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Interviewing the Domestic Violence Victim:
Incorporating Interdisciplinary Lawyering
Skills into the 1L Curriculum

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Interviewing the Domestic Violence Victim: Incorporating Interdisciplinary Lawyering Skills into the 1L Curriculum

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Abstract

Many legal problems require attorneys to navigate issues crossing between law and economics, law and psychology, or law and social work. These intersections represent classic problems presented to lawyers in their “real world” practice with multi-dimensional clients. However, in the 2008 Law School Survey of Student Engagement, 45% of the students surveyed recognized this challenge and maintained “that their legal education does not contribute substantially to their ability to apply legal writing skills in real-world situations.”[1] By including an exercise requiring students to conduct an interview with a domestic violence victim in the 1L curriculum, professors can address this pressing concern by encouraging students to navigate issues ranging from the psychological and physical needs of their client to the client’s safety and monetary concerns.

Although interviewing a witness at first glance does not seem to fit within the traditional legal research and writing pedagogy, the open memorandum problem lends itself to permitting students to gather facts using “client” interviews. Additionally, by fostering the development of practical lawyering skills in addition to oral advocacy and legal research and writing, legal writing professors provide students with an essential tool every lawyer needs to successfully represent a client[2] and assists upper level clinical professors by laying the groundwork for clinical courses.[3] Thus, incorporating the domestic violence client interview into the legal writing curriculum prepares students for real world practice and multi-faceted client problems; incorporates interdisciplinary skills into law school training; and trains students for upper level clinical work.

Interviewing the Domestic Violence Survivor: Incorporating Interdisciplinary Lawyering Skills into the 1L Curriculum

Sara R. Benson*

I. INTRODUCTION

Many legal problems require attorneys to navigate issues crossing between law and economics, law and psychology, or law and social work. These intersections represent classic problems presented to lawyers in their “real world” practice with multi-dimensional clients. However, in the 2008 Law School Survey of Student Engagement, 45% of the students surveyed recognized this challenge and maintained “that their legal education does not contribute substantially to their ability to apply legal writing skills in real-world situations.”¹ By including an exercise requiring students to conduct an interview with a domestic violence survivor in the legal writing curriculum, professors can address this pressing concern by encouraging students to navigate issues ranging from the psychological and physical needs of their client to the client’s safety and monetary concerns.

Although interviewing a witness at first glance does not seem to fit within the traditional legal research and writing pedagogy, the open memorandum problem lends itself to permitting students to gather facts using “client” interviews. Additionally, by fostering the development of practical lawyering skills in addition to oral advocacy and legal research and writing, legal writing professors provide students with an essential tool every lawyer needs to successfully

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¹ STUDENT ENGAGEMENT IN LAW SCHOOL: PREPARING 21ST CENTURY LAWYERS, LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT 2008 ANNUAL SURVEY RESULTS 10 (2008), http://lssse.iub.edu/2008_Annual_Report/pdf/j4u5h7e9/LSSSE_2008_Annual_Report.pdf.

represent a client² and assists upper level clinical professors by laying the groundwork for clinical courses.³ Thus, incorporating a domestic violence client interview into the legal writing curriculum prepares students for real world practice and multi-faceted client problems; incorporates interdisciplinary skills into law school training; and trains students for upper level clinical work.

Part II of this Article elucidates the interdisciplinary nature of a typical domestic violence survivor's concerns. These concerns encompass issues as varied as the intersection between law and social work to the crossroads of law and economics. Part II continues with a proposal regarding suggested topics instructors should include in class discussion(s) preceding the client interview exercise, such as the methodology to utilize during client interviews (the funnel method). Part III recommends a factual scenario the professor can utilize during the "client interview." The factual scenario incorporates a lack of trust on the part of the client, the client's disbelief that she is a survivor of domestic violence, and a faulty intake form that misidentifies the client as a non-victim. Next, in part IV, the necessary components of the class immediately following the interviews, the debriefing session, will be discussed. During this class, students will be encouraged to discuss their experiences with the client interviews and the instructor will be permitted to provide feedback to the class as a whole. Additionally, the students will be encouraged to help re-draft the faulty intake form in an effort to better identify survivors of domestic abuse. Finally, the Article concludes with a summary of the various interdisciplinary

² AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP Ch. 5(B)(Skill § 4) (1992), <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (encouraging law schools to teach students how to conduct and analyze factual investigations) (the "MacCrate Report").

³ Stefano Moscato, *Teaching Foundational Clinical Lawyering Skills to First-Year Students*, 13 J. LEGAL WRITING INST. 207, 219-20 (2007).

issues the client interview scenario raised and encourages professors to adopt and apply this suggested class exercise to their legal writing curriculum.

II. PRECURSOR TO THE INTERVIEW

The client interview could be used at any time during the legal writing curriculum. However, perhaps one of the best periods in the first semester schedule for utilizing this method of fact gathering is just before the open memorandum, when students must obtain facts from a client in order to assess potential viability of a particular claim or defense. Before permitting students to conduct the interview, at least one class is necessary in order to address interdisciplinary concerns of domestic violence survivors that might arise during the interview as well as basic instruction regarding the practitioner skills required to conducting the interview.

A. *Concerns Unique to Domestic Violence Survivors*

It would be difficult to address all of the interdisciplinary contexts implicated by an interview with a domestic violence survivor in just one class session (and, especially precarious to attempt to discuss these diverse issues in just part of one class session). Thus, at the outset, the professor should remind students that this is an overview of domestic violence law and practice and is not intended to be comprehensive. Students who are especially interested in the issues addressed in the readings and in class should be encouraged, where available, to enroll in a domestic violence clinical course. Additionally, the professor should assign one or more articles for students to read before the class meeting in order to facilitate discussion.⁴

⁴ Suggestions for assigned reading include: Nicole E. Allen et al., Battered Women's Multitude of Needs: Evidence Supporting the Need for Comprehensive Advocacy, 10:9 VIOLENCE AGAINST WOMEN 1015 (2004) (noting that comprehensive services are necessary for domestic violence survivors), Wendy Boka, Note, *Domestic Violence in Farming Communities: Overcoming the Unique Problems Posed by the Rural Setting*, 9 DRAKE J. AGRIC. L. 389 (2004) (discussing needs of rural survivors of domestic abuse), Nina W. Tarr, *Civil Orders for Protection: Freedom or Entrapment?*, 11 WASH. U. J.L. & POL'Y 157 (2003) (recognizing pressures specific to survivors of abuse who are also mothers).

The class before the interviews should specifically address, at a minimum, the safety concerns related to providing legal assistance to a survivor of domestic abuse. Attorneys should always begin interviews with a domestic violence client by assessing whether the client is in any immediate danger. Attending to these concerns will also permit the attorney to gather important information related to abuse that is necessary for obtaining an order of protection. Rather than begin an interview by asking background questions, attorneys generally have a potential client fill out an intake form in advance of or immediately prior to a client interview.⁵ For a client with potential domestic violence-related issues, the form can include questions about the abuse suffered. The information the attorney obtains from the form can also be used in order to instruct the client regarding basic safety measures and the availability of non-legal services. For instance, even if the violence at home has not risen to the level of a threat of immediate violence, the attorney should refer the client to a local domestic violence shelter.⁶ In addition, the attorney should explain that if it is necessary for the client to flee the household for her safety, she should gather as many important documents as possible and bring her children (if any) with her. The attorney can also refer the client to the shelter regardless of whether she plans to stay there because domestic violence shelters provide free out-patient counseling and support group services to women suffering from abuse. Finally, shelters often provide legal advocate assistance.⁷ Thus, in addition to having an attorney, a client can utilize the services of a legal

⁵ See, e.g., Reba Nance, *Ten Timely Tips to Keep Your Law Practice Client-Centered*, 35-JUN COLO. LAW. 91 (2006).

⁶ Note that in some counties, especially rural ones, a domestic violence shelter does not exist within city or county limits. However, generally, a service provider may be available. For additional information about the struggles of rural domestic violence survivors see Sara R. Benson, *Failure to Protect: A Pilot Study of Police Response to Domestic Violence*, 17 AM. U. J. GENDER SOC. POL'Y & L. 685 (2009).

⁷ See Suzanne J. Schmitz, *What's the Harm?: Rethinking the Role of Domestic Violence Advocates and the Unauthorized Practice of Law*, 10 WM. & MARY J. WOMEN & L. 295, 299-300 (2004) (explaining how domestic violence lay advocates assist survivors of domestic abuse before and during court proceedings).

advocate for assistance with transportation to and from court, emotional support during the litigation, and access to social services.⁸

It is also important to explain to students that the potential client may be reluctant to trust the attorney with the details of her relationship. This may be particularly important as the attorney-client relationship continues because the client may have the urge to reconnect with the abuser and may not want to tell the attorney in fear of being judged. The students must understand that domestic violence generally follows a cycle of abuse, where the abuser commits a violent act or threat and then feels remorse.⁹ During the period following the act of violence, there may be a “honeymoon” phase wherein the couple reunites for a period of time.¹⁰ However, the cycle of abuse will usually continue at some later date with another act of violence.¹¹ Thus, it is important for the attorney to understand that the client has feelings for her abuser and may wish to return to him during the honeymoon period. At this time, it is crucial for the client to be honest with the attorney about her feelings (without feeling judged by the attorney), and to have access to support groups and counseling sessions which will help her to avoid the emotional draw of returning to her abusive relationship.

Students must also understand the relationship between representing a domestic violence client and potential mandatory child abuse obligations. Many state laws require attorneys to report child abuse, even if they learn of the abuse from their client (a survivor of domestic violence).¹² Students should be encouraged to locate child abuse reporting requirements in their

⁸ *Id.*

⁹ Njeri Mathis Rutledge, *Turning a Blind Eye: Perjury in Domestic Violence Cases*, 39 N.M. L. REV. 149, 167 (2009) (referring to Doctor Lenore Walker’s seminal use of the term battered woman syndrome to describe the cycle of abuse common to domestic violence cases).

¹⁰ *Id.*

¹¹ *Id.*

¹² Adrienne Jennings Lockie, *Salt in the Wounds: Why Attorneys Should Not Be Mandated Reporters of Child Abuse*, 36 N.M. L. REV. 125, 126-29 (2006) (noting that as of 2006, a “handful of state statutes specifically mention

home state and decide whether the law mandates attorney reporting. If so, the student should remember to remind the client of this obligation during the interview and should explain the risks of such disclosure to the client such as potential criminal or civil charges against the survivor and the potential for increased danger to the survivor due to a child protection investigation against her abuser.¹³

B. Interview Techniques

As a preliminary matter, students must review the domestic violence law for their state. Although domestic violence statutes are very similar and for purposes of this exercise the student is trying to obtain an order of protection on behalf of the client, which has a fairly standard set of requirements, students should become familiar with the law. Students should be reminded that they need to understand the legal requirements necessary to obtain an order of protection in their state before they can ask the client the “right questions” or identify additional areas for discussion during the interview. For instance, in Illinois, students will learn that the definition of abuse in the Illinois Domestic Violence Act includes “physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation”¹⁴ Harassment includes “knowing conduct” that “would cause a reasonable person emotional distress” with a presumption that a threat of “physical force” on one or more occasions causes such distress.¹⁵

Generally, students should be instructed about a typical method for interviewing a client: the T-Funnel method.¹⁶ Students should generally be encouraged to ask broad, open-ended questions and then narrow in on parts of the client’s responses that are particularly relevant to the

attorneys either to exempt or include attorneys in the reporting statutes” and about “fifteen state statutes require ‘all persons’ or ‘everyone’ to report child abuse.”).

¹³ *Id.* at 148-54.

¹⁴ 750 ILL. COMP. STAT. 60/103(1).

¹⁵ *Id.* 60/103(7).

¹⁶ Stefano Moscato, *supra* note ____, at 240 n.19.

legal issue or might lead to important information.¹⁷ Additionally, students should strike legalese from their vocabulary during the client interview. Instead of asking whether the client had a “common law marriage,” for instance, students should identify the legal elements of such a marriage and ask related questions such as whether the parties lived together for any length of time. Likewise, students should avoid asking questions such as, “has your partner ever abused you,” because domestic violence survivors may be reluctant to self identify as victims of abuse.¹⁸ Instead, the students should be encouraged to use a form asking specific factual questions about the abuse. The form should include questions about whether the survivor’s family or household member has ever hit her, threatened to hit her, maintained all control over the money in the household, etc. Additionally, students could ask follow up questions to obtain details about the specific instances of abuse during the client interview.

For instance, domestic violence survivors, like all clients, may be reluctant to discuss their personal issues when an attorney is taking notes during an interview.¹⁹ The client may not understand that the notes are confidential or may not trust the attorney at such an early stage in the attorney-client relationship. Thus, the attorney should first establish rapport with the client by introducing herself, explaining that all information is confidential (unless the attorney has mandatory legal reporting obligations relating to child abuse, in which case this obligation should be disclosed to the client),²⁰ and begin the interview by making eye contact with the client.²¹ If the attorney wishes to take notes, she should explain to the client why she needs to

¹⁷ *Id.*

¹⁸ Kathleen Waits, *Battered Women and Family Lawyers: The Need for an Identification Protocol*, 58 ALB. L. REV. 1027, 1062 n.134. (1995).

¹⁹ Laurie Shanks, *Whose Story is it, Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 532 (2008).

²⁰ Lockie, *supra* note ____, at 126-29 (noting that as of 2006, a “handful of state statutes specifically mention attorneys either to exempt or include attorneys in the reporting statutes” and about “fifteen state statutes require ‘all persons’ or ‘everyone’ to report child abuse.”).

²¹ Shanks, *supra* note ____, at 533.

take notes (i.e. to help the client achieve her legal goals) and ask the client for permission to write down information during the interview.²²

Additionally, it is crucial for the student “attorney” to view the attorney client relationship as collaborative and client centered. In this manner, the student will be more apt to listen attentively to the wishes and goals of the client and to permit the client to help direct the legal representation to meet her needs. There are two critical aspects of a client centered approach: the ability to listen and not solely direct the interview, and the knowledge that the domestic abuse survivor has a variety of different concerns, ranging from legal to economic and psychological to physical. Thus, as an advocate, the student must be willing to understand the client’s multitude of needs and be willing to refer the client to other service providers and agencies and be understanding that some of the client’s goals may actually be hindered by a strictly legal approach. For instance, if the client has a low wage job and relies on the abuser for child support payments, it may not be useful for her to put him in jail where he may, as a result, lose his job and be unable to continue to support the children. In this manner, the advocate is truly able to listen to the needs and goals of the client.²³ Thus, instead of recreating the power dynamic of the abusive relationship by dominating conversations with the client, the attorney can truly collaborate with the survivor in order to achieve her true directives.²⁴

III. DURING THE INTERVIEW

The professor will play the “client” during the interview. The interview could take place during class or in small groups outside of class. It really depends on how much time the professor has allotted to the assignment. If the instructor wishes to grade the interviews, one

²² *Id.*

²³ Ann Shalleck, *Theory and Experience in Constructing the Relationship between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1046-47 (1997).

²⁴ V. Paulani 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, 93-94 (2002).

method to determine how well the student(s) performed during the interview is to assign a fact memorandum follow-up assignment. Students will turn in a fact memorandum for the “file” detailing facts discovered during the interview. In that manner, the professor can assign points or a grade to the students, awarding the most points to those students who were able to obtain all of the facts from the client. The professor may also wish to grade students on their performance during the interview itself. For instance, the professor could award more points to those students who are empathetic to the client, good listeners, and adept at asking follow up questions to obtain additional facts about a given situation. Any number of factual situations could provide a practical learning experience for legal writing students, thus, instructors should not feel limited in any way by the set of facts detailed below. I will simply provide one set of facts as a sample that could be utilized by instructors to demonstrate a variety of different interdisciplinary issues inherent in domestic violence cases.

At the beginning of the interview, the attorney should introduce herself, explain that everything discussed is confidential (unless there are mandatory reporting requirements) and explain that she understands that this is not an easy thing for the client to discuss. She should then ask if the client would be willing to fill out a brief form so the attorney can obtain some preliminary information that will help the attorney to assess the client’s possible legal claims. The client should briefly fill out and return the completed intake form (available at Appendix A below) to the attorney. The form is intentionally quite bare and does not include all forms of potential abuse. In fact, only instances of physical abuse are implicated in the form. In this instance, the client will answer “no” to all of the questions in the form because she has not suffered from any physical abuse to date.

The factual scenario that instructors may use for purposes of the interview is as follows: the client was reluctantly referred to this attorney by a friend and does not self identify as a victim of domestic abuse. She is reluctant to trust the attorney and does not want to reveal personal facts to a stranger. Thus, she will not easily divulge information until the attorney introduces herself, makes her feel comfortable, and explains the procedure for the interview as well as confidentiality. The form has actually made her feel even less like a victim of domestic abuse and at the beginning of the interview she protests a bit that she may be in the wrong place because none of the things listed on the form have happened to her. It is up to the student attorney to obtain more detailed information about any potential abuse or threats of abuse from the client. Additionally, a display of empathy on the part of the attorney during the interview itself will help reassure her that she may speak frankly about the situation at hand.

She was dating her husband for six months before they got married. They have been married for six months to date. Everything in their relationship was fine until she moved in with him after they were married. Her husband has not laid a finger on her physically, but he is very controlling. He does not allow her access to any of her earnings and instead makes her cash all of her paychecks and provide the earnings directly to him. He then gives her an “allowance” of just enough money to purchase groceries. He uses the rest of the money to buy things for himself, such as color televisions and expensive cameras. Yesterday, when she asked for additional money to buy herself some clothing for work he raised a fist at her and threatened to “beat her to a pulp” for asking. She believes that he will carry out this threat due to his terrible temper and the fact that he constantly gets into bar fights when he is drunk.

IV. DEBRIEFING THE INTERVIEW

During the class immediately following the client interview, the students should be prepared to discuss the interview process. To begin, the professor should ask whether the students found the intake form to be a helpful tool during the interview. The answer should generally be no and the students should be pressed to further explain this conclusion. They should note that the form does not include many forms of abuse and is only focused on emotional abuse. If the student stops there, the professor should continue the discussion by further inquiring about what different types of abuse are prohibited by the domestic violence statute. Additionally, students should be prompted to explain why this form may actually have hindered the client's ability to discuss the abuse. In other words, the client does not self identify as a "victim" and is not aware that the law prevents abuse other than physical abuse. Thus, the form actually hindered the client's awareness that she could obtain legal redress by further convincing her that she was not a victim of domestic violence. Some students may offer ways the form could be modified to better identify legally significant abuse, such as threats of violence, stalking, and emotional abuse. This may also provide an excellent opportunity for group work during class. The instructor could advise students to keep the definition of "abuse" from the domestic violence statute at hand as they work in groups to propose potential revisions of the intake form. Then, the groups could discuss their proposed modifications with the entire class. The proposals might add additional categories of abuse, but students might also add a qualitative section to the form where clients are permitted to express in their own words how they felt they were mistreated in their relationship. This type of "catch all" question on the form might be a good way to ensure that all forms of abuse are captured and it will give the client an

opportunity to present what she feels is the most important incident or incidents giving rise to a legal claim.

Students should be encouraged to discuss concerns of the client that are related to non-legal issues such as the client's safety, economic concerns, and psychological needs. For instance, did the students engage in safety planning with the client? Did they discuss whether she will be able to make ends meet on her own if she breaks ties with her abusive partner? Perhaps she has doubts about whether she really wants to leave her partner and could benefit from group therapy or individual counseling. Additionally, how many students referred the client to the local shelter or domestic violence service center to obtain legal advocate services or counseling? These types of matters may be specific to domestic violence clients, but clients in all types of lawsuits have multiple concerns that may affect their ability to engage with their lawyer. Thus, it is important for attorneys to be aware of other issues their client faces that may hinder their ability to focus on their legal claim.

Students should also explain whether they felt the client was comfortable enough to discuss the abusive relationship with them. If not, students should be encouraged to discuss different techniques they could use to help foster a better rapport with the client. For instance, some students may have forgotten to properly introduce themselves to the client. Other students may not have made the client feel comfortable that information discussed in the meeting would be kept private. Others could form a client-centered relationship by informing the client up front that their only interest was to help her achieve her goals. Then, they could explain some legal options (such as an order of protection) and ask the client what she would like to achieve with the legal representation.

Finally, students should be permitted to conclude the class with any other observations about the client interview process. The instructor should also be prepared to give his or her thoughts about things that went well during the client interviews and suggestions regarding how the students could strengthen their interview skills or additional reference sources should the students wish to continue with self-study.

V. CONCLUSION

Incorporating an interview with a domestic violence client into the first-year legal writing curriculum accomplishes two tasks: it prepares students for upper-level clinical courses (and the practice of law); and it trains students to think about interdisciplinary issues when interacting with clients. Although other types of issues may incorporate such interdisciplinary concerns into the curriculum as well, domestic violence provides an ideal arena to discuss psychological, safety, economic, and social concerns of clientele. It also provides students with a “real world” example of the application of legal skills in practice. And, it permits students to exercise their listening and empathy skills, which are underutilized in “traditional” first-year courses and are essential to practicing client-centered law. Thus, legal writing professors are encouraged to utilize this exercise in their classes to engage their students in the complex task of representing a domestic violence survivor.

APPENDIX: SAMPLE INTAKE FORM²⁵

Date:

Name: *Samantha Freitag*

Instructions: We understand that this information may be difficult for you to share. Please understand that all of your answers are confidential.

Has your family member, past or present boyfriend, or current or former spouse ever committed one of the following acts? If so, please circle Y and list the date of the event(s):

- | | | | |
|--|---|------------------------------------|----------------|
| slapped you | Y | <input checked="" type="radio"/> N | date(s): _____ |
| pushed or shoved you | Y | <input checked="" type="radio"/> N | date(s): _____ |
| bit you | Y | <input checked="" type="radio"/> N | date(s): _____ |
| kicked you | Y | <input checked="" type="radio"/> N | date(s): _____ |
| burned you | Y | <input checked="" type="radio"/> N | date(s): _____ |
| pinched you | Y | <input checked="" type="radio"/> N | date(s): _____ |
| pulled your hair | Y | <input checked="" type="radio"/> N | date(s): _____ |
| injured you by squeezing you too tightly | Y | <input checked="" type="radio"/> N | date(s): _____ |
| hit you with an object | Y | <input checked="" type="radio"/> N | date(s): _____ |
| used a weapon against you | Y | <input checked="" type="radio"/> N | date(s): _____ |

Who committed these acts? *Alex Freitag*

What is your relationship to the person who committed these acts? *husband*

²⁵ This form is based on: Diana Philip, "Ways Your Partner May have Hurt You," Texas Advocacy Project (revised April, 2006), available at http://www.texasadvocacyproject.org/program_service.php?pid=1.