CLINICAL CONTEXTS: THEORY AND PRACTICE IN LAW AND SUPERVISION

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INTRODUCTION: GENESIS AND METHOD

Nowhere is the intersection of legal theory and legal practice more intense than in supervising students representing real clients on real cases. Supervision is an ongoing dialogue between student and teacher about that representation. The teacher gives shape to the dialogue through each decision about what to include in, and how to conduct, the discussion. The student's practice is the focus of the supervisory discussion, but the teacher frames how that practice is understood. In shaping the dialogue, the teacher conveys both explicitly and implicitly a vision of law, legal institutions, and lawyering. In this Article, I will examine the decisions that shape supervision in order to see both the assumptions embedded in the supervisory dialogue, as well as the vision that emerges from the supervisory process.

When clinical education first brought student representation of clients into legal education,[1] clinical teachers' primary teaching forum was the supervision of students.[2] As clinical education matured, clinical teachers developed other methodologies to supplement supervision. Simulations, case rounds or case meetings, and classroom lectures and discussions became common in the repertoire of clinical teachers. Still, supervision has remained a touchstone for clinicians.

Despite its centrality within clinical education, supervision is the least visible of clinical teachers' activities. Clinicians rarely witness their colleagues supervising students. Nonclinical colleagues do not see or appreciate the seemingly endless student meetings. Judges and lawyers are aware only of the performance of the students, not of the process that surrounds

1. Stephen Wizner & Dennis Curtis, *Here's What We Do: Some Notes on Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 677 (1980); *see also*, Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731, 1739 (1993).

2. *See, e.g.*, David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 73, 75 (1979); Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599, 1646 (1991); Peter T. Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277, 279.

that performance. Students are often attracted to clinical courses by the promise of lawyerly activity, not by the educational context of that experience. Nonclinical students know when their friends go to court, interview a client, or negotiate with opposing counsel but are seldom aware of the supervisory experience. Although supervision is central to clinicians' work, there is a surprising dearth of literature on the subject,[3] particularly in the clinic context.[4]

Despite this invisibility, clinical teachers have engaged in an ongoing dialogue about supervision among themselves.[5] Common ideas, as well as divergent approaches, have emerged. In this Article, I will draw upon the traditions of, and my own experiences within, the clinical community in order to describe one vision of clinical supervision.[6]

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3. The major articles that have addressed student supervision include Jane H. Aiken, David A. Koplow, Lisa G. Lerman, J.P. Ogilvy & Philip G. Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985); Barnhizer, *supra* note 2; Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, *in* CLINICAL EDUCATION FOR THE LAW STUDENT 374 (Council on Legal Educ. For Professional Responsibility ed., 1973); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982); Hoffman, *supra* note 2; Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn From Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981); Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978); James V. Rowan, Michael Meltsner, Brook Baker & Daniel J. Givelber, Training for Competency in Getting and Giving Supervision (1986) (unpublished, distributed at the First UCLA/Warwick International Conference, on file with author); *cf.* Michael Meltsner, James V. Rowan & Daniel J. Givelber, *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399 (1989) (discussing supervision in the practice setting).

4. Much of the literature has focused on the relationship of experience to structured intellectual inquiry. *E.g.*, Bloch, *supra* note 3, at 324-25; Kreiling, *supra* note 3, at 284-89. Clinical education in general has been examined, often to provide a justification for the existence of clinical programs. *See, e.g.*, Barnhizer, *supra* note 2, at 67-68; Bellow, *supra* note 3, at 376; Bloch, *supra* note 3, at 325. The relationship of program structure to goals has been examined. *E.g.*, Barnhizer, *supra* note 2, at 75-103. In regard to supervision, educational techniques, such as feedback, have been explained, and the interpersonal dynamics of the supervisor/student relationship have been explored. *E.g.*, Barnhizer, *supra* note 2, at 103-11; Hoffman, *supra* note 2, at 283-310; Kreiling, *supra* note 3, at 300-06; *cf.* Meltsner, Rowan & Givelber, *supra* note 3, at 425-31 (discussing additonal ways to facilitate supervision in the context of legal practice). Different ways to structure the various components of the supervisory process have been suggested. *E.g.*, Kreiling, *supra* note 3, at 318-36; *see also* Meltsner, Rowan & Givelber, *supra* note 3, at 432-42.

5. Clinicians have a strong sense of community, a rich oral tradition, a distinctive culture, and, through teaching conferences and workshops, a set of common intellectual experiences. *See* Jean Koh-Peters, Address at the 1989 Association of American Law Schools Workshop on Clinical Legal Education (May 1989); *see also* Jean Koh-Peters, *Thoughts on Helpful Elements of Training Programs for Two Kinds of 'New' Clinical Teachers*, *in* Workshop Materials, 1989 Association of American Law Schools Workshop on Clinical Legal Education 36 (on file with author).

6. This project emerged from three significant experiences. The first was the May 1986 National Clinical Teachers Conference in Boulder, Colorado. Over the course of that conference, participants presented three different "models" of supervision, creating a sustained and intense dialogue. In order to prepare for the conference, my colleagues in the clinical

It is difficult and often distorting to talk about clinical education without doing it or seeing it done. Much of the intellectual strength and excitement of clinical culture come from the persistent quest to integrate participation in and analysis of an activity.[7] Therefore, part I of this Article presents the Green case as an example of clinical supervision. It is not an "ideal" supervision, a model toward which to strive, nor a "typical" supervision, a realistic portrayal of an actual supervisory experience. Rather, it is an heuristic device, providing a focus for discussing the fundamental concepts, techniques, and assumptions of supervision. The case itself does not exemplify all aspects of supervision, but by analyzing what is presented, we may also see what is not presented.

Part I consists of a memorandum, prepared by the team of students assigned to the Jessica Green case for their first supervisory session, and three scenes from the case. In the first scene, the initial supervisory session, the students and teacher plan work on the case. The second scene jumps ahead to the court proceeding. In the final scene, the teacher and students critique the hearing.

Part II explores the assumptions implicit in the supervision of the Green case. I delve into portions of the supervisory activity to expose the concepts and tensions buried within.[8] Making these assumptions explicit

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program at American University and I sat in on each other's supervisions, looked at videotapes of ourselves and each other supervising, and worked together to define the characteristics of our supervision. We engaged in a collective critique of our practice as a tool for developing and explicating a theory of supervision to subsequently guide us. Fortunately for us, the then director of our program, Elliott Milstein, was working with Paul Bergman to present one of the three models at the conference. Thus, in an indirect way, some of our concepts were subject to scrutiny and criticism.

The second experience was the June 1987 District of Columbia Judicial Conference. A group of clinicians from the Washington, D.C., area planned a portion of the conference on the relationship between legal academia and legal practice. I served as principal author of the materials, but the process of developing them was a collective one. The clinicians Deborah Barthel, Diane Brenneman, Catherine Klein, Elliott Milstein, Wallace Mlyniec, Ellen Scully, Joan Strand, and Leah Wortham and the Honorable Geoffrey Alprin, a judge of the Superior Court of the District of Columbia, formed the core working group. We presented, with some minor variations, the Green case, *see infra* part I, as a play. After each scene, judges, lawyers, clinicians, and students then provided commentary, identifying the major themes.

The process of creating the materials revealed a vast range of approaches to the supervisory experience. Those of us who had been at the 1986 Boulder Conference often noted that we were continuing the dialogue started there concerning the consequences for supervision of adopting different approaches.

The third experience that shaped this project was the 1989 Workshop on Clinical Legal Education in Washington, D.C., which included a session on the training of supervisors. During that program it became clear that, despite a dearth of material describing and analyzing clinical supervision, there was a richness of knowledge about supervision within the clinical community. I was struck by the need to make the dialogue about supervision a more permanent and accessible part of our clinical culture.

7. *See* Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 591-94, 600-01 (1987).

8. My basic approach is informed by the methodology of phenomenology. *See generally* G.W.F. HEGEL, THE PHENOMENOLOGY OF MIND (J.B. Baillie trans., 1967); MAURICE

helps us to identify a vision of supervision that both reflects and critiques our practice. Beginning with the activity itself, rather than the teacher's intentions, we can better subject our theory of supervision to critical examination.[9]

In addition, by subjecting portions of the activity to intense scrutiny, we can see detail and complexity. A particular action can reveal important characteristics of the general project. However, such a detailed focus can be distorting; each piece of supervisory activity is not one of many identical units of the supervisory whole. This article is not a complete analysis of the supervision in the Green case. Rather, it suggests a process of understanding both our theory and our practice of supervision.

I examine three of the teacher's decisions in supervising the students in the Jessica Green case. A tentative vision of supervision emerges from the examination of these three decisions in part II.

In part III of this Article, I identify some characteristics of that vision. This vision enables us to recognize how each of the daily choices made in supervision shapes the intellectual project of clinical education.

I
THE JESSICA GREEN CASE

This case has been assigned to a team of two students who are in the midst of their clinic experience; they have worked together on other cases and have established a relationship with their supervisor. As part of their participation in the clinic, they have been attending, with the other students in the clinic, weekly classes that examine the lawyering process and weekly case analysis meetings[10] *that focus on developments in their cases. They are familiar with casework and clinical methodology but are still uncertain when working on their cases. The students' only prior contact with the supervisor about the Green case occurred when the supervisor gave the students the client's name and telephone number. The clinic had received this information from an organization that regularly refers domestic violence cases. The students prepared the following memorandum after an initial interview with the client, prior to the first supervisory meeting.*

MERLEAU-PONTY, PHENOMENOLOGY OF PERCEPTION (Colin Smith trans., 1962); ALFRED SCHUTZ, THE PHENOMENOLOGY OF THE SOCIAL WORLD (George Walsh & Frederick Lehnert trans., 1967); Richard M. Zaner, *Solitude and Sociality: The Critical Foundations of the Social Sciences, in* PHENOMENOLOGICAL SOCIOLOGY: ISSUES AND APPLICATIONS 25 (George Psathas ed., 1973).

9. For example, it may be that our intentions are not realized in our activity, or that the intention looks different, less desirable, when seen in action. It may be that we see conflicts among multiple intentions more clearly when we look at how the intentions take shape in a particular action.

10. These meetings do not have a generic name. They may be called case rounds, case meetings, or law firm meetings.

MEMORANDUM

To: Supervisor and File
From: Amelia & Susan
Re: Jessica Green case
Date: May 12, 1987

Facts

The client is a twenty-nine year-old woman with two children: Kyle, two and a half, and Melissa, eight months. The client has been married to Roger Green since February 1983. Intermittent argument, humiliation, and intimidation has long occurred in the marriage. There was a serious incident of abuse when Jessica Green was four months pregnant with her first child, a couple of other instances of physical abuse since then, and a threatening incident this past Monday, May 11, 1987. This last incident led Mrs. Green to seek help. With her older child now able to understand what is going on, she decided she had to do something. She called the domestic violence hot line number advertised on television and was referred to our clinic. We interviewed the client on Tuesday, May 12, 1987.

Soon after they were married, Mr. Green became very demanding about the way the house was kept and very suspicious and jealous. His behavior was limited to shouting and kicking or breaking inanimate objects until late June 1984 when Mrs. Green was four months pregnant with Kyle. At that time, Mr. Green grabbed the client and choked her so hard that she lost consciousness. Mr. Green became frightened and called an ambulance, which took his wife to Holy Cross Hospital. The hospital staff kept her overnight and released her the following day. Since it was somewhat obvious that her injuries did not happen by accident, the hospital staff pressed her for details, but she refused to give them any information. Mrs. Green thinks the hospital record noted that she appeared to have been choked, given the loss of consciousness and bruise marks on her neck. Because she did not want anyone to know, she stayed home from work for five days until the bruise marks could be covered with make-up. She is sure that her employer's records will indicate that she missed work.

After that incident, Mr. Green was quite contrite. Although he still was jealous and demanding about the house, he was not physically abusive again until April 1986. By this time, Mrs. Green and her husband had been living for two months in their newly purchased townhouse on Capitol Hill. During the April 1986 incident, the neighbors called the police because they heard screaming and a couple of heavy objects hitting the wall. Mrs.

Green says she was hysterical when the police came and did not try to cover up what had happened. She told the police that Mr. Green had locked her in a closet and then dragged her out by the hair, but the police did not do anything.

Again, Mr. Green was contrite. He was not physically abusive until last Monday, the day he left for a three-week trip to Montreal and Toronto as part of his job as an international economist at the Department of Commerce. He ripped the phone out of the wall and tore some clothing Mrs. Green had just bought. He grabbed her and said he didn't want her going out of the house for anything except groceries while he was gone. He said, if he ever called in the evening and she was out, "after I'm was finished with you, no one will ever want you." He also said, "Remember what I did when you went to the hospital? That was nothing." He yanked her by the hair but did not strike her.

Mr. Green is still away on business. Mrs. Green is fearful of her husband's behavior on his return. She is terrified that he will carry through with his threats. She has nowhere to go with her two children. Her mother is a widow and lives in an efficiency apartment in Baltimore. She has one younger sister who is a student in West Virginia. She has several friends but only one she feels she can tell about the abuse. Her relationships with her neighbors are friendly but not very close. Most of the women in the neighborhood work, and therefore, she has not had much chance to form close friendships.

She needs support payments from Mr. Green because she has no independent assets and has not worked for three years. Between 1981 and 1984 she worked as a kindergarten teacher in Prince George's County. She quit at the end of the school year in 1984 since she knew her son would be born in November 1984. She has not gone back to work because she has been taking care of her two young children.

Mrs. Green thinks her husband earns about $60,000 a year. They spent most of their savings on the downpayment for the house. Except for an IRA that Mr. Green has, they have no other assets or investments. She thinks that her husband has about $4,000 in his bank account. He maintains the checking account in his own name. Mrs. Green has her own checking account, which she uses for household expenses. Her husband gives her $200 a week for groceries and other expenses. He pays the mortgage, utilities, and other major bills. She does not know what the expenses amount to but will bring in all the bills, which her husband keeps in his file at home.

Relief Desired

The client wants a civil protection order, including an order keeping her husband out of the house. We're not sure if she wants a temporary protection order pending the hearing. She also needs financial support. Mrs. Green definitely wants custody of the children and is fairly confident that her husband will not be opposed. She is willing to allow visitation between the children and their father since up to now all the hostile behavior has been directed toward her. She fears, however, that in the future his bad temper and crazy perfectionism may affect his behavior toward them as well.

Possible Witnesses and Evidence

(1) Pictures taken by Sharon Winston

Mrs. Green has been so embarrassed and humiliated by the events in her marriage that she has tried to keep them secret. She does have one former teaching colleague to whom she confided the details of the first incident in 1984. Her name is Sharon Winston. Her number is 977-1798. She came to see the client after the first incident in June 1984 and took pictures of the bruises. Mrs. Green still has the pictures.

(2) Ms. Winston

Ms. Winston was very upset by Mr. Green's behavior. She was so insistent that Mrs. Green leave him and seek help that, after the second incident, Mrs. Green stopped confiding in her friend about the abuse. She did talk with Ms. Winston yesterday and told her about the recent incident. Ms. Winston wants to help.

(3) Hospital Record

We can get the hospital record from Holy Cross Hospital.

(4) Telephone Company Records

Telephone repairmen had to fix the phone twice after it had been ripped out of the wall. We could check the phone company for records of these repairs.

(5) Police Report

The police may have made a report of the April 1986 incident.

(6) School System Records

We can get the school records of Mrs. Green's June 1984 absence.

(7) Neighbors

We can try to contact the neighbors who called the police in April 1986, although this may be difficult since the neighbors moved to Chicago, and Mrs. Green does not have their address.

(8) & (9) Mother & Sister

Her mother and sister are aware of the shouting and the destruction of objects. Mrs. Green has told them about some of the problems in the marriage, although she never mentioned the physical violence and threats. She felt they sided with her husband since they urged her not to anger him. She is willing to tell them everything now. She also would be willing to have them testify but is still concerned that they are ambivalent.

Financial Eligibility

Mrs. Green is eligible for our services because she has no income of her own and her husband's income is unavailable to her for this action.

Applicable Law

Proceedings Regarding Intrafamily Offenses, D.C. CODE ANN. § 16-1001 *et seq.*, particularly § 16-1005(c), Intrafamily Rules.

Issues for Supervisory Conference

1. Pleading and offering proof on the earlier instances of violence.
2. Chances of getting the eviction order.
3. Getting a temporary support order.
4. Requesting a temporary protection order—whether we should do this
5. Whether and how to get Mrs. Green to think about alternative places to go. She wants to stay in the house. We don't want to show a lack of respect for her decision, but we are worried about her safety and want her to be prepared if there is no eviction order.
6. Service of Process

Scene 1: Supervisory Session—Planning[11]

Supervisor:	The memo you did yesterday shows a lot of progress since the beginning of the year. I saw that there are six things that you would like to talk about. Where do you want to start?	1 2 3 4
Amelia:	We'd like to begin with drafting the petition. We are	5

11. The lines have been numbered for future reference.

not sure how much of the history of abuse we should include in the petition.

Supervisor: Why you are concerned about that?

Amelia: Well, how much of the history is relevant to getting a CPO[12] now?

Supervisor: Why are you worried about the history? Is it important to your theory of the case?

Susan: You can't really understand the seriousness of the present abuse unless you look at what our client has been through. The recent incident doesn't seem so bad by itself.

Supervisor: What are the legal consequences of the recent incident not seeming so bad?

Susan: The judge could refuse to issue a CPO, even though I think that what Mr. Green did most recently qualifies as an intrafamily offense. The real problem is getting an eviction.

Amelia: Why should the seriousness of the abuse be linked to the relief? Once you've got an intrafamily offense, isn't the full range of statutory relief available? There aren't any limits in the statute.

Supervisor: What do you think?

Susan: The alternatives for relief are probably meant to let the judge fit the relief to specific circumstances.

Supervisor: Think back to what you know about remedies from other classes. The argument you just made is certainly consistent with the idea that the judge has discretion to fashion a remedy to fit the particular harm in a given case. What else might influence the relief you can get?

Amelia: Perhaps the more serious the abuse, the more drastic a remedy.

Supervisor: Be more specific about the relationship of the eviction to the seriousness of the abuse. Why is an eviction order important to your client?

Amelia: Because she feels like her life is in danger. She believes that her husband could be really violent—choke her again or even worse. It terrifies her to have him in the same house with her. She doesn't know what will happen at any minute.

12. Civil protection order.

Susan: Also, she's worried about the children—not that he'll do anything to them, but that they'll be exposed to his unpredictable behavior—especially Kyle, since he's now old enough to know what's going on.

Supervisor: So your theory is that the respondent's potential dangerousness to your client and her children makes an eviction necessary. To demonstrate his present dangerousness, the history of his unpredictable and sometimes quite violent actions needs to be brought out. Now what?

Amelia: It seems we need to include the whole history. The incident from June 1984 when he choked her is basic to the reasonableness of her fear now.

Susan: If we don't put it in the petition, can we bring it out as background at the hearing?

Supervisor: What are the issues to think about in answering that question?

Amelia: The judge may not let us present evidence if it's not in the petition. You know, due process, notice. Her husband needs to know the charges against him.

Susan: But this is civil, not criminal. There's notice pleading in civil cases.

Supervisor: Have you checked the statute and rules to see if your question is answered?

Amelia: We did go over them pretty carefully. I can't remember anything that answers this question exactly. But I wasn't reading with this question in mind. We'll go back and check.

Supervisor: What other things do you need to think about to make your decision?

Amelia: Well, by putting everything in the petition, the judge will get a sense of our theory when he reads the petition. He might be more open to an eviction.

Supervisor: What else might the judge be thinking about? When you sat in court last week while waiting to present your consent decree in Joan Morris's case, you watched a lot of proceedings.

Susan: The whole history would take a lot of time to present. We already have a long list of possible witnesses, and we haven't even started investigating. Most of the cases have just two witnesses—the petitioner and the respondent. And there are lots of cases scheduled each day.

Amelia: I think that we need to put the whole story in the petition, but the judge will be annoyed about the time. What do we do about that?

Supervisor: Why else might the judge be annoyed?

Susan: With all the unrepresented people, the judge has to deal with lots of difficult situations. Also, the courtroom is full of tension.

Supervisor: What do you think about the judge's concerns?

Amelia: It doesn't seem fair that our client should suffer because there are so many cases. Why isn't more time allocated to these cases? Other sorts of cases—corporate cases—get more time.

Susan: Our client has a right to have her hearing.

Supervisor: What do you think the judge might think about the issues you're raising?

Amelia: The judge might be concerned about fairness and about a right to a hearing. But he probably feels pressured. After all, the judge did not create the situation.

Supervisor: So the judge is caught between processing cases efficiently to comply with bureaucratic imperatives and ensuring fairness and justice in a particular case. Given the conflict that you've identified, how can you appeal to the values that help your client?

Susan: Perhaps by directly addressing the conflict as a preliminary matter.

Supervisor: How can you do that?

Amelia: After the parties have introduced themselves we can say that our case will take some time—tell the judge the number of witnesses that we'll have.

Susan: We could include in our opening an explanation of why the witnesses are important and how much time each may take.

Supervisor: Of the witnesses you listed in your memo, do you have a sense of which are the most important for your case theory?

Amelia: No. It's hard to tell at this point. We need to talk to them first—find out how much information they have and how they'll come across when they testify.

Susan: We also need to think about the story we're telling. We'll have to be economical. Maybe not so complete or dramatic.

Supervisor: I think you're right. You have hard choices to make about how to structure your case—how to pick witnesses and structure each direct examination. It may be too early to know exactly what trade-offs to make. As you do your investigation, keep these strategy questions in mind. Remember our class discussion about investigation and its relation to case theory: Think about how each piece fits with the story you're telling. When we meet next time, let's talk about other ideas you may have and what you've decided to do. Let's move on to the second issue in your memo. You said that Mrs. Green wants a support order because that's the only way that she can afford to stay in the house. She has no source of income. Is that right?

Amelia: Yes.

Supervisor: Given the discussion we just had about eviction orders, what problems can you anticipate in getting a temporary support order?

Amelia: Well, obviously, asking for a temporary support order could add to the time.

Supervisor: What problems are different from those raised by the eviction order?

Amelia: Well, the statute mentions eviction orders, but it doesn't mention support. There's a general provision permitting any other order needed for effective resolution of the dispute, but there's no case law saying what's included in this provision.

Susan: Also, there's a whole other system set up for support.

Supervisor: Given what you've said, how do you think the judge might respond?

Susan: He may tell us to file a support petition.

Supervisor: What would you say in response?

Susan: This isn't support just for the sake of support. Support is basic to the eviction. It does no good to kick him out of the house if she can't afford to stay there. The purpose of the last relief provision is to make the specific relief provisions real.

Supervisor: So your theory is to tie the support into the eviction. What's the counter argument?

Amelia: If the legislature meant to include support, they would have put it in the statute.

Susan: And an intrafamily offense case is designed for a specific purpose—to deal with family violence.

Supervisor: How can you answer those arguments?

Amelia: Those other procedures take a lot of time. I know from our Jones case that it takes about six to eight weeks just to get a support hearing.

Susan: And there's the time of getting an *in forma pauperis* motion signed.

Supervisor: What else other than time? There might be ways to get around the time problem.

Susan: Nothing seems to make a support action an exclusive remedy. Also, isn't there a policy favoring the resolution of a family problem in a unified way? Like in a divorce?

Supervisor: Before you become completely committed to a strategy of seeking support within the intrafamily offense action, have you considered if there are any advantages for your client in bringing a separate action?

Amelia: I'm not sure. I don't know whether a separate action is a realistic choice or how it compares to trying for support in the intrafamily action.

Susan: We need to do more research on these issues.

Supervisor: I've another meeting scheduled in five minutes. We can meet again this afternoon at 3:30. Let's hold your other questions about a temporary protection order, alternate housing, and service of process until then. In these last few minutes, let's plan what needs to be done on the issues we've discussed.

Amelia: We've started to think about witnesses and evidence, but we have to complete an investigation plan and begin interviewing witnesses and collecting documents.

Susan: We need to do some research on eviction and support to decide what to put in the petition.

Amelia: We've got to draft and file the petition.

Susan: We have to decide about a temporary protection order.

Amelia: We're going to need financial information from the client. She has to fill out a financial statement and provide documentation about her needs and obligations.

Susan: While we're talking to her, we should explore with Mrs. Green possible places for her and the kids to go, if we can't get the eviction order.

Supervisor: In what order do you do these things?

Amelia: The most important is to draft the petition. But since our research and investigation could affect our case theory in the petition, we need to do those first.
Supervisor: What about your client?
Amelia: We told her we'd get back to her to let her know what we're doing.
Susan: Her input will be crucial to making the decisions.
Supervisor: When can you have these things done?
Susan: By tomorrow.
Amelia: We'll have the petition for you to review. Can we meet with you first thing Friday?
Supervisor: Sure. How about 9:30? In addition to going over the petition, we can review what you've done and the decisions you've made. We can then set up a time frame for other actions. We'll schedule some big blocks of time to prepare testimony and argument for the hearing. Also, we can explore possible negotiations. Good meeting. See you this afternoon to finish those other issues.

Scene 2: Trial

Clerk: All rise! This court is now in session. All those having business in the Superior Court before the Honorable Jeffrey Albert draw nigh and give your attention. God save the United States and this honorable court.
Judge: Good afternoon.
All: Good afternoon, your honor.
[*Everyone sits*]
Judge: [*To the clerk*] Please call the next case.
Clerk: Jessica Green v. Roger Green, I.F. 123-87.
[*Amelia, supervisor, Jessica Green, opposing counsel, and Roger Green all take their places at counsel table*]
Clerk: Will counsel and the parties please identify themselves.
Amelia: Good afternoon, your honor. My name is Amelia Durenmatt, and I'm a certified law student. I'm here with my supervisor, Ms. Brooks. We represent the petitioner, Jessica Green [*indicates Mrs. Green*].
Judge: Good afternoon.
Dana: Dana Brinkley for the Respondent, Roger Green [*indicates Mr. Green*].
Judge: Are we ready to proceed?
Amelia: Yes, your honor.

Judge: Call your first witness.

[*Amelia turns quickly to supervisor with a questioning look. The two briefly confer in whispers as others at counsel table take their seats.*]

Amelia: Umm, your honor, if it please the court, I have a brief opening statement.

Judge: Very well counsel, but make it brief.

Amelia: Yes, your honor. We are here today to seek a civil protection order for Jessica Green against her husband, Roger Green. There has been a long history of abuse in this case, including one incident requiring Mrs. Green's hospitalization. Because her husband is unpredictable and sometimes quite violent, Mrs. Green feels that her life is in danger. Therefore, Mrs. Green is asking that the court order her husband not to threaten or abuse her, to leave the family home, and temporarily to make support payments, which will allow her and her two children to remain in the family home. In addition, Mrs. Green is requesting temporary custody of her two children. Because of the . . . .

Judge: Excuse me, Ms. Durenmatt, how many witnesses do you intend to call?

Amelia: Three. I was just . . . .

Judge: And you, Ms. Brinkley?

Dana: Only one.

Judge: What's your estimate on time?

Dana: Fifteen minutes, at the most, your honor.

Judge: Ms. Durenmatt?

Amelia: Yes, your honor?

Judge: How much time will your case take?

Amelia: Approximately one and a half to two hours.

Judge: Counsel, have you attempted settlement in this matter?

Dana: Yes, we have, your honor. The parties were unable to come to any agreement, especially regarding support.

Judge: Support? I'm not going to hear any support matters at this time. This is a CPO hearing, counsel, not a support hearing.

[*Supervisor taps on Amelia's arm to get attention. Amelia bends down to listen and immediately straightens up to ask question.*]

Amelia: With the court's indulgence?

Judge: [*Looking directly at the supervising attorney.*]

Ms. Brooks, you know the court's position on the matter of support in these hearings. It is inappropriate to bring it up, it's outside the scope of the statute, and I have ten other cases to dispose of this afternoon and can't spend two hours on one case.

Supervisor: [*Supervisor rises and addresses the judge.*] Your honor, Ms. Durenmatt is prepared to argue the necessity of support in this particular situation. We ask the court for an opportunity to do so.

Judge: Very well, Ms. Brooks, you have two minutes to put this on the record.

Supervisor: Your honor, Ms. Durenmatt will present the argument.

Judge: Whoever, let's just get on with it!

Amelia: Your honor, there's great danger that past serious abuse will be repeated. Mr. Green has recently made specific threats to that effect. In addition, Mr. Green has abused his wife in front of the children. Therefore, the court should order Mr. Green to leave the family home. Mrs. Green, however, is totally dependent on Mr. Green financially. She left her job as a school teacher after the birth of their first child. Without a temporary support order, she would be forced to live in the same house with Mr. Green. This result would not be an effective resolution of this violent situation as contemplated by the statute 16-1005(10).

Judge: Ms. Brinkley, what do you have to say to that?

Dana: I agree with your honor that now is not the time to go into the complex financial matters that are part of a longstanding marriage. Nothing has happened here other than a domestic dispute. The petitioner is not in the home right now and seems able to survive. It would be inappropriate to remove my client from a home that he has been responsible for for years. The court would be indulging in a de facto property division. If the court were to do this, I would request a continuance, and I would agree with the student that the matter would take two to three hours.

Judge: Ms. Durenmatt?

Amelia: Your honor, while it might take more time than the usual CPO case, we believe Mrs. Green is entitled to relief.

Judge: Wait a minute, I believe Ms. Brinkley mentioned that your client is not in the house at this time?

Amelia: That's true, your honor.

Judge: So there's no problem of recurring abuse?

Amelia: Your honor, Ms. Green went with her children to stay with a friend because her husband was expected to return from a business trip. He had left immediately after the last incident of abuse. She was terrified to be in the same house with him, even for the short time prior to this hearing. Her friend's apartment has only two bedrooms. There's not enough room in the apartment to accommodate Jessica Green, her children, her friend, Sharon Winston, and Ms. Winston's husband and child.

Judge: She's there right now?

Amelia: Yes. But she can't stay there. There's no room.

Dana: Your honor, my client can care for his children and is willing to have them live with him in the house, with liberal visitation for the petitioner.

Judge: Ms. Durenmatt, what about that? There's been no allegation of abuse to the children, I take it?

Amelia: No, your honor, there hasn't. With the court's indulgence . . . . [*Amelia whispers to supervisor, who nods*] Your honor, the court does not have to wait for direct physical abuse to occur. The last abuse occurred in the presence of the older child. It would compound this child's trauma to be separated from his mother, whom he saw victimized. Furthermore, his father would have to employ a stranger for day-care purposes. Finally, Mrs. Green has as much interest as the respondent in the marital home. Because of this interest and the best interests of the children, the court should grant her request.

Judge: Ms. Durenmatt, call your first witness, and we'll see how this goes. If I find that you've proved your case as to abuse, I'll reconsider your argument about support.

Amelia: Thank you, your honor. I'd like to call Mrs. Jessica Green.

[*Jessica Green walks to witness stand*]

Clerk: Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

Jessica: I do.

Clerk: Please be seated.

Amelia: Good afternoon, Mrs. Green.
Jessica: Good afternoon.
Amelia: Please state your name and address for the record.
Jessica: Jessica Green, 425 Essex Street, N.E., Washington, D.C.
Amelia: Who owns that house?
Jessica: My husband and I do.
Amelia: How long have you lived there?
Jessica: A little over a year.
Amelia: Are you presently staying there?
Jessica: I'm staying with my friend Sharon Winston in her apartment in Capitol Hill.
Amelia: Are you married?
Jessica: Yes.
Amelia: To whom are you married?
Jessica: Roger Green.
Amelia: Where does Mr. Green live?
Jessica: At 425 Essex Street, N.E.
Amelia: When were you and Mr. Green married?
Jessica: Valentine's Day, 1983.
Amelia: Do you and your husband have any children?
Jessica: Yes. Kyle, born November 1984, and Melissa, born October 1986.
Amelia: Mrs. Green, please describe in detail what happened on Monday, May 11, 1987.
Jessica: My husband, who's an economist with the Department of Commerce, was getting ready to go to Canada for a three-week business trip. I was on the phone with my friend, Sharon Winston. My husband got upset and accused me of going out with other men. When I didn't get off the phone right away, he got mad and ripped the phone out of the wall. He pulled my hair and grabbed me and said if I went out of the house while he was gone, he would mess me up so badly no one would ever want me. He said the last time he sent me to the hospital was nothing compared to what he would do now.
Amelia: When was the last time your husband sent you to the hospital?
Dana: Objection, your honor. What is the time frame? The question may be irrelevant.
Judge: Ms. Durenmatt?

Amelia: Your honor, the question is relevant and clarifies Mrs. Green's last answer. You need to know about the past incident to understand the significance of the current threat to Mrs. Green.

Judge: How remote is the last hospitalization, Ms. Durenmatt?

Amelia: June 1984.

Judge: Ms. Brinkley?

Dana: I still object. It's over three years ago—that's remote in time and irrelevant to the current situation, your honor.

Amelia: Your honor, it is extremely relevant.

[*Whispers with supervisor*]

Judge: Ahem, Ms. Durenmatt, anything that occurred three years ago is not relevant to granting a civil protection order now. Objection sustained.

Amelia: With the court's indulgence. [*Whispers again to supervisor*] Mrs. Green, what did it mean to you when your husband threatened you last Tuesday?

Jessica: It really frightened me. It meant that if I did anything to displease him while he was away, he would choke me like he did the last time.

Dana: Objection. Your honor has already ruled. Move to strike.

Judge: Ms. Durenmatt?

Amelia: Your honor, this is relevant to Mrs. Green's current fears from her husband's threats. They relate directly to what physical abuse, in addition to hair pulling, she can expect from him right now.

Judge: Ms. Durenmatt, it is a bit remote, isn't it?

Amelia: Somewhat, your honor, but it is still relevant.

[*Supervisor taps student on arm. Amelia looks down and then speaks.*]

Amelia: With the court's indulgence. [*Whispers to supervisor*] Your honor, we'll tie this up with other instances of abuse that will show that our client has a reasonable fear of harm from this man based on his past actions.

Judge: On that basis, I'll allow the question and answer to stand.

Amelia: Thank you, your honor. Mrs. Green, getting back to May 11, you testified that your husband pulled the phone out of the wall.

Jessica: Yes, he did.

Amelia: [*Picking up a document, walking over to clerk*] I'd like to have this document marked as Petitioner's Exhibit Number One for identification.

Judge: It shall be so marked.

Amelia: [*Amelia shows the document to opposing counsel and then walks over to the witness stand.*] Mrs. Green, I'm showing you what has been marked as Jessica Green's Exhibit Number One, can you identify it, please?

Jessica: Yes, I can. It's my most recent phone bill.

Amelia: How do you know it's your phone bill?

Jessica: It's addressed to me and has a charge of $45.00 to replace a phone connection.

Amelia: Your honor, I'd like to move into evidence Jessica Green's Exhibit Number One.

Dana: Objection, your honor, improper foundation.

Amelia: Your honor, in light of *Jones v. Smith*, no additional foundation is necessary.

Judge: Uh, objection overruled. Petitioner's Exhibit Number One is admitted into evidence.

Amelia: Thank you, your honor. Mrs. Green, getting back to May 11, what else did your husband do to you or to your property?

Jessica: After he ripped the phone out of the wall, he went into the bedroom and saw a dress I had just bought. It had the tags still on it. He grabbed it and tore it to shreds. He came at me, grabbed me, and slammed me up against the wall. Then he grabbed my hair, wrapped it around his hand, and started pulling my head down, and, and, and . . . . [*Begins to cry*] He kept pulling and twisting on my hair, and it hurt so much I wanted to scream.

Amelia: Why didn't you scream?

Dana: Objection. Irrelevant.

Judge: Ms. Durenmatt?

Amelia: Your honor, the circumstances of the incident are certainly relevant.

Judge: I'll allow the question. Mrs. Green, you may answer.

Jessica: I'm sorry. What was the question?

Amelia: Why didn't you scream when your husband was pulling your hair?

Jessica: Because my son was standing in the doorway of the living room watching. I didn't want him to get any more scared than he already was.

Amelia: What made you think your son was scared?

Dana: Objection, your honor.
Judge: Ms. Durenmatt?
Amelia: I'll withdraw the question. Mrs. Green, were you able to see your son while your husband was pulling your hair?
Jessica: Yes, he was in the doorway opposite where my husband and I were.
Amelia: What was your son doing at that time?
Jessica: He was clutching his stuffed raccoon with one arm, and he had all of the fingers of his other hand in his mouth. Tears were streaming down his face.
Amelia: Did your husband say anything as he pulled your hair?
Jessica: He said he didn't want me going out of the house for anything except groceries while he was away and, if I wasn't home when he called, that he would mess me up so badly no one would want me and that the last time I was in the hospital was nothing compared to what he would do to me.
Amelia: How did your husband say this?
Jessica: He was shouting in my face.
Amelia: What happened next?
Jessica: He got his suitcase and left on his business trip.
Amelia: What did you do?
Jessica: I sat on the floor and cried for some time. My son came in and hugged me and cried. I told him it was all right, and I put him to bed. Then I called the hotline number to get some legal help.
Amelia: Did you call the police?
Jessica: No.
Amelia: Why not?
Jessica: The last time this happened, the neighbors called the police. When I told the police what happened and how he shut me up in a closet and dragged me out by the hair, they didn't do anything.
Amelia: When you say the last time, when did the incident you're referring to occur?
Jessica: April 1986
Amelia: In addition to the incidents on May 19 of this year and in April 1986, which you have described, have there been any other incidents of violence?
Dana: Objection, your honor.
Judge: Ms. Durenmatt?

Amelia: Your honor, we are talking about a series of major incidents in Mrs. Green's life with Mr. Green. They are the foundation of her present fear. These will help the court understand the nature of the abuse and the protection needed.

Judge: I've gotten the picture, counsel. Can we move on?

Amelia: Your honor, one more major incident is relevant to the recent abuse, if I may proceed?

Judge: Very well, counsel, but hurry it up please.

Amelia: Yes, your honor. With the court's indulgence.

[*Amelia confers with supervisor, leafs through pages of questions looking for the right section. Judge sighs heavily on the bench, looks at his watch, starts talking to the clerk.*]

Amelia: Prior to April 1986, did your husband ever act violently toward you?

Jessica: Yes, when I was pregnant with Kyle.

[*Amelia picks up pictures and starts to move away from counsel table. Supervisor looks puzzled, realizes that Amelia has her notes mixed up and is trying to get pictures from the incident introduced too early. The supervisor tries vainly to get Amelia's attention.*]

Amelia: Your honor, I'd like to have these marked as Petitioner's Exhibits Numbers Two and Three for identification purposes.

Judge: So marked.

Amelia: [*Shows them to opposing counsel*] Mrs. Green, showing you what has been marked for identification as Petitioner's Exhibits Numbers Two and Three, can you identify them?

Jessica: Yes.

Amelia: What are they?

Jessica: Photographs of myself.

Amelia: I'd like to move Exhibits Two and Three into evidence.

Dana: Objection, your honor, lack of foundation.

Judge: Objection sustained.

[*Amelia appears confused and flustered*]

Judge: Proceed with the rest of your questions, counsel.

Amelia: [*Amelia looks up and sees supervisor at counsel table with the prepared questions; student goes to the counsel table, places photos down, and begins sorting through sheets for the right questions. Mumbles.*] With the court's indulgence.

Judge: Counsel, do you have anything further?

[*Judge looks at watch, glances at Jessica Green, rolls his eyes.*]

Amelia: Yes, your honor.
Judge: Let's get on with it then.
Amelia: [*Looking at the paper the supervisor is pointing to, begins weakly*] Mrs. Green, during your pregnancy with Kyle, what did your husband do to you?
Jessica: He choked me, and I had to go to the hospital.
Dana: Objection.
Judge: Ms. Durenmatt?
Amelia: Your honor, this concerns the incident in June of 1984 that the Respondent specifically referred to in his recent threat.
Judge: Ms. Durenmatt, I indicated earlier that three years ago is remote in time and therefore irrelevant.
Amelia: Your honor, this matter is particularly relevant because Mr. Green has recently threatened Mrs. Green with the exact same type of abuse for which she was hospitalized.
Judge: Counsel, it's too remote.
Amelia: But, your honor, the threat of this was just weeks ago.
Judge: Are you making a proffer, Ms. Durenmatt?
Amelia: Yes.
Judge: What is it?
Amelia: Excuse me?
Judge: [*Some impatience showing in his voice*] What is your proffer?
Amelia: With the court's indulgence. [*Hasty, whispered conversation with the supervisor*] Your honor, this testimony will substantiate Mrs. Green's present fear of living with the respondent because of respondent's past violent behavior and present threats of repeating that exact behavior.
Judge: All right, Ms. Durenmatt, just a few more questions in this line, then let's move on.
Amelia: Yes, your honor. Mrs. Green, you testified that you were hospitalized in 1984. What did your husband do to you to require hospitalization?
Jessica: I don't remember what made him mad, but he grabbed a scarf I was wearing around my neck and choked me until I lost consciousness. He got scared and called the ambulance.
Amelia: [*With renewed confidence walks to witness stand*] I'm again showing you what has been marked for identification as Petitioner's Exhibits Numbers Two and Three. Do you recognize these photos?

Jessica: Yes, I do.
Amelia: What is depicted in them?
Jessica: These are pictures of me after my husband choked me.
Amelia: Do you know when these pictures were taken?
Jessica: Yes, two days after I got out of the hospital.
Amelia: What do the pictures show? 390
Jessica: They show the bruises on my neck.
Amelia: Are they a fair and accurate representation of you at that time?
Jessica: Yes, they are.
Amelia: I move Petitioner's Exhibits numbers Two and Three into evidence at this time.
Judge: Any objection?
Dana: Yes. Same objection. Too remote.
Judge: Petitioner's Exhibits Two and Three are admitted.
[*Mrs. Green completes her testimony. Sharon Winston and the custodian of the records from Holy Cross Hospital testify on Jessica Green's behalf. Roger Green then testifies.*]

Scene 3: Supervision Session—Critique

The judge granted the CPO, ordered Mr. Green to vacate the parties' home and to maintain the mortgage payments for ninety days. The judge refused to order support for Mrs. Green and the children. When Amelia began to argue with this aspect of his ruling, the judge lost his temper, cut the student off, and snapped, "I've already ruled, Ms. Durenmatt. Please prepare an appropriate order." The supervisor and the two students met shortly after the hearing and had the following discussion.

Supervisor: You've had some time to think about the hearing. I have some thoughts, but first, what would you like to talk about? 1 2 3
Amelia: Susan and I talked a lot about the hearing. There are a number of things we'd like to go over with you. 4 5
Supervisor: Let's identify them first and then go back to them one by one.
Amelia: Although the client is happy, we both feel as though we lost because the judge didn't order support payments. 10
Susan: We've tried to figure out how we could have strengthened our arguments, and what things might have influenced the judge. Maybe the judge was less sympathetic because Jessica was well-dressed, middle class, and college-educated. How could we have made her more sympathetic?

Amelia: We also thought that the judge wanted to compromise—to find a middle ground. He refused to do all that was needed.

Susan: And how far should we have pushed him? Did we go far enough in fighting for what we wanted? Amelia really fought hard, and it seemed to make a difference on the issue of eviction. But on the support issue, it didn't get us very far.

Amelia: Finally, I feel bad about messing up some things we had practiced so carefully. For example, how could I have tried to get the pictures into evidence before the story about the choking? I could kick myself for missing the foundation questions.

Supervisor: The points you raise are excellent. They show how much understanding you've gained. In addition to the five things you've mentioned, I'd like to talk about the judge's critique. What a judge says can be very powerful, and it's important to look at his comments critically. Also, I'd like to talk about your client. You say she's "happy," but I'd like to find out more about what this decision means to her and how it's been to work with her. Let's begin with your feeling about having lost.

Amelia: I really believed in our theory of the case—that support was basic to the client's safety.

Supervisor: Step back for a minute and think about what your client's goals were in the case.

Susan: Jessica's first priority was being protected from her husband's violence and having a safe place for herself and her children to stay.

Amelia: We did get the CPO, the eviction, and custody. So she is safe, and she and her children are together at home.

Susan: You could say we were partially successful on support. The judge did order her husband to keep up the mortgage payments for ninety days.

Amelia: Jessica seemed relieved and happy. I sensed that she could figure out a way to make ends meet for a short time if the mortgage were paid.

Supervisor: So although the judge may not have accepted the support part of your case theory, you got your client what she most wanted—at least for the short term. And you gained some time to work out a more viable long-term solution.

Amelia: I guess that's right. But I still think the judge should have heard testimony about support. He said he would, if we proved our case on abuse. When he started making his findings, everything happened so fast. I didn't even get a chance to argue. When I tried, he got mad and cut me off. Maybe I should have tried again.

Supervisor: Thinking back now, what else could you have said to change his mind?

Susan: I don't think Amelia could have said anything else. It seemed that the judge had already made up his mind.

Amelia: Maybe I could have woven support issues into the client's testimony—so that it didn't seem so tacked on at the end. That would have made support seem more basic.

Supervisor: That is a very sophisticated point; your case theory does get played out in each of the details of the testimony. But what were the dangers of intricately building support into the client's story?

Susan: It might have detracted from the issue of physical danger to the client. It was hard enough getting the judge to listen to the history of violence. We could have lost the whole thing. The judge was pretty annoyed.

Supervisor: Should you worry about annoying the judge?

Susan: He's human, too, and he might change his mind if you anger him.

Amelia: He was annoyed when I kept arguing about the prior incidents. But finally he changed his mind and let them in. If I hadn't kept arguing, we might not have gotten the eviction.

Supervisor: I thought you did a great job of not backing off. It's often hard to decide when to hang in there and when to let go.

Susan: Given the number of decisions a judge has to make in the course of a hearing, you can't argue with him about every adverse decision. You have to decide which are the most important.

Supervisor: How do you decide?

Amelia: You have to think about what your client cares about and whether the point is essential to your case.

Susan: Also, you might need to make a record on a particular issue.

Supervisor: Good points. Given your client's goals and the strategy you chose of emphasizing the danger to Jessica, do you think your decision to fight harder on the history of abuse than on the client's financial condition was a good one?

Amelia: When put that way, I think it was.

Supervisor: Are there things that might have annoyed the judge less?

Amelia: The judge became irritated when I got flustered or wasn't really following what was happening. It's incredibly hard to listen to what's happening, remember where you're trying to go, and decide how to respond, especially when you're nervous. It all goes so fast.

Supervisor: You're exactly right. You have to both be well prepared—as you both were—and be able to adapt to each of the changes that occurs. What seems like a little thing—like having your questions out of order—can really throw you off. But you were able to recover, and that's an important skill.

How about some coffee? Then we can finish our discussion of the hearing and move on to what to do next.

II
THREE SUPERVISORY DECISIONS IN CONTEXT

Throughout the supervision of the Green case, the teacher made decisions that affected both the development of the case and the education of the students. Those decisions provide an entry point for understanding the supervisory process.[13] To uncover the assumptions underlying the teacher's decision making, I will focus on three supervisory decisions that powerfully shaped the supervisory dialogue. Although by no means the only decisions presented in the Green materials, they present critical, recurring issues in the work of clinicians.

13. Supervision can be viewed as an ongoing series of decisions about what issues to address and how to address them. Sometimes the teacher may feel driven by external circumstances, and in certain respects, that feeling is inevitable. The demands of a case impose constraints that are a critical part of clinical teaching. Those constraints, however, can disguise how the educational project shapes those decisions.

A. The Decisions

1. Allocation of Responsibility—Planning for the Initial Client Interview

One of the teacher's very first decisions in supervising the Green case, one not explicit in the materials, was that the students could interview Jessica Green without a prior supervisory meeting. The students had responsibility not only for conducting the interview on their own, but also for planning and preparing for the interview.

Although the decision to let the students plan the interview with Jessica Green is significant for a number of reasons, I will focus on the allocation of responsibility for planning.[14] One of the major components of lawyering that we teach is planning.[15] We teach that planning is constant and that the students should, to the extent possible, plan all activities in a case. Even a first interview requires a self-conscious planning process. In distributing responsibility for planning in the Green case, the teacher had to consider how that responsibility contributes to teaching about planning. In addition, the teacher needed to analyze when to intervene in the students' exercise of responsibility.

Questions regarding supervisory intervention are usually framed in the language of role.[16] Who is the lawyer? How does a supervisor function as both an educator and a lawyer? When should the supervisor cease being an educator and act as the lawyer?[17] Although the concept of role can be useful in analyzing what supervisors and students do in a clinical practice setting,[18] it can also distort the analysis.[19] Role functions and expectations

14. *See* James H. Stark, Jon Bauer, & James Papillo, *Directiveness in Clinical Supervision*, 3 B.U. PUB. INT. L.J. 35 (1993). I will not address generally the important question of student competence or the related question of malpractice. I will only discuss specific questions regarding student competence to plan. *See infra* notes 62-64, 137-42 and accompanying text.

15. *See* Anthony G. Amsterdam, The Lawyering Revolution and Legal Education 8 (1985) (unpublished paper presented at the Cambridge Lectures, July 15, 1985, on file with author and the *New York University Review of Law & Social Change*) (identifying "ends-means thinking" as a neglected area within the traditional law school curriculum); *see also* 1987 Association of American Law Schools Workshop on Clinical Legal Education 2 (on file with author) (identifying planning as one of four fundamental themes that "cut across traditional skills categories" and comprise the essential subject matter of clinical education).

16. *See, e.g.*, Barnhizer, *supra* note 2, at 72; Bloch, *supra* note 3, at 348.

17. *See* Barnhizer, *supra* note 2, at 104, 108 (suggesting that the supervisor should intervene "only in situations where a client's interests are about to be harmed"); Kreiling, *supra* note 3, at 312 (suggesting that the supervisor "might have to intervene in rare circumstances and take over representation in order to ensure conformity with the highest standards of professional responsibility").

18. *See* Bellow, *supra* note 3, at 380-82 (observing that the role process "generated a number of perceptualized and motivational consequences").

19. The critique of role theory, and functionalism more broadly, has developed from a number of perspectives. *See, e.g.*, Helena Z. Lopata & Barrie Thorne, *On the Term "Sex Roles,"* 3 SIGNS 718, 719-20 (1978); Judith Stacey & Barrie Thorne, *The Missing Feminist Revolution in Sociology*, 32 SOC. PROBS. 301, 306-08 (1985); Barrie Thorne, *An Analysis of Gender and Social Groupings*, *in* 1 FEMINIST FRONTIERS: RETHINKING SEX, GENDER, AND SOCIETY 61-63 (Laurel Richardson & Verta Taylor eds., 1983); Barrie Thorne, Gender . . .

tend to appear as givens in the world, rather than as descriptions of what we are actually doing or what we think we should be doing. Role as a fixed construct can diminish the feeling that choice exists in a situation. Conforming to role appears normal. To deviate from a role requires justification. In addition, the apparently fixed nature of role constructs can disguise the particular historical, social, economic, or political forces behind the structuring of relationships and institutions. Thus the language of role can both color our descriptions and circumscribe our ability to define a perspective from which to analyze and critique our activity. In addition, the language of role can generate debates about the allocation of functions entailed by role demands rather than about the activities themselves.

This is not to say that an analysis of role can or should be ignored. There are formal constraints imposed by role (for example, student practice rules or the rules of professional responsibility). Role concepts can also be helpful tools in understanding how professional and societal conceptions of our activities shape the teacher's and students' experiences.[20] By examining role characteristics, we grasp those aspects of a role that powerfully shape our own understanding and behavior. Rather than reason about our activity from role, however, we should use analysis of our activity as a basis for developing a critical perspective on role.

Therefore, to examine the allocation of responsibility between student and teacher, as exemplified in the decision not to hold a supervisory meeting prior to the interview with Mrs. Green, I will not question whether the role of lawyer permits the supervisor to make this decision. I will not contrast the role of lawyer with the role of educator. I will not label the role of the students who conducted the interview. Rather, I will begin with the decision and examine the types of issues that concerned the supervisor in allocating case responsibility.

2. *Setting the Educational Agenda—Focusing on Case Theory*

Defining what to teach through supervision can be a daunting task. Each supervisory meeting presents a myriad of opportunities for addressing many topics related to the objectives of clinical courses.[21] The dynamic of the case also imposes constraints. In any given supervisory interaction, it is difficult to choose among the educational goals and teaching strategies.

How Is It Best Conceptualized? 6-12 (unpublished paper presented at the 1978 annual meetings of the American Sociological Association, on file with author); *cf.* RICHARD J. BERNSTEIN, THE RESTRUCTURING OF SOCIAL AND POLITICAL THEORY 27-32 (1978); Bruce J. Biddle, *Recent Developments in Role Theory*, 12 ANN. REV. SOC'Y 67, 74-78 (1986).

20. *See* Bellow, *supra* note 3, at 380 (discussing supervisory experience in clinical work).

21. *See* Barnhizer, *supra* note 2, at 76-79 (providing an exhaustive list of the many goals of clinical teaching).

In the Green case, the supervisor chose to focus on case theory[22] throughout both the planning and critique phases.

The supervisor used case theory in two ways. First, the supervisor made case theory the organizing concept for analyzing the lawyering activities in the case. The students discussed the drafting of a pleading, the structuring of a direct examination, and the presentation of oral argument in the context of developing their case theory. By choosing case theory as the fundamental lesson, the supervisor communicated that a good case theory is essential to performing lawyering tasks well.

Second, the supervisor used case theory to integrate aspects of the client's life with the law and the legal system. For example, through case theory, the students linked the client's experience with violence in her marriage to her right to obtain legal relief within the intrafamily offense action. In their efforts to obtain child support, they could see the interaction between the client's economic dependency and her physical danger. Case theory provided the entry point for discussing the client's experience, the students' understanding of that experience, the judge's understanding of that experience, the doctrinal structure of the law of domestic violence, and the relationship of the court and the law to that experience.[23]

In both uses of case theory, the supervisor conveyed her understanding of how lawyers bring together the client's life and experience with the world of the law. Legal doctrine and procedure are not presented in isolation from a client's experience. They are not the general framework into which the students infuse particular experience. Neither do legal doctrine and procedure create a fixed and determinate structure to which client experience must conform or be made to fit. Rather, the story of the case comes from the interaction of experience and law. A lawyer can draw upon a client's experience to shape and push the law, just as the law can exert pressure on the framing of a client's story.

The supervisor could have taught both the lawyering activities and the analysis of the relationship of the client's experience to the world of law and lawyers in many other ways. The particular decision to approach the case as a dynamic process of integrating the client's experience with the legal world had important consequences for the lessons taught in this case.

22. *Case theory* is the phrase used to identify the key elements of a story that provide an interpretation of the events and relationships of a case framed to achieve a particular result. The case theory draws upon, integrates, and shapes the facts and the law in light of what the client wants to achieve in the legal action. For a full discussion of the case theory concept of case theory, see Binny Miller, *Give Them Back Their Lives: Client Narrative and Case Theory*, 93 MICH. L. REV. (forthcoming 1994); Edward D. Ohlbaum, *Basic Instinct: Case Theory and Courtroom Performance*, 66 TEMPLE L. REV. 1 (1993).

23. Ann Juergens, *Teach Your Students Well: Valuing Clients in the Law School Clinic*, 2 CORNELL J.L. & PUB. POL'Y 339, 380 (1993).

3. *The Integration of Institutional Analysis and Client-Based Advocacy—Obtaining More Time for the Hearing*

Students in clinical courses have a unique opportunity to combine analysis of their own experience with critical, systemic analysis. Seeing, participating in, and, most importantly, reflecting upon the law in action provides the student with an opportunity for engaging in self-conscious critical analysis of legal institutions, rules, and procedures that is rooted in, yet transcends, the student's own experience. At the same time that they engage in critical, systemic analysis, however, the students act as advocates for a particular client. They are learning to confront another person's desires, fears, and idiosyncracies while undertaking strategic action on that person's behalf. They must master the modes of thought and skills necessary for those tasks.

The supervisor's decision in the Green case to bring together systemic analysis with advocacy-based strategic planning and decision making enriched the discussion about the relationship between them. However, translating theoretical insights into instrumental action on behalf of a client may limit the power of the critique. The students used institutional critique to identify effective action within the legal system, not to challenge the legal system or identify alternative ways to address the problems they identified. Therefore, the supervisor's decision to combine these two projects must be examined to see what was accomplished and what was sacrificed. How and when is it appropriate to bring together systemic critique and strategic action on behalf of a client?

B. Placing the Decisions in Context

To understand how the teacher approached these three decisions, it is useful to place them in different contexts, each of which exposes different concerns of the supervisor. I have chosen six contexts that reflect aspects of present clinical theory and practice and that influence a teacher's decision making:[24]

1. Overall structure of the clinical course.[25]
2. Relationship of particular student experiences to the whole range of their case experiences.

24. Other important contexts could also be used to explore the supervisory process. For example, Gary Bellow has suggested that the relationship between students and their adversaries in cases would be critical in examining how we address fundamental questions about the adversary system. Conversation with Gary Bellow, Professor, Harvard Law School (Sept. 1993).

25. *See* Paul Bergman & Elliott Milstein, Presentation at 1986 Association of American Law Schools National Clinical Teachers Conference 26 (May 18, 1986) (transcript on file with author) (stressing the importance of the interrelationship between student supervision and the concepts taught in the classroom component of a clinical course); *see also* Conference Materials, 1986 Association of American Law Schools National Clinical Teachers Conference 75 (on file with author and the *New York University Review of Law & Social Change*).

3. The students' process of interpreting and giving meaning to this experience.
4. The students' relationship with their client.
5. The capacities and characteristics of the individual students, including their ability to perform tasks competently and the factors affecting their learning.[26]
6. The teacher's own views about what matters in being a lawyer and what is important to teach.

The concerns that emerge through this contextual analysis of supervisory action help us to identify fundamental characteristics of supervision.

1. Course Structure

The core of clinical methodology is the interaction between case experiences and structured intellectual inquiry related to those experiences.[27] That inquiry occurs throughout the clinical course, not just in supervision. The students in the Green case participated in two other components of the course: the classroom and a group case analysis meeting. In making supervisory decisions, the teacher assessed how the different parts of the course affected the students' actions on the case. She had to ask herself where best to teach different things, how the types of inquiry in the different course components are related, and how the other course components affect supervisory decisions.

a. The Classroom

In the classroom portion of the clinical course, material is presented outside the framework and dynamic of the cases.[28] The curriculum is designed to organize the students' thinking about the material. The students develop a shared understanding of concepts and ways of thinking about acting as a lawyer and examine perspectives from which to evaluate their actions.[29]

The content of the classroom portion of the course affected all three supervisory decisions in the Green case. For example, in deciding whether to meet with the students prior to their interview with the client, the supervisor considered what was happening in the classroom part of the course.

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26. Barnhizer, *supra* note 2, at 73 n.14.

27. *Id.* at 73-75; Bellow, *supra* note 3, at 379, 386-87; Kreiling, *supra* note 3, at 288.

28. This does not mean that an actual case might not be used to illuminate a particular subject, as one might use a case study as a teaching device. Rather, the subject matter of the class is being driven by a generalized understanding of the issues fundamental to the course and not by the events and developments in the cases.

29. Within clinical teaching, various classroom approaches have evolved. They stress different aspects of being a lawyer and present different understandings of the activity of lawyers. Much of the 1988 AALS Conference on Clinical Legal Education was devoted to exploration of different approaches to classroom teaching. 1988 Association of American Law Schools Conference in Clinical Legal Education 2-9 (on file with author).

When the students received this case, had they addressed planning yet?[30] The same question applies to the teacher's decision to focus upon case theory. If the students had developed a shared understanding of case theory concepts in the classroom, then the teacher could draw upon and explore this shared understanding in supervision.[31] Although the students in the Green case may have grasped the ideas and modes of analysis developed in the classroom, they did not necessarily know how to plan or construct a case theory in a way that incorporated those concepts.[32]

Supervision brings together the concepts developed in the class and the experiences of the students on their actual cases. For example, a supervision session about planning the interview of Jessica Green would help the students to understand what planning concepts mean in action. The discourse about planning begun in the classroom would continue in supervision. The teacher would not re-teach planning but would connect those concepts to experience and action.

There are several possible ways to do this. The students could actually plan for the interview with Jessica Green in supervision. As an alternative, they might first discuss the need to plan with the teacher, then do the planning themselves. The teacher could also model a piece of the planning process and then let the students complete the process on their own. Finally, the students could simply reflect, in a postinterview session, upon the planning they had done.

In the Green case, although these possibilities were all present, the teacher rejected them in favor of a fifth alternative—giving the students responsibility for planning on their own. Having responsibility can be an important step in integrating classroom concepts with experience. The

30. Planning can be included in the seminar curriculum as part of teaching skills such as interviewing, negotiation, or investigation, as a separate subject rooted in a certain mode of thought, or as an ongoing, repeated theme.

31. If planning on case theory will be addressed later in the course, the teacher must decide whether to make reference to the conceptual framework that will be developed later.

32. Simulations often assist students in making connections between concepts and experience. Simulations are used in clinical courses in two major ways. First, the teacher may do an individual critique of student performance in a simulation, focusing on the relationship between the students' performance and the concepts developed in the class. Second, the teacher may draw upon the students' experience in a simulation outside of the classroom to develop a group understanding of concepts being taught in the class. For example, a teacher might use videotapes showing segments of student performances that exemplify various aspects of the subject under discussion. *See* Ann Shalleck, Simulation in the Large Classroom: The Relationship of Clinical Methodologies to Other Teaching Strategies, *in* Conference Materials, 1990 Association of American Law Schools Workshop for New Law Teachers (on file with author).

By participating in an imaginary case, students can explore many of the issues that are likely to arise in their actual cases. In a simulation, however, the students play a role in a setting that is structured and controlled in a variety of ways and to varying degrees. The students must make a leap in taking the knowledge developed in an imaginary case and using it in a real one where information and events cannot be controlled and where consequences flow from the students' actions. Students often do not recognize when unstructured experience in the world calls for application of the concepts developed in a class.

teacher decided that acting without any supervisory intervention would help the students understand planning.

The teacher's second decision in the Green case, to focus upon case theory, explicitly integrated the students' experience with concepts previously articulated in the class.[33] The students were familiar with case theory concepts. From almost the very beginning of the dialogue, the teacher referred to and drew upon them.[34] The students were struggling, however, with how to use those concepts in taking action.

The students integrated concepts and experience first by constructing a part of the case theory in the supervisory session. They had researched the law. They knew that they had a story to tell and that the history of abuse played an important part. They were clear that they wanted to have the client's husband evicted from the house. But they did not understand how to put these pieces together to create a case theory. In the supervisory session, the teacher helped the students to construct the part of their case theory supporting an eviction.

The students also learned how case theory involves a dynamic process in which the theory shapes the lawyer's actions, and the ongoing actions, in turn, constantly reshape the case theory. For example, the students began the supervisory session by asking about the pleading.[35] Once they saw the ways that their pleading decisions were tied to their evolving views of their case theory, they could assume the task of drafting the pleading on their own.[36]

The relationship of the classroom portion of the course to supervision also influenced the third supervisory decision to encourage the translation of critical analysis of legal institutions into strategic decisonmaking in advocacy. In the classroom, students may study critical analysis of the law, legal institutions, and lawyers and may learn the skills of different kinds of critical analysis.[37] Teaching about the activity of lawyers may include critical perspectives on that activity. Simulations requiring students to translate critical analysis into strategic action on behalf of a client can form the basis of a class discussion about the possibilities and problems of this sort of

33. *See supra* part I, sc. 1, lines 136-39.

34. *See supra* part I, sc. 1, lines 11-12.

35. *See supra* part I, sc. 1, lines 5-7.

36. The supervisory session was not used to draft the petition, or even a part of it; it was used to construct a piece of the case theory. In supervision, the students identified the task of writing a petition that embodied the case theory. The students then drafted the petition on their own, and the teacher set a time for review and critique of the students' work.

37. Stanford Law School has perhaps gone the farthest in developing a clinical curriculum that explicitly focuses on a critical perspective on the law and the legal system. *See* Gerald P. Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 360-86 (1988-89) [hereinafter Lopez, *Training Future Lawyers*]; *see also* Gerald Lopez, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 10-13 (1989) [hereinafter Lopez, *The Work We Know So Little About*].

translation. Supervision, however, permits students to integrate institutional critique with their own experience. In supervision, analyzing court structures for handling cases of abuse against women,[38] the stressful dynamics of the litigation, the pressures placed on judges,[39] and the tensions between the values implicit in the institutional arrangements and the explicit values of the legal system, the students can give concrete and enriched meaning to classroom discussion of theory. At the same time, supervisory discussions enable them to test the explanatory power of the theories studied in class.

In the Green case, the students transformed their critical insights into a strategy to obtain the type of hearing necessary to achieve their client's goals. Their critical perspective informed their actions as lawyers for a particular client. Within supervision, however, the students did not discuss the significance of the transformation they had accomplished. Because this transformation is problematic, it is important that the students' experience be integrated into further group discussions about institutional critique and client-based advocacy, outside the parameters of an individual case.

b. The Group Case Analysis Meeting

In group case analysis meetings, a group of students draws upon the shared discourse of the classroom to discuss the issues in their cases. Whereas the classroom component is a structured forum for the development of a conceptual framework, the group case analysis meetings allow students to use and test those concepts together in exploring the particular situations presented by their cases. Group case analysis meetings share with supervision a focus on the experiences of the students. Unlike supervision, however, the cases are primarily jumping off points for group discussion and analysis of more abstract issues.

For example, in case analysis meetings, students looking at planning in a number of their cases can analyze different ways to deal with similar issues.[40] They can compare their thoughts about engaging in such a self-conscious and directed process and address the difficulties posed by dealing with many unknowns. The meeting could even include a discussion of planning for initial interviews, thereby drawing directly on the experience of the students in the Green case and fulfilling some of the same functions as supervision.

38. *See supra* part I, sc. 1, lines 84-110.

39. *See id.*

40. Either the group could work with the students responsible for the case to plan an upcoming activity, or they could all discuss their diverse experiences with planning. In either scenario, the meeting would draw upon the material developed in the classroom portion of the course both to assist the students in using that material when acting and to further their understanding of what it means to plan. The discussion can be a way to transform the students' understanding of the material developed in the classroom portion of the course by integrating it with their experiences on their cases.

The case analysis meeting integrates classroom and casework well in situations where the aggregation and comparison of a number of experiences is important. For example, to learn how case theory shapes a lawyer's activity, students could examine the case theory underlying the petition in the Green case and compare it to the petitions and theories in other students' cases.

These meetings have particular importance for the supervisor's third decision in the Green case because students need to examine the transformation of institutional critique into client-based strategic action in a context apart from their work on the case. In the case analysis meetings, because the needs and desires of at least several clients are a part of the discussion, students can see the complexity of and tensions in the relationship between strategic action on behalf of those clients and systemic critique.

For example, the students' efforts to obtain an adequate hearing for Jessica Green may affect other petitioners in intrafamily offense cases. Other students may have felt similarly hampered by the institutional structure and may have tried different ways to alter the structure to benefit their clients. Students can then identify the success of and the constraints on individual, case-by-case solutions and assess whether each individual's attempt to obtain an adequate hearing contributes to overall change, particularly in a system where many of the petitioners appear pro se. From their experiences, they can explore how gender and race are related to the problems of the institutional structure. Students can also compare their clients' attitudes toward systemic analysis. Did any of the students discuss an institutional critique with their clients? How did their clients respond? How did their clients experience the institutional structure? By seeing common problems and identifying potential actions they may have missed on their own, students can better assess strategies for addressing underlying problems. They might work to change the institutional structure by, for example, getting more judicial time devoted to intrafamily offense cases. Or they might see the possibilities of talking with their clients about the situation. Or they might want to find organizations in the community concerned about the court's treatment of abused women. Through the group dialogue, the students can broaden their understanding of the tensions between systemic critique and client-based advocacy.

Individual supervisory dialogues can both contribute to and draw upon these group discussions. In supervision, the teacher often discovers critical issues for discussion within the group. For example, if other students face problems in constructing case theories in intrafamily offense cases, the group can effectively explore the relationship between the law in this area and the experience of women who have been abused. They can draw on their individual cases in understanding the difficulties of incorporating repeated abuse into existing legal categories and of describing that abuse

effectively within a legal proceeding. Using their experiences of maneuvering within existing legal categories and legal proceedings, the students can compare their different approaches, see different possibilities, and identify changes that would make the law better reflect the experience of women.

Similarly, students can use knowledge gained from the group in making decisions in individual cases. When a group discussion has effectively identified the many factors affecting some problem or explored the many differing perspectives on an issue, the students then must reach their own resolution of the issue in their case.[41] Where the discussion reveals multiple possibilities for action, it can generate insights useful to students in critiquing their own choices or in shaping their own behavior and identity as lawyers.

c. Supervision

In the Green case, the teacher assessed the objectives of supervision against the background of both the classroom and the case analysis meeting. In supervision, the teacher is in the best position to evaluate the students' understanding of course material. When concepts are particularly important, or the application of those concepts generates many nuances, as is true of case planning, supervision is particularly useful. Planning requires a type of thinking and an approach to material that law school rarely teaches.[42] The process of planning becomes clear only as one does it. Case theory is similarly important and nuanced,[43] as is the task of translating

41. The group dialogue of the case analysis meetings and the supervisory dialogue present different teaching opportunities. In supervision, although students may draw upon the ideas of the group, they must reach their own conclusions. Feeling the pressure to act, they must face their own responsibility. The focus is narrower, yet sharper, than in case analysis meetings where group discussion can diffuse responsibility.

42. Anthony Amsterdam calls this ends-means thinking. He describes it as:

> the identification of the full range of alternative possible goals in any situation, and of the full range of ways to get to each of them; and analysis of the compatibility or conflict of alternative goals, of one goal with one or more means to a different goal, or of one means with another means; and the design of strategies for maximizing the likelihood of ending up at the most desirable places to be, while minimizing the risks of ending up at the least desirable. This involves techniques such as brainstorming, designed to assure that one's initial canvass of options is systematic, thorough, and creative, so as to guard against tunnel vision. It involves the important ability to plan backward: to begin with an inventory of objectives, trace out all of the routes to them, and determine the first steps to be taken only after considering where they may lead.

Amsterdam, *supra* note 15, at 8; *see also* AMERICAN BAR ASS'N TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM: NARROWING THE GAP 141-51 (1992); Anthony G. Amsterdam, *Clinical Legal Education—A Twenty-first Century Perspective*, 34 J. LEGAL EDUC. 612, 614 (1984).

43. *See* Miller, *supra* note 22. For other views of case theory, see DAVID A. BINDER & PAUL BERGMAN, FACT INVESTIGATION: FROM HYPOTHESIS TO PROOF 162-89 (1984) (firmly distinguishing legal and factual theories in the process of case theory construction); DAVID A. BINDER, PAUL BERGMAN & SUSAN PRICE, LAWYERS AS COUNSELORS 145-64 (1991); Gerald P. Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a*

critical insights into strategic action. Thus, the supervisor in the Green case addressed these issues within supervision.

In supervision the teacher can also assess the students' ability to draw upon the concepts they have learned and act in light of their understanding. At some point in a case, planning will be critical: the failure to do it effectively could have serious consequences for the client. At other points, failures in the planning process may be less serious and may be remedied. The inadequacy of a case theory can sometimes be tolerated, but not always. Strategic action based on critical insight may be misguided in a variety of ways, only some of which are harmful to the client. Supervision usually provides the best forum for discussion when action is most important to the client's well-being.

Supervision also provides a place for students to express their beliefs, feelings, and perceptions about using concepts in action. At the point of action, the implications of those beliefs, feelings, and perceptions can become apparent. For example, a student may resist planning because of discomfort with the thought process involved. A student may find ends-means thinking[44] to be in conflict with her normal method of problem solving and thus anxiety producing or may be offended by an instrumental way of thinking about people and events. Similarly, when constructing a case theory, a student may be troubled by self-consciously constructing one of many versions of an event. If a student believes that the legal system is or should be engaged in the search for one objective "truth," she may find the interpretive aspect of case theory construction at odds with that search. Another student may feel a tension between creative, yet legitimate, interpretation and misrepresentation. Finally, when using critical insights about the law and the legal system in taking strategic action on behalf of a client, a student may believe that other clients or certain broader objectives are betrayed. Although many of these perceptions, beliefs, and feelings provide wonderful material for the group case analysis meetings, in supervision students can confront those issues that are most important to them. Identifying a student's particular conflicts is often key to encouraging that student's intellectual growth and enabling her to find a way to address those conflicts when acting.

Finally, since dissatisfaction often arises at the point of acting, the teacher can nurture a student's emerging critique of the concepts developed in the course. Although dissatisfaction may result from misunderstanding or inability to use the concepts effectively, it may also be the starting point for critique. For example, the teacher can help a student who

Rebellious Collaboration, 77 GEO. L.J. 1603, 1630 (1989) (emphasizing storytelling aspects of case theory); *see also* MARILYN J. BERGER, JOHN B. MITCHELL & RONALD H. CLARK, PRETRIAL ADVOCACY: PLANNING, ANALYSIS & STRATEGY 17-52 (1988); Amsterdam, *supra* note 15, at 5, 7.

44. *See supra* note 42.

bristles at the instrumentalism of planning to relate that dissatisfaction to critiques of instrumental thinking.[45] The student can examine implications of these critiques for analysis of the law and the legal system. The supervisor might direct the student who is troubled by the seeming relativism of the interpretive project towards various attempts to ground that project more securely.[46] For the student who sees inequities in the translation of institutional critique into individual advocacy, the teacher can introduce efforts to articulate a more community-based ethic of legal practice.[47] The student's dissatisfaction becomes a starting point for a dialogue about the tensions between the need to act as a lawyer within the legal system and a critique of that system. The teacher can later integrate student dissatisfaction with these fundamental aspects of lawyering into the group discourse.

In making the three decisions in the Green case, the teacher used several factors to evaluate the necessity of supervision. First, because supervisory time is very precious, the teacher must craft supervision to address those issues that are most in need of individualized dialogue. Teaching planning, although important, is only one of many goals for the course. In the Green case, the teacher decided the students would benefit more from individualized dialogue about case theory and the use of critical institutional analysis than from a supervisory discussion of planning.

A closely related concern is that supervision is a very time-intensive method of teaching. When a goal can be achieved more efficiently in another course component, supervisory time should not be used. It is

45. *See, e.g.*, 1 JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY 143-271 (Thomas McCarthy trans., 1984); JÜRGEN HABERMAS, TOWARD A RATIONAL SOCIETY 81-122 (Jeremy J. Shapiro trans., 1970); Drucilla Cornell, *Toward a Modern/Postmodern Reconstruction of Ethics*, 133 U. PA. L. REV. 291, 310 (1985).

46. *See, e.g.*, RICHARD J. BERNSTEIN, BEYOND OBJECTIVISM AND RELATIVISM 171-231 (1983) (discussing Hans-Georg Gadamer, Jürgen Habermas, Richard Rorty, and Hannah Arendt); RICHARD RORTY, CONSEQUENCES OF PRAGMATISM 160-75, 191-210 (1982); Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990); Drucilla Cornell, *The Doubly-Prized World: Myth, Allegory and the Feminine*, 75 CORNELL L. REV. 644 (1990); Cornell, *supra* note 45, at 300-01 (discussing Alasdair MacIntyre and Roberto Unger); Klaus Eder, *Critique of Habermas's Contribution to the Sociology of Law*, 22 LAW & SOC'Y REV. 931 (1988); Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289 (1989).

47. *See, e.g.*, GERALD P. LOPEZ, REBELLIOUS LAWYERING: ONE CLINICIAN'S VISION OF PROGRESSIVE LAW PRACTICE 31-33, 111-14, 132-33, 155-62, 192, 246-51, 272-73 (1992); Joel F. Handler, *Dependent People, the State, and the Modern/Postmodern Search for the Dialogic Community*, 35 UCLA L. REV. 999 (1988); Lopez, *Training Future Lawyers*, *supra* note 37; Austin Sarat, *". . . The Law is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343 (1990); William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984); Paul Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. REV. 1101 (1990); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88).

important to be constantly alert to, and creative about, ways to teach effectively through classes and group meetings.[48]

In addition, firmly grounding the discussion in the exigencies of a particular case may limit the scope or depth of the analysis. In a classroom discussion or case analysis meeting, students may see issues that they would miss in supervision. As part of a shared intellectual enterprise, students develop and debate concepts within a common language and system of meaning. They participate in an emerging discourse about the law, lawyering, and the legal system. Seeing how others react to the material, they can clarify or advance their own understanding.

Supervision, however, is distinctive and powerful because the point of departure and of closure for the intellectual inquiry is the case. Students grapple with the most fundamental questions about law, lawyering, and the legal system, but the case is the touchstone for discussion. While those discussions may be highly theoretical, tightly analytical, intensely reflective, wildly speculative, or deeply introspective, decisions must be made, actions must be taken, and consequences will follow. The case creates a discipline for the dialogue.[49]

2. *Case-Related Experiences*

The entire range of the students' experiences in cases creates an important context for the teacher's supervisory decisions. Because the teacher knows what has happened and, through control of the students' caseload, can often predict what will happen, she can sequence supervisory discussions around the issues most likely to arise. However, actual cases contain many unanticipated circumstances. Because unpredictable events often offer the most powerful insights into being a lawyer, the teacher's educational agenda must also be flexible.

The Green case also shows both self-conscious sequencing and adaptation to the unpredictable. Because planning is pervasive, the teacher could predict that there would be multiple opportunities, even within just one case, to address the topic. Therefore, the students could plan for the first interview on their own. As early as the first supervisory session, opportunities to address planning arose.

After summarizing the client's situation, the students identified their understanding of the client's goals. Jessica Green wanted to get her husband out of the house, needed money to be able to stay in the house, and wanted custody. They had begun planning as taught, with an analysis of

48. *See* Nancy L. Cook, Robert D. Dinerstein, Elliott S. Milstein & Ann C. Shalleck, Variations in Classroom Teaching Techniques, *in* Conference Materials, 1988 Association of American Law Schools Conference on Clinical Legal Education 25 (on file with author and the *New York University Review of Law & Social Change*).

49. *See* Amsterdam, *supra* note 15, at 16 (discussing the importance of this experience, although not within the supervisory context).

the client's situation and goals,[50] but had not fully assimilated the lesson. They had immediately translated the client's goals into the framework of legal solutions under the intrafamily offense statute, including a civil protection order, an eviction order, and a support order, thus skewing the consideration of alternative possibilities for the client. In the "Issues for Supervisor Conference" section of the memo, they indicated that they had considered locating alternative places for the client important only if the intrafamily offense litigation failed. They thus missed a crucial step in the planning process—identifying alternatives that would have enabled them to think about potential solutions more broadly, with a greater sense of the client's needs and desires.[51] Within the supervisory session, the teacher made the students think about at least one alternative—the filing of a separate action for support—and the students were able to weave this alternative into the planning process.

Also, in their initial memorandum, the students had begun, in a rudimentary fashion, to plan for their investigation and trial. To encourage thinking about the steps mentioned in the memorandum as part of a self-conscious planning process, the teacher ended supervision by directing the students to identify the range of things to be done and to set priorities in light of their goals.

The teacher worked only briefly on two instances of planning and chose not to address at all planning for the interview.[52] Although the memo would have provided the basis for a full discussion of planning, she bypassed the opportunity knowing the chance would come again.

In evaluating the need for a supervisory session on planning, the teacher also considers the students' exercise of responsibility in other cases—whether they have had other opportunities to plan on their own,

50. *See supra* part I, sc. 1, lines 41-52.

51. Amsterdam, *supra* note 15, at 8 (describing the beginning points in the planning process); *see also* Robert Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 589-93 (1990) (discussing the importance of beginning from the point of the client's goals, as defined within the framework of the client's life, and not the legal system's categories).

52. In some circumstances, the supervisor might think it important to address planning in the framework of interviewing. The supervisor might want the students to examine the planning process within many of the different activities the students undertake to see how it operates throughout the process of representation. Or, the supervisor might think it particularly important for the students to understand that the planning process applies specifically to interviewing, an activity that may seem to students to have a spontaneous quality. Because the students may be inclined to overlook the importance of planning at this point in representation, the supervisor should be particularly attentive to the need to address planning for an interview within supervision. Therefore, in making the decision in the Green case not to address planning for the interview, either before or after the interview, the supervisor needs to consider whether a supervisory dialogue about planning for interviews has already occurred in another case and, if not, when such a dialogue should occur in the future.

how they have handled that responsibility, whether they have shown a capacity to reflect about and learn from their experience outside of supervision, and how the exercise of responsibility has affected their learning. If the teacher has confidence that the students will both plan for the interview competently and learn from the experience, she can forego a supervisory session on planning for the interview.[53]

Other case experiences also provide the background in the Green case for the supervisor's decision to emphasize questions of case theory. Working with the students, the teacher repeated the task of theory construction in the first supervision, regarding first the history of abuse and then the need for support. The teacher next identified the need to incorporate the case theory into the drafting of the petition. In the critique session after the hearing, the teacher and the students looked at the relationship of case theory to each individual witness's testimony. The students saw how they wove the part of their case theory about past danger into their client's testimony but did not do the same for support. In addition, they examined how, at the hearing, the two parts of the case theory were in tension.

As important as the teacher might think case theory is to effective lawyering, however, it would not be possible in each case to devote this amount of supervisory time to it. Because, as with planning, every case will present opportunities for teaching about case theory, the teacher must identify when and with which cases to teach about case theory. The case theory questions in the Green case were somewhat sophisticated. The students, who had handled other cases in the clinic, had undoubtedly already developed and implemented more straightforward case theories. The supervisor used this opportunity to deepen the students' understanding of a complicated and important subject and created a step in a sequenced teaching agenda.

The case also provided a distinctive opportunity for the students to see how case theory is critical to the development and expansion of the law. The availability of support as a remedy in an intrafamily offense action was not clear from the statute, and at the time in which the Green case was set, there was no clarifying case law.[54] The students had to develop a case theory integrating the facts of their case with a legal argument supporting an entitlement to support. Although students have many opportunities throughout law school to manipulate ambiguous or unclear legal rules in order to expand or contract legal rights, they rarely get the chance to shape the factual context within which the rule dispute arises and to examine the ways that the framing of both the facts and the law in a case can contribute

53. *See infra* part II.B.5 (discussing the evaluation of the skills of particular students).

54. Since the drafting of these materials, the District of Columbia Court of Appeals addressed this issue in a case brought by the Georgetown University Law Center Sex Discrimination Clinic under the Intrafamily Offenses Act, D.C. CODE ANN. §§ 16-1001 to 16-1006 (1981 & Supp. 1987). Powell v. Powell, 547 F.2d 973 (D.C. Cir. 1988) (holding that trial court had authority to order monetary relief under the Act).

to successful resolution of an issue. Therefore, the teacher seized this special, and perhaps nonrecurring, opportunity.

The totality and flow of case-related experiences are also significant when the teacher is deciding how to address the relationship of institutional analysis and individual advocacy. Systemic patterns of abuse or injustice are often hard to identify based on limited experience. The consequences of institutional unfairness or abuse are not always uniform; different groups of people are often affected differently.[55] Therefore, not until the students have had experiences with the institutions that affect their clients' lives will they be able to identify systemic issues or appreciate the texture of the problems. In addition, students may not be attuned to the tensions between institutional critique and individual advocacy until they have had experiences with a number of individuals who have different feelings and expectations about those institutions.

The dialogue in the Green case showed how important the students' other experiences were to their ability to identify institutional issues.[56] The students had observed the courtroom in another intrafamily offense case and thus knew the institutional framework within which these cases were handled—an overcrowded calendar, many unrepresented parties, few cases with more than two witnesses. The students were also sensitive to the case dynamics. They had felt the tension of the courtroom created by the complexity and explosiveness of the situations and had seen the contradictory pressures placed on the judge. In addition, they were familiar with the court procedures, including the use of preliminary matters. They had a sense of the kinds of things that can get said to judges. Therefore, after articulating and developing their critique, the students could work on using that critique to shape strategy in their case. Without these prior case experiences, the supervisor would have had either to provide much of this information or to direct the students to take some action, like observing in the court, prior to developing a strategy for the case. Probably neither of these alternatives would have been as effective in teaching the use of institutional analysis in individual advocacy.

3. *Acting and Learning—The Process of Creating Meaning from Experience*

Because supervision involves ongoing decisions about when and how to intervene in the students' experience, the teacher must constantly assess the effects of this intervention on the students' interpretation and understanding of their experiences. Commentators have commonly identified three aspects of the students' clinical experience as important to learning: (1) taking action, (2) feeling motivated to learn what is necessary for that

55. *See supra* part II.B.1.b. (discussing how these considerations relate to the use of group case analysis meetings in structuring the clinical course).

56. *See supra* part I, sc. 1, lines 79-121.

action, and (3) having responsibility for the consequences of one's actions.[57] We need to understand why these aspects of the clinical experience are so critical and how supervisory intervention affects each one.

a. Taking Action

Engaging in action transforms the students' comprehension of concepts like planning or case theory. Gary Bellow has described this experience as creating

> a reservoir of new meanings and associations capable of being identified and elaborated in subsequent interactions between the student and teacher. Sensation, perception, intuition, feeling, and cognition necessarily combine to produce "new knowledge" at different levels of awareness, complexity, particularity, and immediacy. Whether this process is active and constructive in nature—involving a continuing set of symbolic transformations of the perceived environment (which I suspect), or more passive—reflecting the assimilation and integration of new data into prior cognitive structures, may be left to further investigation and research. Either explanation of the relationship between act and thought supports the conclusion that experience produces a qualitative change in the mode and content of knowing . . . .[58]

The supervisory dialogue serves to identify, test, and shape that "new knowledge," as well as to assist the students in understanding the largely unexamined process by which they acquire knowledge from their experiences in practicing law.[59]

The possibility of supervisory intervention into the preinterview planning process in the Green case raises several questions about how students learn from the experience of planning. A preinterview supervisory session would have allowed the teacher to shape the students' emerging understanding. For example, the teacher could have identified and corrected the gaps in the planning process apparent in the students' later memorandum. Similarly, the teacher could have explored how the students' preconceptions and emotions about domestic violence might affect their planning. Students often regard abused women as victims in need of saving and therefore do not see women's actions and decisions as strategies for survival or for gaining control.[60] If students assume what troubles or will help a client, they can easily fail to understand her goals or to identify solutions.

57. *See, e.g.*, Amsterdam, *supra* note 15, at 17-19; Bellow, *supra* note 3, at 382-84.

58. Bellow, *supra* note 3, at 382.

59. Meltsner, Rowan & Givelber, *supra* note 3, at 408-09.

60. 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, 215-22 (1992); *see also* Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 93-94 (1991).

Preinterview supervisory dialogue can raise those issues before the students plan for the interview.

If, however, the teacher delays intervention until after the students have acted, then they may "own" the experience more deeply.[61] As a result, the experience may provide a powerful basis for later reflection and understanding. For example, students may find themselves angry or frustrated with the client because she has not met their unexamined expectations. Similarly, they may discover that they are ill-prepared to handle a simple question due to inadequate legal research. Consequently, they may understand at a more profound level what it means to plan for an interview. That understanding may be greater than if the supervisor had discussed their feelings and expectations with them prior to the interview.

Analyzing their planning for the interview before it occurs may also make the students feel stalled.[62] Anticipating action can get only so far; the students understand planning differently only in retrospect.[63]

In addition, intervening in the students' interpretive process may be counterproductive. Although the teacher may be committed to the value of particular concepts, clinical scholarship expresses an overriding concern for the development of a reflective and critical approach to experience.[64] Because we are teaching more than particular concepts, teachers must be careful in their attempts to shape or guide the students' interpretation of their experience. We must be aware of the potential for imposing our own frameworks on students who may have very different ways of thinking about planning.

Intervention need not mean imposition. Discussion about different ways to approach planning can encourage students' own distinctive understanding. The relationship of teacher to student, however, is a complicated

61. Students, of course, differ widely in their attitudes and feelings about acting on their own. Some would be happy to go off with their cases and never to set foot in the teacher's office and must therefore be reined in, while others hesitate to take any action without checking in with the supervisor. Incorporating individual differences into supervisory decisions is addressed later. *See infra* part II.B.5. Whatever the predilection of the student, the teacher must think about whether acting without supervisory intervention can create a meaningful basis for reflection for that student.

62. *See* Meltsner, Rowan & Givelber, *supra* note 3, at 405 (discussing how supervisors, like bike tour leaders, must strike a balance between providing too much and not enough information and skills training).

63. *See* Bellow, *supra* note 3, at 382 ("The ways in which legal concepts and ideas are understood after they have been used in an interview or across a bargaining table 'feel' different in a sense that can not be fully explained by the fact that they are more readily remembered.").

64. *See, e.g., id.* at 386-87; Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 622 (discussing a reflective approach to the clinical experience); Hoffman, *supra* note 2, at 292-93 (explaining that the primary activity of clinical instructors is the supervision of students in work and on cases); Kreiling, *supra* note 3, at 284 (discussing supervision in clinical teaching).

one, with power, status, gender, age, and race differentials and with correspondingly complex psychological dynamics. Therefore, it is frequently difficult to know when interventions impose interpretive schemes on students.[65] Because the nature of the conversation is important, teachers must constantly be attentive to how they may be overpowering or subverting students' attempts to understand experience. Decisions about technique matter. Teachers can structure conversations to create space for students to explore their own ideas about a task such as planning. When these spaces exist, it may be easier for students to challenge teachers' views.

One way of demonstrating respect for the integrity of the students' interpretive process is to let it be.[66] Nonintervention can be a way of conveying a message. In the Green case, letting the students plan for their interview with Jessica Green and letting them modify their own understanding of planning outside of the supervisory structure, based upon their experience with this interview, may have been a fine choice—even if the teacher thought they got it "wrong." Although the students' planning for the interview was probably flawed, the teacher communicated that she respected the students' ability to act independently and to reflect on their actions. During both supervision sessions, the students were open and thoughtful about their actions. At the same time, the students were anxious to respond to the teacher's cues. Providing these students with an opportunity to act on their own enabled them to learn to trust their own ability to act and to be self-critical afterwards.

In making the second decision, to focus upon case theory, the teacher also considered how the students' actions were affecting their emerging understanding. She was very involved with the students at the point of action, helping them to construct their case theory and urging them to use the

65. *See* Barnhizer, *supra* note 2, at 104-07; Bellow, *supra* note 64, at 619-21; Kreiling, *supra* note 3, at 300-06. Robert Condlin has drawn attention to the danger of manipulation in the supervisory relationship by creating a rigid, abstract, binary categorization of all instructional dialogue. Discussions are either in the learning mode or in the persuasion mode. In the persuasion mode, the "listener attributes meaning" to ambiguity; the "listener unconsciously combines the speaker's statement and the listener's own interpretation;" and the "listener publicly responds." In addition, the persuasion mode is competitive, private, and self-protective. The definition of each of these terms layers more characteristics onto each mode. For example, competitive dialogue contains "long, well-edited, soliloquy-like statements." The speaker takes "dense, complicated substantive positions." The dialogue is characterized by "rapid pace; intimidating expression; and automatic, rapid-fire rebuttals of contrary views." The learning mode has the opposite characteristics. Given the sheer number of characteristics, the task of accurately placing a statement in the correct category is daunting. Furthermore, the mixing together of multiple characteristics into a single category disguises, rather than illuminates, the complexity and the richness of educational discussions. Finally, the abstraction of the categories blocks understanding of the forces that shape the dialogue. Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223, 233-46 (1981).

66. Bloch, *supra* note 3, at 350.

theory throughout the case.[67] In two respects, the students' action was critical to their understanding of case theory.

First, as described above,[68] case theory involves a dynamic process. The students had to go back and forth between what they knew about the client's situation and about the law. Neither was fixed. Their view of each one evolved as the pieces of the story came together. It took the students awhile to see how Jessica Green's past experiences of abuse created a present danger that justified an eviction. The teacher took them step-by-step through constructing a persuasive story integrating the legal basis for an eviction with the client's history of abuse.[69] She then did the same for support.[70]

Case theory also interacts with all the lawyering activities in a case. In the Green case, the teacher approached pleading, witness choice, the structuring of testimony, investigation, and strategic planning all as matters of case theory. In thinking through each task and making the myriad decisions each one entailed, the students could see how the details of each task both were shaped by the theory of the case and revealed trouble spots in the theory. For example, thinking of potential witnesses prompted worries about the time required to tell the story, which in turn prompted an evaluation of the importance of each part of the story. The students had to consider modifying their case theory.

The students' actions were important to their understanding of case theory in another way. When the students constructed a case theory, they were telling the client's story. The result desired, the details included, the characteristics of the people highlighted, and the implicit messages transmitted were all profoundly important to the client.[71] What did Jessica Green want? How did she want to be perceived by others? Who mattered

67. In certain respects, the dynamic quality of case theory can be taught through simulation. Within a simulation, the students are active; they are engaging in the tasks through which the case theory is expressed. They can address how case theory shapes those actions and, conversely, the ways those actions lead to changes in the case theory. *See supra* text accompanying notes 35-36.

However, simulation can rarely replicate the richness and texture of the detail of real life. Within real cases, students identify details through their activity; within simulation, details often get filled in by the student's imagination or by faculty proclamation. The arbitrariness of the detail in simulation has the consequence that students may become distanced from the process of theory construction because the details that make up the story do not matter in a real situation. In actual cases, in which the process of discovering and eliciting detail flows from the dynamics of particular situations, students must relate case theory to the reality of people's lives.

68. *See supra* notes 35-36 and accompanying text.

69. *See supra* part I, sc. 1, lines 11-78 (discussing development of case theory supporting an eviction).

70. *See supra* part I, sc. 1, lines 143-95 (discussing development of case theory for support).

71. *See* Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 21-32 (1990) (exploring some of the ways in which case theory matters to a client).

most to her? What was the story she wanted to tell? How did it fit with legal principles and rules? How did she want to be portrayed? The students' efforts to see, to understand, and to answer these questions were embedded in their relationship with their client.[72] In working through possible answers, the students could appreciate the difficulty of connecting case theory and the client's life.

The students began case theory development without much involvement with the client. From their initial interview, they gained ideas about what the client wanted[73] but did not learn whether the eviction or support was more important. Therefore, they did not know which to emphasize. They did not know how quickly Jessica Green wanted her husband out of the house or needed money. They did not know how the client felt about including the history of abuse in the petition or testifying about it at trial. They had not thought about how she wanted to be portrayed or how she felt about being perceived as a victim. They did not know how she regarded her economic dependence. Despite indications that she had felt embarrassed by prior abuse, the students did not know the source of the embarrassment. They did not know if she cared about the portrayal of her husband. The answers to these unknowns were critical to the students' case theory.

The teacher intervened several times to remind the students to pay attention to their client as they developed the case theory. Students often feel comfortable letting a legal theory drive their case theory. Once they have a legal theory, they try to fit the details of the client's situation into the predetermined story.[74] The client who does not fit or does not want to fit may be viewed as a problem. The teacher gave the students a different experience of case theory construction. For example, as they worked to put support into their case theory, the teacher asked if their strategy was best for the client.[75] Again, when the students were deciding what to do next, the supervisor asked about their client, and they realized that she was crucial to the decisions.[76] During the critique, the teacher discussed the success of their case theory from the point of view of the client, not the judge.[77] Each intervention was designed to accustom the students to making their client an integral part of case theory development.

72. *See infra* part II.B.4. Many of these questions have been raised in connection with attempts to define "client-centered" lawyering and have been addressed most fully within debates about client counseling and the ethical parameters of lawyer decision making. *See* Dinerstein, *supra* note 51 (providing a full review of the literature). These questions are also significant in thinking about case theory.

73. They may, however, have translated the client's goals into a narrow range of legal system solutions prematurely. *See supra* text accompanying notes 50-51.

74. *See* White, *supra* note 71, at 27-30.

75. *See supra* part I, sc. 1, lines 187-91.

76. *See supra* part I, sc. 1, lines 221-24.

77. *See supra* part I, sc. 3, lines 56-60; *see also infra* part II.B.6.

In teaching how institutional critique can translate into strategic action for a client, the teacher also intervened powerfully to shape the students' understanding. When the students worried about the length of the court hearing if they covered the whole history of abuse, the teacher first encouraged them to examine how significant institutional factors—an overcrowded calendar, unrepresented parties, difficult situations, and lots of tension—combined to interfere with a full hearing. She then invited critique of the institutional setting. The students found it unfair because it harmed the client, who had a right to a full hearing, and because institutional arrangements favored corporate cases over domestic violence cases. The students identified the conflicting concerns of the decision maker in this institutional setting.[78]

Making an important choice, the teacher then encouraged the students to use their insights to get a full hearing for their client.[79] The students turned their perceptions about the competing concerns of the judge into opening remarks for the hearing.[80] The teacher very actively guided the students' steps.

Through her interventions, the teacher taught only one aspect of the relationship between institutional critique and advocacy. She did not ask the students to expand upon their observation about the differential treatment of different kinds of cases within the court system nor to explore the reasons behind the different treatment. She did not examine the effect of gender. She neither explored the potential for change within the institutional structure nor worked through a strategy to change the structure. The power of the students' experience in translating systemic critique into individual advocacy creates the danger of losing or minimizing these possibilities. Therefore, in designing other teaching experiences within this case, other cases, or the other components of the course, the teacher must be aware that the students' understanding is incomplete.

b. The Motivation to Know

Engaging in action on cases creates a powerful incentive to learn. Most students care deeply about acting competently. In order to perform the tasks required by the cases, they feel the need to seek out and master material relevant to that performance.[81] This "need to know"[82] commonly produces two phenomena.

78. *See supra* part I, sc. 1, lines 79-121.

79. *See supra* part I, sc. 1, lines 131-35.

80. *See supra* part I, sc. 2, lines 24-37.

81. *See* Bellow, *supra* note 3, at 383 (arguing that role adjustment is tied to students' sense of self, which generates high motivational energy); *see also* Barnhizer, *supra* note 2, at 72 (discussing clinical legal education as a means by which students internalize the norms of professional responsibility); Bloch, *supra* note 3, at 338-39 (discussing the manner in which

i. The Definitive Answer

In order to feel competent and in control, students often wish to find *the* answer, to master *the* way of performing a task. This desire for a firm and definitive answer presents several problems for the teacher.[83]

a) Impatience

The need for a firm answer contributes to impatience with generating alternative possibilities and considering the merits of identified options.[84] Supervision provides an opportunity to slow the students down so they can consider possibilities that are not immediately obvious. For example, in the Green case, the teacher raised one alternative not considered by the students—a separate action for support.[85] When the students identified the availability of a separate action for support as part of a counter argument against their theory about the scope of the intrafamily offense statute, the teacher asked them to see this as a possibility and not just as a problem.[86] The students responded by looking more broadly at alternatives.

The reaction is not always so open. Students who are impatient often resist having to discover and consider other possibilities and quickly become committed to a particular way of seeing or doing things. When considering alternatives is critical in a case, the teacher may have to intervene very strongly, often incurring the hostility of students impatient for answers. Students may wonder why the teacher is wasting their time when they want to get to work. Such intervention may stifle motivational energy.

To avoid this problem, the teacher must often look for less critical situations in which to teach openness. For example, in the Green case the

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students both work independently and in conjunction with their teacher to create the learning experience); Hoffman, *supra* note 2, at 287 (noting that involvement in the clinical experience contributes to the students' "need to know," which "results in a high degree of effort by the students").

82. Bellow, *supra* note 3, at 383; Hoffman, *supra* note 2, at 287.

83. *See* Bellow, *supra* note 3, at 385 (noting that clinical supervisors are "continually challenged by their students" to validate or justify an action, rather than the student initiating "speculation, criticism and thought").

84. These steps are critical parts of planning, case theory development, and the translation of institutional analysis into individual advocacy, as well as many other types of legal thought. The process of generating alternatives is sometimes called brainstorming or idea generation. It involves expansive thinking, drawing upon imagination and creativity to elicit many ideas. It temporarily rejects the familiar barriers and constraints of a situation and often calls upon the temporary suspension of judgment. *See* Workshop Materials, 1987 Association of American Law Schools Workshop on Clinical Legal Education (noting that idea generation was identified as part of the essential subject matter of clinical education); *see also* Amsterdam, *supra* note 15, at 8; Dinerstein, *supra* note 51, at 591 n.399. Where one option appears to be the most obvious, the most familiar, or the most accepted, students are particularly likely to seize on that choice. For example, in the Green case, the students, jumping to the conclusion that an intrafamily offense action was proper, failed to examine alternatives.

85. *See supra* part I, sc. 1, lines 187-91.

86. *See supra* part I, sc. 1, lines 187-91.

teacher did not have the students go through a full process of identifying alternatives. Rather, while exploring the option chosen by the students, she identified one missed option—the separate claim for support—found in the students' own counter argument. This small lesson covered only a piece of the process of generating alternatives. But even impatient students would probably have heard the message—multiple possibilities may exist and may be better than the most obvious solution.

The timing of intervention is important. Students can often better understand the dangers of tunnel vision after they identify the actual results of missing an alternative. Although the teacher in the Green case intervened before the end of the supervisory session, she did wait until the students' preoccupation with the intrafamily offense action caused problems in the support part of their case theory. Where the teacher judges that the client will not be harmed, she may let the students proceed even further until they can see the consequences produced by their blinders.

b) Uncertainty

Students who want to find *the* answer often have trouble accepting uncertainty. The open-endedness of much legal practice repeatedly confronts the student.[87] Students are often thrown by having to figure out what the facts are, which ones matter, how to find them, and what their ever-shifting meaning is. In the Green case, uncertainty about the significance of the history of abuse troubled the students.[88] Were the old incidents part of the case or not? Initially they expected a clear answer.

Also, depending on how the legal issues are defined, the scope of potentially relevant law can be expanded or contracted. Students may have trouble identifying all the relevant areas of the law to investigate. For example, the students in the Green case looked to the intrafamily offense statute partly because in the referral process the case had been labeled an intrafamily offense case. Even the small step of thinking about a support action posed a challenge. They did not know how to identify the range of applicable rules and principles.

Many of the subjects taught in the clinic, including planning and case theory development, require students to keep open various options pending the results of a variety of actions. They must also, however, learn to bring things to closure. They must judge when to end their inquiry and learn to choose among options when uncertainty cannot be eliminated nor ambiguity resolved. In the Green case, the students needed to proceed on at least two fronts for support while suspending judgment as to which was better until they had done more research, talked to Jessica Green, and figured out if a support action could work for their client.[89] At the point of

87. *See* Amsterdam, *supra* note 15, at 7-8.
88. *See supra* part I, sc. 1, lines 5-45.
89. *See supra* part I, sc. 1, lines 187-95, 205-06.

drafting their petition, while they still were uncertain, they had to choose. These students, although patient and open to seeing options, may still have had problems both keeping alternatives open and then choosing, while ambiguity remained.[90]

The teacher needs to be attentive to how students can learn to tolerate uncertainty. The teacher can help students identify, at particular points, why uncertainty is important. Making explicit the intellectual task may help some master it. Other students may perceive the openness and fluidity of a situation to result from their failure to know enough or do enough and may feel the need to resolve the uncertainty in order to feel competent. Once they see the inevitability of uncertainty, they may feel more confident about their own actions.

In these situations, the timing of the supervisory intervention can be important. As opposed to the impatient student who wants answers rather than options, students who are uncomfortable with uncertainty may not be helped by acting first and talking later. For example, a supervisory dialogue prior to planning for the interview in the Green case could have given the students an opportunity to confront their anxieties about the uncertain planning process. Even if they did not overcome their discomfort, they might have learned to interpret uncertainty differently, while knowing to expect it.

ii. Teachers as Information Resources

Students sometimes look to the teacher for the knowledge they feel they need at any moment. They view the teacher primarily as a repository of information to be tapped, an authority to be consulted, in the process of getting a task done.[91] Students expect many types of information from the teacher: statutory citations, procedural rules, legal arguments, and descriptions of the structure and operation of legal or social institutions.

In response, teachers must decide what types of information to provide, to what degree of specificity, and under what circumstances. For example, in the Green case, the students might have asked the teacher, prior to the initial client interview, whether there were court rules for intrafamily

90. Experience with uncertainty in other classes is not easily transferable to the clinic. In most law school courses, the legal materials are defined and limited by the casebook and supplement. The organization of the casebook places each case in a doctrinal category. Therefore, the legal framework for approaching a problem is already identified. The facts are also circumscribed, either by the case or by a hypothetical. Although the teacher may vary the facts in a hypothetical, the choice of facts is outside the control of the students. The students rarely have to choose facts for a particular purpose. They rarely have an opportunity to manipulate the facts themselves. Students learn to make varied arguments about the law, which lead to different results. They learn why many different results are possible. The result remains open. Very little hinges on which result or which argument is chosen. This pattern conflicts with the students' experience of uncertainty in clinic cases.

91. *See* Meltsner, Rowan & Givelber, *supra* note 3, at 400-02 (describing one student who fits within this category).

offense proceedings. In order to find out if their request was consistent with a self-conscious planning process, the teacher would need to know two things. First, why did the students think the rules were important in planning for this interview? Did they want to understand the legal framework better? Did they have specific questions that they thought the rules might answer? Were they anticipating questions from their client? Did they want to compare the rules to their in-court observations? Since the supervisor is trying to teach planning, she would be interested in how the students thought the rules were connected to planning for the interview. The issue is not so much whether the teacher gives the information, but how the particular information relates to concepts that the teacher wants to convey.[92]

Second, the teacher would need to examine the relationship between the students' process of obtaining information and the goal of teaching planning.[93] Developing strategies for finding answers to many different types of questions—about the law, court procedures, events, social institutions—is an important part of the planning process. Students need to be able to assess the utility of various methods for finding information, depending on how difficult they are and how long they take. In responding to a request for information in the Green case, the teacher would have to evaluate how her response would affect the students' learning about information gathering. Had the students thought about other ways to obtain the information? If not, they may not have absorbed important planning concepts. If they had identified alternatives, why were they asking? Had they tapped those sources? If they had not found the rules, what was the problem?

There may very well have been conflict between the felt needs of the students to find out about the court rules and the teacher's concerns about providing the information. If the teacher decides not to give the answer, the students may think she is playing a game of "hide the ball" that puts them through unnecessary paces. The teacher could make the conflict itself an explicit focus for a supervisory dialogue.

Issues of student responsibility affect decisions about providing information. In the Green case, the students had responsibility for planning and

92. The nature of the teacher's authority regarding different sorts of information may vary. She may, for example, have extensive knowledge about the characteristics and quality of shelters for battered women in the community and about the court rules. When faced with a request for either type of information, she would ask similar questions but might arrive at different decisions as to whether to provide it based on differences in the type of information she had.

In his presentation about judgment at the 1987 AALS Workshop on Clinical Legal Education, Gary Bellow discussed the importance of conveying to students one's knowledge about the operation of the institutions the students are confronting in their cases. Gary Bellow, A Second Sample Slice: Teaching Judgment Across Traditional Skills, Audiotape of 1987 Association of American Law Schools Workshop on Clinical Legal Education (Mar. 14, 1987) (on file with author).

93. Other goals, such as the need to complete a task by a deadline, may often intrude.

conducting the interview without supervisory involvement. A request for information in this situation where no supervisory meeting has been scheduled[94] makes it difficult to have a discussion in which the teacher can either make a decision about providing the information or explain the decision to the student without becoming involved in the students' actions. Whatever decision the teacher makes, including a refusal to entertain an inquiry outside of the scheduled supervisory session, it may be important to include a discussion of the information request at the time of a regular supervisory session.

The knowledge that students seek to acquire through work on the case often differs from the knowledge that the teacher seeks to convey.[95] The teacher wants to teach about planning while the students want to know if there are court rules. The teacher wants to teach about case theory and the students want to know what to put in the petition. That lack of congruency can be discussed in supervision. Students may be more tolerant of teaching methods that create discomfort when they know the reasons behind them. Although that understanding might not alleviate the frustration or anxiety, it might make the student more open to hearing the teacher's message.

c. *Responsibility for Consequences*

Students understand the subject matter of the clinic differently, not just because they act, but also because they bear responsibility for the consequences of their actions.[96] Anthony Amsterdam has described the power of this aspect of action:

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94. *See* Barnhizer, *supra* note 2, at 92 (noting the frequency of "spontaneous" exchanges within the supervisory relationship).

95. Gary Bellow has identified the tensions that can result from differences between students' and teachers' ideas about the types of knowledge that need to be developed through action on cases. Many of the teacher's goals require that students become extremely self-conscious about their thought processes while engaging in action. This goal is sometimes in conflict with the demands of performance, since the student must be an observer and a performer at the same time. The increased self-consciousness that comes from a conceptual understanding of actions can initially make action more difficult. The demands of performance can cause the student to wish to limit, rather than expand, the field of vision. As Bellow states:

> It should not surprise us that the student engaged in the pressures of day-to-day practice would consider the question of the relationship of the negotiating process to the fundamental paradigms of contract law not nearly as important as what to say at that first moment at the bargaining table. . . . The immediate situation, because of the pressures it inevitably produces, overwhelms the importance of the more distant. At another level this type of student reaction also represents fundamental differences in the very way things are known—the kinds of understandings required—as one moves from observation to involvement, from description to engagement. Whatever its role, it seems predictable that, insofar as the goals in clinical teaching involve a demand for self-consciousness and extensive speculation, such a tension is inevitable.

Bellow, *supra* note 3, at 390-91.

96. *See id.* at 391, 396-97.

> Day after day, lawyers must choose a course of action, choose and choose again, witness the consequences of their choices, and pay the piper intellectually and emotionally, if not financially. Part of a lawyer's education should surely be to come to grips with oneself in the process of decision making—to face up to the way in which one's own mind works under the pressure and the responsibility of making decisions—and to test out how one's intellectual tools bear up under the strain.[97]

Supervision is the primary educational setting in which students "come to grips" with what happens in their cases, whether it be an interim event or the final resolution of a matter. Feeling responsible for a result profoundly shapes the students' thinking about the ideas that guided their choices. Because the use of consequences to evaluate actions is a complicated task, the teacher explores the possibilities and dangers of using results as part of critical reflection. Students often use a legal result as the measure of their success. In some instances, this measure is effective. For example, in the Green case, when the student was unable to admit the pictures of the client into evidence until she had laid a proper foundation, the ruling provided an effective and accurate way to judge her performance.[98] However, legal rulings are often not accurate measures of success. Judges make mistakes. Evidence may be admitted or excluded improperly. And even if evidence is excluded, the purpose for seeking its introduction may be served. Students need to separate their own judgments about both the effectiveness of the action and the quality of their performance from the judgments rendered by the legal system.

In the Green case, the teacher engaged in an independent evaluation process. When the students met with the teacher following the hearing, they felt they had "lost" the case because the court did not order support.[99] The teacher first approached the result in relation to what the client wanted.[100] Seeing that Jessica Green had several goals other than support, the students understood that some of these—getting protection from her husband's violence, being able to stay at home, and gaining custody of her children—were more important to her than support. The protection order, the eviction order, and the custody order, all of which they received from the court, reflected their understanding of Jessica Green's priorities.[101] Also, even though they did not get a support order, the judge ordered some financial assistance for their client, i.e., mortgage payments for ninety days, which partially met her economic needs.[102] This gave the students time to

97. Amsterdam, *supra* note 15, at 16.
98. *See supra* part I, sc. 2, lines 323-99.
99. *See supra* part I, sc. 3, lines 8-10.
100. *See supra* part I, sc. 3, lines 36-43.
101. *See supra* part I, sc. 3, lines 44-49.
102. *See supra* part I, sc. 3, lines 50-52.

bring a separate court action for support or figure out another way to address Jessica Green's financial needs. The students' comparison of the requested relief and the court order was too narrow. They had to assess relief from the perspective of the client's needs.

The students then analyzed their case theory in light of the result. Critical of their execution of their case theory, they identified three ways that their faulty execution contributed to the failure to get support: (1) If her financial need had been more integral to Jessica Green's testimony, the judge might have understood how essential support was to her safety;[103] (2) the client's appearance might have disguised her need for money—class and gender, unspoken parts of the story, needed to be taken into account in the case theory;[104] (3) the judge's procedural bifurcation of the abuse and support issues undermined the support piece of their case theory—by the time they got to support, the judge would not listen to their arguments.[105]

The teacher then connected the students' prior analysis of the client's needs to their critique of their case theory implementation. The judge resisted seeing the relevance of the history of abuse to the current situation and placed time pressures on the students, thereby making it hard to describe the physical danger to the client.[106] The judge's further hostility to support created risks to integrating support more fully into the client's testimony. Had the students taken the focus of their case theory off physical danger, they might have jeopardized getting what the client wanted most. Therefore, a critique of case theory implementation based solely on the failure to obtain a support order was partial and perhaps misleading.

Rather, the students' insights about the possibilities and dangers of changing the client's testimony to integrate support[107] were useful in analyzing the case theory itself. In developing the case theory, they had not identified the tensions between the eviction and support pieces. However, when they recognized and had to reconcile these tensions in structuring Jessica Green's testimony, they decided to emphasize the physical danger. They could see how their resolution of the tensions within the case theory through their strategic decision about Jessica Green's direct examination was consistent with their client's wishes.[108]

In this process of evaluating the consequences of their actions, the students' feelings can play an important part. In the Green case, Amelia, in

103. *See supra* part I, sc. 3, lines 72-75.
104. *See supra* part I, sc. 3, lines 13-15.
105. *See supra* part I, sc. 2, lines 132-35; part I, sc. 3, lines 61-67.
106. *See supra* part I, sc. 2, lines 65-82.
107. *See supra* part I, sc. 3, lines 72-98.
108. The supervisor links the students' choice about emphasis within the case theory to the decision about when to do battle with the judge. *See supra* part I, sc. 3, lines 99-109.

particular, felt very strongly about support. It was the first issue the students raised during the post-hearing supervisory session.[109] Even after seeing that the order reflected their client's priorities, they were still troubled by the result.[110] They were angry at the judge for first saying that he would hear about support but later refusing.[111]

In the part of the supervisory session depicted, the teacher chose not to explore the source of these feelings. Therefore, she did not know if it was hard for the students to accept losing, if they were locked into their own argument, if the issue itself mattered deeply to them, or if they felt very much on the line having conducted the hearing and fought hard with the judge. In some situations it may be important to raise and explore the cause of the students' feelings, particularly when their feelings may be preventing students from analyzing the result. By identifying how their feelings are affecting their analysis, the students may become aware of the links between emotion and judgment.[112]

Because the students' understanding of their client's wishes is embedded within the totality of their relationship with her, the teacher added this topic to the agenda for the critique.[113] Although the students had already evaluated the result in terms of the client's goals,[114] the teacher wanted to probe further, particularly since, at the first supervisory session, their understanding of Jessica Green was limited.[115] She wanted to explore whether they had correctly identified their client's needs and concerns and whether they understood correctly what mattered most to her.

In addition, the teacher wanted the students to switch their focus from the case to the client's life. Even as they looked at the result from the perspective of the client, they were seeing only the case, rather than the meaning of the case for the client. From the perspective of the client's life, they could evaluate success and failure.[116] For example, it may have been very important to Jessica Green to start to talk about the history of her abuse and to overcome her embarrassment. Telling the story of her abuse through her testimony may have been a part of larger project of finding ways to assume control over various aspects of her life. With this understanding of the meaning of the testimony in their client's life, the students could evaluate better their decision to emphasize eviction over support.

The critique of the case theory in the Green case demonstrates four aspects of assessing consequences. First, is the students' definition of the desired result within the legal system rooted in the client's needs? Telling

109. *See supra* part I, sc. 3, lines 8-10.
110. *See supra* part I, sc. 3, lines 61-75.
111. *See supra* part I, sc. 3, lines 61-67.
112. *See* Goldfarb, *supra* note 2, at 1647-49.
113. See *infra* part II.B.4 for a fuller discussion of the student-client relationship.
114. *See supra* part I, sc. 3, lines 44-55.
115. *See supra* part I, sc. 3, lines 35-60.
116. *See* Bryant & Arias, *supra* note 60, at 216, 218.

the story of her abuse through her testimony may have been a part of a larger project of finding ways to assume control over various aspects of her life. Second, how does success or failure within the legal system affect the students' judgments about their actions and decisions? Are they able to evaluate their actions and choices apart from the result? Third, although it may usually feel better to win than lose, how do the students handle their feelings in evaluating their actions? Fourth, how is the students' relationship with the client related to their interpretation of the result?

In the Green case, the teacher used the case theory critique to teach both case theory and the process of critique. Throughout supervision, students must engage in this process of critique again and again. For students to engage in similar critique on their own, they must have opportunities to attempt critique for themselves outside of supervision. Therefore, in addition to giving the students responsibility for planning and executing the interview of Jessica Green, the teacher did not intervene to evaluate the interview. She left the students to come to grips, on their own, drawing upon their experience in supervision, with the consequences of their planning.

4. Relationships Between Students and Their Clients

By the time they come to the clinic, many students have worked as law clerks or interns. For most, however, the clinic provides the first opportunity to act as someone's lawyer. They bring many preconceptions of the lawyer-client relationship, yet have enormous uncertainty about the relationship. Usually, they have little or no experience with the variety of forms that the relationship takes in society. Through supervision, the teacher becomes part of the process by which the students build a relationship with their clients. First, because student practice rules require the supervision of students certified to practice, the supervisor's involvement makes the student-client relationship possible. Second, a major rationale for law school involvement in student practice is the educational potential for such practice.[117] Beyond these two rationales, the teacher wants students to examine how they are constructing their relationship with their client to see both the possibilities for and constraints upon that relationship.[118]

In the Green case, the students began their relationship with Jessica Green on their own. Forming the relationship without intervention can

117. *See* Bellow, *supra* note 3, at 377-78 (discussing the educational benefits of "infus[ing] the law study with experience and knowledge of the legal systems in operation"); Hoffman, *supra* note 2, at 280-81 (describing how individualized supervision of a student in a lawyer's role is effective because it allows the use of a wide range of learning experiences).

118. Although questions about the lawyer-client relationship are also significant for other components of the clinical course, supervision is the primary tool for examining relationships in detail as they develop.

give students a strong sense of the directness and integrity of that relationship. In deciding not to be present at the interview, nor to videotape or audiotape the event, the teacher considered the intrusion into the students' relationship with the client.[119] Unlike supervisory involvement in planning, Jessica Green would have been aware of these intrusions, each of which would have affected the behavior of the students and their client. If supervisory intervention seriously circumscribed the interaction between the students and the client, then the students would have no experience of constructing the relationship on their own, and their own process would not be as accessible for later analysis within supervision.

At other points in the Green case, the teacher did actively intervene in the relationship the students were building with Jessica Green by making the client an integral part of their work on case theory. For example, the teacher used the client's perspective in the incorporation of support into case theory, made the client's needs and concerns central to the students' assessment of the court hearing, and had the students look at the significance of the case in terms of the client's life.[120] Also, getting students to view case theory as the client's story made the client an active participant in shaping the students' actions regarding case theory in at least two ways. First, because the students' understanding of the client's story mattered enormously to the legal action, they had to be conscious of the difficulty of learning that story, and the teacher had to attend to how the student-client relationship was affecting that understanding.[121] How much did Jessica Green want to reveal? What were the limits she wanted in the relationship? What were the barriers to her communication?[122] How were the students' ideas and feelings about domestic violence affecting what they heard? Second, throughout supervision, the teacher made sure that Jessica Green was included in the decisions about case theory.[123] For example, the decisions to include a request for support in the intrafamily offense action, not to request immediate relief through a temporary protection order, and to emphasize eviction over support all included the client.

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119. One consequence of not intervening at this point is that neither the planning process nor the resulting interview is observable. Thus, this piece of the students' experience is not subject to the normal process of critique. *See* Hoffman, *supra* note 2, at 294-95; Kreiling, *supra* note 3, at 325-28. It would, however, be impossible to critique every aspect of a student's action. More importantly, it would not be desirable. Since one goal is to teach self-critique, endless repetition of critique involving the teacher would be counterproductive. Students may learn most when they try out the process for themselves. *See supra* part I, sc. 3, lines 11-29, 44-55.

120. *See, e.g., supra* part I, sc. 1, lines 39-49.

121. *See* Dinerstein, *supra* note 51, at 596; Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717, 735 (1987); White, *supra* note 71, at 44-45.

122. *See* White, *supra* note 71, at 6-19, 32-44 (discussing the development and existence of systematic discouragement of the communication of women and minorities when dealing with the legal system).

123. *See, e.g., supra* part I, sc. 1, 39-49.

The teacher wanted the students to think about how they intentionally shaped their relationship with the client. For example, what helped them understand the story that Jessica Green wanted to tell? What enabled her actively to participate? How were their attitudes and actions affecting her participation in the relationship? What were their reactions to her needs and concerns? Students may not see the choices that are available in shaping the relationship and may have few ways to evaluate the constraints they feel. The teacher can help them identify these choices and constraints.[124]

In order to do this analysis, students need to examine the kind of relationship they want and the social and political context within which the relationship exists. What relief can the legal system provide? What other institutions are involved and what relief is available through them? In the Green case, did the students have knowledge about why women are abused? What did it mean that Jessica Green was seeking legal help, and from a law student? What could a lawyer or a law student do? In exploring these and other questions, the students had to relate their particular relationship with Jessica Green to the way society and the legal system deal with the problems that Jessica Green faced.[125] Also, how do gender, race, and class operate in structuring the relationship?[126] For example, in the Green case, did it matter that the students were women? If so, how?[127]

124. Case theory can be the starting point for this discussion. The materials in the Green case show only the first steps in exploring the connections between case theory and communication in the lawyer-client relationship.

125. *See* Bryant & Arias, *supra* note 60, at 216; Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157, 1163 (1991); Lopez, *Training Future Lawyers*, *supra* note 37, at 322; Lopez, *The Work We Know So Little About*, *supra* note 37, at 1-10; Simon, *supra* note 47, at 488-89.

126. The Green materials provide no information about race and little about class, making it impossible to look at the potential intersections of experience that are affecting the relationship. *See generally* Bartlett, *supra* note 46, at 847-49 (describing how identities such as race change the way in which women experience gender); Martha Minow, *Introduction: Finding Our Paradoxes, Affirming Our Beyond*, 24 HARV. C.R.-C.L. L. REV. 1, 3-5 (1989) (rejecting the preoccupation with similarities and differences between men and women in gender discourse, focusing instead on the influence of the legal system); Celina Romany, *Ain't I a Feminist?*, 4 YALE J.L. & FEMINISM 23, 28 (1991-92) (criticizing feminist theories that fail to address exclusions of race, ethnicity, and class); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989) (arguing that neither the concepts of gender discrimination nor of racial discrimination redress the particular circumstances of women of color in society).

127. *See generally* RAND JACK & DANA C. JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS (1989) (discussing gender differences in the practice of law and the experience of female attorneys in a profession developed by and for men); Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS L.J. 1039 (1992) [hereinafter, Cahn, *Styles of Lawyering*] (identifying the ethic of care as a tool to critique and expand ideas of lawyering); Naomi R. Cahn, *A Preliminary Feminist Critique of Legal Ethics*, 4 GEO. J. LEGAL ETHICS 23 (1990) (discussing the relevance of feminism in transforming traditional legal ethical perspectives and lawyering techniques); Menkel-Meadow, *supra* note 46; Carrie Menkel-Meadow, *Portia in a Different Voice: Speculation on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985) (discussing how women's entry into the legal profession in large numbers may fundamentally transform legal

Were Jessica Green's patterns of communication affected by her gender?[128] How were the students' and their client's experiences with gender, race, and class affecting this particular relationship?[129] Were there other dynamics affecting the relationship? How was power being exercised?[130] Students often do not feel powerful but may be exercising power without being aware that they are doing so.

Finally, how were visions of the lawyer-client relationship operating in the students' relationship with Jessica Green? For example, in thinking about alternatives for handling Jessica Green's problems, which actions did the students consider to be things that lawyers can or should do? Some students come to a clinic thinking that lawyers take only "legal" action. Others see lawyers as having access to all aspects of a client's life. Few have experience thinking through the nature or the scope of a lawyer's involvement in a case. The teacher can help the students identify and evaluate the models of the lawyer-client relationship that are prevalent or emergent

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practice); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986) (discussing the role of feminist practice and rights discourse in struggles for women's rights); Ann Shalleck, *The Feminist Transformation of Lawyering: A Response to Naomi Cahn*, 43 HASTINGS L.J. 1071 (1992) (grounding critique of legal practice not in gender-based characteristics but in multiple analyses of how gender operates in discrete and particular situations).

128. White, *supra* note 71, at 6-19.

129. *See generally* Anthony V. Alfieri, *The Politics of Clinical Knowledge*, 35 N.Y.L. SCH. L. REV. 7 (1990) (discussing the importance of fashioning the lawyer's approach to problem solving around conceptualizations of client identity informed by race, class, and gender); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992) (describing how race affected the lawyer and client construction of client narrative in a case); Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697, 721-22 (1992) (discussing the importance of recognizing race, gender, and class in lawyering); Mary Joe Eyster, *Integrating Non-Sexist/Racist Perspectives into Traditional Course and Clinical Settings*, 14 S. ILL. U. L.J. 471 (1990) (examining the manner in which race and gender issues affect group dynamics among law students from different racial and ethnic backgrounds); Suellyn Scarnecchia, *Gender & Race Bias Against Lawyers: A Classroom Response*, 23 U. MICH. J.L. REF. 319 (1990) (proposing classroom exercises that expose law students to the far-reaching impact of bias in the legal system and the way in which its practitioners function and interact).

130. *See generally* Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991) (suggesting that the practice of poverty law needs to be reconstructed via new methods of interviewing, counseling, investigation, negotiation, and litigation in order to empower the client with a voice throughout this process); Dinerstein, *supra* note 129, at 722 (discussing issue of lawyer dominance over clients); William L.F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992); Austin Sarat & William L.F. Felstiner, *Law and Strategy in the Divorce Lawyer's Office*, 20 LAW & SOC'Y REV. 93 (1986) (providing an in depth look at the nature of lawyer-client discourses); Austin Sarat & William L.F. Felstiner, *Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office*, 98 YALE L.J. 1663 (1989) (discussing the interaction between clients and attorneys in divorce proceedings to illuminate the frailty of the law as an impartial and just process of resolving disputes); Lucie E. White, *Seeking "... the Faces of Otherness ...": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499 (1992).

within the profession.[131] They can examine how those models are affecting their own behavior. The teacher can also give them courage and guidance in experimenting with alternatives to prevailing models. In constructing a relationship with their client, students can experience the possibilities for, as well as the limits to, the choices they can make in that relationship.

The decision to translate institutional analysis of the court system into strategic action for the client in the Green case also had important implications for the students' relationship with Jessica Green. The institutional critique affected the way the students viewed their client. They saw her within the framework of the court system. Analyzing her position within that structure helped them understand the impact of the structure on her experience.[132] Although the law provided relief from abuse through an intrafamily offense action, the court system made the process of obtaining that relief difficult.[133] The pressures of time and volume limited the client's possibilities to present her case effectively.

Additionally, institutional critique helped the students explain the court system to their client. Jessica Green knew her own story, but she needed to decide how to tell it. The students' insights could help her understand the structure within which she would tell her story.

Finally, unless the decision to translate institutional analysis into individual advocacy is part of the ongoing discussion between students and their clients, the students' institutional perspective can obscure the client's own view of experience. For example, in the first supervisory session of the

131. An increasing body of work discusses different visions of the lawyer-client relationship. *See, e.g.*, LOPEZ, *supra* note 47 (identifying "regnant" and "rebellious" forms of lawyering); Dinerstein, *supra* note 51 (discussing the lawyer's use of the client's life as a framework for achieving client goals); Simon, *supra* note 47 (discussing the lawyer's duty to manipulate the world outside of the attorney-client relationship to further the client's self-determined goals); *see also* Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L & SOC. CHANGE 659 (1987-88) (advising the application of critical consciousness and discourse to achieve client empowerment); Handler, *supra* note 47 (discussing the lawyer's role in the movement toward governing the relationship between clients and the social welfare state through participation rather than formalism); Gerald P. Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984) (discussing lawyering as a human problem-solving model); Stephen Ellmann, *Lawyering for Justice in a Flawed Democracy*, 90 COLUM. L. REV. 116 (1990) (book review) (discussing the view that lawyers should give moral guidance to their clients); Symposium, *Theoretics of Practice: The Integration of Progressive Thought and Action*, 43 HASTINGS L.J. 717 (1992) (presenting diverse efforts to reconceptualize and expand forms of legal practice); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (proposing a change-oriented lawyering method, which directs its efforts toward client empowerment).

132. More time in supervision could have enhanced this understanding. The students could have examined the reasons why intrafamily offense cases are handled as they are. For example, since virtually all the petitioners in these actions are women and the respondents are men, they could have looked at the impact of gender on the structure of the court system and how it shaped their client's experience.

133. *See* White, *supra* note 71, at 52-58 (discussing a vision of procedural fairness that acknowledges the barriers to participation in legal proceedings created by social inequality).

Green case, the students identified how the tensions in the court's institutional structure could benefit their client and then crafted an opportunity for Jessica Green to tell her story.[134] They were using their legal skills to realize their client's goals as they understood them. Like any other decision in the course of representation, the move from institutional critique to individual advocacy needs to be discussed with the client. In the Green case, the students may have assumed that Jessica Green wanted them to use their critique to obtain a longer and more comprehensive hearing. Perhaps, however, she had strong feelings about the institutional unfairness and wanted to figure out ways to challenge institutional barriers. She might have been concerned about making the experience of seeking legal relief better for other abused women or have identified herself as a member of a community that is systematically harmed by the institutional structure of the court. These concerns might have affected her thinking about the chosen strategy or generated ideas about alternative strategies.[135] She also might have wanted minimal involvement with the legal system beyond getting the specific relief she requested. In order to find out what Jessica Green wanted, the students had to have a relationship in which these issues were part of the discussion.[136] By learning their client's views of the institutions that shape her experience with these institutions, students are better able to develop strategies that further her goals and also understand institutional problems and legal responses from the perspective of the people who experience those problems.

By placing great importance on the students' relationship to Jessica Green, the teacher complicated her job. With little or no direct relationships with the client and with much of her knowledge about the case coming from the students, making judgments about the case was problematic. Information about the relationship itself came from the students. Therefore, identifying issues within the relationship and deciding about intervention was difficult. Intervention must be assessed in terms of its pedagogical value and its potential danger to the relationship itself.

The teacher directed the students' thinking in the areas of case theory and institutional critique in ways that had powerful implications for the students' relationship with Jessica Green, but the teacher was not present

134. *See supra* part I, sc. 1, lines 61-145.

135. *See* Dinerstein, *supra* note 51, at 589-94 (criticizing Binder and Price model, which recommends that attorneys begin by suggesting alternative courses of action to client, as perpetuating lawyer dominance of the attorney-client relationship and discouraging the client from expressing her true goals); *see also* Simon, *supra* note 47, at 480-89 (criticizing vision of clients that presumes individual subjective definition of interests and proposing a "critical" practice in which client interests can be understood collectively).

136. For descriptions of lawyer-client relationships that would include this sort of discussion, see LOPEZ, *supra* note 47; Dinerstein, *supra* note 51; Handler, *supra* note 47; Lopez, *supra* note 43; Simon, *supra* note 47; Tremblay, *supra* note 47; White, *supra* note 47.

during any of the communication between the students and their client (except for the trial). She also did not intervene in some of the students' activity, such as planning for the interview. The teacher decided that this mixture enabled her to make reasonable judgments about the students' competency in representing Jessica Green and to assess the students' learning. She could raise the issues that she wanted the students to confront. She determined that communication between the students and the client was unlikely to harm the client and, therefore, direct constraints on their interactions were not necessary.

5. Differences Among Students

Supervision requires an enormous amount of individual diagnosis. Although assessment is most obvious when the teacher is providing feedback or evaluation,[137] it is also fundamental to most supervisory decisions. Each of the decisions in the Green case was influenced by the teacher's judgments about the characteristics and needs of the individual students. In making these determinations, the teacher considers at least three aspects of the students' learning.

To begin, the teacher assesses what the students have learned. The scope of relevant knowledge is broad, including many skills, analytical approaches,[138] and the process of reflective understanding.[139] In deciding whether to have a preinterview supervisory meeting in the Green case, the teacher first evaluated whether the students had mastered the skills necessary for this planning task. Were they able to brainstorm about alternatives and assess the likelihood of a particular occurrence? Second, the teacher assessed the students' grasp of ends-means thinking that is involved in planning.[140] Had she seen them engage in this process in another situation, and were they likely to transfer that experience to this situation? Third, she evaluated their mastery of reflective learning. Could they learn from the experience even if it was never addressed in supervision? The teacher decided that the two students handling Jessica Green's case understood enough about planning that they could learn from the experience of planning on their own.

Next, because students learn in different ways,[141] the teacher must identify those situations that create difficulties for a student and then work

137. *See* Hoffman, *supra* note 2, at 292-98 (offering criteria for teacher evaluation of the student's performance based on observation of the student, ascertaining her goals and strategies, evaluating her performance, and suggesting improvements); Kreiling, *supra* note 3, at 328-37 (discussing the importance of teacher preparation prior to student-teacher evaluation conferences).

138. Amsterdam, *supra* note 42, at 612-13.

139. *Id.* at 616-17; Kreiling, *supra* note 3, at 284-85.

140. *See* Amsterdam, *supra* note 15, at 8.

141. Some clinical teachers have looked to psychology to explain these differences in learning. *See, e.g.*, Bea Moulton, Presentation, *in* Conference Materials, 1987 Association of American Law Schools Workshop on Clinical Legal Education 13 (on file with author and

with the student to overcome the barriers. Often, the teacher can structure the student's activity to foster learning.[142] In giving the students responsibility to plan and carry out the initial interview in the Green case, the teacher decided they could learn even in the absence of an externally imposed structure. They were able to generate their own structure from their knowledge about planning and interviewing. If these had been students who floundered in unstructured learning situations, the teacher would have needed to address that problem. For example, in supervision the students could have formulated the steps for planning the interview and then planned on their own. In addition, after helping the students see how their need for structure affected their ability to learn, the teacher could have worked with them to develop strategies for handling unstructured situations. With this knowledge, the students could have identified troubling situations and drawn upon strategies for self-consciously creating structure. The teaching of case theory in the Green case also fit the particular students. From several concrete examples in which the teacher pointed out how the client's situation could be expressed in case theory,[143] the students were able to generalize about the process of case theory development. They could later apply this generalization to other concrete situations. This teaching technique required students who could generalize from a number of specific situations and use and modify that generalization in future action.

Third, the teacher must be attentive to how characteristics such as gender and race affect the ways a student knows and experiences the world. Insights from the work of legal theorists of gender and race can be useful in identifying how such characteristics may shape the students' experience and understanding and affect their handling of a case.[144]

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the *New York University Review of Law & Social Change*). Learning theorists who have developed typologies of learning styles have been influential within the clinical teaching community. Some clinicians use one of two popular psychological testing instruments: the learning style inventory, which appears in DAVID A. KOLB, IRWIN M. RUBIN & JAMES M. MCINTYRE, ORGANIZATIONAL PSYCHOLOGY: AN EXPERIENTIAL APPROACH 29 (1971), and the Myers-Briggs type indicator, I. BRIGGS MYERS, INTRODUCTION TO TYPE (1980); I. BRIGGS MYERS, MANUAL FOR THE MYERS-BRIGGS TYPE INDICATOR (1962); *see also* Hoffman, *supra* note 2, at 293.

142. *See* Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 196-202 (1989) (discussing different forms of modeling of lawyering activities as a teaching method for some students in a clinical program).

143. For example, at the beginning of the session, the teacher related the students' concerns about the case to case theory. *See supra* part I, sc. 1, lines 9-12. After further discussion about why the history of abuse matters in the client's situation, the teacher brought the discussion back to case theory. *See supra* part I, sc. 1, lines 50-55. Later in the session, the teacher related case theory to investigation and preparation for the hearing. *See supra* part I, sc. 1, lines 131-41.

144. *See* Cahn, *Styles of Lawyering*, *supra* note 127 (discussing how to use concepts traditionally labelled as "feminine" to move toward a feminist lawyering process); Shalleck, *supra* note 127 (arguing that a feminist lawyering process is a definitively new and distinct method, rather than a new approach towards a traditional model). An example of how feminist legal theory could be used to explore lawyering was presented at the 1989 AALS

This work is helpful in understanding the students' experience in the Green case. The students understood that presenting only the recent incident would distort the meaning, not just of the client's story, but also of the incident itself.[145] They began their memo by summarizing the history of abuse.[146] The first issue they identified for their supervisory conference was "pleading and offering proof on the earlier instances of violence," and their first question to the teacher concerned making the petition reflect the

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Workshop on Clinical Legal Education. Drawing upon concepts of connectedness and interdependence in feminist legal theory to examine the dynamic between a lawyer and her client in a case in which the lawyer had become enmeshed in the client's life, Elizabeth Schneider argued that connectedness contributed to the lawyer's capacity to empathize with the client and to exercise control over the facts in the case. Both contributed to her ability to win the case but also created difficulty in establishing limits for herself in the case, which made her unable to deal with problematic information and perhaps interfered with her ability to be self-reflective. Using the conflicting aspects of connectedness, she suggested a lawyering model that did not reject connectedness and caring in favor of impartiality and neutrality, but recognized difference and fostered the establishment of limits between lawyer and client in order to permit the exercise of independent judgment. Elizabeth Schneider, Feminist Legal Theory and Clinical Education, *in* 1989 Association of American Law Schools Workshop on Clinical Legal Education 50 (on file with author and the *New York University Review of Law & Social Change*); *cf.* Bartlett, *supra* note 46 (describing the use of feminist legal methods to ask new questions in law); Menkel-Meadow, *supra* note 46 (discussing the influence of women in the legal profession on legal methods and practice); Menkel-Meadow, *supra* note 127 (same); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988) (advocating for reflection on all kinds of differences in applying feminist theory to legal questions); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1551-54, 1564-65 (1993) (discussing ways that issues of race and gender are treated in legal education); Schneider, *supra* note 127 (advocating integration of feminist legal practice into discourse about rights); Susan H. Williams, *Feminist Legal Epistemology*, 8 BERKELEY WOMEN'S L.J. 63, 69-75, 82-83, 93-105 (1993) (analyzing different theories for understanding how gender affects ways of knowing and experiencing the world).

There is a rich body of scholarship, including the work of critical race theorists, addressing the significance of race within the world of the law that could also inform supervision. *See, e.g.*, T. Alexander Aleinikoff, *A Case for Race-Consciousness*, 91 COLUM. L. REV. 1060 (1991); Robin D. Barnes, *Black Women Law Professors and Critical Self-Consciousness: A Tribute to Professor Denise S. Carty-Bennia*, 6 BERKELEY WOMEN'S L.J. 57, 59 (1990-91); Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365; Kimberlé W. Crenshaw, *Foreward: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989); Harlon L. Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. L. REV. 435 (1987); Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Alex M. Johnson, Jr., *The New Voice of Color*, 100 YALE L.J. 2007 (1991); Lopez, *Training Future Lawyers*, *supra* note 37; Lopez, *The Work We Know So Little About*, *supra* note 37; Lopez, *supra* note 131; Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); Scales-Trent, *supra* note 126; David B. Wilkins, *Obligation, Professionalism and Race: Black Lawyers in Corporate Legal Practice*, 45 STAN. L. REV. 1981 (1993); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987). At the 1991 AALS Workshop on Clinical Legal Education, issues of race, gender, and sexual orientation were the focus of the entire program. *See* Workshop Materials, 1991 Association of American Law Schools Workshop on Clinical Legal Education (on file with author).

145. *See supra* part I, sc. 1, lines 12-26.

146. *See supra* part I, sc. 1, lines 5-7.

history of abuse. Feminist critiques of the legal treatment of violence against women support the students' reaction. Feminists have criticized the legal system for using a narrow time frame to view incidents of abuse against women. This approach fails to account for the dynamics of abuse within an ongoing relationship.[147] The students' sensitivity to this issue may have been related to their own experiences. They seemed to connect with the client's sense of danger and fear. They immediately and powerfully understood the client's recent experience as part of a condition of continuing violence.

The possible impact of gender on students' understanding raised several issues for the teacher. The students' own experience with violence—either in their personal or familial relationships or more generally—may have given them insight into the client's situation.[148] Feminist legal theory stresses the connection between individual, personal experience and collective understanding of the world.[149] Theory must both begin with and be tested against experience.[150] The teacher had to decide whether to address the effects of the students' own experiences on their understanding. In exploring the insights they might have gained from the similarities in experience as well as the differences they might have missed,[151] the students could have seen both the potential for, and the dangers of, drawing on their

147. *See* Mahoney, *supra* note 60, at 16 (describing how evidence can be embedded in the entire context of a marriage); Elizabeth M. Schneider & Susan B. Jordan, *Representation of Women Who Defend Themselves in Response to Physical and Sexual Assault*, 4 WOMEN'S RTS. L. REP. 149, 157-58 (1978) (arguing that the law should take into account all of the surrounding circumstances when a woman presents her case of self-defense); *see also* Mark Kelman, *Interpretive Construction in the Substantive Criminal Law*, 33 STAN. L. REV. 591, 600-16 (1981) (discussing the difference in criminal law between using narrow time frames, examining only the incident itself, and broad time frames, taking all of the surrounding circumstances into account); Schneider, *supra* note 127, at 606-10 (arguing that a defendant is the victim of sex bias in the law if she is not given the opportunity to present all relevant information that led to her claim of self-defense, including evidence about the decedent's reputation); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980) (arguing that sex bias in the law is a result of social stereotypes regarding battered women and built in prejudices against women in the law of self-defense).

148. Elizabeth M. Schneider, *Violence Against Women and Legal Education: An Essay for Mary Joe Frug*, 26 NEW ENG. L. REV. 843, 855-859 (1992); Schneider & Jordan, *supra* note 147, at 157.

149. *See, e.g.*, Bartlett, *supra* note 46, at 863-67; Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191, 195-97 (1989-90); Martha Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25, 37-39 (1990); Minow, *supra* note 144, at 51-53; Schneider, *supra* note 127, at 601-04.

150. *See, e.g.*, Bartlett, *supra* note 46, at 863-67 (discussing feminist conscious-raising, where participants articulate their own experiences and make sense of them with others); Minow, *supra* note 144, at 51 (detailing how problems of sexual harassment are unusually acute in the construction field); Schneider, *supra* note 127, at 602 (discussing the interaction between the individual learning process and the public/group learning process in feminist consciousness raising groups).

151. ELIZABETH V. SPELLMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT 3 (1988); Bartlett, *supra* note 46, at 847-49; Cain, *supra* note 149, at

own experience in interpreting the client's experience. Because this inquiry may be too intrusive, the teacher needs to discover the students' wishes before embarking upon it.

In addition, the students' understanding of the abusive history may have been helpful in framing legal action that required an expansion of the legal system's understanding of violence against women. The students correctly assumed that the legal system, both using a narrow time frame and identifying a discrete incident, would focus upon the recent incident.[152] They also realized that this focus would take the form of an evidentiary problem regarding relevance.[153] The teacher helped them translate their insights about the history's significance into an acceptable legal argument. Their case theory about dangerousness made the abusive history relevant. Through this translation, the students challenged the legal system's understanding of abuse. In a small way, they had integrated women's experience of abuse into the legal system.

6. The Teacher

In making her decisions in the Green case, the teacher was also evaluating herself. Because her views influenced the choices she made in supervision, she had to be aware of how those views were shaping her approach.

First, the teacher had an educational project. She wanted to convey certain ideas and information to her students. In order to evaluate her supervisory practice, she had to assess whether her choices were consistent with her educational purposes and be especially alert to possible unintended messages.

Thinking that case theory was very important, the teacher devoted a lot of supervisory time to it and used it as an organizing principle in teaching lawyering tasks. Examining this decision could be useful in a number of ways. The teacher could see if it reflected her educational project. If she thought that case theory was critical and if she meant to be emphasizing it, then she was fulfilling this project. The decision could also reveal inadequacies in the educational project. Supervisory practice can serve as a critique for the educational agenda. If the teacher believed she was devoting "too much" time to case theory, what were the reasons? Had she not given enough time to teaching case theory in other segments of the course? Was case theory more important than the teacher initially thought in designing the clinical course? Was it harder to teach? Was it particularly useful in teaching other lawyering tasks? Furthermore, the decision could provide insight into teaching techniques and methods. Did the amount of time reflect poor teaching? Or does case theory require time-intensive teaching

206-10; Fineman, *supra* note 149, at 39-41; Minow, *supra* note 126, at 2-4; Martha Minow, *Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 62-70 (1987).

152. *See supra* part I, sc. 1, lines 50-92.

153. *See supra* part I, sc. 1, lines 63-65.

methods? Did she teach it repetitively in individual supervisory sessions when another setting would have been more efficient?

Second, the teacher's views about being a lawyer influenced her supervisory decisions in the Green case. She had her own approach to lawyering activities, her own vision of legal practice, and her own standards of competence, which were at the same time useful and problematic. She had ideas about potential case theories and effective judgments. By imagining herself as the lawyer in the case, she could see the choices presented for the students. At the same time, however, she had to separate herself from being the lawyer. She had to be careful about imposing her own view of the best case theory. To help the students figure out how to represent Jessica Green, the teacher had to be open to alternatives. Maintaining these two attitudes in the face of a real case generated ongoing creative tension for the teacher. Being conscious of the tension is the first step in effectively using that tension in supervision.

Third, because supervisory relationships can be very intense, the teacher needed to remain conscious of how the dynamic of the interaction affected the students' learning and handling of the case. She could not ignore her own feelings. For example, the students in the Green case were very attentive to the teacher's questions and comments, wanted to please her, and were open about their uncertainties. The teacher seemed to trust the students. She comfortably challenged them and intervened easily without prompting a defensive reaction. Yet, the teacher could also have felt frustrated or embarrassed by Amelia's failure to keep her papers in order at the hearing. The teacher chose not to reveal or discuss any such feelings with the students after the hearing. It is not always possible to hide those reactions, particularly under pressure, and it may not always be desirable.[154] Anger, frustration, and disappointment, as well as joy, pride, and satisfaction, may be legitimate parts of the supervisory relationship. Because these reactions are so powerful, the teacher needs to exercise that power with care.

III
A Vision of Supervision

Exploring the three supervisory decisions in these six different contexts slowly reveals a vision of supervision. The vision is perhaps best contained in the very process depicted in this Article, a process in which the teacher is constantly identifying those aspects of the law, lawyering, and the legal system that are critical to an understanding of what it means to be a lawyer. The issues that the teacher frames as the most important for supervision (the decisions) and the ways that she chooses to view those issues (the contexts) create a complex and constantly shifting scheme requiring

154. *See generally* Kathleen A. Sullivan, *Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship* 27 Ind. L. Rev. 115 (1993).

the teacher's constant attention to the fundamental assumptions underlying each choice she makes. This scheme permits the supervisor to shift "back and forth between the concrete and the abstract, the practical and the reflective, the specific and the general."[155] By engaging in this process, the teacher constructs a concept of supervision out of the material presented by the cases and the students, the dynamics of the educational enterprise, and the self-conscious application of critical perspectives to daily work in the clinic.

The particular characteristics of supervision will, therefore, constantly change. Identifying these characteristics at any particular time helps us to see the themes and concerns we have made central to the supervisory project. In this analysis of the Green case, at least eight characteristics of supervision emerge. First, the teacher is very active in defining the content and structure of the supervisory experience. Although a student may be very involved in shaping a particular dialogue, the teacher initiates and directs the inquiries into particular topics. In the Green case, there was no discussion with the students about any of the teacher's three decisions. The teacher did not consult the students about whether to have a supervisory meeting prior to the interview. Similarly, although the students had prepared a proposed agenda for the supervision meeting that did not include case theory, the teacher did not discuss with them her decision to focus on case theory. Through the discussion of case theory, the teacher addressed many of the students' concerns, but the decision to proceed through case theory was hers. The teacher also introduced the possibilities of institutional critique and strategic action. In these three decisions, the teacher structured the intellectual inquiry. Within that inquiry, the students were active participants in particular discussions, but the teacher defined the educational project.

Second, the teacher engages in a very self-conscious decision-making process in shaping supervision. From the moment of the initial referral in the Green case, the teacher began a continuing evaluation of how best to structure supervision to accomplish her educational project. In making each decision, she looked to the overall structure of the clinical course, the flow of case-related experiences, the knowledge developed through case activities, the relationship between the students and their client, the particular qualities of individual students, and the dynamics of the relationship between the students and herself. While any given interaction between teacher and student may have become very nondirective—either in the sense of being very free flowing, without a structured or predefined agenda, or in the sense of not leading to a particular answer or way of looking at things—the teacher was nonetheless both defining the educational agenda and making decisions in a self-conscious, directed manner.

155. Letter from Gary Bellow, Professor, Harvard Law School (Feb. 15, 1991) (on file with author).

Third, revealing the teacher's understanding of the supervisory process can be an important part of supervision. Although the teacher actively defines the educational project, the students have access to that process of definition. Demystification can either advance discussion of a particular issue or enable students to question or challenge the teacher's project. For example, in setting the agenda for the critique in the Green case, the teacher first let the students know the process she wanted to follow.[156] She then elicited their concerns, identified her own, and went back to address the students' issues.[157] Although the teacher was directing the agenda, the students could see what she was doing and had opportunities to challenge and change the direction.

Fourth, supervision requires the teacher to engage in different kinds of dialogue. In some instances, the dialogue is directive with the teacher raising issues and structuring discussion. Sometimes, she may even seek to achieve a particular result. In other instances, the dialogue is open-ended, designed to explore different possibilities or provide opportunities for students to develop their own interpretations of events. In the Green case, the discussions of case theory[158] and institutional analysis[159] were both quite directive. In the case theory discussion, the teacher did not define the content of the case theory, but she carefully directed its development.[160] Similarly, she did not tell the students how to analyze the court's treatment of intrafamily offense cases, but she led them to analyze that treatment and to use that analysis to obtain an adequate hearing for their client.[161] However, the teacher was much less directive in her handling of planning. The students planned the interview without any prior direction. When they planned further actions at the close of the first supervision, she intervened at only two points, directing them to consider the client in their planning and to set priorities among the identified tasks.[162]

Fifth, the students' actions on cases and the knowledge gained from those activities form the organizing principle for the intellectual inquiry in supervision. Students examine lawyering theories, skills, social theories, institutional critique, and personal feelings within the framework of their cases. The material presented in the other components of the course is tested and modified through case experiences. Casework reveals the students' characteristics and capacities. The relationship between the students

156. *See supra* part I, sc. 3, lines 1-7.
157. *See supra* part I, sc. 3, lines 130-39.
158. *See supra* part I, sc. 1, lines 122-30.
159. *See supra* part I, sc. 1, lines 93-110.
160. *See supra* part I, sc. 1, lines 122-30.
161. *See supra* part I, sc. 1, lines 68-110.
162. *See supra* part I, sc. 1, lines 200-24.

and clients takes shape through the case. Supervisory inquiry focuses upon the case.[163]

Sixth, the student-client relationship mediates the teacher's concern for the client. Therefore, the teacher expresses her responsibility for and commitment to the client in two ways. First, the teacher intervenes in the students' construction of a relationship with a client. The intervention may be minor or major, exploratory or directive, but the students have the opportunity to construct a relationship with the client. The teacher does not become the lawyer. Rather, the teacher acts to ensure that the students adequately fulfill their responsibility to the client. Through intervention, the teacher discharges her duty to protect the client from harm. Second, the teacher repeatedly directs the students to examine their actions in relationship to the client. In the Green case, in constructing a case theory, planning an interview, and evaluating a result, the students were taught to look through the client's eyes. Seeing the world in this way required the students to understand who their client was and how their client viewed the situation before they could decide upon action.

Seventh, supervision requires an inquiry into the institutional structures within which a case arises and the social and political forces that shape the development of the case. In the Green case, exploring the court system's structure for handling domestic violence cases shaped the litigation strategy.[164] Understanding the dynamics of abuse against women aided in the development of a case theory about dangerousness. Teaching students to be lawyers included analyzing the meaning of gender in the client's and the students' experience, in the student-client relationship, in the court system, and in the other institutions of society.

Eighth, all supervisory action is intervention. Intervention is not just acting when something has gone wrong or is about to go wrong. The students' experience with the case and the client exists within the supervisory framework and the many different sorts of interactions with the teacher shape those experiences. Although the teacher in the Green case had no direct contact with the client and did not take over the hearing when the student was making mistakes, her participation in the planning meetings and critique sessions altered the students' representation of and relationship with their client.

163. The supervisor-student relationship itself is not the primary object of inquiry. Although the supervisor and students may discuss some aspects of their relationship, the purpose of that inquiry would be to shed light on the understanding the students are developing through actions on their cases. In this respect, this vision is quite different from the one articulated in Aiken, Koplow, Lerman, Ogilvy & Schrag, *supra* note 3, at 1050 (advocating the use of learning contracts in clinical classes, including the individual negotiation of the parameters of the supervisor-student relationship and educational goals).

164. *See supra* part I, sc. 1, lines 147-91.

The vision of supervision that emerges from this examination of the Green case is a tentative one. Because neither the decisions nor the contexts are fixed, the particular characteristics of the vision constantly shift. By looking at other decisions within the same contexts and by identifying other contexts that matter in our decision making we can further enrich our understanding of supervision.