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**MODELS OF INVISIBILITY:
RENDERING DOMESTIC AND OTHER GENDERED VIOLENCE VISIBLE TO
STUDENTS THROUGH CLINICAL LAW TEACHING**

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Keywords: pedagogy, intersectionality, incarceration, criminalization, domestic violence.

ABSTRACT

The proliferation of university courses about domestic violence includes clinical courses in law schools in which students represent victims in their legal cases. This essay advocates for a broader approach to teaching about the problem. Using examples from their clinic cases, the authors show how teachers can overcome pedagogical challenges and render domestic and other forms of gendered violence, including state and community violence, more visible to students by intentionally raising and placing it within larger frameworks of structural inequality. In this way, students learn to identify and address gendered violence even when it is not the presenting problem.

This essay describes what we, two former domestic violence attorneys, have learned about the potential to render gendered violence more visible to students through clinical law teaching, even when domestic violence is not part of the “presenting” legal problem. We draw lessons from our experience creating the Family Justice Clinic (“FJC”) at the William S. Boyd School of Law at University of Nevada, Las Vegas (“Boyd”), a family law clinic focused on incarcerated parents, low-income families of prisoners, and those affected by the child welfare system and other forms of state intervention. (Cammett & MacDowell, 2011). Many of our clients are survivors of domestic violence and other forms of gendered violence, by which we mean both violence exacted with the purpose or effect of subordinating in gender-specific ways, and violence that has gender-specific impacts.

The Correctional Association of New York (2012) reports that three-quarters of incarcerated women “have histories of severe physical abuse by an intimate partner during adulthood, and 82% suffered serious physical or sexual abuse as children.” As such, violence experienced by women is strongly correlated with women’s subsequent criminal justice involvement. While rates of prior abuse of incarcerated men may be lower, “[f]amily violence is a shared root cause of subsequent violence” (Smith, 2005, p. 392). One study suggests 14% of men in prison were victims of childhood abuse and neglect (Harlow, 1999). Additionally, prison itself is a violent place where women and men continue to experience high levels of physical and sexual violence and coercion (Wolff, Blitz, Shi, Bachman & Siegel, 2006). In particular, prisons are sites that foster destructive, violent forms of masculinity, the victims and perpetrators of which “are likely to return to the same communities where they grew up, now at greater risk of traumatizing others” (Harris, 2011, p. 32; SpearIt, 2011). However, because the FJC is not

specifically a “domestic violence clinic,” violence is often not the legal issue presented in our clients’ cases. Moreover, in this context, a broader pedagogical approach to gauging the multilayered effects of violence in our client’s lives, and in their legal cases, is required.

In particular, we have found that it is important to address gendered violence in all of its forms, which includes violence perpetrated within communities and by the state, as well as by intimate partners and other household members (Richie, 2012). This is true for two interrelated reasons. First, it allows us to examine how state-sanctioned and other forms of violence has shaped the lives of our clients, as client context is integral to any solution-focused program (Goodmark, 2012). Second, it affords students a broader-based appreciation of the significance of violence to social subordination and their role as lawyers in shaping social change (Aiken, 1997). Gendered violence and its effects is often difficult to surface and explore with students, however, due to the necessary triage that we perform in law clinics in order to address pressing issues. Further, students resist recognizing the issue, in part because of their lack of familiarity with the circumstances in which violence arises in our clients’ lives. Consequently, we have found that rendering gendered violence visible requires modifying traditional approaches to clinical teaching.

TEACHING GENDERED VIOLENCE

Clinical Law Teaching About Domestic Violence

Domestic violence clinics have become a common feature in law schools in the United States (Carey, 2011), and despite calls to integrate the study of domestic and other family violence into law school curriculums more broadly (Buel, 2003; Breger & Hughes, 2008), clinics remain the primary source of law school education about the subject. Moreover, although clinic models vary, most remain narrowly specialized and their services defined by existing legal

remedies and responses to domestic violence, with the vast majority focusing on civil restraining orders and traditional family law matters such as divorce, child custody, visitation and support, spousal support and property division (Carey, 2011). The problem with this approach is that intersecting stereotypes and norms about gender, race, class, and sexuality tend to be reinforced when people operate within the legal system (MacDowell, 2013), which is characterized by a domestic violence discourse that has racialized and gendered dimensions (Morrison, 2006). This discourse constructs victims as white, female, middle class and heterosexual, and as passive and dependent (Morrison, 2006; Goodmark, 2008). Individuals who do not have these characteristics are not easily recognized as victims, including the poor, people of color, lesbian, gay, bisexual and transgender victims (Morrison, 2006; Goodmark, 2008; Cammett, 2009), victims who fight back against their abusers, (Goodmark, 2008), men, and victims who are guilty of criminal conduct (Smith 2005; MacDowell, 2013).

Victims who do not conform to normative stereotypes can be re-traumatized and disillusioned by the responses of courts and other systems to their claims. Moreover, this discourse fails to connect the interpersonal nature of domestic violence to other forms of social violence, including gang and other violence perpetrated in communities marginalized by poverty, racial subordination, and criminalization, violence within spaces of state custody and control such as prisons (Harris, 2011; SpearIt, 2011; Richie 2012), and in other spaces and institutions occupied by low-income people, such as the military. As a result, much of the gendered nature of violence and its role in structural subordination is obscured by conventional narratives of domestic violence. In response to this limited discourse, Camille Carey suggests altering traditional clinical approaches to teaching domestic violence by implementing a social justice framework, drawn from clients' experiences in legal and other systems. In her view. “[s]ituating

[clinical] work on domestic violence within a social justice mission will lead to clearer efforts and goals for future domestic violence lawyering” (Carey, 2011, p. 279). We agree. Our broader approach to interrogating gendered violence provides context for students that is derived from client experiences within punitive state systems. This overarching normative and critical framework helps students make sense of client experiences that are unfamiliar while representing their clients more effectively.

The Family Justice Clinic: Moving Toward A Broader Approach

In the FJC, we incorporate the approach articulated by Carey by focusing students on questions of structural subordination and social justice raised by client experiences while addressing the needs of individual clients in their cases. Rather than engaging in an issue-oriented approach, which is how traditional domestic violence clinics operate (Carey, 2011), the FJC prioritizes services for clients who are at the intersections of state systems that intervene in their families in intrusive and oppressive ways. For example, our clients tend to be involved with the child welfare system, where the state is seeking to terminate parental rights; the immigration system, where they are subject to removal; or the criminal justice system, where they are subject to surveillance and incarceration, and which puts additional psychic, monetary, and legal burdens on their families (Cammett & MacDowell, 2011). This framework for client selection provides our students with the opportunity to engage family law as a site for structural analysis of systems that affect poor people, rather than a mere legal specialization. Thus, the critique of legal and other systems of subordination—including the family law system itself—is the primary rather than secondary subject of students’ work.

In undertaking this broad mission, we initially employed traditional clinical teaching methods such as non-directive teaching, and focused the students on providing client services

within an in-house, university-based, law school clinic setting. Non-directive teaching is a staple of clinical pedagogy (Quigley, 1995; Aiken, 2001; Mlyniec, 2012), and refers to a process of teaching that encourages students to take on a higher level of responsibility and decision-making in their cases, rather than responding primarily to an instructor's direction when solving problems. While clinic supervisors employing this method can intervene in a more directive way to facilitate students' professional growth and encourage client-centered representation, the goal of non-directive teaching is to develop habits of problem-solving that are organic and long-lasting, thereby empowering students as advocates and lawyers. However, while non-directive teaching is useful for honing analytical skills, it is less effective for helping students—who tend to come from relatively privileged backgrounds—to understand the effects of punitive social welfare and other state systems that inform client choices. This is especially true in the absence of a critical framework for understanding survival strategies from the lived experience of clients, which often differs greatly from the life experience of law students. Moreover, keeping student engagement with clients *solely* within the controlled environment of a law school clinic further narrows students' perspectives on client problems. The following case studies demonstrate that in order to be faithful to the value of client-centeredness, as well as to surface the ways in which gendered violence impacts and shapes client experience, additional pedagogical interventions might be appropriate.

MODELS OF INVISIBILITY: TWO CLIENT STORIES

Pam: Gender Norms, Incarceration, and Invisibility

Pam is an African American woman who was in prison when she requested our help. She had been incarcerated on and off for much of her adult life. She contacted our clinic seeking to regain custody of her children upon release, one of whom was placed with an uncooperative

private guardian, while several others were in state-sponsored foster care. As a result of her incarceration and status as a non-custodial parent, Pam also had over forty thousand dollars in child support arrears, which she could not pay, and needed help addressing.

Structural conditions contributed to Pam's invisibility on multiple levels. Her visibility in the legal system was initially impaired by her lack of counsel. The right to appointed counsel in family law matters varies from state to state and is quite limited outside the context of state-initiated termination of parental rights proceedings, especially for adults (Abel & Rettig, 2006). Moreover, legal aid organizations are prohibited from using federal funds to assist incarcerated clients (Diller & Savner, 2009), and most legal aid providers reserve limited non-federal resources for those clients who appeal to their funders' conceptions about the "deserving poor." These conceptions function similarly to dominant narratives about domestic violence to exclude some individuals from receiving needed legal assistance. Thus, Pam's criminal record and incarceration left her ineligible for legal aid services.¹

Pam was rendered invisible in other ways. As a perpetrator of crimes, she was invisible as a victim of violence. Her file from the child protective services agency revealed that, prior to her lengthy incarceration for economic crimes, she had committed acts of violence against one of her children. Nevertheless, it also indicated that, like many incarcerated women, Pam had been a victim of severe domestic violence and struggled with drug abuse (Richie, 1996). A deeper exploration of this phenomenon could have provided an opportunity for students to examine the victim-perpetrator dichotomy that underlies narratives about "real" victims. However, as a mother, her violence toward her children deeply troubled her student attorneys, who did not intuitively see or connect Pam's own victimization and lingering trauma with her acts of child abuse.

Additionally, incarceration created both physical and psychic barriers to seeing the effects of violence in Pam's case. Prison bureaucracies made it hard to get to her on a practical level. At the same time, she was shut down emotionally and controlling about her information because she had to manage so many unsympathetic and bureaucratic entities. Her responses made it difficult for the students to relate to her and extremely hard to surface issues around her victimization that were critical to understand in order to gain her trust and provide legal support. Thus, while our clinic was able to provide Pam with legal representation, the structural and psychic conditions of her subordination presented significant challenges at every level.

Victor: Vulnerability and Visibility

Victor is an undocumented Latino teenager whose case presented as a dispute about child custody and visitation. He was referred to us from another Boyd clinic that had defended him in a domestic violence case brought in juvenile court, in which he had pleaded guilty to the charges against him. Notably, Victor's status as an adjudicated batterer, and the confluence of civil and criminal legal issues, rendered him—like Pam—outside the scope of “deserving clients” and, therefore, no other legal aid services were available to him. As with Pam's case, we were unsuccessful in fully exploring the tensions around his perpetrator status with the students, as well as other important issues related to the structural conditions of his subordination. Nonetheless, significant differences in Victor's circumstances made it easier for students to view him in a positive way.

Initially, Victor's complex identity was invisible to students—and to us—except as a “batterer.” But our view of him was quickly complicated by the unmasking of structural and other violence in his own life. First, we learned that he had endured violence when his gang members subjected him to a “jumping out”—a ritual beating—when he left the gang for the

sake of his child. Second, his undocumented immigration status and the ways in which it exposed him to the risk of additional coercive state violence, such as arrest and deportation, encouraged us to develop a more three-dimensional perception of him. Finally, he became a more sympathetic client after we discovered his illiteracy, which the students uncovered after he was unable to complete his homework for batterer intervention classes ordered by the court as part of his probation. These issues often worked in tandem to undermine his ability to stay out of prison, and also to come to grips with his own anger and engagement with violence. For example, his illiteracy embarrassed him and initially caused him to react with rage at the court's order for classes, risking his incarceration for failure to comply. Moreover, his inability to obtain a drivers' license because of his undocumented status subjected him to violation of probation every time he drove to work, buy groceries, or drove across town in order to visit with his child.

Despite his perpetrator status, Victor's vulnerabilities "softened" him and rendered him more likable to his student representatives, better motivating them to help him. Additionally, the fact that Victor was on probation, not incarcerated, meant students had more physical access to him than to Pam, and therefore could more easily interact with him and get needed information. Students also had more "emotional" access to him due to his relative youth and openness, allowing them to be more proactive and involved, and to more easily conceptualize how he could be helped. Because they could see him more sympathetically, they were able to present an important counter-narrative to his status as a batterer and support his request for joint legal custody and visitation with his child by emphasizing his demonstrated commitment to parenting. This narrative made Victor more visible and positive to the family court, as well. For example, the judge in his case disregarded the statutory presumption in Nevada against granting joint custody to a parent convicted of domestic abuse in order to approve a settlement we negotiated

with the child's mother. It appears that the family court judge was able to overlook Victor's past acts of violence because of his laudable efforts to be an engaged father—an advantage that he did not have when facing criminal charges in juvenile court as a young Latino man.

LOCATING GENDERED VIOLENCE IN STRUCTURAL INEQUALITY

At the conclusion of our first semester teaching and working with clients Pam and Victor, we reflected on whether we were successful in meeting our twin goals of serving clients' legal needs while simultaneously surfacing for students complex narratives of structural violence. We concluded that we had mixed success, especially with the second goal. Pam and Victor's cases embody models of intersectional subordination—and resulting invisibility—in that they are each pushed to the margins of hegemonic narratives that govern access to legal representation. The multiple identities that complicate their needs render them invisible as clients deserving of support in our legal system. Nevertheless, the clinic did help Pam and Victor become “visible” to the law in ways that removed structural legal barriers; in other words, we performed some of their legal work quite effectively. We did so by significantly reducing Pam's child support arrears, thus removing one of the many obstacles to her successful reentry into society from prison. We also eventually assisted her in gaining reunification with her children in foster care placements, moving her closer to her self-defined goal of family integrity. Similarly, we obtained court orders allowing Victor to have structured visits with his child based on an agreement with the child's mother, thereby reducing the potential for conflict between them and his risk of re-arrest.

As to our second goal—helping students better understand the breadth of structural issues facing our clients, particularly around their experience of violence—the results were more mixed. In Victor's case, the students did develop a more profound knowledge about the

interrelationship of structural inequality and violence. Victor's surprising likability in light of students' initial perceptions of him solely through the lens of "batterer," enabled us to complicate the victim-perpetrator dyad in his case, and render visible the effects of structural violence in his life. However, in our collective discomfort with his past violence against his child's mother, we failed to seize the opportunity to engage in a fuller analysis of the gendered aspects of subordination and link this analysis to a broader anti-violence strategy that could align our students with activism for social change in communities seeking new solutions to violence (Incite!, 2006). Specifically, while we were pleased with the outcome as his attorneys, we were less successful at surfacing the implications of the family court case with the students as part of a critique of when and how violence is overlooked, and how gender factors into its visibility. That inquiry would have examined the judge's willingness to disregard aspects of the applicable legal custody standard for an involved father—an advantage that might not have been extended to a mother, whose parental involvement would likely be expected and presumed. It would also have examined the ways in which Victor's identity as a young Latino man may have *negatively* impacted him when he faced domestic violence charges in juvenile court, due to racial and gender stereotypes about perpetrators of crime (MacDowell, 2013). In hindsight, we were more comfortable embracing the narratives we initially constructed for the court—and ourselves—about Victor's commitment to parenting, and his vulnerabilities (such as his youth, immigration status, and illiteracy), in order to justify representing him, rather than addressing these more complex questions.

We were even less able to fully surface the hidden issues of gender and violence as they related to Pam. Although domestic violence was not the presenting problem in her case, evidence of being subjected to *lifelong* violence and its effects abounds in her case records. However, we

failed to draw these out and link them to a larger discourse on the effects of violence in her and other client's lives. Specifically, we did not succeed in unsettling the ways that Pam's experiences with interpersonal, community, and state violence (Richie, 2012) rendered her more guarded and less approachable as a client, and therefore less *likable* to students.

Balancing Intentionality and Nondirective Teaching

These reflections led us to several observations about the limitations of our clinical pedagogy for contextualizing complex social and legal problems, and surfacing the impacts of mass criminalization. Our non-directive approach assumed that students would see issues of personal subordination as they arose during client representation, at which point we would assist them in connecting their client's experience to manifestations of societal power and privilege. As detailed above, however, often one or both of these assumptions were not met due to the necessity of focusing on securing legal remedies, and resistance on the part of students to recognizing the operation of power in the lives of clients. To counter these problems we determined that we needed to alter our approach by integrating a framework that encouraged a continuous analysis of structural subordination. To that end, we utilized our clinic seminar to incorporate theories arising from critical race feminism and other writings in order to help students grasp the multilayered operation of power and the social construction of our clients' experience. This framework would serve as an ongoing analytical device that we could refer back to in case planning and as client supervision issues arose.

For example, Kimberlé Crenshaw's foundational work on intersectional subordination and violence against women of color (Crenshaw, 1991) has become a cornerstone of our orientation.² Crenshaw's articulation of intersectionality—the theory of how identity is formed through the interplay of multiple social categories with one another and with state power—has

proved invaluable for generating discussion about how structural oppression exposes our clients to gendered violence, and, perhaps more importantly, provides an analytical paradigm for students to explore the ways that identity is formed. Revisiting our experience with supervising students in Pam's case illustrates the need for this framework. A scholarly grounding in intersectionality theory could have surfaced the complex, structural underpinnings of Pam's mothering to reveal her persistence and tenacity in the face of overwhelming challenges. It might also have surfaced the connections between the students' negative perceptions of Pam and their subconscious embrace of pathologized Black motherhood—perceptions that are ever-present as lingering cultural artifacts (Crenshaw, 1991; Roberts, 2002; Collins, 2012; Cammett, 2014), but which are not rendered visible absent an explicit critical framework. The students would also have likely done a better job of earning Pam's trust by demonstrating that they saw and heard her efforts at mothering despite a menu of bad and worse options available to her, rather than subtly, though unintentionally, communicating their disapproval. While it is hard to evaluate with precision the difference this alternative viewpoint would have made in terms of Pam's legal case or her overall experience of life and law, it is reasonable to assume that it would have mattered, and would matter to students' treatment of their future clients.

In Victor's case, untangling the significance of race and gender to the court's disregard of statutory domestic violence law would have benefited from an intersectional analysis. Application of intersectionality theory demonstrates that race and gender must be considered *together* in order to reveal their interrelationship, and the relative natures of privilege and subordination (Hutchinson, 2001; MacDowell, 2013). Here, Victor's success in family court may have related in part to the court's perception that he was a committed young father in contrast to the court's expectations for a young Latino of his class. However, as suggested above, the

intersection of these same identities may have been a detriment when he faced domestic violence charges in juvenile court—where his fatherhood was not in play and where the charges and the facts were in greater alignment with stereotypes that equate young Latino males with criminality (Rivera, 1994).

Rendering Power Visible To Students

Despite the foregoing, our second observation is that critical theory has, *in and of itself*, only limited utility in helping students to confront their own values and biases. In particular, it is important for students to recognize that a lawyer's values and perspectives have an impact on attorney-client relationships and case strategy (Bryant, 2001). Ongoing case supervision provides opportunities for exploration of power relations, structural subordination, and personal values that students can reflect upon in a confidential setting. Nevertheless, referencing a critical framework works best if these ideas are also explored in physical sites that remove them from their comfort zones. Clinic law offices can confer the same trappings of power onto lawyers that we critique in state systems that intervene in our client's lives (Gabel & Harris, 1983). Therefore we determined that we, as clinic directors engaged in a social justice project (Aiken 2001), should strive to situate parts of our practice outside of law school clinic offices when possible.

Students are often confused when clients do not view them favorably, even though they have enthusiastically signed on to be zealous advocates. A general distrust of all systems of power is completely logical for low-income clients subject to criminalization and other conditions of poverty, given the onerous way that state systems have operationalized power in dealing with them, often throughout their entire lives (White, 1990; Gustafson, 2009). If, as a result, they perceive their lawyers as agents of hierarchical systems, untangling those dynamics can be challenging, but not insurmountable. In particular, when student attorneys butt up against

power in ways that they are unaccustomed to, it can create an opportunity for transformative learning through what Fran Quigley (1995) calls “disorienting moments” (1995, p. 38). Quigley defined these moments as occurring when a student confronts an experience that is disorienting or even disturbing because it cannot be easily explained with reference to the learner's prior understanding of how the world works. Such a disorienting moment can cause the student to engage in a reassessment of societal and personal beliefs, values, and norms, resulting in “perspective transformation” (1995, p. 46). To that end, law students benefit from engaging their work in sites where they are forced to confront a challenge to their authority (MacDowell, 2008).

In order to operationalize the “disorienting moment” concept under our particular clinic model, we require that our students regularly teach a basic family law curriculum to inmates in our county jail. Our “site-based” approach to engendering disorientation yields many substantive results. First, teaching in a jail renders power visible to students in a very direct way. Most advocates entering a correctional facility are subject to the privacy invasion of searches, and the often demeaning attitudes of jailers. As such, students are confronted directly with the limits of procedural fairness and the not so subtle message, communicated by jail personnel, that our clients are not worth the students’ efforts. Our engagement with correctional facilities, where administrators and guards alike tend to be suspicious of the students’ motives, is disruptive and disturbing, and often outside of the experience of our relatively privileged students.

Second, teaching in a jail helps to surface the ways in which institutional violence against families can manifest. Students teach this class during what is usually a time of great stress for the inmates who attend. These individuals are often in jail because they are unable to pay for bail while they wait for trial or sentencing, or are waiting to be transferred to prison for a longer sentence. During this period the state is often actively dismantling their families through

termination of parental rights; they may also be worried about punitive child support enforcement that will drive them into unmanageable debt after release (Cammett, 2012). For students, confronting these anxieties renders the operation of destructive state power on families quite visible.

Teaching in such a setting also serves to challenge students' working assumptions about who inmates are, and how their family issues play out.³ Family law, as referenced earlier, operates in one way for families who are not subordinated by the state and differently for those families that are—through a governing paradigm of child welfare, child support enforcement, and other state control mechanisms (Brito, 2000; Cammett, 2012). As such, community education is an opportunity for *community members themselves* (here, inmates) to educate the students about the realities of their lives and their priorities—and they often do (MacDowell, 2008). Students report being taken aback, and a little embarrassed about their prior assumptions, which they come to more clearly understand are based on their own upbringing and worldview.

Finally, when students work with incarcerated parents in groups, they can more clearly identify pathways for much needed change. The jail class exposes students to a wide spectrum of civil barriers faced by inmates and their families while imprisoned and again upon reentry (Cammett 2012). At the same time, the experience of teaching in a jail has rendered them more conscious of their own privilege as future lawyers and often reinforced the notion that they are in the position to be change agents. These insights are in keeping with students' often new-found sense of outrage about the conditions under which our clients labor in order to maintain the most basic family integrity—a form of institutional violence that was previously invisible to them.

CONCLUSION

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In sum, violence, especially in low-income communities, is comprised not only of intra-family or domestic violence, but also community and state violence, including mass criminalization, which affects subordinated communities in multi-layered and interrelated ways. Alternatives to traditional, nondirective clinical pedagogy are sometimes necessary to render the problem of gendered violence visible to students, because the conditions and effects of oppression often mask its gendered nature. These may be especially important when domestic violence is not the primary substantive issue being taught, or when it is not the presenting legal problem. Alternative pedagogies can include normative and analytical frameworks drawn from critical theory, and siting students outside the academy where their normative and authoritative positions are subject to challenge and transformation. By engaging these pedagogies, students can play a role in changing domestic violence narratives to uncover the interconnected nature of gendered violence and render it visible in all of its manifestations.

NOTES

¹Pam was also invisible to advocates for the incarcerated who tend to presume that child support obligors are men (Pew Center on the States, 2008).

²Additionally, Abbe Smith's, *The "Monster" in All of Us: When Victims Become Perpetrators* (2005), serves as an important text by illustrating the flaws of the prevailing victim/perpetrator dichotomy in the law and popular perception.

³Students put together their own curriculum based on their perceived needs of prisoners. Their approach to the material often reflects their own biases (e.g., that female inmates can be expected to be concerned about getting, not *paying*, child support) and their assumptions about "appropriate" family structures under the law.

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