expectations they had prior to entering the Domestic Violence Clinic about their clients and the student attorney role, (2) whether they believe it is valuable for lawyers who represent domestic violence survivors to be taught the Stages of Change Model, and (3) whether learning the Stages of Change Model affected their client representation. Excerpts of their reflections are interspersed throughout this article.<sup>40</sup>

## I. CLIENT-CENTERED REPRESENTATION IN DOMESTIC VIOLENCE CASES

### A. *The Clinical Model*

Law school clinics operate with the multiple purposes of teaching students lawyering skills and values to prepare them to be competent, ethical, and reflective lawyers, while providing representation to those in need.<sup>41</sup> Clinic students are presented with clients in crisis and the law in action. The students bear the tremendous responsibility of representing another person,<sup>42</sup> typically for the first time since entering law school.<sup>43</sup> Under the close supervision of clinical faculty who generally strive to use a non-directive teaching method,<sup>44</sup> students learn to be lawyers through their

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<sup>40</sup> Student responses are on file with the author.

<sup>41</sup> See Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 *How. L.J.* 31, 32 (1993) (discussing the mission of clinical education as rooted in serving those in need, educating future lawyers, and connecting law schools with the greater community).

<sup>42</sup> See William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 *AKRON L. REV.* 463, 493 (1995) ("Direct contact with people in need can have a transformative effect upon clinical law students.").

<sup>43</sup> See, e.g., D.C. CT. APP. R. 48(a)(1) (requiring law students to be enrolled in a clinical program in which they are monitored by a supervising attorney in order to provide legal assistance to indigent clients).

<sup>44</sup> See Brodie, *supra* note 39, at 352 ("Student autonomy in case-handling, promoted through non-directive supervision, is thought to be the foundational pedagogical commitment of clinical legal education."); Keith A. Findley, *The Pedagogy of Innocence: Reflections on the Role of Innocence Projects in Clinical Legal Education*, 13 *CLINICAL L. REV.* 231, 266 (2006) (stating that most clinicians engage in "non-directive" supervision); cf. Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic*, 16 *CLINICAL L. REV.* 451, 454 (2009) (identifying non-directive supervision and maximizing student ownership as clinical goals, but arguing that these goals are not well-suited in clinics in which students work on large institutional

representation of real people with all the complexities, indeterminacies, and complications of real problems.<sup>45</sup>

As we begin each semester, one of my early goals is to help my students find their voices and rediscover the confidence and sense of competence they possessed before entering law school.<sup>46</sup> Instilling an appreciation of the profession's focus on service and justice encourages students to imagine their professional role as "simultaneously a form of social commitment and self-expression."<sup>47</sup> The clinic is often the first place students are encouraged to integrate who they are as a person with their identity as a legal professional,<sup>48</sup> and I encourage students to reflect on what kind of lawyers they want to be.<sup>49</sup>

In my Domestic Violence Clinic, I expose law students to the skills, values, theoretical issues, ethical concerns, and institutional issues involved in the practice of law, all while representing persons subjected to domestic violence. Our clients are diverse, but they have all experienced violence,

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advocacy projects).

45 See Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 282 (2000) ("Simulations are too neat. Real-life advocacy is confusing, intimidating, unpredictable and messy, and our students need to know this. Moreover, students need to experience the complexities of dealing with an actual client. If there is a baseline concept underlying clinical education, it is the importance of a client context for learning and understanding the law."); Quigley, *supra* note 42, at 475 ("[C]linical education stands squarely for the proposition that students learn most effectively by participating in their own education by actually representing people.").

46 See Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389, 389 (2006) (finding that female students are underrepresented in classroom discussions and are less likely to form professional beneficial relationships with their professors, and that "professors treat women differently from men and reward behaviors that are more likely to be displayed by men"); Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2027 (1998) ("Far from brimming over with personal and intellectual self-confidence, by the second (2L) year, a surprising number of Harvard Law students come to resemble what [Professor Morton J. Horwitz] has called 'the walking wounded': demoralized, dispirited, and profoundly disengaged from the law school experience. What's more, by third (3L) year, a disturbingly high number of students come to convey a strong sense of impotence and little inclination or enthusiasm for meeting the world's challenges head on.").

47 William H. Simon, *The Trouble With Legal Ethics*, 41 J. LEGAL EDUC. 65, 66 (1991).

48 See Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 535–37 (2007) (explaining that law schools traditionally disaggregated the legal academic process from the formation of students' professional identities, personal values, and goals). See generally WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (focusing on the development of professional identity as central to the future of legal education).

49 See Quigley, *supra* note 42, at 474 ("Clinical education offers an opportunity for a liberating education, an opportunity for teacher and student to join in a common quest for developing self-conscious reflection from experience. As a result, students transform into self-learners, teachers become reflective self-evaluating transformative agents of education, and clients get a chance to participate in fashioning their own futures.").

live in poverty, and face complex life circumstances that both limit their choices and present barriers to escaping violence. Through the clinic seminar and client representation, students learn a tremendous range of lawyering skills, including how to interview, counsel clients regarding legal and non-legal options, investigate facts, conduct legal research, develop a case theory, file pleadings, negotiate, conduct a trial, and engage in community outreach, education, and organizing. As students learn legal skills, clinical faculty also teach lawyering values, such as the significance of the attorney-client relationship and the importance of providing culturally competent,<sup>50</sup> empathetic,<sup>51</sup> client-centered representation.<sup>52</sup>

*B. Client-Centered Lawyering for Autonomy and Safety*

Client-centered lawyering prioritizes the client, the client's understanding of the problem, and the achievement of the client's goals in the way the client deems best.<sup>53</sup> It is the predominant method of lawyering taught across law school clinics and recommended for lawyering in general.<sup>54</sup> In client-centered representation, the client is empowered to be the decision-maker;<sup>55</sup> the lawyer works with the client as a problem-

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<sup>50</sup> Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 34 (2001); see also Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1, 46 (1997) ("[V]enturing into the client's world should increase the likelihood of developing a critical understanding of power and privilege."); Susan Bryant & Maria Arias, *Case Study: A Battered Women's Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community*, 42 WASH. U. J. URB. & CONTEMP. L. 207, 210 (1992) ("In a clinical setting, students begin to develop an understanding of how race, gender, ethnicity, and class can influence lawyering. . . . Often lawyering skills courses that are taught through simulation teach skills without an explicit recognition of the importance of context. In the clinical setting, however, the real world makes context more apparent and forces students to apply their lawyering skills to problems with real world complications.").

<sup>51</sup> Genty, *supra* note 45, at 275 (arguing that empathy is among the most important of lawyering skills and that empathy can be taught only through representing actual clients in in-house law school clinics, as compared to simulations or externship placements).

<sup>52</sup> DAVID A. BINDER & SUSAN C. PRICE, LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH (1977) (introducing the model of client-centered representation in their textbook on lawyering skills); see also DAVID A. BINDER ET AL., LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH (2d ed. 2004).

<sup>53</sup> DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 51 (2002).

<sup>54</sup> Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 370-71 (2006) (describing how client-centered representation quickly became the primary method of client counseling taught in law schools in the United States, and identifying client-centered representation as "one of the most influential doctrines in legal education today").

<sup>55</sup> Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 507 (1990) (noting that the goal of client-centered counsel is "not only to provide opportunities for clients to make decisions themselves but also to enhance the likelihood that

solver and allows the client to choose what he or she wants from the lawyer and the legal system.<sup>56</sup> The lawyer also takes a holistic view of the client and seeks to understand the multitude of issues the client faces and the context of the client's problems,<sup>57</sup> including the client's relationships and community.<sup>58</sup>

One student reflected on her notion of lawyering prior to entering the Domestic Violence Clinic and how it evolved, commenting,

I assumed that my role and my clients' roles were clearly divided. I assumed that my clients would provide their stories, and that I would take it from there by determining the case theory, the available options, and the legal strategy. However, I learned quickly both as a student attorney and as an attorney that the attorney–client relationship is just that—a relationship. It requires collaboration and communication on both sides. Ultimately, our clients know more about their cases than we do.<sup>59</sup>

Client-centered representation, like the Stages of Change Model, prioritizes the client's understanding of the problem, desires, decisions, voice, and methods for achieving his or her goals,<sup>60</sup> thereby encouraging client empowerment.<sup>61</sup> When asked to reflect on whether the Stages of Change Model affected his lawyering, one former student commented,

It is simply one of the most important things to understand as a DV attorney. Understanding this model helped reduce my personal stress level. I came to understand that some decisions made by my client weren't the result of my own personal failures. Even if I explained the law perfectly and my client understood

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the decisions are truly the client's and not the lawyer's"); Paul R. Tremblay, *On Persuasion and Paternalism: Lawyer Decisionmaking and the Questionably Competent Client*, 1987 UTAH L. REV. 515, 523 (1987) (describing "client-centeredness" as the "conviction that the client, and not the lawyer, should remain the primary decisionmaker").

<sup>56</sup> Bryant & Arias, *supra* note 50, at 216.

<sup>57</sup> Kruse, *supra* note 54, at 374 ("[G]oals of client-centered representation [include] collaborative decision-making, holistic problem-solving and client empowerment.").

<sup>58</sup> Enos & Kanter, *supra* note 25, at 93.

<sup>59</sup> E-mail from Anonymous 3 to author (Feb. 8, 2012, 15:58 PST) (redacted copy on file with author).

<sup>60</sup> See Brenda V. Smith, *Battering, Forgiveness, and Redemption*, 11 AM. U. J. GENDER SOC. POL'Y & L. 921, 932 (2003) ("[T]he women involved may themselves understand their situations and solutions better than we do. A basic principle of client-centered lawyering is that clients have crucial information about the nature of their problem and the nature of the solutions to their problems.").

<sup>61</sup> Bryant & Arias, *supra* note 50, at 217 n.6 (arguing that client-centered interviewing encourages client empowerment); Enos & Kanter, *supra* note 25, at 94 ("Client empowerment . . . begins with a client-centered analysis of the problem presented, so that the advocate—whether a lawyer or other provider—sees the problem through the client's eyes and is therefore in a position to assist the client in addressing her problem the way she deems best.").



that she had a strong case, it was ultimately up to the client to decide what he or she wanted to do.<sup>62</sup>

The Model enables attorneys to be better lawyers by helping them understand survivors' needs and processes for pursuing safety, and also helps lawyers avoid feeling frustrated and hopeless, which encourages them to continue representing domestic violence survivors in ways clients find beneficial.

Besides furthering clients' autonomy, client-centered representation has positive implications for client safety. Battered women's advocates have long insisted on the importance of listening to women's safety-related fears and responding accordingly.<sup>63</sup> Research now substantiates the validity of abused women's predictions and supports the conclusion that a survivor is her own best expert on her safety.<sup>64</sup> Studies have found women's perceptions of the risks they face from an abusive partner to accurately predict re-assault.<sup>65</sup> For example, in a study of 177 women who had experienced domestic violence, the subjects were asked to predict on a scale from zero to ten the likelihood that the abusive partner would become violent in the next year.<sup>66</sup> The women's perceptions and predictions were the "single best predictor of severe violence."<sup>67</sup> Furthermore, when women's perceptions are factored into risk assessment tools, they improve the accuracy of these instruments.<sup>68</sup> Certain aspects of a survivor's experience increase the accuracy of his or her assessment of the risk of re-abuse, including the history of relationship violence, recency of the abuse, history of stalking, and presence of post-traumatic stress disorder symptoms.<sup>69</sup>

Researchers also found that women sought help in different ways based upon the level of risk they detected.<sup>70</sup> When abusive partners had threatened to kill them, a high indicator of lethality risk, women were more likely to complete the civil protection order process, contrary to women

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62 E-mail from Anonymous 2, *supra* note 37.

63 *See generally* GOODMAN & EPSTEIN, *supra* note 2.

64 D. Alex Heckert & Edward W. Gondolf, *Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault*, 19 J. INTERPERSONAL VIOLENCE 778, 781 (2004) (using multinomial logistic regression research to evaluate women's perceptions of risk).

65 *Id.* at 796 (finding that a domestic violence victim's perception of risk is a "reasonably accurate predictor of repeated assault").

66 Arlene N. Weisz et al., *Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions*, 15 J. INTERPERSONAL VIOLENCE 75, 79 (2000).

67 Heckert & Gondolf, *supra* note 64, at 781.

68 *Id.* at 796 (concluding that abuse survivors are able to "assess risk in broader and more idiosyncratic ways that go beyond a combination of risk factors").

69 Lauren Bennett Cattaneo et al., *Intimate Partner Violence Victims' Accuracy in Assessing their Risk of Re-abuse*, 22 J. FAM. VIOLENCE 429, 429, 437-38 (2007).

70 Heckert & Gondolf, *supra* note 64, at 794.

whose partners had not made death threats.<sup>71</sup> Women were more likely to leave the abusive partner, engage in safety planning, or take other actions to try to reduce the risk when they felt that they were at risk for re–assault, whereas women who felt “somewhat safe” were less likely to take these actions.<sup>72</sup>

Because a survivor’s own perception of risk is as accurate or more so than available risk assessment instruments, abuse survivors should be encouraged to trust their intuition. Likewise, lawyers should listen to abuse survivors’ concerns about their safety and assessments of what will make them safe. A Domestic Violence Clinic graduate noted that prior to entering the clinic, she thought she would play an “expert role” in how her client’s life should proceed, but concluded, “Truly learning to appreciate that the client is the expert of her own life was one of the hardest but most fundamental lessons to learn.”<sup>73</sup> While client–centered lawyering is taught across clinics regardless of subject area, it is particularly apt for domestic violence clinics because of its positive impact on survivors’ autonomy, empowerment, and safety.

## II. COMMON CHALLENGES WHILE REPRESENTING DOMESTIC VIOLENCE SURVIVORS

Domestic violence protection order cases distinctively challenge students as they strive to be client–centered lawyers. Students theoretically understand and accept the concept of client–centered representation and can artfully articulate it, but they experience difficulty implementing the concept when faced with real clients’ choices and goals. Student attorneys representing domestic violence survivors commonly struggle with several areas of representation related to how the attorney views the client and how the attorney defines his or her role.

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<sup>71</sup> James C. Roberts et al., *Why Victims of Intimate Partner Violence Withdraw Protection Orders*, 23 J. FAM. VIOLENCE 369, 370 (2008).

<sup>72</sup> Heckert & Gondolf, *supra* note 64, at 794, 797–98 (cautioning, however, that women who feel somewhat safe may be at the greatest risk because they are not taking proactive steps to reduce their risk, and recommending that if women do not feel “very safe,” they should be instructed to trust their instincts and be vigilant about signs of danger).

<sup>73</sup> E–mail from Anonymous 4 to author (Sept. 9, 2012, 12:48 PST) (redacted copy on file with author).

*A. The Attorney as Rescuer*

Lawyers bring their own experiences, values, and attitudes to the representation,<sup>74</sup> which often results in the objectification of clients and assumptions about how clients will behave,<sup>75</sup> all of which are in tension with being client-centered. Some students envision themselves in the role of rescuer,<sup>76</sup> savior,<sup>77</sup> or knight in shining armor<sup>78</sup> to a victim who needs to be saved. A clinic alumnus reported, “I honestly thought I’d be the ‘white knight’ who would come and save the day. I thought that I’d be able to solve all of my clients’ problems within a few months.”<sup>79</sup> Another graduate similarly said, “I expected to be a hero of sorts. I thought that as a student attorney, I could rescue my clients from whatever abuse or violence they had been subjected to. In that role, I also expected gratitude and appreciation.”<sup>80</sup>

When attorneys perceive their clients as victims rather than as survivors of violence, they may view their clients as weak and unable to act autonomously or in their own interests. One former student said, “I expected most of my clients to be both physically and emotionally broken from their relationships. I did not expect these clients to have significant control over their own lives.”<sup>81</sup> By perceiving their clients solely as victims, attorneys disregard their clients’ strengths and resources. This perception

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74 Some students grew up in households with domestic violence and have strong opinions about what their clients should do based on their personal experiences and perspectives. For example, one student was very proud of her mother who immediately left her father when he hit her. That student labored to understand why her clients did not act as her mother had. See Shalleck, *supra* note 3, at 1053 (discussing the inherent tensions raised for “client-centered” representation arising from attorneys’ personal values and attitudes).

75 The diversity of our client population further challenges students’ expectations about domestic violence.

76 Enos & Kanter, *supra* note 25, at 97–98 (describing how students perceive themselves as “rescuers”).

77 Gary Brown et al., Comment, *Starting a TRO Project: Student Representation of Battered Women*, 96 YALE L.J. 1985, 2014–15 (1987) (identifying that students may approach their representation “over-optimistically, and somewhat egotistically” and believe they are “‘saving’ their clients from a terrible fate”).

78 Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901, 905 (1997) (identifying that attorneys are comfortable in the role of “the knight in white armor”).

79 E-mail from Anonymous 2, *supra* note 37.

80 E-mail from Anonymous 3, *supra* note 59. She concludes by saying, “Many of our clients were extremely grateful for what we did, but some were not. As an attorney, I am treated the same way, but I no longer expect to be perceived as a hero.” Cf. Melissa Moody, *A Blow to Domestic Violence Victims: Applying the “Testimonial Statements” Test in Crawford v. Washington*, 11 WM. & MARY J. WOMEN & L. 387, 398 (2005) (discussing the role of police officers as heroes and protectors).

81 E-mail from Anonymous 2, *supra* note 37.

makes it difficult for the attorney to trust the client's analysis of his or her situation.<sup>82</sup>

### *B. Assumptions About Leaving*

When I ask students about their goals for the semester, they tend to express a fixed vision: they want to help victims leave abusers. Students often enter the clinic with an oversimplified understanding of their clients and domestic violence,<sup>83</sup> which includes the expectation that the client will—with unwavering resolve—exit the abusive relationship or have already exited, with the student able to metaphorically lock the door.<sup>84</sup> One student reflected on the assumptions she held about her clients prior to entering the clinic, writing, “I assumed they would want to leave the abuser. . . . We would get a client, obtain the [Civil Protection Order], and the client would neatly live the rest of her life.”<sup>85</sup>

Protection order clients, however, may decide not to pursue a legal remedy and may “drop” their cases,<sup>86</sup> sometimes failing to communicate this to their student attorneys and falling out of contact. The client may return to an abusive partner and either wish to dismiss the case or change the forms of relief sought, such as altering the terms of a “stay away” order, the child custody and visitation provisions, or details regarding property or monetary relief. Students are often unprepared for clients who return to their abusive partners,<sup>87</sup> and frequently, students are devastated and fraught with worry when this occurs. In contrast, in the Domestic Violence Clinic's immigration cases, a client's goal is almost always fixed and does

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82 Enos & Kanter, *supra* note 25, at 98 (explaining that viewing clients as victims can impede an advocate's ability to identify and build on the client's strengths and resources).

83 See Bryant & Arias, *supra* note 50, at 215 (“Many students start the clinic with monolithic assumptions about battered women. Through their own work on cases and through seminar readings, they develop a more sophisticated understanding of the diversity of the client group.”); Leigh Goodmark, *Clinical Cognitive Dissonance: The Values and Goals of Domestic Violence Clinics, the Legal System, and the Students Caught in the Middle*, 20 J.L. & POL'Y 301, 311 (2012) (explaining that challenging assumptions regarding domestic violence is part of the clinical project); see also Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 91 (2008) (describing the prevailing narrative of domestic violence victims: “Battered women are weak, dependent, passive, fearful, white, straight women who need the court's assistance because they are not able to take positive action to stop the violence against them.”).

84 See Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1283–84 (1992) (describing the social and legal presumption of exit and how a woman's failure to exit a work or romantic relationship is used against her as evidence that abuse did not occur).

85 E-mail from Anonymous 4, *supra* note 73.

86 See *infra* Part IV.A.

87 Goodmark & Klein, *supra* note 26, at 258 (reporting that students become “[f]rustrated with clients who do not return telephone calls or who choose to return to their abusive husbands or partners”).

not shift: the client is undocumented or has conditional status and wishes to become a legal permanent resident.<sup>88</sup> As a result, clients in such cases tend to pursue the goal of permanent residence unwaveringly, consistent with the attorney's expectations.

### C. *Lawyering as Courtroom Drama*

Protection order cases involve fast-paced litigation, and students are eager to get into court and practice trial skills.<sup>89</sup> The promise of the courtroom may have indeed been what compelled them to enroll in the Domestic Violence Clinic.<sup>90</sup> Students are understandably both excited and nervous about appearing in court for the first time, and their focus on the performance aspect of the representation sometimes comes at the expense of attending to significant non-legal, safety-related client needs. Students and lawyers also may have rigid conceptions of what constitutes legal work appropriate for an attorney and may deem non-legal problem solving as more fitting for a social worker, which presents obstacles to seeing and helping clients in a holistic manner.<sup>91</sup>

Students may enter the clinic with a rigid image that lawyers pursue "legal solutions through applying their knowledge of the law and legal systems to the client's legal problems."<sup>92</sup> Deeply immersed in the study and practice of law, student attorneys and lawyers tend to be predisposed to believing that law is the answer, when litigation actually may not resolve the violence, can create greater dangers, and should generally be

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88 For immigration representation, the Domestic Violence Clinic receives the majority of our cases through referrals from a local non-profit organization that has a lengthy waiting list. Typically, by the time we begin representing an undocumented immigrant in an immigration case under the Violence Against Women Act (which applies to abused women and men), he or she has been waiting for representation for one to two years. Many of our immigration clients are living apart from their abuser and are not in immediate crisis when we begin representation. The clinic also represents many immigrants in protection order actions, and we often seek immigration relief on their behalf.

89 See Marilyn J. Ireland, *Magician to Sorcerer: A Book Review of Stephen Nathanson's What Lawyers Do*, 34 CAL. W. L. REV. 529, 530 (1998) (noting that students' notions of the legal profession are often based on courtroom dramas).

90 Many early law clinics provided representation in a variety of fields of law that relate to poverty law, including landlord-tenant, public benefits, family law, and criminal misdemeanors. With the increasing specialization of clinics and the growing number of clinics focused on legislative advocacy, small businesses and transactional work, estate planning, and human rights projects, domestic violence clinics and criminal defense clinics are often a school's only clinical offerings in which students can presume that they will receive trial experience.

91 See Jacqueline St. Joan, *Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in A Domestic Violence Clinic and Issues of Client Confidentiality*, 7 CLINICAL L. REV. 403 (2001) (examining the intersection of the work of lawyers and social workers in one domestic violence clinic).

92 Enos & Kanter, *supra* note 25, at 86.

undertaken alongside non-legal problem-solving.<sup>93</sup> A Domestic Violence Clinic graduate reflected,

When I thought of my role as an attorney before my experience in the clinic, I primarily thought my job was to give legal advice and keep our clients informed of the process. I soon learned that my role as an attorney was much bigger. My role included advising clients of legal as well as non-legal options that would help them stay safe. It was definitely not just about the law.<sup>94</sup>

Another former clinic student similarly reported,

I don't think I appreciated how little the legal system could do for the clients and the importance [of] the social services they could access after getting a [Civil Protection Order]. I thought [my] role would center more around court and filing motions and less in helping the clients navigate the sometimes surprisingly complex social services.<sup>95</sup>

#### D. *The Prosecutorial Mindset*

When first introduced to client-centered lawyering, students often undergo a period of adjustment of stance from a prosecutorial mindset to the role of a civil attorney representing a client. Students are often familiar only with the criminal justice system response to domestic violence in which the state intervenes and makes decisions, and they lack a model for deferring to an abuse survivor's wishes. In terms of exposure to the topic of domestic violence in the standard law school curriculum, students study the elements of assault<sup>96</sup> and are introduced to the Battered Women's Syndrome defense in Criminal Law.<sup>97</sup> However, intimate partner abuse is rarely covered in Torts class<sup>98</sup> and few tort actions are filed based on domestic violence, although it is the most common tort committed.<sup>99</sup> The

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<sup>93</sup> Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 8–9 (2004) (discussing the prevalence of legal responses to violence).

<sup>94</sup> E-mail from Anonymous 5 to author (Feb. 8, 2012, 17:51 PST) (redacted copy on file with author).

<sup>95</sup> E-mail from Anonymous 4, *supra* note 73.

<sup>96</sup> However, assault is typically not presented as domestic violence and as occurring in the context of an intimate partner relationship.

<sup>97</sup> See, e.g., RICHARD J. BONNIE ET AL., CRIMINAL LAW 505–12 (3d ed. 2010) (discussing the use of Battered Woman Syndrome to satisfy the self-defense requirement that threatened harm be imminent); WAYNE R. LAFAVE, MODERN CRIMINAL LAW 518–28 (5th ed. 2011) (discussing the use and critique of Battered Woman Syndrome).

<sup>98</sup> See James T.R. Jones, *Integrating Domestic Violence Issues into the Law School Torts Curriculum*, 47 LOY. L. REV. 59 (2001) (explaining how torts could be taught by almost exclusively using domestic violence examples).

<sup>99</sup> Jennifer Wiggins, *Domestic Violence Torts*, 75 S. CAL. L. REV. 121, 124 (2001) (advocating

criminal justice system, with its mandatory arrest and “no drop” policies, places decision-making power about domestic violence in the hands of the police and prosecutors.<sup>100</sup> The law enforcement or prosecutor’s role in the criminal justice system stands in stark contrast to the civil attorney’s or defense counsel’s mandate to carry out an individual client’s wishes and typically heed the survivor’s expertise regarding his or her level of risk and effective management of risk. The Domestic Violence Clinic provides the opportunity for students to learn what it means to represent another person, explore questions of ethical judgment to avoid subordinating the client’s values and wishes, counter judges’ and clerks’ dominant understandings of domestic violence and expectations of victims, and appreciate the responsibility that client-centered representation entails.

This section has described challenges that students commonly experience when representing survivors of domestic abuse, as evinced through former students’ reflections, my observations, and the literature. This discussion applies to practicing attorneys as well; they, too, may approach their work with assumptions about their clients and expectations about the scope of the representation and their role, although they may not be presented with a forum for reflecting on their representational challenges.

### III. MODELS FOR UNDERSTANDING DOMESTIC VIOLENCE

To date, two models have been widely employed to teach lawyers, judges, advocates, and student attorneys about domestic violence: the Cycle of Violence and the Power and Control Wheel.<sup>101</sup> These models illustrate the dynamics of domestic violence and purport to explain the battering experience but do not describe the survivor’s experience of living in a violent relationship or what he or she does in response to the violence. This section describes the predominant models, the essential contributions of the Stages of Change Model to client-centered lawyering, and the pedagogical uses of each model. Teaching the limitations of a model is

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for civil liability for domestic violence torts).

100 See ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 184–88 (2000) (explaining that under “no drop” policies, prosecutors will not consider the victim’s preference as to whether or not to proceed with a criminal domestic violence prosecution, and discussing the controversy of mandatory arrest and prosecution policies).

101 Leigh Goodmark, *Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal*, 31 WASH. U. J.L. & POL’Y 39, 41 (2009) (stating that Lenore Walker’s Cycle of Violence has been a primary theoretical model and is routinely used in domestic violence trainings); Goodmark & Klein, *supra* note 26, at 258 n.8 (stating that the professors use the Power and Control Wheel and Cycle of Violence to teach students about the dynamics of domestic violence, and finding that “[t]hese are extremely helpful teaching devices for students and for clients”).

part of teaching the use of any model, and this section also offers cautions regarding each model.

At the outset of the semester, I teach a daylong Domestic Violence Clinic orientation designed to introduce students to the dynamics and complexities of domestic violence. I provide an overview of the clinic and our general case types<sup>102</sup> and teach sessions addressing the dynamics of domestic violence,<sup>103</sup> poverty and domestic abuse,<sup>104</sup> and cultural competency and cross-cultural lawyering skills.<sup>105</sup> The orientation focuses largely on exploring how multiple oppressions and intersecting issues affect a survivor's experience of domestic violence and the efficacy of various interventions. These are the beginnings of conversations that the students and I will have throughout the semester. I begin with these topics during orientation because I want the clinic students, prior to meeting their clients, to consider their clients' possible circumstances, develop a vocabulary about lawyering values, and reconnect with or build their capacity for empathy, which may not have been a focus of other law school courses.<sup>106</sup>

As part of the orientation, during an initial period when students are learning to identify what domestic violence is, I expose them to the Cycle of Violence, a highly pervasive model. I also teach the Power and Control Wheel to help students understand the multiple forms that coercive control and domestic violence may take, with the unifying attribute being the

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<sup>102</sup> See *supra* notes 23–25 and accompanying text. In advance of orientation, students read the Domestic Violence Clinic Manual, the General Clinical Program Manual, the student practice rules, and the article excerpts identified *infra* notes 103–05.

<sup>103</sup> Assigned readings include the Power and Control Wheel; Cycle of Violence; select Domestic Violence Fact Sheets by the National Coalition Against Domestic Violence; AYUDA INC., ASSISTING BATTERED IMMIGRANTS AND THEIR CHILDREN TO FILE IMMIGRATION CLAIMS UNDER THE VIOLENCE AGAINST WOMEN ACT: A MANUAL FOR IMMIGRATION AND DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES (5th ed. 2006); Sarah M. Buel, *The Dynamics of Domestic Violence Cases in the United States: An Overview*, in DEFENDING BATTERED WOMEN IN CRIMINAL CASES (1993); and Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 COLO. LAW. 19 (1999).

<sup>104</sup> Students read excerpts from Jody Raphael, *Battering Through the Lens of Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 367 (2003).

<sup>105</sup> I assign excerpts from ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN* (1997); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325 (1999); and Shalleck, *supra* note 3.

<sup>106</sup> Other activities during orientation include the "In Her Shoes" simulation, developed by the Washington State Coalition Against Domestic Violence; a court observation, which familiarizes students with the courthouse, legal practice, and how judges handle cases and prompts students to reflect on power differentials, therapeutic jurisprudence, and race, class, and gender; and a "Get to Know Your City" activity, which builds students' knowledge of courthouses, social service offices, community resources, and neighborhoods outside of the law school campus.



abuser's attempt to dominate the survivor. I wait to introduce the Stages of Change Model until the first or second week of the semester, when students have begun working with clients. I stagger the teaching of the three models so that students can better absorb them and understand their relevance to their client representation.

A. *Traditional Models*

1. *Battered Woman Syndrome and the Cycle of Violence.*—An early model for understanding domestic violence—and the source of the Cycle of Violence model—was Lenore Walker's theory of Battered Woman Syndrome, introduced in her 1979 book, *The Battered Woman*, and further developed in her 1984 book, *The Battered Woman Syndrome*.<sup>107</sup> She defined Battered Woman Syndrome as a cluster of psychological and behavioral characteristics that abused women develop as a result of how they perceive their batterers' violence.<sup>108</sup> Walker posited that women develop the characteristics of Battered Woman Syndrome due to "learned helplessness" and the "cycle of violence."<sup>109</sup>

For her theory of learned helplessness, Walker extrapolated from experimental psychologist Martin Seligman's studies that involved electrically shocking dogs at random intervals and drowning mice.<sup>110</sup> In the studies, the animals were subjected to conditions they were unable to control and eventually ceased to find a means of survival or escape, even when it became available to them.<sup>111</sup> She theorized that through the batterer's control of his victim and repeated abuse that the victim is unable to control or predict, the victim comes to believe she is unable to influence what will happen to her, enters a "psychological paralysis,"<sup>112</sup> and becomes unable to act.<sup>113</sup> Walker concluded, "Once the women are operating from a belief of helplessness, the perception becomes reality and they become passive, submissive, 'helpless.'"<sup>114</sup>

The Cycle of Violence describes domestic violence as occurring in repeating cycles of tension-building, acute abuse, and a honeymoon or

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<sup>107</sup> LENORE E. WALKER, *THE BATTERED WOMAN* (1979) [hereinafter WALKER, *THE BATTERED WOMAN*]; WALKER, *THE BATTERED WOMAN SYNDROME*, *supra* note 10.

<sup>108</sup> WALKER, *THE BATTERED WOMAN SYNDROME*, *supra* note 10, at 7.

<sup>109</sup> *Id.* at 33, 86–97.

<sup>110</sup> *Id.* at 33, 86–94 (applying to battered women the conclusions of an experiment in which dogs received electric shocks in conditions they could not escape. The dogs eventually ceased trying to flee and became passive. Walker argued that women similarly become convinced that they cannot escape and develop "learned helplessness," which causes them to stay in abusive relationships.).

<sup>111</sup> *Id.* at 86.

<sup>112</sup> WALKER, *THE BATTERED WOMAN*, *supra* note 107, at 43.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 47.

loving–repentant period.<sup>115</sup> The abuser’s contrition and remorse during the honeymoon stage encourage the survivor to hope the abuser will change and prompt her to stay in the relationship.<sup>116</sup> The theory holds that as the violence recurs and the cycle repeats, the woman feels powerless to escape the abuse.<sup>117</sup>

Walker’s theory of Battered Woman Syndrome predominated during the 1980s and 1990s<sup>118</sup> and continues to be employed in criminal cases.<sup>119</sup> Abused women who have killed their abusers use this theory as a self–defense argument in showing that they, the victim–defendants, were in imminent danger.<sup>120</sup> The theory has also been used by prosecutors to explain witness recantation, inconsistencies in a victim’s testimony, or loyalty to an abusive partner.<sup>121</sup>

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115 WALKER, THE BATTERED WOMAN SYNDROME *supra* note 10, at 95.

116 *See id.* at 96.

117 *See* WALKER, THE BATTERED WOMAN, *supra* note 107, at 55.

118 *See* Jane Harris Aiken, *Intimate Violence and the Problem of Consent [An Essay]*, 48 S.C. L. REV. 615, 627–28 (1997) (stating that all states allow some form of expert testimony on battered woman syndrome); *see, e.g.*, *Ibn–Tamas v. United States*, 407 A.2d 626, 631–40 (D.C. 1979); *Hawthorne v. State*, 408 So. 2d 801, 805–06 (Fla. Dist. Ct. App. 1982); *Smith v. State*, 277 S.E.2d 678, 682–83 (Ga. 1981); *State v. Allery*, 682 P.2d 312, 316 (Wash. 1984).

119 *See* Alafair S. Burke, *Rational Actors, Self–Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C. L. REV. 211, 239–40 (2002) (explaining that despite critiques of Walker’s research during the 1980s and 1990s, there is ongoing popular support of Battered Woman Syndrome “with little change in the empirical landscape”); *see, e.g.*, *Jensen v. Hernandez*, 864 F. Supp.2d 869, 918–19 (E.D. Cal. 2012) (upholding the admissibility of expert testimony on battered woman syndrome); *State v. Stewart*, 719 S.E.2d 876, 886 (W.Va. 2011) (holding that admission of expert testimony on battered woman syndrome did not require an expert to diagnose the defendant).

120 The defense may use the theory of Battered Woman Syndrome to satisfy the imminence requirement of traditional self–defense claims. *See State v. Koss*, 551 N.E.2d 970, 973 (Ohio 1990) (“Expert testimony regarding the battered woman syndrome can be admitted to help the jury not only to understand the battered woman syndrome but also to determine whether the defendant had reasonable grounds for an honest belief that she was in imminent danger when considering the issue of self–defense.”); *see, e.g.*, *Sedlak v. Sessions*, 249 F. App’x 787, 788 (11th Cir. 2007) (finding that the defendant unsuccessfully offered evidence of battered woman’s syndrome in defense to felony murder charges after stabbing her husband); *People v. Torres*, 488 N.Y.S.2d 358, 358–59 (N.Y. Sup. Ct. 1985) (holding that expert testimony on battered woman syndrome was admissible in a case in which the defendant shot her abusive husband as he sat in a chair); *Bechtel v. State*, 840 P.2d 1, 9–10 (Okla. Crim. App. 1992) (holding that the trial court erred by refusing to permit testimony on battered woman syndrome).

121 *See, e.g.*, *Thomas v. Lampert*, 349 F. App’x 272, 277–78 (10th Cir. 2009) (admitting testimony on battered woman syndrome to explain the victim’s loyalty to the defendant despite his abuse of her); *United States v. Young*, 316 F.3d 649, 659 (7th Cir. 2002) (finding an expert’s testimony on battered woman syndrome to be “highly probative” as to why the victim recanted on the stand).

Contrary to Walker's early theories,<sup>122</sup> research now shows that women who experience abuse are typically active survivors who are vigorously engaged in seeking help as well as terminating and ultimately surviving violence.<sup>123</sup> The validity of Walker's theories have been fervently contested because of the lack of control groups,<sup>124</sup> problems with interviewing methods<sup>125</sup> and data analysis,<sup>126</sup> and absence of data supporting some of her conclusions.<sup>127</sup> Although Battered Woman Syndrome reflects some survivors' experiences and may be used effectively in some criminal cases,<sup>128</sup> it has been critiqued on numerous grounds.<sup>129</sup> Namely, it implies that abuse

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122 See WALKER, *THE BATTERED WOMAN*, *supra* note 107, at 55–70; WALKER, *THE BATTERED WOMAN SYNDROME*, *supra* note 10, at 33, 86–94;

123 EDWARD W. GONDOLF & ELLEN R. FISHER, *BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS* 17–25, 93 (1988) (asserting that women are “survivors” because they “assertively and persistently attempt to do something about their abuse. They contact a variety of help sources where one would expect to find assistance. The help sources, however, do not appear to muster the decisive intervention necessary to stop the cycle of violence.”); Jessica R. Goodkind et al., *A Contextual Analysis of Battered Women's Safety Planning*, 10 *VIOLENCE AGAINST WOMEN* 514, 515 (2004) (finding that women engage in multiple strategies to protect themselves and their children, rather than being passive recipients of abuse).

124 Robert F. Schopp et al., *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1994 *U. ILL. L. REV.* 45, 54–55 (1994).

125 David L. Faigman, Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 *VA. L. REV.* 619, 637 (1986) (identifying that Walker's use of leading questions leads to hypothesis gathering, and stating that “[u]nder no circumstances should a researcher permit her hypotheses to become as obvious to her subjects as Walker did.”); *see also* WALKER, *THE BATTERED WOMAN SYNDROME*, *supra* note 10, at 96 (giving examples of the leading questions used in the study).

126 Faigman, *supra* note 125, at 637–38 (explaining that Walker's interviewers' evaluated the subjects' responses, rather than relying directly on their responses, and that allowing experimenters with obvious expectations to substitute their judgment for the respondents' is problematic. “Just as a subject may tailor her responses to fit what she believes the experimenter wants to hear, so too may the experimenter's expectations color her interpretation of the data the subject provides. . . . Indeed, it would be difficult to fashion a design more conducive to experimenter expectancies than the one used by Walker.”).

127 Schopp et al., *supra* note 124, at 55–56; *see also* Burke, *supra* note 119, at 237 (stating that Walker identified that “women currently in abusive relationships are more fearful, anxious, and depressed, and less angry, disgusted, and hostile than women no longer in battering relationships. Although the six variables she chose to measure may correlate with learned helplessness, nothing suggests that these are valid diagnostic indicators of the phenomenon.”).

128 As alternatives to the singular Battered Woman Syndrome, expert testimony on broader categories could be offered, including testimony on “battering and its effects,” “battered women's experiences,” “intimate partner battering and its effects,” or “evidence on domestic violence.”

129 *See* Anne M. Coughlin, *Excusing Women*, 82 *CALIF. L. REV.* 1, 87 (1994) (“I am persuaded that the battered woman syndrome defense, at least as it is presently constituted, is profoundly anti-feminist. . . . [T]his defense reclaims for women all of the insults of the gender ideology of domesticity while endorsing none of its compliments.”); *see also* Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*,

survivors suffer from psychological impairment or pathology,<sup>130</sup> suggests there is one set of effects of battering;<sup>131</sup> promotes an image of battered women as “helpless, meek, and unreliable agents”;<sup>132</sup> and discounts the experiences of those who do not fit into the model.<sup>133</sup> A survivor’s apparent helplessness may instead reflect the reality of insufficient resources, such as the inadequacy of police responsiveness and protection, limited childcare options, or scarce financial and legal support.<sup>134</sup> There is also high risk to one’s safety in leaving, and behaviors that could be interpreted as helplessness may actually be the result of a survivor’s common-sense evaluation of the potential for violent response.<sup>135</sup>

If a lawyer views a client as passive, helpless, and unable to act in his or her own interests, the lawyer is likely to substitute his or her own judgment for the client’s and make decisions without the client’s input. However, by not taking the client at his or her own terms and disregarding the client’s experience in surviving the relationship and managing risk, the lawyer denies the client autonomy and may increase the client’s danger. Unfortunately, many images of battered women support such paternalism,

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21 HOFSTRA L. REV. 1191, 1197–1201 (1993); Faigman, *supra* note 125, at 637 (critiquing the methodology of Walker’s research because of her use of leading questions); David L. Faigman & Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 ARIZ. L. REV. 67 (1997); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 36–43 (1991) (discussing how the theory of learned helplessness can backfire against women in court); Marilyn McMahan, *Battered Women and Bad Science: The Limited Validity and Utility of Battered Woman Syndrome*, 6 PSYCHIATRY PSYCHOL. & L. 23, 30–37 (1999).

130 See SCHNEIDER, *supra* note 100, at 79–83.

131 It is now understood that survivors have a wide range of psychological responses to battering, including high incidences of depression and post-traumatic stress disorder following abuse. See JUDITH HERMAN, *TRAUMA AND RECOVERY* 86 (2d ed. 1997).

132 Laurie S. Kohn, *The Justice System and Domestic Violence: Engaging the Case but Divorcing the Victim*, 32 N.Y.U. REV. L. & SOC. CHANGE 191, 208 (2008).

133 See Dutton, *supra* note 129, at 1195–97 (critiquing the battered woman syndrome because of the actual variety of psychological profiles among battered women); see also Melanie Frager Griffith, *Battered Woman Syndrome: A Tool for Batterers?*, 64 FORDHAM L. REV. 141, 184 (1995) (“If the facts of a given case are arguably inconsistent with the cycle of violence or the theory of learned helplessness, defendant-batterers may attempt to use evidence of the battered woman syndrome to undermine the prosecution’s evidence of prior abuse.”); Brett C. Trowbridge, *The Admissibility of Expert Testimony in Washington on Post-Traumatic Stress Disorder and Related Trauma Syndromes: Avoiding the Battle of the Experts by Restoring the Use of Objective Psychological Testimony in the Courtroom*, 27 SEATTLE U. L. REV. 453, 517 (2003) (“If the courts treat battered woman syndrome as a standard to which all battered women must conform, those battered women whose symptoms do not conform to battered woman syndrome will be prejudiced. The less similar the defendant’s symptoms are to the prototypical battered woman as described by Walker, the greater the prejudice will be.”).

134 See GONDOLF & FISHER, *supra* note 123, at 11–12.

135 See Mahoney, *supra* note 129, at 6 (describing the common occurrence of “separation assault”).

including theories of learned helplessness and diminished capacity, as well as a societal tendency to portray women as irrational or crazy.<sup>136</sup>

The Cycle of Violence theory has been critiqued because it is part of the larger Battered Woman's Syndrome and because only a fraction of abuse follows this pattern.<sup>137</sup> Walker's own data suggest that the Cycle exists in only twenty-three to fifty-eight percent of relationships with intimate partner violence.<sup>138</sup> Scholars have identified methodological and interpretive flaws in Walker's research surrounding the Cycle of Violence and question whether Walker's research and theorizing supports the existence of the Cycle.<sup>139</sup> For example, due to time and expense limitations, all of Walker's subjects were battered women; she did not utilize a control group of women who had not experienced abuse for comparison.<sup>140</sup> Additionally, Walker's research on the Cycle examined several select incidents of violence each abused individual had experienced, but she failed to examine the entirety of the subjects' relationships.<sup>141</sup> These gaps in information make it difficult to conclude that a three-phase cycle exists. While research has shown that the loving-contrition or honeymoon period disappears in many battering relationships and is wholly absent from others,<sup>142</sup> other scholars posit a fourth phase of the Cycle: a calm and peaceful period.<sup>143</sup> Furthermore, the theory contains no timeframe for the phases of the Cycle, which is problematic when used by survivors to argue self-defense.<sup>144</sup>

During orientation for the Domestic Violence Clinic, I expose students to the Cycle of Violence because it is a dominant model and those in the

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<sup>136</sup> Espinoza, *supra* note 78, at 915–16 (“When women and children do speak, their stories are distorted to make them willing victims, liars, provocateurs, and crazies.”); *see also* Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 38 (discussing how the use of Battered Woman Syndrome evidence leads juries to characterize abused women as “unreasonable, incompetent, suffering from psychological impairment or just plain crazy”).

<sup>137</sup> *See* MARY ANN DUTTON, *EMPOWERING AND HEALING THE BATTERED WOMAN* 28–29 (1992) (noting that the cyclical pattern does not occur in all abusive relationships); *see also* Mia M. McFarlane, *Mandatory Reporting of Domestic Violence: An Inappropriate Response for New York Health Care Professionals*, 17 BUFF. PUB. INT. L.J. 1, 7 (1999) (describing study results that most abuse survivors reported that the abuse they experienced was a constant presence, and they did not identify a honeymoon period as a reason for remaining in the relationship).

<sup>138</sup> Burke, *supra* note 119, at 239 (questioning whether the cycle exists because a substantial number of research participants did not experience all three cycles).

<sup>139</sup> *See* Faigman, *supra* note 125, at 637.

<sup>140</sup> WALKER, *THE BATTERED WOMAN SYNDROME*, *supra* note 10, at 202–03.

<sup>141</sup> Faigman, *supra* note 125, at 636–37 (explaining that Walker tested her theory by questioning subjects about four battering incidents: “the first, the second, one of the worst and the most recent.”).

<sup>142</sup> Regina A. Schuller & Neil Vidmar, *Battered Woman Syndrome Evidence in the Courtroom*, 16 LAW & HUM. BEHAV. 273, 280 (1992).

<sup>143</sup> Faigman, *supra* note 125, at 638.

<sup>144</sup> *Id.* at 638.

field presume familiarity with it. I situate the Cycle of Violence in a historic context and we discuss the above-detailed critiques of the model, along with ways in which it reflects some clients' experiences. I draw students' attention to the honeymoon phase to prepare students for the idea that people who experience domestic violence, like anyone, want their intimate relationship to be successful and may still want to maintain the intimacy, but without the violence. Students should expect that clients will have positive memories of non-violent times in the relationship or of what initially brought the client and partner together. While working on behalf of a domestic violence survivor, an attorney can find it difficult to accept that the client's relationship had positive aspects, especially because the attorney focuses on the specific incidents of violence as he or she prepares for trial. But when a client says, "It wasn't all bad," or says the respondent "isn't really like this," the attorney should understand that the relationship is complicated and that, as a result, the client has faced complicated decisions. The survivor's reflection, redefining, and decision-making processes are reflected in the Stages of Change Model.

While the Cycle of Violence fails to show survivors as active agents who are highly motivated to terminate the violence, the Stages of Change Model refutes these conceptions of victimhood and encourages attorneys to respect their clients' choices. Newer research shows that survivors demonstrate a high degree of resourcefulness and persistence in their responses to violent situations,<sup>145</sup> actions that the Stages of Change Model anticipates.<sup>146</sup>

2. *The Power and Control Wheel.*—The Power and Control Wheel<sup>147</sup> is the other widely accepted tool for understanding the dynamics of domestic violence.<sup>148</sup> This model was developed by the Domestic Abuse Intervention

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145 GONDOLF & FISHER, *supra* note 123, at 11–25 (rejecting the theory of learned helplessness based on evidence of women's active help-seeking).

146 The various stages show survivors actively ensuring their survival by planning, evaluating, learning, gathering information and economic resources, building networks, and discovering additional resources and ways to take actions to stay alive. *See infra* Part III.B.

147 *Power and Control Wheel*, *supra* note 9.

148 *See, e.g.*, Michelle Madden Dempsey, *What Counts as Domestic Violence? A Conceptual Analysis*, 12 WM. & MARY J. WOMEN & L. 301, 328 (2006) ("Structural inequality account-based research in the United States has produced perhaps the most influential depiction of the dynamics of domestic violence: the power and control wheel."); Kohn, *supra* note 132, at 209 (claiming the Power and Control Wheel is "widely recognized as a critical tool in explaining the context of domestic violence"); Tamara L. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much Is Too Much?*, 22 BERKELEY J. GENDER L. & JUST. 2, 9 (2007) (referring to the Power and Control Wheel as a "cornerstone feminist theory of domestic violence portraying ways in which batterers coerce victims"); Carolyn Puzella, *Social Scientists' Perspectives on the Causes of Spousal Abuse*, 11 J. CONTEMP. LEGAL ISSUES 37, 42 n.31 (2000) (explaining the use of the Wheel across the country to depict the interconnectedness of violence and other forms of coercive control).

Project in Duluth, Minnesota, based on battered women's descriptions of their experiences of abuse.<sup>149</sup> It reveals the range of abusive actions beyond physical assault and how the abuser's attempts to control a survivor pervade the survivor's entire experience.

The words "power and control" are at the center of the Wheel, visually representing that power and control form the core of domestic violence. Spokes break the Wheel into eight segments that categorize interrelated dimensions of the abusive partner's exercise of power and control. The eight categories are: (1) using intimidation; (2) using coercion and threats; (3) using emotional abuse; (4) using economic abuse; (5) using isolation; (6) using minimization, denial, and blame; (7) using children; and (8) using male privilege.<sup>150</sup> The multiple categories of behaviors are further accompanied by corresponding examples of the actions an abusive partner takes to create a controlling environment. While the segments of the Wheel describe psychological tactics, physical and sexual violence are listed on the outer periphery of the Wheel, demonstrating that physical and sexual violence may not be the most frequently used tactic in daily experience, but that such violence is present as a threat or has occurred.<sup>151</sup>

By directly focusing on the abusive partner's actions, the Wheel places blame and responsibility on the abuser. The Wheel shows the multiple ways the abuser exerts power and control over the survivor, and this range of controlling behaviors helps explain why ending the violence or leaving the relationship is not such a simple task. By emphasizing that violence is based on systemic power and control issues, the Wheel suggests that abuse is not caused by incidental issues such as drugs, alcohol, or the environment. While physical and sexual abuse are crimes, acts such as intimidating the survivor, using the children, or controlling finances are much more subtle and difficult to conceptualize as abuse but are just as insidious. The Wheel redefined domestic violence by naming these subtle behaviors as abuse.

Currently, the Power and Control Wheel is the most prevalent model used for teaching about domestic violence.<sup>152</sup> It is featured prominently

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<sup>149</sup> *Power and Control Wheel*, *supra* note 9. Based on its origin, this model is often referred to as the "Duluth Model."

<sup>150</sup> *Id.*

<sup>151</sup> Dempsey, *supra* note 148, at 328 ("The purpose of depicting domestic violence in this way is: (1) to emphasize the central role of structural inequality in understanding what counts as domestic violence; (2) to establish conceptual connections between different types of abusive behaviors; and (3) to suggest that abusive control may be as much, if not more, of a problem than acts of physical violence."); Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 986 (1995) (noting that while the physical violence may not be the most dominant characteristic of the battering, it is used as part of an "ongoing strategy of intimidation, isolation, and control that extends to all areas of a woman's life, including sexuality; material necessities; relations with family, children, and friends; and work. Sporadic, even severe, violence makes this strategy of control effective.").

<sup>152</sup> *Supra* note 148; *infra* notes 153–173 and accompanying text.

in Domestic Violence Law textbooks for law students.<sup>153</sup> Professors teaching domestic violence clinics also routinely use the Power and Control Wheel when teaching about the dynamics of relationships with domestic violence.<sup>154</sup> It is employed in training judges,<sup>155</sup> law enforcement personnel, attorneys, social workers, advocates,<sup>156</sup> and other professionals<sup>157</sup> about domestic violence. Advocates, counselors, and social workers use the Wheel as part of their counseling of battered women<sup>158</sup> and when conducting community outreach.<sup>159</sup> Some lawyers use the Wheel with their clients to explain that abuse extends beyond physical violence, and lawyers may ask their clients to identify the opposing party's behavior on

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153 The Power and Control Wheel is prominently featured in all of the Domestic Violence Law textbooks that are currently available. See DIANE KIESEL, DOMESTIC VIOLENCE: LAW, POLICY, AND PRACTICE 14 (2007) (including a diagram of the Power and Control Wheel in the introductory chapter); NANCY K. D. LEMON, DOMESTIC VIOLENCE LAW 43 (3d ed. 2009) (depicting the Power and Control Wheel at the beginning of Chapter Two, Domestic Violence: Causes, Effects, and Treatment); ELIZABETH M. SCHNEIDER et al., DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE 58 (2d ed. 2008) (including a diagram of the Power and Control Wheel in Chapter Two, The Dynamics of Abusive Relationships); D. KELLY WEISBERG, DOMESTIC VIOLENCE: LEGAL AND SOCIAL REALITY 56–58 (2012) (featuring a diagram of the Power and Control Wheel and describing the development of this model in Chapter Two, Characteristics of Domestic Violence).

154 See, e.g., Goodmark & Klein, *supra* note 26, at 258 n.8.

155 See Bette Garlow, *Ginger Rogers Dancing Backwards in Red High Heels—Feminist Lawmaking and Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 401, 409 (2003) (observing that the Power and Control Wheel has helped her explain domestic violence to numerous judges, police officers, attorneys, educators, religious leaders, employers, and community groups); Gael Strack & Eugene Hyman, *Your Patient. My Client. Her Safety: A Physician's Guide to Avoiding the Courtroom While Helping Victims of Domestic Violence*, 11 DEPAUL J. HEALTH CARE L. 33, 35 (2007) (explaining that during the 1990s the feminist view of domestic violence as the exercise of power and control prevailed, and judges, police officers, and prosecutors were thus trained to understand domestic violence in this manner).

156 Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1119 (2009) (describing the prevalence of the Power and Control Wheel as “almost a required text for service providers who work with women who are subjected to abuse.”).

157 See, e.g., CAL. FAM. CODE § 1816(d)(5)(C) (West 2004 & Supp. 2012) (requiring mediators, counselors, child custody evaluators, and investigators to be trained in the dynamics of domestic violence, including the abuser's use of power and control); Mayte Santacruz Benavidez, *Learning from the Recent Interpretation of INA Section 245(a): Factors to Consider When Interpreting Immigration Law*, 96 CALIF. L. REV. 1603, 1628 (2008) (explaining how immigration officers with the Vermont Service Center, the branch of the United States Citizenship and Immigration Services which adjudicates petitions under the Violence Against Women Act, receive special training about domestic violence, including dynamics of power and control).

158 Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1317 n.80 (1993).

159 See, e.g., BUREAU OF DOMESTIC AND SEXUAL VIOLENCE PREVENTION, WHEELS, available at <http://www.dhs.state.il.us/page.aspx?item=38490> (describing the use of wheels in community education).



the Wheel.<sup>160</sup> The Wheel is also used in batterer treatment programs as a way for abusive individuals to recognize their own use of power and control in intimate partner relationships.<sup>161</sup>

In response to critiques that the initial model was developed based only on the experiences of heterosexual women from a limited geographic region in Minnesota,<sup>162</sup> the Wheel has been adapted to portray abuse in various populations and communities, which has furthered its pervasiveness.<sup>163</sup> For example, specific wheels have been designed to depict abuse experienced by immigrants,<sup>164</sup> lesbians and gay men,<sup>165</sup> teenagers,<sup>166</sup> deaf individuals,<sup>167</sup> children,<sup>168</sup> people with disabilities,<sup>169</sup> Muslims,<sup>170</sup> and Native Americans,<sup>171</sup>

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160 See Garlow, *supra* note 155, at 409 (“One of the very best educational tools developed so far in this field is the Duluth Power and Control Wheel, which has helped thousands of women identify their circumstances as abusive. I recommend that all lawyers refer to this instrument during discussion with prospective clients, to assist in screening for domestic violence.”).

161 Johnna Rizza, *Beyond Duluth: A Broad Spectrum of Treatment for a Broad Spectrum of Domestic Violence*, 70 MONT. L. REV. 125, 140 (2009) (explaining that current treatment programs use the Wheel to teach about abusive behaviors, challenge batterer minimization and denial, and promote ways to avoid violence).

162 See generally Aarati Kasturirangan et al., *The Impact of Culture and Minority Status on Women’s Experience of Domestic Violence*, TRAUMA, VIOLENCE, & ABUSE, Oct. 2004, at 318 (examining the influence of culture and ethnic background on women’s experiences of domestic violence); Diana Schow, *The Culture of Domestic Violence Advocacy: Values of Equality/Behaviors of Control*, 43 WOMEN & HEALTH, no. 4, 2006 at 49 (discussing the culture of domestic violence advocacy and its effects on which populations can access services).

163 “Wheels” Adapted From the Power and Control Wheel Model, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, [http://www.ncdsv.org/publications\\_wheel.html](http://www.ncdsv.org/publications_wheel.html) (last visited Dec. 20, 2012) (providing an extensive list of adapted wheels).

164 *Immigrant Power and Control Wheel*, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, [http://www.ncdsv.org/images/Immigrant%20P&C%20wheel%20NO%20SHADING%20-%20NCDSV-ICE\\_updated2009.pdf](http://www.ncdsv.org/images/Immigrant%20P&C%20wheel%20NO%20SHADING%20-%20NCDSV-ICE_updated2009.pdf) (last visited Jan. 10, 2013).

165 *Lesbian/Gay Power and Control Wheel*, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, <http://www.ncdsv.org/images/Lesbian-GayPCwheelNOSHADING.pdf> (last visited Jan. 10, 2013).

166 *Teen Power and Control Wheel*, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, <http://www.ncdsv.org/images/Teen%20P&C%20wheel%20NO%20SHADING.pdf> (last visited Jan. 10, 2013).

167 *Deaf Power and Control Wheel*, DEAF HOPE, DEAF POWER AND CONTROL WHEEL, (2006), <http://www.deaf-hope.org/images/DeafHope%20Power-Control%20Wheel.pdf>.

168 *Abuse of Children*, DOMESTIC ABUSE INTERVENTION PROJECT, <http://www.theduluth-model.org/pdf/Abuse%20of%20Children.pdf> (last visited Jan. 10, 2013).

169 *Power & Control Wheel: People with Disabilities and Their Caregivers*, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, <http://www.ncdsv.org/images/DisabledCaregiverPCwheel.pdf> (last visited Jan. 10, 2013).

170 Sharifa Alkhateeb, *Muslim Power and Control Wheel*, NAT’L CTR ON DOMESTIC AND SEXUAL VIOLENCE, [http://www.ncdsv.org/images/PFP\\_MuslimPowerAndControlWheel.pdf](http://www.ncdsv.org/images/PFP_MuslimPowerAndControlWheel.pdf) (last visited Jan. 10, 2013).

171 *Violence Against Native Women: Battering*, NAT’L CTR. ON DOMESTIC AND SEXUAL

and to describe abuse perpetrated by law enforcement<sup>172</sup> and military personnel.<sup>173</sup>

However, for all the benefits of the Power and Control Wheel, it provides only a partial education. After decades of legal reform and action in the courts, the question “Why doesn’t she leave?” and variations of this question—including “Why does she stay?” and “Why don’t they just get up and leave?”<sup>174</sup> and why does the petitioner “not leave if the abuse is so bad”<sup>175</sup>—are still being asked,<sup>176</sup> and the Wheel does not provide ready answers. Additionally, with the subject of the Wheel being the choices and actions of the batterer, the survivor is the object. The Wheel does not tell us what the survivor does in response to the violence; therefore, it lacks a robust sense of the survivor as agent.

Further critiques can be made based on how the Wheel has been implemented over time. A danger in using the Wheel to define domestic violence is that behaviors that fall outside of its categories may not be considered abuse. The Wheel highlights some of what abusers do but renders other parts invisible; it does not reflect the ambiguities and contradictions in relationships, so the tool is both revealing and distorting. By thinking of domestic violence as any act of coercion, physical or verbal force, humiliation, denial of access to resources, deprivation of liberty, or life-threatening situation that results in psychological or physical harm and ultimately leads to the survivor’s subordination, additional behaviors could be identified that do not currently appear on the Wheel. For example, the Wheel does not encompass many aspects of HIV-related domestic violence, such as the abuser’s destruction of the HIV-positive person’s medication or threat to publicize his or her HIV-positive status.<sup>177</sup> While

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VIOLENCE, [http://www.unified-solutions.org/Pubs/Wheels/native\\_battering\\_triangle\\_ncdsv.pdf](http://www.unified-solutions.org/Pubs/Wheels/native_battering_triangle_ncdsv.pdf) (last visited Jan. 10, 2013).

172 Diane Wetendorf, *Police Perpetrated Domestic Violence*, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE (2004), <http://www.ncdsv.org/images/Police-perpetrateddomviolNOSHADING.pdf>.

173 *Military Power and Control Wheel*, NAT’L CTR. ON DOMESTIC AND SEXUAL VIOLENCE, <http://www.ncdsv.org/images/MilitarycontrolwheelNOSHADING.pdf> (last visited Jan. 10, 2013).

174 Deborah L. Rhode, *Feminism and the State*, 107 HARV. L. REV. 1181, 1193 (1994) (citing Unified Court System of the State of New York, *Report of the New York Task Force on Women and the Courts*, 15 FORDHAM URB. L.J. 11, 32 (1987)).

175 Missouri Task Force on Gender and Justice, *Report of the Missouri Task Force on Gender and Justice*, 58 MO. L. REV. 485, 505 (1993) (reporting on the commonality with which judges believe that if the abuse is severe enough, the abuse survivor would have left, and their explicit expression of this belief from the bench).

176 Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273, 274 (1995) (“The questions most often asked about battered women concern why they do not leave their abusers.”).

177 Stoever, *Stories Absent from the Courtroom*, *supra* note 6, at 1171–1174 (discussing examples of an abusive partner exerting control by threatening to reveal an intimate partner’s

the Wheel revolutionized society's understanding of domestic violence by broadening the definition beyond physical and sexual violence, what was once considered a dynamic tool has become static and fixed for some of its users.

When using the Wheel, legal actors must examine the motivations underlying various behaviors because a batterer or survivor may use a behavior listed on the Wheel as part of abuse or part of survival. An example of a listed behavior that could easily be used in abuse or survival is taking the partner's money. This action could be part of an abusive partner's economic control, or it could be part of a survivor's strategy of setting aside money in preparation for leaving. As another example, threatening to leave or threatening to take the children away could be part of a batterer's coercion and intimidation or, alternatively, could be a survivor's ultimatum to her abuser when seeking an end to the violence. Survivors take various actions in the course of surviving, some of which are brave and noble, others that are messy, violent, and very human. The impact of previous harms and threats matters to the current moment, and it is problematic to examine only one act without a broader lens to evaluate the greater context and conditions.

Other critiques include Laurie Kohn's argument that by suggesting that battered women are overwhelmed by the abuser's multiple forms of controlling behaviors, the Wheel "reinforces the image of domestic violence victims as unable to act in their best interests."<sup>178</sup> She further argues that the legal system's use of the Wheel has had the effect of pathologizing victim behavior because it is commonly used in court to explain seemingly incomprehensible or irrational victim behavior, rather than to identify abusive behavior. Kohn writes that "expert testimony on power and control defines victim behavior as its own pathology associated with impaired judgment."<sup>179</sup>

While Battered Woman Syndrome, the Cycle of Violence, and the Power and Control Wheel are widely known and have been enormously useful to those advocating on behalf of domestic violence survivors, heightened attention should be given to the Stages of Change Model, which describes survivors' actual process of surviving abuse and seeking to end violence. Discussion of this model is nearly absent from legal

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HIV status or interfering with his or her medical care).

<sup>178</sup> Kohn, *supra* note 132, at 209.

<sup>179</sup> *Id.* at 211 (surveying cases that show the courtroom use of the Wheel and Battered Women's Syndrome to demonstrate to jurors why victims exhibit seemingly incomprehensible behavior, which reinforces the message that victims are unreliable).

scholarship<sup>180</sup> and Domestic Violence Law textbooks,<sup>181</sup> and the Model does not appear in curriculum for training judges or teaching clinic students and lawyers. Teaching the Stages of Change Model would deepen attorneys' understanding of survivors' experiences of domestic violence, allowing attorneys to provide better representation.

### B. *The Stages of Change Model*

The Stages of Change Model,<sup>182</sup> which is also referred to as the Transtheoretical Model of Behavior Change,<sup>183</sup> addresses many of the issues that the traditional models leave unanswered. The Stages of Change Model is based on psychotherapy and behavior change theories that examine how people make changes in their lives.<sup>184</sup> Extensive quantitative and qualitative research shows the applicability of the Model to ending relationship violence and accounts for the relational change

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180 Two articles discuss the Stages of Change Model and domestic violence. See Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases*, 11 AM. U. J. GENDER SOC. POL'Y & L. 465, 484–85 (2003) (including two paragraphs that use the Stages of Change Model to explain that women in earlier stages may be less likely to cooperate with the prosecution, and generally recommending that prosecutors consider how battered women think about the violence in their lives); Stoever, *Freedom from Violence*, *supra* note 6 (using the Stages of Change Model to propose the reform of domestic violence protection order laws).

181 Domestic Violence Law textbooks have generally failed to include the Stages of Change Model. See DIANE KIESEL, *DOMESTIC VIOLENCE: LAW, POLICY, AND PRACTICE* (2007); NANCY K. D. LEMON, *DOMESTIC VIOLENCE LAW* (3d ed. 2009); ELIZABETH M. SCHNEIDER ET AL., *DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE* (2d ed. 2008). Only the most recent Domestic Violence Law textbook includes a description of the Stages of Change Model, and this discussion appears in Chapter Four, Specific Types of Abuse. See D. KELLY WEISBERG, *DOMESTIC VIOLENCE: LEGAL AND SOCIAL REALITY* 159–161 (2012) (citing Stoever, *Freedom from Violence*, *supra* note 6, and including an excerpt from Sondra Burman, *Stages of Leaving Abusive Relationships*, in *ENCYCLOPEDIA OF DOMESTIC VIOLENCE* 675, 676–79 (Nicky Ali Jackson ed., (2007))).

182 *Supra* note 31. While numerous studies support the validity of the Stages of Change Model and its application to intimate partner violence, there have been several critiques concerning the lack of scientific support for interventions based on the model. Compare Jean Adams & Martin White, *Are Activity Promotion Interventions Based on the Transtheoretical Model Effective?* 37 BRITISH J. SPORTS MED. 106 (2003) (arguing that the Stages of Change Model has limited applicability to promoting physical activity or exercise), with Johannes Brug et al., *The Transtheoretical Model and Stages of Change: A Critique*, 20 HEALTH ED. RESEARCH 244 (2005) (responding to Adams and White and arguing that stage-based interventions remain promising in the context of complex health behaviors). See also Sandy Whitelaw et al., *The Status of Evidence and Outcomes in Stages of Change Research*, 15 HEALTH ED. RESEARCH 707 (2000) (claiming that there is a dearth of outcomes-based reports for interventions based on the Transtheoretical Model of Behavior Change).

183 See, e.g., James O. Prochaska & Wayne F. Velicer, *The Transtheoretical Model of Health Behavior Change*, 12 AM. J. HEALTH PROMOTION 38, 39 (1997).

184 See Prochaska & DiClemente, *supra* note 31, at 282.

that occurs in the domestic violence context.<sup>185</sup> In describing the process of how domestic violence survivors seek an end to relationship violence, the Stages of Change Model includes five distinct stages that emerged from researchers' interviews with women who were abused by intimate partners: (1) pre-contemplation, (2) contemplation, (3) preparation, (4) action, and (5) maintenance.<sup>186</sup> The Model posits that progress through the stages occurs in a cyclical and dynamic sequence rather than in a linear fashion, and it is expected that people experiencing domestic violence will revisit earlier stages as they move toward "maintenance."<sup>187</sup> For example, the survivor may advance from pre-contemplation to contemplation to preparation, and return to the contemplation stage before moving forward to the preparation, action, and maintenance stages.

In pre-contemplation, someone who is experiencing abuse is not aware of the extent of the problem, minimizes or denies the abuse, and has no intention of making any changes.<sup>188</sup> At this point, the abused individual accepts both the abuser's definition of the situation and the blame for the violence and may respond defensively to any suggestion that there is a problem or need for change.<sup>189</sup> An abuse survivor may try to accommodate and appease the abusive partner to avoid "causing" more abuse in the future.<sup>190</sup> At this stage, the survivor benefits most from receiving information about what domestic violence is and what risks exist in continuing the relationship without change.<sup>191</sup> To move from pre-contemplation to contemplation, an abuse survivor will need to come to his or her own definition of the situation and recognize that he or she is not responsible for the abusive partner's violence.<sup>192</sup>

In the second stage, contemplation, the violence has typically escalated and become more severe, and the survivor begins to name the violence against him or her.<sup>193</sup> The survivor thinks about the possibility of making changes, begins to build social, emotional, and financial support, and may make an initial attempt to leave the relationship.<sup>194</sup> However, the survivor

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185 *Supra* note 31 and accompanying text.

186 Burke et al., *Ending Intimate Partner Violence*, *supra* note 31, at 124–25.

187 Brown, *supra* note 31, at 10.

188 Brown, *supra* note 31, at 11.

189 *See* Burman, *supra* note 31, at 84–85.

190 *Id.* (discussing a feeling of responsibility and self-blame for assaults: "If I had not spoken up and argued, if I had only done something differently, it never would have happened.").

191 *Id.* at 85.

192 Brown, *supra* note 31, at 11, 22 (describing the primacy of the abuser's definition of the violence, but noting that abuse survivors will have insights that challenge the abusive partner's definition).

193 *Id.* at 12; Burman, *supra* note 31, at 85.

194 Brown, *supra* note 31, at 12.

also experiences ambivalence and vacillates between feeling troubled and unconcerned as he or she considers whether the relationship can continue unchanged.<sup>195</sup> The survivor considers the advantages and disadvantages of taking action, such as leaving or seeking a court order, in the face of obstacles and externalities, but may be overwhelmed by the consideration of emotional and economic factors.<sup>196</sup>

In the preparation stage, the survivor seeks out others to re-conceptualize the problem and to determine possible actions. The survivor has heightened awareness of the abuse and attempts to determine the best course of action for his or her situation and a plan to carry it out.<sup>197</sup> In the preparation or “determination” stage, survivors may set aside money, call an abuse hotline, investigate safe housing options, gather information about legal and advocacy help, and reconnect with people from whom they have been isolated.<sup>198</sup>

In the fourth stage, action, the survivor is motivated to change the environment and carries out strategies to protect herself or himself and children from future violence, such as going into a shelter, seeking a protection order, or having relatives, friends, or the police intervene to keep the abusive partner at bay.<sup>199</sup>

Finally, the maintenance stage involves a continuation of actions by the survivor that are necessary to sustain the desired change.<sup>200</sup> There are substantial obstacles to remaining in this stage, including an overwhelming fear of impending danger and separation assault;<sup>201</sup> symptoms of post-traumatic stress disorder, including hyper-vigilance and flashbacks;<sup>202</sup> and mourning the loss of positive aspects of the relationship, including the emotional connection and financial security.<sup>203</sup> Despite these challenges, many abuse survivors do succeed in carrying out strategies through the action and maintenance stages to successfully end relationship violence.<sup>204</sup>

I introduce the Stages of Change Model to my Domestic Violence Clinic students as part of a class on the psychological dynamics of domestic violence that I teach during the first or second week of the semester. Because the students have conducted a court observation and have recently begun representing clients, they have exposure to the environment of domestic

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195 Burman, *supra* note 31, at 85.

196 *See id.*

197 Burman, *supra* note 31, at 86.

198 Brown, *supra* note 31, at 12.

199 Burman, *supra* note 31, at 86.

200 Brown, *supra* note 31, at 14.

201 *See* Mahoney, *supra* note 129, at 6.

202 Burman, *supra* note 31, at 87.

203 *Id.* at 86–87.

204 *Id.* at 87.

violence courts and the context of their cases and are able to discuss the Model in conjunction with what they are learning from their clients.

When teaching the Stages of Change Model, I describe its traits and lead a discussion beginning with the following questions.<sup>205</sup>

1. What might a survivor need at each stage to enable his or her progression to the next stage?
2. What does the survivor need from law enforcement, the judicial system, and domestic violence service providers?
3. Are there predictable obstacles that can be preemptively addressed?
4. How can he or she maintain progress, both through the stages and once he or she has achieved maintenance?
5. Who is best equipped to perform the helping functions at various stages?
6. What other insights does this model raise for your representation?

I have crafted the questions to enable students to apply the Model to their lawyering and to encourage them to think beyond courtroom advocacy as they begin representing survivors. Through anticipating potential client needs, students can think expansively about their role and are prompted to learn about community resources that may benefit their clients. Potential answers to the first question are explored throughout Part IV. Question Two raises manifold issues about the limitations of our formal response systems; these issues are addressed in Part IV.C. Questions Three and Four reveal the economic, emotional, relational, cultural, and other challenges to maintaining an end to the relationship or the violence in the relationship; these issues are further discussed in Part IV.D. The fifth question helps students recognize that they cannot be everything to their clients and that I am not asking them to be. Certain needs are more appropriately and competently met by other professionals to whom the student attorneys can connect their clients.<sup>206</sup>

As students or attorneys initially enter into the work of representing abuse survivors, they are trying to make sense of events and clients' choices, grasp the complexities of their clients' lives, and hear the client. The Stages of Change Model posits acceptance of various responses on a survivor's own timetable, allows space for decision-making and change, and

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<sup>205</sup> Stoever, *Freedom from Violence*, *supra* note 6, at 332.

<sup>206</sup> See MODEL RULES OF PROF'L CONDUCT R 2.1 cmt.4 (2011) ("Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work. . . . Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation.").

prepares the attorney to anticipate client needs extending far in advance of and beyond the court order. Students reflecting on the Model are able to recognize preparatory steps their clients undertook in anticipation of going to court or into shelter; the ambivalence some clients feel about defining the violence, ending the relationship, or initiating a legal action; and their clients' survival strategies. Students particularly recall and revisit this model when they experience clients making choices that are different from what the students want for their clients or believe they would have made themselves.<sup>207</sup> In a multitude of ways, the Stages of Change Model gives the client-centered model of representation meaning, as it describes survivors' responses to violence and helps students and attorneys understand clients' experiences and needs.

Any model regarding domestic violence can be critiqued as being an overly simplistic, reductive construct to apply to a complex situation. For example, the Power and Control Wheel has been criticized for not taking account of the sophistication of batterers, as evidenced through jailhouse recordings that reveal multifarious methods of witness tampering.<sup>208</sup> Rather than limiting how we think about domestic violence, ideally the Stages of Change Model can spark new realizations and surface aspects of ending violence that have heretofore been unrecognized by attorneys. In particular, the Stages of Change Model engages the survivor, reflects the survivor's assessment of his or her situation and process of surviving abuse, and prioritizes the survivor's voice, while the dominant models of the Power and Control Wheel and Cycle of Violence fail to offer such insights.

Any model is susceptible to misuse, and consideration should be given to ways to use a model that minimize the costs. For example, I caution students against attempting to "diagnose" their clients and cabin them in stages. It is not our role to decide that a client is "only" in the contemplation or preparation stage and will not carry through with seeking a court order, which is associated with the action stage. The Model should be used to understand client decision-making and behavior rather than to predict outcomes.

Finally, while the survivor can address, respond to, and attempt to end the violence, only the person who is engaging in controlling behavior and

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207 Scholarship on cross-cultural lawyering discusses how each person views situations through her own cultural lens and based on her personal experiences. See Bryant, *supra* note 50, at 66 (describing a process to help student attorneys analyze how similarities and differences between the lawyer and client can influence representation. "Lawyers tend to *ask* questions when clients make choices that the lawyers would not have made or when the lawyers perceive an inconsistency between what the clients are saying and doing. Lawyers tend *not to ask* questions about choices that clients have made when the lawyers would have made the same choices; in such a situation, the lawyer usually assumes that the clients' thought processes and reasoning are the same as his or her own.")

208 See Amy E. Bonomi et al., "Meet Me at the Hill Where We Used to Park": *Interpersonal Processes Associated with Victim Recantation*, 73 SOC. SCI. & MED. 1054, 1059 (2011).



perpetrating violence can truly end the abuse. Any change the survivor makes is relational and, while the survivor can seek to end the violence, he or she is not ultimately able to control the abusive partner's behavior. Attorneys should be cautioned from feeling that the survivor's choice to bypass a particular option is somehow "causing" the violence to continue. Additionally, the potential of an ongoing threat of violence should inform the safety planning that attorneys engage in with clients, as discussed in Part IV. This article focuses on the use of the Stages of Change Model to help attorneys understand survivors' processes and be client-centered in their representation, with Part IV exploring lessons from the stages that can enable attorneys to better meet clients' needs.

#### IV. LAWYERING LESSONS FROM THE STAGES OF CHANGE MODEL

The Stages of Change Model focuses on the survivor's response to violence, which in turn centers the attorney's attention on the client and guides attorneys in being more client-centered. By understanding how domestic violence survivors make changes in their lives to enhance their safety, attorneys are better equipped to work with these individuals and serve as their advocates. The following sections describe how the Stages of Change Model can provide a different conception of what lawyering is, thus transforming the representation of domestic violence survivors. The lessons attorneys can garner through the Model include learning that ending abuse is a process; meeting clients where they are in the process of responding to violence, rather than presuming a legal response; addressing the limitations of the protection order remedy; and advocating beyond the courtroom.

##### A. *Learning that Ending Abuse Is a Process*

After meeting a client, students immerse themselves in the case and the client's needs by searching for shelter, assisting with a Crime Victims' Compensation application,<sup>209</sup> interviewing witnesses, engaging in discovery, and preparing for trial.<sup>210</sup> They put their energy into working for the client and focus on tasks through their fears for their client's safety. The students see the value in each undertaking and have as the end goal obtaining the protection order. There is a tremendous emotional component to this work, and students give much of themselves and become invested in their cases as they take on the responsibility of representing their first clients. The client and students work toward the protection order together. But what

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<sup>209</sup> See, e.g., WASH. REV. CODE § 7.68.015-920 (2011).

<sup>210</sup> In the Domestic Violence Clinic, the students work in teams of two because of the legal and emotional complexity of the issues and the fast timeline of domestic violence litigation.

happens when the survivor says she or he no longer desires the protection order—when the client expresses no further need for the student attorney?

Students enter the clinic poised and eager to help victims leave batterers and escape violence. During orientation, some students respond with surprise when I say that not all clients will wish to leave their partners and that some clients will decide to dismiss their cases during the semester. Indeed, as many as half of domestic violence survivors decide to dismiss their protection order actions or seek to vacate orders once entered.<sup>211</sup> Studies have found that many abuse survivors attempt to leave a violent relationship five to seven times before they are able to fully do so.<sup>212</sup> Domestic violence survivors, like all people, want their relationships to be successful and want “both to be safe, free, and unafraid, and to live with the partner they love or the partner they feel is needed to provide financial security for themselves and their children.”<sup>213</sup> During attempts at ending violence, many survivors seek orders of protection, but the protection order case imposes an artificial timeline on making a monumental decision. Survivors may dismiss cases because the abuser has threatened increased violence, the temporary protection order appears to be effective in shifting the dynamics of the relationship, or they believe the partner’s promises to change.<sup>214</sup>

The context of an intimate relationship between the parties presents complexities in domestic violence cases that are absent from many other areas of the law. Respecting a client’s decision to forego legal relief and return to an abusive partner can be the hardest part of doing domestic violence work, especially after hearing the client describe the abuse he or she has endured. The students are alarmed by disturbing accounts of control and violence, and they intently focus on incidents of violence while drafting legal pleadings, refining the case theory, preparing for trial, and rehearsing their arguments. In the legal case, not all facts have equal weight,<sup>215</sup> so the client and lawyer choose the events to tell in court with the legal standard and end goal in mind. The student attorney does not present the entirety of the relationship to the court and the courtroom story

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211 Kohn, *supra* note 132, at 205 (“In some jurisdictions, dismissal rates for civil protection orders are in equipoise with pursued petition rates.”); Meier, *supra* note 158, at 1343 (recounting that during the first semester of representing clients in protection order actions in the Domestic Violence Advocacy Project, all students “experienced a client’s withdrawal, disappearance, or backing off of all or some part of the initially-intended legal action”).

212 Kathleen J. Ferraro, *Battered Women: Strategies for Survival*, in *VIOLENCE BETWEEN INTIMATE PARTNERS: PATTERNS, CAUSES, AND EFFECTS* 124, 133 (Albert P. Cardarelli ed., 1997).

213 Rebecca Fialk & Tamara Mitchel, *Jurisprudence: Due Process Concerns for the Underrepresented Domestic Violence Victim*, 13 *BUFF. WOMEN’S L.J.* 171, 212 (2004).

214 See Roberts et al., *supra* note 71, at 371–74.

215 See, e.g., WASH. REV. CODE § 26.50.010 (2011) (by defining domestic violence to include physical harm, injury, assault, fear of physical harm, or sexual assault, the legal definition does not capture psychological violence).

does not include a recounting of positive memories. Students may also feel that they are literally on the journey to ending violence with their clients, as the students help clients plan for the future, help clients settle into a shelter, take turns babysitting clients' children during interviews and court dates, and engage in other similar activities. Students are thus invested both in their clients' cases and their safety. As much as students know they cannot control the actions of an abusive partner, they feel a responsibility for their clients' well-being. They are genuinely concerned for their clients and believe that the legal remedy they have been jointly working toward is the answer.

While students and attorneys readily support a survivor's desire to end an abusive relationship and to get a court order, a client's ambivalence about a legal case<sup>216</sup> or his or her seemingly contradictory actions<sup>217</sup> can be hard to understand and accept, and the advocate often yearns for a different resolution. As hard as it might be to take in a client's account of the violence, it is even harder to let the client go and to accept the client's choice of an action the student or attorney believes to be contrary to the client's interests. Students may feel they have failed, and most will be consumed with worry about their client's safety. Students have spent hours in my office searching for answers, expressing their confusion, wondering how their client is doing, and struggling to accept their clients' decisions. On rare occasions, a student is upset that the client is not moving forward with the protection order case because the student has invested time in it and has worked diligently on it with the client.

While students can express concern for a client's safety to the client, they have to come to terms with the concept that the case and the client's decision are not about the student but are instead about what the client wants at that time. A principal tenet of the Stages of Change Model is that leaving an abusive relationship or ending violence is a complex process that occurs over time.<sup>218</sup> Survivors do leave their abusers many times and take numerous steps in the interest of their safety.<sup>219</sup> Although only one stage carries the label "action," survivors undertake various actions for their safety in the contemplation and preparation stages and continue to work actively to sustain an end to violence during the maintenance stage. By teaching the value of client-centered representation and acceptance of

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<sup>216</sup> Meier, *supra* note 158, at 1345 (noting that "inexperienced lawyers often either fail to register signs of their clients' ambivalence, or react critically to those signs they do notice").

<sup>217</sup> Margaret E. Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 *CARDOZO L. REV.* 519, 556 (2010) ("The social science research shows that women subjected to abuse are making choices all the time regarding the violence in their lives. Sometimes the objectives that they are trying to accomplish and the consequences they are weighing to help select the right option involve much more complicated factors than are apparent to an outsider.").

<sup>218</sup> See Brown, *supra* note 31, at 10.

<sup>219</sup> Ferraro, *supra* note 212 and accompanying text.

various responses on a survivor's own timetable, the Model helps students respect and anticipate the survivor's process, decisions, and choices of legal or non-legal approaches. Students may be heartbroken when a client returns to an abusive partner after the students and client have worked so hard toward obtaining a protection order, but such a choice is the client's right. The Stages of Change Model can help students reconcile a client's choice by teaching them that there are many decision points in this long process, that the student is accompanying and supporting the client along one or more stages of the client's journey, and what can and should come next differs among cases and clients.

Accounts from law students illustrate the value of teaching the Stages of Change Model. Students from the Yale Temporary Restraining Order Project candidly wrote about how they struggled to maintain student motivation and participation in light of frustrations with clients.<sup>220</sup> Not exposed to the Stages of Change Model, the Yale Project students became discouraged when clients cancelled appointments, decided not to pursue a protection order “for reasons that may seem irrational to the law student,”<sup>221</sup> returned to or remained in contact with the abusive partner “even at risk to their own or their children's safety,”<sup>222</sup> did not seek permanent orders “although it would seem clearly in their best interest to do so,”<sup>223</sup> and sought help from the Project multiple times.<sup>224</sup> Some students became so frustrated and angry that they left the Project.<sup>225</sup> It is important to note that the Yale Temporary Restraining Order Project was a student-run project in which students were acting as clerks in a courthouse rather than engaging in client representation; the Project was not a clinical course and did not have the responsibility for clients and opportunities for supervision and reflection that are hallmarks of law school clinics. These students' experiences contrasted with my students' reports of the difference the Stages of Change Model made to their lawyering. A former student of mine stated that the Stages of Change Model “helped me become more patient. Before understanding the process, I was easily frustrated with clients when they did not seem to want to move forward with ending their violent relationship.”<sup>226</sup> This same Domestic Violence Clinic graduate recalled, “At times, I felt as though the domestic violence survivors were resisting our help, which I found surprising. I thought they would be more eager to move forward with obtaining a civil protection order. I soon learned that it

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220 Brown et al., *supra* note 77, at 2013–15.

221 *Id.* at 2013.

222 *Id.*

223 *Id.*

224 *Id.*

225 *Id.*

226 E-mail from Anonymous 5, *supra* note 94.

was a process . . . .”<sup>227</sup> She came to understand, “My role was to listen and realize what it was they needed from me at that point.”<sup>228</sup> Another clinic alumna reflected,

I think having an understanding of [the Stages of Change Model] allows attorneys to empathize with their clients . . . . I know that personally before understanding [the Model] when a client would tell me that they were repeatedly being harassed and abused and they left their abuser but they returned a few days later or a few weeks later[,] I would sit there thinking to myself why are you so silly, why would you return to someone [who is] abusing you. [It is] hard to represent someone who you think is just going to return back to the same hopeless situation. [It’s] even harder to represent someone who you think is silly or inept. So I think empathy and understanding [are] crucial and you [cannot] have these two things without learning about the [Model].<sup>229</sup>

Another former student reflected, “Giving a client room to move through the stages and trying to understand the barriers facing that individual client, without importing my own values, was a constant challenge but one that I could better identify through the [Stages of Change Model].”<sup>230</sup>

Throughout the semester, I emphasize to my Domestic Violence Clinic students that our work has the dual goals of advancing survivors’ autonomy and safety. Rather than teaching that we are helping survivors leave abusive relationships, our work can support unique individuals in their process of ending violence and in the actions they choose for their own safety. Many clients make choices that the students are surprised by and claim they would not make themselves, most frequently the decision to return to the abusive partner or to propose custody or visitation arrangements that the students feel are unwise. The client, however, has survived the violence and understands—better than any attorney or outsider—the nature of the problem, the level of danger the respondent poses, possible solutions to the violence, and what he or she desires for himself or herself.<sup>231</sup>

Once students are taught the Stages of Change Model, their conceptions about their clients shift dramatically. A former student recalled how her first clinic client missed appointments, failed to return telephone calls, and wavered on her goals.<sup>232</sup> She reflected,

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<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> E-mail from Anonymous 1, *supra* note 29.

<sup>230</sup> E-mail from Anonymous 4, *supra* note 73.

<sup>231</sup> *Supra* notes 64–69 and accompanying text (explaining that because a petitioner’s counsel has limited to no experience with the abuser, the attorney should defer to the client’s assessment of risk).

<sup>232</sup> E-mail from Anonymous 6 to author (Feb. 9, 2012, 19:10 PST) (redacted copy on file with author).

I remember very clearly how angry I was with her. I felt like I was working so hard to help her, and she wasn't helping herself. I remember thinking that I couldn't fight for her if I also had to fight with her. . . . I now realize that she had gone from the [preparation] and action stages back to contemplation. But at the time, I felt disappointed and frustrated with her.<sup>233</sup>

This client's boyfriend ultimately consented to the entry of a protection order against him, but the student recognized this as a shallow victory.<sup>234</sup> The student began representing another client just after learning the Stages of Change Model.<sup>235</sup> She remembers,

[W]hen I had another client call her abusive boyfriend to pick her up from the emergency shelter that we found for her I was much better able to understand what was happening with her. I could see that she was overwhelmed by the reality of leaving this relationship, and what that would mean for her (and her son) emotionally, financially, etc. My partner and I were able to switch modes from actively pursuing the protective order . . . . At the time that I was representing her, she didn't go through with the protective order, but she did begin counseling. I think that we were able to effect some change just by helping her see that she did have options, and I hope that she was eventually able to leave. I believe that if we hadn't been able to see that she was no longer in the action stage, and was instead somewhere between contemplation and decision, we would have continued to push her to pursue the protective order at that time, and it may have scared her off, even made her feel that we were trying to control her just as her boyfriend had been doing.<sup>236</sup>

#### *B. Meeting Clients Where They Are*

The Stages of Change Model encourages attorneys to meet their clients where they are in the process of pursuing safety. A Domestic Violence Clinic graduate noted that by highlighting various stages and needs of the survivor, the Model “helps student[s] understand and work with what might otherwise appear to be a non-cooperative client.”<sup>237</sup> Another clinic alumna stated, “Without understanding the process that survivors go through, I might have pushed those clients in a direction they did not want, or were not ready to go to, and I probably would have alienated them.”<sup>238</sup>

Survivors will have different needs at different stages. For example, abuse survivors in the preparation stage may only seek information about available legal and social resources. Even if the attorney merely provides

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<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> E-mail from Anonymous 7 to author (Feb. 6, 2012, 16:24 PST) (redacted copy on file with author).

<sup>238</sup> E-mail from Anonymous 3, *supra* note 59.

this information and the survivor does not proceed with a legal case, the survivor's enhanced knowledge of legal tools can further his or her journey toward freedom from abuse. In this way, we can redefine success and the attorney's role.<sup>239</sup> By focusing representation upon the clients' needs, seemingly small steps, such as engaging in safety planning or gathering information about legal remedies, shelters, or counseling services, can be seen as important to the survivor's process and as successful moments. While some legal aid offices and non-profit organizations track the number of protection orders received for grant-reporting purposes, the Stages of Change Model can help practitioners think about and value client services differently.

One former student reflected on serving clients who are in the contemplation or preparation stages in his current legal practice as follows:

A significant number of my long-term clients would first come to me in the early stages of the [Stages of Change Model]. Clients sometimes wanted basic advice on how a divorce would work or what would happen to their kids if they left their abusive partners. I know a lot of attorneys who simply didn't have the time [or] interest in talking to clients when people just came in for basic advice.<sup>240</sup>

By providing information, attorneys enable clients to evaluate potential consequences of various options and determine what course of action will best meet their needs. The attorney and client can then work to address problems in the way the client deems best for his or her safety and particular situation.

The stages in the Model help attorneys realize that not every client is ready for the "action" stage, which frequently involves seeking the legal remedy of a protection order. The attorney must resist the impulses to identify facts amounting to domestic violence and presume the survivor needs a court order.<sup>241</sup> The student is newly familiar with legal remedies, but the legal "solutions" may not be beneficial to clients or be what they desire. An alumnus discussed the danger of leaping into action, saying, "If the lawyer pushes a client who is in the contemplation stage to petition for a protective order, or take other concrete, life-changing action, there is a risk that the client will be pushed the other way . . ."<sup>242</sup> Survivors often

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<sup>239</sup> Brown, *supra* note 31, at 8 (discussing how the Stages of Change Model can be used to reframe "failures" into positive steps and acknowledge the incremental nature of change).

<sup>240</sup> E-mail from Anonymous 2, *supra* note 37.

<sup>241</sup> See Bryant & Arias, *supra* note 50, at 222 ("[S]ome students find it painful to live with a client's problem and not rush to pack it up neatly with a legal solution. These students came to law school to learn how to solve people's problems and are frustrated by the law's inability to facilitate resolutions.").

<sup>242</sup> E-mail from Anonymous 6, *supra* note 232.

find themselves in a court action because this is the only option presented to them. Another Domestic Violence Clinic graduate reflected,

[P]re–contemplation and contemplation are probably the most important stages for new attorneys to understand. I think that [a lot] of students and attorneys think that the fact that someone has filed for a [Temporary Restraining Order] means that they are ready to move forward, when that is not necessarily the case.<sup>243</sup>

The Model's focus on the client's needs helps students be client-centered in the relief they pursue for each client. A former student reflected on her experience amending a protective order for a client who remained in contact with the respondent:

This abuser was the most heinous of my time in clinic. My initial, internal reaction was frustration with my client. However, I remember thinking about the cyclical nature of [the Stages of Change Model]. Even by coming to us and getting the [Temporary Protection Order], she had gotten to a new stage in the [Model]. By appreciating that she was going through her own process, I could have a more productive conversation with her. Instead of chastising her or burdening her with a worry that she had let me down, we were able to have a frank conversation about how we could better structure the [Temporary Protection Order/Civil Protection Order] to meet her needs. The beauty of the [Civil Protection Order] is that it could be drafted in a manner that empowered our client because she was in charge of what got put in it. We could amend it so that it kept her safe in the way that she felt made the most sense in her life.<sup>244</sup>

An attorney should allow a client to self-identify where he or she is in the process of surviving abuse and resist attempting to convince a survivor to leave a relationship or seek a protection order. Instead, by recognizing that clients' problems are multidimensional, frequently require non-legal responses beyond a court order, and often require legal remedies in addition to or instead of a protection order, the attorney can offer non-coercive options with the aim of enhancing a survivor's safety and autonomy. The Stages of Change Model facilitates this recognition because it highlights survivors' multiple needs and helps students anticipate diverse clients while understanding that the client is his or her own best expert on his or her life. The Model can be used to counteract assumptions, such as the notion that all people who experience abuse desire a court order or identify as victims, giving students and attorneys a wider set of expectations that encompasses more clients. One student represented multiple clients who were "extremely independent," "straight to the point," and "knew exactly

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<sup>243</sup> E-mail from Anonymous 7, *supra* note 237.

<sup>244</sup> E-mail from Anonymous 4, *supra* note 73.



what [they] wanted.”<sup>245</sup> Reflecting on one client, she remarked, “She surprised me and even disappointed me a little because she did not treat me like a hero at all, and hardly seemed to need my help. . . . I learned not to underestimate them as victims, and not to overestimate myself as an attorney.”<sup>246</sup>

*C. Confronting the Limitations of Legal Remedies*

Survivors commonly seek protection from the courts during the action stage, but the legal system frequently provides an incomplete remedy to the violence. By conveying what survivors need at each stage as they seek an end to violence, the Stages of Change Model helps attorneys recognize and respond to the limitations of the legal system during the action stage, such as the limited types of relief available, the short duration of court orders, and the challenges of the courtroom atmosphere.<sup>247</sup> Where the system fails is where the attorney must work harder.

If the survivor desires a civil protection order, the question arises: What tailored relief will make the order meaningful to the particular survivor? Unlike criminal no-contact orders, civil protection orders are survivor-centered and give a survivor the opportunity to request relief uniquely tailored to the context and circumstances of the relationship and violence. States have developed standardized forms for domestic violence protection orders that list the statutorily specified relief, and state statutes also invite judges to award other relief necessary to end violence.<sup>248</sup> Protection orders can be powerful tools for eliminating violence,<sup>249</sup> but an order’s effectiveness depends on the specificity of the relief and whether it is customized to the petitioner’s needs, the respondent’s compliance with the

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<sup>245</sup> E-mail from Anonymous 3, *supra* note 59.

<sup>246</sup> *Id.*

<sup>247</sup> See *infra* notes 250–70 and accompanying text.

<sup>248</sup> See, e.g., D.C. CODE § 16–1005(c)(11) (2012) (permitting courts to order the respondent to “perform or refrain from other actions as may be appropriate to the effective resolution of the matter”).

<sup>249</sup> Holt et al., *supra* note 28, at 18 (concluding that domestic violence survivors who obtain civil protection orders have a decreased likelihood of subsequent physical and non-physical intimate partner violence, including significantly decreased risk of injuries, weapon threats, contact by the abusive partner, and abuse-related medical treatment); Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613, 616–618 (2004) (finding significant reductions in physical assaults, threats of harm, stalking, and harassment among women who sought protection orders, regardless of whether the orders were granted). *But cf.* Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL’Y & L. 499, 512–14 (2003) (recognizing that obtaining only a short-term emergency protection order achieves some battered women’s goals, and that various institutional barriers make it difficult for many petitioners to complete the protection order process).

order, and the adequacy of enforcement.<sup>250</sup> Additionally, many judges are unwilling to venture beyond the relief set forth in the standardized form, either because they feel their dockets are too full and they lack time to delve into other matters, or because they are unaware that they are able to do so.<sup>251</sup> The adequacy of the orders, therefore, is limited.

To be able to progress from the action to maintenance stages, attorneys must ask whether the relief sought is sufficient to target factors that would connect the parties or create barriers to ending abuse. Economic dependence is a substantial impediment to separating from an abusive partner, but financial relief in the form of child support, maintenance, housing payments, and compensation for medical expenses, lost wages, and damaged property is enumerated in only a small number of state statutes.<sup>252</sup> Until legislative reform occurs, in many states attorneys must argue for these remedies by relying on statutory language that allows judges to enter other relief necessary to the effective resolution of the matter, and judges must be willing to grant relief beyond the standardized protection order form.<sup>253</sup>

Part of survivors' maintenance strategies may involve keeping an order of protection active or extending it to provide protection over the years. The short duration of protection orders frequently does not provide enough time to effectively protect survivors during the process of ending violence.<sup>254</sup> Across states, the initial order is typically effective for only one year.<sup>255</sup> Worse still, the statutory time period for protection orders is as brief as three months in Arkansas<sup>256</sup> and West Virginia<sup>257</sup> or six months

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250 Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 811–13 (1993) (“Protection orders, when properly drafted and enforced, are effective in eliminating or reducing domestic abuse.”).

251 Stoever, *Freedom from Violence*, *supra* note 6, at 363–65.

252 *Id.* at 372.

253 *See id.* at 372–73.

254 *See* Jane K. Stoever, *Enjoining Abuse: The Case for Permanent Domestic Violence Protection Orders* (forthcoming 2013).

255 *See, e.g.*, ARIZ. REV. STAT. ANN. § 13–3602(L) (2012) (West); DEL. CODE ANN. tit. 10, § 1045(b) (West 2012); D.C. Code § 16–1005(d) (2012); GA. CODE ANN. § 19–13–4(c) (West 2012); IDAHO CODE ANN. § 39–6306(5) (West 2012); IOWA CODE ANN. § 236.5(2) (West 2012); KAN. STAT. ANN. § 60–3107(c) (West 2012); MASS. GEN. LAWS ANN. ch. 209A, § 3(c) (West 2012); NEB. REV. STAT. ANN. § 42–924(3) (Lexis Nexis 2012); NEV. REV. STAT. ANN. § 33.080(3) (West 2012); N.H. REV. STAT. ANN. § 173–B:5(VI) (West 2012); N.C. GEN. STAT. ANN. § 50B–3(b) (West 2012); OR. REV. STAT. ANN. § 107.716(6) (West 2012); TENN. CODE ANN. § 36–3–605(b) (West 2012); WYO. STAT. ANN. § 35–21–106(b) (West 2012).

256 ARK. CODE ANN. § 9–15–205(b) (2009) (establishing that an order may be in effect from 90 days to ten years, at the court's discretion).

257 W. VA. CODE ANN. § 48–27–505(a)–(b) (LexisNexis Supp. 2011) (permitting entry of a protection order for 90 or 180 days and permitting a yearlong order after a violation).

in Connecticut,<sup>258</sup> Missouri,<sup>259</sup> South Carolina,<sup>260</sup> and Michigan.<sup>261</sup> In a handful of states, judges have complete discretion over the time period of the initial protection order,<sup>262</sup> which can result in orders that are very brief or that last a lifetime.<sup>263</sup> The orders' discretionary nature makes it difficult for survivors to plan because they cannot anticipate a specific result. Given the limited length of most orders, the attorney should engage in client counseling regarding the duration and renewal of protection orders. When the order is nearing expiration, the attorney and survivor should discuss the legal standard for renewal, the likelihood of a successful outcome, and the safety risks of reengaging with the abusive partner by serving a new pleading and bringing this person back to court. Beyond getting an initial court order in the action stage, these long-term planning conversations and safety considerations are important to the maintenance stage. Although the survivor cannot ultimately end the violence, the survivor can do many things to manage his or her risk, which is what makes the maintenance stage so important, dynamic, and requiring of the survivor's expertise on the abusive relationship and effect of interventions on his or her life.

In many ways, the courtroom may not feel like a safe place to individuals who have experienced violence.<sup>264</sup> There is a history of judges being hostile to protection orders and not comprehending the serious nature of domestic violence.<sup>265</sup> For example, judges sometimes belittle petitioners, make remarks that minimize the seriousness of domestic violence,<sup>266</sup> fail to

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258 CONN. GEN. STAT. ANN. § 46B-15(d) (West 2009) ("No order of the court shall exceed six months, except that an order may be extended...as the court deems necessary.").

259 MO. ANN. STAT. § 455.040(1) (West Supp. 2012) (allowing entry of the order for a minimum of 180 days to a maximum of one year).

260 S.C. CODE ANN. § 20-4-70(A) (Supp. 2011) (allowing judges to enter protection orders for six to twelve months).

261 MICH. COMP. LAWS ANN. § 600.2950(13) (West 2010) (instructing judges that the minimum time period for a protective order is 182 days).

262 See COLO. REV. STAT. § 13-14-102(1.5) (2011); FLA. STAT. ANN. § 784.046(7)(c) (West Supp. 2012); HAW. REV. STAT. § 586-5.5 (West 2008); N.D. CENT. CODE § 14-07.1-02(4) (2009); VT. STAT. ANN. tit. 15, § 1103(e) (2010).

263 Some states allow the judge to enter orders either permanently or for a specific time period. MD. CODE ANN., FAM. LAW §§ 4-506(b)(2)(iii) (LexisNexis Supp. 2011); MONT. CODE ANN. §§ 40-15-201(4), -202(1), -204(1) (2011). Other states allow the court to amend the order at any time. MISS. CODE ANN. § 93-21-17(2) (West 2007); N.J. STAT. ANN. §§ 2C:25-29(b), (d) (West Supp. 2012).

264 See Stoever, *Stories Absent from the Courtroom*, *supra* note 6, at 1191-92.

265 Stoever, *Freedom from Violence*, *supra* note 6, at 359; see also Lynn Hecht Schafran, *There's No Accounting for Judges*, 58 ALB. L. REV. 1063, 1065 (1995) (providing multiple examples of inappropriate and harmful judicial responses to domestic violence).

266 The report of one Florida judge's behavior is frequently cited as an example of judges mishandling and trivializing domestic abuse. After learning that the defendant doused his wife with lighter fluid and set her on fire, the judge sang "you light up my wife" to the melody of "You Light Up My Life." FLA. SUP. CT., REPORT OF THE FLORIDA SUPREME COURT GENDER

enter orders when warranted by statute, or enter mutual orders even when there is no evidence of mutual abuse.<sup>267</sup> Most protection order litigants are pro se,<sup>268</sup> and navigating the courthouse and adversarial process can be intimidating and overwhelming, especially against an abusive partner. Petitioners seeking protection orders can be further daunted as they anticipate appearing before a judge and being cross-examined either by the pro se abusive partner or by opposing counsel.<sup>269</sup> Because the courtroom is open to the public, the abuse survivor may not feel comfortable revealing intimate details regarding the relationship and sexual assaults, physical abuse, and emotional harms he or she suffered.<sup>270</sup> While sitting and waiting for clients' cases to be called, I observe some petitioners lowering their voices to be barely audible to the judge, and I often have the feeling of listening in on something intensely personal that I am not supposed to hear. Petitioners' unease runs the gamut: one client may be intimidated by the legal process and appearing in court; another may speak out directly, even angrily, about the abuse he or she has endured and the questions being asked, whether by opposing counsel, the judge, or his or her own attorney. Concerning the challenges a petitioner encounters in court, one obstacle is the fact finder's expectations of how a victim should present.<sup>271</sup> A petitioner who exudes strength or who seems uncooperative or hostile is generally perceived by judges to be less sympathetic and may be viewed as the aggressor.<sup>272</sup>

Legal action is common during the action stage, and as attorneys counsel clients, they should be mindful of the interrelated nature of responses from law enforcement, the civil justice system, and the criminal justice system.<sup>273</sup> Many acts of domestic violence are criminal, and companion

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BIAS STUDY COMMISSION 121 (1990).

267 Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1683 (finding that mutual protection orders are sometimes entered even when the batterer has not petitioned for relief); see also Myrna Raeder, *Remember the Ladies and the Children Too: Crawford's Impact on Domestic Violence and Child Abuse Cases*, 71 BROOK. L. REV. 311, 329 (2005) (finding that judges frequently enter orders against both parties).

268 Tamara L. Kuennen, "No-Drop" Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims, 16 UCLA WOMEN'S L.J. 39, 54 n.58 (2007) (noting that the majority of protection order petitioners are pro se); see also, e.g., D.C. ACCESS TO JUSTICE COMM'N, *supra* note 7.

269 Tom Lininger, *Bearing the Cross*, 74 FORDHAM L. REV. 1353, 1359–61 (2005) (discussing several reasons why victims of domestic violence fear cross-examination).

270 See Stoever, *Stories Absent from the Courtroom*, *supra* note 6, at 1184–85.

271 See Laurie S. Kohn, *Barriers to Reliable Credibility Assessments: Domestic Violence Victim-Witnesses*, 11 AM. U. J. GENDER SOC. POL'Y & L. 733, 734 (2003).

272 See *id.* at 736.

273 A full discussion of the challenges survivors confront when attempting to be heard by the criminal justice system—whether they are seeking help or resisting involvement—is beyond the scope of this article.

civil and criminal cases are common, with an abuse survivor petitioning for a protection order and being the complaining witness in a domestic violence charge for assault, harassment, or a threat to do bodily harm.<sup>274</sup> The civil attorney should advise the client of the ways in which the civil and criminal cases may be intertwined<sup>275</sup> and gauge the survivor's interest in involving the criminal justice system. The civil attorney should discover from the client whether the police were called and if so, whether the police response was appropriate, whether the client wishes to cooperate with the prosecution if there is a criminal case, and how the client believes various civil and criminal interventions will affect his or her safety. The survivor can convey his or her desire or reluctance to cooperate to the prosecuting attorney's office and can especially emphasize any safety concerns he or she may have. The client may also be concerned about the collateral consequences of criminal convictions and may not desire criminal justice involvement.<sup>276</sup> Throughout the process, the attorney should ask what other services would be beneficial to ending violence and follow up with the client about the adequacy and usefulness of the court or community responses.

#### *D. Advocating Beyond Court*

The Stages of Change Model can be used to teach that being a lawyer involves addressing clients' legal and non-legal needs. It is helpful to employ the Model for this purpose because, for two years prior to entering the clinic, doctrinal courses form law students' perception of what it means to be a lawyer. The traditional law school curriculum teaches substantive law and legal theory but does not encourage students to widen their lenses to identify non-legal aspects of client problems.<sup>277</sup> Discussion of emotions

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<sup>274</sup> See Balos, *supra* note 7, at 576 (discussing how civil protection orders are a companion or substitute to criminal domestic violence prosecutions).

<sup>275</sup> For example, the attorney should advise the client about the use of testimony from one case in the other, and the differing burdens of proof, such that if a criminal domestic violence case proceeds first, the civil domestic violence protection order standard is typically satisfied. See generally *Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) by State*, AM. BAR ASS'N COMM'N ON DOMESTIC VIOLENCE (June 2009), [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards\\_of\\_Proof\\_by\\_State.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards_of_Proof_by_State.authcheckdam.pdf) (providing evidentiary standards and domestic violence definitions by state).

<sup>276</sup> See Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 688 (2006) (describing the indirect consequences of federal and state convictions); Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 489 (2010) (describing collateral consequences in the United States as more severe than other similar countries such as England, South Africa, and Canada, and often based disproportionately on race).

<sup>277</sup> See Norman W. Spaulding, *The Discourse of Law in Time of War: Politics and Professionalism During the Civil War and Reconstruction*, 46 WM. & MARY L. REV. 2001, 2024 (2005)

is also largely absent in large doctrinal courses, if not openly ridiculed.<sup>278</sup> Students may draw strict lines between what is legal work and what is “social work,” figuring that conducting a deposition, negotiating with opposing counsel, or going to trial is clearly lawyering, whereas helping a client search for shelter or an apartment is not. Representing domestic violence survivors, however, requires multi-dimensional responses. The following sections describe the importance of safety planning with clients throughout the stages and the additional legal and economic needs that many survivors have during the maintenance stage.

1. *Safety Planning Through the Stages.*—Safety planning<sup>279</sup> is an integral part of working with anyone who has experienced domestic violence.<sup>280</sup> Attorneys need to proactively raise safety issues and engage in safety planning during each stage of the Stages of Change Model to help clients avoid greater danger.<sup>281</sup> Safety plans can address strategies for being safe while remaining in a relationship and the risks a survivor potentially faces upon leaving the relationship,<sup>282</sup> including physical and psychological risks; threats to family, friends, and relationships; risks related to the survivor’s

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(noting that the work of law schools has been limited to narrow doctrinal teaching and formalist legal theory).

278 For example, one professor noted that statements by his students beginning with “I feel” were met with eye-rolls from their peers, and observed, “[t]he law school classroom operates to suppress emotion and intuition by systematically devaluing comments tinged with feelings while granting exalted status to the cognitive and rational realm.” Doni Gewirtzman, *Reflections on Substance and Form in the Civil Rights Classroom*, 54 ST. LOUIS U. L.J. 783, 792–93 (2010).

279 There are multiple available models for safety planning. *See, e.g.*, AM. BAR ASS’N, COMPREHENSIVE ISSUE SPOTTING: A TOOL FOR CIVIL ATTORNEYS REPRESENTING VICTIMS OF DOMESTIC & DATING VIOLENCE, SEXUAL ASSAULT & STALKING (2008) (guiding attorneys through questions to ask clients and providing the identification of local resources and potential referrals); Nancy Glass et al., *Computerized Aid Improves Safety Decision Process for Survivors of Intimate Partner Violence*, 25 J. INTERPERSONAL VIOLENCE 1947, 1947 (2010) (describing a model that provides feedback on lethality risks, safety options, prioritizing for safety, and the development of a personalized plan).

280 Goodkind et al., *supra* note 123, at 515 (“A basic tenet of every nonprofit domestic violence victim service program is to engage in safety planning with battered women.”).

281 *See* Clare Dalton, *Domestic Violence, Domestic Torts and Divorce: Constraints and Possibilities*, 31 NEW ENG. L. REV. 319, 370 (1997) (stating that a priority for attorneys representing victims of abuse should be to develop a safety plan, whether the lawyer does this personally or involves an experienced service provider to do safety planning).

282 Taryn Lindhorst et al., *Contextualized Assessment with Battered Women: Strategic Safety Planning to Cope with Multiple Harms*, 41 J. SOC. WORK EDUC. 331, 332 (2005) (explaining that many safety plans assume that the survivor is leaving the relationship, but applying a uniform plan fails as a prescription to all survivors); Fran Waughn & Michelle Bonner, *Domestic Violence and Child Protection: Issues in Safety Planning*, 11 CHILD ABUSE REV. 282, 283 (2002) (noting that for plans geared at helping an abuse survivor leave the relationship, an effective plan secures the safety of things and people important to the survivor at that moment, such as the survivor’s children).

sexual orientation; and the danger of arrest based on the survivor's legal status.<sup>283</sup> A safety plan should also include survival strategies for use during a violent incident.<sup>284</sup> Over time, as patterns of violence escalate and isolation increases, the survivor's connection to the community decreases. Attorneys must, therefore, be skillful, creative, and adaptive in safety planning to avoid increasing a survivor's isolation by inadvertently decreasing access to his or her community.

Among the stages in the Stages of Change Model, the preparation stage provides multiple opportunities for safety planning. For example, it can be invaluable for the client to have someone with whom to talk through a timeline and plan for gathering personal documents, finding alternate housing, reconnecting with family or friends, relocating, and filing and serving a protection order case, and to discuss how this case would interact with child custody or dissolution actions. To prepare to escape quickly, survivors may hide money, valuables, and important papers; keep a list of phone numbers; and remove weapons from the home.<sup>285</sup> As the petitioner prepares to file a complaint for a protection order, the attorney or advocate should ask how the petitioner thinks the respondent will react to being served with the petition and to reading the allegations against him or her. This encourages the petitioner to think about his or her own predictions and perceptions of violence, strategize for the petitioner's safety around the respondent's anticipated response, and have mechanisms and resources for protecting herself or himself and any children.

Moving into the action and maintenance stages, the attorney may connect the client with local safety planning advocates who can assist with immediate needs and provide ongoing emotional and physical safety planning support beyond the court case.

Survivors may not feel that formal systems are equipped to support their needs in light of the historic treatment of their cultural group and because services predominantly focus on women abused by men.<sup>286</sup> Many survivors benefit from culturally specific support that accounts for the strengths and vulnerabilities of their communities and the ways cultural contexts and systems of oppression manifest in survivors' lives.<sup>287</sup> For example, community groups that support lesbian and gay survivors may have heightened awareness of how abusive partners can leverage

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<sup>283</sup> Waughn & Bonner, *supra* note 282, at 283.

<sup>284</sup> *Id.*

<sup>285</sup> Goodkind et al., *supra* note 123, at 521.

<sup>286</sup> See, e.g., Melvina Sumter, *Domestic Violence and Diversity: A Call for Multicultural Services*, 29 J. HEALTH & HUM. SERVICES ADMIN. 173 (2006) (examining the cultural barriers that hinder the effectiveness of social services for women of color).

<sup>287</sup> Kristin Tucker, Northwest Network, Guest Lecture in the Seattle University School of Law Domestic Violence Clinic (Nov. 17, 2011).

institutional violence and isolation against the survivor.<sup>288</sup> These groups can also offer survivors peer support from people in the community who have faced similar hardships. For example, a transgender man may benefit from speaking with other transgender survivors to know that others have had similar experiences and to create a community of support.

When attorneys recognize the safety planning needs a survivor has during each stage of change, they are able to prioritize safety planning and understand their role in this essential activity. The Stages of Change Model can help attorneys remain client-centered during safety planning by focusing them on the survivor and his or her interests. To be empowering and useful, safety planning must be a collaborative and contextual endeavor that takes the survivor's thoughts, perceptions, interests, and options into account. As previously discussed, because of their experience, survivors become the best experts on their own personal risk for interpersonal violence and are generally able to predict violence as effectively as official risk assessment scales.<sup>289</sup> This understanding explains why survivors may make choices that seem to oppose their interests. For example, because survivors understand their own situations better than anyone, they may be unwilling to leave their abusers if they believe that the risks of leaving outweigh those of remaining. An attorney or advocate can guide a survivor in developing a safety plan and should seek to understand the client's circumstances as he or she strives to survive control. However, the survivor must actually make the decisions, as there is no singular best or correct approach, and a strategy that decreases violence for one survivor may have the opposite consequences for another, depending on the survivor's circumstances.<sup>290</sup>

2. *Maintaining an End to Violence.*—The maintenance stage of the Stages of Change Model encourages attorneys to view maintaining an end to violence as something attorneys have a role in creating. Both client-centered representation and a focus on the maintenance stage require attorneys to be aware of clients' legal and non-legal needs, including emotional, psychological, and economic needs that present barriers to ending violence. For many survivors, the "action" of utilizing the civil justice system is not enough to actually end the abuse, and the court order alone is insufficient without connecting the client to social services and helping the client obtain additional legal remedies.<sup>291</sup> The attorney's role should not end

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<sup>288</sup> *Id.*

<sup>289</sup> Jennifer K. Connor-Smith et al., *Risk Assessments by Female Victims of Intimate Partner Violence: Predictors of Risk Perceptions and Comparisons to an Actuarial Measure*, 26 J. INTERPERSONAL VIOLENCE 2519, 2520 (2010).

<sup>290</sup> Goodkind et al., *supra* note 123, at 527.

<sup>291</sup> See Goodmark, *supra* note 93, at 8 ("I did not understand that finality within the legal system was not finality in the real world.").



on the courthouse steps when a client's needs in the maintenance stage instead require a longer-term commitment.

Following the entry of a civil protection order, the petitioner may need ongoing legal assistance regarding the order. He or she may wish to modify portions of the order, such as visitation provisions; extend the order prior to its expiration to provide lengthier protection; or vacate an order that the petitioner determines is no longer needed.<sup>292</sup> If the respondent has violated the order, the petitioner may enforce the order through an action to adjudicate civil or criminal contempt.<sup>293</sup> Obtaining safety-related relief through a civil protection order is often the first of a series of legal actions, and longer-term family law cases, such as dissolution, child custody, or child support actions, may follow.

A mission of clinical programs is to provide representation to people who would otherwise not be able to afford to hire an attorney.<sup>294</sup> Attention to the poverty our clients face, and how poverty affects clients' legal problems and potential interventions into violence, gives attorneys important insight into context and allows them to be more sensitive and effective advocates.

While domestic violence occurs across all income levels, it occurs with the greatest frequency in lower-income households and in neighborhoods of concentrated disadvantage.<sup>295</sup> Financial hardship makes it more difficult to escape abuse,<sup>296</sup> and many survivors determine that the economics of creating two households is too much to bear. Economic barriers are, in fact, the most common reason survivors are unable to separate or remain apart from abusive partners.<sup>297</sup> Domestic violence is the largest cause of

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292 See, e.g., D.C. CODE § 16-1005(d) (2011) (permitting parties to file motions to modify, extend, or vacate a protection order for good cause); *but cf.* Kuennen, *supra* note 268, at 41 (2007) (reporting that some judges refuse to vacate petitioners' protection orders when they so request, maintaining that doing so would be contrary to public policy).

293 See, e.g., D.C. CODE § 16-1005(f) (2011); *In re Robertson*, 940 A.2d 1050 (D.C. Cir. 2008) (maintaining the right of victims of domestic violence to privately enforce their civil protection orders).

294 Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 *FORDHAM L. REV.* 1879, 1879-88 (1999).

295 Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 *U.C. DAVIS L. REV.* 1009, 1020-23 (2000) (explaining how women with limited resources are especially vulnerable to battering); Raphael, *supra* note 104, at 367 (stating that families with lower incomes are more likely to experience domestic violence).

296 See, e.g., Lucie E. White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 *GEO. L.J.* 1961 (1993) (explaining the many financial factors that affect a woman's decision to stay with an abusive husband, including the inability to provide for their children on a single income).

297 See Andrea Kovach, *Integrating Asset-Building Strategies into Domestic Violence Advocacy*, 43 *CLEARINGHOUSE REV.* 148, 149 (2009) (reporting that economic dependence is an even greater predictor of the inability to leave an abusive relationship than safety factors).

women's homelessness in America,<sup>298</sup> and economically disadvantaged or dependent survivors are forced to weigh the severity of the violence against homelessness and hunger for themselves and their children.<sup>299</sup>

Homelessness caused by domestic violence seems to have a simple solution, namely, entry into a domestic violence shelter, which carries the promise of immediate safety. The demand for shelter beds, however, far exceeds availability,<sup>300</sup> and a number of additional barriers limit access to shelter. Most shelters do not admit survivors who suffer from drug or alcohol addiction.<sup>301</sup> There is a scarcity of shelters that are able to house children, particularly teenage boys.<sup>302</sup> Shelter rules, such as curfews that are not compatible with work schedules, may exclude some survivors.<sup>303</sup> Shelters also may not be physically accessible for survivors with limited mobility,<sup>304</sup> and shelters may not be culturally competent or serve non-

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298 Erica Franklin, *When Domestic Violence and Sex-Based Discrimination Collide: Civil Rights Approaches to Combating Domestic Violence and its Aftermath*, 4 DEPAUL J. SOC. JUST. 335, 370–371 (2011) (stating that domestic violence is the cause of homelessness for as many as fifty percent of homeless women).

299 *See, e.g.*, Buel, *Fifty Obstacles to Leaving*, supra note 103, at 24 (explaining that a lack of affordable housing can mean staying with an abusive partner and risking injury or even death); *see also* Lisa A. Goodman et al., *No Place Safe: Sexual Assault in the Lives of Homeless Women*, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, [http://www.vawnet.org/applied-research-papers/print-document.php?doc\\_id=558](http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=558) (last visited Nov. 5, 2012) (reporting that “92% of a racially diverse sample of homeless mothers had experienced severe physical and/or sexual violence at some point in their lives”).

300 SUSAN FALUDI, BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN at xiv (1991) (“Federal funding for battered women’s shelters has been withheld and one third of the 1 million battered women who seek emergency shelter each year can find none.”).

301 Lorraine Greaves et al., *Substance Use Among Women in Shelters for Abused Women and Children: Programming Opportunities*, 97 CAN. J. PUB. HEALTH 388, 388 (2006) (explaining the exclusion of women with addictions from battered women’s shelters and describing the complex interconnectedness of experiencing violence and abusing alcohol or drugs).

302 Lisa Mihaly, *Beyond the Numbers: Homeless Families with Children*, in HOMELESS CHILDREN AND YOUTH: A NEW AMERICAN DILEMMA 11, 26 (Julee H. Kryder-Coe, Lester M. Salamon, & Janice M. Molnar eds., 1992) (stating that some shelters exclude male children as young as seven, although age limits of ten or twelve are common, or that male children might be housed in all-boy wards or placed into foster care).

303 *Id.* at 28 (“Finding a job or home is almost impossible because of the daily routine in many shelters.”); Denise A. Donnelly et al., *White Privilege, Color Blindness, and Services to Battered Women*, 11 VIOLENCE AGAINST WOMEN 6, 23–24 (2005) (discussing high levels of control in everyday living matters, which black women perceive as a dangerous effect of utilizing white social institutions).

304 Emily M. Lund, *Community-Based Services and Interventions for Adults With Disabilities Who Have Experienced Interpersonal Violence: A Review of the Literature*, 12 TRAUMA VIOLENCE ABUSE 171, 171–72, 179 (2011) (identifying disabilities-related forms of violence and a disconcerting gap between service providers’ perceptions of their accessibility and ongoing structural and programmatic barriers that limit accessibility); Karen Nutter, Note, *Domestic Violence in the Lives of Women with Disabilities: No (Accessible) Shelter from the Storm*, 13 S. CAL. REV. L. & WOMEN’S STUD. 329, 331 (2004) (explaining that abuse shelters do not adequately serve the needs of differently abled survivors).

English-speaking survivors.<sup>305</sup> Few shelters offer privacy<sup>306</sup> or the comforts of home, and residents may find it difficult to live under shelter rules and in temporary and close quarters.<sup>307</sup>

Poverty affects choices, and abuse survivors crucially need material resources that allow them to visualize and obtain an alternative to violent households. In protection order actions, attorneys need to zealously pursue financial relief if the client so desires and does not believe seeking the financial relief will place him or her in greater danger.<sup>308</sup> Such relief may include child support, maintenance, rental or mortgage payments, and

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305 See Crenshaw, *supra* note 105, at 1262–63 (recounting the experience of a woman who was repeatedly denied entry to a shelter because she spoke Spanish and could not prove that she was English-proficient); Donnelly et al., *supra* note 303, at 22–23 (discussing the dearth of culturally-competent programs and the failure of many shelters to account for cultural differences in religion, diet, and child-rearing, which marginalizes many survivors).

While some shelters are under the mistaken assumption that if they serve undocumented survivors, they will lose federal funding, shelters and transitional housing programs cannot legally turn away undocumented abuse survivors from their programs based on immigration status, even if the program receives federal funding. Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 61 Fed. Reg. 45985–01 (Aug. 30, 1996). In fact, shelters that refuse to provide services to battered immigrants may be in violation of Title VIII, which prohibits discrimination on the basis of immigration status. Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, 3604–3604.

306 Mihaly, *supra* note 302, at 27 (stating that families have “virtually no privacy” and are often housed in “barracks shelters, which house dozens or hundreds of people,” who “generally live in one large room that may be shared by single men and women. Sheets between the beds often provide the only privacy. Bathroom facilities in these congregate settings sometimes lack doors on toilet stalls and showers.”). While this description is of general homeless shelters, with the few beds available in abuse shelters, many abuse survivors turn to homeless shelters to avoid homelessness.

307 *Id.* (“Shelter routines often deprive parents of many of their parenting roles, and their dignity as well. The staff decide when the lights go on and off, when meals will be served, what children will eat, and where and when children can play. Research has shown that this usurpation of parental roles is depressing and confusing both to parents and children and may have effects that last far beyond the episode of homelessness itself.”).

308 See Laura Lein et al., *With the Best of Intentions: Family Violence Option and Abused Women’s Needs*, 7 VIOLENCE AGAINST WOMEN 193, 204 (2001) (quoting a recipient of Temporary Assistance to Needy Families as saying, “I figured if they was to pursue child support from him, he really would come at me in a violent way. I know him like a book. He’s just looking for a reason. He was just waiting for a reason to come at me in some kind of way. He even threatened to kill me and bury me on the side of my sister. So I take things like that serious . . . I just told her [the caseworker] I didn’t want them pursuing child support.”); Naomi Stern, *Battered by the System: How Advocates Against Domestic Violence Have Improved Victims’ Access to Child Support and TANF*, 14 HASTINGS WOMEN’S L.J. 47, 48–49 (2003) (describing the requirement that custodial parents receiving welfare cooperate with the government in obtaining child support from the non-custodial parent, and the Family Violence Option and good cause waiver that permit child support agencies to waive cooperation based on domestic violence).

reimbursement for medical care and property damage.<sup>309</sup> Client counseling can combine legal options with discussion of economic sufficiency, including needs related to housing, food, clothing, daycare, education, and health care. Regarding housing, for example: if a family lived together, the shared home is where a child's bed, clothes, and toys are, and this home is familiar. Will the petitioner seek to have the abusive partner vacate the shared residence so that he or she can return home? Would the petitioner and any children be safe returning to a location that is known to the respondent? If the petitioner relocates, can the court order include an award of possession of personal and household items and furniture to create a new home? Does the jurisdiction provide police stand-by to allow the petitioner to return to the premises, and are the duration and security sufficient? What shelter and transitional housing options are available, and what time limitations and other restrictions need to be discussed with the survivor? Attorneys can raise areas for exploration and help clients generate options and identify sources of assistance. In considering who the right person is to resolve the problem, the answer may not be the attorney. But the attorney can begin the conversation, as many survivors benefit from simply having such planning conversations, receiving information about available community and government programs, or being connected with those in other disciplines.

Beyond court, by virtue of having ready access to telephones and computers, my clinic students have assisted clients in many ways. For example, when a client's electricity was cut off, students arranged for energy assistance and were able to restore the client's electricity, which was necessary for the client and her child's well-being and could have otherwise negatively impacted the client's custody of her child. Other students searched Craigslist for free baby supplies and a crib for a client who was fleeing abuse with a newborn baby. Students have helped clients search for apartments and have provided them with information about food banks. Most frequently, students connect clients and their children with counseling services or with other culturally competent community services.

It is impossible to adequately assist domestic violence survivors without considering their economic situations and how domestic violence overlaps with poverty. All of our clinic clients are living on very limited incomes, which requires the student attorneys to search for solutions beyond the

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309 See DEL. CODE ANN. tit. 10, § 1045(a)(6) – (7) (2011) (permitting judges to order the respondent to pay “support for the petitioner and/or for the parties’ children . . . including temporary housing costs,” and “pay to the petitioner or any other family member monetary compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses and litigation costs, including attorney’s fees”); Stoeber, *Freedom from Violence*, *supra* note 6, at 371–72 (recommending that additional means of economic maintenance be statutorily available in orders of protection, and citing Delaware as a model statute).

courtroom to make a legal order have positive meaning in the survivor's life. The Stages of Change Model makes this search easier because it helps students and attorneys understand not only how a survivor attempts to keep herself or himself safe, but also what a survivor needs to address ongoing barriers to ending violence once and for all.

#### CONCLUSION

Survivors of domestic violence struggle mightily to have their voices heard and their experiences understood as they seek an end to violence. While the Cycle of Violence and the Power and Control Wheel focus on defining domestic violence through the abuser's actions, the Stages of Change Model illustrates the survivor's process and experience of surviving violence, thereby providing an essential education to lawyers representing abuse survivors. As a result of learning this Model, attorneys can better understand their clients' various needs and provide survivor-centered, client-centered representation to help clients achieve safety and autonomy.