Theory and Experience in Constructing the Relationship between Lawyer and Client: Representing Women Who Have Been Abused

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THEORY AND EXPERIENCE IN CONSTRUCTING THE RELATIONSHIP BETWEEN LAWYER AND CLIENT: REPRESENTING WOMEN WHO HAVE BEEN ABUSED

ANN SHALLECK*

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During the last twenty-five years, feminist activists and theorists have transformed society’s understanding of abuse against women by their intimate partners. While creating the concepts of “battering” and “battered woman,” they have galvanized a broad and multilayered response to what

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2. See, e.g., Schneider, supra note 1, at 535.
3. See id. at 529-30.
Within the legal sphere, they have created civil actions permitting remedies, commonly known as civil protection orders, which enable women who have been abused to obtain a broad range of temporary relief against their abusers. Feminist activists and theorists have also generated many legislative and policy changes in the criminal law, which have resulted in increased enforcement of generally applicable criminal laws to situations of familial or intimate violence, the passage of specific laws addressing domestic violence, such as mandatory arrest laws and laws making violation of a civil protection order a crime, and the introduction of policies encouraging or mandating prosecution when domestic violence has occurred. In the torts area, they have successfully limited the application of spousal immunity to permit the imposition of tort liability against an abuser for damages resulting from domestic violence. In addition, they have been instrumental in bringing about the Violence Against Women Act of 1994, federal legislation that provides services, funding, judicial training, remedies for immigrant women who have been abused, federal causes of action for civil rights violations, and interstate enforcement of civil protection orders.

These legal developments have not only made the abuse of women a visible object of legal regulation, but also brought women who have suffered abuse into the judicial system. Women who have been abused by their intimate partners sometimes enter the legal world willingly, seeking assistance or redress from the legal system for the abuse. They are sometimes forced into that world unwillingly, either when actions are


6. Bartlett, supra note 5, at 530-31; Schneider, supra note 1, at 523-24.


10. See generally Schneider, supra note 9.
brought against them, such as murder or assault prosecutions or custody actions, in which the violence against them is bound up in the action, or when they are coerced into being reluctant participants in actions to vindicate a social policy against domestic violence, most commonly criminal prosecutions against an abuser. They may also enter the legal world inadvertently, when the violence against them is interwoven with some other claim the women are making or defending, such as in actions regarding disability benefits, welfare benefits, or unemployment compensation. In many, although not all, of these actions, women who have been abused are represented by a lawyer.

The relationship between the woman who has been abused and the lawyer has increasingly become the focus of academic discussion and debate. Two related sets of theoretical questions intersect in framing this discussion. First, feminist theorists and activists have begun to question the increasingly dominant underlying vision of a “battered woman” and the understanding of “battering” that have animated many of the legal changes accomplished on behalf of women who have been abused. Second, clinical


13. See, e.g., id.


scholars and others who train lawyers to represent women who have been abused have begun to examine how the relationship between lawyer and client affects the experiences of these women in the legal system.\(^{16}\)

In this article, I will discuss the two theoretical frameworks prompting a re-examination of legal representation for women who have been abused and the implications of these critiques for both the education of lawyers representing women who have been abused and our conceptualization of the process of developing theory regarding the meaning of the legal system for these women. First, I will identify the main elements of the emerging feminist critique of the ascendant conception of domestic violence that underlies many of the legal reforms accomplished during the last quarter century for women who have been abused. Second, I will examine the principal themes in the attempts by theorists of legal practice to articulate a vision of lawyering on behalf of women who have been abused. Third, I will examine the roles of theory and experience in educating students to provide representation to women who have been abused. Based on the analysis of theory and experience, I will discuss ways to approach the education of lawyers to provide representation to women who have been abused which not only address domestic violence from the perspectives of those women, but also contribute to our developing understanding of abuse in the lives of women.

I. FEMINIST CRITIQUES OF THE "BATTERED WOMAN" AND "BATTERING"

Without rejecting the importance of many of the cultural, social, political and legal developments of the last quarter century, or the recognition of the oppression of women underlying the efforts to secure these changes, some feminist theorists and activists have identified limitations, contradictions and dangers embedded in the theoretical constructs that have dominated both the discourse about, and the institutional developments affecting, the experience of abused women in an intimate relationship.\(^{17}\) They have seen the harms women who have been abused suffer under the legal regime resulting from the changes that have been implemented, and confronted the conceptual problems revealed in the actualization of the new

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\(^{16}\) Margulies, supra note 14, at 1092-1103; Meier, supra note 14, at 1332-56; Mills, Silence, supra note 14, at 1228-31; O'Leary, supra note 14, at 213-15.

\(^{17}\) Abrams, supra note 15, at 368-76; Cahn & Meier, supra note 15, at 340, 353-56, 358, 359; Goldfarb, supra note 15, at 589-96, 600-01; Mahoney, supra note 15, at 75-79; Schneider, supra note 1, at 527-29, 557-59 (revealing problems with current views of battered women).
legal landscape. Against this background, these feminist theorists and activists have begun to articulate new ways to conceive and approach the issue of abuse of women in intimate relationships. Although not all of those who have engaged in this critique embrace all of the following elements, several overlapping and intersecting themes characterize this emerging feminist critique.

First, these theorists see the construct of the “battered woman” as essentializing. It makes one characteristic of a woman’s experience define her entire identity, thereby marginalizing or trivializing other aspects of her identity. Those aspects of her life that she may have insulated from the impact of the violence in her life become invisible. Her strengths and her accomplishments become submerged under the label of “battered woman.” Her relationship with a violent person entirely defines her.

Second, these critics also view the construct of “battering” as essentializing because this framework treats intimate abuse as a single, uniform experience. Within dominant theories of domestic violence, the “cycle of violence” is presented as having a powerful, internal dynamic that, of necessity, replicates itself in all battered women’s lives. Experiences that do not fit into the cycle are denied, diminished, or interpreted to make them fit into the model. If a woman’s experience does not fit the cycle, it must not be “battering.” In addition, this view of “battering” is constructed out of the experiences of primarily white, heterosexual women.

18. See supra notes 15-16 and accompanying text.
19. See generally sources cited supra notes 14 and 15.
20. Naomi R. Cahn, Inconsistent Stories, 81 GEO. L.J. 2475, 2487-88 (1993);
Mahoney, supra note 15, at 24-26; Schneider, supra note 1, at 530.
22. See id.
23. Id.
24. Id.
25. Goldfarb, supra note 15, at 619-21; Littleton, supra note 15, at 29-30; Schneider,
supra note 1, at 531, 535-39.
27. Id.
28. Id. at 17-19.
“Battering” of women of color or of lesbians is understood as a variant of the dominant model. Their experiences of intimate abuse and their understanding of those experiences are not used to alter the model or to challenge its validity, but are assimilated into it.

Third, “battered women” are portrayed as victims, as powerless and passive objects of another’s violence, helpless to free themselves from the constraints imposed by the “batterer.” Women whose actions seem to fit into the stereotypical portrait are denied affirmation of their attempts to resist, to survive, to protect their children, or to create space to maneuver within the constraints they face. The reasonableness of the choices made within the constraints they face is obliterated. In addition, the stereotype of “battered women” as passive victims might secure them help or protection in one context, but may boomerang to harm them in another.

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31. See Abrams, supra note 15, at 334-37; Goldfarb, supra note 15, at 619-21; Schneider, supra note 1, at 531-35.
33. Miccio, supra note 32, at 1100-01.
34. Id.
35. For example, women who have been abused may lose custody of their children because they are seen as too passive to act as responsible parents. Abrams, supra note 15, at 344-45; Mary E. Becker, Double Binds Facing Mothers in Abusive Families: Social Support Systems, Custody Outcomes, and Liability for Acts of Others, 2 U. CHI. L. SCH. ROUNDTABLE 13, 14-16 (1995); Naomi Cahn, Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions, 44 VAND. L. REV. 1041, 1064-68 (1991); Linda J. Panko, Legal Backlash: The Expanding Liability of Women Who Fail to Protect Their Children from Their Male Partner’s Abuse, 6 HASTINGS WOMEN’S L.J. 67, 87 (1995); see also Jane Harris Aiken, Intimate Violence and the Problem of Consent, 48 S.C. L. REV. 615, 626-27 (1997) (explaining how leaving an abusive situation can be used as evidence of instability and unfitness in custody hearings).

Women may also have their children removed from their care due to a failure to protect the children from abuse or from witnessing the mother’s abuse. Becker, supra note 35, at 13-16, 20-21; Miccio, supra note 32, at 1089-90, 1101-02; Panko, supra note 35, at 67-69; Evan Stark, Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control, 58 ALB. L. REV. 973, 992, 994-95 (1995).
Other women, whose actions challenge the stereotypical portrait, who wish to assert their capacity to shape or control the violent situation in some way, are often left outside of the sphere of protection offered by the legal developments regarding domestic violence.\textsuperscript{36}

Fourth, the power of the construct of the “battered woman” tends to put the focus on the woman, rather than the man who is violent.\textsuperscript{37} This focus has two consequences. First, the common question asked about abused women is “Why didn’t she leave?” This question tends to obscure the inquiry about why she had to face the violence at all.\textsuperscript{38} Second, the twin constructs of “battering” and “battered woman” are dependent upon the demonization of the “batterer.” Seen solely as the instrument or incarnation of violence, he is rarely a real, complex human being for whom a woman might have felt or still feel affection.\textsuperscript{39} When differences among men who abuse women are minimized or the complexities of a particular woman’s history with a man are invisible, women’s differential responses to varying situations are more difficult to comprehend.\textsuperscript{40} Therefore, women’s efforts to find help for or to protect the person who has abused them are understood, at best, as misguided and, at worst, as demented.\textsuperscript{41} Other women’s efforts to protect their children’s relationship with a parent who may be

\textsuperscript{36} Abrams, supra note 15, at 334-35, 368-74 (noting the disenfranchisement of Black women); Goldfarb, supra note 15, at 625-26; see also Stark, supra note 35, at 1012-14 (showing one woman’s aggressiveness in court which did not fit the stereotype of a passive victim).

\textsuperscript{37} See Abrams, supra note 15, at 325-29; Becker, supra note 35, at 15, 27 (describing the cultural tendency to blame mothers); Littleton, supra note 15, at 38; Mahoney, supra note 15, at 25-26; Peter Margulies, The Violence of Law and Violence Against Women, 8 CARDozo STUD. L. LITERATURE 179, 186 (1996); Meier, supra note 14, at 1311; Panko, supra note 35, at 85-86 (noting society’s tendency to blame the woman who has been abused); Schneider, supra note 1, at 530; cf. Cahn & Meier, supra note 15, at 344-45 (enumerating the frequency of women’s victimization by domestic violence).

\textsuperscript{38} See Becker, supra note 35, at 18-19; Cahn & Meier, supra note 15, at 343-45; Littleton, supra note 15, at 43-47, 52-56; Mahoney, supra note 15, at 5-7; Panko, supra note 35, at 85-86 (emphasizing the actions of the violent man as opposed to the actions of the “battered woman”); Schneider, supra note 1, at 557-59; see also Lucie E. White, No Exit: Rethinking “Welfare Dependency” from a Different Ground, 81 GEO. L.J. 1961, 1987-88 (1993) (describing a past welfare recipient who stayed in an abusive situation to hold the marriage together).

\textsuperscript{39} Becker, supra note 35, at 17-18; Cahn, supra note 20, at 2490; Cahn & Meier, supra note 15, at 344, 355-56; Espinoza, supra note 14, at 906-07 (describing one woman’s difficulty separating herself from her abuser); Peter Margulies, Political Lawyering. One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate, 3 MICH. J. GENDER & L. 493, 504-05 (1996) (illustrating the affectionate feelings that “battered women” may still have for their abusive men); Mills, Intuition, supra note 14, at 184-85 (describing the occasional abuser).

\textsuperscript{40} Mahoney, supra note 15, at 34-43.

\textsuperscript{41} Id.
loving, or, at least adequate, by staying in an abusive situation or resisting punishment of an abusive partner are demeaned, ignored, or treated as irrational.  

Fifth, these four characteristics of the concepts of "battering" and "battered woman" lead many women not to recognize themselves or their experiences in the standard narrative of domestic violence. In order to secure what legal protections exist, they often must violate their own understanding of themselves and conform to the dominant stereotype. In making this strategic maneuver, a woman can feel additional powerlessness at her inability to explain her own situation as she experienced it. If she refuses to participate in this violation of her self-understanding, a woman may forego the limited protections that the legal system offers. She may decide to withdraw from the legal system that seems to demand adherence to the stereotype, incurring the wrath or the pity of many participants in that system. She may even end up jailed or punished for failing to play her appointed role. Alternatively, if she proceeds in the legal system but refuses to adopt the standard story, she may find herself denied the protection that she sought.  

Sixth, using legal remedies may create additional dangers for women who have been abused rather than ensuring or even increasing their safety or the safety of their children. This feminist critique is directed not just at the partial nature of most legal tools, but also at the site of the decision about whether to use available legal mechanisms. Beyond the debates about whether or not civil protection orders, arrests, criminal prosecutions and incarceration actually decrease the incidence or level of violence in the aggregate, these critics are concerned that those who work with or counsel
the women, initiate legal actions, or make decisions in those cases disregard and belittle an individual woman’s evaluation of the danger she or her children face when she participates in legal action.47

These feminist theorists and activists seek first to reveal and challenge the assumptions behind and consequences of legal reforms, many of which they themselves originally sought.48 Second, they attempt to place these reforms in a historical and political perspective, in order to further our understanding of how visions implicit in legal reforms may not be apparent until those reforms are realized and how the consequences of legal change may not be predictable or intended.49 Third, these theorists and activists are engaged in a search for new legal strategies that provide abused women with legal accounts of abuse by an intimate partner that resonate with their own experiences, that create additional space for safely challenging that abuse, and that do not separate social policies regarding domestic violence from the complex and multiple realities of women who must find ways to cope with violence in their intimate relationships.

II. THEORIES OF REPRESENTATION FOR WOMEN WHO HAVE BEEN ABUSED

Scholars who teach students in their clinical courses to provide representation to clients, including women who are abused by intimate partners, confront, in multiple aspects of their students’ representation, the images of “battering” and “battered women” that are so troubling to the emerging feminist critique of the now dominant domestic violence narratives. These images appear in the students’ own implicit or explicit understanding of domestic violence, in the attitudes and behavior of judges, opposing counsel, witnesses, police, prosecutors, court clerks, family members, friends, social service providers, and other participants in the legal system. Faced with these images, clinical theorists have begun to articulate and teach a vision of the lawyer-client relationship, in which the lawyer

14, at 188-91 (supplying differing views about the effectiveness and safety of having mandatory or preferred arrest policies); Symposium on Domestic Violence, 83 J. CRIM. L. & CRIMINOLOGY 1 (1992); Angela Corsilles, Note, No-Drop Policies in the Prosecution of Domestic Violence Cases: Guarantee to Action or Dangerous Solution?, 63 FORDHAM L. REV. 853 (1994).


48. See generally Bryant & Arias, supra note 14; Cahn, supra note 20; Cahn & Meier, supra note 15; Mahoney, supra note 17; Mills, Silence, supra note 16.

49. See Abrams, supra note 15, at 325-29, 344-46 (analyzing the consequences of dominance feminism).
works with the client to create an experience for the client in the legal system in which the woman can both learn about and make decisions about ways to use the legal system, including bypassing the system entirely, in the process of defining and meeting her needs.

Several theorists of practice have identified elements that they think are essential to effective representation of women who have been abused. Although these various efforts to create models of representation for women who have been abused have differences, certain recurring characteristics emerge from these models. Identifying these characteristics can be helpful in increasing our awareness of the assumptions we bring to representation for women who have been abused, evaluating our emerging conceptions of this representation, fashioning alternative models, identifying lawyering practices through which the models can be realized, and exploring pedagogical methods that would enable students to learn how to provide and critique the practices that the aspirational models describe.

In different ways, these theorists of practice are particularly attentive to the affective components of the lawyer-client relationship. Two of them, Peter Margulies and Linda Mills, have explicitly characterized their models as "affective." A third, Leslie Espinoza, has characterized hers as "therapeutic." A fourth, Joan Meier, in the creation of a model integrating both legal and psychological theory and practice, has made the affective component central to her vision of lawyering. Finally, while Susan Bryant and Maria Arias are deeply concerned about making a client’s understanding of her situation and definition of her needs a critical component in the interaction between lawyer and client, they also stress the importance of other aspects of client representation. Some, but not all, of these developing models of lawyering for women who have been abused in an intimate relationship are deeply rooted in and draw heavily upon psychological theory.

50. Bryant & Arias, supra note 14, at 215-16 (interviewing skills); Espinoza, supra note 14, at 908-09 (lawyer putting client’s story in the context of the client’s personal history); Margulies, supra note 14, at 1092-1103 (domestic violence survivors’ access to, connection with, and voice in the system); Margulies, supra note 39, at 496, 506-07 (discussing the emotional requirements); Meier, supra note 14, at 1328-37, 1363-66; Mills, Silence, supra note 14, at 1240-48, 1257-60.

51. Margulies, supra note 14, at 1072-74; Mills, Intuition, supra note 14, at 192; Mills, Silence, supra note 14, at 1228-31, 1257-60.

52. Espinoza, supra note 14, at 936-37.


55. Linda Mills is a lawyer, a social worker and a professor of Social Welfare at the School of Public Policy and Social Research at the University of California at Los Angeles, where she teaches both social workers and lawyers. Joan Meier, a lawyer and a law professor, has developed her model of representation in collaboration with Mary Ann Dutton, a clinical psychologist. Meier, supra note 14, at 1296-99; Mills, Intuition, supra note 14, at
A. Reflection on Experience

First, these models of lawyering encourage lawyers representing women who have been abused to identify and reflect upon, both before and during their representation, their own experiences of and feelings about violence or powerlessness in intimate relationships. This reflection is needed for three interrelated reasons. First, understanding his or her own vulnerability and powerlessness within intimate relationships is part of a lawyer's ability to experience empathy with the client's situation. Although the lawyer may


56. See Bryant & Arias, supra note 14, at 218-21; Espinoza, supra note 14, at 936-40.

57. Linda Mills has described the importance of the “mutual recognition of distinctly similar, yet uniquely different, emotions” in the lawyer-client relationship. Mills, Silence, supra note 14, at 1228-29. For Mills, advocacy for abused women in an intimate relationship is dependent on lawyers’ “ability to feel their own impotence in the subtext of their own relational worlds, and on their capacity to acknowledge their powerlessness in the face of lovers, supervisors, opposing counsel, or judges more powerful or seemingly more persuasive than themselves.” Id. From this reflection on their own experiences, lawyers can become “both cognizant of the differences between themselves and their clients, their own abuse, and the abuse of the battered women before them, and simultaneously capable of finding the shared ground, or space in between, that is, the similarities of the violence they have both endured, which serves to bridge the differences between them.” Id. at 1229; see also Cahn & Meier, supra note 15, at 345-46; Margulies, supra note 14, at 1094-98; Meier, supra note 14, at 1333-37; Mills, Intuition, supra note 14, at 197-98; Ann Shalleck, Clinical Contexts: Theory and Practice in Law and Supervision, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 176-77 (1993-1994).


Also, within the literature about the nature of law, several legal scholars from different theoretical perspectives have debated the importance of empathy. See, e.g., Lynne N. Henderson, Legality and Empathy, 85 Mich. L. Rev. 1574 (1987); Toni M. Massaro, Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?, 87 Mich. L.
not have gone through the same type of experience as the client, the lawyer needs to find within his or her own experience a basis for beginning to understand the situation of a client on an emotional level.\textsuperscript{58} For these theorists, the discovery of common experiential ground is necessary, not primarily for instrumental reasons of gaining the trust of or increasing rapport with a client, but for the construction of a relationship built explicitly on the shared recognition of the similarities and differences in their situations.\textsuperscript{59} From a relationship characterized by this sort of understanding comes the lawyer’s abilities to act effectively with and for the client.

For these theorists, self-reflection is important for more than empathic understanding, however. Reflection by the lawyer on his or her experiences is part of the process of understanding the pervasive nature and complex dynamics of intimate violence.\textsuperscript{60} The lawyer needs to see intimate abuse not as a single category within which one fits or not, but as a complex mixture of experiences involving not just physical violence, but also coercive behavior and the exercise of power and control,\textsuperscript{61} as well as other, yet unnamed, forms of domination and dependency. From this identification of commonalities of experience, lawyers can see that abuse is not a problem of the “other,” but a shared experience, even if the experience is different.\textsuperscript{62}

\textsuperscript{58} Linda Mills has stressed that lawyers must undertake this self-reflection in order to understand their clients “not intellectually or ideologically, but rather, through their personal experiences of strength and weakness, passion and melancholy, distance and deprivation in all facets of their lives.” Mills, Silence, supra note 14, at 1228; see Ellmann, \textit{Ethic of Care}, supra note 57, at 2700; Phyllis Goldfarb, \textit{A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education}, 75 Minn. L. Rev. 1599, 1669 (1991) (“Feelings often provide windows to thought, and analyzing the causes and consequences of particular affective reactions often is a valuable step toward comprehending experience.”); Henderson, \textit{supra} note 57, at 1579-82; Mills, Intuition, supra note 14, at 197-98.

\textsuperscript{59} Meier, \textit{supra} note 14, at 1334; Mills, Silence, supra note 14, at 1228-29, 1258-60; see also Ellmann, \textit{Empathy and Approval}, supra note 57 (describing lawyering in which lawyer and client share common concerns and goals); Ellmann, \textit{Lawyers and Clients}, supra note 57, at 734-39. \textit{See generally} other sources cited \textit{supra} note 57 concerning the debates about the uses of empathy within the lawyer-client relationship. \textit{Cf.} Margulies, \textit{supra} note 14, at 1096-98 (advocating use of empathy as an instrumental technique).

\textsuperscript{60} Mills, Intuition, supra note 14, at 197-98; Mills, Silence, supra note 14, at 1228-30.

\textsuperscript{61} See Abrams, \textit{supra} note 15, at 344-46, 368-69; Mahoney, \textit{supra} note 15, at 53-60; Meier, \textit{supra} note 14, at 1317-22; Schneider, \textit{supra} note 1, at 538; Stark, \textit{supra} note 35, at 985-86 (exploring issues of power and control).

\textsuperscript{62} Mahoney, \textit{supra} note 15, at 10-19; Mills, Silence, \textit{supra} note 14, at 1258-60; see also Jane M. Spina, \textit{Reflections on a Case (of Motherhood)}, 95 Colum. L. Rev. 1990, 2049 (1995) (discussing “otherness” in a foster parent case); White, \textit{supra} note 57, at 1508-09 (identifying the paradoxical nature of empathy—while we catalogue similarities with the
Within these models, reflection by the lawyer furthers a third goal. Only with reflection can the lawyer respond respectfully to both the client’s understanding of, and the decision-making affecting, her life. Lawyers must confront and overcome any barriers in their own reactions to and understanding of a client that could prompt them to disregard or overwhelm a client’s own thoughts and decisions about how to proceed in a case.

63. It is not clear within the affective lawyering literature whether the lawyer should have a non-judgmental or respectful attitude toward the client. These two attitudes overlap in many ways, but one can easily imagine scenarios in which a lawyer could have one attitude and not the other. See Ellmann, Empathy and Approval, supra note 57, for an insightful discussion of how expressions of empathy may reflect or communicate a positive judgment. For Ellmann, these positive judgments “need not always remain so veiled.” Id. at 993. They are not only less problematic than they have generally been viewed within standard clinical literature, but also can contribute to good lawyer-client relationships. Id. at 1014-15; see BASTRESS & HARBAUGH, supra note 57, at 116; BINDER ET AL., supra note 57, at 40, 53, 60-61. A similar instability seems to characterize the relationship between withholding judgments about and having respect for the client’s understanding and choices. See BASTRESS & HARBAUGH, supra note 57, at 130; Bryant & Arias, supra note 14, at 219; Ellmann, Empathy and Approval, supra note 57, at 997-1000.


In addition, the standard clinical literature on lawyering places great weight on lawyers’ facilitating a decision-making process rooted in the client’s own values. David Binder and
For these theorists, the lawyer's ability to not impose his or her own assumptions, ways of thinking, stereotypes, or biases on a client is grounded in reflection on the lawyer's own experience. A lawyer's views of and feelings about intimate abuse cannot just be left outside the door to the lawyer's office. A lawyer can "shed" those attitudes only by reaching into his or her own experience and finding commonalities, as well as differences, with the client. The lawyer, by appreciating, or at least sensing, the ways in which he or she shares in the vulnerabilities of the client, even if their experiences have been different, may avoid judging the client. As the lawyer perhaps becomes increasingly uncertain about what he or she would have done if in the client's situation, the lawyer becomes less likely to impose on a client a course of action that arises from the lawyer's imposition of his or her own framework of understanding on the client.

As with the development of empathy, the process of not judging a client is a part of understanding the nature of intimate violence. For these theorists, the uni-dimensional conception of "battering" within the dominant theories of domestic violence has masked the complexities and contradictions of the interactional structures within which intimate violence occurs. It has permitted and even encouraged participants in all parts of the legal system to judge harshly women who have experienced abuse. By failing

his colleagues have called this approach "client-centered." See Binder et al., supra note 57, at 18, 20-21, 259-86, 347-61; see also Bastress & Harbaugh, supra note 57, at 256, 283-303, 319-23.

65. See Espinoza, supra note 14, at 912 (illustrating reflection on the lawyer's own experience that assists the lawyer in understanding her client's experience of abuse).

66. For Mills and Meier, the process of reflection requires acknowledgment and exploration of the countertransference that occurs between lawyer and client. See Meier, supra note 14, at 1349-56; Mills, Silence, supra note 14, at 1246-48.

Other clinical theorists, not writing specifically about the representation of women who have been abused in an intimate relationship, have also identified the importance of recognizing the operation of countertransference in the lawyer-client relationship. See Bastress & Harbaugh, supra note 57, at 296-97.

67. White, supra note 57, at 1509.

68. See Espinoza, supra note 14, at 922-23, 925-30, 933-36 (discussing complex issues in the lives of women who are abused that are hidden by dominant narratives of abuse).

69. Panko, supra note 35, at 85-87; see Espinoza, supra note 14, at 926 (describing how lawyer's judgment of client's approach to violence in her life prevented listening to client's story); see also discussion supra Part I regarding the double binds created for women who are identified as "battered." If they adopt the persona of the "battered woman," they may receive help from the legal system in the form of protection orders, criminal sanctions against an abuser, or acquittal for a retaliatory act on their part, but they may be penalized for their "helplessness" in custody, child neglect or other legal actions against them. They may suffer if they are coerced by the legal system into separation through the increased danger they face in the future from the abuser. Their understanding of themselves and the meaning of violence in their lives may be greatly damaged through their acquiescence in a
to see and respect an individual woman's sometimes shifting and contradictory ways of dealing with and interpreting the violence in her relationship, a lawyer may easily impose his or her own understanding of the violence on a client as the client makes the multiple decisions involved in taking any legal action at all, including meeting with a lawyer. The lawyer can come to understand the dynamics involved in continuing in an intimate relationship in which there is abuse only if he or she accepts the conflicted and unstable accounts that the woman has of her relationships and experiences.  

B. Recognition of the Fluidity of the Lawyer-Client Relationship

The second characteristic of these models of lawyering is their explicit recognition of the fluidity of the lawyer-client relationship. A woman who is or has been in an abusive relationship and has entered the legal system is often in a long process of coming to understand the relationship and herself within that relationship. As her understanding of the complex dynamics of the relationship changes, and her vision of herself alters over time, she can bring great instability to the relationship with her lawyer. In addition, the relationship between the client and her lawyer can become an element affecting her concepts of her life and herself. Therefore, the lawyer needs to see his or her role not as furthering a stable goal of the client, but as creating an opportunity for a client to explore multiple possibilities, as well as her own changing desires to further any of them.

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70. See Naomi R. Cahn, The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice, 77 Cornell L. Rev. 1398, 1424-30 (1992) (identifying the ambiguities of accounts and interpretations of domestic violence); Espinoza, supra note 14, at 908-09, 912-13 (describing the importance of creating a space for and listening to the changing and contradictory stories of women who have been abused).

71. Espinoza, supra note 14, at 908-09, 911-12 (illustrating the uncertainty that exists in the lawyer-client relationship of a domestic violence case); Meier, supra note 14, at 1343-47; Mills, Intuition, supra note 14, at 191-92; Mills, Silence, supra note 14, at 1229-30, 1235-58.

72. Cahn, supra note 20, at 2475; Espinoza, supra note 14, at 911-14; Meier, supra note 14, at 1343-47; Mills, Silence, supra note 14, at 1229-30, 1239.

73. William Simon has written insightfully about how a client does not come to the lawyer-client relationship with fixed, stable needs, but throughout the relationship with the lawyer and partly resulting from that relationship, engages in a process of formulating and reformulating those needs. William H. Simon, Visions of Practice in Legal Thought, 36 Stan. L. Rev. 469 (1984).

74. See Espinoza, supra note 14, at 913-14 (describing the importance of a lawyer's
The fluid character of the lawyer-client relationship, therefore, has two components of particular importance for women who have been in abusive relationships. First, it helps to affirm within the process of representation the non-judgmental attitude of the lawyer. If the woman can experience a space within which she can examine multiple possibilities and shift among them freely without fear of being judged as unstable or indecisive, she is then better able to figure out, within the contours of that relationship, what she thinks is best for her to do. If most people in the legal system are telling her that she ought to leave, she has at least one place where the desirability of leaving is not assumed and the complexities of separating are acknowledged not just in words, but throughout the multiple aspects of the lawyer-client interactions.

Second, by explicitly recognizing the unstable character of the client's goal, the lawyer is better able to accept the seemingly non-instrumental character of the representation. The purpose of the representation is not just to help the client achieve what she wants, but to work with the client to help her figure out what she wants. The client's ambivalence is not a moment to be confronted and worked through, but an important and continuing aspect of a case. The process of deciding what she wants may even be bound up for the client with the process of attempting to bring about an articulated goal. When concrete actions are taken to move towards a goal, a client may see that the goal is not what she understood it to be abstractly, or that the goal has consequences she did not foresee. As the client shifts in what she wants, the lawyer can come to understand the multiple meanings that each step within the legal system has for a woman who is abused within an intimate relationship.

ability to adapt to the changing stories of the client in order to assist the client in coming to her own decisions with the lawyer about the legal story she wants to tell).

75. Espinoza, supra note 14, at 908, 912-14, 926; Meier, supra note 14, at 1364-66; Mills, Silence, supra note 14, at 1229.

76. Descriptions of client-centered lawyering rhetorically affirm the importance of client-centered decision-making and create models for taking great time and care with the process of developing, examining and arriving at decisions. See BASTRESS & HARBAUGH, supra note 57, at 235-36, 256, 264-65, 267-68; BINDER ET AL., supra note 57, at 1272-80; Dinerstein, supra note 57, at 502-11. Nonetheless, even client-centered lawyering can have a strongly instrumental feel to it. Once the client's goals are articulated, the lawyer goes about furthering them. Even if that process of implementing the client's goals is a collaborative one within which the client actively participates, see, e.g., Mills, Silence, supra note 14, at 1229-31, 1257, the unstable character of the client's goal(s) has not received significant attention within the literature about client-centeredness.

77. See Shalleck, supra note 57, at 156-57, 168 (stressing the importance of exploring, at multiple levels and in multiple ways, what story a client wants to tell, how a client wants to be portrayed, and what a client wants in the process of constructing a case theory).

78. See id., at 164-65, 166-67 (discussing the importance of evaluating the results of
C. Working Collaboratively with Clients

The lawyer and client operate collaboratively within these models of lawyering. This collaboration is grounded in two principles. First, this model rejects the pre-eminence of legal solutions for women who are abused in their intimate relationships. Not only are legal remedies limited in their effectiveness in stopping or reducing violence, but they can interfere with a woman’s ability to develop for herself both an understanding of the violence in her intimate relationships and responses that enable her to alter the situation in ways that meet her changing needs. At their worst, legal actions can further harm women. If the lawyer treats legal understanding of violence and legal remedies as no better than any other possible understanding or response, and if the lawyer views a woman’s decision to pursue a legal remedy as constantly fluid, then the lawyer has no special claim to expertise. Within this framework, a client must be treated as an equal participant in shaping both the understanding of what type of action should be taken and how it should be pursued.

Second, the lawyer’s ability to act effectively for his or her client is dependent upon a relationship within which lawyer and client recognize each other as jointly involved in a common enterprise. For some of the theorists of this model of lawyering, the lawyer not only takes on a client’s goal, but participates with the client in achieving a goal that has significance legal action from the perspective of the client and in terms of the client’s life).


80. Finn, supra note 5, at 44-46, 51-53 (offering nonlegal options for women who are abused); Mills, Silence, supra note 16, at 1233-38, 1256, 1261-62; Shalleck, supra note 57, at 150, 157, 166, 168 (describing the importance of lawyers not translating client stories into legal theories or client goals into legal solutions without the active participation of the client).

81. Bryant & Arias, supra note 14, at 219; Mills, Intuition, supra note 14, at 188-89; Mills, Silence, supra note 14, at 1227, 1233-38; see also supra notes 35 and 44.

82. The importance of both legal and non-legal client concerns, as well as legal and non-legal solutions to client problems are powerful themes in standard clinical literature. See, e.g., BASTRESS & HARBAUGH, supra note 57, at 256; BINDER ET AL., supra note 57, at 5, 8-10, 13-14, 201-03, 295. Elsewhere, I have critiqued the demarcation of the legal from the non-legal. Shalleck, supra note 64, at 1749-50; see also Cahn, supra note 20, at 2502-03, 2507-08 (discussing a more equal attorney-client relationship).

83. Although the lawyer’s approval of a client’s effort is not the same as entering into a collaborative relationship with the client, approval may often be a significant part of the lawyer’s attitude toward the client in approaching representation collaboratively. See Ellman, Empathy and Approval, supra note 57, at 994-1005 (discussing the functions of approval in the lawyer-client relationship).
for both of them. For some advocates of this model of lawyering, this collaboration entails at least some form of self-disclosure by the lawyer. Advocates of this approach stress the importance of the respect and shared commitment that come from mutual self-disclosure that is part of a collaborative effort despite the dangers of manipulation, imposition of the lawyer’s understandings and responses on a client, and the inequality that may be a part of the lawyer’s having and exercising discretion about how and when to disclose aspects of his or her life to the client.

D. Developing Responses that Enable Clients to Take Steps that Are Viable Within Their Particular Situations

This model of lawyering is particularly attentive to the limitations of remedies available through the legal system to women who have been in abusive relationships. Even the legal system’s more innovative efforts of the last few years fail to respond to the needs of most women who are attempting to figure out ways to deal with the violence in their intimate relationships. Because of the legal system’s emphasis upon eradicating violence rather than understanding it or helping women find ways to address the intimate violence in their own lives, as well as the system’s emphasis upon the termination of a woman’s relationship with the person who has abused her, the remedies available through the legal system often do not provide women an opportunity to make the changes in their lives that they need. When the inadequacies of these remedies are combined with the need to conform to the stereotypical image of a “battered woman” that the legal system reinforces, many women seek to escape from the system once they enter it or are deterred from even approaching it at all.

84. See Goldfarb, supra note 15, at 1670; Mills, Silence, supra note 14, at 1229, 1231, 1255, 1258; see also Gerald Lopez, Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education, 91 W. VA. L. REV. 305, 356-57 (1988-1989) (advocating collaboration as an important skill for lawyers working with clients who are subordinated).


86. For a discussion of the dangers of lawyer self-disclosure, see Ellmann, Ethic of Care, supra note 57, at 2696-97; O’Leary, supra note 14, at 217-18.


88. See Bryant & Arias, supra note 14, at 216, 219-20; Cahn, supra note 20, at 2486-87; Cahn & Meier, supra note 15, at 344-45; Espinoza, supra note 14, at 927; Margulies, supra note 37, at 185; Margulies, supra note 39, at 504, 507; Meier, supra note 14, at 1343-46; Miccio, supra note 32, at 1097-98 (exploring “battered women’s” reluctance in using the legal system); Mills, Silence, supra note 14, at 1239, 1242, 1249-52.
Within this legal context, lawyers for women who have been abused face several challenging tasks in their relationship with a client. The lawyer needs to work with the client to develop a variety of actions that both fit with the client's sense of her own capacity for acting and respond to the shifting and conflicting needs that the client feels.\(^8\) Also, the lawyer needs to explore with the client how each of those responses might work if implemented.\(^9\) Each response might or might not have a legal component to it.\(^9\) The lawyer needs to respect the client's judgments about the dangers that any action might pose, as well as the disruption of the client's life that each action could entail. In identifying and explaining various legal actions that could be a part of a client's plan, the lawyer needs to be particularly careful not to favor legal action over other kinds of actions, either implicitly or explicitly.\(^9\) Furthermore, in describing the nature of the legal actions, as well as the multiple consequences that might flow from them, the lawyer needs to draw upon his or her understanding of the client in anticipating the meaning that those consequences could have for the client in her own struggle to deal with the violence in her relationship.\(^9\)

**E. Making Time**

Often, for lawyers, time assumes the quality of a commodity. While it feels like the most precious thing we have, it also feels like the one over which we have the least control. Lawyers can feel that they are constantly in a responsive mode, answering to multiple demands, each of which makes a claim upon their time, often unpredictably and insistently. Against this backdrop, lawyering in this model requires that lawyers recognize the centrality of time in the process of representing women who have been in

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11. Robert Dinerstein provides an insightful critique of lawyer-centered development of alternatives in the work of David A. Binder & Susan C. Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (1977), as well as an interesting example of how a lawyer can work with a client to develop options in terms of the client's understanding of what choices mean in the client's life, rather than in terms of legal categories. Dinerstein, supra note 57, at 509-603. Clinical literature has addressed in detail the process of working with clients to identify possible actions and to evaluate those possibilities in terms of a broad definition of a client's needs. See, e.g., Bastress & Harbaugh, supra note 57, at 255-82; Binder et al., supra note 57, at 272-361 (addressing the role of a lawyer in a client's decision-making process).
13. See Bastress & Harbaugh, supra note 57, at 258-65 (discussing what they refer to as "advanced empathy," which is a process that involves anticipating thoughts and feelings that the lawyer thinks are implicit in a client's account of her or his situation).
abusive relationships. Each of the elements of lawyering identified above demands significant and often unpredictable allocations of time. In order to be self-reflective in a serious and meaningful way, the lawyer must set aside time to explore his or her own feelings and experiences. Developing empathic understanding of the relationships surrounding the violence in someone’s life involves becoming familiar with the details and texture of her experiences and thoughts. Accepting the constant changes in a client’s desires regarding her situation requires patience and attention to the reasons for the shifts in understanding and decisions. The mutual recognition of shared understanding and shared projects that characterizes a collaborative relationship comes only after multiple interactions and much exploration in the search for common ground. Developing with a client creative and specifically tailored responses to her situation is a process that results only after lawyer and client have imagined and explored multiple possibilities.

Identifying some elements of a model of representation for women who have been abused is an important step in developing ways to make the law and the legal system genuinely valuable tools for women seeking to deal with violence in their lives. Lawyers have the potential to be both important resources for these women as they confront the legal system, as well as theorists with a critical perspective on the law that is firmly rooted in concrete experiences with many different women who are seeking to bring about some change in their lives. Defining the characteristics of an aspirational model of lawyering is, however, only one step in this process. It is necessary to examine, from the perspective of practice, the assumptions contained within the models and the meaning that the characteristics of the model have when implemented through the actual work of lawyering and teaching people to be lawyers. From our actual practices, we can see not only our articulated goals, but also the assumptions implicit in our practices, as well as the meaning that these characteristics of the model have when implemented through the actual work of lawyering.

III. THEORY AND EXPERIENCE

The feminist critique of the dominant legal frameworks for addressing domestic violence, as well as the efforts of a group of theorists of practice to formulate a model for representation of women who have been abused provide a basis for a dialogue about the roles of theory and experience in shaping our understanding of the law affecting women who have been abused and lawyers’ representation of these women. Feminist theorists have

94. Bryant & Arias, supra note 14, at 222; Espinoza, supra note 14, at 908, 923-24; Margulies, supra note 14, at 1073, 1088; Mills, Intuition, supra note 14, at 192; Mills, Silence, supra note 14, at 1229-30.

95. Shalleck, supra note 57, at 167 (noting the importance of repeated reflection on experience).
become increasingly concerned that legal developments affecting women who have been abused are failing in significant ways to meet the needs of women who confront violence in their intimate relationships. These insights have emerged largely from an examination of the relationship between theoretical understandings of domestic violence and the actual contexts within which theories about abuse have been given meaning. Theorists of practice have been working for nearly a decade to develop a contextualized understanding of law and legal practice. Examining the representation of women who have been abused provides an opportunity to see how theoretical understandings of intimate abuse and women’s experiences of abuse matter to our understanding of law and lawyering in a particular context, and how our experiences of representing women who have been abused can provide critical insights about the legal frameworks for addressing intimate abuse.

My approach to this inquiry about theory and experience comes from my work in a clinical program in which students provide representation to women in a wide variety of contexts, including the context of abuse by an intimate partner. Although the clinic is not focused solely on domestic violence, the students in the clinic provide representation in many different legal actions to women who have been abused. For example, they represent women who have been abused in actions to obtain and enforce civil protection orders, custody and support actions, divorce, and child neglect cases in which domestic violence may or may not be a part of the claim that a child has been neglected, as well as a wide variety of legal matters, such

96. Elizabeth Schneider has played a particularly important role in fostering an understanding, rooted both in theory and in practice, of abused women. See, e.g., Schneider, supra note 1; Elizabeth M. Schneider, The Dialectic of Rights and Politics: Perspectives from the Women’s Movement, 61 N.Y.U. L. Rev. 589 (1986).


99. In the District of Columbia, where my students practice, these actions are known as “Intrafamily Offense” actions. D.C. CODE ANN. §§ 16-1006 (1997).

100. See Ann Shalleck, Child Custody and Child Neglect: Parenthood in Legal Practice
as housing or public benefits cases, where legal action can assist a woman in dealing with the issues that abuse has created or contributed to in her life. In addition, although the students in the clinic are not the prosecutors handling the cases, they frequently provide representation to women who have decided to pursue criminal remedies as they go through the various steps of the criminal process.

In the process of teaching students to provide representation to these women, I am constantly confronting the roles of theory and experience in shaping the students’ and my own understanding of women who have been abused, and of the relationship between lawyer and client in a situation in which a woman has been abused. In addition, the work of representing women who have been abused can create a critical vantage point from which to evaluate and challenge the theories about women who have been abused that dominate the legal world. The work described above of the feminist theorists who have challenged the underlying visions of the “battered woman” and of “battering” that are currently ascendant in legal thought and action, as well as the work of the theorists of practice who have attempted to define a model of lawyering for women who have been abused, have both contributed significantly to my understanding of what and how we should teach students about being lawyers for these women, and how our teaching can challenge dominant visions of women who have been abused.

In examining the activity of teaching students in a clinical program, we need to address not only our intentions, but also the assumptions that we find embedded within our pedagogical work. Within the choices that we make in organizing and carrying out our educational project, we can find the visions that are implicit in the particular actions that we take. When we identify the assumptions underlying the contradictions and complexities of the difficult choices clinical teachers make daily about teaching their students to represent women who have been abused, we create an opportunity for critical reflection about the vision of the lawyer-client relationship that animates our choices, the understanding of women who have been abused that we find in ourselves, in our students and in the legal system, and a method of contributing to the development of theory about domestic violence and the law.

As we teach students about the process of representing women who have been abused, how do we make theory, in particular theories about these women who are or will be their clients, a fundamental part of teaching them

and Culture, in Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood 308 (Martha Albertson Fineman & Isabel Karpin eds., 1995) (discussing a child neglect and custody case handled in the clinic in which the client’s experience with abuse became apparent only at the point that she sought to transfer custody of her children to her mother).

101. See Shalleck, supra note 57, at 109 (using the choices made in clinical supervision to identify and examine the assumptions underlying the process of supervision).
to be lawyers for these women? This question is important for at least three reasons. First, if one thinks that a theoretical understanding affects the representation that people provide, then, as an instrumental matter, it is important to explore how that theoretical understanding operates in shaping students’ representation of women who have been abused. Second, clinical programs provide a useful position from which to engage in the development and the critique of theory. Situated in law schools, yet engaged in the day-to-day practice of law, clinical programs have the time, the resources, the knowledge that comes from actual practice, and an environment to support theoretical exploration. Third, if we are to take seriously the multiple calls for a contextualized understanding of legal practice, we need to develop ways to teach a type of practice that is attentive to the context created by the clients’ lives, the institutional structures affecting their lives, and the legal frameworks and legal cultures that operate in shaping a client’s experience of the legal system. In short, teaching theory is important in developing lawyers and developing theory.

The question of how teaching theories about domestic violence may affect the attitudes and behavior of the students providing representation to women who have been abused raises at least three problematic issues. The first relates to the contested nature of domestic violence theory. If teaching theory includes presenting students with the dominant frameworks concerning “battering” and “battered women,” the work of feminist theorists challenging these dominant paradigms alerts us to the dangers that the dominant paradigms present in the operation of the legal system. These dominant theoretical frameworks for understanding domestic violence both reflect assumptions about domestic violence that are implicit in the practices of the actors within the legal system and, at the same time, powerfully shape those practices. These dominant frameworks for understanding women who have been abused might shape the students’ understanding of their clients in a similar way and, therefore, affect how the students interpret and respond to their clients.

The various theories that portray women primarily as victims often contain within them an implicit vision of the woman as having an incorrect or false understanding of her situation. Because these theories can

102. See supra notes 96-97 and accompanying text.
103. See Shalleck, supra note 57, at 169, 172.
104. One of the primary assumptions of clinical theory, in its many forms, has been that conceptual understanding and experience interact to create knowledge about lawyering. See, e.g., Gary Bellow, On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology, in CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973); Goldfarb, supra note 58, at 1647-48, 1650-54; Mark Spiegel, Theory and Practice in Legal Education: An Essay on Clinical Education, 34 UCLA L. REV. 577 (1987).
105. This supposedly flawed consciousness of their choices explains, at least in part, why women stay in relationships involving violence.
encourage students to distrust clients’ own accounts of their experiences and interpret their clients’ understandings of their experiences through the filter of the dominant stereotypes, these theories may very well impede students in listening to and hearing, let alone respecting, women’s own interpretations of their experiences of intimate violence. In addition, these dominant frameworks support interventions intended to promote the safety of the woman through separation from the person who is abusing her. They may, therefore, encourage students to impose on a client subtly or unconsciously, or even directly and consciously, their own judgments about the actions she should take. If these theories of domestic violence promote these effects, then teaching them is not likely to contribute to the development of a type of representation that accords with the aims of either the feminist critics of the dominant theories of domestic violence or the theorists of practice. These theories of “battering” and “battered women” may possibly validate the assumptions implicit in the legal frameworks that the students confront and the assumptions the students themselves bring to the experience.

But what if the work of the feminist theorists challenging the dominant frameworks is included in the presentation of theory, as it certainly should be? This solution, although it fits easily with common forms of academic discourse in which multiple, competing theories are presented and debated, is not without its problems within the context of actual clients and actual cases. The significant divisions within current feminist thought concerning the proper legal frameworks for addressing women’s experiences of abuse, disputes that reveal differing visions of women and of the role of the law, are not simply the disputes of the classroom.106 These different visions, when realized in the actions of lawyers, can create different attitudes and behaviors in the lawyer. How do we, as teachers, help the students not only to think through and evaluate the competing theories, but also to figure out how to act with their clients in light of their developing understanding of the theoretical debates? When we as teachers of domestic violence theory have our own views about the theoretical debates and about the relationship of those debates to legal representation, how do we supervise students in their

106. Hanna, supra note 46, at 1850. For example, some believe the law should be an instrument for eradicating or decreasing violence against women, for punishing violent behavior, or for strengthening societal norms stigmatizing abuse. Others believe the law should further women’s own efforts to find safety, to deal with the violence in their own lives, and to devise remedies that work in their own particular situations. Two areas that demonstrate these divisions are mandatory arrest and mandatory prosecution. Both have generated intense disagreements among feminists concerning the proper role for the law in the area of domestic violence. See, e.g., Bowman, supra note 47, at 201; Hanna, supra note 46, at 1850; Sheila J. Kuehl, Introduction to Forum: Mandatory Prosecution in Domestic Violence Cases, 7 UCLA WOMEN’S L.J. 169 (1997); Mills, Intuition, supra note 14, at 183; Donna Wills, Domestic Violence: The Case for Aggressive Prosecution, 7 UCLA WOMEN’S L.J. 173 (1997).
Domestic violence theory is not only contested, but also constantly changing and developing. Feminist criticism of the dominant frameworks for understanding domestic violence is part of a process of change and discovery. As theorists and activists create both new concepts for understanding women’s experience of violence in intimate relationships and different legal frameworks for addressing those experiences, and as they work within the actual conditions of the world to shape the law and legal institutions in light of their evolving understanding, their theory changes as they confront in practice the realization of their theoretical insights in the legal and social world. Some of the elements of current feminist critique of the dominant frameworks concerning domestic violence may turn out, when realized in practice, to be problematic in their own right. For example, some of the feminist critics, in an attempt to emphasize the agency of women who have been abused and to validate the perspectives of the women themselves, may romanticize the actions and perspectives of the women. The elements of resistance, intentionality, and strategic wisdom ascribed by feminist critics to women who have been abused may serve to further respect for them individually and for their understandings of the meaning of their experiences. When realized in practice, however, these elements could give rise to an alternative stereotype that may, in its own ways, prove harmful to women. Women who are abused may go from being stereotypical victims to stereotypical heroes. When we give students even the best critical perspectives that we have available, what do we want them to do with shifting, unstable, partial theoretical understandings as they meet and work with their clients?

Third, in order to educate lawyers who can provide meaningful representation to women who have been abused, we need to integrate the teaching of domestic violence theory with the teaching of both the theory and practice of client representation. Theoretical sophistication and insight does not necessarily translate into representation that is helpful to a woman who has been abused. Developing contextualized understandings of legal

107. See Espinoza, supra note 14, at 919-22 (critiquing her supervision of a student’s approach to a domestic violence case); Shalleck, supra note 57, at 177-78 (discussing the conflicts a clinical teacher faces and the need for reflectiveness in evaluating supervisory decisions).

108. Elizabeth Schneider has stressed the importance of understanding the process by which feminists develop knowledge about domestic violence, a process she identifies as “dialectical.” Schneider, supra note 1, at 520-26; see also Elizabeth M. Schneider, Describing and Changing: Women’s Self-Defense Work and the Problem of Expert Testimony on Battering, 9 WOMEN’S RTS. L. REP. 195 (1986); Schneider, supra note 96, at 598-601.


110. Even having clarity about what is “helpful” is problematic. See Cahn, supra note
practice involves a rethinking of the content of our clinical courses. Over the last twenty-five years, clinicians have developed multiple conceptions of the issues that are fundamental to being a lawyer. They have also written textbooks reflecting these conceptions of the subject matter of clinical education. A rich and varied literature expanding, modifying and challenging these models has emerged. Several of these commentators have stressed the need for an increased awareness of the impact of context on our understanding of lawyering. How then do we integrate the teaching of lawyering theory with theories applicable to the context of the cases or clients whom our students are representing? Do we maintain the fundamental structures of our thinking about lawyering, while making them more context specific? Do we develop alternative approaches to the project of teaching students to be lawyers that are structured around the specific context of the representation?

To begin to work through these three problematic aspects of teaching domestic violence theory, we can use several aspects of the educational experience of a clinic to help frame the choices teachers have in deciding whether and how to present theories about women who have been abused: timing, structure, and the relationship of responsibility, reflection and learning.

A. Timing

Deciding when to address theories about domestic violence depends largely upon one’s view of the relationship between theory and experience in assisting students in figuring out how to work with their clients. If students have the theories early in their clinical experience, that theoretical understanding may help them in identifying, at least cognitively, from the very beginning of their representation of clients the multiple, detailed,
intricate ways in which their representation is related to the frameworks for addressing domestic violence that dominate the legal system and affected by their own underlying assumptions about women who have been abused. When they begin actual representation, they may be able to identify more readily how the frameworks within which domestic violence is handled by the legal system contain assumptions that need not be taken as givens. In addition, the process of confronting theoretical debates explicitly, when approached with techniques that encourage reflection and not just analytic mastery, has the potential to increase students' awareness of their own attitudes about and experiences with violence. In addition, when the students begin to have interactions with their clients, they may be able to test out and evaluate, in light of this experience, the theories they have studied. Their knowledge may become rooted, not just in the analytic component of the theoretical debates, but also in the multiple aspects of their feelings and their experiences.

Alternatively, examination of domestic violence theories can be delayed until after students have had some experience in representing women who have been abused. If students are presented with multiple, competing theories about domestic violence prior to their contact with their clients, when they begin that representation they may be overwhelmed by their awareness of the conflicting consequences for representation entailed by the different theories. At the same time that they are trying to make sense of the fundamentals of the most basic activities of representing someone, they are also confronting the challenge of understanding theoretical questions about the nature of "battering" and the meaning of the construct of the "battered woman" in terms of concrete choices about how to act with their clients.

In addition, where examination of domestic violence theory has initiated the students into their clinical experience, they may be so focused upon the meaning of particular choices they make with their clients in terms of competing domestic violence theories that they may miss the particularity and individuality of each client. Also, by beginning with theory, we may communicate implicitly that experience is primarily a way of testing theory, rather than the basis for the development of theory. If, however, we explore

117. See Bellow, supra note 104, at 388-89 (discussing different pedagogical techniques for capturing multiple aspects of understanding a subject).

118. Id. at 382, 387-88; Bryant & Arias, supra note 14, at 219-22; Goldfarb, supra note 58, at 1647-54.

119. A process that is enormously complex in its own rights. See Bellow, supra note 104, at 391.

120. See Meier, supra note 14, at 1329-30 (discussing difficulties students have in applying theory to case representation).

121. They may also, as Joan Meier describes, compartmentalize their knowledge about domestic violence from their work as lawyers. Id.
theories of domestic violence primarily after students have had some experiences representing women who have been abused, we have the potential to validate the students' own experiences of listening to and working with women as a source for critiquing, modifying, and creating theory. 122

We can time the presentation and analysis of domestic violence theory in many ways over the duration of a clinic so as to intersect and interact with the experiences of the students in providing representation to their clients. We can also use different techniques for addressing theory that are designed with the timing of each presentation of theory in mind. For example, within the different components of a clinic, the teacher may identify themes, such as agency and victimization, early in the course, which can be developed and explored as the students have increasing experience representing women who have been abused. Also, tasks that call upon students to theorize based on their experiences can be intermixed with opportunities to evaluate the theories of others based on what has happened in the students' own work.

Additionally, by breaking down the barriers between what has been conceived of as the teaching of lawyering and the teaching of theory regarding the context of people's lives, we can make theory an integrated part of the subject matter of a clinical course from the beginning, rather than an activity separate from the process of representation. 123 The teacher can identify what clinical teachers have understood primarily as lawyering activities needed to begin the process of representation, such as listening, and reconceptualize them as activities fundamental to the understanding of women who have been abused. 124 The integrated teaching of these activities from the beginning of a clinical course, as part of both basic lawyering and a basic understanding of women who have been abused, can implicitly transmit important messages about domestic violence and about lawyering. Skills and substance are not two separate spheres. Listening is not an abstract skill that lawyers must have, but an activity that matters profoundly in shaping the lawyer-client relationship with a woman who has been abused. Also, domestic violence cannot be understood unless advocates learn to listen to women who have been abused.

The complicated skill of listening carefully not just to the details of a woman's experience, but also to her understanding of that experience, to the ambiguities and conflicts in her accounts of events, and to her formulations of desired results is one essential component of recognizing the particularity

122. See Goldfarb, supra note 58, at 1652; White, Paradox, supra note 64, at 859.
124. See Bryant & Arias, supra note 14, at 216-19 (providing an example of a seminar in which the subject of interviewing is integrated with theories about women who have been abused).
of each woman's experience. For the feminist critics of domestic violence theory, this aspect of representation is a necessary starting point for challenging the essentializing of "battered women" and "battering." Through this reconceptualization of fundamental lawyering activities, the student, while learning lawyering, is also exploring through action the theories of domestic violence. Because listening as a part of lawyering and listening as a part of understanding domestic violence are intertwined, the teacher can teach both throughout the development of the course. As the student learns about the difficulties and uncertainties of what it means to listen to what is said and not said, and discovers how to listen to both the words and the silences, the student can begin to see the complexities and uncertainties of understanding each particular client's experience of abuse.\textsuperscript{125}

In addition, in learning about listening to women who are abused, students can also start to see the different meanings that listening can have within different contexts. The activity of listening to a client may be a part of all lawyering, but it may take different forms and have different significance for representation when carried out in different contexts.\textsuperscript{126}

Also, teaching from the first moments of a course the theory of domestic violence as part of the practice of representing women who have been abused, we transmit certain assumptions about theory, both the theory of domestic violence and the theory of lawyering. We teach students that theory must be grounded in our ongoing attempts to listen to and understand the experiences of women who have been abused.\textsuperscript{127} We convey that our understanding is partial, shifting, and tentative. Finally, we communicate that our actions as lawyers do not just reflect prevailing frameworks of domestic violence, but have the potential to shape those frameworks. The interaction between lawyer and client is a part of constructing what it means for a woman who has been abused to deal with the legal system. We teach our students that the actions of a lawyer need not replicate existing frameworks for understanding domestic violence, but can contribute to new understandings of domestic violence by creating space for the experiences of the client to be heard, even if that space is just the lawyer's office and the understanding is partial and unstable.\textsuperscript{128}

\textsuperscript{125} See id. at 219; Espinoza, \textit{supra} note 14, at 922-23 (discussing particular client experiences of abuse).

\textsuperscript{126} Espinoza, \textit{supra} note 14, at 927.


\textsuperscript{128} See Alfieri, \textit{supra} note 123, at 1234; Espinoza, \textit{supra} note 14, at 916-17; Miller, \textit{supra} note 64, at 488; Shalleck, \textit{supra} note 64, at 1751.
B. Structure

The structures for learning that we have in our clinics provide us with many different types of opportunities for making theory a part of our educational project. Clinical teachers have developed several interrelated components to their clinical courses, all of which offer distinctive ways to make the teaching of theories of domestic violence a part of clinical teaching. The fundamental assumption underlying all of these structures is that the interaction between the experience of being a lawyer, reflection upon that experience, and intellectual inquiry related to that experience creates knowledge about lawyering. The three most common components of clinical courses are the classroom, case rounds, and supervision of student representation. In each of these, we can make the theory of domestic violence a part of the material of the course. The choices we make about how to address the theory within these different components reflect our understanding about what theory is and how theory and experience interact to enable students to represent better women who have been abused.

Domestic violence theory can be addressed in the classroom in multiple ways. Although assigning sets of readings and devoting particular classes to aspects of domestic violence theory is the most common form for addressing theoretical questions and debates, we have other pedagogical techniques that can be used as part of the classroom component of a clinic to teach theory. For example, simulations, which are frequently used to


130. I include in the classroom component the use of simulation as a teaching technique since the classroom components of many clinical programs use simulations as one of the primary means for teaching students the basic concepts of the course. See Shalleck, supra note 57, at 142 n.32; Anthony G. Amsterdam, The Lawyering Revolution and Legal Education 17-19 (July 15, 1985) (unpublished paper presented at the Cambridge Lectures, on file with author).

131. For a discussion of the components of clinical courses, see Shalleck, supra note 57, at 141-49. I am not including in this discussion the use of community service, law reform or impact advocacy projects not undertaken for a client or client group because I am focusing in this article on teaching about the lawyer-client relationship. A number of clinics include these projects as components of their courses. See, e.g., Bryant & Arias, supra note 14, at 210, 212; Meier, supra note 14, at 1325.

132. For an example of the use of readings and classroom discussion, see Bryant & Arias, supra note 14, at 217; Meier, supra note 14, at 1326-27.

133. See Bellow, supra note 104, at 388-89 (identifying pedagogical techniques for
teach lawyering activities such as interviewing, counseling or negotiation, may present situations involving domestic violence, which can raise fundamental questions about how domestic violence is conceptualized.\textsuperscript{134}

Although often used as a technique for teaching lawyering skills, simulations can be effective in presenting theoretical material. In individual critiques of the students’ behavior in the simulations, in small group discussion of experiences in the simulation or in classroom discussion of issues raised in the simulation, the choices made by the students while in role in the simulation can illustrate how particular behaviors in the lawyer-client relationship reflect underlying theoretical assumptions about domestic violence.\textsuperscript{135} Using videotape, the teacher can present and compare a variety of student behaviors reflecting differing assumptions about domestic violence. The teacher can also ask the students to think about and try alternative ways of acting in the simulation that reflect different underlying visions of who “battered women” are. The experience in the simulation coupled with the analysis of the meaning contained within different ways of acting can serve as an entry point into theoretical debates about domestic violence.

In addition, teachers can use the simulation as a stimulus for reflection upon the students’ own experiences of violence or powerlessness. Student journals or reflection pieces about what happened in the simulation, what thoughts and feelings the events evoked, and how those role experiences relate to the students’ own experiences in their lives when not in a role in the simulation can be valuable in getting students to connect a theoretical understanding of domestic violence with their experiences when out of role.\textsuperscript{136} We can use various techniques to make parts of the journal entries an element of the material of the classroom.\textsuperscript{137} Making students’ reflections

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\item \textit{See} Bryant & Arias, \textit{supra} note 14, at 216.
\item \textit{See} Meier, \textit{supra} note 14, at 1335-36 (describing simulation critiques focused on “meta-messages” conveyed by the asking of certain questions or the responses to client statements or questions).
\item \textit{See} Charles R. Lawrence, III, \textit{The Word and the River: Pedagogy as Scholarship as Struggle}, 65 S. CAL. L. REV. 2231 (1992) (stressing the importance of journals in revealing the diversity of student experiences and giving voice to those least likely to feel that they can speak with authority); J. P. Ogilvy, \textit{The Use of Journals in Legal Education: A Tool for Reflection}, 3 CLINICAL L. REV. 55 (1996) (discussing the process and role of journal writing in different types of law courses).
\item Care needs to be taken in using journal entries. Ogilvy, \textit{supra} note 136, at 92-96 (addressing ways to preserve student privacy and confidentiality). When writing in their journals, students need to know under what conditions their entries are to be made accessible to the whole class, either in identifying or non-identifying form. Teachers may get students’ consent to distribution of an entry to the entire class. There are also techniques for using parts of journal entries from many students which do not identify particular students. For example, if the entire entries are not distributed to the class, the teacher could extract
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upon their own experiences a part of the analysis of theories of domestic violence is particularly important to the attempts of theorists of practice to create a model of representation of women who have been abused. Awareness of how one’s own ideas, feelings and experiences affect one’s reactions to a woman who has been abused is critical to an understanding not just of the client, but also of the nature of abusive relationships. Therefore, by encouraging reflection upon the students’ own experiences, journals can help to make those experiences an explicit part of understanding theories of domestic violence.

Simulations are also a way to expand the students’ understanding of what being a lawyer for a woman who has been abused means. Simulation conducted as part of a classroom course can begin to break down amazingly resistant student constructs about what it is to be a lawyer. Students often arrive at clinics believing that “doing law” is learning substantive rules of law, reading and analyzing cases and statutes, identifying doctrinal issues, finding policy arguments, and constructing a legal argument out of legal materials. One of the major contributions of clinical work has been the articulation and conceptualization of a variety of other activities that go into the work of a lawyer. One trend within clinical scholarship has been the presentation of these activities as neutral skills whose components can be neatly identified and categorized. Another trend has been the development of a variety of critical perspectives on lawyering, often referred to as the theoretics of practice, which, while including differing approaches to lawyering, all share profound skepticism about the project of identifying a neutral, universally applicable model of lawyering. In a simulation involving representation of a woman who has been abused, students can feel and analyze how being an effective lawyer for that woman involves not only mastering the wide range of activities that clinical scholars have identified as part of lawyering, but also developing a critical understanding of what

segments from a variety of journals to illustrate different experiences with and reactions to violence and powerlessness.

138. See supra Part II.A (concerning the importance of reflection for empathic understanding of the client’s situation, a nuanced view of the nature and dynamics of domestic violence, and respect for a client’s understanding of and judgment about her life).

139. For a very insightful critique of the traditional educational project of most law schools, see Amsterdam, supra note 130, at 2-7, 9-12.

140. See, e.g., BASTRESS & HARBAUGH, supra note 57; BELLOW & MOULTON, supra note 111; BINDER ET AL., supra note 57.

141. See Shalleck, supra note 64, at 1743-48 (critiquing the neutral conception of lawyering presented in the work of BINDER ET AL.).

each of those activities means in the course of acting as a lawyer for that woman.

Case rounds are also an important setting for the development of an understanding of theories of domestic violence. By bringing together for shared analysis the students' experiences in their cases, case rounds permit students to see a variety of ways to handle situations involving violence in intimate relationships, to challenge one another in their approaches to the clients and the cases, to expand each others' understandings of the possibilities available within seemingly similar situations, to identify similarities and differences in their relationships with their clients, and to analyze the patterns they experience in the operation of the law and the legal system. Because of both the multiplicity of experiences and viewpoints and the grounding of the discussion in the students' actual cases, case rounds present an opportunity not only for testing and critiquing the theories of others from the perspective of the students' own experiences, but for creating theory from the multiple experiences of the group in the clinic.

Although simulations provide an entry point for exploration of domestic violence theory, as well as the freedom of experimentation that comes when a real client or case is not at stake, case rounds assure a firmer grounding to the theoretical discussions by focusing on the students' actual experiences with their clients. Since no one has made up the situations with which the student is presented, students cannot discount the material that is discussed as unrealistic or contrived. Also, the students' experiences with their actual clients are far richer, more complex and more unpredictable than any simulation. Thus, the discussions about domestic violence address a far wider range of factors that affect the situation of a woman who has been abused than do discussions grounded in simulation. Significantly, because case rounds occur regularly throughout the clinical experience, the students can see new information, new issues and new responses emerging over time, as their relationships with their clients change. The fluidity of the lawyer-client relationship, therefore, emerges from the development of the

143. See Shalleck, supra note 57, at 144-46 (discussing purposes of group case analysis meetings).
144. See Shalleck, supra note 64, at 1751; White, Paradox, supra note 64, at 854-55.
145. The complexity and unpredictability of the material presented from actual client representation creates a challenge for the teacher in case rounds in structuring the discussions. The relationship between case rounds and the other components of the clinical course can assist the teacher in organizing and guiding discussion of material that comes in chaotic form. For example, from supervision, the teacher knows many of the issues that are present in each student's work and can bring topics to the group that are at that moment compelling for the students in the clinic. Similarly, the teacher can use case rounds to explore, in light of the richness and complexity of the students' work with their clients, issues that have been raised in the classroom component of the course. See Shalleck, supra note 57, at 141-49 (suggesting ways to make the different components of a clinical course interact with each other in developing issues in the course).
discuss from week to week. Furthermore, students tend to take case rounds very seriously. They look to their fellow students for ideas. They learn to challenge each others’ perspectives. They are curious about differences in approaches and responses that they find when they compare experiences. When asked to think about the relationship of different experiences, they struggle with how to conceptualize and make sense of the experiences they and their fellow students are having. They see how the task of theory development can be collective, drawing on multiple understandings of women’s experiences of abuse, each one of which can change from week to week.

In addition, case rounds are a useful forum for addressing the aspirational aspects of the representational model of women who have been abused suggested by the theorists of practice. In the group, students can struggle to find collective ways to deal with the many difficulties that come with the representation of women who have been abused. Some students encounter frustration at the unstable, shifting nature of a client’s account of an event. Others become angry or hurt when a client changes her mind about what she wants to do. Some students want to save the woman from the danger they perceive to her or to her children and, therefore, often consciously or unconsciously find ways to impose on her their judgment about what action to take. Some find the often unpredictable time demands of the cases distressing due to the disruptions they cause in the students’ attempts to plan work on all of their cases, as well as other parts of their lives.146

Student motivations for wanting to represent women who have been abused do not necessarily produce representation of the type described by the theorists of practice.147 Often students seek out representation of women who have been abused because they want to stop or protect women from domestic violence. They may or may not understand their motivations for doing this kind of representation as linked to experiences in their own lives. Great divergence often exists between the students’ images of what it means to help women who have been abused and women’s own understanding of what they need. Therefore, this representation is often enormously difficult

146. See Bryant & Arias, supra note 14, at 219-20 (describing students who, by failing to hear and understand their client’s fear, spent four days drafting petitions that the client never came to sign); Espinoza, supra note 14, at 911, 918-23 (presenting in a very moving and open way the frustrations and challenges created for the students and the supervisor in the representation of a woman who has been abused); Shalleck, supra note 57, at 153-54; see also Paul R. Tremblay, Rebellious Lawyering, Regnant Lawyering, and Street Level Bureaucracy, 43 HASTINGS L.J. 947, 950 (1992) (discussing the desire to “rescue” clients); Gary Brown et al., Comment, Starting a TRO Project: Student Representation of Battered Women, 96 YALE L.J. 1985, 2015 (1987) (discussing students’ “savior syndrome”).

147. See Lopez, supra note 43, at 1609-10 (demonstrating how client domination can result from a lawyer’s desires to achieve a client’s best interest).
in practice, partly because of the frustrations of the legal system, but, far more commonly, because of frustrations with the clients.

These frustrations and difficulties of working with women who have been abused can easily lead students to greater acceptance of the dominant frameworks of the legal system for handling domestic violence. They may prompt students to see women as victims needing to be protected, even if the women do not recognize or accept that need. Students may also see women as failing to understand or appreciate the danger that they or their children face as explicable within the frameworks of victimization and powerlessness. The students’ discomfort with the client’s knowledge of and approach to her situation, coupled with the students’ confidence in a superior understanding of domestic violence, justifies in the students’ minds imposing their own evaluation of danger, disregarding client wishes, or pursuing solutions that the client may not want. Experience by itself does not necessarily encourage students’ reflection, empathic and non-judgmental responses, acceptance of the fluidity of the lawyer-client relationship, collaborative working relationships with clients, the construction of responses that fit a client’s needs, or comfort with the unpredictability of the time demands of the representation. Also, neither lawyering theory that affirms the centrality of the client’s perspective, whether it be the traditional client-centeredness approach or the theoretics of practice approach, nor feminist critiques of dominant domestic violence theory by themselves provide students with ways to incorporate into their understanding of representation of women who have been abused processes for dealing with the felt difficulty of this work. Exhorting students to realize the aspirational goals of the model is of little value if we cannot help them in devising ways to address the conditions that make the characteristics of the model difficult to achieve.

Therefore, students should have a space to discuss the frustration and anger that this representation often creates for them. For at least some students, the collective discussion that occurs in case rounds enables them to admit to their feelings, to explore their motivations, to identify how the feelings and motivations affect their representation, and to try to figure out together ways to handle these aspects of their experience together as they represent their clients. The group dialogue can give some students a place

148. See Espinoza, supra note 14, at 906-07, 922, 924-26 (presenting an example of how accepted frameworks for handling domestic violence suppressed recognition of or action on client’s expression of needs). For examples of this phenomenon outside of the context of domestic violence, see Alfieri, Reconstructive Poverty, supra note 64, at 2111-13; Lopez, supra note 43, at 1609-10.

149. Both Linda Mills and Joan Meier argue strongly for integrating psychology into the training of lawyers to deal with the issues generated for students by working with women who have been abused. See Mills, Silence, supra note 14, at 1243 (“I am arguing that advocates for battered women have a responsibility to draw from psychoanalytic theory and
to explore their own doubts and frustrations with greater distance than in individual supervision. When students see their own doubts and problems reflected in the experiences of others, they may be able to fashion concrete responses that draw upon the insights of both the feminist critics and the theorists of practice, or responses that are rooted in their own insights about the clients' experiences. Dialogue reflecting experiences and insights fosters the development of an effective model of representation of women who have been abused because it recognizes that the difficulties of the work are felt deeply by many who undertake it.

Supervision which addresses directly the actions of the student provides an additional forum for teaching about domestic violence theory. When
used in conjunction with the other components of the clinical course, supervision is critical for many reasons.\footnote{152} The supervising teacher is able to work with the students on how understandings of domestic violence suffuse all the details of the work that lawyers do. Since supervision occurs as students plan for all the actions in a case, recognize and evaluate the multiple decisions that need to be made, and critique actions after they have occurred, the teacher can pick multiple moments during the representation of a client to look with the students at how theories of domestic violence are operating at all times and as part of all the lawyering activities involved in the representation.

In addition to examining how differing visions of women who have been abused take shape in all the details of a case, the teacher can also use supervision as a place for the student to look at the visions of women who have been abused that are implicit in the actions of the various participants in the legal system. Students can examine how domestic violence theory operates in the actions of a judge, a social worker, a family member, a prosecutor, or in the institutional structures of the legal system.\footnote{153} Sometimes, identifying the operation of these implicit visions in the actions of others can help students see how their own actions with their client are affected by their underlying experiences and understandings of domestic violence.\footnote{154} These observations also assist students in figuring out with the client the choices that the client has about how to present herself in any supervision. The aim of the article is to encourage teachers to be self-conscious in identifying the contexts that expose important aspects of teaching about client representation. In addition to identifying contexts within which to place supervisory decisions, I also explore three supervisory decisions, which I address in each of the six contexts: (1) the allocation of responsibility between teacher and student in planning for an initial client interview, (2) the setting of the educational agenda for each supervisory interaction, and (3) the integration of institutional analysis and client-based advocacy. \textit{Id.} I do not analyze in the article decisions about teaching theories of domestic violence, although the three decisions are all relevant to the teaching of domestic violence theory. The decision about teaching theory could be analyzed within the contextual framework presented. The imaginary case I use, both to identify these multiple contexts for supervisory decision-making and to analyze the choices available to the teacher in making the three decisions identified in the article, is a case in which the students are seeking a civil protection order for a woman who has been abused. The case, therefore, could be a vehicle for exploring the complexities of supervising students who are representing a woman who has been abused. \textit{Id.}

\footnote{152} \textit{Id.} at 152-67 (discussing relationship of action to the creation of meaning).

\footnote{153} See Bryant & Arias, \textit{supra} note 14, at 221 (examining how students can see how assumptions about abused women are reflected in actions of participants in the legal system); Shalleck, \textit{supra} note 57, at 152, 158, 165, 169 (discussing the assumptions about domestic violence implicit in institutional structures in the legal system).

\footnote{154} See Bryant & Arias, \textit{supra} note 14, at 221.
legal action she chooses to take and the potential consequences for herself and for the outcome of the legal action of the decisions that she makes.\textsuperscript{155}

Furthermore, the client herself may be affected by the understandings of domestic violence that she finds in the legal system and in the rest of her world. Supervision provides the opportunity to look in detail at a woman's changing understanding of herself throughout the course of her relationship with the student. In supervision, the teacher can help the student examine the multiple ways that the client presents herself, describes what has happened to her, and discusses what she wants.\textsuperscript{156}

Additionally, the teacher can use domestic violence theory to help the student explore the various factors that might affect how the client approaches the image of herself that she wants to convey to the lawyer, the stories that she tells of experiences of abuse, and the possibilities for action that she sees as available to her. Domestic violence theory can help the teacher frame a broad set of questions to assist the student in attending to aspects of the client's story that might have been taken for granted or suppressed.\textsuperscript{157} The teacher can also draw upon that theory in helping the student be aware of how the details of the student's words, actions and attitudes affect the client's understanding of herself, her ability to take action, and her choice of what to do and how to present herself in the world.\textsuperscript{158} In addition to provoking the student to think about these issues,

\textsuperscript{155} \textit{See} Miller, \textit{supra} note 64, at 563-70 (providing a model of how clients can participate in the creation of case theories that convey visions of themselves that they help shape); Shalleck, \textit{supra} note 57, at 157, 168 (identifying issues that the students need to address with the client in order to take action in the legal system); White, \textit{Subordination}, \textit{supra} note 64 (analyzing how a client's choices about visions of herself that she wanted to convey to different participants in the legal and social service systems affected the various stages of the case).

\textsuperscript{156} \textit{See} Shalleck, \textit{supra} note 57, at 156-57, 168.

\textsuperscript{157} For example, what is the client's self-concept? Does she present herself as a victim? If she does, why is that happening? Does she see herself as a victim? Have her interactions with the person who is abusing her made her feel victimized? How do these interactions fit into other ways that the abuser has made her feel? Has the abuse affected other parts of her life? Her work? Her relationship with her children? Her relationships with family and friends? How have her experiences of abuse affected the way that she feels in other parts of her life? How does she feel about those parts of her life? Have her previous interactions with the legal system (e.g., police, intake workers, clerks) made her think that she needs to conform to the stereotype of a victim? Have her encounters with the social service system produced the same result? Have friends or family members encouraged her to feel victimized? Have they refused to take seriously the acts of abuse? Have they held her responsible for the abuse? Have they discouraged her from taking any action? How does the client understand their attitudes about the abuse she has suffered? In what ways do their views matter to her? How is abuse viewed in the communities to which she belongs? How do those views affect her view of herself? Do race, sexual orientation, and class matter?

\textsuperscript{158} \textit{See}, e.g., Bryant & Arias, \textit{supra} note 14, at 220 (describing supervision in which
the teacher can help the student, in the planning phase of supervision, to identify and use lawyering techniques developed in the classroom portion of the course that put into practice the search for the client’s understanding of herself, undertaken with the knowledge that the lawyer is himself or herself affecting that understanding. In the critique portion of supervision, the teacher can guide the student in evaluating how his or her lawyering helped in appreciating the client’s shifting understanding of herself, including the client in framing choices about how to present herself in the world, and assisting the client in achieving results that she wanted.

In addition to getting students to see theory in all aspects of their practice of representing women who have been abused, supervision can be a place for students to evaluate how their own evolving conceptions of being a lawyer relate to existing models of lawyering for women who have been abused. In this process, they can begin to shape their own identities as lawyers. As students develop an understanding of what it means in terms of daily practice to provide a particular type of representation, they can decide if and how they will do this work. Supervision is a place to question, to reflect upon, and to put into practice each of the aspects of representing women who have been abused.

When theories have been introduced in the class and common questions have been addressed in case rounds, supervision is the place for students to confront in detail what representing an abused woman requires. For students hesitant to talk much in case rounds, supervision provides a setting in which to express their doubts and frustrations with the work. Supervision allows students to explore their motivations and critically examine their attitudes, not just abstractly, but in the framework of a particular client with particular needs. In addition, supervision provides a space for students to talk about their own experiences with and feelings about abuse. Sometimes that discussion may be sparked by the particular demands of a case. In other situations, the regularity and openness of the supervisory dialogue can provide a safe space for a student to talk, outside of the confines of any particular case, about their own lives and experiences, and the effect of their own histories and attitudes on their approach to the representation of women who have been abused.

students see how the choices presented to the client about how to deal with the danger posed by her husband overwhelmed her, causing her to withdraw; Espinoza, supra note 14, at 919-23 (describing supervision in which a client’s desire to reconcile with her husband was suppressed by both student and teacher who did not pursue a disfavored client narrative); Meier, supra note 14, at 1336 (describing supervision in which students see how, by misinterpreting a question from a client, they respond in a way that misreads what the client wants and perhaps sends a message that deters her from further use of the legal system).

159. See Shalleck, supra note 57, at 167, 169-70.
160. Id.
161. Id. at 153, 176.
Moreover, supervision is critical to the understanding and development of domestic violence theory because in the actual work with clients students must take responsibility for the actions that they take. Each choice that a student makes has consequences for a client and the student must live with the uncertainties contained in the choices made in the course of representation. Anticipating consequences in planning and evaluating those consequences in critique force a student to come to terms with the meaning of theories of domestic violence at multiple levels. If students plan an interview with a client, try, in light of the planning, to listen carefully to the client, and attempt to understand the danger the client feels before drafting court papers seeking relief, only to have the client withdraw from the representation by missing the appointment to sign the papers because she feared confronting her husband in court, the students can, in supervision, try to discover where and why they went wrong. They can question themselves. Why, when they heard her sense of danger, did they think that court orders would alleviate her sense of danger? Did they jump to a legal course of action because of the dominance of legal frameworks for addressing domestic violence? Did the students’ own attitudes about the danger and the effectiveness of court remedies shape the options that they presented to her? Were their skills at listening not well enough developed to hear the complexity of the message about danger that the client conveyed? If the students heard the message as it was conveyed by the client at the time of the interview and presented multiple options in terms of the client’s needs, did the client not really understand what going to court meant, in terms of danger to herself or her children, until she had the concrete option presented to her? Was the client unable to communicate her shifting thoughts about that option in the course of the interview? Was she embarrassed about conveying later doubts to the students directly?

When the students find that their efforts were misdirected, even after spending many hours drafting the papers and putting their energy and commitment into their work, they must confront in a powerful way the consequences of their misreading of the client. By exploring in supervision the multiple possibilities behind the client’s withdrawal from the students, the students are examining what domestic violence theory means in practice. In addition, the students are developing ways to attempt to improve their legal practice in the future.

162. See Amsterdam, supra note 129, at 616-17 (describing the power of the decision-making aspect of lawyering); see also Shalleck, supra note 57, at 163-67 (analyzing the role of responsibility for consequences in student learning from action).
163. This scenario is presented in Bryant & Arias, supra note 14, at 219-20.
C. Responsibility, Reflection and Learning

The responsibility of the students for the actions they take in representing women who have been abused raises important questions about student representation of women who have been abused. Students will make errors in their representation of women who have been abused. Clinical teachers, through careful attention to each of the structural components of their clinical courses and the development of multiple educational techniques used in different settings, can minimize student errors. Through readings, simulations, journals, and case rounds combined with supervision of the students' actions in a case, teachers can help students identify and realize the highest levels of practice available to them at their stage of development. Teachers can develop techniques for identifying and helping students figure out ways to correct, to the extent possible, errors that they make. Teachers

164. Linda Mills, in reviewing the literature on law school clinical programs that provide representation to abused women, is deeply troubled by student errors in representing abused women. Mills, Silence, supra note 14, at 1240-41. She notes that the materials from a hypothetical case presenting portions of two students' representation of an abused woman from my article Clinical Contexts: Theory and Practice in Law and Supervision, supra note 60, partly motivated her to write her article because of the students' mistakes presented in those materials. Mills, however, seems to be confused about the status of the materials, thinking they are from an actual case. The case presented was not an actual case from the Women and the Law Clinic at American University, or any other clinic, and is clearly identified as imaginary. The case was, in fact, jointly conceived and drafted by a group of clinical teachers and a judge from Washington, D.C. who were creating a presentation for a Judicial Conference on the topic of clinical education. Shalleck, supra note 57, at 111-12 n.6.

To present the difficult issues posed by supervision of students in clinical programs, the materials intentionally present multiple student mistakes in representation, mistakes which the group found to be illustrative of the type of errors students from many different programs commonly make. Similarly, the small portions of a hypothetical supervisory dialogue presented in the materials are identified clearly as a “heuristic device,” and not as an “ideal” or “typical” supervision. Id. at 112. The supervisory dialogue was meant to present important supervisory decisions, some of which are explored in the body of the article. The aim of the article was to suggest a contextual framework for analyzing and evaluating the multiple decisions made by supervisors.

I included the Jessica Green case hypothetical in the article to provide a concrete example of the types of choices faced by teachers in their day-to-day work supervising students in order to ground the discussion of supervision in the realities of teaching students. The case was meant to avoid the dangers inherent in creating abstract aspirational models not rooted in the complicated demands of the actual work of teaching students to represent clients. Only at the end of a detailed examination of some of the issues raised by the Green case does the article present a “vision” of supervision that emerges from the analysis of supervisory action, one that relies on “a complex and constantly shifting scheme requiring the teacher’s constant attention to the fundamental assumptions underlying each choice that she [the supervisor] makes.” Id. at 178-79.
can also ensure, through various forms of intervention in student work with a client, that students do not fall below a minimal level of practice. Additionally, teachers can emphasize the importance of reflection on the students' own experiences, as well as on their experiences in representing their clients, both the successes and the failures, so that the students can learn valuable lessons from the actions that they take. However thorough and well-designed a clinical course may be, mistakes are inevitable.

Several aspects of student mistakes are important to analyze, however, if we are to understand the problems that are a part of representing women who have been abused. Given the contested nature of theories of domestic violence, it is not clear what constitutes an error. Actions that might appear harmful from the perspective of the feminist critics and the theorists of practice might appear justified when viewed in the light of currently prevailing domestic violence theory. For example, encouraging a woman to seek a protection order when she is uncertain and confused would be viewed differently under differing frameworks. The task of the supervisor in the clinical setting is to help the students recognize the importance of evaluating this form of client counseling from the perspective of the client.

Even this evaluative project, however, is plagued by difficulty. How does the student know the client's perspective? In certain circumstances the client may clearly convey that she has been harmed or helped by the student's approach to counseling. Far more commonly, however, the student will have limited and partial understanding about how the client evaluates his or her approach to decision-making. The student's reflection on the process of counseling the woman who has been abused can usually produce only tentative and uncertain conclusions. These partial thoughts, although they may not produce certain judgments about the appropriateness of the action taken, are important for two other reasons. First, a student begins a process of ongoing reflection and re-evaluation of work with women who have been abused. This thought provoking process, perhaps more than any particular judgment about an action being right or wrong, begins the process

165. All the accounts of clinical practice describe the misreadings and misjudgments that students make in representing women who are abused. See, e.g., Bryant & Arias, supra note 14, at 219-21; Espinoza, supra note 14, at 918-23; Meier, supra note 14, at 1336-37; Shalleck, supra note 57.

166. Linda Mills suggests that the students in the fictional Jessica Green case would have done a better job if they had more information on the "unique situation of battered women or the diversity of their reactions to violence." Mills, Silence, supra note 14, at 1241. Even assuming that the students would have been able to translate this knowledge into action, given the state of our knowledge about "battered women," would the students necessarily have benefitted from a review of the literature? Particularly at the moment in history when the simulation was created, 1987, the critiques presented in Parts I and II of this article did not exist. The theories about domestic violence that were available then would more likely have supported than challenged the students' focus upon legal remedies.
of understanding domestic violence. Second, theory comes from this process of reflection, even if that theory itself is unstable and changing.

Additionally, greater and greater levels of preparation prior to action with clients may not make the students better at their actual representation. Clinical teachers constantly experiment with different ways to prepare students for the process of representing women who have been abused. Through simulations, readings, reflection on the students’ motivations, expectations and experiences, and supervisory planning sessions prior to actions in cases, clinical teachers work to produce the highest quality of representation possible within the context of the clinical program. The essence of clinical methodology, however, is that lessons are often not fully learned until the student deals with an actual situation. The interaction between the analysis before the action, the action itself, and the reflection following the action produces knowledge about representing women who have been abused that is not possible solely in the preparatory phase. Through action, students do not simply apply what they have been taught

167. See Shalleck, supra note 57, at 167.
168. See White, Paradox, supra note 64, at 854-55.
169. See David F. Chavkin, Am I My Client’s Lawyer?: Reconceptualizing the Supervisor-Student-Client Relationship (presented at the Clinical Theory Workshop, New York Law School, September 19, 1997).
170. See Shalleck, supra note 57, at 153-58 (discussing the relationship of action to meaning). Linda Mills asserts that the fictional students in the Jessica Green case would have done a better job if they had a supervisory meeting prior to their interview with Jessica Green. She assumes, without any basis in the text, that they had not been through “extensive classroom and individual training sessions.” Mills, Silence, supra note 14, at 1242. In the hypothetical situation, the students had, in fact, gone through classes, case rounds, observation of the domestic violence court, and representation of other clients who had been abused. Perhaps a supervisory meeting prior to each interview with a woman who has been abused would be useful. Clinical teachers are always searching for a useful balance between analysis prior to action, action itself and reflection following action. It may be the case that with some students, in some situations, increasing amounts of discussion prior to action does little to improve the quality of action. Deciding whether to have a supervisory meeting prior to a particular client interview depends upon the analysis of that decision in light of the multiple contexts within which the teacher views the decision. For instance, what have the students experienced already in the other components of the course? Shalleck, supra note 57, at 141-42, 144, 146-49, 149-52. How is action important in the students’ learning about interviewing a woman who has been abused? Id. at 153-55. What are the most important messages to convey to the students about their relationship with Jessica Green and what are the different ways to convey those messages other than meetings prior to initial interviews? Id. at 167-71. What are the particular strengths and weaknesses of these particular students? Id. at 175-77. How does the teacher’s own views of the case influence her choice of where to devote time? Id. at 177. In light of this type of analysis, the teacher can evaluate whether the students have had enough prior work to approach a first interview without an initial supervisory dialogue.
before, but learn the material differently. Students may only truly learn about women who have been abused when they have had experience with them, experience subjected to analysis and reflection both before and after the action.

Finally, although students will make errors representing women who have been abused, so will experienced lawyers. The experience level of a lawyer is not a good indicator of how well the lawyer will conform to the aspects of lawyering identified by the theorists of practice. If, however, experience is one factor that, when combined with many other aspects of good lawyering practices, will produce better representation for women who have been abused, can we ever justify representation by law students who, by definition, do not have experience? Putting aside the problem that few skilled, experienced lawyers exist who provide representation for women who have been abused, we have the responsibility as clinical teachers to develop the best lawyers for women who have been abused that our educational practices permit. We must proceed, however, with the understanding that we have no more certainty about our educational practices than we do about our theories of domestic violence. Here, as elsewhere, we have only our tentative, partial understandings that develop and change over time.

IV. CONCLUSION: CREATING THEORY FROM TEACHING

Feminist critiques of the increasingly dominant forms of domestic violence theory, as well as the creation of models of representing women who have been abused, have together made fundamental contributions to challenging the increasingly strong legal paradigm for addressing domestic violence in our society. They have raised critical questions about whether this paradigm helps women who have been abused deal with the abuse in their lives. The experience of teaching students to provide representation to women who have been abused can make a further important contribution to this project of reconstructing domestic violence theory from the perspective of the women themselves.

From clinical practice, we can start to define characteristics of legal practice for women who have been abused. This practice (a) promotes awareness of the multiple visions of the client that are operating throughout her experience in the legal system; (b) attends to the consequences of any vision that is unselfconsciously or self-consciously adopted by lawyer and

171. See Shalleck, supra note 57, at 153.
172. Linda Mills, in assessing the errors of the fictional students presented in the Jessica Green scenario, asserts that these errors “might have been remedied by a more experienced lawyer, given the nature of the judge hearing the proceeding. Should not a battered woman, though, whose very life may depend on her lawyer’s persuasiveness, skill, and understanding of institutional practices be represented by no one less than the best?” Mills, Silence, supra note 14, at 1240 n.68.
client; (c) enables a client to convey, in the forums she chooses and to the extent she wishes, the vision of herself that she decides, after consultation with her lawyer, to project; (d) recognizes that the interaction between lawyer and client plays a part in shaping the client’s understanding of her needs and her experience; (e) enables the client to make informed decisions about the multiple consequences of the visions of herself conveyed through the legal proceeding; and (f) assists a client in understanding the possibilities that she has within her situation to make changes that are meaningful to her and in taking those actions that she decides are desirable.

Also, by looking at how the feminist theories operate in the day-to-day practice of lawyers working with women who have been abused, and by viewing the aspirational elements of the theorists of practice in the framework of the actual project of teaching students a contextualized practice designed for women who have been abused, clinical experience has the potential to ground domestic violence theory in a recognition of both the profound challenges and deep importance of developing a contextualized understanding of the lawyer-client relationship. When engaged in this sort of relationship, each woman can contribute in some small way to the creation of a new legal paradigm concerning domestic violence.