

INTERNATIONAL  
JOURNAL OF

# Clinical Legal Education



## Articles

Mediation and Experiential Learning: How a Mediation  
Clinic Can Inform a Law-based Curriculum

*Ben Waters*

Getting Back to the Sandbox: Designing a Legal  
Policy Clinic

*William Wesley Patton*

## Clinical Practice

An Essay on the Stages of the Clinical Year in Law School:  
Group Process with Existentialist Roots

*Richard J. Wilson*

How to Discover Students' Talents and Turn Them  
into Teaching

*Michal Urban*

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# INTERNATIONAL JOURNAL OF Clinical Legal Education

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The primary criterion is: is this a work that through description, analysis and critical reflection adds to our understanding of clinical legal education and is of interest to an international audience? Contributions of an interdisciplinary nature that link clinical legal education and the relevant higher education and professional development literature are welcome.

This is a criterion that cuts both ways – very UK-orientated (or US-orientated) pieces might have merit but may be so introverted as to lack the international element – other papers might cover something which is of such interest to an international audience as to be worthy of publication. The best papers will often be rooted in a specific local experience – but will be able to draw that into a larger theoretical context that has wide relevance across jurisdictions.

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The Clinical Practice section is intended for more descriptive pieces. It is not peer-refereed. These will generally be shorter articles. They may focus on the general clinical context in a particular country – or describe a particular clinical programme, or a new type of clinical practice or clinical assessment. This section is intended to be less formal than the refereed part of the Journal, enabling clinicians to share experiences. The main criterion for acceptance is that the piece is likely to be of interest to the Journal's readership.

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Contributions should be typed with double spacing throughout on one side of uniform size paper (preferably A4 size) with at least a one inch margin on all sides and pages should be numbered consecutively. Manuscripts may be submitted by post or e-mail. Submissions on disc will be accepted where they are of Word format. In such cases a hard copy should also be submitted. A cover page should be included, detailing the title, the number of words, the author's name and address and a short biographical statement about the author.

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# Foreword

Welcome to the Autumn 2011 edition of the journal, soon to be followed by a Spring 2012 edition. My thanks to Kevin Kerrigan who has now passed editing on to me. Kevin has been promoted to Dean at Northumbria Law School but will remain heavily involved in our clinical programmes and in our clinical conference.

## **The GAJE/IJCLE Conference, Valencia, July 2011**

IJCLE partnered with the Global Alliance for Justice Education (GAJE) to organise their 6th worldwide conference and our 9th conference. The conference was hosted by the Institute of Human Rights, Faculty of Law, University of Valencia. There were several other local partners including the Legal Clinic at the University of Valencia; the Human Rights Institute Bartolomé de las Casas at University Carlos III in Madrid, the Legal Clinic “Dret al Dret” at the University of Barcelona, and CEDAT (Centre d’Estudis de Dret Ambiental de Tarragona) at the University Rovira i Virgili in Tarragona.

More than 300 delegates from more than 40 countries attended the conference which explored the GAJE theme: “Combatting Social Injustice Through Justice Education” and the IJCLE theme “Life, the Universe and Clinic: What questions does Clinic answer?”.

Conference delegates were therefore able to explore a fascinating and broad spectrum of experience and opinion on both social justice and educational issues. Our heartfelt thanks go to both our colleagues in GAJE and the conference hosts and local partners. More detail about the conference and papers presented can be found at <http://www.gaje.org/conferences/6th-worldwide-conference>.

## **Next year’s IJCLE conference, Durham, England, 11-13th July 2012**

Next year’s IJCLE conference will be in Durham, a city founded in AD 995 with a World Heritage listed cathedral and castle.

The theme of the conference will be: Entering the Mainstream: Clinic for All? We will be exploring this question from many perspectives including pedagogic, professional and social justice. As ever, we welcome papers on a wide diversity of matters related to clinical legal education as well as the specific conference theme.

Highlights of the conference include: a keynote paper from Professors Blaustone, Klein and Galowitz (other keynote speakers to be announced shortly); interactive workshops on clinical teaching; conference dinner and Ceidilh at Durham Castle and optional visits to evensong at Durham Cathedral and Beamish Open Air Museum. For more information please visit [www.ijcle.com](http://www.ijcle.com). I look forward to renewing old friendships and making new ones amongst our ever growing global community of clinicians.

## **In this edition**

**Ben Waters** reports on a mediation clinic within an English undergraduate law degree. He rightly points out the need to move beyond a traditional approach to dispute resolution which focuses

upon litigation. Despite more than a 15 years having passed since Lord Woolf's plan for litigation in England and Wales to be seen as a last resort, the teaching of alternative dispute resolution in England and Wales is patchy at best. The initiative at Canterbury Christ Church University in Kent is an example of how students on a substantive law course can benefit from a clinical experience within the curriculum and how the next generation of lawyers can experience at first hand the benefits and challenges of mediation.

**Professor William Patton's** article reminds us that clinical education can sometimes proceed on a model that is based upon group activity directed at social justice goals identified by the professor. In following this model we may be making assumptions about student learning that rests upon a generalisation that firstly our students will benefit most from group activity and secondly that exposure to social justice work as identified by the professor will necessarily lead to increased pro bono activity by students in their later professional life.

Professor Patton describes his different approach at Whittier Law School. This self directed policy clinic is based upon student choice of the area in which they wish to work in a "client-less" clinic. Students then complete tasks such as: preparing letters to the editor of a newspaper; legislative analysis of a pending bill; an appellate brief or working on a community lawyering project.

The clinic allows students to self direct, thus giving them ownership and the ability to select projects in accordance with their own ethical and political views rather than those of the teacher's. In doing this, Professor Patton postulates, the clinic lays the foreground for deeper engagement in lifelong pro bono activity .

The article is a persuasive call for a different kind of clinical experience. It might be argued that both this and the live client clinic ought to form part of the learner's experience. Undoubtedly a self directed policy clinic affords the student more autonomy and the opportunity to follow an individual learning path. It is less likely to offer the learning that can take place in more team oriented clinics or the motivation and learning that can occur when working for a real client when a real person's experiences and problems are immediate for the student. In the last edition of this journal Kevin Kerrigan and I argued that clinical experience should pervade the law curriculum. We would argue that Professor Patton's model of clinic should form part of the law degree alongside the live client clinic.

**Professor Richard Wilson** explores the stages of the clinical year in law school drawing parallels between the cyclical stages of clinical experience, which can be strongly linked to the seasons, and functional education as practised at his church in Washington D.C. Many clinicians, of different faiths or none, may well recognise the stages which Professor Wilson describes. The paper particularly helps one to remember the emotional highs and lows which both students and supervisors almost invariably experience through their time together.

**Dr Michal Urban's** paper gives a fascinating insight into a Street Law project explicitly aimed at those law students with the motivation and talent for teaching. This project at Prague Law School, Charles University in the Czech Republic is interesting because the focus is so clearly on learning teaching skills. This has led to both standard and upgraded programmes which clearly scaffold the students' experience and give them a real opportunity to develop their teaching ability. Most

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1 Lord Woolf, M.R., *Access to Justice Final Report*, July 1996.

Street Law programmes, be they involving community groups or school children, require an element of pedagogic skill. There may well be elements of Prague Law School's programme which could be explored to see if our own Street Law programmes, which do not have the same emphasis on law teaching, can adopt some of the methods used. We will certainly be reviewing our own Street Law programme in the light of Dr Urban's paper here at Northumbria.

*Jonny Hall*

Editor





# Mediation and Experiential Learning

## How a Mediation Clinic Can Inform a Law-based Curriculum

*Ben Waters\**

### **ABSTRACT**

The perception that students of Law and Legal Studies should learn about a variety of methods of dispute resolution and not just litigation, has prompted the Department of Law and Criminal Justice Studies at Canterbury Christ Church University in Kent UK to establish a mediation clinic as a focus for undergraduate experiential learning. This article will consider the importance of discipline based research and the integration of clinical legal education within the core curriculum, the benefits offered by a combined live and simulated curricula approach in the context of mediation and the importance of providing a practical input during the academic stage of legal education.

### **Introduction**

There are a variety of ways and settings in which the curriculum can be developed to provide clinical legal education to students at undergraduate level within the UK. The mediation clinic at Canterbury Christ Church University (CCCU) in Kent is the first such clinic to be based within a UK university and has been established with the intention of providing undergraduate Law and Legal Studies students with the opportunity of learning experientially in a somewhat innovative way. This article explores the importance and value of providing an experiential learning element during the academic stage of legal training in England and Wales. The article also provides a view on how discipline based research can help to integrate experiential learning in the core curriculum, and will consider other opportunities which a mediation clinic provides both for the university and the wider community.

The move away from the purely theoretical approach to legal study is by no means new in itself, it is an approach which has been advocated and practised for many decades in the United States for instance. The growth of experiential learning within the field of legal education prompted members of the Law and Legal Studies team at CCCU to consider the possibility of curriculum development to include experiential elements of study. Academic members of the Law & Legal Studies team have become accredited mediators and as a result of having actively led mediations through work generated by the mediation clinic and through mediations performed for other mediation providers, academic staff have themselves developed useful new skills.

## **The Integration of Experiential Learning Within the Curriculum**

When designing a curriculum which proposes to utilise clinical experience, it is advisable to undertake preliminary research into the most suitable type of clinic given a whole range of criteria. There is of course a variety of clinical programmes ranging from placements/internships, role play simulation to the 'live' clinical experience. The model which has been chosen for the CCCU project is the 'live' clinical experience supported by simulation.

### **Why mediation and what is it?**

The worthwhile nature of encouraging students of Law and Legal Studies to understand about all kinds of dispute resolution, not just litigation, is reflective of the times we live in and has more relevance now than ever before. Since former Master of the Rolls, Lord Woolf, produced his report on the civil justice system in 1996 and the subsequent enactment of the Access to Justice Act 1999, a holistic approach to dispute resolution is arguably a fundamental part of a UK lawyer's education. This view is supported by Carrie Menkel-Meadow who considers that teaching students about dispute resolution, which broadly includes negotiation, problem-solving, and mediation, as well as litigation serves at least four goals: first, a focus on the broad spectrum of actual dispute resolution devices provides a more accurate view of how the legal system operates. Secondly, dispute resolution study provides a valuable way to incorporate experiential learning in legal education. Thirdly, the concrete lawyering skills that can be taught with a focus on dispute resolution are central to the performance of any lawyering work. Fourthly, using the dispute resolution framework for teaching about what lawyers do, facilitates a particular normative agenda as well.

### **A fresh approach**

Failure to educate the next generation of lawyers about the holistic nature of dispute resolution is at best a serious omission and at worst irresponsible. Students should be aware that there is often more than one way to resolve a dispute; litigation is not always the answer or indeed need not be the process method of choice. With the arrival of the previously mentioned legislation and the introduction of the Civil Procedure Rules, lawyers who practise in England and Wales are required to consider alternatives to litigation where they can.

Informed by teaching and practise, and so as to assist the reader in gaining a basic understanding about mediation, the author has chosen to adopt the following definition of mediation:

*“Mediation is a voluntary process conducted confidentially whereby the parties to a dispute are empowered to resolve their differences in a structured yet informal environment with the assistance of an impartial facilitator.”*

The aims of the university’s mediation clinic are therefore threefold. The first aim is to provide mediation services to the local and wider community. This we have started to do and have so far, in the space of nearly two years, undertaken nearly twenty mediations. The second aim is to enhance teaching across curricula within the university; this is where the clinical element links in. Thirdly, the clinic aims to provide a focus for research.

## **Mediation and the Live clinical Experience**

### **The aims of ‘live’ clinics**

According to the Higher Education Academy UK Centre for Legal Education (UKCLE) the broad aims of ‘live’ clinics are:

- to enhance the students’ learning experience and understanding of the substantive law, legal process, ethics and the role of law in society
- to produce students that can take the learning experience offered by live client clinics and reflect upon how and why cases were progressed and how this fits into the overall context of their legal studies
- to empower the students to become pro-active in the process of learning
- to provide formative assessment methods which are in themselves a strategic and integral part of the learning experience

A mediation clinic provides an example of how experiential learning can be implemented in an undergraduate curriculum. The research undertaken by those responsible for setting up and establishing the clinic at CCCU, both with regard to the discipline itself and the possible pedagogical opportunities available, has reinforced views about the importance of understanding conflict resolution methods in a variety of different settings from the community forum to those conflicts within the international arena.

The mediation clinic at CCCU therefore places an emphasis on encouraging and enabling students of Legal Studies and Law as a core part of the practical level of their undergraduate study, to understand how conflict can be resolved through a recognised and effective alternative dispute resolution process. Early research into the project revealed that in other common law jurisdictions, notably, The United States, Canada and Australia, mediation has been taught at university level for many years and in some of the universities in those countries students are given a clinical experience based around the study of dispute resolution and particularly mediation.

### **Reflective practice**

Students can also develop an understanding of how a mediation service provider operates and we are involving students in the process as assistant mediators, under the guidance and supervision

of experienced members of academic staff, and by being involved in office administration. The assistant positions offered to students are observational in nature enabling them to learn through reflection. Part of the early discipline based research acknowledged that reflective practice is a key component for successful experiential learning and that mediation lends itself perfectly to the reflective practice paradigm, being an active process of exploration and discovery which often leads to very unexpected outcomes. Learning in this context may, as Mezirow has observed [enable the learner to make] a new or revised interpretation of the meaning of an experience, which guides subsequent understanding, appreciation, and action. By experiencing the process of mediation at first hand, students should be able to gain a better understanding and appreciation of a different approach to conflict resolution and undertake comparative studies with other recognised methods. R.A.B. Bush outlines the following benefits that “live” observation has over simulation in the context of studying methods of alternative dispute resolution (ADR):

- the observations [balance] the more abstract study of classroom work and reading
- they provided a sense of immediacy and relevance that intensifies students’ interest in ADR
- the opportunity to sit back and watch critically, rather than directly involved in an exercise with classmates allows students a greater chance to be analytical and critical about the operation, and
- students [are] given direct personal contact with the ADR field, contact which helps to overcome the kinds of biases towards ADR that, it has often been noted, exists among legal professionals.

It is not only the students of course who benefit from the experiential nature of this learning approach. The supervisory capabilities of academic staff has been enhanced through their active involvement with the mediation clinic.

The work of David Kolb, who introduced his now well known four stage learning cycle, is helpful in understanding the value of experiential learning in the context of the study of mediation. Kolb emphasises the affective side of learning because in his view, which is a view shared by other educational psychologists, people learn from experience through a direct encounter with life that involves total immersion with all its attendant sensations and feelings. The affective dimension to learning includes emotions and also a deeper, non-rational understanding of the situation. This further embeds the notion that the mediation process, which often involves parties participating in a process of emotional release, fits the reflective practice model of learning quite appropriately.

Clinical legal education in the UK is still a relatively unadvanced concept. There are notable exceptions; the clinics at Northumbria, Warwick and Kent Universities are nationally if not internationally renowned. It has been mentioned that there are a number of different types of clinical experience. For James Stark, the emphasis on reflection and critique should be a common factor for all types of clinical experience while the teaching control and the learning environment may differ. The mediation clinic at CCCU aims to design and develop new and innovative curricula using the work of the clinic as a focus. As already mentioned, observation experience of “live” mediations is being offered to the students.

### **Transferable skills**

Through involvement with the clinic, both by observing “live” mediations and by participating in

simulated role play exercises, students are not only able to appreciate and understand the ethical dimensions of mediation, but will improve their personal and interpersonal skills, autonomy, independence of thought and decision making skills. They are able to do this by reflecting on their experience. Indeed reflection arguably works best with engagement and proactivity on the part of the learner, a concept which is supported by the use of the mediation process as a focus for students' knowledge development and the development of their transferable skills. The skills which students gain from their "live clinical" experience provide much scope for reflection and will ultimately enhance their employability. This is currently a key issue for graduates from higher education in the UK. The importance of an experiential base for a degree is therefore increasingly acknowledged as important in building employment-related skills.

CCCU has a rich tradition in providing "vocational" education for those intending to enter public sector employment, from social work and healthcare provision to policing. The work undertaken by the mediation clinic and the exposure which students will have to it, will continue this tradition. With the development of a qualifying law degree which has been offered since September 2008, the clinic forms a cornerstone of one of the university's driving principles, that being the concept of theory meeting practice and the reinforcement of theory through practice. Whilst the mediation clinic is currently situated within the department for Law & Criminal Justice Studies, the nature of mediation and conflict resolution as a curriculum taught subject area, lends the clinic to cross-faculty participation; involvement with other departments should therefore be encouraged.

### **The encouragement and promotion of research**

To enhance the research profile of academic departments, clinics are seen as increasingly important at the academic stage of legal academic study within the UK. The mediation clinic is the first of its kind in a UK law school and the study of alternative dispute resolution will produce a research-based curriculum. It is providing academic staff with data which will form the foundation of research projects, to be entered into in partnership with other departments within the university, or externally with private sector, public sector and voluntary sector providers. It is also hoped that the clinic will provide a knowledge sharing forum which amongst other things will assist in spreading the message about the appreciable benefits of alternative dispute resolution and particularly mediation.

### **Conclusion**

The establishment of the mediation clinic at CCCU clearly demonstrates the benefits of discipline based and research informed teaching. The initial research into the type of the model through visiting other institutions and by talking to experienced academics involved in clinical practice has been invaluable to the success of the initial phases of the project. The pedagogical opportunities for curriculum design and development through studying law based undergraduate subjects not only at the micro level, but also at the macro/practical level through experiential learning, helps to make an important link between theory and practice using conflict resolution and particularly mediation and the work of the clinic as the focus. In addition the combination of the live clinical experience with simulation arguably helps to produce a rather less prosaic undergraduate Law curriculum.

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# Getting Back to the Sandbox:

## Designing a legal policy clinic

William Wesley Patton

### Introduction

Perhaps my fondest educational memory is the first day of kindergarten after I was led to the sandbox. When I looked around I saw seven other students entering and then sitting on the sand. Several toys [tools] rested on top of the sand. The teacher gave us no directions and no goals; we were self-directed and our task was self-selected<sup>1</sup>. Each of us was placed in a laboratory where we could explore our imagination. The variables of our experiment were few: a limited number and type of instruments (a shovel, large plastic clawed fork, an assortment of shapes and sizes of containers); a sea of sand which upon closer inspection contained its own unique properties and identity (size and shape of grain, color of silica, degree of opacity and opalescence, moisture content [slightly moist on top from the morning dew, dusty-dry mid-layer, and wetter strata deeper into the body of the sand], and odor [from light-nosed top bed to dank cellar-like olfactory presence in the depths of the pit]). We did not feel observed, but watched we were by our mentor/teacher like from an orbiting satellite peering down upon us. She would have observed seven individual children working independently upon seven unconnected projects. We were not at that stage of our development motivated toward co-operative pursuits, nor were we hampered by notions of individuality, originality, and plagiarism<sup>2</sup>. The teacher could observe intellectual theft as some

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1 “While solitary play frequently has been maligned as indicative of poor social-cognitive adjustment, recent findings suggest that solitary play frequently involves goal-directed and educational activities... [and] that participation in activities in which there is not a great deal of adult involvement encourages the development of independence, initiative, and novel use of materials.” Jane A. Goldman, *Social Participation of Preschool Children in Same – Versus Mixed-Age Groups*, 52 *Child Development* 644, 649 (1981).

2 The theory that children’s play evolves in a direct line and relationship to stages of intellectual development is currently undergoing a more nuanced interpretation. “For Piaget the ontology of play must be viewed in relation to the development of intelligence in the child and therefore each

cognitive stage, which Piaget has outlined, exhibits a characteristic type of play activity. Play in the *sensory-motor* period is characterized by repeated performance of newly mastered motor abilities and evidence of pleasure in engaging in such activities... Corresponding with the concrete operational phase is the appearance of *games-with-rules*. Through the use and development of collective, as opposed to individualize, symbols... the child’s reasoning becomes more logical and objective, and therefore presumably closer to reality, preparing him/her finally for the *for operation* period.” Helen B. Schwartzman, *The Anthropological Study of Children’s Play*, 5 *Annual Review in Anthropology* 289, 310–311 (1976). For many years the act of children independently playing side by side but not interacting, or parallel play, was “viewed as a

of us copied other's designs, and our expertise slowly increased by adopting and adapting sand manipulation methods invented by our peers. We became much more comfortable with the sand than with the dynamics of sand play. We did not perceive group identity; we did not yet explore the concept of "CO" in cohort, cooperate, or coordinate, but simply played in coexistence. Our pattern of play changed over time. During that year we often moved toward group digs and constructions, but we never abandoned, and often returned to, our original methodology of individualized parallel play.

Recently, I have discovered that the image of this kindergarten sandbox individualized experimental laboratory is a cross-cultural Jungian archetype.

For instance, Yoko Hino uses a scene in a kindergarten sandbox to illustrate the Japanese educational philosophy of play activity or "Zokei Asobi" which is based upon the notion that "children's expression naturally comes from within and is expressed as spontaneous play... [b]ecause children have a natural curiosity, play is not to be derived by someone else, but by their own will." She tells the following story of a kindergartner who "was fully absorbed in digging in the sandbox, certain that a mole would come out. He believed that since the sandbox adjoins the field, a mole must surely come out. Although one child digging with him expressed doubt about this possibility, and others laughed or tried to interrupt him, he continued digging for almost an hour, waiting for the encounter with a mole. The idea that a mole would indeed come out from a sandbox seems foolish to adults. No one directed him to do this; it was only important to him to try to meet a mole. His reason and a firm belief in this 'play' came from his own will and originated in his heart."<sup>3</sup>

characteristic of a 'stage' through which children pass as they develop from solitary players to social players." Roger Bakeman and John R. Brownlee, *The Strategic Use of Parallel Play: A Sequential Analysis*, 51 *Child Development* 873, 873 (1980). Many now argue that parallel play is one of a continuing number of types of play activities that children, and even adults, continue to use even after having cognitively advanced beyond that play phase. "Contrary to the hypothesis that parallel play is a more 'immature' form of peer involvement... no age-related differences were apparent from time spent in this kind of activity." Lawrence V. Harper and Karen S. Huie, *The Effects of Prior Group Experience, Age, and Familiarity on the Quality and Organization of Preschoolers' Social Relationships*, 56 *Child Development* 704, 714 (1985). Harper and Huie note that individual or parallel play "is best seen as an alternative to peer involvement, rather than as one pole of a dimension of social activity, and that parallel play may function as a short-term, 'strategic' bridge between more solitary pursuits and greater involvement with age-mates." *Id.*, at 716. Some have even placed in doubt "the role of parallel play in generating early peer relations..." Edward Mueller and Jeffrey Brenner, *The Origins of Social Skills and the Interaction Among Playgroup Toddlers*, 48 *Child Development* 854, 854 (1977). Others have postulated that parallel play is a more immature form of expression since older

children continue to engage in solitary play, but less often engage in parallel play. James E. Johynson, Joan Ershler, and Collen Bell, *Play Behavior in a Discovery-Based and a Formal-Education Preschool Program*, 51 *Child Develop.* 271, 274 (1980). In addition, some have argued that young children's choice of solitary play rather than group play is "an insufficient criterion for characterizing children as 'socially withdrawn.'" Robert J. Coplan, Kenneth H. Rubin, Nathan A. Fox, Susan D. Calkins, and Shannon L. Stewart, *Being Alone, Playing Alone, Acting Alone: Distinguishing among Reticence and Passive and Active Solitude in Young Children*, 65 *Child Development* 129, 136 (1994). These concepts of solitary and parallel play are relevant to the discussion of the selection and implementation of legal projects by novice law students in a legal policy clinic, *infra.*, at Section III.

- 3 Yoko Hino, *Restrictions and Individual Expression in the 'Play Activity/Zokei Asobi'*, 37 *J. of Aesthetic Educ.* 19, 20, 22 (2003). The image of a sandbox has also been used to describe the evolutionary development of skills. "Process skills may easily be developed through the child's play... This kind of practice, which uses process skills, may be applied to many other learning experiences such as sandbox play..." Thomas Daniels Yawkey and Steven B. Silvern, *Kindergarten Goals and Contemporary Education*, 77 *The Elementary School J.* 25, 27 (1976). The antithesis of a "structured game" is "a



“Sandbox” is also the designation for a contemporary computer game design and development structure. “Sandbox is a type of game mechanic that is very non-linear and lets players do whatever they want... The idea behind the term is that there’s you, here’s the sand, now do whatever you want with it. Sandbox games are often only limited by your imagination, or what you could find to do with the materials given to you.”<sup>4</sup> This idea of self-directed exploration in a laboratory environment also forms the structure of the last twenty years of children’s museums which provide constructivist materials and tools for children to experience and manipulate.<sup>5</sup>

This article will analyze contemporary educational psychology in an attempt to: (1) determine whether a sandbox can and/or should be added to the law school curriculum; (2) describe a constructivist learning environment with the goal of providing law students self-selected *pro bono publico* projects that may help internalize a life-long goal of public service; and, (3) provide an interdisciplinary model that is feasible both in the large university law schools and in small and/or free-standing law schools. The second half of the article will describe my attempts to build a sandbox model into my Legal Policy Clinic.

## A Cautionary Note

I offer the reader a cautionary warning regarding this and other articles applying contemporary educational psychology to law school pedagogy. First, educational theory has historically fluctuated among warring camps, and what is vogue today may quickly become passé tomorrow. Second, no one has the answer for the perfect educational methodology for every learning environment or for every student/teacher relationship. “At least three dangers are likely to accompany any educational innovation. The first is that the proponents will create the impression that at last the solution to all problems is contained in one package... The second danger is that the description of the proposed

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child building a castle in the sand with no defined goal and with no clear rules or guidelines. We could say that the castle ‘builds itself’ through her actions (in contrast to the child who builds a house from Lego blocks following detailed instructions.... Can we say that unstructured games, played according to no clearly defined rules, assume some degree of (internal) control? It seems to us that the answer is an affirmative one, at least in most of the cases in this category. For in these cases it is still possible to give some kind of description of the action (building a castle in the sand...), and there exists those actions relevant to the realization of the characterization of the action.” Roni Aviram and Yossi Yonah, *‘Flexible Control’: Towards a Conception of Personal Autonomy for Postmodern Education*, 36 Educational Philosophy and Theory 3, 13 (2004).

4 Wikia Gaming, <http://gaming.wikia.com/wiki/Sandbox>, (visited 9/23/09). “In a sandbox game, you wander around and do what you want instead of following a plot. Game Stew, The Game Mastering Blog, <http://www.gnomestew.com/gming-advice/nonlinear-sandbox-games>, (visited on 9/23/09). A

Sandbox Symposium on computer game design is held annually. (<http://sandbox.siggraph.org/about.html>). The term “ ‘sandbox game’ was discussed 3,926 times on 256 sites” from 6/23/09 to 9/23/09. Boardreader, <http://boardreader.com/tp/Sandbox%20game.html> (visited on 9/23/09).

5 For example, see an interactive guide to the Imaginarium Discovery Center in Alaska which is a “hands-on, minds-on science discovery center, a place where families and visitors of all ages can explore art, history and science through play.” <http://www.anchoragemuseum.org/expansion/imaginarium.aspx>, visited 9/10/09. The concept of “play” in adult pedagogy is beginning to be better recognized. “[A]dults do engage in a variety of assimilative play activities.” Schwrtzman, *supra.*, note 1, at 311. The role of play in adults is also an important life component. “The pioneer of terminal care and thanatology, Elizabeth Kübler-Ross said, ‘We are able to begin to play again regardless of age, place, and situation. All we have to do is just to shake-up the sense of play, because it is sleeping in ourselves.’” Hino, *supra.*, note 3, at 23. Kübler-Ross also noted that “many

program will be so appealing that enthusiastic support for and adoption of the approach will occur prior to the appearance of any empirical evidence to support the basic tenets of the innovation... [and] [t]he third danger is that the initial developmental phases of the movement will be accepted as the final version, thus stagnating efforts to improve and expand preliminary programs as new insights are gained in practice.”<sup>6</sup>

An example of an often insufficiently explored trend is the proliferation of team and group projects based upon limited empirical data regarding the characteristics of the Gen-X generation who, among other traits, are supposed to “gravitate toward group activity...”<sup>7</sup> But there are two problems with so easily riding on the Gen-X group learning theory train. First, researchers are now seriously questioning whether any large group of students has sufficiently generalized learning styles and personalities to support any meta-pedagogy. “To accept generational thinking, one must find a way to swallow two large assumptions. That tens of millions of people, born over about 20 years, are fundamentally different from people of other age groups – and that those tens of millions of people are similar to each other in meaningful ways.”<sup>8</sup> Second, one would have to disregard the conflicting data on whether all students really enjoy and benefit from group projects. For example, on the positive side in one study “intrinsically motivated people showed greater commitment and devoted more time to task completion” in team projects.<sup>9</sup> Other studies have found that cooperative education increases students’ willingness to take on difficult tasks, result in better long-term retention of data and more intrinsic motivation.<sup>10</sup> In addition, another study found that “culturally diverse groups generated more perspectives on a problem and more alternative solutions than culturally homogenous groups but took longer to achieve equal levels of group process effectiveness, accurate problem identification, and solution quality than less diverse groups.”<sup>11</sup>

However, studies have also demonstrated that for many students the group tasks create such an anxiety provoking environment that their ability to participate and learn is greatly overbalanced by

terminal patients talk with their loved one about a memory of playing happily together.” *Id.*, at 23. Law teaching through computer simulations that have many elements of play and strategy are being used to teach law students procedural, as well as, policy and theory. See, e.g., CALI computer programs and Kathleen Goodrich and Andrea Kupfer Schneider, *The Classroom Can Be All Fun & Games*, Marquette University Law School Legal Studies Research Paper Series Research Paper No. 09–36 (<http://ssrn.com/abstract=1485532>).

6 Kenneth Castain, *An Examination of the Basic Assumptions of ‘Individualized’ Instruction*, 59 *The Modern Language J.* 334, 334, 344 (1975).

7 Leslie Larkin Cooney, *Giving Millennials A Leg-Up: How To Avoid The “If I Knew Then What I Know Now” Syndrome*, 96 *Ky. L. J.* 505, 505–506 (2008). See, also, Linda S. Anderson, *Incorporating Adult Learning Theory Into Law School Classrooms: Small Steps Leading To Large Results*, 5 *Appalachian L. J.* 127, 131 (2006); Rodney O. Fong, *Retaining Generation X’ER’s In A Baby Boomer Firm*, 29 *Cal. U. L. Rev.* 911, 912 (2001).

8 Eric Hoover, *The Millennial Muddle: How Stereotyping Students Became a Thriving Industry and a Bundle of Contradictions*, *The Chronicle of Higher Education* (2009) [<http://chronicle.com/article/The-Millennial-Muddle-How/48772/?sid>].

9 Simon Taggar, *Individual Creativity and Group Ability to Utilize Individual Creative Resources: A Multilevel Model*, 45 *The Academy of Management J.* 315, 315–316 (2002).

10 David W. Johnson, Roger T. Johnson, and Karl Smith, *The State of Cooperative Learning in Postsecondary and Professional Settings*, 19 *Educ. Psychol. Rev.* 15, 19 (2007). See also, Noreen M. Webb, Megan L. Franke, Marsha Ing, Angela Chan, Tondra De, Deanna Freund, and Dan Batteny, *The Role of Teacher Instructional Practices in Student Collaboration*, 33 *Contemp. Educ. Psych.* 360, 361–362 (2008).

11 Michael Sweet and Larry K. Michaelsen, *How Group Dynamics Research Can Inform the Theory and Practice of Postsecondary Small Group Learning*, 19 *Educ. Psychol. Rev.* 31, 43 (2007).

their fear of appearing less capable than the other group members. These students have “[w]orry, anxiety, and attention to non-task relevant information (e.g., others’ perceptions of one’s ability) [which] are likely to divert attention from the task and to limit students’ cognitive resources... Moreover, a concern with appearing unable may also decrease students’ willingness to invest effort, as effort and ability have an inverse relationship.”<sup>12</sup> In addition “social rejection and the stress it often causes can interfere with normal learning activities.”<sup>13</sup> Another study found that “[s]tudents valued the traditional lecture component of the college classroom equally well with the active learning projects... however, cooperative learning ranked the lowest... [and many] perceived cooperative learning in general to be an ineffective motivator.”<sup>14</sup>

Professors who accept the generalization that students want to actively participate in classroom group dynamics may often misinterpret the silence of those who have problems participating as a lack of interest or a failure to prepare. However, there are many reasons for student resistance to group projects. “Personal factors such as interest, comprehension and confidence...” [and] “[c]ultural and language factors have also been identified as having a role in constraining student participation...”<sup>15</sup> Professors may incorrectly generalize about students’ personalities and aptitude based upon their unwillingness or ineffectiveness in group problem solving dynamics. Further, “[i]n a relational perspective one cannot hold that a person is a certain way – talented, reasonable or noisy – only that these manifestations articulate phenomena that tend to appear in certain situations (relations).”<sup>16</sup> And Catherine O’Grady has warned us, “because clinical collaborations tend to differ markedly from a new lawyer’s typically hierarchical practice collaborations, clinical collaborative pedagogy may not adequately prepare students for the realities of legal practice.”<sup>17</sup> Despite the conflicting data regarding the benefits of group projects and the information that it can have a substantially negative impact on some students’ learning, professors have dramatically increased their use of this pedagogical technique. In a 2008 survey by UCLA, 36% of college professors indicated that they assigned group projects.<sup>18</sup> With these “cautionary notes” regarding the efficacy of educational philosophy and psychology in mind, proceed carefully.

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12 Yeolla Berby-Meyer and Avi Kaplan, *Motivational Influences on Transfer of Problem-Solving Strategies*, 30 *Contemporary Educational Psychology* 1, 4, 16–17 (2005).

13 Stephane D. Dandeneau and Mark W. Baldwin, *The Buffering Effects of Rejection-Inhibiting Attentional Training on Social and Performance Threat Among Adult Students*, 34 *Contemporary Educational Psychology* 42, 42–43 (2009).

14 Patricia L. Machemer and Pat Crawford, *Student Perceptions of Active Learning in a Large Cross-Disciplinary Classroom*, 8 *Active Learning in Higher Education* 9, 13, 24 (2007).

15 Louisa Remedios, David Clarke, and Lesleyanne Hawthorne, *The Silent Participant in Small Group Collaborative Learning Contexts*, 9 *Active Learning in Higher Education* 201, 202 (2008).

16 Moira Von Wright, *The Punctual Fallacy of Participation*, 38 *Educational Philosophy and Theory* 159, 161–162 (2006).

17 Catherine Gage O’Grady, *Preparing Students For The Profession: Clinical Education, Collaborative Pedagogy, And The Realities Of Practice For the New Lawyer*, 4 *Clinical L. Rev.* 485, 529–530 (1998).

18 *Data Points: More Faculty Members Adopt ‘Student-Centered’ Teaching*, *The Chronicle of Higher Education*, Oct. 23, 2009, LVI, #9, at A4 (relying on *The American College Teacher: National Norms For The 2007–8 Heri Faculty Survey* (University of California At Los Angeles Higher Education Research Institute). Although clinical legal education has been using problem based learning for decades, seldom have clinicians delved into the empirical analyses of effective problem design and into the educational effects of that methodology. “Problem-based learning (PBL) is a sophisticated instructional strategy, which depends heavily, but not entirely, on collaboration among students within a group.” Marilla D. Svinicki, *Moving Beyond “It Worked”*: *The Ongoing Evolution of Research on Problem-Based Learning in Medical*

## I. What variables should be considered in determining the substantive focus for a self-directed legal policy clinic?

Frequently the types, scope, and procedural arena of issues litigated in a legal clinic are decided based upon the professor's legal expertise or interest, the law school's surrounding community's legal needs, or some form of funding stream. These factors are obviously important in assuring the continuing viability of the clinic (professor interest), legal expertise (professor education and training), relevance to the community at large, economic viability and the sustainability of the clinic. However, rarely do students themselves have an opportunity to help define the legal universe in which they will learn and ply their developing lawyering skills.

Legal clinics are also often designed to further a professor's definition of social goals. As one clinician has stated: "Clinical legal education offers students direct experience as lawyers working for social justice."<sup>19</sup> At least historically, many clinicians have defined social justice in large part as bringing legal services to the underserved.<sup>20</sup> However, few have studied the impact of professor selected definitions of social justice on law student motivation to enroll in a particular clinic, on the impact on students' participation, vigilance, and persistence while in the clinic, or on the long-term intrinsic interest of those students to continue with the professor's or an alternative

*Education*, 19 *Educ. Psychol. Rev.* 49, 50-57 (2007) [outlining many of the problems that can arise from ill-structured problems and the disjunction between teaching content versus process and diagnosis]. Some question whether problem based instruction is effective with novices who lack sufficient "domain knowledge" to provide them with the ability to craft creative solutions. Linda Morton, *A New Approach To Health Care ADR: Training Law Students To Be Problem Solvers In The Health Care Context*, 21 *Ga. St. U. L. Rev.* 965, 980-981 (2005). And when engaging in interdisciplinary instruction, the differences between the disciplines may complicate developing problem solving rubrics. "Legal and medical training offer useful, but often conflicting, approaches to problem solving, thus, potentially impeding our abilities to understand and communicate with others regarding a shared issue or problem." Linda Morton, Howard Taras, and Vivian Reznick, *Encouraging Physician-Attorney Collaboration Through More Explicit Professional Standards*, 29 *Hamline J. Pub. L. & Pol'y* 317, 317 (2008). Problem based instruction is heavily dependent upon the ability of the mentor "who stimulates the discussion, provides students with relevant content information if needed, evaluates the progress, and monitors the extent to which each group member contributes to the group's work." Sofie M. Loyens, Joshua Magda, and Remy M. J. P. Rikers, *Self-Directed Learning in Problem-Based Learning and its Relationship with Self-Regulated Learning*, 20 *Educ. Psychol. Rev.* 411, 413 (2008). Although problem-based legal instruction has been demonstrated to increase student motivation and completion of assignments, we must also be aware

that the group and problem method can impede some students' progress and may seriously interfere with those students' abilities to concentrate on the content rather than upon the psychological consequences of their anxiety and frustrations. See, e.g., Wilfred Admiraal, Theo Wubbles and Albert Pilot, *College Teaching In Legal Education: Teaching Method, Students' Time-on-Task, and Achievement*, 40 *Research in Higher Education* 687, 700-703 (1999).

- 19 Jane H. Aiken, *Provocateurs for Justice*, 7 *Clinical L. Rev.* 287, 287 (2001). Aiken further states that "I aspire to be a provocateur for justice. A provocateur is one who instigates, a person who inspires others to action... [and] imbues her students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solution to that injustice." *Id.*, at 288.
- 20 For instance, Stephen Wizner has indicated that "[c]linical legal education has been focusing on legal services for the underserved and on the justice mission of law schools for years" and he argues that "law schools do have some obligation to contribute to the solution of the crisis in access to justice...." Stephen Wizner, *Teaching And Doing: The Role of Law School Clinics In Enhancing Access To Justice*, 73 *Fordham L. Rev.* 997, 997-998 (2004). It is no wonder that clinicians focus their clinical goals on social justice since codes of ethics and studies such as the "Mac Crate Report suggest that legal education could be doing a better job of instilling the value of promoting justice, fairness, and morality." Jane Harris Aiken, *Striving To Teach*

vision of social justice through *pro bono publico* participation. Therefore, one question is whether and to what extent clinical teachers should take “an active role in facilitating clinical students learning lessons on social justice?”<sup>21</sup> And an equally important issue concerns the methodology of defining social justice and in communicating the professor’s vision of that better legal system. We sometimes act as though there is one definition and one set of criteria that define social justice.<sup>22</sup> But “[w]hat criteria can we use to judge whether an educational policy or practice is socially just? How do we make comparative assessments of social justice in education?”<sup>23</sup>

It has been argued that all education which involves not only theory, but also action, must necessarily be political. “[T]raining is not neutral... [i]t attempts to advance social change activism toward a more participatory and democratic society. Radical training, therefore, is a much more

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- ‘Justice, Fairness, and Morality’, 4 Clinical L. Rev. 1, 6 (1997). “The Legal Strategies for Social Change course explores the roles lawyers have played and should play in trying to bring about social change to benefit disadvantaged or subordinated groups.” Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, And Age In Lawyering Courses*, 45 Stan. L. Rev. 1807, 1807 (1993).
- 21 Fran Quigley, *Seizing The Disorienting Moment: Adult Learning Theory And The Teaching Of Social Justice In Law School Clinics*, 2 Clinical L. Rev. 37, 37–38 (1995).
- 22 “Public interest law is usually defined broadly as legal practice in the service of otherwise unrepresented or underrepresented persons or interests... however, [it] is usually used to refer only to representation of the underdog in each of these areas.” Philip G. Schrag, *Why Would Anyone Want to be a Public Interest Lawyer?*, Inaugural Address of the Delaney Family Professorship, September 23, 2009, at 1 (SSRN: <http://ssrn.com/abstract=1486246>). However, clinic students may more broadly define public interest in *pro bono* public work to include working with corporations to better serve the general public even though that legal work does not involve the representation of individual underrepresented clients. Although state bar associations sometimes include *pro bono* services outside the category of legal services to the poor, the predominant theme is usually single client representation in the areas of “family, consumer, housing, immigration, and employment” law, but other areas such as “legal assistance to small non-profits” is also included. *The True Meaning of Law: Rediscovered*, at 2–3 (Minnesota State Bar Association Report on Pro Bono Legal Services, June 2007). There is thus a disconnection between “*pro bono*” legal work that is often described as “work on behalf of indigent individuals or other uncompensated legal work in conjunction with an individual lawyer, law firm or organization on behalf of a disadvantaged minority...” and “public

interest” defined as representing ““a position on behalf of the public at large on matters of public interest...” [and which] does not include the direct representation of litigants in actions between private persons, corporations...” DePaul College of Law offers a Certificate in Public Interest Law that defines a broad range of courses as public interest, including: (1) Mental Health Law, Advanced Criminal Procedure, Evidence, Animal Law, Complex Civil Litigation, State Constitutional Law, and Labor Law. ([http://www.law.depaul.edu/centers\\_institutes/public\\_interest/program\\_req.asp](http://www.law.depaul.edu/centers_institutes/public_interest/program_req.asp)). Although the ABA admits that the “meaning of [public service] may be debatable around the edges...at its core is the responsibility of the profession to insure access to justice for all...” Directory of Law School Public Interest and Pro Bono Programs, Introduction (<http://www.abanet.org/legalservices/probono/lawschools/introduction>). Cynthia F. Adock and Alison M. Keegan, *A Handbook On Law School Pro Bono Programs: The Aals Pro Bono Project 70* (June 2001). Social justice can also be part of a larger political agenda: “The ‘Out-Crit’ denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet ‘different’ subordinate groups in an interconnective way... [and] must be designed to ensure that critical legal education operates as a principled platform for self-empowerment and social justice activism in everyday life.” Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy And Social Justice Activism: Marking The Stirrings Of Critical Legal Education*, 10 Asian L. J. 65, 66, 88 (2003).

23 Sharon Gewirtz, *Towards A Contextualized Analysis of Social Justice in Education*, 38 Educational Philosophy and Theory 69, 69 (2006). Gerwitz suggests that we at least consider “a) looking at the multi-dimensional nature of justice; b) looking at the tensions between different dimensions of justice; c) being sensitive to the mediated nature of just practices; and d) being sensitive to differences in the contexts and levels within which justice is enacted.” *Id.*, at 79.

political act as it is a pedagogical act.”<sup>24</sup> However, even if the clinician has sufficiently defined and described her definition of and goal for social justice, there are still several central problems that must be addressed.<sup>25</sup> First, students may disagree with the professor’s notion of social justice. Although “[m]any students are at least partly attracted to law school due to their own social, political or moral values”, they may have a very different notion of what social justice entails.<sup>26</sup> As Babich has articulated in defining his “apolitical law school clinic”, students “look to their professors to help them develop as lawyers and professionals, but not necessarily for political guidance.”<sup>27</sup> There is, of course, a considerable difference between the role of the law professor as mentor/symbol of the public activist or servant and the role as political proselytizer.

In addition, a professor-defined and driven social justice clinic runs counter to the educational psychology research on non-directed learning, student autonomy, and motivation. Cooperative

24 John D. Holst, *Conceptualizing Training in the Radical Adult Education Tradition*, 59 *Adult Education Q.* 318, 332 (2009). Holst defines “radical training” as the “mastery of action (practice) and the master of principle (theory) conceived dialectically. Training is about building the skills, understanding, and confidence of people. Second, a significant amount of training takes place in the actual activities of social movements; it is training in action.” *Id.*, at 332. Since teachers have a tremendous influence upon their students, there has been a legitimate concern that students, especially young children, might be unreasonably led by the teacher pied-piper. “The so-dubbed ‘indoctrination objection’, however, calls into question whether education, aimed at cultivating autonomous critical thinkers, is possible. The core of the concern is that since the young child lacks even modest capacities for assessing reasons, the constituent components of critical thinking have to be indoctrinated if there is to be any hope of the child’s attaining the ideal.” Stefaan E. Cuypers and Ishtiyaque Haji, *Education for Critical Thinking: Can It Be Non-Indoctrinative?*, 38 *Educational Philosophy and Theory* 723, 723 (2006). Cuypers and Haji contrast indoctrination to “authentic education” that is “a molding process that is conducive to the attainment of a primary educational aim of transforming children into morally responsible agents. If this aim is not realized owing to manipulation or paternalism, attainment of this aim is frustrated as a result of the inauthenticity of the educational process.” *Id.*, at 734.

25 “[I]t has generally been assumed that the teacher is an agent of influence. How that influence should be expressed has been the critical question.” Joan I. Roberts, *Freedom, the Child, the Teacher: A Gap Between Ideas and Action*, 15 *Interpersonal Relations and Education* 319, 319 (1976).

26 Henry Rose, *Law Schools Should Be About Justice Too*, 40 *Clev. St. L. Rev.* 443, 444 (1992). It is difficult to compare law schools’ devotion to *pro bono* and

public service because of “the use of an array of terms, such as ‘public interest,’ ‘public service,’ and ‘*pro bono*.’” Russell Engler, *From The Margins To The Core: Integrating Public Service Legal Work Into The Mainstream of Legal Education*, 40 *New Eng. L. Rev.* 479, 481 (2006). Of course, some students may greatly benefit from a professor’s passionate quest of an individualized conceptualization of social justice. I am not arguing for a completely politically neutral clinic environment, but one in which students have an opportunity to define the politics of the clinic’s practice and one in which both faculty and students can debate their visions of justice. As one recent graduate has noted “many clinical professors have found a middle road between the danger of indoctrination, on the one hand, and the myth of neutrality, on the other. Many faculties address the indoctrination threat with honesty and openness, by being ‘up front about [their visions of justice] from the beginning, [f]rom the time students choose whether to enroll....” Jeffrey Ward, *One Student’s Thoughts On Law School Clinics*, 16 *Clinical L. Rev.* 489, 517–518 (2010).

27 Adam Babich, *The Apolitical Law School Clinic*, 11 *Clinical L. Rev.* 447, 455 (2005). Babich describes the apolitical law school clinic as one that “(1) emphasizes a commitment to professionalism – rather than to a political viewpoint – as the motivating force behind each student attorney’s activities, (2) is fully consistent with the clinics’ roles as public-service organizations and their duties to clients, and (3) helps defuse controversy by offering compelling, politically neutral, and — best of all — honest justification of a clinic’s advocacy of even the most unpopular viewpoints.” *Id.*, at 449–450. But it is almost impossible for a professor to be politically neutral. “When assuming the position of being a teacher, there is always a question of erasure. This *erasure* of life, which has to be expelled from the ‘body’ for it to function as a body... will have to be a more

learning theory posits that the role of the professor is to engage in “the ‘spirit of mutuality’ of learning between students and instructors.”<sup>28</sup> According to self-determination pedagogical theory, students will more fully engage in an educational activity when the goals of that assignment are aligned with students’ philosophy. “Feelings of autonomy are particularly strong when the task is perceived as being closely connected to the values, interests, and goals that constitute the core of one’s authentic self and identity...”<sup>29</sup>

Although a professor-defined clinic substantive focus is obviously necessary in most contexts, a legal policy clinic offers an example in which the clinic students themselves can determine the subject matter and the political focus of their lawyering tasks.

## II. The collateral benefits of a self-directed and self-selected legal policy clinic on students’ lifelong desire to provide *pro bono* public services

In its landmark 1992 survey of the public’s attitude about attorneys, the American Bar Association discovered that 43% responded that if attorneys would perform more *pro bono* services, it would “significantly increase their favorable impressions about the profession...”<sup>30</sup> For the past twenty years non-profit organizations,<sup>31</sup> state and local bar associations, the American Bar Association,<sup>32</sup>

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or less blind neutralization, or a pretending to be neutral, of the possibility of a neutral position and a neutral agenda.” James Steinnes, *Transformative Teaching: Restoring the Teacher, Under Erasure*, 41 *Educ. Philos. & Theory* 114, 123 (2009).

28 Quigley, *supra.*, note 21, at 58-59. There are, of course, a number of different clinic models: (1) those that solely represent individual clients; (2) pure policy and/or impact clinics that promote specific justice objectives or which assist targeted communities in advocating positions; and (3) “a combined advocacy model in which students represent individual clients while simultaneously participating in efforts to achieve broader social change.” Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications Of A Combined Advocacy Clinics*, 16 *Clinical L. Rev.* 451, 451-452 (2010). Skrikantiah and Koh argue that although most individual client representation clinics are based upon a student-centered pedagogy that permits then “ownership” of clients’ cases, when the clinic shifts to “institutional advocacy work” the “students should act as collaborators, working as one member of a project team that includes their instructor(s).” *Id.*, at 454. Skrikantiah and Koh describe a policy clinic that, in effect, partners with “communities and organizations the clinic seeks to serve.” *Id.*, a 456. They explain that the traditional clinical model of student ownership does not function well when students work on impact issues affecting larger constituencies because students lack the substantive knowledge, procedural and advocacy strategies, and the time to competently advocate those positions. *Id.*, at

474-477. In the Policy Clinic model I discuss, *infra.*, the student is, in essence, her own client since she is the one who has complete ownership in the selection of the legal issue, the research, and the advocacy necessary to perfect that student’s notion of social justice. Since there is no attorney/client relationship and no formal relationship with an institutional client, many of the problems identified by Srikantiah and Koh, such as the student’s “struggle to establish attorney-client relationships with more sophisticated clients”, simply do not arise. *Id.*, at 475.

29 Idit Katz and Avi Assor, *When Choice Motivates and When It Does Not*, 19 *Educ. Psychol. Rev.* 429, 431 (2006).

30 Gary A. Hengstler, *Vox Populi*, 79 *A.B.A. J.* 60 (1993).

31 For instance, the Public Interest Law Initiative was “[o]riginally founded in 1977 as ‘The Chicago Law Student Public Interest Internship Program’” to “cultivate... a lifelong commitment to public interest law by creating opportunities for law students and lawyers to provide public interest and *pro bono* work in Illinois.... PILP’s programs first capture emerging lawyers when they are law students and new law school graduates, and then extend into legal practice to reach new associates, seasoned layers, and senior attorneys working in every sector of the legal community – private, academic, and government and nonprofit.” (<http://www.pili-law.org>).

32 The American Bar Association promulgated ABA Standards 302(b) which requires law schools to provide students with opportunities for “participation in *pro bono* opportunities” which

and the Association of American Law Schools<sup>33</sup> have all attempted to proselytize and empower law students and attorneys concerning their role in providing free legal services and access to justice.<sup>34</sup> The *pro bono* movement has been largely founded upon a non-empirically based infection theory: once law students are exposed to the opportunities and rewards of providing free legal services, they will internalize those values and provide the public with a life-long career that involves public service. However, this intuitive model and students' self-reports about the effects of law school *pro bono* programs are just beginning to be empirically examined. For instance, almost a decade ago Deborah Rhode noted that "[s]chools with *pro bono* requirements have found that between two-thirds and four-fifths of students report that their experience has increased the likelihood that they will engage in similar work as practicing attorneys. However, no systematic studies have attempted to corroborate such claims by comparing the amount of *pro bono* work done by graduates who were subject to law school requirements and graduates who were not. Nor do we have research comparing the effectiveness of such required programs with well-run volunteer opportunities."<sup>35</sup>

A new study brings into question whether the *pro bono* infection model is actually effective. Sandefur and Selben recently analyzed the data in *After the J.D.: First Results of a National Survey of Legal Careers* which surveyed 5000 attorneys and which will continue to track those attorneys

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Interpretation 302-10 specifically defined as: "*Pro bono* opportunities should at a minimum involve the rendering of meaningful law-related services to persons of limited means or to organizations that serve such persons; however, volunteer programs that involve meaningful services that are not law-related also may be included within the law school's overall program." ABA Standard 404(a) (5) includes "[o]bligations to the public, including participation in *pro bono* activities" within the definition of the responsibilities of full-time faculty. ABA *Model Rule 6.1* provides that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of *pro bono* public legal services per year."

33 The AALS, in its *pro bono* project, *Learning to Serve*, not only notes that its "Commission's central factual findings indicate that most students do not participate in law-related *pro bono* projects", but also that "[e]fforts to build broader cultures of commitment must begin in law schools. To that end, the AALS Commission's primary recommendation is that every law school should seek to make available for every student at least one well-supervised *pro bono* opportunity and either require participation or find ways to attract the great majority of students to volunteer." Deborah L. Rhode, *Foreword to Learning To Serve*, at 1-2 (<http://www.aals.org/probono/report.html>). The AALS Commission also recommends a broad definition of the types of lawyering activities that constitute student *pro bono* involvement: "All work that students do for the benefit of others has important values... schools need not adopt a narrow view of what counts as a project that draws

on lawyer's skills and knowledge... [and] some of the most satisfying law-related projects currently in place do not involve individual legal representation at all." (*Id.* at 5).

34 Scott L. Cummings, in *The Politics of Pro Bono*, 52 UCLA L. Rev. 1, at 1 (2004) has provided one of the best descriptions of the evolution of the legal *pro bono* movement in America: "Whereas for most of American legal history, *pro bono* was ad hoc and individualized, dispensed informally as professional charity, within the last twenty-five years it has become centralized and streamlined, distributed through an elaborate institutional structure by private attorneys acting out of professional duty. *Pro bono* has thus emerged as the dominant means of dispensing free representation to poor and underserved clients, eclipsing state-sponsored legal services and other nongovernmental mechanisms in importance." Cummings has noted significant problems that have arisen as "the professional ideal of *pro bono* as an act of individual kindness clashes with the image of institutionalized *pro bono* as an instrument to promote large firm commercial interests." (*Id.*, at 107). He notes that shifting *pro bono* representation to large for-profit law firms leaves some individuals, groups, and public interest issues substantially underrepresented because the "chief consideration for law firms is cultivating their paying client base. Decisions about *pro bono* are therefore always filtered through the lens of how they will affect the interests of commercial clients." *Id.*, at 116, 147-148.

35 Deborah L. Rhode, Essay: *The Pro Bono Responsibilities of Lawyers and Law Students*, 27 Wm. Mitchell L. Rev. 1201, 1212 (2000). "No



for a decade.<sup>36</sup> Although Sandefur and Selben were aware of the tremendous number of articles which have celebrated the benefits of clinical education, they were also aware that “existing research does little to reveal, explain or otherwise inform our understanding of the relationship between clinical legal education and the practical and professional development of law students.” The After the J.D. results were mixed regarding the effects of clinical legal education upon new lawyer behavior. First, the attorneys expressed that having taken clinical courses was the third most helpful law school experience in preparing them for practice.<sup>37</sup> However, “on average clinical training experiences during law school bore no relationship to participation in *pro bono* work by new lawyers working in private practice or as internal counsel... [and] on average, there was little relationship between clinical training experiences and lawyers’ rates of participation in community, charitable, political advocacy and bar-related organizations...”<sup>38</sup> There also was not a statistically significant relationship between *pro bono* activity and those students who entered law school “to help individuals or change or improve society” and those who took clinical courses.<sup>39</sup> On the other hand, there was “a strong relationship between clinical training experiences and public service employment.”<sup>40</sup>

Although studies have found that forces outside the law school experience have a greater impact on attorneys’ behavior than any school related variables, changes in the law school curriculum might increase the effects of those three years on attorneys’ *pro bono* activities.<sup>41</sup> For instance, specific courses and/or assignments on professionalism throughout the curriculum might increase students’ attitudes toward civic duty. In addition, a greater number of clinical course offerings spread among the three year curriculum might have a synergistic effect on students’ attitudes. Further, a clinical course in which students select their own cases and projects to match their own political philosophies and interests might provide them a more persistent desire to later engage in *pro bono* activities. Finally, as Deborah L. Rhode and Scott L. Cummings have recently elucidated, much of the *pro bono* work in American law is accomplished through large law firm formalized free legal services networks in which an individual attorney’s conceptions of public service may directly conflict with the firm’s institutional self-interest.<sup>42</sup> One of the principal goals of large

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comprehensive national data exist on the extent of lawyers’ *pro bono* contributions. Full information is difficult to come by because only three states mandate reporting of contribution levels, because the definition of *pro bono* is often expansive and ambiguous, and because lawyers often stretch its scope to include work for which they expected to be paid but which turned out to be uncompensated or undercompensated.” Deborah L. Rhode, *Pro Bono In Principal And In Practice*, 26 Hamline J. Pub. L. & Pol’y 315, 3260327 (2005).

36 Rebecca Sandefur and Jeffrey Selbin, *The Clinic Effect*, 16 Clinical L. Rev. 57 (2009), analyzing Ronit Dinovitzer, Bryant G. Garth, Richard Sander, Joyce Sterling, and Gita Z. Wilder, *After the J.D.: First Results of a National Survey Of Legal Careers*, (NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2004).

37 *After the J.D.*, supra., note 36, at Figure 11.1 and Table 11.1, at 81. The effects upon preparation to practice were, in descending order: (1) legal employ during summers; (2) legal employ during

school year; (3) clinical courses; (4) legal writing; (5) internships; (6) upper-year lecture; (7) course concentrations; (8) first-year curriculum; (9) legal ethics; and (10) *pro bono*. *Id.*

38 Sandefur and Selbin, supra., note 36, at 82. See also, Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 Law & Soc’y Rev. 113 (2007).

39 *Id.*, at 94–95. However, “[n]ew lawyers who recalled civic motivations for entering law were twice as likely to be working in public service jobs as those who did not (20% versus 10%).” *Id.*, at 99.

40 *Id.*, at 102.

41 “Outside of the law school environment, studies of lawyer professionalism consistently find four factors to be very powerful in shaping lawyers’ behaviors: where they work, with and for whom they work, and the market conditions within which they operate.” *Id.*, at 104.

42 Scott L. Cummings and Deborah L. Rhode, *Managing Pro Bono: Doing Well By Doing Better*, 78

firm pro bono practice is to provide skills training to their young associates, and case selection is often driven, in part, by the lawyering activities inherent in the selected representation.<sup>43</sup> Therefore, cases providing associates with certain skill sets, such as motion and trial experience, are preferred, whereas other potential *pro bono* activities such as community organizing, lobbying, and legislative analyses are less favored.<sup>44</sup> Large law firm *pro bono* case selection is also greatly influenced by the economic and/or political ramifications to the law firm. As a shield “[o]ver three-fifths... of firms” rely upon a law firm committee for *pro bono* case selection and/or approval.<sup>45</sup> Large law firms generally categorically reject *pro bono* representation in employer/labor, mortgage foreclosure, family law and estate planning, and bankruptcy based upon actual ethical conflicts, law firm economic interest in not offending existing or potential clients, and substantive areas with procedures and evidentiary rules different from those used in ordinary civil law practice.<sup>46</sup> In addition, law firm *pro bono* case selection focuses on individual client representation, “matters which can be completed expeditiously...” rather than on more systemic legal problems like environmental law or homelessness.<sup>47</sup> Since many students, once they are employed in law firms, will have a constricted selection of the types of *pro bono* cases and clients that they can represent, it is important to provide them with an opportunity in law school to work on cases that they, themselves, find important. Once they gain the confidence to represent “their” public service issues and once they feel the satisfaction of that representation, they may be better equipped and more empowered to attempt to change the *pro bono* culture in the law firms where they will later work.

For the purposes of this paper, I want to explore just one variation on the law school *pro bono* theme: What effect might student selected clinical cases have upon their attitude toward *pro bono* activities and upon the persistence of that attitude throughout their legal careers?<sup>48</sup> We know from

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Fordham L. Rev. 2357 (2010). They demonstrate not only that large law firms dominate American *pro bono* activity, but that those firms have in many ways supplanted traditional sources such as legal aid societies, that have provided access to justice. (*Id.* at 2360–361, 2372–2375).

43 “The institutionalization of *pro bono* programs, however, has blurred the line between paid and nonpaid work; the training, recruitment, and reputational functions of *pro bono* service are increasingly integrated into the economic framework of large law firms. Nowhere is this more evident than in the growing linkages between large-firm *pro bono* and career development programs.” *Id.*, at 2426.

44 “Of particular value were cases that had a ‘high likelihood of... going to trial.’” (*Id.*, at 2427).

45 *Id.*, at 2391.

46 *Id.*, at 2392–2394.

47 Richard Abel, *The Paradoxes Of Pro Bono*, 78 Fordham L. Rev. 2443, 2448. In addition, the state of the economy’s economic health also drives law firm pro bono case selection. “The economic contraction increased pressures to choose matters that could be resolved with predictable and limited

resources.” (*Id.*).

48 I am not alone in seeking more emphasis on students’ involving in selecting clinic clients. For instance, Adrienne Jennings Lockie has recently “encourage[d] clinical supervisors to involve students in the decision of whom to represent; students benefit in a number of ways from being involved in the client selection. Providing students with as much autonomy as possible enhances student learning.” 16 Clinical L. Rev. 357, 360 (2010). There is a difference between motivating students to perform required course assignments and helping them develop an internalized desire to continue pursuing a self-defined goal or activity. “A major reason for calling attention to the distinction between behavior in *controlled motivation* situations and in the on his own situations is that this distinction makes it clear why it is important to help the pupil develop a feeling that what he is studying has significance for him. If an individual is to use some knowledge or skill when he is on his own, he has to feel that the rewards of using the knowledge or the skill will be greater than the rewards of not using it.” Ralph H. Ojemann, *Should Educational Objectives Be Stated in Behavioral Terms?*, 68 The Elementary School J. 223, 226 (1968).

adult learning theory that self-directed education is more than merely providing students with some discretion in designing their own curriculum.<sup>49</sup> One of the critical results of self-directed learning is that students' projects "are 'owned' by the learner who is in control of what is learned, when learning starts, where it goes, and when it is complete."<sup>50</sup> Psychological motivation literature also emphasizes that people organize their lives around "a persistent motivation for the experience of 'happiness,' contentment, or well-being" and around the desire for "virtually unlimited choice regarding our own beliefs, attitudes, and behaviors..."<sup>51</sup> In addition, the educational experience

49 At the basis of adult learning theory originally advanced by Malcolm S. Knowles, Abraham H. Maslow and Carl R. Rogers is the psychological need of older learners to be self-directed, to use reflection in learning experiences and to immediately apply what they learn. Frank S. Bloch, *The Andragogical Basis Of Clinical Legal Education*, 35 Vand. L. Rev. 321, 326–331 (1982). For a history of adult learning theory, see, Li-Kuang Chen, Young Sek Kim, Paul Moon, and Sharan B. Merriam, *A Review and Critique of the Portrayal of Older Adult Learners in Adult Education Journals, 1980–2006*, 59 *Adult Education Q.* 3 (2008). One branch of adult learning pedagogy, achievement goal theory, "posits that students often pursue one of two broad goals in a class: mastery goals or performance goals. [citations omitted] Both goals concern the pursuit of competence and the assessment of one's own skill level, but they do so in different ways. When pursuing a mastery goal... students strive foremost to develop their ability and knowledge base in a content area. When pursuing a performance goal... students instead try to outperform peers." Corwin Senko and Kenneth M. Miles, *Pursuing Their Own Learning Agenda: How Mastery-Oriented Students Jeopardize Their Class Performance*, 33 *Contemporary Educational Psychology* 561, 562 (2008). Senko, et. al, found that the approach that students take in a course, master goal versus performance goal, may substantially affect test performance; "using an *interest-based approach* may lead mastery-oriented students to under-achieve to some degree if it guides them toward a learning agenda that differs from the teacher's agenda." *Id.*, at 565. One study "found a strong correlation between mastery goal orientation and law school success (as measured by class rank). In contrast, there was no correlation between performance goal orientation and class rank. However, performance goal orientation did correlate to higher LSAT scores." Leah M. Christensen, *Enhancing Law School Success: A Study Of Goal Orientations, Academic Achievement And The Declining Self-Efficacy Of Our Law Students*, 33 *L. & Psych Rev.* 57, 66 (2009).

50 Donald N. Roberson, Jr. and Sharan B. Merriam, *The Self-Directed Learning Process of Older, Rural Adults*, 55 *Adult Education Q.* 269, 270 (2005). Self-directed learning "can be described as intentional... and self-planned... learning, where the individual

is responsible for... and in control... of learning." *Id.*, at 270. In addition, "[e]xperiential education is commonly defined as learning that involves participants in direct experience and focused reflection.... Through the process of reflecting on experiences students are said to produce knowledge and meaning rather than being the recipients of knowledge and meaning from the teacher." Robyn Zink and Michael Dyson, *What Does It Mean When They Don't Seem To Learn From Experience?*, 39 *Cambridge J. of Education* 163, 164 (2009). Of course, some have argued that adult learning theory, or andragogy, is not the proper pedagogical analogue to apply to law school teaching "because our students have not always reached the stage of 'adulthood' the androgical method requires, and also because we feel it necessary to teach specific content." Linda Morton, Janet Weinstein, and Mark Weinstein, *Note Quite Grown Up: The Difficulty Of Applying An Adult Educational Model To Legal Externs*, 5 *Clinical L. Rev.* 469, 470 (1999). Therefore, one might envision in law school a modified form of adult learning theory which provides students with a much greater degree of self-directed learning, but which also provides for "[a]utonomy support [which] has three prototypical features: (a) choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation; (b) meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided; and (c) perspective thinking, in which the authority shows that he or she is aware of, and cares about, the point of view of the subordinate." Kennon M. Sheldon and Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 *Personality and Social Psychology Bulletin* 883, 884 (2007). For an interesting discussion self-determination theory in relation to the evolution of lifetime learning objectives and life transitions, see, Jennifer G. La Guardia, *Developing Who I Am: A Self-Determination Theory Approach to the Establishment of Healthy Identities*, 44 *Educational Psychologist* 90 (2009).

51 Lawrence S. Krieger, *Human Nature As A Guiding Philosophy For Legal Education And The Profession*, 47 *Washburn L. J.* 237, 249–250 (2008). "Identity

is enhanced by students' "positive emotions like enjoyment, pride, and hope as experienced in educational settings."<sup>52</sup> Although legal education has focused on individual students' learning styles for years,<sup>53</sup> only recently has attention been devoted to individual students' emotional reactions to the educational environment. "[I]n classroom learning, students may be especially sensitive to the emotional meanings of their academic experiences, as well as to the experiences of others, who are in such close proximity... Similarly, teachers are simultaneously interacting with

learning...' cannot be separated from a person's experienced life, nor from his or her social commitment'; thus, identity is at the same time individual and social." Jennifer A. Sandlin and Carol S. Walther, *Complicated Simplicity: Moral Identity Formation and Social Movement Learning in the Voluntary Simplicity Movement*, 59 *Adult Education Q.* 298, 299 (2009). "Adult education scholarship... understands learning as a lifelong pursuit embedded in everyday life experiences." Dae Joong Kang, *Rizoactivity: Toward a Postmodern Theory of Lifelong Learning*, 57 *Adult Education Q.* 205, 205 (2007). Students' attitudes toward particular learning environments and methods affect their willingness and ability to learn. "Metacognitive experiences are online feelings, judgments/estimates, and thoughts people are aware of during task performance. In a broader sense, the affective experiences that the person becomes aware of in connection with the task at hand — e.g., interest, liking, disappointment, etc. — are also part of the metacognitive experiences. These affective experiences co-occur with metacognitive feelings and metacognitive judgments/estimates, such as feeling of knowing, feeling of difficulty, feeling of familiarity, feeling of confidence, feeling of satisfaction, estimate of solution correctness, etc." Anastasia Efklides, *Metacognitive Experiences: The Missing Link in the Self-Regulated Learning Process*, 18 *Educ. Psychol. Rev.* 287, 288 (2006). Therefore, within students' discretion to select different types of courses, the "interest value" of the course will play a heavy role. "Expectations for success, confidence in one's abilities to succeed, and personal efficacy have long been recognized by decision and achievement theorists as important mediators of behavioral choice." Jacquelynne Eccles, *Who Am I and What Am I Going to Do With My Life? Personal and Collective Identities as Motivators of Action*, 44 *Educational Psychologist* 78, 81 (2009). Course selection will also be influenced by "anticipated anxiety, fear of failure, and fear of the social consequences of success. Cost can also be conceptualized in terms of the loss of time and energy for other activities that may be more central to one's personal and collective identities." *Id.* at 83. In addition, persistence is related to the concept of self-efficacy, or how individuals perceive their own competence in relation to different challenges. "Empirical research illustrates that students with

'high self-efficacy for a specific task are significantly more likely to do the things necessary to succeed at the task and far more likely to persist in the face of adversity than are individuals with low self-efficacy in relation to that specific task.'" Christensen, *supra.*, note 43, at 72, citing to Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We be Part of the Solution?*, 8 *Legal Writing: J. Legal Writing Inst.* 229, 234 (2002). Christensen found that "law students with higher class rank tended to have lower academic self-efficacy" which may, in part, be due to the nature of law school pedagogy. Christensen, *supra.*, note 43, at 71–72, 77–78.

- 52 Thomas Goetz, Anne C. Reinzel, Nathan C. Hall, and Reinhard Pekrun, *Antecedents of Academic Emotions: Testing the Internal/External Frame of Reference Model For Academic Enjoyment*, 33 *Contemporary Educational Psychology* 9, 10 (2008). Teachers' perceptions of whether or not students are engaged and are actually internalizing the educational experience are often incorrect. "[I]t can be assumed that teachers' domain-general conceptions can lead to false inferences regarding the emotions experienced by individual students in different domains. For example, a teacher may incorrectly assume that a student who is bored in his or her class also feels bored in most other classes. Such a dispositional, domain-general explanation could result in less responsibility being felt by teachers for students' affective engagement in their own classes." *Id.*, at 28.
- 53 For instance, approximately 18 years ago I wrote an article applying visual learning theory to law teaching, *Opening Students' Eyes: Visual Learning Theory in the Socratic Classroom*, 15 *Law & Psychol. Rev.* 1 (1991); see also, William Wesley Patton, *An Opening Gambit In Teaching Juvenile Law: Creating Icons Of Normative Family Structures*, 20 *Law & Psychol. Rev.* 1 (1996). "Interestingly, only 26% of the first-year law school students we tested had high auditory strength, whereas 5% of their classmates were low in auditory strengths. As for visual strengths, only 8% of those we tested had high visual strengths, whereas 12% were low in their visual strengths... [also] 21% were high in tactual strengths [what they write], and 16% were high in kinesthetic strengths." Robin A. Boyle, *Teaching Law Students Through Individual Learning Styles*, 62 *Alb. L. Rev.* 213, 227–228 (1998).

multiple students experiencing a variety of emotions... [and] the teachers' emotions are integral to their motivation and cognition and ultimately their teaching effectiveness."<sup>54</sup>

However, in the majority of law school clinics the clinical professor selects a substantive field of practice and focuses any *pro bono* efforts on a target group. The professor's act of selection projects to students the professor's subjective sense of "justice".<sup>55</sup> However, what effect does the professor's definition of justice have on clinic students who do not share the same ethical, political views, and/or sociological perspectives?<sup>56</sup> For instance, in a law school landlord/client clinic, what does the professor's valuation of representing the tenant have on a student who thinks that, at least sometimes, landlords are the ones who are unjustly treated by the legal system?<sup>57</sup> Or in an environmental law clinic, what affect does the professor's normative and evaluative decision to litigate a case to protect an endangered moth have on the student who comes to a very different

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54 Debra K. Meyer and Julianne C. Turner, Re-Conceptualizing Emotion and Motivation to Learn in Classroom Contexts, 18 *Educ. Psychol. Rev.* 377, 388 (2006). One of the goals of self-directed learning is to increase student engagement through motivation strategies. There are "three main forms of engagement: behavioral, emotional, and cognitive. Behavioral engagement is indexed by participation measures, for example, school attendance, effort, persistence and attention. Emotional engagement includes affective reactions to classroom, school or teacher and is measured as specific affects such as interest, boredom, happiness, anxiety. Cognitive engagement refers to cognitive forms of investment in learning, for example, goals, strategic and self-regulatory processes." Mary Ainley, *Connecting with Learning: Motivation, Affect and Cognition in Interest Processes*, 18 *Educ. Psychol. Rev.* 391, 401 (2006). However, there are some drawbacks to permitting students too much latitude in using self-directed motivation in structuring their learning. "From the standpoint of their potential for having adaptive or societally desirable effects on the contents of motivation... it appears that identities are double-edged swords. In their early stages of development, they provide important sources of motivation for curiosity and exploration. However, as they become more clearly delineated, and especially if they become rigidly solidified... they begin to guide us more strongly toward certain experiences but away from others." Jere Brophy, *Connecting With the Big Picture*, 44 *Educational Psychology* 147, 155 (2009). "[T]he interplay of student motivation and identity development can be usefully understood within a co-regulation (CR) model. Co-regulation refers to the relationships among cultural, social, and personal sources of influence that together challenge, shape, and guide ('co-regulate') identity." Mary McCaslin, *Co-Regulation of Student Motivation and Emergent Identity*, 44 *Educational Psychologist* 137, 137 (2009). Although professors may be experts in the substance and pedagogy

relating to the topic of the course, "students are likely to be experts in the contingencies of their social environments..." *Id.*, at 137.

55 The clinical experience is obviously more than an environment in which students learn advocacy skills. It is also an environment in which they can view relative deprivation, explore the power dynamics of legal institutions, and can begin to form an ethical and professional role model. It offers students an opportunity for "[c]ontemplative education [which] is concerned with the development of the 'whole person'" and is "a set of pedagogical practices designed to cultivate the potentials of mindful awareness and volition in an ethical-relational context in which the values of personal growth, learning, moral living, and caring for others are nurtured." Robert W. Roeser and Stephen C. Peck, *An Education in Awareness: Self-Motivation, and Self-Regulation Learning in Contemplative Perspective*, 44 *Educational Psychologist* 119, 127 (2009).

56 One of the major goals of a law school education is to help students develop critical thinking skills. "Modernist theorists conceive of it [critical thinking] in terms of both the ability and the disposition to critically evaluate beliefs, their underlying assumptions, and the worldviews in which those beliefs are embedded." Duck-Joo Kwak, *Re-Conceptualizing Critical Thinking for Moral Education in Culturally Plural Societies*, 39 *Educational Philosophy and Theory* 460, 462 (2007). Clinical students can develop their critical thinking skills both by engaging the clinical faculty and other students in the dynamics and results of case selection, as well as by making individual case and substantive area clinical choices as well.

57 At the beginning of my teaching career at UCLA Law School, I co-taught a trial advocacy course with Paul Boland. That course was interesting because the students represented two different groups: tenants in eviction proceedings and parents in the dependency system who were charged with child abuse and/or neglect. Our students had

cost/benefit analysis regarding ecology and commerce.<sup>58</sup> A professor's social justice selection can conflict with the essence of self-directed learning. "In autonomy-supportive contexts, instructors empathize with the learner's perspective, allow opportunities for self-initiation and choice, [and] provide a meaningful rationale if choice is constrained..."<sup>59</sup> In addition, the nature of the legal task and the students' involvement in those lawyering activities often determine the types and quality of student motivation. Thus, learning may be "intrinsically motivated (i.e., was undertaken for its inherent interest and enjoyment) or was extrinsically motivated (i.e., was done to attain an outcome that is separable from the learning itself... [a]utonomous motivation [which] involves the experience of volition and choice... [and] controlled motivation [that] involves the experience of being pressured or coerced."<sup>60</sup>

In addition to motivation, Emily Zimmerman has recently noted that "law student enthusiasm" toward the study of law is a critical determinant of students' quality of educational experiences, their emotional levels of distress, and their post-graduation attitude toward the practice of law as

radically different reactions to the two groups of clients. Some students found the battle of tenants against landlords as a form of crusade for the disadvantaged, while a much smaller group found it very problematic that rent control ordinances and the "technicalities" of eviction law permitted tenants to stay in apartments even though they had unreasonably failed to pay at least a fair rent for the habitable portion of their apartment. Of course, I attempted to provide a teachable moment by discussing descriptions of lawyers' and students' reactions to the politics of landlord/tenant law by introducing law review articles such as Homer C. LaRue's, *Developing an Identity of Responsible Lawyering Through Experiential Learning*, 43 *Hastings L.J.* 1147 (1992). But those discussions, although interesting, did not appear to have a significant impact on many students' attitudes about this type of *pro bono* representation. The reactions to representing accused child abusers were equally mixed. Most students initially were repulsed by the facts discovered in the parents' cases, while others saw these as cases where the government must be put to the test of meeting its burden in order to curtail unreasonable official conduct and social engineering. Although it has been argued that "[e]mpathy is among the most important lawyering skills that students can learn in a clinic", we have no empirical evidence that our introduction of empathic literature actually affects a substantial percentage of clinical students or whether those momentary glimpses of compassion persist during the students' legal careers. Philip M. Gentry, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic And The Teaching of Empathy*, 7 *Clinical L. Rev.* 273, 275, 278 (2000). "There are three phases of adult learning when encountering 'disorienting moments' that can result in perspective transformation. First, there is the 'disorienting experience' in which a meaning

scheme is placed in jeopardy. Next, the learner engages in exploration of and reflection on the content of the problem itself, or the premise upon which it is predicated. Finally, the learner enters a 'reorientation' stage. Here the learner creates means for coping with the problem should it arise again." Aiken, *supra.*, note 19, at 25. But we do not possess empirical data on how many clinic students actually transform their personal views after having encountered "disorienting" lawyering contexts.

- 58 "Fairness theory also offers important distinctions among the concepts of self-interest, fairness, and satisfaction. Perhaps most importantly, fairness is related to, but not synonymous with, self-interest... Additionally, it is necessary to make a vital distinction between outcome satisfaction and process satisfaction." Craig W. Wendorf and Sheldon Alexander, *The Influence of Individual - and Class-Level Fairness-Related Perceptions on Student Satisfaction*, 39 *Contemporary Educational Psychology* 190, 194 (2005). In other words, a student may be quite pleased with the process and lawyering skills gleaned from a clinical course, but may be equally dissatisfied and troubled by the outcome or the perceived justice in achieving what the professor concluded was a just goal and result.
- 59 Maarten Vansteenkiste, Willy Lens, and Edward L. Deci, *Intrinsic Versus Extrinsic Goal Contents in Self-Determination Theory: Another Look at the Quality of Academic Motivation*, 41 *Educ. Psychologist* 19, 21 (2006).
- 60 *Id.*, at 19. "[P]eople have a primary motivational propensity to engage in activities that allow them to feel a sense of personal causation... [and] individuals experience 'causality pleasure' when they perceive themselves as the initiator of their behavior." *Id.*, at 20. Educational psychology is beginning to understand that the types and degree of student motivation have a great impact on

a profession.<sup>61</sup> Zimmerman notes that student enthusiasm has two variables, interest and vitality, and that interest is a four staged process in which professors need to tailor pedagogy and both summative and formative assessments according to the students' individual stages of interest and knowledge.<sup>62</sup> Vitality refers to "law students' subjective feelings of energy regarding law study."<sup>63</sup> Vitality is closely related to self-determination theory since vitality scores increase as tasks are autonomously selected and based upon external motivation.<sup>64</sup> Research on student enthusiasm supports "giving students choices about topics to study. Both interest and vitality can be promoted when individuals feel that they are engaged in an activity of their own choosing."<sup>65</sup>

As Margaret Barry has warned us, there is a "risk of permitting clinic precepts of social justice, commitment and professionalism to deconstruct into alienation, intolerance and mediocre performance" for some clinic students.<sup>66</sup> Although clinical professors may hope that students' reflections upon meaningful lawyering events may be transformative in relation to those students' notions of social justice, we simply do not have sufficient evidence to determine the frequency of such change.<sup>67</sup>

### III. A review of three years of data regarding the Whittier Law School legal policy clinic

At first my sandbox image and my goal of introducing a legal laboratory for pedagogical play<sup>68</sup> into

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- student achievement. The "differences between the percentage of variance in student performance... [is explained] by three types of motivation: goal types, sources of enjoyment and general motivation to learn." David Kember, Amber Ho, and Celina Hong, *The Importance of Establishing Relevance in Motivating Student Learning*, 9 *Active Learning in Higher Education* 249, 252 (2008).
- 61 Emily Zimmerman, *An Interdisciplinary Framework For Understanding And Cultivating Law Student Enthusiasm*, 58 *De Paul L. Rev.* 851, 853–854 (2009).
- 62 Zimmerman, *supra.*, at 857-860. Zimmerman describes the "four phases of interest as 'triggered situational interest,' 'maintained situational interest,' 'emerging individual interest,' and 'well-developed individual interest.'" *Id.*, at 859 (discussing and quoting from Suzanne Hidi, K. Ann Renninger & Andreas Krapp, *Interest, a Motivational Variable that Combines Affective and Cognitive Functioning*, in *Motivation, Emotion, And Cognition: Integrative Perspectives On Intellectual Functioning And Development* 89, 92 (David Yun Dai & Robert J. Sternberg, eds., 2004). Students progress dynamically through the four levels of interest in relation to different topics based upon whether the interest is internally or externally triggered, whether and what kind of support the student receives, the amount of knowledge acquired surrounding the topic, and the degree of independence and perseverance attached to the exploration. Zimmerman, *supra.*, at 859–861.
- 63 Zimmerman, *supra.*, at 857.
- 64 Zimmerman, *supra.*, at 870, 884.
- 65 Zimmerman, *supra.*, at 909. Zimmerman suggests that giving first year students a choice of one elective from a menu of courses will add to their enthusiasm for the study of law. *Id.*, at 911.
- 66 Margaret Martin Barry, *Clinical Supervision: Walking That Fine Line*, 2 *Clinical L. Rev.* 137, 138 (1995). "If a student who signs up for a public benefits clinic becomes disenchanted with the idea of welfare, and further, the beginnings of a firm moral objection to it grows out of the clinic experience, this can generate significant barriers to performance predicated upon a commitment to assuring clients get the benefits for which they qualify." *Id.*, at 154.
- 67 "[R]eflection and internalization go hand in hand, with an understanding that reflection includes a gradual transformation of originally discrete external social knowledge into embedded and absorbed personal knowledge." Alison Le Cornu, *Meaning, Internalization, and Externalization: Toward a Fuller Understanding of the Process of Reflection and Its Role in the Construction of Self*, 59 *Adult Education Q.* 279, 284 (2009). Although clinic students' reflections may be transformative, we do not necessarily know transformative of what and in what ways their concepts of social justice and professionalism are modified by the clinic experience.
- 68 Although some might accept the concept of play as important to the development of younger children, historically play has not been easily accepted as

the law school curriculum appeared inconsistent with the realities of creating a graded<sup>69</sup> clinical course that must jibe with all law school academic rules and regulations.<sup>70</sup> However, the more difficult problem was actually implementing a student self-directed and self-selected process for legal projects. As I quickly discovered, as legal novices in the area of public policy advocacy, many of the clinic students were not yet equipped with sufficient expertise to intelligently select the types of projects and the specific topics within those projects that they would advocate.<sup>71</sup> Cognitive load

a serious pedagogical device. For instance, in “colonial times, the tendency of children to play was taken to be a sign of their moral laxity, and adults admonished children to avoid the frivolity of play in favor of work and study... [however in] 1896 George Herbert Mead called on educators to base children’s early educational experiences on spontaneous play activities called forth by the proper use of natural stimuli.” “[T]he history of the pedagogy of play reveals practices of delimiting and governing what counts as valuable play, and the suppression and assimilation of particular aspects of the child’s will to play.” Andrew Gibbons, *Philosophers as Children: Playing with Style in the Philosophy of Education*, 39 *Educational Philosophy and Theory* 506, 513 (2007). Nancy R. Kind, *Play: The Kindergartners’ Perspective*, 80 *The Elementary School Journal* 80, at 80–81 (1979). “[F]reedom of choice and action are fundamental to the pedagogy of the kindergarten...” Mary Boomer Page, *The Present Point of View of the Plays and Games of the Kindergarten*, 9 *The Elementary Teacher* 341, 341, 345, 353. See also, Jaipaul L. Roopnarine, Mohammad Ahmeduzzaman, Seanna Donnelly, Preeti Gill, Andrea Mennis, Lauren Arky, Kristen Dinger, Mary McLaughlin, and Enayet Talukder, *Social-Cognitive Play Behaviors and Playmate Preferences in Same-Age and Mixed-Age Classrooms over a 6-Month Period*, 29 *American Educational Research J.* 757, 772 (1992).

69 Some argue that adult learning theory requires a different method of student evaluation and grading. “As a zero-sum system, a mandatory curve also creates anxiety and undermines the security and relatedness needs... Zero-sum grading also obstructs the natural impulse for growth through integration of personal authenticity and competence with social connectedness and sensitivity... because the system sets its primary indication of personal competence in direct conflict with helping and supporting others.” Krieger, *supra.*, note 44, at 297–298. “Although traditional grading methods usually are based on the one-sided evaluations of students by teachers – which is disfavored in andragogical theory – the solution is not necessarily to eliminate grades or to reduce the rigor of the evaluation process by means of a pass/fail system. Instead, the student, together with the instructor, should assess the students’ performance at critical points during representation in order to evaluate the work in the

case, to determine the student’s learning needs and to measure the student’s overall progress. Just how students finally are graded or evaluated at the end of the course is not so important, since the positive, andragogically based process of shared evaluation between the student and the teacher already will have taken place.” Bloch, *supra.*, note 43, at 350.

70 The Legal Policy Clinic is a hybrid course. Clinical courses have traditionally been declined into: 1) live-client; 2) simulation; and 3) field placement externships. Deborah Maranville, *Passin, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 *Clinical L. Rev.* 123, 124 (2000). In the Legal Policy Clinic, although students do not represent individual clients, they do engage in advocacy in a variety of actual cases and/or controversies in the appellate courts, Congress and state legislatures, and in the media. In addition, although they do not provide services in off-campus externships, they must often engage in interdisciplinary fact investigation with experts in a variety of business and legal environments. Further, some of the students’ work product, especially their legislative analyses and community lawyering projects are similar in structure to seminar papers and/or independent study projects. Therefore, the exact grading requirements for the Clinic overlapped with the specific and often conflicting grading policies for live-client, simulation, seminar and independent study requirements at Whittier. Also, if the class must be graded on a curve, how does the professor compare the extremely diverse bodies of work of different students? If students have discretion to define their projects, comparisons among clinic students become much more difficult. Additionally, what should be measured in determining a grade in such a hybrid clinic? Should the grade be a comparison of similar assignments, growth of the students in terms of policy advocacy skills and/or sensitivity to the need for and expertise in pro bono and public interest law? I ultimately decided to grade on several variables: (1) students’ selection of and the student’s growth in selecting projects; (2) sophistication of research; (3) caliber of finished project; and (4) students’ self-evaluation and reflection on the processes and products.

71 Although “experts are reluctant to accept problems as defined by others and are willing to explore multiple differential diagnoses in parallel processes



theory is increasingly demonstrating that learning theory must assess students' individual cognitive structures in order to properly assess the most effective methods and pace of instruction. Because inexperienced students increase their cognitive abilities "instructional designs need to change. For more knowledgeable learners, the limitations of WM [working memory] are not the same as novices, because previously learned information stored in LTM [long-term memory] can be activated, effectively increasing the capacity of WM for domain-related information."<sup>72</sup> Therefore, at least at the beginning of the semester providing clinic students with ultimate discretion over project selection is not consistent with educational psychology because "[r]ealistic whole tasks are often too difficult for novice learners without some form of simplification."<sup>73</sup> In addition, novice student competency regarding difficult task selection is not affected by students' motivation levels; they may be excited about the task or take ownership in task selection even if they lack sufficient competency to determine the variables inherent in case or project selection.<sup>74</sup>

Thus, inexperienced law students' motivation and excitement to tackle a social problem might lead to overly ambitious projects that could lead to considerable frustration during implementation. Even though adult learning theory supports student autonomy, the "debate over the benefits and drawbacks of offering choice in the classroom has intensified in recent years...[and] [t]he empirical findings concerning the benefits of choice are equivocal and confusing."<sup>75</sup> There is no simple equation of: Adult student desire for autonomy + student motivation + student task selection = successful clinical instruction since the process and environment of choice is both complex and involves interrelationships among the professor and the student making the choice and among that student and all other students in the class:

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in order to discover, even 'create,' the real problem to be solved", novices do not necessarily relish such discretion and often do not have the framework for making those fundamental decisions without instructor assistance. Brook K. Baker, *Learning To Fish, Fishing To Learn: Guided Participation In The Interpersonal Ecology Of Practice*, 6 Clinical L. Rev. 1, 46 (1999). Although adult learning theory prizes student autonomy, it also recognizes that skills instruction must be tailored to students' stages of development. Robin A. Boyle, *supra.*, note 47, at 232. For a discussion of the social and pedagogical concerns of the coordination student experience and pedagogy, see, Craig L. Feldbaum, Terry E. Chirstenson, and Edgar C. O'Neal, *An Observational Study of the Assimilation of the Newcomer to the Preschool*, 51 Child Development 497, 506 (1980).

72 Paul Ayres and Fred Paas, *Interdisciplinary Perspectives Inspiring a New Generation of Cognitive Load Research*, 21 Educ. Psychol. 1, 2 (2009).

73 Rob J. Nadolski, Paul A. Kirschner, and Jeroen J. G. van Merienboer, *Optimizing the Number of Steps in Learning Tasks for Complex Skills*, 75 British J. of Educ. Psychol. 223, 224 (2005). Nadolski, *et. al.* further found that especially when teaching professional degree students topics such as "diagnosing diseases" or "preparing a plea in court", "[l]imiting the number of steps in learning to solve complex tasks leads to optimal learning-

effectiveness... [t]oo many steps made the learning task less coherent... [and] too few steps led to a lower performance on the learning task." *Id.*, at 223, 234.

74 "Increasing task motivation is not helpful for a learning task that is so difficult that it is impossible to solve." *Id.*, at 226. Clinicians, of course, can help increase student competencies for autonomous case selection. "The following aspects of instruction and teacher behavior have an effect on the way students' self-regulate their learning: clarity and pace of instruction, the amount of structure provided, autonomy granted, teacher enthusiasm, humor, fairness, and teacher expectations about students' capacity." Monique Bockaerts and Eduardo Cascallar, *How Far Have We Moved Toward the Integration of Theory and Practice in Self-Regulation?*, 18 Educ. Psychol. Rev. 199, 204 (2006). Cognitive psychology clearly demonstrates that the learning process has different stages and contexts. "The first stage involves taking in new information. The second stage involves the integration of the new information into the structure of the learner's existing knowledge structure. The third stage involves the process of recalling that information for use at appropriate times in the future." Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations To Educate Lawyers*, 9 Clinical L. Rev. 417, 432 (2002).

75 Katz and Assor, *supra.*, note 29, at 429.

Choosing to engage in an activity and choosing a mode of engagement are conceptualized as being affected by three factors: the person's traits, the person's behavior and the environment. For example, teachers' feedback (an environmental factor) influences students' self-efficacy (a personal factor) and leads students to choose more difficult tasks or more complex strategies (a behavioral factor). In turn, choosing to employ more complex strategies promotes acquisition of skills and can lead students to feel more efficacious, thus inducing them to choose strategies and tasks in the future with even greater complexity.<sup>76</sup>

The reverse is also true; if students select topics that are too difficult in relation to their capacity or which are too complicated to perform competently within the constraints of the limited clinic semester, they are more likely to choose future tasks that are significantly less challenging than they are capable of performing.<sup>77</sup> In addition, students' motivational levels may decrease in relation to the negative feedback and/or from a sense of failure they experience from over-ambitious projects.<sup>78</sup>

After considering all of the different educational psychology theories, I chose a semi-autonomous case selection methodology for the Legal Policy Clinic. First, I determined the genres of the legal assignments that students as non-lawyers could file on their own without me signing as the attorney of record:<sup>79</sup>

76 *Id.*, at 430.

77 "[M]ost people tend to choose tasks of intermediate difficulty, as this type of task gives them the most information about their capabilities and provides an optimal opportunity to increase their sense of competence... [i]n contrast, choice options that are too easy or too difficult undermine motivation." *Id.*, at 435. Novices use "backward reasoning" which is a form of thinking "backward from goals, by mapping the various roads that might be taken to each goal, by proceeding backward step by step along each road and asking what steps have to be taken before each following step can be taken." However, experts use "forward reasoning" by taking "the entire pattern of symptoms and laboratory results and reasoning forward from them to a likely diagnosis. It is not difficult to see that it is the expert physician's vast store of templates, of patterned symptomology, that makes forward reasoning possible." Mare Neal Aaronson, *We Ask You To Consider: Learning About Practical Judgment in Lawyering*, 4 *Clinical L. Rev.* 247, 293–294 (1998).

78 According to Self-Determination Theory, "there are three basic psychological needs that when satisfied enhance intrinsic motivation and lead to autonomous internalization of behaviors of initial extrinsic origin... The three psychological needs posited by SDT are the need for autonomy, the need for relatedness, and the need for competence." *Id.*, at 430–431. However, the relationship between the emotional reactions to achievement is still not fully understood. "Research on emotions in education and on human emotions more generally, is in a state of fragmentation. While theories and studies prevail which address single

emotions... or single functions of emotions... more integrative approaches are largely lacking. The control-value theory of achievement emotions... offers an integrative framework for analyzing the antecedents and effects of emotions experienced in achievement and academic contexts." Reinhard Pekrun, *The Control-Value Theory of Achievement Emotions: Assumptions, Corollaries, and Implications for Educational Research and Practice*, 18 *Educ. Psychol. Rev.* 315, 315 (2006). See also, Peter Op't Eynde and Jeannie E. Turner, *Focusing on the Complexity of Emotion Issues in Academic Learning: A Dynamical Component Systems Approach*, 18 *Educ. Psychol. Rev.* 361 (2006). "Interested and challenged learners who believe that they will understand the learning material come up with better strategies and enjoy learning. When each factor was considered separately in correlation analyses, anxiety turned out not to be a good predictor of performance." Regina Vollmeyer and Falko Rheinberg, *Motivational Effects on Self-Regulated Learning with Different Tasks*, 18 *Educ. Psychol. Rev.* 239, 249 (2006).

79 Unlike the normal legal clinic in which the professor chooses the clients and issues, in the student self-selected policy clinic students often take political and legal positions that run counter to the professor's philosophical and legal positions. It is therefore important to find lawyering tasks in which students can not only be the authors, but also, if possible, to use types of legal documents that they can file on their own. The first year that I offered the clinic one student decided that for his community lawyering project that he would work with a group of local environmentalists to

(1) a letter to the editor;<sup>80</sup> (2) a legislative analysis of a pending bill;<sup>81</sup> (3) an appellate brief in the California Court of Appeal or California Supreme Court;<sup>82</sup> and (4) a community lawyering project.<sup>83</sup>

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protest the construction of an IKEA warehouse store approximately one-half mile from the law school because it arguably would negatively impact the traffic congestion. The problem is that the project was being built on land owned by the person who was selling the law school land it wanted to develop and that person had donated considerable money to the law school. Even if I might have agreed with the student's community lawyering project in trying to stop the development, I would have placed the law school in a politically compromised position by signing on to the project if they sought an injunction or filed an opposition to the environmental impact report. However, since the student was not representing the clinic or the law school, we ameliorated a difficult problem.

80 Students were asked to select any news article in any written media source on any legal topic of their choice, and were then asked to write a letter to the editor in response. If students choose a foreign language media source they must provide me with a translation of both the original source and with their response.

81 This exercise permits students to select a bill pending in any of the fifty United States legislatures or in Congress. The students are required to select the topic, write a legislative analysis of the bill, and to send the bill to the appropriate legislative committees and to any lobbyists who might use the student's analysis to perfect change in the legislation.

82 In California non-lawyers, including law students, can file four different types of documents in the appellate courts. Since California Court of Appeal decisions are only selectively officially published, students can file a Request for Publication of an Unpublished Opinion pursuant to *California Rule of Court, Rule 978* that provides: "[a] request by any person for publication of an opinion not certified for publication may be made only to the court that rendered the opinion. The request shall be made promptly by a letter stating concisely why the opinion meets one more of the publication standards [stated in Rule 976]. The request shall be accompanied by proof of its service to each party to the action or proceeding in the Court of Appeal." [emphasis supplied]. Students can also file a Request for Depublication in the California Supreme Court to overrule the decision of the Court of Appeal to officially publish the case. *California Rule of Court, Rule 979(a)* provides that "[a] request by any person for the Depublication of

an opinion certified for publication shall be made to the Supreme Court within 30 days after the decision becomes final as to the Court of Appeal... and shall state concisely reasons why the opinion should not remain published and shall not exceed 10 pages." Students can also file a brief in Support or Opposition to Granting Petition For Review in the California Supreme Court pursuant to *California Rules of Court, Rule 14 (b)* which provides

that "[a]ny individual or entity desiring to support or oppose the granting of a petition for review or original writ in the Supreme Court shall lodge a letter in that court in lieu of a brief *amicus curiae*..." Finally, in California since filing an *amicus curiae* brief as a true friend of the court, and not as a one representing a party in the appellate action, is not the practice of law, students can arguably file *amicus curiae* briefs in the California appellate courts without noting that it is in support or in opposition to any party. For instance, in *Duggan v. Commonwealth of Virginia*, 1993 WL 44562 (Feb. 23, 1993, not reported), a non-party who also was not an attorney filed an *amicus curiae* brief on behalf of the Virginia Division of Motor Vehicles. The court refused to file the brief, in part, because it was not signed by an attorney as required by Rules of Court, Rules 5A:23(c) and 5A:20(g). However, the court noted that if the brief had been filed in the person's "individual capacity" rather than as the representative of another person or organization, the signature by an attorney requirement would not have been applicable. (*Id.*, at \*2). See also, *State Bar of Michigan v. Galloway*, 335 N. W. 475 (1983); *Boumediene v. Bush*, 476 F. 3d 934 (2006) [*amicus* brief denied for other policy grounds]; In re Carlos, 227 B.R. 535 Bkrtcy.C.D.Cal. (May 20, 1998).

83 Although all "[s]ervice-learning promotes its objectives to increase opportunities for students in the community, strengthen community relationships, and provides integrative learning experiences for students", in order for students to internalize the community service in a way that will have long-lasting effects, students "require a sense of ownership in the civic experience: engage in meaningful experiences, discuss their activities, and make decisions that influence the quality of their service." Self-directed learning is thus a relevant component to designing and implementing community lawyering projects. Thomsas D. Bordelon and Iris Phillips, *Service-Learning: What Students Have to Say*, 7 *Active Learning In Higher Education* 143, 143, 145 (2006).

In the second year of running the policy clinic, based upon student input, I added the following modifications to the assignments: (1) a letter to the editor of any newspaper or journal in the world;<sup>84</sup> (2) the legislative analyses were extended to any bill in Congress or in any state legislature and/or to students drafting their own bills, writing a legislative analysis, and attempting to find a sponsor for their bill; and (3) I permitted groups of students, if they so chose, to work on a community lawyering project.

But the greatest difference between these assignments and those that I for years have assigned in my live-client clinics is that the students had sole discretion to choose the topics for each of the lawyering tasks that I assigned. Thus, the clinic had no specific substantive focus. Here is a list of the types and substantive topics of the students' legal projects during the first three years of the Legal Policy Clinic:<sup>85</sup>

Appellate Briefs:

*In re Charles T. [juvenile];*

*Mason v. California Dept. of Real Estate [real property];*

*In re Kekoa S. [delinquency];*

*People v. Canty [criminal];*

*People v. English [criminal];*

*Martin v. County of Los Angeles [emotional distress damages];*

*In re Michael G. [child abuse];*

*In re Anthony C. [termination of parental rights];*

*In re S.S. [domestic violence, sexual abuse];*

*Santos v. Grand Portage Band of Chippewa Indians [Native American Family Doctrine];*

*Motevalli v. Los Angeles School District [First and Fourth Amendment Rights];*

*People v. Stewart [criminal];*

*In re Kendall [DNA evidence];*

*People v. Ferguson [search and seizure];*

*Rackohn v. Goldberg [attorney fees].*

Legislative Analyses:

*ABX4-15 [workers' compensation];*

*H.R. 2198 [mental health];*

*H.R. 2873 [foster care];*

*S. 156 [crime bill];*

*A.B. 540 [immigrant rights];*

*A.B. 1450 [parolee tracking];*

84 Since some of my foreign students and some of my LLM students wanted to write in their native tongue in their community newspapers, I expanded the range of publications for their letters to the editor. The students provided me with the assignment in English and in their own language. The expansion of options noticeably increased some of the students' motivation to write the letters to the editor. The only problem arose when one student who is a political exile chose to write the letter to the editor in his previous hometown

newspaper. I was worried that some type of political retaliation might place the student at risk. Thankfully, nothing happened, possibly because his letter to the editor was never accepted for publication.

85 Because of my other responsibilities as Associate Dean for Clinical Programs, I have only been able to offer the Legal Policy Clinic three times. However, I intend to offer the course again in the fall 2010 semester.

H.R. 1198 [*reparations under the State Prisoner of War Act*];  
S. 911 [*Endangered Species Recovery Act*];  
S. 1147 [*Aviation Security Act*];  
H. R. 46 [*education*];  
H. R. 863 [*sentencing*];  
H.R. 912/S 486 [*student loan forgiveness*];  
H.R. 2437 [*Child Protection Services Workforce Improvement Act*];  
H.R. 119 [*right to bear arms*];  
H.R. 5005 [*homeland security*];  
H.B. 2862 [*anti-smoking*];  
S. 1165 [*juvenile crime prevention*];  
S. Res. 35/H. Res. 88 [*victims' rights*];  
S. 800 [*Innocence Protection Act*];  
S. 342 [*Quality Classroom Act*];  
A.B. 1447 [*child abuse reporting*];  
S.B. 2816 [*Armed Services Tax Fairness Act*].

Community Lawyering Projects:

*Culturally focused domestic violence counseling in the Asian American community;*  
*Wheels of Justice: legal aid services from a roving motor home;*  
*Community organizing over hazardous storm drains;*  
*Community organizing regarding land usage;*  
*Community education on rent stabilized housing;*  
*Counseling for non-English speaking Vietnamese immigrants in places of worship;*  
*Kinship Caregivers' Rights;*  
*Developing the Urban Focused Legal Services Project in Toledo, Ohio;*  
*Volunteer family maintenance program for parents with custody of wards of the court;*  
*Creating a free local legal data base for the public;*  
*A feasibility study for adding public parking spaces for tenants in Long Beach;*  
*Creating an Animal Education and Awareness Program in the City of Paramount;*  
*Bundling services for latch-key children;*  
*Work force development strategies for the poorly education in Santa Ana, California.*

The breadth of student selected legal projects is astounding when compared with the narrow focus of most law school legal clinics. Section IV discusses the challenges for the clinical law professor as legal specialist operating in such a generalist's legal universe in which students' projects may be diametrically opposed to the professor's sense of social justice.

#### **IV. The role of the clinical faculty member in a student project selected policy clinic**

The students' Legal Policy Clinic advocacy topics are extremely broad and encompass what traditionally might be termed both conservative and liberal political issues. Therefore, it is likely that the clinical professor will need to adjust to at least two variables not always present in other professor-defined clinics. First, since the clinician will probably not be an expert in many of the substantive areas in which students conduct their research, how can the professor properly mentor the students, and what is the professor's role in this type of clinic? And, second, what pragmatic

and psychological effects will the clinical faculty member have from the mentoring of students on projects that might be antithetical to the professor's own political vision?

#### A. The partially effaced narrator clinician

We are used to being at the center of the universe in our clinics because we are usually substantive and procedural experts, we choose the types of cases the students will work on, and we are ultimately the one responsible to the client under the rules of professional responsibility.<sup>86</sup> One might conclude from my call for a "sandbox clinic" which is student directed and selected that I am effacing the clinical professor from the clinic experience.<sup>87</sup> Nothing could be further from the truth; a clientless policy clinic permits us to transmogrify into a different kind of mentor.<sup>88</sup>

86 For an interesting discussion regarding why teachers tend to control students and the learning environment, see, Johnmarshal Reeve, *Why Teachers Adopt a Controlling Motivation Style Toward Students and How They Can Become More Autonomy Supportive*, 44 *Educational Psychologist* 159 (2009). "Students need to learn to become autonomous learners and they need to be made aware that levels of achievement at university are directly related to the development of the skills of autonomous learning." Diane Railton and Paul Watson, *Teaching Autonomy: 'Reading groups' and the Development of Autonomous Learning Practices*, 6 *Active Learning in Higher Education* 182, 191-192 (2005). Professors can derive great comfort in helping students become independent. "It is the empowerment that comes from acknowledging that the pupil is an active reasoned, a judge, not a mimic, someone who is responsive to the teacher's invitation to join in the business of reasoning and making sense of ourselves, does so with the autonomy and, oftentimes, alacrity." Michael Luntley, *Learning, Empowerment and Judgment*, 39 *Educational Philosophy and Theory* 418, 429 (2007).

87 An effaced narrator is one that melds into a background where the storyteller's value judgments are more or less tacit. "It widely held in theories of narrative that all works of literary narrative fiction include a narrator who fictionally tell the story. However, it is also granted that the personal qualities of a narrator may be more or less radically effaced." George M. Wilson, *Elusive Narrators in Literature and Film*, 135 *Philos. Stud.* 73, 73 (2007). "Hemingway's narration seems designed to lessen the effect of a judging presence. His omniscient narrator may see and know all, but precious little is offered for consideration. This is called an effaced narrator... More important, this narrator does not describe a character's psychology, or tell the reader what should be thought about a character or event... but strives for objectivity. The readers are to judge what the characters say and do for themselves." *A Clean, Well-Lighted Place (Style)*, Answers.com, <http://www.answers.com/topic/a-clean-wel-lighted->

[place-story-5; Jahn Manfred, Narration as Non-Communication: On Ann Banfield's Unspeakable Sentences'](http://www.uni-koeln.de/~ame02/jahn83.htm) [revised version of a paper originally published in *Kolner Anglistische Papiere* 23 (1983) (<http://www.uni-koeln.de/~ame02/jahn83.htm>, at 14). Perhaps the best known effacement of an artist took place in John Cage's 1952 performance of his musical composition 4'33" in which Cage "created what is perhaps the ultimate form of minimalist creation" where the performance of the orchestra 'consisted entirely of four minutes and thirty-three seconds of silence." Rikki Sapolich, *When Less Isn't More: Illustrating The Appeal Of A Moral Rights Model of Copyright Through A Study of Minimalist Art*, 47 *Intellectual Prop. L. Rev.* 453, 460 (2007); Alan L. Durham, *The Random Muse: Authorship and Indeterminacy*, 44 *Wm. & Mary L. Rev.* 569, 604-605 (2002). "The meanings of silence are complex, varied, and often beyond interpretive understanding of the dominant culture. Such resistance is also evident in the law school classroom, where students of color can withdraw their participation as a way of destabilizing the power dynamics and resisting the pressures to assimilate to the socializing norms of the credentializing experience." Margaret E. Montoya, *Silence And Silencing: Their Centripetal And Centrifugal Forces In Legal Communication, Pedagogy and Discourse*, 5 *Mich. J. Race & L.* 847, 854 (2000). Montoya indicates that one linguist has catalogued 20 different meanings of "silence" in communication. *Id.*, at 860. On silence in the classroom, see also, Stefan H. Krieger, *A Time To Keep Silent And A Time To Speak: The Functions Of Silence In The Lawyering Process*, 80 *Oregon L. Rev.* 199 (2001).

88 Professors' identities grow, shift, reshape, and sometimes morph during our careers. And our "[i]denities are constructed within discourse, through difference and in the context of contingency and ambiguity." Matthew Clarke, *The Ethico-Politics of Teacher Identity*, 2 *Educational Philos. and Theory* 185, 196 (2009). "[A] number of theorists have framed learning to teach in terms of the development of a teacher identify, where identity references individuals' knowledge and naming of

Historically, the triad of clinic professor, law student, and client has forced us to delicately balance our ethical duties of competence and zealotry to our clients with our equally essential pedagogical ethics of providing our clinic students with superb pedagogy.<sup>89</sup> We have debated this balance at numerous clinical conferences and in dozens of law review articles, and as one might expect, no meta-model has emerged.<sup>90</sup> We shed much of this concern in the clientless policy clinic as our focus intensifies on the student, and to a somewhat lesser extent, on the student's choice of topic. In the law school legal policy sandbox the students, to a large degree<sup>91</sup> "construct their own knowledge..." where constructivism replaces "the teacher as the center of knowledge (objective), with the learner (subjective). Independent of the teacher, each learner's subjective experiences

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themselves, as well as others' recognition of them as a particular sort of person." *Id.*, at 186.

89 Of course, under the modern legal ethics movement the triad is becoming the quadrad as governmental agencies add the community to the list of those for whom the lawyer is ethically responsible, for example, under the *Sarbanes/Oxley* statute. "In recent decades, the law governing lawyers has begun to fragment. Nowadays, a lawyer's duties often cannot be found in a single body of rules, such as the ABA Model Rules of Professional Conduct, but are likely to vary with the lawyer's specialty, the tribunal or agency before which the lawyer practices, the state or states in which the lawyer is acting, and other factors." John Leubsdorf, *Legal Ethics Falls Apart*, 57 *Buff. L. Rev.* 959, 959 (2009). Leubsdorf recognizes several trends in the "fragmentation" of legal ethics: (1) rules restrain lawyer's representation of express clients' goals; (2) the new rules are specialized by area of practice; (3) the new rules include non-lawyers and may not even specifically mention attorneys or address conflicts with other ethical rules systems; (4) a greater variety of different regulatory bodies have sought to regulate attorneys; and (5) the new regulators, legislative, administrative and judicial are mainly federal regulators. *Id.*, at 959–962.

90 "Clinical theory currently emphasizes that student learning is highly dependent on a close, supportive, but ultimately non-directive relationship with a clinical supervisor whose principal agenda is teaching before-and-after-the-fact, not lawyering during-the-fact." Baker, *supra*, note 60, at 3. "The primary reason cited for these conflicts between clinicians' opinions and practices [regarding non-directive, modeling, and collaboration theories] was a commitment to provide high quality client service. Respondents were concerned that nondirectiveness meant that clients were served by the modest abilities of most students, thereby reducing the quality of service that the supervisor believed could have been delivered." Harriet N. Katz, *Reconsidering Collaboration And Modeling: Enriching Clinical Pedagogy*, 41 *Gonz. L. Rev.* 315, 324 (2006). For a discussion of the nuances of supervision and

recognition that the level of supervision might fluctuate with the abilities of different students and as students gain competence, see, Carolyn Grose, *Flies On The Wasp Or In The Ointment? Some Thoughts On The Role Of Clinic Supervisors At Initial Client Interviews*, 14 *Clinical L. Rev.* 415, 420–422 (2008); Justine A. Dunlap and Peter A. Joy, *Reflection-In-Action: Designing New Clinical Teacher Training By Using Lessons Learned From New Clinicians*, 11 *Clinical L. Rev.* 49, 84 (2004).

91 Peter Boghossian, *Behaviorism, Constructivism, and Socratic Pedagogy*, 38 *Educational Philos. & Theory* 713, 714–715 (2006). "Behaviorism is diametrically opposed to constructivism. Unlike constructivists, behaviorists believe that knowledge does not depend upon introspection, and they completely reject discussion about internal mental states. Rather, behaviorism's focus is on the external observation of lawful relations and among outwardly observable stimuli and the responses that flow." *Id.*, at 715. "There are three fundamental differences between constructivist teaching and other teachings. Firstly, learning is an active constructive process rather than the process of knowledge acquisition. Secondly, teaching is supporting the learner's constructive processing of understanding rather than delivering the information to the learner. Thirdly, teaching is a learning-teaching concept rather than a teaching-learning concept. It means putting the learner first and teaching is second so that the learner is the center of learning." Jong Suk Kim, *The Effects of a Constructivist Teaching Approach on Student Academic Achievement, Self-Concept, and Learning Strategies*, 6 *Asia Pacific Education Review* 7, 9 (2005). Some studies have shown that constructivist pedagogy results in higher and more persistent student achievement. "More discovery-oriented and student-active teaching methods ensure higher student motivation, more learning at higher cognitive levels, and longer retention of the knowledge [citations omitted]. Not only do active learning exercises help students learn... they also increase their confidence with class materials." Isabelle D. Cherney, *The Effects of Active Learning on Students' Memories For Course Content*, 9 *Active Learning in Higher Education* 152, 154 (2008).

now have a special and unique meaning. It is both the student's learning experiences and her perceptions of those experiences that have educational value."<sup>92</sup>

So, what is the clinician's role in the policy clinic? Even if the professor may not be an expert in the substantive area of the students' chosen projects,<sup>93</sup> the professor still possesses expertise on the procedural aspects of the advocacy.<sup>94</sup> For instance, in my policy clinic I can introduce students to the technical procedural and advocacy skills inherent in the genre of lawyering assignments the students will practice: letters to the editor, legislative analyses, appellate briefs, and community lawyering projects. For example, take the shortest assignment, the letter to the editor. This is the perfect introductory assignment because its structure and content seem so intuitive; a student just reads an article and gets on a computer and types a very short response. However, writing letters to the editor is a microcosm of all legal advocacies. First, the students must determine the procedural rules for this type of advocacy such as the limit on the number of words, the timeline between the article's publication and receiving letters to the editor, and whether or not and to what extent the student must supply identifying information.<sup>95</sup> Second, students must learn the best advocacy strategies for getting their letters to the editor published, the publicity benefits to themselves and their potential law firms and/or clients in using letters to the editor, and the potential political and

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92 Boghossian, *supra.*, note 78, at 715.

93 I acknowledge that my policy clinic is counter trend since it is a generalist's clinic at a time when most clinics have moved to more and more specialization. "Civil clinical programs have moved to specialize for multiple reasons. Specialization promotes efficiency in delivering legal services. Second, specialization makes the teaching experience more predictable. It increases the comfort level of both students and teachers. There is a perception that the quality of representation is likely to be higher. Some clinics specialize to further a specific service or social justice agenda. Some clinics specialize because of faculty expertise and interests... [but] [a] clinical program that begins with a limit on the subject matter or the representation invariably limits who the clients will be...." Antoinette Sedillo Lopez, *Learning Through Service In A Clinical Setting: The Effect Of Specialization On Social Justice and Skills Training*, 7 Clinical L. Rev. 307, 309, 320 (2001).

94 Those who argue that non-directed constructivist pedagogy is ineffective rest their arguments on the cognitive distinction between working memory which is limited in duration and short-term unless quickly rehearsed and long-term memory where data and patterns are permanently retained. Under this cognitive load theory, if novices are required to use extensive short term memory in learning new information and/or procedures, they will be less able to transfer that information into long-term memory. Some researchers have "noted that despite the alleged advantages of unguided environments to help students to derive meaning from learning

materials, cognitive load theory suggests that the free exploration of a highly complex environment may generate a heavy working memory load that is detrimental to learning. This suggestion is particularly important in the case of novice learners, who lack proper schemas to integrate the new information with their prior knowledge." Paul A. Kirschner, John Sweller, and Richard E. Clark, *Why Minimal Guidance During Instruction Does Not Work: An Analysis of the Failure of Constructivist, Discovery, Problem-Based, Experiential, and Inquiry-Based Teaching*, 41 Educational Psychologist 75, 80 (2006). There is also some empirical data that demonstrates that a purely problem based pedagogical model is inferior to one that also includes traditional instruction in "knowledge organization and schema acquisition" which requires a more directed teaching approach. *Id.*, at 82-83. The model I proffer for the legal policy clinic combines elements of both non-directed and student-selected learning with the more formal and directed elements of knowledge and schema acquisition regarding the legal procedural elements of each genre of public policy advocacy. The public policy teacher/ mentor thus provides specific information to enable students to implement their self-selected and politically defined projects.

95 Some of the students whose letters to the editor were published were very surprised at receiving emails from the journal's editor asking for a confirmation response as a check on the authenticity of the author. Other students have received telephone calls as well.



social benefits and risks of publishing their views on controversial topics.<sup>96</sup>

But the clinician's place in the policy clinic also entails the traditional roles of mentor and role model. The law's historical apprenticeship system reflects to some degree modern notions of the novice law clinic student learning by emulating the instructor's expertise. "[S]everal strategies for interactions seem particularly important in the replication of expertise: (1) enlisting fully engaged participation by the novice; (2) being directive, but pluralistically so, in offering interpretative guideposts and suggestions for performance, (3) contextualizing performance tasks and being relatively task-centered with respect to the novice's activities, and (4) *demonstrating expert performance and exploring exemplars of practice.*"<sup>97</sup> Mentoring by modeling is not necessarily inconsistent with student self-directed and student-selected pedagogy. For instance, I offer my students three types of expert modeling experiences. First, during the introduction of each genre of advocacy, and after we have studied the procedures and techniques of our advocacy model for that particular lawyering product, I provide the students with a number of my own work products for their critique. I have noticed that this sharing provides many educational benefits: (1) my willingness to become vulnerable to student criticism quickly helps to establish a bond with the students who, as novices, are equally vulnerable in this new legal environment ;<sup>98</sup> (2) my sample of published letters to the editor ratifies the success of the strategies discussed in the class readings; and (3) my actual involvement with the lawyering skill as a *pro bono* activity helps model the goal of life-long public service. Second, after students complete the graded Legal Policy Clinic, they can

96 I have the students read several articles on the strategies for getting letters to the editor published. For instance, they read, Cliff Schaffer, *How to Write Letters to the Editor* (<http://www.druglibrary.org/schaffer/activist/howlte.htm>); *Letter to Editors Hints*, Critical Mass Sydney (<http://www.ncnsw.org.au/member/cmss/advocacy/letters/hints.html>); Mesia Quartano, *Animal Rights: Writing Letters to the Editor: Step by Step* ([http://animalrights.about.com/newissues/animalrights/library/weekly/aa080799\\_example.htm](http://animalrights.about.com/newissues/animalrights/library/weekly/aa080799_example.htm)); Gary Plummer, *Letters to the Editor: Credibility Builder* (<http://www.grayrun.com/lettered.html>); *Letters to the Editor: Why to Write & How To Get Published* (<http://www.soundvision.com/media/lettertototheeditor.shtml>); *Tips for Writing Effective Letters to the Editor*, The Cityherald.com (<http://www.tri-cityherald.com/opinion/howtowriteletters.htm>).

97 Baker, *supra.*, note 60, at 65 [emphasis supplied]. The mentor in the classical era was "at the same time a father-figure, a teacher, a role model, an advisor and a guide." Pau Hennissen, Frank Crasborn, Neils Brouwer, Fred Korthagen, and Theo Bergen, *Mapping Mentor Teachers' Roles in Mentoring Dialogues*, 3 Educational Research Review 168, 169 (2008). "Although good mentoring is certainly helpful and inspirational, judgment is taught only in part by example and through imitation." Mark Neal Aaronson, *We Ask You To Consider: Learning About Practical Judgment in Lawyering*, 4 Clinical L. Rev. 247, 250 (1998). "Collaborator and modeling provide excellent environments for

students to begin their development as lawyers." Katz, *supra.*, note 60, at 316. The clinician's role as mentor and model helps law students shape the reality of their experiences. "In short, what is called an 'experience' – even if a highly ambiguous one which seems to yield nothing more than a 'sense' of confusion and uncertainty – is precisely meaningful for the subject only insofar as its sheer sensuousness has been 'overlayed' by a grid of truth – or, what is perhaps more likely, by several overlapping and possibly conflicting grids of knowledge. Such a theory of affective experience is central for a critical understanding of the very subtle ideological processes and practices operative in legal education...." Jerry Leonard, *The Eleventh Plateau: The Lost Object (ive) Of Legal Education*, 4 Law and Critique 81, 88 (1993).

98 We often fail to recognize how vulnerable our clinic students are since we may assume that they have "toughened up" after having four years of undergraduate training. But, "[d]uring their time in higher education students move backwards and forwards along a spectrum of vulnerability. The vulnerability they feel as beginning under-graduates may be different from, but just as intense as, the vulnerability they experience when engaged in postgraduate studies." Denise Clarie Batchelor, *Vulnerable Voices: An Examination of the Concept of Vulnerability in Relation to Student Voice* 38 Educational Philosophy and Theory 787, 799 (2006).

continue to volunteer on one of the Clinic's long-term public policy projects. For instance, my public/media child dependency open courts project has been ongoing for more than a decade.<sup>99</sup> That project has resulted in the publication of four law review articles,<sup>100</sup> an hour-long debate with a live-feed to dozens of California courts,<sup>101</sup> numerous MLCE presentations,<sup>102</sup> several legislative

99 Another long-term *pro bono* public policy project involves sibling advocacy, especially the establishment of statutes and court opinions that recognize the importance of the sibling bond. This project has resulted in the publication of: William Wesley Patton and Sara Latz, *Severing Hansel from Gretel: An Analysis of Siblings' Association Rights*, 48 Univ. Miami L. Rev. 745 (1994); Patton, *The Status of Siblings' Rights: A View Into The New Millennium*, 51 De Paul L. Rev. 201 (2001); Patton, *The Interrelationship Between Sibling Custody and Visitation and Conflicts Of Interest in the Representation Of Multiple Siblings in Dependency Proceedings*, 3 Children's Legal Rights Journal 18 (2003); Patton and Amy Pellman, *The Reality of Concurrent Planning: Juggling Multiple Family Plans Expeditiously Without Sufficient Resources*, 9 U.C. Davis J. of Juv. L. & Policy 171 (2005); Patton, *The Whittier Law School Legal Policy Clinic's Amicus Curiae Advocacy On Behalf Of Siblings*, 5 Journal of Child and Family Advocacy 449 (2006); Patton, Chapter 5: *The Rights of Siblings in Foster Care and Adoption: A Legal Perspective*, in *Siblings In Adoption And Foster Care: Traumatic Separations And Honored Connections* (Praeger, 2009). The sibling project has also generated numerous MCLE training sessions: *Conflicts of Interest in Representing Minor Clients*, (AALS Workshop on Clinical Legal Education, Dallas, Texas May 3-6, 1997); also a small group leader; *New Issues and Pending Legislation in Dependency Law* (October 22, 1998 at the Fourth Annual Dependency Law Conference); *Siblings' Association Rights in the New Millennium* (National Association of Counsel for Children Conference, Portland, Oregon October 9, 1999); *Establishing Permanency Through Adoptions: Sibling Relationships* (October 5, 2001, 7th Annual A New Beginning Conference, Los Angeles Convention Center); *Balancing Relationships and Permanency Through Adoption* (October 2, 2001, National Association of Counsel for Children Conference, San Diego/Coronado, California); *Keynote Speech: The Constitution, Statutes, and Legislative Policies Regarding Siblings' Rights*, (February 9, 2002, Portland Oregon State Bar Conference); *Paper: Conflicts of Interests In Representing Sibling Groups in Dependency Proceedings* (Dependency Court Legal Services, Sept. 25, 2002); *Post-Adoption Sibling Rights* (Whittier Law School Children's Rights Symposium: *Special Needs Children and Adoption*, March 22, 2003); *Conflicts Of Interest In Representing Multiple Sibling Groups* (U.C. Davis Medical School 2003); *The Adoption and Safe Family Act,*

*Concurrent Planning, And Sibling Association* (Center for Adoption Law & Policy, Capital University Law School, Columbus, Ohio, October 20, 2003); *Where Have All The Siblings Gone, How Did They Get There, and Why?*, California Judicial Council's Juvenile Court Centennial Conference, December 5, 2003); and, *Successive Versus Concurrent Conflicts of Interest and the Duty of Loyalty* (WLS Alumni Luncheon Lecture, July 22, 2008). Finally, the sibling project has resulted in a number of legislative analyses, appellate briefs and oral arguments on sibling issues: Oral arguments and amicus curiae briefs in the California Supreme Court in *In re Zeth S.* (Calif. Supreme Court #S099557) and in *In re Celine R.* (Calif. Supreme Court #S111138) [legal representation of siblings] (May 2003); Legislative analysis of Proposed Judicial Council Rule 1438.5 regarding conflicts of interest in representing multiple children (2005); *Amicus Curiae* brief filed in the California Supreme Court in *In re Charisse C.*, Supreme Court No. S152822 (August 2007) [conflicts of interest in the successive representation of abused children].

100 William Wesley Patton, *Pandora's Box: Opening Child Protection Cases To The Press and Public*, 27 W.S.L. Rev. 181 (2000); *An Empirical Rebuttal To The Open Juvenile Dependency Court Reform Movement*, 38 Suffolk Univ. L. Rev. 303 (2005); *The Connecticut Open-Court Movement: Reflection and Remonstrations*, Connecticut Public Interest L. J., Fall 2005; *When The Empirical Base Crumbles: The Myth That Open Dependency Proceedings Do Not Psychologically Damage Abused Children*, 33 Univ. of Alabama L. & Psych. Rev. 29 (2009).

101 *Should Dependency Court Proceedings Be Open To The Public?* Inside Justice, sponsored by the California Judicial Council, Jan. 2004.

102 *An Analysis of Recent Changes in Child Delinquency and Dependency Law* (presented October 15, 1999, at the L.A. Convention Center 5th Annual A New Beginning Conference); *Hot Topics In Dependency Law, Practice, Procedures, and Policies*, (January 12, 2002, University of California Riverside); *The Trend of Opening Dependency Proceedings To The Press and Public* (National Association Of Counsel For Children Annual Conference, New Orleans, August 14, 2003); *Confidentiality v. Openness In Child Protection Court Hearings*, The Legacy Family Institute and the Every Child Matters Education Fund, web cast seminar broadcast on May 12, 2004; *The Evils of AB 2627: An Empirical and Policy Rebuttal*, National Association of Counsel

analyses of different states' proposed open dependency court bills,<sup>103</sup> and my expert testimony in superior court.<sup>104</sup> The clinic students benefit from involvement with these long-term legal policy projects in a number of ways: (1) they learn that legal change sometimes take years and that the law, even once decided, continues to change in ways that require further policy advocacy; (2) they learn persistence from the professor's modeling in which the long-term legal advocacy continues even after setbacks; (3) they have a chance to see the myriad avenues for policy advocacy involved in a single issue, including action in courts, journals, print media, television, conferences, and in Congress and state legislatures;<sup>105</sup> (4) and once in awhile they have the opportunity to celebrate the success of *pro bono* policy advocacy. Since legal policy students' involvement in these professor-driven long-term *pro bono* public policy projects is voluntary and does not factor in the students' clinic grade, this opportunity does not interfere with nor frustrate the clinic's sandbox pedagogy of student directed learning. And these continuing projects provide students a roadmap toward a life-long *pro bono publico* path even if they choose to practice in an area outside the public interest field.<sup>106</sup>

## B. The challenges for a legal specialist in teaching a general policy clinic

Most of us have developed legal specialties that we often rely upon when teaching specific live-client clinics. What concerns should clinicians have in teaching a course in which they may not have expertise in many of the areas of law in which the students are performing lawyering skills? For instance, since I never enrolled in a law school tax course and have never practiced tax law, I knew very little about the student's project of writing a legislative analysis of the *Armed Services Tax Fairness Act*. However, unlike in the live-client clinic, since the clinic supervisor is not ethically responsible for competent, zealous, loyal, and confidential representation to a particular client, the

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For Children Southern California Chapter, April 2004; *Child Abuse Victims Re-Victimized By The Legal System*, Univ. of Suffolk Law School Symposium: Beyond Prosecution: Sexual Assault Victim's Rights In Theory and Practice (April 16, 2004); *Debunking Sunshine: Open Child Dependency Proceedings, University of Connecticut*, November 17, 2004; *Pediatric Psychiatric Implications of Open Child Abuse Proceedings*, WLS Faculty colloquia, September 16, 2008; *Prophylactic Protections For Child Witnesses*, Widener Law School Symposium on Child Witnesses (April 9, 2009).

103 Testimony, by Invitation by California Senator Adam B. Schiff, Chair of the State Senate Select Committee on Juvenile Justice, in two Senate hearings: (1) "Confidentiality In The Juvenile Court" on May 21, 1999; Position paper used by the National Association of Social Workers and several children's organizations in defeating SB 1391 which would have opened California dependency courts to the press and public; Testimony in the California State Assembly Committee on the Judiciary regarding AB 2627 (should child abuse proceedings be open to the press and public?), April 11, 2004; Testimony in the California Senate Judiciary Committee in opposition to press access to child abuse cases,

June 2004; Legislative analysis of proposed Arizona House Bill 2024 [open dependency courts] (2006); Legislative analysis of Kentucky HR 421 [open juvenile dependency proceedings] (February 5, 2008); Legislative analysis of Georgia proposed Bill No. HB 616 [modifying confidentiality rules in juvenile court (March 11, 2009)]; Legislative analysis of Connecticut proposed Bill No. 5320 [presumptively open juvenile dependency proceedings] (February 3, 2009); and, Legislative analysis of Connecticut Proposed Amendment LCO No. 7314 [juvenile open court pilot project], filed at the request of the Connecticut State Child Advocate Office (May 20, 2009).

104 I testified as an expert witness on the child dependency system and on the pediatric psychiatric effects on child abuse victims who testify in open court, in *San Mateo County v. Superior Court* (2005).

105 Since this project does not involve the representation of a particular client, some state legislatures permit non-attorneys students to testify before committees.

106 One of the advantages of students having taken the legal policy clinic is that they know the procedures for expressing their views on public policy issues. Hopefully, when these students read an article in the local newspaper or legal journal, they will

concerns are mainly pedagogical: Do I have the competence to provide these students with a high quality learning experience? As long as you are able to “check your ego at the door” in terms of your accustomed role as legal expert, there are a variety of methods for marshalling your general legal and experiential knowledge to compensate for a lack of substantive specific expertise.

First, this is an excellent opportunity for modeling competent practice and for teaching or reminding students of their ethical duty of competence. For instance, *ABA Model Rules of Professional Conduct, Rule 1.1[2]* provides that “[a] lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar...” *Rule 1.1* further provides that attorney competence can be acquired “through the association of a lawyer of established competence in the field in question” or “by reasonable preparation.”<sup>107</sup> Even though students are not representing actual clients in their policy clinic advocacy, these same methods are available for your mentoring and for their establishment of sufficient expertise to perform competent policy analysis. For instance, as their mentor, you can work with the students to develop a game plan for their acquiring sufficient expertise for each assignment.<sup>108</sup>

In addition, some students’ policy projects may require interdisciplinary expertise. However, the client-less policy clinic can avoid many of the most difficult aspects of providing interdisciplinarity to student’s clinic experiences. For instance, the serious legal issues of client confidentiality, conflicts of interests, and conflicting rules of professional responsibility among different credentialed experts rarely arise in client-less advocacy.<sup>109</sup> Since the policy clinic does not have a substantive focus, the myriad of interdisciplinary issues which may not often reoccur do not warrant the formal and ongoing associations with interdisciplinary experts often required in live-client clinics.<sup>110</sup> Thus, the budget, coordination, and student supervision problems associated with

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feel empowered to write a letter to the editor rather than just mumbling to themselves their disagreement with the author’s opinion. And when they read an appellate opinion with which they disagree, hopefully they will use their tools to seek depublication, a review in the California Supreme Court, or file an amicus curiae petition.

107 *ABA Model Rule, Rule 1.1[2]and [4]*.

108 Helping policy clinic students brainstorm the methods for developing sufficient expertise to competently analyze their policy issues provides an opportunity for collaboration between the clinician and student. Since the clinical professor also confesses an absence of expertise, a form of bond can be developed as the “team” works on a roadmap for acquiring expertise. The clinician can relate that many advocates, even in order to engage in competent fact investigation when dealing with expert witnesses, must learn a subject sufficiently to determine what is and what is not relevant expert opinion.

109 One of the oldest interdisciplinary relationships is between clinics that represent children and/or families and the social workers. Since attorneys’ ethical universe focuses more narrowly than the social worker’s focus of society and the interests to all involved in a dispute, conflicts in confidentiality

rules often create risks to clients. “Social workers are mandatory reporters of child abuse and neglect. Lawyers are not... The development of interdisciplinary practice has spawned a body of literature that addresses the ethical and practical issues that may arise in collaborations between lawyers and social workers.” Jacqueline St. John, *Building Bridges, Building Walls: Collaboration Between Lawyers And Social Workers In A Domestic Violence Clinic And Issues Of Client Confidentiality*, 7 *Clinical L. Rev.* 403, 425–426 (2001). See also, Maryann Zavez, *The Ethical And Moral Considerations Presented By Lawyer/Social Worker Interdisciplinary Collaborations*, 5 *Whittier J. Child & Fam. Advoc.* 191, 192–194 (2005);

110 For instance, several of the projects in my Legal Policy Clinic have involved psychiatric expert evidence. The legislative analyses regarding the psychological effects of separating siblings and of forcing child abuse victims to testify before the public and press were heavily laden with psychiatric questions. However, rather than having a staff psychiatrist or a formal teaching arrangement with a psychiatrists at another school, I helped the students on a case by case basis. Fortunately, I teach a course, *Forensic Child and Adolescent Psychiatry*, at the UCLA David Geffen School of

interdisciplinary work are much less onerous in the policy clinic.<sup>111</sup>

Depending upon your law school context, a number of resources may be readily available on campus. For instance, you may guide a student who is working on an environmental policy issue to the following sources: (1) a colleague with that specialty in the law school; (2) a professor in another department in the university or college;<sup>112</sup> and (3) a list of legal and substantive specialists who might act as a mentor for the project. Finally, if you teach at a free-standing law school or one that is located a substantial distance from your main college campus, you might cultivate a group of law school alumni who are willing to provide guidance to your students in their areas of legal expertise.<sup>113</sup>

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Medicine, Department of Psychiatry, and I was able to have some of my psychiatric fellows participate in the writing of the legislative analyses. In fact, one of the UCLA psychiatrist's statements regarding the harm to child witnesses testifying in public actually was quoted in the California Legislative Analyst's legislative report. For discussions of collaborations between law schools, lawyers, and psychiatrists, see, Eric S. Janus, *Clinical Teaching At William Mitchell College of Law: Values, Pedagogy, and Perspective*, 39 Wm. Mitchell L. Rev. 73, 79 (2003); Susan R. Schmeiser, *The Ungovernable Citizen: Psychopathy, Sexuality, and the Rise of Medico-Legal Reasoning*, 20 Yale J. L. & Human. 163, 166 (2008); Jennifer L. Wright, *Therapeutic Jurisprudence In An Interprofessional Practice At The University of St. Thomas Interprofessional Center For Counseling And Legal Services*, 17 St. Thomas L. Rev. 501 (2005); Donald N. Duquette, *Developing A Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31 U. Mich. J. L. Reform 1, 7 (1997); Joan S. Meier, *Notes From The Underground: Integrating Psychological And Legal Perspectives On Domestic Violence In Theory And Practice*, 21 Hofstra L. Rev. 1295, 1297 (1993); W. Warren H. Binford, *Restructuring A Clinic*, 15 Clinical L. Rev. 283, 311 (2009).

111 Mary Nyman Ballard, *Interdisciplinary Law and Psychology Training At Indiana University*, 47 Fam. Ct. Rev. 485, 485-486 (2009); Paul R. Tremblay, *Professional Ethics in Interdisciplinary Collaborations: Zeal, Paternalism and Mandated Reporting*, 13 Clinical L. Rev. 659, 666, 700-701 (2007); Melissa Breger, Suellen Scarnecchia, Frank Vandervoret, and Naomi Woloshin, *Building Pediatric Law Careers: The University of Michigan Law School Experience*, 34 Fam. L. Q. 531 (2000); Christina A. Zawisza, *Two Heads Are Better Than One: The Caser-Based Rationale For Dual Disciplinary Teaching*

*in Child Advocacy Clinics*, 7 Fla. Coastal L. Rev. 631 (2006); Katherine R. Kruse, *Lawyers Should Be Lawyers, But What Does That Mean?: A Response To Aiken & Wizner And Smith*, 14 Wash. U. L. J. & Pol'y 49, 63, 65, 73 (2004); Ann Moynihan, Mary Ann Forgey, and Debra Harris, *Foreword: Fordham Interdisciplinary Conference Achieving Justice: Parents and the Child*, 70 Fordham L. Rev. 287, 329 (2001).

112 Some have noted that interdisciplinary programs are much easier to implement at large universities than they are at smaller colleges. Ballard, *supra.*, note 97, at 490; Sara R. Benson, *Beyond Protective Orders: Interdisciplinary Domestic Violence Clinics Facilitate Social Change*, 14 Cardozo J. L. & Gender 1, 5 (2007). Inter-university interdisciplinary collaborations are problematic because of distances between campuses, conflicting academic schedules, and insufficiently flexible professor schedules and "different educational styles and goals between the two professional schools." Ronald W. Filante, *Developing A Law/Business Collaboration Through Pace's Securities Arbitration Clinic*, 11 Fordham J. Corp. & Fin. 57, 80-81 (2005). For a discussion of the many different models of law school interdisciplinary programs, see Karen Tokarz, Nancy L. Cook, Susan Brooks, and Brenda Bratton Blom, *Conversations on 'Community Lawyering': The Newest (Oldest) Wave In Clinical Legal Education*, 28 Wash. U. J. L. & Pol'y 359, 382-385 (2008); Melissa Breger and Theresa Hughes, *Advancing The Future of Family Violence Law Pedagogy: The Founding of A Law School Clinic*, 41 U. Mich. J. L. Reform 167, 182-184 (2007);

113 Involving law school alumni in the students' lawyering skills projects has the collateral benefit of improving alumni relations, and your director of alumni relations may be more than willing to provide you with a list of alumni by area of specialization.

## Conclusion

Although there is currently a serious debate regarding the effects of learning style pedagogy on student performance,<sup>114</sup> there is consensus among cognitive researchers that motivationally nuanced pedagogy affects students' performance, persistence, and longitudinal behavior. However, more empirical data is needed regarding the possible connection between self-directed learning in law school and students' life-long *pro bono* behavior.

The clarion call from the American Bar Association,<sup>115</sup> the Carnegie Foundation,<sup>116</sup> and from the Clinical Legal Education Association<sup>117</sup> for improvements in the practical training of law students has currently morphed into a debate regarding law student assessments and law education outcome measures.<sup>118</sup> The most recent ABA Standards Review Committee draft on outcome

114 For instance, a recent article has concluded that “extant data do not provide support for the learning-styles hypothesis....” Harold Pashler, Mark McDaniel, Doug Rohrer, and Robert Bjork, *Learning Styles: Concepts and Evidence*, 9 *Psychological Science In The Public Interest* 105, 116 (2009). Pashler, *et. al.*, studied all current learning style literature and determined that there is insufficient empirical evidence to support the “meshing hypothesis” of learning style data that supports the concept that “instruction should be provided in the mode that matches the learner’s style.” *Id.*, at 108; see also, David Glenn, *Matching Teaching Style to Learning Style May Not Help Students*, *The Chronicle of Higher Education*, Dec. 15, 2009 (<http://chronicle.com/article/Matching-Teaching-Style-to/49497/?sid=a>). For a 50-page bibliography of learning style studies, see, [http://www.learningstyles.net/index.php?option=com\\_docman&task=cat\\_view&gid=34&Itemid=73&lang=en](http://www.learningstyles.net/index.php?option=com_docman&task=cat_view&gid=34&Itemid=73&lang=en). For studies on the application of learning styles to law teaching, see, e.g., R. A. Boyle, *Applying Learning-Styles Theory in the Workplace: How to Maximize Learning-Styles Strengths to Improve Work Performance in Law Practice*, 79 *St. John’s Univ. L. Rev.* 97 (2005); R. A. Boyle, *Teaching Law Students Through Individual Learning Styles*, 62 *Albany L. Rev.* 213 (1998); K. Russo, *Effects of Traditional Versus Learning-Style Instructional Strategies on the Legal Research and Writing Achievement of First-Year Law School Students* (*Dissertation Abstracts International*, 63 (07), 2478A).

115 In 1992 the ABA published American Bar Association, Section On Legal Education And Admissions To The Bar, Legal Education And Professional Development – An Educational Continuum, Report Of The Task Force On Law Schools And The Profession: Narrowing The Gap 3 (1992) [known popularly as the MacCrate Report] which outlined law schools’ failure to provide

sufficient skills training for law students.

116 In 2007 the “Carnegie Report” was published. See William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S. Shulman, *Educating Lawyers: Preparation For The Profession Of Law* (2007).

117 Roy Stuckey, *et. al.*, *Best Practices For Legal Education: A Vision And A Roadmap* (2007). For an interesting discussion of law student assessment methods, see, Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness To Practice Law*, 16 *Clinical L. Rev.* 335 (2010).

118 The ABA’s movement to assessment and outcome measures as part of the accreditation process has been rapidly progressing. In 2008 the ABA Outcome Measures Committee concluded that “legal education has lagged behind these other fields in using outcome measures, [and] we should now actively consult the literature in those other fields to learn from them and thereby to replicate their successes and, if possible, avoid whatever pitfalls they encountered.” Catherine L. Carpenter, *et. al.*, American Bar Association Section Of Legal Education And Admissions To The Bar, Report Of The Outcome Measures Committee 64 (July 27, 2008). A month later, at its August 2008 meeting, the ABA Standards Review Committee began considering the question of “student outcome measures...” Donald J. Poldon, Chair’s Notes, March 6, 2009, at 2 (<http://www.abanet.org/legaled/committees/comstandards.html>). The ABA Standards Review Committee has already released three different drafts of proposed ABA accreditation learning outcomes standards. Student Learning Outcomes Draft For October 9–10, 2009 Meeting; Student Learning Outcomes Draft For January 8–9, 2010 Meeting; and Student Learning Outcomes Subcommittee April 17, 2010 Draft (<http://www.abanet.org/legaled/committees/comstandards.html>).

measures requires “that law schools use both formative and summative assessment tools during the course of their students’ education.”<sup>119</sup>

Therefore, in response to the new outcome measure trend, the next phase of the research on the Whittier Law School Legal Policy Clinic will be a longitudinal study of Whittier law school graduates to determine whether there is a significant difference in the career involvement in pro bono activities between those clinical students who were able to choose their *pro bono* cases and define for themselves the meaning of social justice and those who were not provided that opportunity.

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<sup>119</sup> Student Learning Outcomes Subcommittee April 17, 2010 Draft, at 4 (*supra.*, note 110).

# Clinical Practice



# An essay on the stages of the clinical year in law school:

## Group process with existentialist roots

Richard J. Wilson\*

### Abstract

*This short essay focuses on “units,” or stages of group process, part of my shared experience in law teaching and in adult education at St. Mark’s Church, Capitol Hill, Washington, DC. The article explores the context of the functional education program of church teaching and its common elements with clinical law teaching. In my own experience, the unit structure from church teaching translates well into the structure of clinical legal education.*

### Introduction

I have been a law teacher for 25 years this year, most of them in in-house, live-client clinics. The experience has generally been a happy one, rewarding and fulfilling for me, as I hope has also been true for my students. Because of my background as a public defender prior to teaching, I try to motivate my students to consider work in the public interest field, if not directly in human rights. My own clinic, the International Human Rights Law Clinic at American University, has done human rights work for the past twenty years. As I complete a fulfilling sabbatical year, I find myself looking back as much as forward and reflecting on what has been useful in my own teaching that might also be useful to others.

I am repeatedly drawn to the synergy between my experiences in clinical teaching in law and my long-time work as a teacher in the adult education program of my church, St. Mark’s Episcopal Church on Capitol Hill. Let me clarify from the outset that my reflections are not intended to proselytize or otherwise sell any particular brand of religion. There are a couple of good reasons why this is so. First, I haven’t done this kind of church work for a number of years; my primary church teaching with adults was during the 1980s and 90s. More recently, I have taken to

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of Law. I appreciate the insights and help of Zachary Ista, my research assistant, in reviewing and preparing this article.

protecting my Sunday mornings for “down time” – long, slow swigs from the New York Times, and an occasional Tai Chi course. Second, St. Mark’s, then and now, was and is unlike many other churches. It explicitly advertises to draw in religious skeptics and doubters. Its parishioners include a solid core of Christian believers but it also draws agnostics, atheists, fallen-away Catholics, Jews and other religious refugees and dissenters, all of them seekers after faith. It serves communion to any and all who step up during the service. “Whatever you believe, whatever you do not believe, you are welcome at this table,” says the introduction on the St. Mark’s website, which also poses this premise for the church’s work: “We follow the paradoxical path: by looking squarely into the dimness of uncertainty, we can discover truth.”<sup>1</sup> St. Mark’s still offers an extensive education program similar to that with which I was involved for many years, including my two-year stint as a co-director of Christian Education. That makes me an official Elder in the church – a category not defined by age, I might note.

My purpose here, however, is to describe and briefly analyze one central and totally secular application of our church’s pedagogical structure to legal education, and particularly to the trajectory of work with cases and clients in clinical legal education. I have directed the International Human Rights Law Clinic at American since its founding in 1990. That in-house clinic, part of a nationally recognized clinical program, takes from 16 to 32 students for the entire academic year. Students work on real human rights cases, both domestic and international, while taking a parallel seminar called “The Lawyering Process.” The course and case-work is year-long, and graded credits are given to students for their participation. There are generally two to four supervisor/teachers in the clinic, with each supervisor overseeing the work of four student pairs on case-work throughout the year.<sup>2</sup>

The work on cases is ever-changing, challenging and generally rewarding for me and students, but it can produce teeth-gnashing frustration with slow, bad decisions by courts or with general bureaucratic truculence and obstinacy. Each year I have taught in clinic, I have been struck by the parallels between the group dynamics of the clinical class, rounds and case-work and the model provided in my church work. That model comes from a structure known as functional education, set out more fully below. Both clinic and the adult church classes share a common commitment to learning life lessons through experience, and in both contexts we make extensive use of role-plays, simulation and other experiential devices to put us into situations in which tough choices are made, followed by reflection and learning from that experience.

In this short reflection, I will briefly set out some background on adult education at St. Mark’s Church. I will focus on two particular aspects, functional education and the “units,” or context in which adult courses are taught. I will follow that with an examination of my own extrapolations to the literature on functional education in broader historical, philosophical and pedagogical context, and how closely they relate to the theories of adult learning in clinical legal education. The heart of my reflection lies in an exposition of the relationship between the functional unit and my experience of the stages of the clinical year. Units have been called “descriptive stages of deepening human encounter and experience,”<sup>3</sup> and they are my focus here. Units relate to both the stages

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<sup>1</sup>These references come from <http://www.stmarks.net/about/introduction.html> (last visited on April 7, 2010).

<sup>2</sup>A useful document on the concrete operation of the Human Rights clinic can be found on-line at [https://www.wcl.american.edu/clinical/annual\\_2002.pdf?rd=1](https://www.wcl.american.edu/clinical/annual_2002.pdf?rd=1)

(last visited on April 8, 2010).

<sup>3</sup>Paul R. Abernathy, A Word About Kierkegaard, Buber, and Tillich, [http://www.stmarks.net/christian\\_ed/functional\\_education/kierkegaard.html](http://www.stmarks.net/christian_ed/functional_education/kierkegaard.html) (last visited on April 8, 2010).

of group development and the universal seasons of religious worship, both ancient and modern. I follow with a brief conclusion.

It was the parallel between the church classes' passage through the units and my observation that my clinic classes often pass through the same stages that led me to this writing. Before developing that parallel more fully, however, let me indulge my academic curiosity by a brief exploration of the roots of functional education, both at St. Mark's and more widely. The functional model seems to have universal application, and the unit structure seems to repeat itself again and again, much as the church calendars of all faiths (and school semesters) provide an endless cycle of renewal.

### **A. Functional education at st. mark's church**

The core written sources for my knowledge of functional education and the units are sparse indeed. They come from a literature used at St. Mark's to plan and carry out adult classes, collectively gathered under the rubric of functional education. Functional education's theories and structures provide the basic framework, both theological and practical, for our religious teaching, with strong echoes in clinical legal education. The core ideas of functional education were put into writing by Dr. Charles Penniman, who served as an educational consultant to the parish in the 1950s during a time when church attendance was falling off generally.<sup>4</sup> Penniman's terse writings, completed in 1954 and later annotated by a former rector, the Rev. James Adams, still guide functional education at a thriving St. Mark's today.<sup>5</sup>

All of the adult courses at St. Mark's, as I said above, are experiential. There is an eloquent explication by Penniman of his own meaning of functional education that bears brief repetition here because it echoes so powerfully in my own clinical teaching. "People learn functionally and in problem situations," Penniman begins his *Categories*. "Therefore, we start with life . . . We specifically do not start with the straightjacket of goals where life is only hinted at. We start with life and only hint at goals."<sup>6</sup> Later, Penniman sets out what he calls the "laws of learning: (a) People learn what they are ready to learn; (b) People learn where there is a positive effect . . . ; (c) People learn what they can use, and use now . . ." The commentary notes that "these are the principles of what has been called 'progressive' or 'experiential' education."<sup>7</sup>

Progressive education is the early twentieth-century movement most identified with the writings of John Dewey, the great American educational theorist.<sup>8</sup> Penniman further explicates functional learning when he suggests that any issue can be approached at three levels: the ideological, the organizational and the functional. "It will be seen that the first two will never get us into the issue – that it is only on the third level that we get into the issue." By this, the commentary suggests, he means that it is not enough to think intellectually about an issue (ideological), or to feel the emotional connection of loyal and enthusiastic group membership (organizational), but that true knowledge occurs only when people learn "how they function under pressure and where they find the resources they need. They are engaged at a personal level, what the Bible calls the level of spirit."<sup>9</sup>

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<sup>4</sup>Id.

<sup>5</sup>His theological work, organized as *Categories and General Notes*, and annotated by the Rev. James Adams, former rector at St. Mark's, can be found at [http://www.stmarks.net/christian\\_ed/functional\\_education/penniman.pdf](http://www.stmarks.net/christian_ed/functional_education/penniman.pdf) (last visited on April 8, 2010).

<sup>6</sup>*Categories*, Id. at 2.

<sup>7</sup>Id. at 12.

<sup>8</sup>John dewey, *democracy and education: an introduction to the philosophy of education* (1916); john dewey, *experience and education* (1938); the *essential dewey: volume 1, pragmatism, education, democracy* (Larry A. Hickman & Thomas A. Alexander eds. 1998).

<sup>9</sup>*Categories*, supra n. 6, at 11.

So, a typical class at St. Mark's is designed to explore religious issues in a real-life context. Each class session during my time there was carefully planned around day-to-day issues that put the class into the moral and religious dilemmas of the day - what Penniman called "the issue." A typical early class session in an adult confirmation class might begin, for example, with a scenario asking paired class members to identify the types of credentials by which people identify each other, or with small groups preparing skits on a topic such as depiction of an occasion in which people who did not know each other are gathering before a formal meeting. "The Issue" in the first scenario might be as follows: "I want to be known to the world by my credentials, and I want to be accepted for who I am." The Issue in the second might be, "I want to make new friends, and I want to maintain my autonomy and privacy." These issues are what are often referred to in clinical scholarship as the "inherent tension" between two competing dynamics, as for example, the alleged tension between theory and practice in legal education generally<sup>10</sup> or between teaching and scholarship<sup>11</sup> for clinical teachers. These are not choices between good and evil but between competing goods. Yet we will, indeed we must, choose a course of action.

Another typical example has been the use of role-plays. Leaders request, for example, that class participants divide into two groups, one to prepare the husband and the other to prepare the wife, to role-play a household discussion. In one such typical scenario, the wife has obtained an attractive job offer in another city, one that would require the husband to give up his well-paying job without the certainty of getting similar employment in the new location. The groups are given about a half-hour to prepare one of their members to be the role-player, after which the two role-players play out the scene for the class, in role, hopefully moving toward solution. The role-play goes on for 15 to 20 minutes, after which the role players and groups are de-briefed, followed by guided discussion, ending with some lesson on how one might approach this issue from a religious or faith perspective. As the course evolves, the issues become more central to life's ultimate questions and thus more poignant. A typical role-play toward the end of the course involves two role-players, prepared by their groups, one playing a dying grandmother, covered in blankets and unable to speak, who is visited by a grand-son or daughter who must do all the talking in their brief meeting. These powerful role-plays open the class to discussion of their values, what matters, and how they might use a framework of religious faith to resolve the issues.

There was, during my own classes and teaching, no overt suggestion that life problems would be resolved by "coming to Jesus" or any other such proselytizing solution. Participants were left to decide their path of their own faith journeys. Many chose to take this journey within the St. Mark's community, a generally activist parish with extensive community outreach programs and a vibrant parish life. While the program allowed personal experience to drive the decision for involvement, as time went on, the courses offer a deeper meaning, "found in probing that relation between belief and behavior, that intersection of life at which issues of faith often freely arise and confront us."<sup>12</sup>

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<sup>10</sup>Frank S. Bloch, *The Case for Clinical Scholarship*, 6 *Int'l J. Clinical Educ.* 7 (2004) ("There is an inherent tension in legal education between its academic and professional missions, sometimes characterized as a conflict between theory and practice.").

<sup>11</sup>Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 *Clinical L. Rev.* 385, 394 (1996) ("... [T]here is an inherent tension between [teaching and

scholarship], especially for clinical teachers.").

<sup>12</sup>Rev. Paul R. Abernathy, rector of St. Mark's, sets out the basic tenets in *Introduction to Functional Education: Theological Underpinnings of St. Mark's Christian Education Program*, [http://www.stmarks.net/christian\\_ed/functional\\_education/intro.html](http://www.stmarks.net/christian_ed/functional_education/intro.html) (last visited on April 7, 2010).

## B. Functional education in history and theology

The Rev. Paul Abernathy, current rector at St. Mark's, suggests that Charles Penniman's work was solidly in the tradition of theological existentialism, particularly in the writings of Søren Kierkegaard, Martin Buber and Paul Tillich. As such, it reflects a concern with the core themes of existentialism: the absurdity of life and the inevitability of death; existence and non-existence; and the intentionality of human behavior reflected in the power to choose as part of the human condition.<sup>13</sup> Kierkegaard (1813-1855) himself posited three "modes of existence": the aesthetic, the ethical and the religious. As paradigmatic examples of each of these modes, Kierkegaard chose Don Juan for the aesthetic, Immanuel Kant for the ethical, and the biblical Abraham of the Old Testament for the religious. One can freely choose, Kierkegaard argued, any of these courses of action to guide one's life. Consistent with the other existentialists, however, he posited that there was no legitimate rationale for choosing one over the other. One is thus left with the option of "taking hold" of life by passionately engaging in what one chooses.<sup>14</sup> While these core ideas of existentialism may have been eclipsed in some ways by post-modern thought, the ongoing vitality of the St. Mark's congregation's intellectual engagement is testimony to the currency of these theories in people's lives.

One can find additional support for functional approaches in the writings on existential psychotherapy as practiced in the 1970s.<sup>15</sup> During the same period of time, the term "functional education" was used as a term of art, probably not coincidentally, to describe work in the fields of educational and development theory. In education, the term was used in 1961 to mean "education everywhere and at all times," in "natural schools" emerging from the student's needs, "spontaneously from the influence of the environment," rather than from "deliberate, goal-oriented" traditional education. The basis in psychology for the term comes from William James in the United States, and Eduard Claparède in Europe.<sup>16</sup> Another, similar meaning was given the term for an early computer program designed to meet individual learning needs of grade school students in pilot public schools, thus allowing the student to assume responsibility for her own learning.<sup>17</sup> In a more overtly political context, functional education described a body of educational principles responsive to colonial oppression, designed to raise consciousness and promote deep social change, originally promoted by followers of M.K. Gandhi in India in the 1950s and early 60s,<sup>18</sup> and later by the Brazilian educator, Paulo Freire,<sup>19</sup>

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<sup>13</sup>Abernathy, *supra* n. 4.

<sup>14</sup>ROBERT C. SOLOMON, *EXISTENTIALISM* 2-28 (2D ED. 2004).

<sup>15</sup>See, e.g., Maurice R. Green, *Anticipation, Hope, and Despair*, 5 *J. Am. Acad. Psychoanalysis* 215 (1977); Julius E. Heuscher, *Inauthenticity, Flight from Freedom, Despair*, 36 *Am. J. Psychoanalysis* 4 (1976) (using the language from the units, and quoting extensively from the existentialists). The former rector of St. Mark's, Rev. James Adams, vividly demonstrates the unorthodox theology of St. Mark's by pointing to LSD research that demonstrates another paradigm of the class experience, found in the work of Dr. Stanislav Grof, *Theoretical and Empirical Basis of Transpersonal Psychology and Psychotherapy: Observations from LSD Research*, 5 *J. Trans-Personal Psych.* 15 (1973), cited in JAMES R. ADAMS & CELIA ALLISON

HAHN, *A WAY TO BELONG* (1980), at 55, n. 4 (using the "trauma of birth" to demonstrate four stages of development: "primal union with the mother, antagonism, synergism, and finally repartition from the mother.").

<sup>16</sup>See generally, Yehudah Zeilberger, *Functional Education*, (translated from Hebrew, originally an entry in the *Educational Encyclopedia* (Jerusalem, Israel 1961)), <http://www.math.rutgers.edu/~zeilberg/family/EncKhi1.html> (last visited on April 8, 2010).

<sup>17</sup>John C. Flanagan, *Functional Education for the Seventies*, 49 *The Phi Delta Kappan* 27 (Sept. 1967).

<sup>18</sup>P. Udagama, *Basic Functional Education: Concepts and Approaches* (UNESCO, May 1976), at 13.

<sup>19</sup>Mohammed Rafi, *Freire and Experiments in Conscientisation in a Bangladesh Village*, 38 *Econ.*

a personal favorite of mine.<sup>20</sup>

Thus, while the holistic discipline of functional education, at least as that term is used at St. Mark's church, includes biblical and spiritual dimensions, my focus here will be on the experiential – and wholly secular – uses of the theory, much as the term has been used in other theoretical contexts. I offer this extended preface to discussion of the units for three reasons. First, the theories of functional education find great resonance within clinical legal education, particularly in the teachings of such theorists as John Dewey and Paulo Freire. Their theories resonate in the methodology of clinical teaching today, not only in the United States but throughout the world. Second, the methods themselves are remarkably similar in their application. Our work in clinical teaching in law is grounded in the same experiential learning context as functional education, and we make extensive use of role-playing and simulation, in and out of class, as effective devices for adult learning. Third, and most important, the units were developed in a religious context, as part of religious instruction. This provides important contextualization for their application to the field of law, as I hope the subsequent section will demonstrate.

### **C. The units: repeating, seasonal stages in the life of a clinic**

For our purposes, Penniman's theory of the "units," or stages of group development, is of greatest interest. Unit theory, so far as I can tell, is not covered in Penniman's surviving writings; units are identified but not explicated. The most thorough exposition on the units is found in two sources. First, there is a booklet describing the evolution of an adult confirmation class, co-authored by the former rector, James Adams, who annotated Penniman's work, together with a St. Mark's parishioner.<sup>21</sup> Additional material has been gathered by the current rector and posted to the church's website, as noted above.

The five units are curiosity, anxiety, hope, despair and anticipation. The terminology alone has a wholly existential ring. All planning of adult courses was done with the knowledge – now borne out by decades of experiential teaching – that the class will pass, as a group, through these units in fairly predictable steps, with predictable amounts of time spent in each unit. As Paul Abernathy, the current rector at St. Mark's, notes, "the units do not describe a linear movement, but, rather, provide a framework or context within which a very dynamic, indeed, ever repeatable process takes shape."<sup>22</sup>

From a theological point of view, Penniman's units are said to follow the group dynamic of Christ and his apostles as their relationships evolved and deepened. Units "are drawn from a study of the disciples' growing relationship with Jesus as portrayed in the gospel accounts."<sup>23</sup> Again, however,

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& Political Weekly 3908, 3909-10 (Sept. 13-19, 2003). "Conscientisation" is the practice of raising consciousness of groups through education, in this case accomplished through the work of a large human rights NGO using a functional education program.

<sup>20</sup>I have recognized and promoted the influence of Freire repeatedly in my writing on educational macro-theory using active and engaged teaching and learning methods, particularly in Latin America, but wherever oppressed people gather to learn. Richard J. Wilson, *The New Legal Education in North and South America*, 25 *Stan. J. Int'l L.* 375, 424-427 (1988-1989); RICHARD J.

WILSON, *ACCESS TO JUSTICE: AN ISSUE PAPER FOR USAID AND LEGAL SERVICES PROVIDERS 3* (USAID, 1995); Richard J. Wilson, *Beyond Legal Imperialism: U.S. Clinical Legal Education and the New Law and Development*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* (Frank Bloch ed., 2010).

<sup>21</sup>JAMES R. ADAMS & CELIA ALLISON HAHN, *A WAY TO BELONG* (1980).

<sup>22</sup>Abernathy, *supra* n. 4.

<sup>23</sup>Abernathy, *supra* n. 4.

I am more interested in the socio-political dimensions, as well as the deeply cyclical nature of the movement through the units. In this sense, I am drawn more to the imagery of the mandala, the concentric circle so important to both Buddhism and Hinduism, or the yin and yang of Taoism, as sources for symbolic reference.

As noted above, there is, at some primordial level, an endless cycle of renewal linked to the seasons. In Sir James Frazer's classic, *The Golden Bough*, he captures the ritualistic and mythical dimensions of those changes, and argues quite persuasively that religious traditions, particularly Christian festivals, evolved from these early practices and beliefs:

The spectacle of the great changes which annually pass over the face of the earth has powerfully impressed the minds of men in all ages, and stirred them to meditate on the causes of transformations so vast and wonderful. . . . In course of time the slow advance of knowledge, which has dispelled so many cherished illusions, convinced at least the more thoughtful portion of mankind that the alternations of summer and winter, of spring and autumn, were not merely the result of their own magical rites, but that some deeper cause, some mightier power, was at work behind the shifting scenes of nature. . . . Thus the old magical theory of the seasons was displaced, or rather supplemented, by a religious theory.

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Taken together, the coincidence of the Christian with the heathen festivals are too close and too numerous to be accidental.<sup>24</sup>

Joseph Campbell, too, captures the cyclical nature of the seasons in his book on the hero's mythical journey, *The Hero with a Thousand Faces*. "The wonderful cycle of the year, with its hardships and periods of joy, is celebrated, and delineated, and represented as continued in the life-round of the human group."<sup>25</sup> "We're captive on the carousel of time," says Joni Mitchell. "We can't return, we can only look behind from where we came, and go round and round and round in the circle game."

For anyone who has taught for some time, this invocation of the inevitable rhythm of the seasons (particularly in the northern states), and of life itself, resonates deeply and powerfully in the predictable repetitions of semesters.

My own clinic is a full academic year in length, so my experience of the clinic cycle is spread across the full nine-month academic calendar. Because it follows the seasons from fall through spring, and Washington, D.C. experiences the full range of seasonal variation (albeit sometimes milder than more deeply northern climes), the template is particularly appropriate in the full-year context. I do experience something of the same cycles in the more compressed schedule of the single-semester courses I teach outside of clinic, particularly those moving from winter into spring. What follows is my effort to apply the template of functional education units to the academic calendar in clinic. The parenthetical information shows my best estimate of the amount of time each unit, or phase, will take, followed by the church season symbolically invoked in the cycle of the Christian calendar.<sup>26</sup>

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<sup>24</sup>SIR JAMES GEORGE FRAZIER, *THE GOLDEN BOUGH* 376-377, 419 (1922).

<sup>25</sup>JOSEPH CAMPBELL, *THE HERO WITH A THOUSAND FACES* 384 (1968).

<sup>26</sup>One might note a similar set of cycles with other

religious calendars, particularly those of the Abrahamic tradition (Christianity, Judaism and Islam), but the complexity and variation of religious calendars, combined with my scant knowledge of comparative religions, militate against such speculation.

## UNIT 1: CURIOSITY

(Full year, weeks 1-6; one semester, weeks 1-3)

(Church season: the Sundays after Pentecost)

It is the fall of the year, and at once, a time of beginnings and endings: the end of the growing season and the beginning of the school year. “In the northern countries of Europe this has always been the primary harvest time.”<sup>27</sup> People bring in food and store it, preparing themselves and their homes for the winter ahead. In psychological terms,<sup>28</sup> this can be a period of time in which group members are either dependent on leaders or might flee from the awesome responsibilities facing them. In biblical terms, this was the time the disciples dropped everything and spontaneously followed Jesus, feeling “their enthralment with the authority and the depth of insight in his teaching.”<sup>29</sup> The Sundays after Pentecost (the holiday commemorating the descent of the Holy Spirit to visit the disciples, are sometimes called Whitsunday, so named for the white garments worn by those to be baptized during this time). This was a time of teaching the behaviors expected of Christians and “a preparation for possible trouble ahead.”<sup>30</sup>

In my experience, students are highly trusting and dependent on their clinic supervisors at this stage, and tend to react to us as sources for “answers,” as their teachers have been throughout their educational lives. The new modes of work, in both seminar and case-work, are both exhilarating and terrifying, as students face the first real responsibilities in their own cases. One device we use regularly in clinic orientation is a session in which students speak to their hopes and fears of what the clinic year will bring. The opportunity to articulate their fears out loud serves, at the same time, as a way for them to hear that their fears and hopes are shared with everyone else – they are not alone – and as a mode of breaking patterns of deep socialization in law school in which speaking of one’s emotions are explicitly or implicitly repressed as part of the ethos of “thinking like a lawyer.”

Student teams generally immerse themselves in their cases enthusiastically. They are often slow to reach out to clients for the first time, feeling a sense of dread and awe in establishing contact with a real person as part of a course of study; no course has ever involved a third party in the learning process. Moreover, where culture and language are involved in the encounter, as is often the case in immigration or human rights cases, students often lack the most basic abilities to communicate, or they misread cultural signals in their enthusiasm to gather information. During the first simulation exercises on interviewing, including sessions on partnership collaboration and interpretation (linguistic and cultural), the students are like sponges soaking up knowledge in great experiential gulps.

Students’ learning curves are high and fast, but I find my supervision sessions include a lot of admonitions that they must find legal or factual answers for themselves and not through their teacher. As Freire notes, this is no longer the “banking” system of education, in which the teacher “makes deposits which the students receive, memorize, and repeat,” but a deeply significant resolution of the “teacher-student contradiction,” where students come to realize that “both are

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<sup>27</sup>A WAY TO BELONG, *supra* n. 22, at 54.

<sup>28</sup>A WAY TO BELONG, *supra* n. 22, (includes a chart, at 56, comparing the units on theological and

psychological bases).

<sup>29</sup>Abernathy, *supra* n. 4.

<sup>30</sup>A WAY TO BELONG, *supra* n. 22, at 54.



simultaneously teachers and students.”<sup>31</sup> My role is focused on facilitating models for problem solving, noting potential alternative visions and ranges of action with regard to their actions, and pointing to research tools for law and facts, particularly for factual exploration with which they have had little or no experience after two years (for most) of law school. I value apprenticeship over discipleship.

## UNIT 2 – ANXIETY

(Full year, weeks 7-13; one semester, 4-6 weeks)

(Church season: Advent)

Winter is approaching. As the days grow noticeably shorter, primitive people “undoubtedly feared that the sun was gradually disappearing and that the world would be left in cold and darkness. . . . Their anxiety was compounded by their memory of other winters. Even if the sun returned, would their food last until spring? Would they have enough fuel to keep themselves warm?”<sup>32</sup> Put more colloquially, this stage “characterizes the growing awareness that all ain’t what one perceived it to be.” This is the period in which the disciples experience “rising opposition to Jesus by the religious and secular rulers and their own confusion about Jesus’ intentions.”<sup>33</sup> Their beliefs, “when tested in the crucible of the human experience of suffering, prove insufficient to help one continue to make meaning or sense out of human existence.”<sup>34</sup> Theologically, the paradigm is the disciples’ statement, “Teacher, do you not care if we perish?” Psychologically, this is a period of counter-independence and flight.<sup>35</sup>

The Advent season is the four Sundays before Christmas, but this unit or stage usually begins well before December, which is the end of the semester for us. By the first days of December, most students have turned their attentions away from clinic and toward other courses that require their attention. I associate the Anxiety stage with the time from later October though semester-end.

This is an ambiguous and uncomfortable period, but it can also be enormously productive and rewarding. Students are growing in confidence and becoming more accustomed to the rhythms of clinic class, rounds and supervision. They feel comfortable coming into my office. At the same time, students are beginning to be annoyed by their supervisor’s constant response of “I don’t know. What do you think we should do?” Students yearn for the comfort of answers (“Teacher, do you not care if we perish?”), and the pressures of time and case schedules may constitute a siren call to the teacher to abandon the classic non-directive supervision model.

This is also a time when the first signals of friction or fraying of the partnership relationship appear, and students are often anxious about raising the issue directly and openly. If court appearances loom, the anxiety level can be through the roof, with students grasping for a thorough “script” for what seems to them the unstructured, unpredictable and indeterminate event of a courtroom hearing. Many have never seen a courtroom save for the mock courtrooms at school.

More than anything, students often have begun to see a more human and unreliable side to their individual clients. Clients often do not put their legal cases at the center of their universe, and may skip or be late for meetings. They may tell different and inconsistent versions of the facts of their

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<sup>31</sup>PAOLO FREIRE, PEDAGOGY OF THE OPPRESSED 58-59 (1970).

<sup>32</sup>A WAY TO BELONG, supra n. 22, at 54

<sup>33</sup>Abernathy, supra n. 4.

<sup>34</sup>Id.

<sup>35</sup>A WAY TO BELONG, supra n.22, at 56.

story, often leading students to conclude that clients are lying, rather than that memories are weak or that stories are often uncomfortable or impossible to recount due to trauma. Legal issues that seemed simple when posed suddenly become immensely complex when the student teams struggle to make sense of the chaos of law and facts together. Frustration and impatience rises, though often masked behind the traditional student-teacher encounter of formality and distance. Another version of this phenomenon is the issue of the client as friend with students becoming confused about boundaries and limits, both moral and ethical. Do they (or the clinic) pay for their client's cab fare to clinic? How about a meal? Donated clothing for the client's new baby? Bail for release from immigration detention? In the non-monetary realm, one paradigmatic issue is giving out a personal cell or home phone number, thus permitting the client to call at any hour of any day. If the client is a group or organization, how does the student team prevent itself from being seen as research help and not a full partner in the lawyering project? Ethically, how much of the client's story is available for public consumption? What if the client really is lying? What are our duties of candor to the tribunal? These and other questions may be exciting at first, but after a few weeks, they can become tedious or annoying.

Experienced faculty often feel the pressures of additional responsibilities outside of clinic, whether they be with regard to writing (a constant, gnawing anxiety), faculty committee work, or outside speaking in the fall "conference season." And despite repeated admonitions to students to submit drafts early, student teams often – indeed inevitably – fail to plan enough lead time, leading everyone into a last-minute frenzy of producing that first court filing, brief or legal memorandum that may or may not have an unalterable and definitive due date. Students learn the meaning of the term *nunc pro tunc* filing.<sup>36</sup>

### UNIT 3 – HOPE

(Full year, weeks 14-15; one semester, week 7)

(Church seasons: Christmas and Epiphany)

The sun is rising earlier each day and light is gradually, incrementally returning. It is no coincidence, as Frazier suggests in the passage quoted above from *The Golden Bough*, that the date attributed to Jesus' birth is commensurate with the winter solstice. "Since the dawn of history the day has been set aside for the celebration of hope. The return of the light is represented by the burning of the Yule log and the promise of another spring by decorations made from branches of trees which remain green throughout the year."<sup>37</sup> One of the most basic symbols of hope is the birth of a baby. "In the birth of a child the moment is charged with potentiality. A new life has begun."<sup>38</sup> Theologically, another symbol is the Epiphany, the date in early January celebrated as the revelation of God in human form. It commemorates the transfiguration, the miracle in which Jesus, atop a mountain and before the disciples' eyes, is transformed into radiance, speaks with Moses and Elijah, and is called "Son" by God. For the disciples, it is a defining moment that confirms their commitment.

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<sup>36</sup>A fancy Latin term meaning "now for then," *nunc pro tunc* filings are the lawyer's way of saying to courts, sorry, I'm late, but it's just a day or two!

<sup>37</sup>A WAY TO BELONG, *supra* n.22, at 54.

<sup>38</sup>*Id.*

Psychologically, this is a moment of resolution or catharsis.<sup>39</sup> This stage “captures one’s sense of having come through a moment of suffering or a time of trial intact. Feelings of relief or gratitude can pervade one’s being. Hope may also manifest itself in one’s renewed conviction about one’s life and its purpose and a deepened relationship with God.”<sup>40</sup>

Hope is a short but intense stage: I give it a week or two (not counting the Christmas break) before we pass on, sometimes by degrees, into despair. In the clinical context, it is most readily recognizable in the first court appearance, hearing or other formal, public presentation, which is often timed to fall at this point in the calendar, but not always. These events are usually short episodes, often preliminary skirmishes in a long process, but they are the first such experiences for many students, and they are usually intense in their preparation. As a portion of overall time spent in clinic, these public events are by far the least amount of total time, but perhaps the greatest in psychic energy and lost sleep.

The relief after such events, for both the students and me, is palpable. All of these feelings occur regardless of the outcome of the event, but a courtroom win produces the greatest sense of accomplishment and relief. Even a loss tends to produce some catharsis or resolution, the feeling of having suffered and survived intact. Usually student performance is excellent, but even if it is not, they have come through the fire and survived. For clients, this can also be a defining moment. Outcomes of court hearings seldom, in my view, are driven solely by lawyer performance but much more by the power of a client’s story. The raw narrative power of a compelling story can transfigure a courtroom from a routine event into a personal epiphany for the client, and sometimes for the judge, because the students are able to let the client’s voice out through the story, to fill the room with pathos and compassion.

A lesser and more timely version of the hope stage occurs simply because of the end of the semester. Students usually feel some sense of accomplishment after a semester, and generally begin the second semester revived and excited. In a one-semester course or clinic, hope appears as the course passes “over the hump,” or middle of the course, and starts to head toward the end. It may not be a time of particular catharsis and group bonding, but it is a notable passage in any event.

## **UNIT 4 – DESPAIR**

(Full year, weeks 16-23; one semester, weeks 8-12)

(Church season: Lent)

It’s January, and February and March . . . and spring never seems to come. Although Lent itself is, as a formal matter, the 40 days between Ash Wednesday and Palm Sunday, it feels so very much longer. The cold, grey, dreary winter seems never to end. The 40 days of Lent are a symbolically powerful number, as reflected in other meaningful Biblical events, such as the 40 days of Noah’s flood, the 40 years of wandering of the Hebrew people, and the 40 days of fasting by Christ in the wilderness. There is no particular magic to that number in the clinic calendar; despair is the much longer period of time from just after the beginning of the semester up to spring break, which for us is usually the second week of March.

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<sup>39</sup>A WAY TO BELONG, *supra* n.22, at 56.

<sup>40</sup>Abernathy, *supra* n. 4.

Liturgically, Ash Wednesday, which starts Lent, reminds us of our mortality. The ashes are imposed as the priest tells us to remember that we are dust and to dust we shall return. No reminder is more sobering and humbling in the church calendar. “Primitive people suffered further agonies as they saw the last of their winter stores being consumed while the frozen earth, still covered with snow, gave no promise of returning to life.”<sup>41</sup> This is a season of turning inward, of “self-examination and reflection.”<sup>42</sup> “In some sense, [despair] is a deeper degree of anxiety, pointing to one’s awareness that mountaintop moments don’t last forever. The return to the valley ever waits.”<sup>43</sup> If we see the Bible story of the disciples as a metaphor for our own lives, we know that when faced with the really important moments, we often react as they did in Jesus’ final days – “betrayal, denial, abandonment and subsequently, grief and repentance.”<sup>44</sup> Psychologically, this is fight or flight at its deepest and most powerful; disenchantment, counter-dependence and independence all can take hold.<sup>45</sup>

This can be an important period of reflection and ongoing learning for the students, but may also be a time when they are most frayed and brittle. If their partners or clients are uncooperative or life outside of clinic is not going well, this is often the time of students’ tear-filled private meetings with me. At its deepest point, the Penniman materials suggest, despair occurs when “my life is out of control, or I feel condemned for my stupid decisions. In such moments I feel like I am filled with tears, so many tears that if I cried them all they would make a pool so large and deep that I might drown in them.” This “pool of tears” is an image reminiscent of the powerful allegory of Alice in Wonderland, falling into the pool of her own tears when in despair.<sup>46</sup>

Graduating students often begin to feel the approaching end of their time in law school, and they know they are about to step off the cliff from the security of school into the real world of work life, into a deeper relationship with a partner (or not), or profound anxiety about high debts from law school costs and no immediate job prospects. In that long period where the end is not easily discerned, I am also more likely to be short and temperamental or to flee the scene of my students’ angst. I’m more impatient with the late work-product and increasingly reluctant to spend all-nighters finishing and filing a brief or other court document. We all feel exhausted, and the week of spring break is only a tantalizing reminder of rest, not a real respite from the pace and demands of the uncontrollable schedule of law firm practice within a law school.

## UNIT 5 – ANTICIPATION

(Full year, weeks 24-28; one semester, weeks 13-14)

(Church seasons: Easter, Ascension, Pentecost)

Spring and new life are finally here, the season of new beginnings . . . and school endings. The first flowers bloom, the cherry blossoms adorn the Tidal Basin near the Capitol Mall, and warm, gentle breezes return. The spring equinox brings the world back into balance, but then tips toward longer, sunnier days. “Primitive people must have felt this same energizing effect of enthusiasm

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<sup>41</sup>A WAY TO BELONG, *supra* n. 22, at 55.

<sup>42</sup>*Id.*

<sup>43</sup>Abernathy, *supra* n. 4.

<sup>44</sup>*Id.*

<sup>45</sup>A WAY TO BELONG, *supra* n.22, at 56.

<sup>46</sup>Categories, *supra* n. 6, at Confirmation Class, Unit IV, Despair, 9.

for life. . . It is no wonder that their celebration of joy and thanks for the renewal of the earth centered around Easter, the goddess of fertility, and that they used the most obvious symbols of fertility, the egg and the rabbit.”<sup>47</sup> As despair is to anxiety, anticipation is “a deeper degree of hope.” In this stage, “one can step out on faith into the unknown of new experience or deeper relationship with others, with God, and with one’s self.”<sup>48</sup> In psychological terms, this is the stage of interdependence and consensual validation.<sup>49</sup>

The school year is about to end, as is the student’s work in clinic. Sometimes, with luck, the student team’s case-work ends with some culminating event that corresponds to the end of the school year – a trial or major filing in court, a presentation or other major work-product in the project-based cases. As often as not, however, the case simply goes on, passing from one student team to another by means of a transfer memo. Some files have up to ten transfer memos as the case lingers and lingers and lingers in judicial limbo, a giant circle game. Graduation, too, is a great ritual festival of celebration and passage, always a favored event for me. I feel proud to have contributed to the developing sense of ownership of a new career by those precious few who have shared the journey of the clinic year with me. Hopefully, in the best of cases, we have evolved from student and teacher to true colleagues.

Year-end is also a time of deeper reflection about what clinic students really want from their careers, from their professional and personal life. There is that sense of the great cycles of school and work life, from one student team to another, a time of endings that anticipates all the possibilities of new beginnings.

## CONCLUSION

Let me note again that this is a template and a prediction tool; it has been mostly true for me in most years. The units do not always fall into perfect symmetry, but remarkably, they often do. I often take comfort in the knowledge that I am somewhere on the great wheel of the clinic seasons, deeply situated and moving at the same time. I can modify my behaviors in recognition of my place in the stages, or make accommodations for otherwise puzzling or perplexing student (or my own) actions. I’ve used the stages more than once to explain an interaction or event to fellow faculty or to the students themselves. Perhaps you’ll find them as useful as I have.

At the center of this annual journey lies the relationship between me and my students, and between my student and their client. The primordial principle defining those relationships shares the central lesson of Karen Armstrong’s *The Great Transformation*, which focused on the “axial age,” the period between 900 and 200 B.C. when the major pre-Christian traditions – Confucianism and Daoism in China, Buddhism and Hinduism in India, Judaism in Israel, and philosophical rationalism in Greece – took shape.<sup>50</sup> During that period, what mattered “was not what you believed but how you behaved. Religion was about doing things that changed you at a profound level. . . Each tradition developed its own formulation of the Golden Rule: do not do to others what you would not have done to you. As far as the Axial sages were concerned, respect

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<sup>47</sup>A WAY TO BELONG, *supra* n.22, at 55.

<sup>48</sup>Abernathy, *supra* n. 4.

<sup>49</sup>A WAY TO BELONG, *supra* n.22, at 56.

<sup>50</sup>KAREN ARMSTRONG, *THE GREAT TRANSFORMATION: THE BEGINNING OF OUR RELIGIOUS TRADITIONS* (2006).

for the sacred rights of all beings – not orthodox belief – was religious.”<sup>51</sup> As Best Practices for Legal Education puts it: first, do no harm to students.<sup>52</sup>

<sup>51</sup>Id. at xviii-xix.

<sup>52</sup>ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 111 (CLEA 2007).

# How to Discover Students' Talents and Turn Them into Teaching

*JUDr. Michal Urban*<sup>1</sup>

## Introduction

Some law students were born to teach. Their professors' job is to help them to discover their talents and turn them into teaching. This paper offers a description of the Prague Street Law Programme with an emphasis on the way of working with law students, who possess clear talent for teaching. Students enrolling for Street Law clinics are students of law, who have obviously decided to study law rather than pedagogy. However, when being provided with an opportunity to teach, some law students prove to possess clear pedagogical talents, which they themselves might not realise. This article analyses Czech experience regarding running Street Law clinics, whose aim goes beyond traditional aims of Street Law clinics, i.e. beyond putting theory into practice, looking at law through the eyes of the lay people, communicating legal matters to lay people, improving presentation skills and serving the community. In addition to these highly beneficial traditional aims of Street Law clinics, Prague Street Law programme also seeks to create an environment, in which law students might realise their pedagogical talents, equip them with necessary methodology, find enjoyment in teaching and efficiently turn their talents into the teaching of law. The paper focuses in particular on the description of the way Prague Street Law programme is designed to support the described goals and lists a number of concrete teaching methods, which have been employed to stimulate students' pedagogical development, since these might serve as a source of inspiration for other clinicians.<sup>2</sup>

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Ph.D. research at Prague's Faculty of Law regarding legal consciousness and teaching law at secondary schools. He is a teacher of Street Law programme at Prague's Faculty of Law as well as a teacher of law at two Prague grammar schools.

2 In this paper, the terms "faculty teacher" and "clinician" are used as synonyms.

## Standard Street Law Clinic in Prague

Since 2009, Prague Law Faculty has run the most advanced Street Law programme in the Czech Republic.<sup>3</sup> The fundamental part of the programme is a standard Street Law clinic, which each semester provides 15 law students with the experience of teaching law at Czech public secondary schools. It is opened every semester for a new group of students from the third, fourth and fifth years.<sup>4</sup> Younger law students are not allowed to sign up, since they might not yet possess sufficient legal knowledge. Each semester is divided into three equally long periods lasting one month. The first month of the semester is spent at the faculty and the faculty teacher introduces students to the basics of the teaching profession, students learn essential teaching principles, fundamental teaching tricks and they are also encouraged to identify elementary teaching mistakes. The second month is devoted to the teaching practice and law students spend it in participating Prague secondary schools, in which they teach law to pupils aged from 14 and 19 years. The last month of the semester takes place at the faculty and students are required to reflect on their teaching experience and work out a portfolio, in which they summarize and evaluate their teaching experience, describe teaching methods and activities they were using and archive all their lesson plans in case they need them in the future.

The aim of the standard Street Law clinic is similar to the aim of many other clinics, i.e. to make it possible for law students to use their theoretical knowledge of law in practice, learn more about the way lay people understand the law, practise explaining legal matters in a simplified but still true way to lay people, learn team cooperation, improve presentation skills, learn improvisation “on the spot” and eventually also serve the community by taking part in a clinic. Although the standard Street Law clinic has been running only for two semesters, it has become rather popular and draws attention and active participation from many law students.

## Upgraded Street Law Clinic

In reaction to the relative success of the standard Street Law clinic, Prague Law Faculty decided to work with the most talented law students more permanently and establish a sequel to the standard Street Law clinic, which would engage students in a more complex way. Therefore, an upgraded Street Law clinic has been introduced.<sup>5</sup> In order to find appropriate law students for the clinic, the goal of the clinician, who is teaching the standard Street Law clinic, was expanded to include the following tasks:

- 1) identify those law students, who are undoubtedly good at teaching;

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3 Prague Law School is a faculty of the Charles University, the oldest university in Central Europe, founded in 1348. In comparison with the other three law schools located in today's Czech Republic, which are part of the universities in Brno, Pilsen and Olomouc, the Prague Law School tends to be more conservative, which includes a cautious approach to clinical legal education.

4 Public law schools in the Czech Republic offer only Masters programmes in law, no Bachelor programme in law is available. The Masters programme lasts for five years and is opened to all

students, who have graduated from their secondary schools and passed the entrance exams.

5 In this paper, the term “standard Street Law clinic” is used for a basic, fundamental Street Law I clinic, whereas “upgraded Street Law clinic” for an extended version of a Street Law clinic opened only to students, who have graduated from the standard Street Law clinic. This upgraded Street Law clinic might as well be called Street Law II in the faculty's curriculum. Not to confuse these terms, only the longer, more self-explanatory terms are used in the paper.



- 2) create an environment in which such students may realise their talents to teach and help them equip themselves with necessary methodology;
- 3) let such students experience what an unforeseen satisfaction teaching may bring them;
- 4) and eventually prepare such conditions in which these talented students might continue teaching law even after standard Street Law clinic terminates, ideally even after their graduation from the Law Faculty.<sup>6</sup>

However ambitious the above described upgraded Street Law clinic might appear, all the necessary organizational steps have already been taken and since there is sufficient interest on the students' side, the clinic came into existence in Autumn 2010.<sup>7</sup> Since the upgraded Street Law clinic is currently being introduced at the Prague Law Faculty, the paper may unfortunately not present the reader with detailed statistics, which would reveal more about the project's outcome. These statistics will certainly be analysed in a future paper, in which the project will be evaluated and examples of best practice will be presented. As the topic of this paper is to describe the way Prague Street Law clinics work with students with a talent for teaching, there now follows a description of the way of working, which enables the clinic to create a welcoming, motivating, working environment, in which students' talents for teaching might flourish.

The description is divided into six points, which are numbered and always introduced by a short headline.

- 1) **No teaching without pre-school training.** Law students are not trained teachers, though some, as argued in this paper, possess a remarkable talent for teaching. Therefore, during the preparatory month at law school,<sup>8</sup> students are introduced to basic elements of the teaching profession, discuss various educational situations and learn concrete examples of activities they might use in schools. During this pre-school introduction to teaching, two ways to introduce students to the basics of pedagogy are used. First, students are often asked direct, targeted and concrete questions, which force them to think, make use of their past experience, imagine the described situations and develop their pedagogical instinct. Examples of such questions are as follows: *What do you do to keep order in the class?*, *How do you find out whether everybody has understood your instructions?* *How would you check that pupils have prepared their homework?* Each time, several concrete possible answers should be formulated to make sure that students are aware that each of the questions points to a "pedagogical situation", which might be solved in number of ways. Secondly, all students have to prepare micro teaching session. Each student has to choose any relevant legal topic and prepare a five-minute long "lesson", in which they present this topic to a mock class, which is role-played by the rest of the students in the seminar.<sup>9</sup> In order to stimulate the atmosphere, students might be given certain roles in the class, such as a role of a "cooperating student", "bored student", "faultfinder" or "student in love with the teacher".

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6 We are undoubtedly talking about couple of lessons a week or a month, not full-time teaching, although even full-time teaching may not be fully excluded and some law students might theoretically consider teaching as the main part of their career, be it only for couple of years.

7 This paper had to be submitted in September 2010.

8 In this paper, the term "law school" refers to Prague

Law Faculty, unless otherwise specified in the text.

9 It might appear rather awkward to turn students of law into a class of 14 to 19 year-old-pupils, but as long as the faculty teacher does not fail to stress the play-like character of the activity, the whole role-play usually is a very enjoyable activity, which most of the law students carry out with unpretentious pleasure.

Another alternative is to encourage students to design their own roles and ask them to pass their roles to any other student later on.<sup>10</sup> Despite being full of enjoyment, the activity has a clear educational aim, because it gives students basic feedback on their way of teaching and teaches students to observe their colleagues and provide them with feedback, be it praise or criticism.

- 2) **Keep it intensive.** Since the standard Street Law clinic is opened only for a relatively small number of students (up to 15) and lasts only for one semester, strong emphasis is put on the fact that the work with students is intensive. They are required to actively participate in seminars and to work for the whole teaching practice in teams of three, which stimulates cooperation and encourages all members of the team to participate. Seminars take place every week, and when preparing their lessons, students have to meet or consult their plans several times a week.
- 3) **Teams of three: individual performance, yet shared responsibility.** For most of the Street Law clinic, students work in teams of three, especially during the teaching practice. The aim is to provide them with somebody to consider their teaching ideas with, to stimulate peer cooperation and peer teaching and to reduce the role of the faculty teacher, who might otherwise find themselves in a role of the final authority, approving every detail of students' lesson plans. The teacher requires a copy of each lesson plan before the lesson is taught, but their role is neither to design nor necessarily fully agree with every activity students have chosen to carry out. The responsibility for the lesson lies primarily on the law students, the teacher should intervene only in cases of "pedagogical emergencies", e.g. when the whole lesson is collapsing, when the lesson plan is clearly badly drafted, or when students are about to touch an extremely sensitive issue either incompetently, or lacking important knowledge about the pupils.<sup>11</sup> Peer teaching and peer cooperation plays also a significant role in the reflection of each taught lesson.

In order to secure relatively even participation of team members and encourage their activity, students are often given certain roles and take turns in playing them. For instance, during teaching practice, there are always two students who teach the lesson and one who sits at the back of the class and observes the class and his/her teaching colleagues. The job of the observing student is to take notes and once the lesson is over, provide his/her colleagues with precious feedback on their teaching, think about alternative ways of doing activities, of solving educational problems or of organizing the whole lesson.<sup>12</sup>

The division of roles has many benefits. Apart from providing feedback to teaching colleagues, it equally teaches students to observe the class and "read" what happens or might have

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10 It is of course very funny, when the card describing the role of a student in love with the teacher is received by someone who would never have thought of being in love with the person teaching at the moment.

11 In one class, for example, one pupil committed suicide a year before the teaching practice of law students. Since the students were preparing a lesson on murder and euthanasia, they were informed about the background of the class. In another case, students planned a clearly boring lesson, which would lead to serious issues between the teaching students and pupils of the class. Therefore, the clinician helped them to improve the lesson.

Otherwise, it is our belief that if students experience some failure during their teaching practice, it mostly stimulates their progress, especially if it happens in early stages of their teaching practice.

12 It certainly helps when observing students are expected to fill in an observation form (preferably a form, which enables them to enter their comments, not just tick boxes or numbers). It not only encourages activity of the observer, but also represents a written piece of feedback, which may be given to the teaching colleagues, stored in their portfolios and available for future study or reflection.

happened during a lesson. This helps students improve their own teaching abilities and reflect on their own teaching style and strategies.<sup>13</sup>

While working in teams of three, students are naturally forced to cooperate and divide their workload and responsibility for certain tasks, although the final responsibility for teaching the class is still shared by all members of the team. Obviously, students tend to compete with each other and surpass the performance of other team members, which spices up the teaching atmosphere and stimulates better achievement for all involved. Interestingly enough, some teams manage to cooperate so well that their team works almost professionally, which is mostly rewarded by a very positive response from pupils, who especially enjoy times when teaching students interact and elegantly pass the floor from one to the other student.

- 4) **The teacher is always present – and always observing.**<sup>14</sup> Since the Street Law clinic has been designed as an intensive one, law students are almost constantly observed when working with a class. For statutory reasons, the secondary-school teacher is always required to be present in the lesson.<sup>15</sup> More importantly, in a majority of cases, there is also the faculty teacher present at the lessons taught by law students and each lesson is followed by a thorough, detailed analysis.

An analysis of one lesson might take up to 60 minutes and represents a fundamental part of the Street Law clinic. It provides crucial feedback to the students and allows them to interact directly with the faculty teacher and clarify various educational and legal issues, which are not theoretical, but directly connected to students' experience with law teaching. These analyses are an essential part of the Street Law clinic, since they directly motivate students to improve their performances and help to identify students' strengths and weaknesses. Additionally, the faculty teacher also makes sure that teaching methods used by law students are sufficiently interactive and motivating for pupils.

The analysis usually starts by student-observer summarising the lesson, pointing out its good and bad sides and offering alternative views and solutions. In reaction to that, the teacher offers his/her view, comments on the feedback delivered by the observing student and asks questions regarding methodological issues, content of the lesson, alternative activities etc. In this way, the feedback is very useful for the students and offers them concrete pieces of advice to be used in preparation of future lessons. As will be described in the following point, students are required to

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13 It is our experience that students mostly do not realise this. They primarily see themselves as observers, who help their teaching colleagues by being their "third eye", which sees what the two normal eyes do not or could not see. In this regard, it is useful to encourage students to reflect on their role of the observer and let them formulate, in which ways it helps them in their own teaching. Eventually, it is rather disputable who benefits from the observation more, the teaching, or the observing student. This corresponds with the experience of many mature teachers, who confirm that they improve their way of teaching by observing their colleagues.

14 When formulating this headline, the author was inspired by the proverb about the devil that never sleeps.

15 For safety reasons, law prohibits a law student, who

has no legal contract concluded with the secondary school, to undertake full responsibility for the pupils and be the only adult person in the class. Therefore, the school teacher, in whose class law students are teaching, retains legal responsibility for the pupils, which is also reflected by the fact that law students are not paid for the time spent in schools and secondary school teachers still receive salaries for lessons taught by "their" law students. Nevertheless, the pay is not high and compensates the teachers for their time, in which they let law students teach in their classes or provide students with reflections on their teaching.

Another issue, which is not dealt with in this paper, is the degree of cooperation between the law students and secondary-school teachers. Should the secondary-school teachers remain passive all the time, or should they co-teach the lessons with law

improve from lesson to lesson and thorough, personalized feedback plays an important role in this.

- 5) Thorough lesson-planning is a must. Since students are given thorough feedback on their teaching, thorough and responsible planning for every lesson is demanded. Most groups are easily motivated by the fact that they want to teach well, want to impress pupils and want to receive good comments from the faculty teacher. However, some students have to be motivated by more explicit formulation of what is necessary to be done till the next lesson. Generally, students are well prepared for their classes.

Our overall experience is that some students devote themselves to teaching and some adopt a more relaxed approach, but satisfactory results and improvements are observable in all cases. As has been set out above, as a result of the personal treatment of all students and direct and intensive contact with the clinician, students are expected and required to improve from lesson to lesson. It seems to be fair to add that the majority of them really do.

- 6) **Teaching well in front of one class as well as in front of the whole world.** Teaching can hardly be done privately, without others being able to observe it and comment on it, especially since the Street Law clinic is designed to train possible future teachers of law. Therefore, unlike some seminars at the law faculty, where students may remain passive or even anonymous throughout the whole semester, the Street Law clinic is not intended by far for passive and indifferent individuals. Especially, since we are trying to spread the knowledge about the Street Law programme among the general public and intentionally decided to attract the attention of the media. More specifically, in the school year 2009/2010, we managed to publish several articles about the clinic in national newspapers and two reports regarding the clinic were broadcast by Czech Radio. Furthermore, there was a TV report broadcast by Czech Television.<sup>16</sup> The interest of the media understandably motivates the students, teaches them about the work of the media and enables them to experience how pleasant it is to read about yourself in a newspaper or watch yourself on public television. Additionally, by finding our way into the public media we are trying to cast doubt on the influential slogan that *good news is no news*. We have understandably not managed to uproot the slogan, but we have managed to let part of the Czech public know that Street Law clinic exists.

After graduating from the basic Street Law clinic, upgraded Street Law clinic is offered to some of the students. The basic idea, on which the upgraded Street Law clinic is built, is to extend the time limit for the clinic, increase the responsibility and independence of the students and reduce the involvement of the teacher. Therefore, the most talented and hard-working students are offered the opportunity to continue teaching under far more demanding circumstances. In the upgraded Street Law clinic, law students are given one whole class of pupils (i.e. around 30 pupils) to teach for one whole school year.<sup>17</sup> This time, supervision from faculty teacher is only occasional and there is no secondary-school teacher present in the class, as was the case during the standard Street Law clinic.

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students? Benefits and drawbacks of this street law model certainly deserve an analysis.

16 Even though the report is in Czech, some of the readers might appreciate it and therefore we insert its link below. It deals with a moot court the law faculty organized for pupils from one Prague grammar school. It may be found in the Internet-

accessible Czech TV archives, the report was broadcast as a part of the evening news, at about 20:19. The address is as follows: <http://www.ct24.cz/vysilani/2010/05/09/210411020000509-20:00-zpravy>.

17 In the faculty's curriculum, the upgraded Street Law clinic is designed for at least one semester of

With this new, intensive Street Law clinic in mind, we may expand the previous six points and add five more points, which will more closely reveal the way we work with the students who are offered the opportunity to enrol into the upgraded Street Law clinic.<sup>18</sup>

- 7) **Teaching is not for everybody.** As has been mentioned above, the standard Street Law clinic has many useful aims and is vastly beneficial, even for those students who will never attempt to teach law in the future. The upgraded Street Law clinic is, however, opened only for those graduates of the standard Street Law clinic, who are both skilled and hard-working enough to be offered a year-long cooperation with a secondary school. At this stage of the Street Law programme, it is only fair to admit that this form of clinical legal education is not for everybody and not any law faculty student would fulfil such a responsible commitment. Since the role of both faculty and secondary school teacher is reduced and law students undertake, for instance, responsibility for pupils' progress in the class, more caution is necessary. On the other hand, it should not encourage those students, who will be offered a place in the upgraded Street Law clinic, to consider themselves more than the rest of the law faculty. Nevertheless, it is necessary for a clinician to be fully aware of the fact that such advanced teaching should not simply be offered to any student interested in teaching.
- 8) **Growing through responsibility:** As has been suggested above, at this stage of teaching, law students are given one class of pupils (i.e. around 30) to teach two hours a week for the whole school year. It is their duty to plan the lessons, to design and realise a year-long plan for the course, to test students, to find ways to motivate pupils all the year around etc. The idea is that by graduating from the standard Street Law clinic, students possess the necessary pedagogical skills to find their way through the whole year on their own. Understandably, even the upgraded Street Law clinic is still a law school subject, therefore supervision of the faculty teacher is required and the teacher will be open to any requests from the students. One of the abilities students should gain during this course is the ability to ask for help when necessary. Nevertheless, the aim of the designer of this course was certainly not to put too heavy a burden on the shoulders of students, therefore students are expected to teach one class in a pair of two law students, which should keep the element of cooperation, peer teaching and team work in the clinic.
- 9) **Moot courts:** While teaching, law students will be required to organize moot courts for their classes and teach certain legal topics in this way. The benefits of moot courts for law teaching have been analysed elsewhere and this paper will therefore not repeat this argument, only two comments will be made. Firstly, most of the benefits of moot courts apply both to law school students and secondary school pupils. Secondly, when organizing moot courts, an emphasis should be put on involvement of elements from outside of the class, i.e. professional judges and attorneys, teachers of the school or other classes from the school acting as the audience or improvised jury. Consequently, moot courts should become events for the whole school and

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teaching. In reality, secondary schools often require students to teach one class for the whole school year. Therefore, we use the length of one school year in this paper.

18 In terms of law, law students this time enter into an official part-time contract with secondary schools,

which entrusts them with full responsibility for pupils during the lesson (therefore no secondary school teacher has to be present in the class) and entitles them to receive basic salary corresponding to the number of taught lessons.

should attract the attention of the media and help spread knowledge about the project, which is an aim of the Street Law programme described above.

- 10) **Share what you have learned.** While taking part in the upgraded Street Law clinic, students will be offered to participate in leading teaching practices of younger law students. After several months of teaching, older Street Law students<sup>19</sup> should be prepared to allow younger students into their classes not only for observation, but also for their own teaching practices. As they were in a similar position not a long time ago, older Street Law students share common experience with their younger colleagues and their comments on younger students' teaching and pieces of advice might therefore be especially enriching for their younger colleagues. Understandably, the faculty teacher will have to guide and supervise the teaching practice anyway, but an active involvement of older Street Law students would no doubt ease the teacher's task, not to mention having a positive educational impact on participants of the upgraded Street Law clinic. This fact, after all, corresponds with one of the mottos of all Street Law programmes, which goes as follows: *What you hear, you forget, what you teach, you remember.*
- 11) **Learn by writing.** Because the standard Street Law clinic has been introduced only recently, there is neither a course-book, nor a reader of relevant texts for Street Law students. Our plan is to put such a reader together and invite students of the upgraded Street Law clinic to participate in preparation of the reader, be it in the form of proofreading, editing or identifying relevant texts.

As has been mentioned above, the upgraded Street Law clinic was opened in Autumn 2010, which prohibits the paper from presenting concrete statistical data, which would provide the reader with empirical support for this Street Law clinic. For the time being, there is only entrance data available, documenting the situation at the beginning of the project. It has been explained earlier that the upgraded Street Law clinic is opened only for the most successful graduates of the standard Street Law clinic, on average 5 out of 15 of the students. Out of these 5, on average 4 accept the invitation for the clinic, which is considered a rather positive response, especially considering all other options in terms of legal practice. It became rather popular for law students in later years of their studies to start working in legal firms, which certainly pays far better than teaching law in public schools.

However, taking part in the upgraded Street Law clinic depends also on the interest of secondary schools in accepting law students as teachers of law and allowing them to teach two lessons a week the whole year round. So far, we have managed to place two pairs of students in two different Prague grammar schools and we are close to an agreement with another grammar school.

Clearly, the presented numbers are relatively small in comparison with the total number of students studying at the law faculty.<sup>20</sup> Bearing this fact in mind, it seems to be inevitable that Street Law clinics will continue to be offered as voluntary subjects, which may accept only a small percentage of law students. However, unlike in the past, Prague Street Law clinics are now part of

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19 Older Street Law students are those students, who graduated from the standard Street Law clinic and participate on the upgraded Street Law clinic.

20 Every year, Prague Law School welcomes from 650 to 800 new students into the first year of study.

the official law school curriculum and students who enrol onto the clinics are granted credits for their participation.<sup>21</sup> Additionally, Street Law programme enjoys a relatively stable support from the faculty, and as the interest of both the law students and the secondary schools is rising, we are considering opening the standard Street Law clinic for up to 30 law students every semester in a year or two. In this context, the future of Street Law programme in Prague appears to be rather promising. Hopefully there will be another opportunity to inform the readers of the International Journal of Clinical Legal Education about the Street Law experience from Prague.

## Conclusions

This paper has, in eleven concrete points, described the way the Prague Street Law programme works with law students, who possess a clear talent for teaching. The points were chosen so that they would enable an insight into the Prague Street Law programme and offer both information about Prague Street Law clinics to those, who have been running similar projects, and inspiration for those, who might get inspired by Prague Street Law experience. It has been explained that one of the programme's aims is to establish a more permanent involvement of talented law students in law teaching. The first step in this process is to identify those law students, who would in future be good teachers of law. It has been highlighted that not all law students would make good teachers of law, even if they endeavoured to do so. The paper suggests that being a good teacher does not mean to excel in one specific area, but rather to possess a whole range of skills and abilities, including a basic talent for teaching, necessary rhetorical skills, determination to learn from mistakes, willingness to take teaching seriously and to carefully prepare for the classes, skills to cooperate with others, and the ability to identify and understand the needs, wishes and feelings of pupils.<sup>22</sup> In terms of the paper's main topic, it is important to point out that as only a small percentage of law students meet the above-described criteria or possess potential to develop these qualities, these students are precious indeed and deserve the special educational care of the teachers.

The paper further suggests that the teacher's role in the context of the described Street Law programme is not only to search for these students, but also to let them experience and realise their talent for teaching, help them enjoy teaching and experience the satisfaction teaching may bring to them. The enjoyment, together with sensitive guiding of the students by the faculty teacher, naturally motivates students to overcome standard teaching difficulties and prejudices against teaching, including the expectation that school pupils are unbearably naughty and uncooperative these days.<sup>23</sup>

The paper expresses the ambition of Prague Street Law clinics to spur a more permanent involvement of law students in law teaching. The presumption of the Street Law programme is that some law students might continue with teaching even after they graduate from the upgraded Street

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21 In the school year 2009/2010, students received two credits, beginning from the school year 2010/2011, four credits will be awarded. On average, students need to gather 30 credits every semester, many of which they receive for compulsory subjects, which all students have to pass in order to proceed into the next year of study.

22 The mentioned skills and abilities might of course be expanded and some more might be added.

23 Interestingly enough, all our Street Law students were positively surprised both by the behaviour and learning motivation of pupils. This should not suggest that all Czech pupils are little angels, but that pupils at cooperating Prague grammar schools are generally a pleasure

Law clinic and possibly also after their graduation from law school, be it only for couple of hours every month or semester. The paper assumes that not all Street Law students will be willing to give up teaching which they were deeply involved in, which they greatly enjoyed and which was earning them the respect of others, since these benefits might not be easily and adequately substituted by work in a legal office. Nevertheless, the paper concludes that for presenting detailed empirical data the Prague Street Law programme is still too young.



