

**REFLECTING ON REFLECTIVE PRACTICES
IN CLINICAL LEGAL EDUCATION**

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The annual International Journal of Clinical Legal Education conference took place on 28th- 30th November at Monash University in Melbourne, Australia. The day before the conference opened, a well-attended pre-conference workshop on 'Reflective Practices in Clinical Legal Education' was held at Monash University's Clayton campus. This article provides a summary of the key highlights of the day.

SESSION 1 - REFLECTIVE PRACTICES IN CLINICAL LEGAL EDUCATION

The workshop was opened by Associate Professor Rachel Spencer of Monash University and Professor Susan Brooks of Kilne School of Law, Drexel University, Philadelphia. Professor Susan Brooks explained they intended the day to take the form of a conversation.

A show of hands poll revealed there was a real mix of people in attendance. Delegates ranged from in house clinicians, to people involved more widely in externships and pro bono. There were also people whose teaching was outside of clinic and 'real' practitioners present. Delegates were asked to introduce themselves in pairs and to explain to one another what they hoped to get out of the day. The pairs were then

asked to volunteer to the wider group what they had discussed. This plenary discussion revealed a wide variety of aspirations for the day, which included:

- learning how best to get students to reflect on their own values and assumptions rather than just commenting on what they 'did';
- taking a step back in order to unpack further why reflection is important;
- learning about different reflective methods and how to respect diversity;
- exploring ways of encouraging high quality reflection and translating that into reflective writing – this clinician noted that reflective insights in oral debriefs were often not translated into strong written reflections;
- wanting to get better at providing objective feedback on student reflections;
- learning about new ideas for how to assess reflection;
- wanting to explore the idea of reflection and mental health and resilience, and whether they tie together;
- acknowledging that there are difficulties with reflection because within a team of clinicians there are varying conceptions of what 'good' reflection or 'good enough' reflection are;
- looking forward to getting to know more about interrelationship between reflective practice and competence;
- seeing if there is a support for reflection in social science theory; and
- exploring the relationship between critical thinking and reflection.

Susan explained that she had been interested in reflection a part of a larger skill set around relational skill sets and lawyering. In particular, she was interested in habits of mind and tools that we can offer students to help enable them to their work as individuals within a wider social context. Susan explained that a while ago she across

an article of Rachel Spencer's entitled 'Holding up the Mirror'¹, which made her realise there was someone who was thinking about these things deeply. She later visited Rachel in Australia to explore their common interests further.

Rachel explained the introductory exercise in pairs we had just undertaken was an edited version of something she has done in reflection classes with students for a number of years. She explained how she liked to build her students ability to reflect through a scaffolded process. Firstly, she gets students to talk to one another (like we had just done) to build their confidence, before they may be invited to share their thoughts with her as the supervisor or the wider group. This is important for establishing a relationship of trust between supervisor and the students and between the students; we cannot expect this trust just to exist automatically. We all have students who write amazing reflections but they would not necessarily share these insights in a large group discussion. It is important to recognise the diversity of students and a scaffolding approach compliments this. It was noted that clinical legal education is about learning by doing AND reflecting. Reflecting is important, but the word 'reflection' can be problematic and off-putting. Many people, both colleagues and students, think reflection is 'navel gazing' and not for them. It was suggested that there are perhaps other words we can use to describe for reflection which may make it more accessible (discussed further later).

¹ R.M.A. Spencer, 'Holding Up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' (2012) 18 *International Journal of Clinical Legal Education* 181.

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Rachel went on to note that she tells her students it is great that they are doing clinic or an externship, but that experience alone does not produce competence. Many practitioners run into trouble because they are not reflective enough about what they are doing. There is a clear contrast between classroom learning (simulated, replicable, low risk etc.) where the central interest is the student, and workplace learning (unpredictable, messy, high risk etc.) which involves competing interests. In workplace learning the supervisor is not just there to serve the needs of the student, and the student is not the centre of the universe. Much more direction may be given in the classroom – this is not the case in workplace. Rachel tells her students that everything that happens in the workplace is a learning opportunity but that they need to become opportunistic learners. She believes that there is a necessity to teach emotional intelligence and that this is intrinsically linked to reflection.

Susan then went on to discuss fields of transformation. Three dimensions we are engaging in all the time – personal, interpersonal, and systemic. For example, she gets students to think about how their interaction with their client is informed by the wider social context and to ask themselves how it shapes that interaction.

Rachel noted that it was widely becoming accepted that a law student now needs more than just a good knowledge of law. In this era of artificial intelligence, the human touch is what is important. Technology may be able to provide legal knowledge but it cannot relate to a client as a person can. Students therefore need to be able to establish

a relationship of trust with clients. It was noted that students coming into clinic can sometimes have a preconception that they need to be detached in order to be a good lawyer. They then become confused when we tell them that they need to embrace feelings in reflection. Students need to learn that emotional intelligence and emotional involvement are two different things.

Susan noted she was really interested in creativity and how emotions affect a person's thinking. That we should be aware of the two sides to our brains and that effective legal work requires a person to engage both and 'bringing our whole selves'.

Rachel then went on to note that competencies were linked to emotional intelligence (empathy, self-confidence, innovation, self-control, conflict management etc.). Emotional intelligence has been described as the ability to perceive your own and others' feelings and emotions, and to use this to guide your actions.² In clinical legal education, this might involve recognising a client's anger and that how they feel about something will affect their decision-making. Any decision we make naturally involves emotions, we cannot disconnect logic from emotion entirely. Susan clarified that we need not only to teach our students to understand client emotions, but also their own emotions too. We can make more intelligent choices when we understand how our emotions influence our decision-making.

² John, D. Mayer and Peter Salovey, 'What is emotional intelligence?' in Salovey and Sluyter (Eds.), *Emotional Development and Emotional Intelligence: Educational Implications* (New York: Harper Collins, 1997).

Rachel then turned the focus of the discussion to analysing what reflection *is*. It was noted that reflection is something people have been thinking about for a long time – there are millions of results on Google if you do a search. It is impossible though to give a universal definition, as reflection is something that means different things to different people. In 1993, there was an article written by Atkins and Murphy which noted that a lot had been written about reflection but it still lacked a clear definition.³ Whilst commentators tend to use different terminology and detail to discuss the reflective process, Atkins and Murphy identified commonality that could be broken down into three key stages:

1. *Stage 1* – Awareness of uncomfortable feelings. This is the disorientating moment or moment of surprise or discomfort. This is one of the significant differences between classroom learning and workplace learning.
2. *Stage 2* – Critical analysis of the situation. This involves an examination of feelings and knowledge. It is necessary at this stage to get the student to think about how the experience was for them, but then also consider it from the perspective of the client (what was going on in the client's head etc.).
3. *Stage 3* - Development of new perspective, leading to an outcome of learning. This is the stage where the student should be asking did it go well? Why did it go well? How can I replicate this? What would I change?

³ Sue Atkins and Kathy Murphy, 'Reflection: A Review of the Literature' (1993) 18(3) *Journal of Advanced Nursing* 1188.

It was noted that students often only become aware of their own privileged position from undertaking clinic and that clinic could therefore enhance a student's self-awareness.

The room then split into groups again to discuss our own reflective practices. A wider plenary discussion followed and a number of interesting points were mentioned, including:

- One person favoured giving students articles to read to encourage them to refer to literature and produce academically rigorous pieces of work that are not just introspective.
- It was noted that requiring students to consider multiple perspectives could be particularly useful. There may be more ways of doing this earlier in a degree so it is not just suddenly introduced in clinic.
- A speaker queried how much emphasis should be placed on the 'discomfort' moment in student reflections. How much emphasis on the physical sensation of discomfort?
- Another person emphasised the importance of creating a safe space for reflection. For example, reflections are marked but it is ok for a student to acknowledge their failures.
- It was highlighted that first year students are often far more in touch with their emotions than final year students. This is a barrier to reflection as usually it is our final year students we are asking to reflect.
- One person's practice involved getting first year students to write themselves a letter that they were then required to reflect on in a later year of the degree.

It was noted that it was possible to include relational competences in other modules, and to have a learning outcome linked to reflective practice. Students can be required to think about a future plan of action and to self-evaluate and assess in both clinical and non-clinical settings.

Rachel noted that it was possible to ground this in theory. Schon's "the Reflective Practitioner" discusses the distinction between reflection on action (e.g. keeping a reflective journal) which may, in time, lead to being able to reflect in action i.e. the ability to critique what you are doing while you are doing it.⁴

It was highlighted that there were two main forms of reflection (1) Oral reflection/debriefing and (2) Written reflection. Of key concern to clinicians is how to help students achieve their full reflective potential.

The following reflective exercises were discussed as ways of encouraging students to reflect:

- Start with oral reflection or a debriefing in a pair or small group. Gradually build this up so the students have to discuss matters with a wider range of people. Next time start with a slightly bigger group. Gradually build this up until the student is comfortable discussing matters with a larger group and you as the supervisor.

⁴ Donald, A. Schön, *The reflective practitioner: How professionals think in action* (New York: Basic Books, 1983)

- Challenge students to think about what they want to get out of clinic and what their values are. Encourage them to talk about personal issues too.
- Ask the students to undertake a strength finder exercise at the start of the clinic and then get them to reflect on this at the end of the semester.
- Challenge students to see things from a different perspective. A good way to do this (which was demonstrated in the workshop) was to show the students an ambiguous picture that they may interpret as two different things. The example used in the workshop was a picture that may have been either a vase or a face.⁵ This illustrates that people can be looking at exactly the same problem or set of facts but see them in a completely different way. This is a way of teaching perspectives.
- Give students a list of traits and get them to pick five they already have and that will be useful, and then ask them to choose five they need to develop. Then can revisit these later in their journal writing.
- Ask the students to prepare a critical incident report when they have been surprised or learnt something from an experience.

Rachel helpfully also gave twelve recommendations based on her research with students, which had included focus groups:

1. Advise students that feelings of discomfort are not unusual;
2. Provide an introductory session about what is required in good reflective writing. Provide examples (she uses good examples only);

⁵ See examples at:

https://www.google.co.uk/search?ei=6b6LXKT8JrThxgPB9r2gAg&q=woman+vase+optical+illusion&oeq=woman+vase+opti&gs_l=psy-ab.1.0.0i22i30.2162.4578..5943...2.0..0.88.466.7.....0....1..gws-wiz.....0i71j0j33i21j0i13i30.Qm4M6OYwI18 (accessed 15 March 2019).

3. Assessment tasks should allow for rigorous discussion of articles on reading list. Students can be tasked with reading articles and presenting back to the group so all group members have a greater understanding.
4. Teach students about the skills inherent in the act of reflection.
5. Discuss potential questions about reflection with students in class. Yes, you should write in the first person etc.
6. Confirm what reflections are confidential or negotiate otherwise. For example, explain that anything discussed in the classroom might be overheard, but nothing written and marked will be passed on to anyone else.
7. Negotiate how oral sharing of experiences in class might occur, as students get anxious about reflective journals.
8. Alleviate student anxiety by advising students to expect difficulty.
9. Use reflection prompts such as:
 - o Have you questioned any of your prior beliefs?
 - o Have you been aware of any access to justice issues?
10. Be mindful of student diversity and tailor sensitive feedback to individual students.
11. Articulate our own ideas about emotional intelligence and professionalism. Explain that not all lawyers will agree.
12. Consider rebadging reflection as 'clinical retrospective', 'placement analysis' or 'a reflective analysis paper' to make it sound more accessible.

SESSION 2 - REFLECTION, EMOTIONS AND STUDENT WELLBEING

The next session was led by Associate Professor Kate Seear of Monash University, Professor Catherine Klein of the Catholic University of America and Professor Lisa Bliss of Georgia State University. The three acknowledge the contribution of Professor

Paula Galowitz who could not join them on the day but who has contributed to the planning of the session.

Kate started by explaining what they hoped to explore the ethical and moral dilemmas expressions of emotion pose. They also wanted to discuss what we might make of articulations of emotion for learning and to try to come to some consensus on what clinical supervisors should do to navigate emotions in clinic.

It was discussed that lawyering practice expresses distaste for emotional vulnerability. Notwithstanding, or perhaps because of this, there is a growing concern about mental health in the legal profession. It was noted that this is a very live debate in Australia at present. Interest had been piqued in the topic by a 2009 Report, “Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers”, which has been published by the University of Sydney.⁶ There is now a concern about the mental health of both lawyers and law students. The issue is very topical because in recent months two magistrates in Victoria have committed suicide.⁷ Magistrates and judges are now talking about workload pressure and the importance of being more open about feelings. It was highlighted that emotions have to be scrutinised for their various

⁶ University of Sydney, *Courting the Blues: Attitudes towards depression in Australian law students and lawyers* (2009). Available at: <https://cald.asn.au/wp-content/uploads/2017/11/BMRI-Report-Courting-the-BluesLaw-Report-Website-version-4-May-091.pdf> (accessed 15 March 2019).

⁷ See for example <https://www.abc.net.au/news/2018-04-12/stephen-myall-magistrate-unrelenting-workload/9643950> (accessed 22 March 2019).

potential consequences. Emotions may shape our practice. For example, if we feel disgust towards a client, we may be less likely to help them.

The session then turned interactive and we were asked to discuss with our neighbour our own experiences in clinic and a time when we had felt a strong positive or negative emotion. The idea behind the exercise was that once we had confronted our own emotions in clinic, we would be in a better position to look outward to our students' and clients' emotions. This exercise utilised the scaffolding process we had earlier discussed. Once we had talked in small groups, we were asked to write our emotion on a post it note and to put it on the whiteboard and there was then a group discussion.

Most delegates had focused on negative emotions (see Image 1 below). Common emotions experiences were:

- Frustration - with self and with students.
- Anger - students or supervisor may react with anger. It is sometimes necessary to deal with other people's anger.
- Disappointment – for example with a judge in court or the legal system that has let a client down.

There were some positive emotions like joy and excitement but these were in the minority.

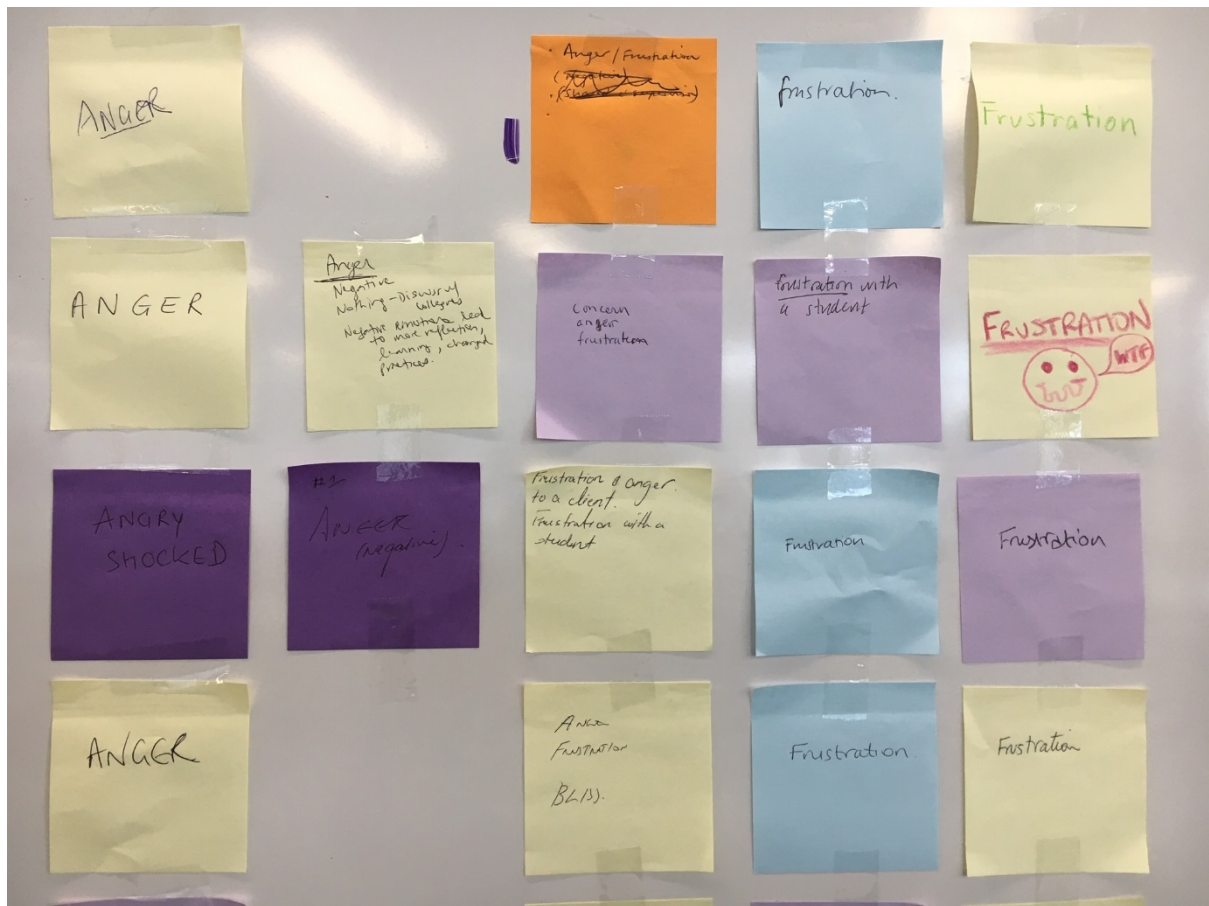


Image 1 – A selection of post it note emotions

The discussion then turned to student emotions and how we deal with these. We again talked to those around us before discussing in the wider group. The following examples were explored in the subsequent plenary discussion:

- One example involved a student failing an assignment. The student was angry about this and blamed the clinician, criticising the assignment. The clinician noted that the student's anger caused her to be angry in turn. She had to manage her own anger, but then after the anger subsided she thought about the student's criticisms. This led her to make adaptations to future assignments based on the feedback the student had given.

- Another person explained how one of their students became very frustrated in their tax clinic when their client failed to show up and provide information. The student was not in touch with their privileged position or sympathetic to the client. The clinician tried to emphasise to the student that 80% of lawyers are dealing with people who have problems and are less privileged than themselves.
- One person explained how they had encountered an absence of student emotion when dealing with clients. They believed this was because the students were so fearful of saying the wrong thing they did not want to express any kind of emotion. It was noted that we do tend to teach students that emotion in law is bad, so perhaps we need to help them overcome this in clinic.

The third workshop activity involved the room splitting into three groups. Each group was assigned with an area to consider:

- Group A – Teaching and planning for emotions;
- Group B – Issues and challenges when teaching for emotions; and
- Group C – Pedagogical priorities in the teaching of emotions.

After each group had debated their particular topic, it was asked to feedback their best ideas to the wider group. There was a common theme running through all the groups in terms of embracing emotion in clinic.

Group A – Teaching and planning for emotions:

- The group thought that the supervisor has a key role in modelling the best way to deal with emotion. It may be counterproductive to pretend you are always

calm and collected. Consider being honest with students when you are feeling anger or frustration (but avoid coming across as angry).

Group B – Issues and challenges when teaching for emotions:

- This group thought that if you do not show or talk about emotions with your students then they will not come to you for help. We should be normalising emotion in the clinic space.

Group C – Pedagogical priorities in the teaching of emotions.

- This group also discussed acknowledging that it is ok to have emotions. We should avoid labelling feelings as right or wrong. They noted that we cannot have a pedagogical goal of ‘solving’ emotions or dealing with them in a half an hour session. This needs to be a longer-term pedagogical goal.
- They also identified that it should be clear from the beginning what students can expect and how they should try to manage their emotions. This process should continue throughout clinic.
- It was noted that getting students to embrace their emotions is a complicated to frame as a pedagogical goal.

THIRD SESSION: A WORKING CONCEPTUALISATION FOR REFLECTIVE PRACTICE IN THE LEGAL PROFESSION – EXPLORING THE DOMAINS OF REFLECTION FOR LAW STUDENTS

After lunch Michele Leering, a PhD candidate from Queen’s University, Canada led the first session of the afternoon. She started with a short mindfulness exercise.

Michele noted that her research had revealed that there were 86 reflective practice authors in Australia but only nine in Canada. She explained that she had been a lawyer for many years and she recalls that in law school they did not talk about reflection at all. Without being a reflective practitioner Michelle thinks you cannot make your tacit knowledge explicit and that this is important for practice. When Michele did a masters in adult education it was based on reflection, unlike her law school experience. This highlighted to her the tension between liberal arts and vocational educational education in law schools. She opined that in Canada it was quite difficult for legal academics to find common cause with the regulator and even to also to agree with one another. Michele cares about access to justice and she wants the profession to be more engaged with this.

Michelle referred to the Carnegie Report⁸, published in 2007, which called for reform to legal education in North America. It recommended that law schools should integrate three sets of values or ‘apprenticeships’ in the legal curriculum:

- (1) Intellectual or cognitive apprenticeship. This focuses on knowledge and the way of thinking of the profession;
- (2) Practice apprenticeship. This is where students are introduced to practice-based learning through simulated scenarios or working for real clients in clinics; and

⁸ The Carnegie Foundation of the Advancement of Teaching, *Educating Lawyers: Preparation for the Profession of Law* (2007). Summary available at: http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf (accessed 15 March 2019).

- (3) Socio-ethical apprenticeship – this involve the exploration and assumption of the identity, values of the professional community.

Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work. This would helping people learn better, learn from their experience, develop professional competency, and develop their skills.

The room then split into groups to focus on five different domains of reflective practice discussed in Michele's research: (1) reflection on practice; (2) critical reflection; (3) self-reflection; (4) integrated reflection and (5) collective reflection.⁹ The focus of the discussion was student reflection. Feedback from the groups was as follows.

Reflection on practice groups:

- This group had focused on reflecting upon, and developing, a single competency like interviewing. Methods varied as to how the group members encouraged their students to do this e.g. debrief and discussion, modelling interviewing etc.

Critical reflection groups:

- Spent time talking about how to encourage critical reflection. For example, by exploring how law might harm vulnerable or disadvantaged people. There was also a broader discussion about laws being made by the privileged. The group

⁹ Michelle, M. Leering, 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' *Canadian Bar Review* 95, 47-89.

thought it was important to discuss law reform and change to legal systems and the fact that precedents can perpetuate injustice.

- There were many different methods discussed by this group for encouraging critical reflection. Examples included sending students off to an inquiry, or giving them statistics and asking them to unpack any assumptions or prejudices that might stand behind such statistics. The idea of case rounds were also discussed.

Self-reflection groups:

- This group made a reference to the fact students come to law school to be lawyers, whatever their preconceptions about being a 'lawyer' are. It was suggested that self-reflection might lead students to embrace the norms they want but challenging the norms they do not like. It is still possible to be in the 'tribe' but reject certain norms of thinking.
- One group talked about how self-reflection lead to thinking about the role of a lawyer. There is a need to have both time and space to have this deeper type of reflection though.

Integrated reflection groups:

- This discussion had centred on students making the most of opportunities they are afforded. A reflective portfolio is the vehicle for drawing everything together.

Collective reflection groups:

- Discussed building collaborative skills – a shared vision for achievement, common goals, improvement ongoing, and student mind mapping of feedback

SESSION 4 - ASSESSMENT OF STUDENT REFLECTIONS

Associate Professor Ross Hyams of Monash University led the final session of the day.

Ross explained that in his clinic the students initially were required to keep a reflective journal but that it was not assessed. He began to question the credibility of not assessing it. However, assessing reflection raises difficulties and challenges. As Stefani suggests, we may accept a pedagogical rationale for reflective journals but cannot presume it is easy to create a fair assessment tool for reflective journaling.¹⁰ We need to recognise that the learning process involved in reflection is itself is important. Reflective journaling should be assessed on the reflective process involved, not just the 'product' produced.¹¹ The challenge is therefore finding an assessment tool that assesses the reflective journey as well.

Ross noted that we might not always agree with some of the things our students write in their reflections. He questioned whether it is appropriate for us, as clinical teachers, to comment upon, counsel or advise students on their:

- Prejudices;
- Biases;
- Non- legal ethics;
- Beliefs; and
- Opinions.

If we believe we have a right or obligation to tackle such issues this leads us to further questions such as:

¹⁰ Lorraine Stefani, 'Assessment in Partnership with Learners' (2006) *Assessment and Evaluation in Higher Education* pp. 339-350

¹¹ As above.

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- How does that translate to assessing reflection?; and
- Can we create an assessment tool that adequately and appropriately assesses such matters?

We then split into groups to work on clinical scenarios involving various challenges and issues including the following.

Scenario 1 - The first scenario involved a student who was resistant to idea of reflection but whose clinic work was reasonably good:

- The group who looked at this scenario said that they would have started by discussing the positive aspects to her work and encourage her to talk about the implicit reflection in her work. They would have avoided dealing with the issue in an overly formal way.
- They would have also given the student specific questions to answer so she had more guidance.

Scenario 2 – Involved a student from a privileged background who was showing no empathy towards his clients. He had expressed a view that the clients find themselves in need of legal help because they are poor and stupid:

- The group who considered this scenario agreed that it was necessary to challenge the student's views. It was noted that it was important to set learning outcomes in clinic that are not just about legal skills like research and advice.

The pre-conference workshop proved to be a thought provoking prelude to the following International Journal of Clinical Legal Education conference. The perennial challenge of engaging students in reflective practice in clinic was thoroughly debated, and new insights were generated from the interactive group sessions. The 2019 pre-

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conference workshop on European Best Practice Standard in clinic will no doubt be equally as engaging.