

INTERNATIONAL
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Articles

Autonomy-Mastery-Purpose: Structuring Clinical Courses
To Enhance These Critical Educational Goals
Leah Wortham, Catherine F. Klein, Beryl Blaustone

A Model for Interdisciplinary Clinical Education: Medical
and Legal Professionals Learning and Working Together
to Promote Public Health
Lisa Bliss, Sylvia Caley, and Robert Pettignano

The Opportunities and Challenges of an
Interdisciplinary Clinic
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Holding Up the Mirror: A theoretical and practical analysis
of the role of reflection in Clinical Legal Education
Rachel Spencer

Clinical Practice

Street Law Based CLE: A Student-Impact-Assessment
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Reflections Upon Transitions: An Essay on Learning How
to Teach after Practicing Law
C. Benjie Louis

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Foreword

Welcome to Issue 18 of the journal.

International Journal of Clinical Legal Education Conference July 2012

My thanks again to all those who attended this conference (all 185 of you from 22 countries). It was our most successful conference to date with a huge diversity of papers and experience from across the globe. The theme of the conference was: *Entering the Mainstream: Clinic For All?* My growing sensation is that clinical legal education is now gaining momentum such that one day clinic may well be available to the majority of students – whether we see the methodology pervade the law curriculum as much as some hope for, remains to be seen.

I am busy considering all of the papers that were submitted after the conference and it is clear that there will be a rich conference journal to publish early in the New Year. Aside from the usual benefit of formal and informal discussions about our teaching, I and many others particularly enjoyed the Ceilidh.

International Journal of Clinical Legal Education Conference, Griffiths University, Brisbane, 15–18th July 2013

Professor Jeff Giddings and I are busy arranging this conference as I write. The theme of the conference will be “Common Ground” and we hope to explore cross cultural and cross model sharing of best practice in experiential legal education. We have secured keynote speakers: Professor Leah Wortham and Professor Catherine Klein from the US with their extensive experience in clinic across the World; Professor Ernest Ojukwu from the Nigerian Law School, a key figure in the hugely successful recent rise of clinic in Nigeria and Professor Stephen Billett of Griffiths University whose research is in the fields of vocational learning, workplace learning and conceptual accounts of learning for vocational purposes. Professor Billett’s presence is an indication of our desire to learn from and with those outside of legal education – a desire shown increasingly in the pages of this journal in relation to interdisciplinary clinics (two of the papers in this issue are on this theme).

A call for papers will have been sent by the time you receive this journal and I encourage as many of you as possible to join us in Australia for what promises to be a very lively and interesting conference.

European Clinical Network of Clinical Legal Education (ENCLE)

As notified in an email to our international network, several European clinicians including myself, met recently in Poland and agreed to form ENCLE. ENCLE’s mission is to support the growth and quality of CLE programmes in Europe through facilitating transnational information sharing, fostering research on CLE, convening conferences, workshops and training sessions, establishing a website as an open resource for information sharing and promoting collaboration between CLE programmes and legal professionals. All those practising clinical education in Europe are invited

to join and can email encl.info@gmail.com for more details. A strong European network will also assist the growth of clinic internationally.

In This Issue

In “Autonomy-Mastery- Purpose,” Professors Wortham, Klein and Blaustone examine intrinsic and extrinsic motivation in students. They argue that those law students who rely on extrinsic motivation through law school (particularly the competitive pursuit of the top grade in the class) and beyond are likely to feel unfulfilled as lawyers whereas those who are intrinsically motivated (focusing on personal growth, close relationships and helping others) are likely to be more satisfied with their lives, more creative and better functioning as lawyers.

One crucial aspect of intrinsic motivation is student autonomy. The authors elaborate on Pink’s application of autonomy to the business setting to describe how clinical teachers can pursue autonomy supportive teaching.

The paper also looks at mastery and provides a powerful restatement of the role of reflective learning in achieving mastery and the power of clinic to give students the opportunity and tools to become reflective practitioners. The paper is not merely a paean to clinic however. The authors indicate ways in which the clinical teacher can provide reflection opportunities which develop the student’s learning process. Clinical teaching has the capacity for achieving autonomy and mastery but care must be taken over the pedagogical process.

As editor of the journal I very much welcome papers such as this one that consider theories of learning and their application in the clinical setting.

Professors Lisa Bliss Sylvia Caley, and Robert Pettignano examine the Health Law Partnership at Georgia State University in their paper. The paper posits that interdisciplinary projects promote co-learning, holistic problem-solving and community building for young professionals. It is clear from the article (and from other articles published and to be published in this journal) that public health legal services are a growing phenomenon that are more capable of attacking the social determinants of ill health for vulnerable members of society while providing a rich learning experience for all of the professionals and students involved. The paper gives useful examples of how the partnership can function and some of the challenges that are encountered.

Paula Galowitz also reports on an interdisciplinary clinic. Her article provides some very useful sources of inspiration for the many interdisciplinary clinics springing up around the World. It is interesting that in both papers in this journal on this subject, students were able to identify significant commonalities between their respective professions and broaden their perspectives as to each other’s roles. It is particularly clear from this article how valuable seeing the patient/client from a different perspective can be.

Rachel Spencer considers some of the vast literature on reflection in her paper “Holding Up The Mirror.” While there is a wealth of literature on the subject, many clinicians will recognise that teaching reflection is no simple matter. Spencer rightly looks beyond the field of clinical legal education into other fields such as medicine, nursing and social work where much has been written on the subject. The appendices to the article include many interesting approaches to reflection

and, at Appendix G, the marking criteria for a reflective portfolio at the University of South Australia. My colleagues at Northumbria, particularly Kevin Kerrigan and Carol Boothby, have been working to describe student performance for our criteria in this area and it is interesting, and useful to us, to see a similar process in Australia.

Street Law in Malaysia is the focus of Asnida Suhaimi and Nur Zulkifli's paper: "Street Law Based CLE: A Student-Impact –Assessment." The paper considers the history of street law at the University of Malaya and a short survey to determine the motivation of students who took part and the skills they believed that they had learned. It is interesting that the authors report that while students clearly believed that many of their interpersonal skills and other "soft" skills had been improved a larger majority (79%) believed their academic performance had been improved by this extra-curricular activity.

C Benjie Louis looks at clinical teaching for a new supervisor. In "Reflections Upon Transitions: An Essay on Learning How to Teach After Practicing Law," he considers not only this but his reflections on unique lessons for a clinician of colour in the US and provides a set of 5 core tools he argues would be useful to any new clinician. The reflection is a personal one in the main but many of the experiences and lessons that are described can be encountered in live client clinics across the World and the tools suggested can be useful to clinicians, old and new alike.

I look forward to seeing many of you in Australia in 2013.

Jonny Hall

Editor

Autonomy-Mastery- Purpose: Structuring Clinical Courses To Enhance These Critical Educational Goals[†]

Leah Wortham,^{} Catherine F. Klein,^{**} Beryl Blaustone^{***}*

[†] The authors would like to thank Stephen Young, reference librarian at Columbus School of Law of The Catholic University of America (CUA), for his invaluable research assistance and Barbara McCoy from the CUA staff for her formatting of the numerous drafts. Thanks also to Joanna Wood (CUA 2011) and JeanMarie Krowicki (CUNY 2012) for their careful cite-checking and editorial suggestions. We deeply appreciate the thoughtful comments received from Lawrence Krieger.

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“There is a science to what we do.”

This article takes its name from the keynote plenary that the authors presented at the 8th International Journal of Clinical Legal Education conference held at Northumbria University in July 2010. The presentation and this article link research on human motivation and well-being to the structure and methods of clinical legal education. The quote above is from a conference participant in response to a question that we posed to small groups at our plenary regarding how the concepts of autonomy support and mastery resonate with their experience in clinical education and legal education more generally.

Autonomy, mastery, and purpose are the “tripod of Type I behavior” formulated by Daniel H. Pink in his 2009 book, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US*.¹ Pink postulates “Type I” behavior as that driven by intrinsic, self-generated motivations as opposed to “Type X” behavior directed toward extrinsic factors outside the self such as imposed production quotas, bonuses, competitions to “best” others, or avoiding punishments.² Pink develops a computer-operating-system metaphor to advocate “Motivation 3.0” as an optimal organizing principle for 21st century business built on providing employees opportunities for autonomy, mastery, and purpose as opposed to an outmoded “Motivation 2.0,” which assumes a controlling work environment based on the premise that people respond best to carrots and sticks.³ Pink’s book cites examples of businesses structured to support autonomy, mastery, and purpose and describes their successes in enhanced creativity, innovation, retaining valued employees, and productivity.⁴ He contrasts such businesses with work places organized around specifically dictated job conditions and traditional structures where workers are subject to externally controlled rewards and punishments.⁵

Pink provides an engaging, easily accessible entry to a body of social science literature on motivation, achievement, and feelings of well-being that also has been applied to legal education.⁶ This article seeks to provide user-friendly access to theory regarding the basic human needs for autonomy, mastery, and purpose as well as regarding intrinsic versus extrinsic motivation. The article provides examples of choices clinical teachers can make to promote student learning and feelings of well-being through methods supporting satisfaction of those basic human needs and encouraging students to find their self-driven motivations.

1 DANIEL H. PINK, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US* 77-81 (2009).

2 *Id.*

3 *Id.* at 17-21, 85 -141. Carol Wallinger frames the type of contrast Pink makes to that between self-determination theory, outlined in this article, and the behaviorism “made famous by B.F. Skinner.” Carol L. Wallinger, *Moving From First to Final Draft: Offering Autonomy-Supportive Choices to Motivate Students to Internalize the Writing Process*, 54 *LOY. L. REV.* 820, 823, n. 10 (2008).

4 Pink discusses Meddius, a “results-only work environment,” as an example of a business structured to support worker autonomy; Green Cargo, a company that provides its employees with “Goldilocks tasks” to create an environment of “mastery;” and TOMS as an example of a company with “purpose.” PINK, *supra* note 1, at 86, 118-19, 136.

5 PINK, *supra* note 1, at 99, 101-02 (noting law firms and call centers).

6 Pink, a law graduate himself, cites to Sheldon & Krieger’s study of two law schools showing a relationship in differences in perceived autonomy to mental distress and favorable outcomes in grades and bar passage. PINK, *supra* note 1, at 98-99 (citing Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 *PERSONALITY SOC. PSYCHOL. BULL.* 883 (2007)) [hereinafter *Understanding Negative Effects*].

Part I describes the difference in extrinsic and intrinsic motivation and reviews the negative effects of business and educational models assuming extrinsic motivation to be most effective rather than seeking to stimulate intrinsic motivation. Part II describes the Carnegie Foundation's Preparation for the Professions project's call for law schools to focus on law students' sense of identity and purpose as part of their professional education, as well as noting the similar goal that students learn "how to be" as articulated by the Tuning Project of the Bologna process regarding higher education in Europe. Part III provides basics on the theory of human needs for a sense of autonomy, mastery, and purpose on which the rest of the article is based. Part IV applies work contrasting autonomy-supportive teacher behaviors with controlling instructional behaviors to the clinical context. Part V of the article draws on cognitive psychology, neuroscience, and learning theory to suggest four methods useful for assisting novice law students on the steep road to mastery of lawyering competence within the time constraints of clinical programs and the professional demands of client service. Methods identified also contribute to satisfaction of students' need for relatedness, which too often is undermined in other parts of law school. Part VI extends the discussion of clinics' potential contribution to the need for relatedness and focuses on clinical education's capacity to support development of students' sense of how a career in law can contribute to their sense of life purpose in being part of something larger than themselves.

Many of this article's applications of theory to clinical teaching are from the clinics in which students provide client representation or are engaged in transactional legal problem solving under faculty supervision, the type of clinics in which Professors Klein and Blaustone teach.⁷ We think, however, that clinical teachers will be able to see applications of the theory presented to the various types of clinical programs that exist around the world, *e.g.*, street law programs in which students teach community members and externship programs in which students work under the supervision of a lawyer in an organization external to the law school.⁸ We hope, like Pink's book, to offer an accessible gateway to a body of theoretical and empirical work that can help clinical teachers think critically and creatively about both their clinical program's structure and their teaching and supervision. We hope to inspire teachers to think about ways they might apply this theory toward nurturing the type of life-long self-direction that motivates people to continually seek greater mastery and provides a sense of well-being both now and in the students' future careers.

7 Kevin Kerrigan refers to such clinics as "full representation, in-house legal schemes." He describes a number of clinical models in the United Kingdom: simulation clinics, street law/law in the community initiatives, advice-only clinics, representation services, externship/placement programs, mediation schemes, soup runs, campaign teams, letter writing help, innocence projects, and others. Kevin Kerrigan, "How do you feel about this client?" – A Commentary on the clinical model as a vehicle for teaching ethics to law students, 2007 INT'L J. CLINICAL LEG. EDUC. 7, 14 & nn. 46-52.

8 See generally THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch, ed., 2011) for discussion of a number of clinical models that have developed throughout the world.

I. INTRINSIC AND EXTRINSIC MOTIVATION

Our plenary in Northumbria commenced with an excerpt from a “TED Talk” presentation⁹ by Daniel Pink on “the candle problem” devised by psychologist Karl Duncker in the 1930s.¹⁰ This often-replicated experiment shows that external rewards like a promised financial payment can impede rather than enhance performance in solving problems requiring innovative, creative solutions.¹¹ On the other hand, when problems have a clearly defined particular solution, external rewards can be an effective incentive.¹² Pink points out that much success in 21st century business will depend on creative, innovative solutions rather than mere production according to previously set procedures. While legal education requires rote learning of some building blocks of doctrine, procedural rules, and technique, ultimately lawyering requires deep conceptual learning that can be applied flexibly and creatively to new situations.

Lawrence Krieger of Florida State University has done pioneering research and writing in lawyer and law student distress and their relationship, not only to those individuals’ unhappiness, but also to unprofessional behavior as lawyers.¹³ As a service to law students, he self-publishes two booklets, *The Hidden Sources of Law School Stress* and *A Deeper Understanding of Your Career Choice*, available to encourage distribution in law schools.¹⁴ While Pink applies the considerable body of research in intrinsic versus extrinsic rewards to business settings, Krieger’s pamphlets relate these concepts directly to law students. He challenges “The Universal Fallacy: that the road to happiness runs through the top of the class,” which encourages the notion of grades as the ultimate goal and

9 TED is “a nonprofit devoted to Ideas Worth Spreading. It started out (in 1984) as a conference bringing together people from three worlds: Technology, Entertainment, Design” and has since broadened its scope. *About TED*, TED, <http://www.ted.com/pages/about> (last visited Dec. 12, 2011).

10 *Dan Pink on the Surprising Science of Motivation*, TED (Jul-Aug.2009), http://www.ted.com/talks/dan_pink_on_motivation.html. Pink begins by describing his decision to attend law school as a “youthful indiscretion” and reports never having practiced law. But he frames his TED presentation as a lawyerly case for a reframing of the way we consider motivation. PINK, *supra* note 1, at 42-43, 61 (description of the candle problem and further experiments by Sam Glucksberg).

11 For an application of this theory in contexts from parenting to education and business, see generally ALFIE KOHN, *PUNISHED BY REWARDS* (1999).

12 PINK, *supra* note 1, at 60-69.

13 See generally LAWRENCE S. KRIEGER, *THE HIDDEN SOURCES OF LAW SCHOOL STRESS: AVOIDING THE MISTAKES THAT CREATE UNHAPPY AND UNPROFESSIONAL LAWYERS* (2006) [hereinafter *HIDDEN SOURCES*]; LAWRENCE S. KRIEGER, *A DEEPER UNDERSTANDING OF YOUR CAREER CHOICE* (2006); Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 *WASBURN L. J.* 247 (2007) [hereinafter *Human Nature*]; Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 *CLINICAL L. REV.* 4125 (2005) [hereinafter *Inseparability*]; Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 *J. LEGAL EDUC.* 112 (2002); Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, And What We Might Do About It*, 1 *J. ASS’N LEGAL WRITING DIRS.* 258 (2002); Lawrence S. Krieger, *What We’re Not Telling Law Students – and Lawyers – that They Really Need to Know: Some Thoughts-In-Action Toward Revitalizing the Profession From Its Roots*, 13 *J.L. & HEALTH* 1 (1998); Lawrence S. Krieger, *Taking Inventory: The Science of Happiness*, 20 *GPSOLO* 66 (2003); Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6; and Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being* 22 *BEHAV. SCI. & L.* 261 (2004) [hereinafter *Undermining Effects*].

14 These booklets can be ordered online at http://www.law.fsu.edu/academic_programs/humanizing_lawschool/booklet2.html.

measure of success in legal education.¹⁵ Instead he cites the research that shows:

a primary focus on external rewards and results, including affluence, fame, and power, is unfulfilling... Instead people who have a more “intrinsic,” personal/ interpersonal focus – on personal growth, close relationships, helping others, or improving their community – turn out to be significantly happier and more satisfied with their lives.¹⁶

In his psychology text UNDERSTANDING MOTIVATION AND EMOTION, Professor Johnmarshall Reeve summarizes in five paragraphs considerable research on four benefits of intrinsic motivation for which one easily can see direct application to legal education.¹⁷ First, the higher the intrinsic motivation, the greater the persistence in completing a task. Second, people are most creative when they are motivated by “the interest, enjoyment, satisfaction, and challenge of the work itself – rather than by external pressures.”¹⁸ Creativity can be undermined by “being watched,”¹⁹ “evaluated,”²⁰ “bossed,”²¹ or “rewarded.”²² Third, intrinsic motivation “enhance[s] a learner’s conceptual understanding of what they are trying to learn... [and] promotes flexibility in one’s way of thinking,²³ active information processing²⁴ and tendency to learn in a way that is conceptual rather than rote.”²⁵ Fourth, “[p]ursuing intrinsic goals (e.g., competence, relatedness, autonomy in life) leads to better functioning and higher psychological well-being than does pursuing extrinsic goals (e.g., financial success, social recognition, physical image).”²⁶ This positive relationship

15 KRIEGER, HIDDEN SOURCES, *supra* note 13 at 4 (citing Sheldon & Krieger, *Undermining Effects*, *supra* note 13).

16 *Id.*

17 JOHNMARSHALL REEVE, UNDERSTANDING MOTIVATION AND EMOTION 112-13 (5th ed. 2009).

18 REEVE, *supra* note 17, at 113 (quoting TERESA M. AMABILE, THE SOCIAL PSYCHOLOGY OF CREATIVITY 112 (1983)).

19 REEVE, *supra* note 17, at 112 (citing TERESA M. AMABILE, THE SOCIAL PSYCHOLOGY OF CREATIVITY 112 (1983)).

20 REEVE, *supra* note 17, at 112 (citing Teresa M. Amabile, *Effects of External Evaluations on Artistic Creativity*, 37 J. PERSONALITY & SOC. PSYCHOL. 221 (1979)).

21 REEVE, *supra* note 17, at 112 (citing Richard Koestner, et al., *Setting Limits on Children’s Behavior: The Differential Effects of Controlling Versus Informational Styles on Intrinsic Motivations and Creativity*, 52 J. PERSONALITY, 233 (1984)).

22 REEVE, *supra* note 17, at 112 (citing Teresa M. Amabile et al., *Social Influences on Creativity: The Effects of Contracted-for Reward*, 50 J. PERSONALITY & SOC. PSYCHOL. 14 (1986)).

23 REEVE, *supra* note 17, at 113 (citing Kenneth O. McGraw & John. C. McCullers, *Evidence of Detrimental Effects of Extrinsic Incentives on Breaking a Mental Set*, 15 J. EXPERIMENTAL SOC. PSYCHOL. 285, 285-94 (1979)).

24 REEVE, *supra* note 17, at 113 (citing Wendy S. Grolnick & Richard M. Ryan, *Autonomy in Children’s Learning: An Experimental and Individual Difference Investigation*, 52 J. PERSONALITY & SOC. PSYCHOL. 890 (1987)).

25 REEVE, *supra* note 17, at 113 (citing Carl Benware & Edward L. Deci, *Quality of Learning with an Active Versus Passive Motivational Set*, 21 AM. EDUC. RES. 755 (1984)); Ann K. Boggiano et al., *Use of Techniques Promoting Students’ Self Determination: Effects on Students’ Analytic Problem-Solving Skills*, 17 MOTIVATION & EMOTION 319, 319-36 (1993); Marteen Vansteenkiste, et al., *Examining the Motivational Impact of Intrinsic Versus Extrinsic Goal Framing and Autonomy-Supportive Versus Internally-Controlling Communication Style on Early Adolescents’ Academic Achievement*, 76 CHILD DEV. 483 (2005).

26 REEVE, *supra* note 17, at 113.

is associated with less anxiety and depression and lesser use of alcohol,²⁷ both subjects of considerable concern regarding law students and lawyers.²⁸

II. GOALS FOR LEGAL EDUCATION

The Carnegie Foundation's report, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* has stimulated considerable debate about legal education within the United States.²⁹ The report on legal education is part of a comparative study with regard to several professions. The report posits the goal common across disciplines of "formation of competent and committed professionals."³⁰ Applying that common goal to legal education, they recommend the teaching not only of legal doctrine and analysis, but also introduction to aspects of practice leading to acting responsibly for clients and formation of professional identity with values consistent with the fundamental purposes of the legal profession.³¹

The Carnegie Report observes that U.S. law schools "[i]n a relatively short period of time... impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals."³² The Report cites the Socratic method, the "signature pedagogy" for its strengths in rapid socialization, but also addresses its unintended consequences of encouraging simplification of the complexity of problems in the real world to abstract "facts" and obscuring social consequences and ethical aspects of legal practice.³³ The report posits three "apprenticeships" as facets of training important for future lawyers: (1) an intellectual and cognitive apprenticeship focusing on knowledge and ways of thinking of the profession; (2) an apprenticeship of practice; (3) an apprenticeship of "formation" related to a sense of identity and purpose.³⁴ The Carnegie Report finds legal education to have focused the most attention, and to have the greatest success, in the first. Clinical education and some innovation in classroom courses have directed more attention to the second, although Carnegie finds that the curriculum still suffers from a lack of integration.³⁵ The report finds legal education most wanting with regard to the third apprenticeship of formation, education related to the ethical and social meaning of the profession.³⁶

27 REEVE, *supra* note 17, at 113 (citing Tim Kasser & Richard M. Ryan, *Further Examining the America Dream: Differential Correlates of Intrinsic and Extrinsic Goals*, 22 PERSONALITY & SOC. PYSCH BULLETIN 280 (1996) and Tim Kasser & Richard M. Ryan, *Be Careful What You Wish For: Optimal Functioning and the Relative Attainment of Intrinsic and Extrinsic Goals*, in LIFE GOALS AND WELL-BEING: TOWARD A POSITIVE PSYCHOLOGY OF HUMAN STRIVING (P. Schmuck & K. M. Sheldon eds., 2001)).

28 See data and sources collected in Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn From the Science of Positive Psychology*, 9 Yale J. Health Pol'y, L. & Ethics 357, 365-371 (2009).

29 WILLIAM M. SULLIVAN ET. AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) [hereinafter *The Carnegie Report*].

30 THE CARNEGIE REPORT, *supra* note 29, at 13.

31 See generally *id.* 87-161 (Chapter 3 describing the skills to be taught for competent practice and to gain the ability to exercise practical reasoning an judgment and Chapter 4 regarding development of professional identity and purpose).

32 *Id.* at 186.

33 *Id.* at 187-88.

34 *Id.* at 27-29.

35 *Id.* at 194-97.

36 See generally *id.* at 126-161.

An important European initiative regarding higher education similarly articulates three types of educational objectives in higher education. The Bologna Process created the European Higher Education area in which 47 countries in Europe and beyond now participate.³⁷ A central aim was to create a system to facilitate credit transfer that would encourage students to study at more than one institution and in different countries during their academic career. The process also, however, has become a significant force for pressing an approach to teaching and learning that is focused on student outcomes, a perspective with considerable cogency worldwide.³⁸ The Tuning Project was developed to facilitate credit transfers among participating universities in the Bologna Process, but it has proceeded to formulate generic competences that should be achieved by all types of higher education and competences specific to particular subject areas.³⁹ Similar to the Carnegie Report's notion of the three apprenticeships, the Tuning Project identifies three categories of competences, upon which higher education across fields of study and professional training should focus.⁴⁰ The first, akin to Carnegie's formulation of intellectual and cognitive apprenticeship, is knowing and understanding: theoretical knowledge, capacity to know & understand.⁴¹ The second, like Carnegie's apprenticeship of practice, is "knowing how to act": practical application of knowledge to situations.⁴² The third is "knowing how to be": guiding values, the social context of working with others, which sounds much like Carnegie's notion of formation.⁴³

Both of these influential educational visions stress that the educational venture should be measured by student outcomes and that the desired outcomes are more than substantive content and ability to think about and express understanding in particular ways. Higher education should go further and consider what graduates of a particular educational program should be able to do in the practice of their discipline as well as what values graduates should consider in such practice and the interactions with other people that entail.

37 See <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/about/>, the official website of the Bologna Process from July 1, 2007 through June 30, 2010 and <http://www.ehea.info/>, the current official website.

38 JOHN BIGGS & CATHERINE TANG, *TEACHING FOR QUALITY LEARNING AT UNIVERSITY* 13 (4th ed. 2011).

39 *Id.* at 14. See <http://www.unideusto.org/tuningeu/home.html>, the Tuning Project's website.

40 INTRODUCTION TO TUNING 20, available at http://www.unideusto.org/tuningeu/images/stories/documents/General_Brochure_final_version.pdf. With its 122 pages and 785 footnotes, Laurel S. Terry, *The Bologna Process and Its Impact in Europe: It's So Much More than Degree Changes*, 41 VAND. J. OF TRANSNATIONAL L. 107 (2008) provides a comprehensive history of the Bologna process through the article's publication date, an identification of relevant stakeholders, and references to a wealth of source materials. As the article describes, the Tuning Project began as a pilot project by a group of European universities. It remains an independent project that is not part of the EU, Council of Europe, or UNESCO but has sponsored many conferences and produced many documents. Terry, *id.* at 143-145.

41 INTRODUCTION TO TUNING *supra* note 40, at 20.

42 *Id.*

43 *Id.*

III. AUTONOMY, COMPETENCE, RELATEDNESS, AND PURPOSE

Decades of empirical studies have identified three important human psychological needs: autonomy, competence, and relatedness.⁴⁴ Theory underlying this research assumes that people interact constantly and dynamically with their surroundings, rather than a mechanistic view assuming that people react in a predictable and automatic way to changes in the environment.⁴⁵ The environment in which people function may nurture development of these needs or disrupt and thwart it. Our presentation and later sections of this article focus on “autonomy support” in the manner in which clinical teachers interact with students and programs are structured to enhance students’ interest in improvement, ability to formulate self-set goals, gain capacity for self-regulation, and so on. The presentation and article also discuss methods of mastery learning, a form of “competence support.” We address clinical education’s capacity for “relatedness support,” but we also focus on ways that law schools can and should contribute to students’ development of a professional identity that contributes to a sense of purpose in their lives.

In the words of Richard Ryan and Edward Deci, pioneering researchers in this field, the needs for autonomy, competence, and relatedness “appear to be essential for facilitating optimal functioning of the natural propensities for growth and integration, as well as for constructive social development and personal well-being.”⁴⁶ Ryan and Deci developed self-determination theory (“SDT”) to study what helps people to thrive and maximize positive motivation.⁴⁷ SDT posits that thriving and positive motivation require “regular experiences of autonomy, competence, and relatedness.”⁴⁸

Pink’s tri-part formulation for the Motivation 3.0 environment that stimulates optimum outcomes on creative tasks taps directly into SDT’s identification of autonomy and competence (mastery) concepts of basic needs. For the third component, he identifies a sense of “purpose,” which highlights the “authenticity” dimension of autonomy, being able to act in ways that feel consistent with one’s core sense of self.⁴⁹ From an interview with psychologist Mihaly Csikszentmihalyi, Pink quotes “Purpose provides activation energy for living.”⁵⁰ Purpose often means working

44 Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well Being*, 55 Am. Psych. 68, 68 (2000). REEVE, *supra* note 17, at 144-65.

45 In psychological theory terms, this contrasts organismic theory and a mechanistic one. REEVE, *supra* note 17, at 143-44.

46 Ryan & Deci, *supra* note 44, at 68.

47 *Id.* See also REEVE, *supra* note 17, at 131-35.

48 Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6, at 885.

49 See *supra* note 75-77 and accompanying text.

50 PINK, *supra* note 1, at 134.

toward something bigger than oneself, an end that will work toward the common good.⁵¹ Pink points out that this may resonate in particular with the Baby Boomers nearing historical retirement age while many of them are still healthy and interested in continuing to work, but also with the population that comprise most law students: those called Generation Y, the millennials, or the echo boomers.⁵² In our application of concepts to clinical education, we consider how relatedness, in terms of building and maintaining positive relationships during law school, is important to learning and well-being, but also consider how the clinical experience can offer the activating energy of a sense of purpose.

A. Autonomy Support

In a study now well known to many U.S. legal educators, Kennon Sheldon and Lawrence Krieger applied self-determination theory to data collected from students in two American law schools.⁵³ The results found that students at both schools “declined in psychological need satisfaction and well being” over the three-year period in law school.⁵⁴ Reports from the students at the two schools, however, varied in perceived autonomy support from faculty.⁵⁵ Students from the school with more perceived autonomy support reported a less severe decline in psychological need satisfaction over the three years.⁵⁶ They also had reported more favorable feelings of well-being in the third year and had better grade performance, better bar exam results, and more self-directed reasons for their choice regarding the job they would seek after graduation.⁵⁷

Autonomy support is not the laissez-faire caricature that some use to dismiss it.⁵⁸ It is considered to have three features, which will be described here with application to a teacher-student situation.⁵⁹ First, the teacher provides students with as much choice as is possible given the nature of the learning

51 Two of the authors teach at The Catholic University of America. The notion of “common good” is one of the basic principles of Catholic social thought. Pope John Paul II, Encyclical Letter, *Sollicitudo Rei Socialis* (Dec. 30, 1987) [hereinafter *Sollicitudo Rei Socialis*] reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 395 (David J. O’Brien & Thomas A. Shannon eds., 1992), available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html.

52 PINK, *supra* note 1, at 135.

53 Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6.

54 *Id.* at 883.

55 *Id.*

56 *Id.*

57 *Id.* See *id.* at 891 for discussion of interpretation of the grade differences at the two law schools.

58 Johnmarshall Reeve, *Self-Determination Theory Applied to Educational Settings*, in HANDBOOK OF SELF-DETERMINATION RESEARCH 183, 193 (Edward L. Deci & Richard M. Ryan eds., 2002) (citing mischaracterizations of autonomy support as “permissiveness, neglect, independence, or a laissez-faire interaction style”). For such a mischaracterization of autonomy support, see Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, 87 Mich. B. J. 20, 21 (2008). Despite his distortion of autonomy support, Miller’s article resonates with this article because his central thesis relates to Carnegie Report’s focus on an apprenticeship of professional identity and a connection between learning and purpose. THE CARNEGIE REPORT, *supra* note 29, at 126-161.

59 Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6, at 884; Reeve, *supra* note 17, at 148-54. See Wallinger, *supra* note 3 (application of the three features of autonomy support to a legal research and writing course); Louis N. Schulze, Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 Charleston L. Rev. 269, 271 (2011) (application to law school academic support programs).

situation and specific goal.⁶⁰ Second, when no choice can be provided given the nature of the task and situation, the teacher gives a “meaningful rationale” for why the task is necessary and no choice can be given.⁶¹ Third, the teacher considers the student’s point of view, e.g., learning proper citation may be boring and tedious, keeping careful notations in a client file can be difficult to discipline one’s self to do.⁶²

Johnmarshall Reeve juxtaposes this definition of autonomy support with structure defined as “giving students clear expectations, optimal challenges, and timely and informative feedback as they attempt to make progress in living up to those expectations and challenges.”⁶³ He describes autonomy support and structure as two different classroom elements that can be complementary and mutually supportive. Autonomy support in legal education can, and likely best should, be combined with a structure of defined expectations, challenges that “stretch” the student, and feedback on performance.

Part IV of this article applies specific teacher behaviors found to be autonomy supportive or the controlling converse to clinical education. In doing so, Part IV uses Daniel Pink’s framework of four dimensions of the workplace in which autonomy can be supported or thwarted: Task, Time, Technique, and Team. Part IV considers autonomy supportive behaviors in teacher interactions with students and program design against these “Four Ts.”

B. Competence Support

The psychological need for competence refers to being effective in the way one interacts with one’s surroundings and the desire to “exercise one’s capacities and skills and, in doing so, to seek out and master optimal challenges.”⁶⁴ Mihaly Csikszentmihalyi empirically derived the concept of “flow,” a state of deep concentration, absorption, and involvement generating considerable pleasure.⁶⁵ Research indicates that this state is reached when people engage in a task with a level of difficulty and complexity that is precisely right for [one’s] current skills and talents.⁶⁶ Figure One, which illustrates a TED talk by Csikszentmihalyi, graphically shows this intersection of high challenge and high skill, while also showing the difference in states of being at intersections of lower challenge and skill levels.

60 Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6, at 884; Wallinger, *supra* note 3, at 839; Schulze, *supra* note 59, at 323-24.

61 Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6, at 884; REEVE, *supra* note 17, at 148-54; Wallinger, *supra* note 3, at 839; Schulze, *supra* note 59, at 327-30.

62 Sheldon & Krieger, *Understanding Negative Effects*, *supra* note 6, at 884; REEVE, *supra* note 17, at 148-54; Wallinger, *supra* note 3 at 839-40.

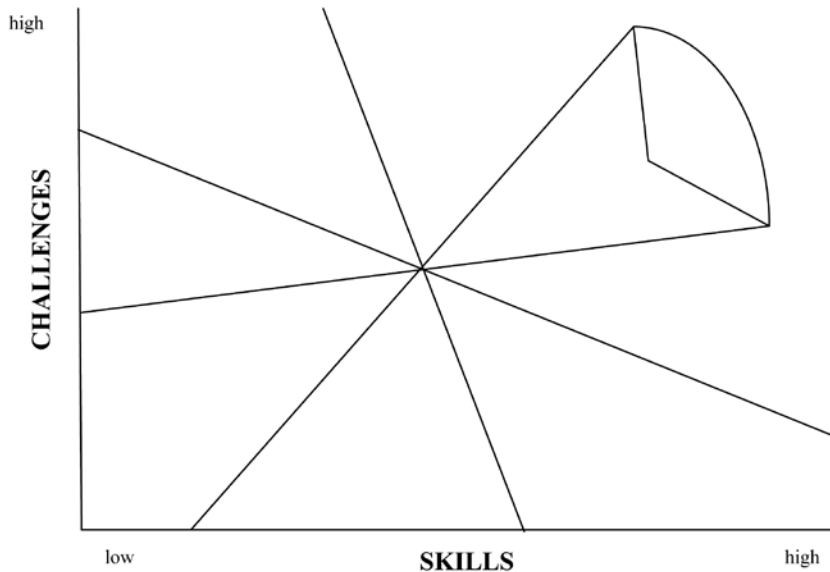
63 Reeve, *supra* note 58, at 193-94.

64 REEVE, *supra* note 17, at 155 (citing EDWARD L. DECI & RICHARD M. RYAN, *INTRINSIC MOTIVATION AND SELF DETERMINATION IN HUMAN BEHAVIOR* (1985)).

65 MIHALY CSIKSZENTMIHALYI, *FLOW: THE PSYCHOLOGY OF OPTIMAL EXPERIENCE* (1990) [hereinafter *Flow*]; Mihaly Csikszentmihalyi on Flow, TED, (Feb. 2004), http://www.ted.com/talks/lang/eng/mihaly_csikszentmihalyi_on_flow.html [hereinafter *Flow TED talk*] (TED talk by Professor Csikszentmihalyi on flow).

66 REEVE, *supra* note 17, at 155-58.

FIGURE ONE: MIHALY CSIKSZENTMIHALYI'S REPRESENTATION OF STATES OF BEING AT DIFFERING DEGREES OF CHALLENGE AND SKILL AND "FLOW" (FOCUSED CONCENTRATED, AUTONOMOUS DEEP ENGAGEMENT)



Source: Mihaly Csikszentmihalyi on Flow, TED, (Feb. 2004), http://www.ted.com/talks/lang/eng/mihaly_csikszentmihalyi_on_flow.html (TED talk by Professor Csikszentmihalyi on flow).

The capacity to reach the state of engagement in flow requires concerted skill building often including repetition and tedium.⁶⁷ As previously discussed regarding autonomy support, a student may be helped by teachers explaining the rationale for why a particular skill must be acquired toward an important practical and challenging use in practice. This skill building may need a structured type of teaching rather than an open-ended one. Structure has been defined as “(1) information about the pathways to desired outcomes and (2) support and guidance for pursuing these pathways.”⁶⁸ Research also reminds that encouraging people to engage in optimally

67 PINK, *supra* note 1, at 124-25 (citing research on necessity of long years of practice on mundane tasks as necessary to building mastery in fields including sports, music, and business).

68 REEVE, *supra* note 17, at 159 (citing J.P. Connell & J.G. Wellborn, *Competence, Autonomy, and Relatedness: A Motivational Analysis of Self-System Processes*, 23 SELF PROCESSES IN DEVELOPMENT: MINNESOTA SYMPOSIUM ON CHILD PSYCHOLOGY 167 (1991); Ellen A. Skinner, *Development and Perceived Control: A Dynamic Model of Action in Context*, 23 SELF PROCESSES IN DEVELOPMENT: MINNESOTA SYMPOSIUM ON CHILD DEVELOPMENT 167-216 (1991); ELLEN A. SKINNER, PERCEIVED CONTROL, MOTIVATION, AND COPYING (1995); Ellen Skinner, et al., *Individual Differences and the Development of Perceived Control*, 63 MONOGRAPHS OF THE SOC'Y FOR RES. IN CHILD DEV. no. 2-3 (1998)).

challenging tasks requires an environment that “tolerate[s] (and even value[s]) failure and error making.”⁶⁹

In discussing effective methods for the “cognitive apprenticeship” of law school, the Carnegie report identifies four basic methods identified by cognitive theorists:

1. Modeling – making the way of thinking visible
2. Coaching – providing guidance and feedback
3. Scaffolding – providing support for students who are not yet at mastery
4. Fading – encouraging students ready to proceed independently⁷⁰

While the Carnegie report discusses these four methods in terms of case analysis in a doctrinal course, they have application to working with students on practice applications in a clinical course.

Pink uses “mastery,” which of course subsumes competence, but suggests a step beyond to confidence in one’s craft. Part V describes Pink’s three “laws of mastery” and presents four approaches to teaching to mastery in the professional role as lawyer drawing on work from cognitive psychology, neuroscience and learning theory.

C. Relatedness Support

Johnmarshall Reeve defines relatedness as, “the psychological need to establish close emotional bonds and attachments with other people, and it reflects the desire to be emotionally connected to and interpersonally involved in warm relationships.”⁷¹ Some of the application of relatedness to law school entails the reminder to students, and their teachers, not to let work demands crowd out time needed to develop and nurture relationships with friends and family. But relatedness also refers to “gravitat[ing] toward people who [sic] we trust to care for our well-being, and... drift[ing] away from those who we do not trust to look out for our well-being.”⁷²

This notion of relatedness, of course, should apply to students’ trust that teachers have their best interests as people, as well as future lawyers, at heart. Particular techniques described in Part V are useful not only in enhancing students’ mastery of lawyering tasks, but also promoting students’ sense of teachers’ commitment to their learning and well-being in their future careers. Clinical structure and teaching methods also often encourage student-to-student support and collaboration as a model for engendering support from colleagues in professional life.

69 REEVE, *supra* note 17, at 159 (citing Margaret M. Clifford, *Failure Tolerance and Academic Risk-Taking in Ten-to-Twelve Year Old Students*, 58 BRITISH J. EDUC. PSYCHOL. 15 (1988); Margaret. M. Clifford, *Students Need Challenge, Not Easy Success*, 48 EDUC. LEADERSHIP 22 (1990)).

70 THE CARNEGIE REPORT, *supra* note 29, at 63.

71 REEVE, *supra* note 17, at 162 (citing Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCHOL. BULL. 5, 5-33 (1995); ERICH FROMM, *THE ART OF LOVING* 7-34 (1956); Shan Guisinger & Sidney J. Blatt, *Individuality and Relatedness: Evolution of a Fundamental Dialectic*, 49 AM. PSYCHOL. 104 (1994); Richard M. Ryan, *The Nature of the Self in Autonomy and Relatedness*, in *THE SELF: INTERDISCIPLINARY APPROACHES* 208, 208-38 (J. Strauss & G. R. Goethal eds., 1991); Richard M. Ryan & C. L. Powelson, *Autonomy and Relatedness as Fundamental to Motivation and Education*, 60 J. EXPERIMENTAL EDUC. 49, 49-60 (1991); Harry S. Sullivan, *THE INTERPERSONAL THEORY OF PSYCHIATRY* 16-20 (1953)).

72 REEVE, *supra* note 17, at 162.

The concept of relatedness also “extends to relationships with groups, organizations, and communities.”⁷³ Students’ evolving sense of how their work as lawyers can benefit not only individual clients, but also impact similarly situated people and communities supports this type of relatedness. In addition, this vision of their work’s potential impact nurtures the sense of purpose, which Pink highlights as the third important component of environments encouraging deep motivation to tackle difficult tasks.

D. Supporting Students’ Need for Purpose

Kennon Sheldon and Tim Kasser, leading authors in motivation and self-determination theory, have linked the body of their empirical work and that of fellow scholars working in positive psychology to the theories of humanist and existentialist psychologists such as Carl Rogers, Abraham Maslow, Eric Fromm, R.D. Laing, and Rollo May.⁷⁴ They point out that SDT’s contrast in intrinsic and extrinsic motivation mirrors the humanist and existentialist focus on authenticity.⁷⁵ SDT theory co-founder, Edward Deci, defines authenticity as “being the author of one’s actions – acting in accord with one’s true inner self.”⁷⁶ But SDT does not assume the authentic ideal is the narcissistic person in love with her reflection in the water.⁷⁷ Intrinsic motivations often relate to helping others and achievement of some greater good. Furthermore, intrinsic motivation is not static and unchanging. The Carnegie Foundation’s study of several professions, including law, assumes that “formation” with regard to a sense of identity and purpose is part of the mission of professional education.

Self-determination theory has developed a continuum of types of extrinsic motivation that can shed light on the process through which a law student might internalize motivation toward professional values. Rather than a sharp dichotomy, Figure Two depicts a continuum of types of extrinsic motivation that lead closer to a sense of self through the psychological process of integration.⁷⁸

73 REEVE, *supra* note 17, at 161.

74 Kennon M. Sheldon & Tim Kasser, *Goals, Congruence, and Positive Well-Being: New Empirical Support for Humanistic Theories*, 41 J. Hum. Psych. 30 (2001).

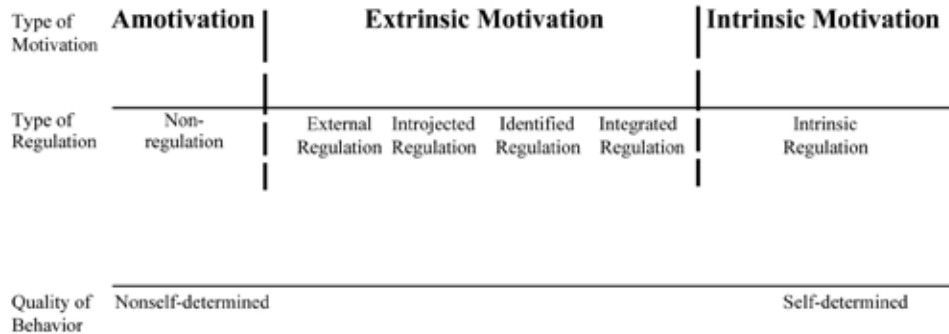
75 *Id.* at 36.

76 EDWARD L. DECI & RICHARD FLASTE, *WHY WE DO WHAT WE DO: UNDERSTANDING SELF-MOTIVATION* 4 (1995).

77 Sheldon & Kasser, *supra* note 74, at 45 (disputing the characterization of theories of self-actualization and personal growth as narcissistic to the exclusion of ideas of duty and service to others).

78 *See also* DECI & FLASTE, *supra* note 76, at 4-7.

FIGURE TWO: THE SELF-DETERMINATION CONTINUUM, WITH TYPES OF MOTIVATION AND TYPES OF REGULATION.



Source: Richard M. Ryan & Edward L. Deci, *Overview of Self-Determination Theory: An Organismic Dialectical Perspective* in HANDBOOK OF SELF-DETERMINATION THEORY 3, 16 (Edward L. Deci & Richard M. Ryan eds. 2002).

From the left of Figure Two, one sees first a state of amotivation in which someone has no motivation toward a particular goal or behavior. Think of students just starting law school who, as yet, have no concept of, or motivation toward, writing in the manner deemed excellent in legal work.

Next we see external regulation, a form of extrinsic motivation with the “classic instance of being motivated to obtain rewards or avoid punishments.”⁷⁹ Think then of a student in a first-year legal writing course who is motivated by the desire to get a good grade, fears a bad grade, and wants to do whatever the teacher says to achieve these ends. As documented by Sheldon and Krieger’s work, external motivations of “impressing others, or gaining status and influence” impose stress and anxiety.⁸⁰

Introjected regulation is one step closer to intrinsic motivation. In this stage, people adhere somewhat to another’s demands to “think, feel, or behave in a particular manner.”⁸¹ They have internalized the external motivation and are concerned with meeting the expectations of others, but the behavior is not part of the individual’s integrated self. In this stage, first-year students might begin to understand and accept the standards for good writing learned in class

⁷⁹ Richard M. Ryan & Edward L. Deci, *Overview of Self-Determination Theory: An Organismic Dialectical Perspective*, in HANDBOOK OF SELF-DETERMINATION RESEARCH 3, 17 (Edward L. Deci & Richard M. Ryan eds., 2002).

⁸⁰ Sheldon & Krieger, *Undermining Effects*, *supra* note 13, at 264.

⁸¹ REEVE, *supra* note 17, at 134.

but still would be adhering to them from guilt or anxiety about how their performance will be evaluated by the teacher rather than accepting the standards and integrating them in their own sense of self.

With identified regulation, people voluntarily decide that behaving or thinking in a particular way is important or useful and accepts those merits for themselves. This involves a “conscious valuing of a behavioral goal or regulation, [and] an acceptance of the behavior as personally important.”

⁸² At this stage, legal writing students would identify reasons why the standards for good legal writing match goals that have become their own. They might consider why this type of writing is persuasive and more likely to achieve desired results for clients. Serving clients well would have become one of their own goals. The student already may be thinking of a type of client they hope to represent and considering why that type of service matches the students’ views of the public good. A student would accept that even the nitty-gritty of careful proofing, editing, and correct citation form are the standard to which written legal work is held and meeting them will further achievement of their own goals for client service. The student also may have begun to consider how such conventions, even if tedious, further useful ends, e.g., clarity, convenience for checking authorities cited.

Integrated regulation occurs when people transform values and behaviors into their own. A behavior becomes coherent and congruent with one’s own values.⁸³ So here, behaviors that initially were stimulated by external motivations have become internal. Students understand the indicia of quality writing and adopt those as standards for their own. Students start to gain inherent pleasure in meeting the challenge of expressing legal arguments clearly, logically, and persuasively. When structured practice has helped students to gain mastery of writing tools, applying those skills to a challenging task can trigger the sense of the joy of intense concentration that is “flow.”⁸⁴

This continuum from external to increasingly internal motivation is not meant to be a developmental one with people passing through each stage when an external regulator is internalized.⁸⁵ The concepts, however, offer legal educators a paradigm for thinking about how we may encourage law students to strive for excellence in performance⁸⁶ while also encouraging them to embrace broader public goals to which their skills and support can be directed. The values students bring to law school are not the beginning and end of the process. With this perspective, our job as teachers is to explain why what we seek to teach is of value, provide a vision of ends to which that knowledge and skills could be put, and encourage students to consider if these values are ones congruent with their own sense of self. Doing so contributes to students evolving sense of their own purpose in life and how their careers as lawyers will support their own sense of purpose.

82 Ryan & Deci, *supra* note 79, at 17.

83 REEVE, *supra* note 17, at 134-35.

84 CSIKSZENTMIHALYI, FLOW, *supra* note 65, at 83.

85 Ryan & Deci, *supra* note 79, at 18.

86 Emily Zimmerman develops an “enthusiasm paradigm,” as an additional construct to autonomy support for considering ways to encourage law student motivation. Emily Zimmerman, *An Interdisciplinary Framework For Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 895 (2009). The “enthusiasm paradigm,” comprises students’ interest and commitment for law study as well as “vitality,” defined as “subjective feelings of energy regarding law study.” *Id.* at 857.

We can relate this paradigm of supporting and encouragement of students' motivation and sense of purpose with concerns expressed with regard to lawyers and legal education. The Carnegie Report's sharpest criticism of American legal education is its failures with regard to supporting formation of professional identity and purpose.⁸⁷ Carnegie quotes the definition of a professional lawyer from a 1996 report of the Section on Legal Education of the American Bar Association on the teaching of professionalism:

A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.⁸⁸

The first paragraph of the Preamble to the American Bar Association Model Rules of Professional Conduct says, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."⁸⁹

Both these formulations assume that a lawyer should aspire to purposes beyond personal advancement: service to other people in need of help as clients, but also to broader questions of the good of society and the quality of justice that the society provides.

The previously described continuum from amotivation to integrated regulation, which transforms motivations that originated externally into intrinsic ones, assumes that people's motivation and values can change over time rather than being fixed at adulthood. With its challenge for law schools to focus on the third "apprenticeship" of professional identity and purpose, the Carnegie Report disputes the notion that law schools should shy away from engaging students on values questions.⁹⁰ Carnegie cites ethics curricula developed in other professional schools that have produced empirically-validated increases in student's ability to exercise moral judgment.⁹¹ One model cited is that of James Rest, Muriel Bebeau, and others who built on Lawrence Kohlberg's work on the development of moral judgment to formulate a four-component process for ethical education programs in the professions.⁹² The four components are as follows.

87 THE CARNEGIE REPORT, *supra* note 29, at 126-161.

88 THE CARNEGIE REPORT, *supra* note 29, at 126 (quoting AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION & ADMISSION TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE 6 (1996)).

89 AMERICAN BAR ASSOCIATION, MODEL RULES OF PROF'L CONDUCT 1 (2010).

90 See THE CARNEGIE REPORT, *supra* note 29, at 129, 135-36 (criticizing a faculty view equating "efforts to support students' ethical development with inculcation, which they see as illegitimate and ineffective").

91 THE CARNEGIE REPORT, *supra* note 29, at 133-34 (citing Muriel J. Bebeau, *Influencing the Moral Dimensions of Dental Practice*, in MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS 121 (James Rest & Darcia Narváez eds., 1994)).

92 For background on this model, see Clark D. Cunningham & Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation's Critique of American Legal Education* in THE ETHICS PROJECT IN LEGAL EDUCATION 79 (Michael Robertson, Lillian Corbin, Francesca Bartlett & Kieran Tranter eds., 2011). The formulations of the Four Component Model in this article draw primarily on Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 115 (2007) (citing James Rest, *Background: Theory and Research*, in MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS 22-25 (James Rest & Darcia Narváez eds., 1994) and Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights From Educational Research in the Professions*, 5 U. St. Thomas L.J. 366, 393 (2008)).

Component 1. Ethical Sensitivity: the ability to recognize ethical issues. This includes “knowing the regulations, codes and norms of one’s profession, and recognizing when they apply,” as well as “the ability to interpret the reactions and feelings of others.”⁹³ This is both a cognitive and affective process.

Component 2: Moral Reasoning: a capacity to see alternative courses of action, to realize conflicts inherent in various choices, to consider how people would be affected by each and think about which may be more morally justifiable both by individual and collective norms.

Component 3: Moral Motivation: giving sufficient importance to moral values that the professional is motivated to act on such values above self-interested ones such as wealth, status, or self-protection of oneself and one’s group.⁹⁴ Professional identity, “the degree to which the professional understands and internalizes the concepts of professionalism,”⁹⁵ is an important factor in whether a person will be willing to act on those values over self-interest, fear, or other factors.

Component 4: Moral Character and Implementation Skills: This entails:

whether the professional has sufficient persistence, ego strength, toughness, strength of conviction, and courage to implement his or her moral reasoning. A professional must also be able to determine an effective action plan and to carry out the plan. Creative problem solving is critical for moral character and implementation.⁹⁶

The first component encompasses issue-spotting and knowledge of relevant law, while the second concerns consideration of alternative courses and application, which is most easily made “real” in a clinical setting. The third and the fourth components highlight the importance of professional identity and purpose, not only as factors in motivation for law study, a zest for living, and sense of well-being, but also as requisites to the ability and willingness to act consistent with the standards and public purpose of a profession.⁹⁷

93 Hamilton & Brabbit, *supra* note 92, at 115.

94 Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights From Educational Research in the Professions*, 5 U. St. Thomas L.J. 366, 393 (2008).

95 *Id.*

96 Hamilton & Brabbit, *supra* note 92, at 116 (citing James Rest, *Background: Theory and Research*, in *MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS* 22-25 (James Rest & Darcia Narváez eds., 1994)).

97 See Hamilton & Brabbit, *supra* note 92, at 115-117 (citing Robert Kagan, *THE EVOLVING SELF: PROBLEMS AND PROCESS IN HUMAN DEVELOPMENT* 30, 32 (1982) on stages of identity formulation in professionals).

IV. APPLYING AUTONOMY SUPPORT TO CLINICAL EDUCATION

A. Autonomy Supportive vs. Controlling Teacher Behavior

Considerable empirical work has been done to apply the specifics of self-determination theory to teacher behaviors in the classroom and to consider the outcomes in students in classrooms of teachers who act in greater conformance to the principles of autonomy support. Such research has shown:

that students with autonomy-supportive teachers, compared with students with controlling teachers, experience not only greater perceived autonomy but also more positive functioning in terms of their classroom engagement, emotionality, creativity, intrinsic motivation, psychological well-being, conceptual understanding, academic achievement, and persistence in school.⁹⁸

Researchers have identified a number of instructional behaviors that differentiate teachers with autonomy-supportive style from teachers with a controlling style.⁹⁹ These behaviors appear in Figure Three.

98 Johnmarshall Reeve & Hyungshim Jang, *What Teachers Say and Do to Support Students Autonomy During a Learning Activity*, 98 J. OF EDUC. PSYCH. 209, 210 (2006) (citing Carl Benware & Edward L. Deci, *Quality of Learning with an Active Versus Passive Motivational Set*, 21 AM. EDUC. RES. J, 755 (1984); Aaron E. Black & Edward L. Deci, *The Effects of Instructors' Autonomy Support and Students' Autonomous Motivation on Learning Organic Chemistry: A Self-Determination Theory Perspective*, 84 SCI. EDUC. 740 (2000); Ann K. Boggiano et al., *Use of Techniques Promoting Student' Self Determination: Effects on Students' Analytic Problem-Solving Skills*, 17 MOTIVATION & EMOTION 319, 319-36 (1993); EDWARD L. DECI & RICHARD M. RYAN, *INTRINSIC MOTIVATION AND SELF DETERMINATION IN HUMAN BEHAVIOR* (1985); Edward L. Deci & Richard M. Ryan, *The Support of Autonomy and the Control of Behavior*, 53 J. PERSONALITY & SOC. PSYCHOL, 1024 (1987); Edward L. Deci et al., *An Instrument to Assess Adults' Orientations Toward Control Versus Autonomy in Children: Reflection on Intrinsic Motivation and Perceived Competence* 73, J. EDUC. PSYCHOL. 642 (1981); Wendy S. Grolnick & Richard M. Ryan, *Autonomy in Children's Learning: An Experimental and Individual Difference Investigation*, 52 J. PERSONALITY & SOC. PSYCHOL. 890 (1987); Patricia L. Hardre & Johnmarshall Reeve, *A Motivational Model of Rival Students' Intentions to Persist in, Versus Drop out of, High School*, 95 J. EDUC. PSYCHOL. 347 (2003); Richard Koestner, et al., *Setting Limits on Children's Behavior: The Differential Effects of Controlling Versus Informational Styles on Intrinsic Motivations and Creativity*, 52 J. PERSONALITY 233 (1984); Marianne Miserandino, *Children Who Do Well in School; Individual Differences in Perceived Competence and Autonomy in Above-Average Children*, 88 J. EDUC. PSYCHOL. 203 (1996); Richard M. Ryan & Wendy S. Grolnick, *Origins and Pauns in the Classroom: Self-Report and Projective Assessments of Individual Differences in The Children's Perceptions*, 50 J. PERSONALITY & SOC. PSYCHOL. 550 (1986); and Robert J. Vallerand et al., *Self Determination and Persistence in a Real-Life Setting: Toward a Motivational Model of High School Dropout*, 72 J. PERSONALITY & SOC. PSYCHOL, 1162 (1997)).

99 See Reeve & Jang, *supra* note 98, at 210 (2006) (citing Edward L. Deci et al., *Effects of Performance Standards on Teaching Styles: Behavior of Controlling Teachers*, 74 J. EDUC. PSYCHOL. 852 (1982); Cheryl Flink et al, *Controlling Teaching Strategies: Undermining Children's Self-Determination and Performance*, 59 J. PERSONALITY & SOC. PSYCHOL. 916 (1990); and Johnmarshall Reeve et al., *Autonomy-Supportive Teachers: How They Teach and Motivate Students*, 91 J. EDUC. PSYCHOL.537 (1999)).

FIGURE THREE: AUTONOMY SUPPORTIVE & CONTROLLING INSTRUCTIONAL BEHAVIORS

Autonomy Supportive Instructional Behaviors	Controlling Instructional Behaviors
<p>(Task)</p> <ul style="list-style-type: none"> • Asking what student wants--- • Time listening • Time student talking <p>(Time)</p> <ul style="list-style-type: none"> • Time allowing student to work in own way (also applies to technique) <p>(Technique)</p> <ul style="list-style-type: none"> • Providing rationales • Praise as informational feedback--- • Offering encouragements • Offering hints <p>(Team)</p> <p>(these apply to technique too; these behaviors help the student feel like her professor/supervisor is working with her on a team and has her back if things get too hard).</p> <ul style="list-style-type: none"> • Being responsive to student-generated questions • Communicating perspective-taking statements 	<ul style="list-style-type: none"> • Uttering directive/commands • Time teacher talking • Time holding/monopolizing learning materials: • Deadline statements: • Exhibiting solutions/ answers • Uttering solutions/answers: • Making should/ought to statements: • Asking controlling questions: • Praise as contingent reward: • Criticizing the student

Source: This figure adapts a table appearing in Johnmarshall Reeve & Hyungshim Jang, *What Teachers Say and Do to Support Students Autonomy During a Learning Activity*, 98 J. OF EDUC. PSYCH. 209, 211 (2006).

As previously described the three general features of autonomy-supportive behavior (applied to an educational setting) are (1) providing as much choice as is possible given the nature of the learning situation and specific goal, (2) when no choice can be provided, the teacher giving a “meaningful rationale” for why the task is necessary and no choice can be given, (3) a teacher’s communication to students that the teacher is considering the student’s point of view.¹⁰⁰

B. Applying Autonomy Supportive Behaviors to the “Four Ts”

Daniel Pink’s applies the concept of autonomy in the business setting by positing four aspects of work: Task (what people do); Time (when work is performed); Technique (how the work is done); Team (with whom they work).¹⁰¹ This four-part formulation provides a useful framework for

100 See *supra* Part III. A.

101 Pink, *supra* note 1, at 93-94.

thinking about application of autonomy support to clinical education.

Consider the application of Pink's concept of autonomy's 4T's in a clinical legal education setting along with the autonomy supportive and controlling instructional behaviors identified in Figure Three.

First, reflect on how clinical legal education operates in the client representation and transactional legal problem-solving clinics that are common in the United States, hallmarks being real clients with significant issues, real cases, and real courtrooms and agencies. These courses usually include a classroom component, but the class work is designed to further the application of the concepts, do group work, and provide an opportunity for students to share challenges and solve problems through discussion and case rounds. Collaboration is encouraged. In the clinical setting, there are relatively few students assigned to a professor. The professor acts as the supervising attorney and as tutor, rather than as someone who is professing at or dictating to the student. Students have regular case supervision meetings with their professors where they speak to their professors as colleagues and get critical guidance and feedback on how to direct and manage their cases.

1. Task (the first “t”)

Beginning with autonomy of task, on an administrative level, the clinic, at the majority of law schools, is an elective course. CUNY is one of the few U.S. law schools that require a clinical course. Where clinic is an elective, students can choose whether or not to enroll in a clinic. Whether or not a clinic is required, students usually have some choice about the kind of clinic in which they want to work. Most law schools have a number of different clinical offerings. Because of the frequent high demand for clinical courses, students often are allowed to prioritize their top choices.

Once enrolled in a clinic, the structure of a clinical course also promotes autonomy of task. In both CUNY and CUA clinics, for example, most students work in pairs on cases, advocacy projects and transactional work. Clinical supervisors may promote autonomy of task in the clinical setting by asking the students to engage in taking initiative at all stages of their clinical work.¹⁰² Specific ways to promote student autonomy in a clinical setting include giving students choices about what cases/projects to work on. At CUA and CUNY, where case load and work demands permit, we often allow students the opportunity to select the types of cases we will look for in the intake process.

We also encourage and allow students to set the agenda for supervision meetings, as well allowing them to control the order in which issues will be discussed. During supervision, teachers often ask students: “With which issue do you want to start?”¹⁰³ Where case load permits, both at CUA and CUNY, we sometimes give students the opportunity to select the types of cases we handle. This also can be done by giving students responsibility for choosing and developing aspects of the clinic classes on topics of interest to them – allowing them to be the “teacher”

A clinical supervisor may also promote autonomy of task through devoting more time to listening carefully and fully attending to a student's speech as evidenced by verbal/nonverbal signals of active and responsive information processing, coupled with allowing more time for the student to

¹⁰² Reeve & Jang, *supra* note 98, at 210 (2006).

¹⁰³ *Id.*

talk.¹⁰⁴ These behaviors communicate to students that they have some control over what they are doing and that the teacher will not be dictating to them or telling them what to do. In a clinical setting there are frequent opportunities for professors to encourage student autonomy. Typically there are regular clinic classes, multiple cases or projects, and frequent supervision meetings, resulting in numerous opportunities for clinical teachers to encourage student autonomy.

Behaviors that undermine autonomy of task include “uttering directives” or commands, and monopolizing the conversation and learning materials.¹⁰⁵ Control over learning materials may be addressed by having centralized student resources in the clinic library or computers system. As observed in our law school clinics the effect of these behaviors is that students are more interested in their work in large part because they had had a voice in choosing it for themselves and because they had the continued ability to direct their own work.

2. Time (the second “t”)

In terms of autonomy of time, on an administrative or structural level, a clinical course is typically very liberal and flexible. Of course, this assertion is not absolute. A clinical course usually requires a certain number of hours in the clinic, or “work hours,” and class attendance. In the CUA and CUNY clinics, class sessions and rounds are combined into one time period and attendance is mandatory. Nevertheless, in both programs, students are individually responsible for managing their time in the same professional fashion as lawyers manage their time in actual practice.¹⁰⁶

Teachers may promote autonomy of time through the time a student is allowed to work in his or her own way, or the cumulative time the teacher invited or allowed the student to work independently and to solve problems in his or her own way.¹⁰⁷ In a clinical setting, promoting autonomy of time means allowing students opportunity to set their own time tables and deadlines. Of course, client work often comes with its own deadlines. These can be explained in regard to the second autonomy support indicia of the “meaningful rationale” for why things must be as they are. But imposing arbitrary and meaningless deadlines or continually reminding students of looming deadlines are teacher controlling behaviors rather than autonomy supportive.

Once enrolled, CUNY and CUA students find that their hours are done on the honor system. At both schools, the practice of keeping time-records varies among the clinics but the students are expected to work on the honor system. No one checks to see if students fulfill their required time commitment per week. Students are required to provide the administrative staff and their professors with a schedule, but this functions mainly for the clients’ convenience and for the scheduling of clinical supervision. Students also may work in the evenings, the early mornings, the weekends, or whenever their schedule allows. Sitting in one’s chair in the law school clinic space is not a substitute for getting casework done. These autonomy-promoting behaviors communicate to students that they have a lot of control over their time. Clinical supervisors guide students through the process of managing and planning their time to enable them to be successful. For example, in CUA’s Families and the Law Clinic, after the students have conducted a client intake interview

104 See discussion *infra* Part V.B.4.

105 Reeve & Jang, *supra* note 98, at 210.

106 See *supra* Part III. C.

107 Reeve & Jang, *supra* note 98, at 210.

and decided with their supervisor to represent the client in a civil protection order hearing, the supervisor will ask them to identify all the tasks that need to be done to prepare the case for trial and then ask them to “plan backwards” from the trial date with deadlines to ensure that all can be done in time.

In the CUA and CUNY clinics, students are not completely free from the tedium that accompanies timekeeping in many legal settings. Students are expected to keep a chronological log that generally explains what they did and how long it took, but this is not nearly as laborious and menial as keeping billable hours in a law firm can be. Because students work in pairs and do not always have the same hours, clinical professors explain, and students understand, that this somewhat boring task helps them move the case along and avoid duplicating work. Chronological logs also provide subsequent students who take over cases with a quick history of the client’s case. Students, therefore, have a “meaningful rationale,” for what could be a tedious task: quality client service and respect for their partner’s time.

Far from shirking responsibility, most students put in more than the required clinic hours because there is a real person and not just a letter grade on the other end of their work hours. In many situations, one can assume that the basic motivation of relatedness is providing plenty of intrinsic motivation to work hard and well for the client.

3. Technique (the third “t”)

In terms of autonomy of technique, most clinical professors give students a lot of supervision and thoughtful direction regarding their work on their cases and projects, however with a very long leash, allowing for a lot of room to explore and make mistakes. Students have the sense that they have autonomy over the way they accomplish the goals of the case, even if it is with firm guidance from the supervisor. When students ask their supervisors how to do something or present a case strategy question, supervisors often ask: “What do you think?” “How can you begin to find out the answer to this question?” and other open-ended questions. This allows students to think critically about best practices, to experiment, to develop their own strategies, and to learn by trial and error. Student attorneys can be creative, tenacious, and use methods that practicing lawyers would not because no one told them “that’s not how it’s done” Several recent examples of students’ decisions to act in very persistent ways include: calling the cell phone of the Assistant Attorney General assigned to a clinic client’s child support case three times a day until they found out what was going on, students virtually camping out for hours on multiple days in a District Attorney’s office until he signed off on a Supplement B form that was required for a U-Visa application and students proposing draft language to attorneys in order to overcome impediments to a settlement. Of course, the supervising attorney will not let the students stray completely off course, but student attorneys perceive that while in the clinic they are the ones directing their work and the ones responsible for their cases. Even the clinic classroom experience has a lot of group discussion and role play rather than lecture. The clinical student can access the law and the goals of the course through the perspectives and lessons learned from other students, as well as through their hands on experience.

In clinic students are giving leeway to experiment with different techniques. Often, in law practice, there is not a right or wrong way to proceed. One example that frequently arises in CUA’s clinic is for the student to consider the choice of whether to ask an immigration client to write a first draft of her personal declaration or to have the student attorneys write a first draft themselves in

the client's voice.

4. Team (the fourth "t")

Last but not least, we examine autonomy of team. At both CUA's and CUNY's clinical programs, students in their first clinical semester are assigned a partner and a supervising professor. Students are given the opportunity to say with whom they would not want to work, but the ultimate assignment of teams is left to the professor. So there is not much choice in the initial teaming decision, however, once teamed, the student attorneys may divide the casework as they wish based on each person's skills and interests. At CUA, although student attorneys have a particular supervising attorney, students may ask any of the clinical professors about their case issues. At CUNY, students also are able to approach any of the supervisors in a particular clinic about their case. At both CUA and CUNY, some cases are handled jointly by two clinics and the consultation expands accordingly. By comparison to most doctrinal classes, our clinics are very flat, non-hierarchical organizations. Furthermore, a student's assigned partner is not the only person with whom the student can work on case issues. Students work in communal spaces during their work hours and can swivel around in a chair and ask a question of anyone sitting nearby. Student attorneys also are encouraged to reach out to community partners and relevant listservs to get answers.

What is the result of this experience while the clinical student is in law school?¹⁰⁸ In our clinics, we observe that productivity goes up. The clinical work is usually very interesting. Students again have a full name. Students have a professor who discusses their work and progress with them each and every week. Students are encouraged to share opinions and perspectives with their supervisors and clinical colleagues on substantive issues and on lawyering techniques and strategy. Students are supervised and supported, but most clinical students are given what feels like significant and meaningful control over their casework. Students have real clients with whom they speak and advise. Students build confidence that they can function as a lawyer, and many report that the clinical experience has validated their decision to become a lawyer. Daniel Pink would say that these opportunities for engagement promote autonomy. Students are at least partially acting from the intrinsic motivation that the learning process itself is enjoyable. Furthermore, students want their lawyering skills to get better and better because another person, a client, is depending on them to represent them. Student attorneys want the best outcome for their clients. Finally, the clinical student can experience what it is like to help a person whose life could be changed for the better because that student decided to go to law school! Her work matters. She knows that she is being graded, but the importance of the grade pales in comparison to providing quality representation. SDT would say that students experience competence and relatedness need satisfaction, and the work has supported intrinsic values for personal development and altruism and helping others. In the clinic, students often report feeling tired because of working hard, but happy.

So what is the result when the clinical law student enters the world of real legal practice? One CUA graduate remembers clinic as an "oasis of practical work in a desert of textbooks."

First, the former clinical law student has something relevant to discuss in her job interviews. Second, the former clinical law student can apply the legal practice skills she learned in the clinic, whether interviewing clients or witnesses, drafting pleadings and motions, preparing a trial

¹⁰⁸ For a student's perspective on the FALC experience, *see infra* Conclusion.

notebook, negotiating a settlement or conducting herself in the courtroom before a judge. She has learned how to interact with real clients, with real problems, and how to cope with clients sometimes breaking down in front of her because of those problems. She also has learned how to collaborate with colleagues and supervisors on legal issues. She is not completely new and inexperienced, and that is a huge advantage when transitioning to actual practice. She probably will not realize how significant until she gets her first job. One recent CUA graduate, who worked in the clinic for two years, reported how exciting it was when she got her first job just after passing the bar, her supervising attorney at a Washington, DC-area nonprofit introduced her to others by saying: “Although she is new to our organization, she is not new to the legal practice.”¹⁰⁹ A CUNY graduate observed: “CUNY School of Law was an amazing training ground. Virtually everything I did as a new lawyer (interacting with clients, drafting documents, working closely with colleagues) I had done already within the supervision and support of the law school. My placement through the Health Law Concentration led to a post-graduate Skadden Fellowship project at the same organization. Instead of feeling like the “new” attorney, I walked in on my first day ready to pick up exactly where I’d left off.”¹¹⁰

V. GUIDING STUDENTS’ COMPETENCE AND MASTERY IN CLINICAL COURSES

“We are what we repeatedly do. Excellence, therefore, is not an act but a habit.”

Aristotle

Mastery does not happen in isolation from autonomy or purpose. Autonomy means working on one’s own terms in the fullest sense of self-determination. Mastery is dependent upon self-directed effort. In addition, full engagement in practice is dependent upon our sense of purpose or meaning derived from our belief that what we do has significance beyond ourselves. At some point, everyone has had the thought of “having wasted my effort,” which is a common reaction to effort that does not contribute to identifiable goals reflecting what we value beyond ourselves. Pink’s framework of autonomy, mastery and purpose gives the law teacher/supervisor additional terms of reference when incorporating professional reflection on performance into the law students’ learning experience.

A. Understanding the Dynamics of Mastery and Flow: Professional Self-Regulation in Lawyering

1. *Mastery as a Mindset*

Mastery is a mindset, not an end result. Pink posits three “laws” of mastery: mastery as mindset, pain, and asymptote.¹¹¹ We set the groundwork for the mastery as mindset when we focus on our individual learning process while doing a task rather than the reward for a task, e.g., a grade,

¹⁰⁹ Conversation with Laila Leigh, former Families & the Law Clinic Student and 2010 graduate of Catholic University Law School, in Washington, D.C. (March 17, 2012).

¹¹⁰ Written comments of Rebecca Price, Esq., 2002 graduate of CUNY School of Law (January 29, 2012) (on file with authors).

¹¹¹ PINK, *supra* note 1, at 120-27.

or only on the achievement of the task itself. From this perspective, learning is viewed as an investigative approach during which people stay open to revising their understanding through a cycle of preparation, doing and reflecting. Usually people develop motivation to repeat this learning cycle because they observe their increased growth when using this open investigative approach. This growth entails increasing our awareness of internal thoughts including subjective reactions along with gaining more comfort in modifying our thoughts and decisions in carrying out tasks.

Pink further describes the mastery mindset as the desire to get better and better at something that matters.¹¹² Pink discusses Mihaly Csikszentmihalyi's concept of "flow" in which people engage in activities that are self-fulfilling and thus generate motivation to stay involved in the task.¹¹³ Csikszentmihalyi empirically derived the concept of "flow," a state of deep concentration, absorption, and involvement generating considerable pleasures.¹¹⁴ Research indicates that "flow" is reached when people engage in a task "with a level of difficulty and complexity that is precisely right for [one's] current skills and talents"¹¹⁵ People experience flow as the total engagement in the doing of the task without self-consciousness and without a sense of time.¹¹⁶

Pink uses Csikszentmihalyi's research to explain that we find flow when we undertake tasks at the appropriate level of intellectual challenge, which is neither too hard nor too easy.¹¹⁷ Figure One, which appears in previous Section III.B on competence support, depicts the flow state at the intersection of high challenge and high skill. In these circumstances, we are reaching to be better, stretching the boundaries of our capacity. We become more proficient in performing specific tasks in resolving future challenges that differ from what we have encountered in the past. Our capacity to concentrate increases when we revisit a particular challenge with a desire to repeat it. We are able to develop a nuanced understanding of a task when we mindfully repeat it and reflect on each effort. We become more able to resolve future challenges that differ from what we have encountered in the past.

Mastery is what people are referring to when they say they "were in the zone" in a specific activity. The exploration of this mindset has a long history in popular culture – particularly in the arts and athletics.¹¹⁸ "Being in the zone" requires some level of familiarity with the task as well as sufficient challenge to trigger focused attention and stimulate the feeling of desire to do better.¹¹⁹ Striving

112 PINK, *supra* note 1, at 120-23.

113 PINK, *supra* note 1, at 114-15; CSIKSZENTMIHALYI, *supra* note 65, at 67-70; Flow TED talk, *supra* note 65.

114 CSIKSZENTMIHALYI, FLOW, *supra* note 65; Flow TED talk, *supra* note 65.

115 REEVE, *supra* note 17, at 155-58.

116 This does not mean that pain is absent from the experience of mastery as a mindset. See discussion *infra* Part V.A.2.

117 PINK, *supra* note 1, at 115.

118 For an illustration, see BERNIE WILLIAMS, BOB THOMPSON & DAVE GLUCK, RHYTHMS OF THE GAME THE LINK BETWEEN MUSICAL AND ATHLETIC PERFORMANCE (2011). Bernie Williams became a professional baseball player for the New York Yankees, is an accomplished popular guitarist trained in classical methods, and is a music composer. He and his co-authors wrote this book as a guide to mastery in these fields but their observations are universally applicable.

119 Cf. DANIEL GILBERT, STUMBLING ON HAPPINESS xiii-xvii, 31-58 (2005). Gilbert explains how we incorrectly make decisions based upon inaccurate assessment of future feeling states. He usefully reframes our understanding of "desire" and explains the growing body of research on "happiness." Gilbert is a social psychologist whose research emphasis is on cognitive bias. He is the Harvard College Professor of Psychology at Harvard University.

for competence in any activity requires deliberate and repeated reflection on how we performed those activities. Thus we are able to fully mentally engage in our learning process because of our heightened sense of self-awareness through reflection. Using analogies like “being in the zone” to discuss the learning process in achieving mastery helps law students understand that becoming a lawyer is a lifelong learning journey.

“Mindful learning” involves the active consideration of different points of view, being sensitive to context, welcoming new experience and making distinctions in resorting our understanding of information.¹²⁰ Students are viewed as active participants in the learning process, and they benefit from being prodded to consider their mindset when learning. This prodding actively models that self-awareness is essential for concentration and that learning does not happen when the individual is non-aware or acting on automatic pilot.¹²¹ When these characteristics are present, the individual has the feeling of being more in control of the learning process and a sense of self-direction in the midst of uncertainty in the endeavor.¹²² Studies show that students retain more knowledge and are more engaged when instructors present information conditionally rather than in absolute terms.¹²³ In the legal education context, Krieger describes mindfulness as the state of being consciously open and attentive to one’s experience.¹²⁴ He explains that mindfulness, or the capacity for metacognitive self-awareness, allows students to notice how they are doing in their learning, which enables more conscious choice in behaviors, attitudes, and identification of outcomes.¹²⁵ Krieger points out that maintaining awareness and perspective is a skill that improves with encouragement and practice.¹²⁶

We often observe that law school experience diminishes our students’ fuller sense of self as an active agent in problem solving. Many lose touch with the skills that they brought to the study of law. Their self-confidence declines. As a result, law students often find it difficult to fully mobilize their internal resources when starting to perform as a lawyer. And because most traditional legal education does not afford the law student regular opportunity to actively engage in the practice of becoming a lawyer, the student becomes less connected to their learning processes and professional goals.

120 ELLEN J. LANGER, *THE POWER OF MINDFUL LEARNING* 4 (1997); *See generally* Ellen J. Langer, *THE POWER OF MINDFUL LEARNING* (1997). The principle of mindfulness also is a developed theory in many religious contemplative practices, particularly Buddhism. The Buddhist concept of mindfulness is the heightened attention to both our internal sensations and our perceptions of external reality. Buddhism focuses on contemplative practice which fosters self-awareness by which we gain wisdom. *See generally* ALEXANDER WYNNE, *THE ORIGIN OF BUDDHIST MEDITATION* (2007); ANDREW WEISS, *BEGINNING MINDFULNESS: LEARNING THE WAY OF AWARENESS* (2004) [hereinafter *BEGINNING MINDFULNESS*]; THICH NHAT HANH, *THE MIRACLE OF MINDFULNESS: A MANUAL ON MEDITATION* (Mobi Ho trans., 1987) (1976).

121 LANGER, *supra* note 120, at 4.

122 LANGER, *supra* note 120, at 4-6.

123 LANGER, *supra* note 120, at 77-81 (discussing a number of studies that show the benefit of conditional framing to priming mindful learning).

124 Krieger, *Human Nature*, *supra* note 13, at 285-86.

125 *Id.* at 285.

126 *Id.* at 292-93. *See also* Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 7-17 (2003) (discussing metacognition in psychology, education and law); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 452-83 (2003) (discussing self-regulated learning).

By contrast, clinical legal education is structured to orient students to assume the professional role and to focus on building critical lawyering skills. Students are told that during the clinical course they will learn to act like a lawyer. In supervising students' work, professors demonstrate that they do not expect students to know all the answers. Instead, professors put forth clear expectations that students will use a range of tools including critical thinking skills and that they will learn how to improve those tools by doing a number of different tasks. Clinic students usually are excited by assuming the professional role of lawyer and using their law school studies to do something active. In clinic, students are evaluated or graded on multiple factors. Of course, students normally are motivated to get excellent grades and evaluations, but there is no singular exam and the student is not solely motivated by the external grade or evaluation reward. Rather, students are motivated to give excellent client service and to improve their lawyering skill levels.

A hallmark of clinical legal instruction is that law students are required to reflect on their own performance. Repeatedly, as students complete assignments, they are asked to explicitly and fully unpack their performance.¹²⁷ At both CUA and CUNY we do this in supervision meetings, in reflection memos, assigning students to lead debriefings of their cases in clinic rounds, and in self-evaluations submitted at mid-semester and at the end of the semester. This modeling of assessing one's own thinking and action conveys to students that they will ultimately be professionally responsible to gauge the effectiveness of their choices. A CUNY clinic student reacted to reflection assignments, "As a clinic student I was required to submit a reflection memorandum after every time I met with my client, went to court with my client, or completed a task on my client's behalf. In the beginning of the semester I found this task quite bothersome. However, somewhere in the middle of the semester I began to see the importance and understand the benefit of reflecting on my own performance. If I hadn't taken the time out to sit down and reflect on what I was doing, I would not have realized how what I was doing was affecting my client and her needs. By reflecting on my work I was able to see what a difference I was making for my client. I was also able to see what I needed to improve."¹²⁸ When students are expected to take the initiative in appraising their performance, to analyze what was achieved in their work, and observe that their actions made a difference for the client, they will push themselves to improve in all areas. These aspirations go beyond any extrinsic rewards they originally set for themselves.

2. Achieving Mastery Involves Pain

Assuming the role of lawyer means embracing the reality that successfully navigating one difficult situation permits the chance to go through difficult situations and that by doing so, one becomes an excellent lawyer. Learning how to lawyer similarly involves intense, persistent effort, pushing boundaries of discomfort, and living with not "getting it" right away. Indeed, most legal problem-solving is arduous. Pink writes that mastery requires pain, or less starkly, requires perseverance and passion for long-term goals. It requires "grit." "Grit" is the character strength associated with

127 Gregory Munro argues that it is essential for law students to have a continuous "feedback loop" for frequent assessment and thus students should be continually exposed to multiple diagnostic tools to assist them to evaluate their learning. GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 60 (2000). See generally GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* (2000).

128 Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

dogged persistence and intense effort when tackling obstacles.¹²⁹ It is not only about working harder, it is also about working longer and with focused, undistracted energy. Studies show that a person who has “grit” is more likely to successfully achieve long term goals.¹³⁰ We can liken this idea of pain to the intense effort associated with climbing up the side of a cliff by repeatedly pulling yourself up to the next hold despite the discomfort of wearing your fingernails down.

Active learning by acting as a lawyer under clinical supervision acclimates students to the reality of encountering both success and difficulty in legal problem-solving. The teacher’s/supervisor’s explicit attention to the students’ reflection on their lessons from practice helps to normalize the discomfort associated with real life complex problem-solving and the quest for excellent lawyering performance. Normalizing the expectation of “peaks” and “valleys” in gaining proficiency in lawyering skills increases the students’ ability to take corrective action routinely.

Thus our teaching/supervision choices should encourage the law student’s desire to try again, do more and improve their level of lawyering skills. Law students are likely to gain the insight that achieving mastery is an incremental process when teachers regularly explore the student’s reflection on their preparation and performance. Law students gain greater capacity to navigate ambiguity when they are given structured opportunities to reflect on their approach to handling “messy facts” and changing circumstances.

Teaching to mastery requires the teacher to provide a structured approach to learning for the law student rather than being completely open-ended and non-directive. Providing structure includes articulating a framework for reflection and incorporating these mechanisms into the content of the supervision. Structure has been defined as “(1) information about the pathways to desired outcomes and (2) support and guidance for pursuing these pathways.”¹³¹ Setting structure creates an environment conducive to balanced reflection on performance. Students are more likely to internalize a structure for reflection when they are encouraged to identify and correct mistakes. Encouraging people to engage in optimally challenging tasks requires an environment that “tolerate[s] (and even value[s]) failure and error making.”¹³² One CUNY clinic student explained the value of reflecting on her mistakes: “The reflection memo assignments gave me the opportunity to reflect on my mistakes and explain why I made them and how I planned to correct them. While in other doctrinal classes I was sometimes afraid to admit to my mistakes and unwilling to explain why I had made them, in clinic I was not afraid to discuss the mistakes I had made because I knew my supervisors/professors did not expect perfection. The supervisors were there to help us come

129 In his N.Y. Times article Paul Tough discusses Angela Duckworth’s early research and her observation that, “People who accomplished great things... often combined a passion for a single mission with an unswerving dedication to achieve that mission, whatever the obstacles and however long it might take. She decided she needed to name this quality, and she chose the word ‘grit.’” Paul Tough, *What if the Secret to Success Is Failure?* N.Y. TIMES (MAGAZINE), Sept. 14, 2011 available at <http://www.nytimes.com/2011/09/18/magazine/what-if-the-secret-to-success-is-failure.html?pagewanted=all>. “Grit entails working strenuously toward challenges, maintaining effort and interest over years despite failure, adversity and plateaus in progress.... [T]he gritty individual stays the course.” Angela L. Duckworth, Christopher Peterson, Michael D. Matthews & Dennis R. Kelly, *Grit: Perseverance and Passion for Long-Term Goals*, 92 J. PERSONALITY & SOC. PSYCHOL. 1087, 1087-88 (2007).

130 Statistical findings suggest that sustained effort, and not talent alone, is predictive of achieving difficult goals. Duckworth, et. al., *supra* note 129, at 1089-1100.

131 REEVE, *supra* note 17, at 159.

132 *Id.*

to the right solution, not punish us for being wrong. Our clinical teachers emphasized that the purpose of the reflection assignments was to help us, as aspiring lawyers, to make the self-reflective process a regular part of our work as lawyers. They taught me that reflecting on and learning from experience is an essential part of the process of becoming an excellent lawyer.”¹³³ Although on first impression it may seem counter-intuitive, deliberative practice or conscious reflection on performance primes the ability to enter this mastery mindset more often and with greater skill. We want law students to internalize that continued professional development requires their ongoing effort to become more observant of their thinking, choices and actions in the lawyering process. Our students at CUA and CUNY often state on course evaluations that faculty held them to higher standards than they imagined for themselves and that made them gain confidence in their potential/ability to be successful lawyers.

To clarify, the pain involved in mastery for the clinical student is the pain associated with the discomfort and exertion in learning how to lawyer. As clinical teachers, we can reinforce that this discomfort and exertion should not ever go away completely. As they strive in their careers to continually improve and apply their knowledge and skills to challenging situations, moments of uncertainty and self-doubt will continue to be a normal part of the process. Indeed, students should become wary of the mindset that “I’m a good lawyer now so, of course, I’ll reach a conclusion about what to do in cases easily.” This is not the same pain that many students associate with other aspects of law school when they react to what they perceive as humiliating teaching styles, the disregard for their individual development, being forced to engage in boring hours of memorization, and a sense that the entire academic experience is designed to weed out the weak who cannot “hack it as a lawyer in the real world.” That type of pain does not typically lead to “flow.” The student does not keep doing the individual tasks required because she wants to or because she believes that the task is critical in order to be a good lawyer.

Contrast these counter-productive painful experiences with the discomfort a clinical law student experiences when putting together her first trial notebook for a clinic client’s hearing. Typically, she wants to put together a good case because a client is depending on her, and she wants to prove to herself she can do it. She is pretty sure she can do it even though she has never done anything like a trial notebook before. She writes multiple drafts of each part of the trial notebook: opening, direct, cross, closing, and so on. With each draft she gets just a little better. She tells herself that she is going to prepare each step correctly so that the client’s story is portrayed in the best possible way. The student works long hours and puts in tremendous effort in producing this trial notebook. She continues to strategize about the hearing and revises her drafts. She continues to refine her trial notebook while also reminding herself to remain flexible because one never knows what will happen in court. Another example comes from a student assigned to be a court evaluator in a guardianship proceeding. The court evaluator must meet with the subject of the proceeding and compile a report discussing her findings. At the guardianship hearing that follows, the court evaluator must get on the stand and testify to her report. In a real sense a person’s liberty is in the hands of the court evaluator who acts as the “eyes and ears of the court.” She reread and edited her report for several days until she was satisfied with the end result. She knew this proceeding was a serious matter and that her report would help the judge decide whether or not to appoint a guardian, so she wanted my report to be the best it could be. She knew that someone else’s welfare

¹³³ Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

was depending on her and she didn't want to let them down so she pushed herself to perfect her report. Both these students will have the opportunity to do this type of work in other cases during the semester. And with each subsequent case assignment, each student will be able to observe her increasing abilities as she more confidently assumes her identity as lawyer.

3. *Mastery as an Asymptote That Will Never Be Fully Reached*

"Asymptote" refers to an algebraic concept of a curve approaching but never touching the line above the curve. Pink uses this term to label his third aspect of mastery as a continuing quest toward something that one accepts will never be fully achieved.¹³⁴ We may get close to our idea of perfection in our performance, but we never fully realize what we envision. Our mental image of the absolute ideal result will remain slightly out of grasp even though our capacity improves over time and with effort. But with a vision of mastery as an asymptote, this experience need not predominately negative, scary or frustrating. Becoming fully engaged in performing as a lawyer is also exciting, rewarding, and contributes to building professional self-confidence. And these positive reactions lead to greater desire to repeat the experience and further practice the skills. We provide our students with repeated opportunities to explore what they can actually control in a given task and to also identify the many circumstances over which they have no control at all. This explicit acknowledgment helps students to gain greater self-confidence in their professional role as lawyer while at the same time embracing the reality that they will not always achieve their desired outcomes. They develop a deeper awareness that their professional growth is a long path of learning from their successes, mistakes and external limitations. Krieger provides an excellent exercise to use with students to achieve this balanced, long-term positive acceptance that much of what happens is not within our control as lawyers.¹³⁵

Some students may experience frustration, a sense of failure, may "hide out" from supervision and may abandon the task because they have not internalized that full mastery will remain elusive. Articulating what precisely the student has accomplished and what remains to be accomplished reduces the degree to which the students may experience these impediments to their desire for mastery. Teachers should address these challenges in striving for mastery because achieving mastery demands effort to enter the mental state of "flow" and to spend more time in "flow." Students are more prepared to enter "flow" if they understand that "complete" mastery is always out of reach and never a constant state of mind.

Students often are overly harsh on themselves when reflecting on how they could have performed better in the courtroom or in the mediation room. We remind our students that learning how to be a better lawyer is a never-ending process for us all. We take the time to be explicit in our belief that learning from practice should increase our self-confidence rather than diminish it. One CUA faculty member frequently advises students who are being overly hard on themselves after a court appearance: "You are always the best lawyer after the fact. We will always be able to imagine afterwards in our minds how we would have better responded to something in court. There is always something to learn and improve on. Embrace that!"

¹³⁴ PINK, *supra* note 1, at 126-27.

¹³⁵ For Krieger's Control Exercise, see Krieger, *Inseparability*, *supra* note 13, at 439 (Appendix I).

B. Teaching to Mastery in Professional Role as a Lawyer

This section identifies four teaching approaches to clinical supervision that enhance students' growth towards competence and mastery drawn from cognitive psychology, neuroscience and learning theory. These four approaches also are derived from our reflections on our experiences as clinical legal supervisors.

1. Affirming Law Students' Capability

Teachers build law students' self-confidence when they deliberately communicate that students are capable of learning how to become good lawyers. This communication makes it explicitly clear to students that the teacher is committed to their individual professional development. Explicitly expressing our belief in the students' ability to act as a lawyer encourages their learning process. Our confidence in student capacity comes from our supervision history and is based upon specific premises from active-learning theory. Feeling accepted by the teacher and supported in one's efforts aid comprehension, retention and skill level.¹³⁶ Students can see us as those "we trust to care for our wellbeing" addressing the relatedness need identified by self-determination theory.¹³⁷ As mentioned earlier, our student's learning is positively supported when they believe that we are committed to their individual welfare and their success in becoming effective lawyers.¹³⁸ Validating capacity helps generate a positive emotional reaction, which stimulates increased commitment to the learning process.¹³⁹ Being explicit about capacity helps move the legal intern from the role of student to the role of novice attorney bearing responsibility for the welfare of the client.

We also validate our student's capacity by explicit reference to the common pitfalls in the learning process. It is common, and dare we say normal, for students who strive for excellence to have difficulty in settling for less than perfection in their performance. It is difficult to maintain their confidence that they will become good lawyers when they let unrealistic expectations of success get the best of them. This propensity, if not challenged, may lead to endless disappointment and frustration, which are counter-productive toward achieving mastery. Thus our explicit identification of common pitfalls directs students to sustaining their conscious efforts in their performance and recognizes the hard work, even pain, which accompanies this journey. This is simply one way we demonstrate to students that we are paying attention to their point of view in the learning process. Our teaching efforts to identify these pitfalls in the learning process contribute to the students' perception of autonomy support in the teacher-student relationship.¹⁴⁰ We do this is by incorporating common pitfalls into our classroom exercises, simulating or mooted issues during clinic rounds so that the entire group can discuss how to handle issues such as: how to introduce oneself to the court, how to address the judge, how to effectively use the

136 See Laurie Barron, *Learning How to Learn: Carnegie's Third Apprenticeship*, 18 *Clinical L. Rev.* 101, 116, 121 (2011).

137 See discussion *infra* Part III.

138 See *infra* Part III.C.

139 See, e.g., JOSEPH B. CUSEO, *IGNITING STUDENT INVOLVEMENT, PEER INTERACTION, AND TEAMWORK: A TAXONOMY OF SPECIFIC COOPERATIVE LEARNING STRUCTURES AND COLLABORATIVE LEARNING STRATEGIES* 8, 10 (2002). Cuseo explains that students increase their retention of material when the teacher employs active learning techniques in the instruction. The positive emotional reaction to active learning techniques aids retention, integration, synthesis and application of knowledge.

140 See discussion *infra* Part III. A.

microphone systems, how to review a retainer agreement, how to make oral recommendations to a Board of Directors, and how to respond to a lawyer's objections in a mediation.

This explicit emphasis on mindfully cultivating incremental gains helps students disabuse themselves of notions of achieving perfection. As explained earlier, we approach but never fully achieve our ideal of perfection in our performance.¹⁴¹ The teacher emphasizes that all legal problem solving is a learning process that starts with the subjective experience of uncertainty in undertaking each assignment. In clinical supervision, the teacher models adopting a "beginner's state of mind" and provides opportunities for the student to reflect on their individual leaning process. "Beginner's state of mind" refers to adopting the learner's stance that "we know that we do not know" rather than learning from a perspective that "we know what we are learning."¹⁴² This stance primes us to look for what we do not know. We engage in learning being mindfully aware that our understanding will always contain flaws and thus we actively examine our process for those flaws. The starting point of our learning is to wonder whether we know something rather than to assume our knowledge. We approach learning as an individual process of discovery that should not negatively affect the students' core self-concept as to who they are as full human beings with a fuller life's narrative. The teacher reinforces that openness to self-critique keeps the good lawyer open to improving the quality of one's thinking and actions.

We should not confuse the idea of validating the student's capacity with giving of false, excessive, or generalized praise. Validating students' capacity means giving specific remarks reflecting the teacher's acknowledgment of the incremental steps our students are taking toward mastery of the lawyering role. This commitment is apparent when we take the time to validate the student's effort and we examine the specifics of their work without negative character attributions. For example, a discussion reviewing a law student's case theory might sound like, "It is really good to see that you reworked your original case theory. You acknowledged that you originally overlooked a key element to making your claim. After that reflection, you took into account various interpretations of the facts. You explored the pros and cons of alternate theories. You were able to refine your theory of the case by taking all these steps to address your key facts and include all the legal elements of your claim. This work is taxing and can be frustrating. You can be proud that you produced a workable theory on behalf of your client." We avoid narrative character attributions when discussing their work such as, "Apparently you believe you can act as this client's lawyer without fully researching the controlling law before framing a case theory." Just the right amount of genuine validation promotes mental behaviors that encourage mastery. When a teacher communicates to students that they are capable of handling the task, they usually will strive to be even better at that task.

Students take more risk to learn how to function as a lawyer when they observe that we want them to succeed. They observe that we want them to succeed when we take active measures to promote their sense of ownership of their practice along with a sense of full partnership with the

¹⁴¹ See discussion of asymptote *infra* Part V.A.3.

¹⁴² "Beginner's state of mind" refers to the approach of inquiry, not judgment, in gaining self-awareness and knowledge of the external world from deliberative contemplative discipline, without strong ego attachment. See generally ALEXANDER WYNNE, *THE ORIGIN OF BUDDHIST MEDITATION* 1-8 (2007); WEISS, *BEGINNING MINDFULNESS*, *supra* note 120, at 189-195 (2004); HANH, *supra* note 120, at 27-31.

supervisor.¹⁴³ Before students start their clinical assignments, they receive instruction on how the supervisor will engage with these stages of the reflection process. At the outset we address the rationale for our teaching choices and we make transparent our motive of supporting their growth towards competence and mastery. In supervision communications, we first request students' reflections on the specific strengths in their work or to identify what they have accomplished thus far in the assigned task. We expect full discussion of this foundation and we reinforce those points with which we are in agreement. We do not rapidly pass over these reflections in order to emphasize our criticisms of the work. We then note other significant points of their effective practice. When we invest in this type of reflection practice, students observe that we believe in their capacity to learn from their lawyering efforts.

Students feel less vulnerable when armed with the understanding that all their work includes a mixture of their strengths as well as areas for improvement. They are also less distracted by imagined negative assessment by their supervisor when they lead the exploration of where their work needs improvement or is incomplete. This active teaching measure requires the teacher to listen first to students' comments on where their performance fell short before pointing out where the student's performance needs improvement. In every case and with every student, we should consistently probe first for the students' identification of what needs to be revised or improved in the work. Self-generated observations regarding where students believe their work is falling short makes the teacher's feedback less threatening and more familiar.¹⁴⁴

At both CUA and CUNY, we provide students with explicit, written evaluation criteria to guide their discussions in our mid semester meetings. We distribute critique guides for every debriefing which our students use when they give feedback to or receive feedback from any colleague on their performance. Students are taught to specifically identify aspects of strong performance as well as the aspects of performance that need improvement.

A former student enrolled in the Mediation Lawyering Seminar at CUNY, the prerequisite for enrollment into the mediation clinic, reflected on her introduction to these feedback methods:

Often feedback sessions begin with what could have been done better, but starting off with the things that worked well is more positive and makes the feedback session less dreadful. I think the six-step feedback model is beneficial because not only does the student get to reflect on her own strengths and weaknesses, she gets input from her classmates as to what worked well and what did not. Sometimes students can be too harsh on themselves, or just the opposite, they are unwilling to see room for improvement. Once you as the student identify your weaknesses, others are more inclined to address these weaknesses as well. This feedback model helps students see their strengths and their weaknesses and helps students better handle critique of their weaknesses. The feedback model helped me see my strengths and helped me identify my weaknesses. It was also very helpful to hear what other law students thought my strengths and weaknesses were. I learned a lot about myself from

143 One example of a structured reflection or feedback process premised upon taking these active teaching measures can be found in Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143, 154-59 (2006).

144 Blaustone, *supra* note 143, at 159.

participating in feedback sessions with my peers.¹⁴⁵

Once students are oriented to these reflection stages in unpacking performance, we do not shy away from identifying important areas for improvement if the student has not articulated the significant weaknesses in their work. We put our effort into reframing the “failure” as an opportunity to anticipate how to handle the challenge better next time. For instance, we might say; “Going forward, you must make sure to address the most recent case law interpretation on all your disputed elements when drafting your argument. Why do you think this observation matters in your approach to subsequent work? What will you do differently next time you are conducting legal research and framing a case theory?” When challenges are framed as surmountable rather than failures, students are more likely to continue their intense effort to more effectively resolve the issues. When students are not validated or even worse when they are not treated as professional colleagues in training, their desire for self-mastery diminishes.

2. Explicit Commitment to Student & Teacher’s Joint Responsibility for Learning & Clear Communication about Expectations

Communicating belief in the joint responsibility for the student’s professional development promotes mastery. Joint responsibility means that both teacher and student discuss what they are expected to do in the supervision process as well as in the lawyering assignment. Students are expected to take primary responsibility for their learning and teachers are primarily responsible for the quality of the learning environment in supervision. The teacher should make clear from the beginning that she is there to help carry the load, but the student must figure out how to do the majority of the work for themselves. The intended message is that the law student is actively partnering with the supervisor to move towards the goal of reaching lawyering competency. It is the student’s journey and the teacher is there to help the student along the way but ultimately it is the student’s quest. Jointly, the teacher and the student set the expectations for the student in assuming the role of lawyer and performing their assigned duties.

It is important to give explicit attention to joint responsibility for the student’s professional development because students are expected to see themselves as the primary professional responsible for taking action in cases while under supervision. It is understood that the student is accountable for what happens in the case. It is up to the student to become the lawyer or professional the student wants to be. This “learning on the job” is not a passive learning process. At the outset of the clinical experience, the teacher makes clear to students that they have to actively figure out what to do and how to do it. They are placed in “the real legal world” where situations are ever-changing and outcomes are not completely predictable. Setting clear expectations about the students’ responsibilities for the clinical learning relationship prepares them to avoid either mindless imitation or sheer replication of previous efforts in solving the next problem. When students and teachers discuss their expectations about how to start assuming the role of lawyer, students are more likely to integrate these concerns into how they individually approach their efforts toward achieving mastery.

In order to promote mastery in the clinical supervision relationship, teachers translate student responsibility for their learning into specific expectations for students’ initiative and follow-

¹⁴⁵ Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

through in effectively consulting with their supervisors. Together, both teacher and students articulate specific expectations for student engagement before assigning any individual case work. Both teacher and students continue to identify how these expectations apply to the actual work throughout the duration of the learning experience. For example, if students are expected to identify their questions when consulting the supervisor, the teacher should refer back to this expectation before commenting on the specific questions. Teachers indicate to students that they are expected to carry out their responsibilities to the fullest extent possible. In other words, students understand that they are responsible for the quality of their judgments and their actions in every assignment, all of which impact the welfare of the client and which may be subject to a supervisor's review. There is less "checking out" by the student when the teacher reinforces what is expected throughout the semester. And when communicating in supervision, the teacher regularly addresses the responsibilities of both the supervisor and the students in carrying out the lawyering assignment. When students know from the very beginning that they are responsible for the professional they want to become, they become the driver on the road to mastery.

Students are more inclined to build their understanding of professional competence and mastery when teachers regularly review expectations set by both the supervisor and students during the specific assignment. Students sometimes say that they appreciate the discussion of expectations because they feel uncertain about the norms of professional legal culture. In addition, students often comment that they benefit from being prodded to explicitly state the expectations they are trying to fulfill in taking on specific assignments. They indicate that these discussions remove some of the mystery in understanding the type of effort required in lawyering and the standards by which the work will be evaluated by both the student and the supervisor.

3. Deliberate Attention to Reducing "Fill-in"

Teachers promote mastery when questioning students about their assumptions or the extent of their fill-in undertaking any task. Teachers promote mastery when normalizing the presence of assumptions, our mental fill-in of additional content, in fact gathering, memory and reasoning. Ordinarily, most people cannot tell when they are filling-in gaps with fabricated information or when they are creating gaps by omitting information because this is mostly an unconscious process.¹⁴⁶ "When we imagine future circumstances, we fill in details that won't really come to pass and leave out details that will."¹⁴⁷ The human brain supplies "best guesses" routinely at extraordinary speed and without asking permission. We make inferences about what we know to a greater degree than we commonly acknowledge. Research confirms that individuals confuse their subjective belief in the truth of a statement with the objective truth of a statement.¹⁴⁸ Additional research illustrates the individual propensity to overestimate one's abilities and to overestimate

146 Daniel L. Schacter, Joan Y. Chiao & Jason P. Mitchell, *The Seven Sins of Memory: Implications for Self*, 1001 ANNALS N.Y. ACAD. SCI. 226, 227-29 (2003). See generally DANIEL L. SCHACTER, *THE SEVEN SINS OF MEMORY: HOW THE MIND FORGETS AND REMEMBERS* (2001). Daniel Schacter is a psychology professor at Harvard University whose research is focused on neuropsychological aspects of memory and memory distortion. See also GILBERT, *supra* note 119, at 83-105.

147 GILBERT, *supra* note 119, at 263.

148 Alison R. Fragale & Chip Heath, *Evolving Informational Credentials: The (Mis)Attribution of Believable Facts to Credible Sources*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 225, 226-27, 233 (2004).

the likelihood of successful outcomes.¹⁴⁹ Our automatic mental processes make us inclined to interpret realities in ways that maintain consistency and predictability even when external factors indicate that our “theory” may not accurately reflect the facts.¹⁵⁰

We instinctively and subconsciously filter out negative information which does not support our beliefs. We overvalue data that supports our beliefs. Confirmation bias is the subconscious propensity to favor information that confirms our assumptions with no attention to the level of objective accuracy of the information.¹⁵¹ Ordinarily we mindlessly select and interpret our evidence in biased ways. This propensity is more likely when we are working on issues that are emotionally important to us or reflect our individual values.¹⁵² For instance, we are more likely to credit sources that reinforce our positions and reject as less trustworthy contradictory information coming from sources supporting opposing points of view.¹⁵³ This subconscious, automatic method of processing information leads to erroneous reliance and over-confidence in our understanding of most things.¹⁵⁴

Each of us is unaware that we are naturally prone to being over confident in the narrative we provide ourselves to make our realities coherent. This automatic process often propels students to make poor decisions. Our focus on becoming mindful of this pitfall helps students detach emotional negativity to “getting it wrong” and allows them to internalize the realization that these common challenges face everyone in improving their thinking processes. When students are asked to take the conscious step to look for fill-in, they develop more ability to substitute investigation for their unexamined judgments in creating coherent understanding. We regularly ask our students to explain the basis for their observations or how we would verify the accuracy of what the student is over-confident is asserting. In every assignment, we ask students to reflect on questions such as: “What information may I have overlooked? What are all possible unknown factors or variables that could change my analysis?” This inquiry encourages reflection on the distinction between self-confidence and over confidence in our judgments.

We seek to reinforce our students’ belief that they are able to function better because they question what they know and are more able to doubt the validity of their assertions. When we encourage law students to become aware of their own assumptions and how everyone operates with the reality of default fill-in, they become more inclined to question the basis for their assessments. Once students become aware that everyone is prone to make these types of mistakes when lawyering, they pay more attention to making less of them. They are more able to reflect on the consequences of incomplete factual comprehension and inaccurate risk assessment. They

149 Avishalom Tor, *The Methodology of the Behavioral Analysis of Law*, 4 HAIFA L. REV. 237, 254-55 (2008).

150 See Amos Tversky & Daniel Kahneman, *Extensional Versus Intuitive Reasoning: The Conjunction Fallacy in Probability Judgment*, in HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 19 (Thomas Gilovich, Dale Griffin & Daniel Kahneman eds., 2002); Daniel Kahneman & Shane Frederick, *Representativeness Revisited: Attribute Substitution in Intuitive Judgment*, in HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT 49 (Thomas Gilovich, Dale Griffin & Daniel Kahneman eds., 2002). Kahneman, a Nobel laureate in Economics and a psychologist, developed ground-breaking psychological theories of judgment and decision-making.

151 Jane Risken & Thomas Gilovich, *Informal Logical Fallacies*, in CRITICAL THINKING IN PSYCHOLOGY 110, 112-13 (Robert J. Sternberg, Henry L. Roediger III & Diane F. Halpern eds., 2007).

152 *Id.*

153 *Id.*

154 *Id.*

take additional steps to verify their understanding. They are thus more likely to uncover their assumptions.¹⁵⁵ Students become more motivated to consciously check their assertions when they understand these propensities for error. Finally, with repeated reflection on their assumptions, students feel more capable of correcting their choices in the future.¹⁵⁶

In our supervision experience, many students have commented that becoming more aware of the prevalence of the assumptions-making process helps them to monitor their internal thinking. Several students observed that they did not know they were making assumptions until questions were posed by the supervisor which led to their insight that they need to monitor their inclination to fill-in gaps in the legal stories that they are developing. In the beginning of the clinical experience, students will comment that they were not aware of the extent to which this fill-in process is occurring for them. After opportunities to reflect on this inclination, many students identify specific instances where they are self-correcting to mitigate their tendency to fill-in. For instance, a student remarked that she was able to reflect on her inaccurate inferences about what the witness actually saw when listening to him describe an assault. She further commented that she was pleased that she able to correct for these inaccuracies without negative judging her ability to fully prepare the witness's testimony. She viewed this self-correction as a normal part of clarifying her understanding and did not feel less capable as a lawyer because she had made some inaccurate assumptions. Several students have commented that having this explicit conversation with their supervisors helps them to actively check for omissions and questionable inferences when reviewing their notes from a client interview. And eventually, many students will comment that they are able to catch more of the issues during subsequent interviews.

4. Taking Time to Verify Understanding from Supervision

Teachers promote mastery by focusing on what the student actually understands from the supervision rather than only focusing on giving substantive information. The teacher must take the time with the student to determine what the student actually understands from their communication with the supervisor. As teachers who are legal practitioners, we understand how challenging this idea is to our goal of efficiently supervising many students on several cases. Nevertheless, more misinterpretation happens when we fail to regularly probe our student's understanding of our discussion or written remarks. Asking the student to articulate their understanding of what was just covered takes time away from other comments that may be important to the supervisor. Yet when we focus on the extent of the student's grasp of the communication, the supervisor has the opportunity to confirm or correct the student's understanding before they proceed further. Putting a priority on finding out what the student understands from the supervision can alert the supervisor to important issues needing clarification that matter more than the additional information the supervisor wanted to cover. The student integrates the lesson that lawyers need to regularly clarify their understanding of tasks.

This means that the teacher would conclude a supervision session by asking for the student's

155 Jeremy A. Blumenthal, *Law and the Emotions: The Problems of Affective Forecasting*, 80 Ind. L.J. 155, 161-64 (2005).

156 Human beings should understand themselves better as self-regulating, thinking actors who are able to deliberately take into account the functioning defaults inherent in our thinking processes. Douglas J. Hacker, *Definitions and Empirical Foundations*, in METACOGNITION IN EDUCATIONAL THEORY AND PRACTICE 1, 10 (Douglas J. Hacker, John Dunlosky & Arthur C. Graesser eds., 1998) (citing R. H. Kluwe, *Cognitive Knowledge and Executive Control: Metacognition*, in *Animal Mind- Human Mind* 222 (D.R. Griffin ed., (1982).

understanding of the discussion. For instance, after discussing the student's interview plan, the supervisor would ask the student to articulate her understanding of what has been covered. The supervisor may then learn that the student did not register the importance of following up a particular line of inquiry. Now the supervisor is able to take the additional moment to ask the student about the omission of those points. Or the supervisor may learn that the student misinterprets suggestions or misunderstands what the supervisor said about a controlling point of law. Our belief in the importance of verifying the student's understanding from the supervision is reinforced by students' comments that they find it helpful when they are asked to review their understanding of what was covered in the conversation or written remarks. As one law student commented:

I have learned that the most important thing in law school is being able to understand the rules in order to apply them to various situations. This is also true outside of the classroom. When having a conversation with a professor or supervisor, if you don't understand what she says, you cannot accurately complete the task. It is helpful when all individuals involved are on the same page. Mastery involves understanding – if you don't understand you can't get to the next level.¹⁵⁷

Law students do not come to the clinical experience already accustomed to actively clarifying their understanding of what the job entails with their supervisors. Although some students may be accustomed to asking questions, that process does not necessarily correspond to the actual level of understanding the student possesses regarding the assigned lawyering tasks. Not all students will ask questions nor will the actual questions posed necessarily lead the student to moving forward in their process towards mastery in becoming an effective lawyer. Additionally, we observe that students' questions may not necessarily correlate to their areas of significant confusion or misunderstanding. We are positing that supervisors may incorrectly correlate the simple exercise of asking questions with a student's progress towards developing lawyering skills. If teachers take the initiative to probe the student's understanding rather than simply respond to questions posed, they actively work to reduce predictable distortion by students as they begin to practice as novice lawyers. Supervisors can do this by asking students how they arrived at their observations or why they arrived at the questions they are now asking. These types of questions help students to explore the extent of their thought processes underlying their comprehension. As teachers, when we pay attention to clarifying the student's understanding from our supervision, we model vigilance against premature judgment when lawyering.

VI. RELATEDNESS AND PURPOSE

In the previously mentioned booklet for law students, *The Hidden Sources of Law School Stress*, Lawrence Krieger discusses three aspects of "hidden stresses of thinking 'like a lawyer,'" which can be attributed to the "intellectual and cognitive apprenticeship" of the first year: losing faith in oneself, losing faith in the law, and losing connections with other people.¹⁵⁸ This formulation helps us think about how clinical programs can counter these losses with supporting the students' basic need for relatedness, nurturing intrinsic motivation by reminding students of personal

¹⁵⁷ Written comments of JeanMarie Krowicki, 2012 graduate of CUNY School of Law (January 21, 2012) (on file with authors).

¹⁵⁸ KRIEGER, *HIDDEN SOURCES*, *supra* note 13, at 7-9.

values that brought them to law school, and aiding students in forming a professional identity that contributes to a sense of purpose for their lives.

Krieger sees law school classes concentrated on identifying relevant law and applying it to facts without engaging students' "pre-existing beliefs, values, preferences, and... feelings and emotions" as contributing to the students' loss of faith in one's self.¹⁵⁹ He warns this can lead students to "discount or ignore their beliefs, feelings, and values as if they no longer matter" with a resulting feeling of feeling "lost."¹⁶⁰

Second, Krieger posits that students may have come to law school thinking that "The Law" has a fixed meaning, and courses will teach "The Answer." Instead they learn that the "best answer" in law school often is identifying many possible outcomes. Law school teaches skills that can be used "to shade the law in favor of virtually any position a client might prefer," including ones that conflict with the students' values. Students may ignore their "sense of right and wrong... in order to rationalize any possible outcome," and this loss of faith in the law can "dampen the ideals and values that brought [them] to law school in the first place."¹⁶¹

Third, law students can carry over their newly honed skills of finding the weaknesses in other's arguments, making counter arguments, and defending their position into bringing "critical and aggressive/defensive" communication into personal relationships. A heavy law school workload, compounded by worry about avoiding failure and getting good grades, already may press students to neglect connections to friends and family. Interacting in argumentative and critical ways when together can compound the problem of losing one's relatedness to others.

As an "antidote" to these three stresses, Krieger recommends remembering that thinking like a lawyer is "a legal skill but not a life skill."¹⁶² Clinics provide an opportunity for students to use analytical skills, not as an abstract point and counterpoint exercise that is an end in itself, but rather a tool for the important end goal of improving the lives of others

As previously stressed, one dimension of relatedness refers to "gravitat[ing] toward people who we trust to care for our well-being, and... drift[ing] away from those who we do not trust to look out for our well-being."¹⁶³ The previous discussion of teaching to mastery stressed the importance of a student's perception that the teacher believes in the student's capacity to become a good lawyer and the reassurance that the teacher is there to support the student's journey to that goal.

In addition to the relationship of student and teacher, clinical programs can offer opportunities for supportive relationships with other students. Much of law school can seem to be about competition with other students – for grades, for jobs, for editorial positions, for spots on moot court teams. Clinics often pair students to work on cases and seek to encourage a sense of mutual

159 KRIEGER, HIDDEN SOURCES, *supra* note 13, at 7.

160 See Krieger, *Human Nature*, *supra* note 13, at 265-270 and accompanying footnotes regarding the a study of language used in law school classrooms by Elizabeth Mertz, an anthropologist and law professor, who conducted a project sponsored by the American Bar Foundation. Mertz's research team recorded a full semester of contracts classes in eight diverse law schools. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER,"* (2007).

161 Sheldon & Krieger, *Undermining Effects*, *supra* note 13, at 282 (research finding that a decrease in all valuing in law school with a "disproportionate initial drop in the healthy 'intrinsic' values").

162 KRIEGER, HIDDEN SOURCES, *supra* note 13, at 9.

163 REEVE, *supra* note 17, at 162.

support among clinic students toward doing the best job for clients, while acknowledging the hard work entailed. Street law programs usually encourage team sharing of ideas and lesson plans and feedback for their improvement.

Law study gives a concrete use for what has been learned with a real client to represent. Clinics also can help students see the relationship of the work to broader communities of people. Like street law programs, representation clinics often combine individual casework with community education efforts and needs assessments providing relatedness to other individuals as well as groups.

As to purpose, clinical teachers can be mindful of what may help nurture the values that students brought to law school and provide a vision for standards of important ends to which service can be directed. The Carnegie Report challenges the position of professors who believe that law schools neither can nor should attempt to influence student values and even take the position that asking students to state their normative positions is a form of indoctrination.¹⁶⁴ The Report cites experience in other professional education showing that well-structured ethics education can make a difference in students' ability to recognize ethical issues, reason through alternatives, be motivated to act consistent with moral principles and public purposes of the profession rather than self-interest, understand how to formulate a course of action consistent with those principles, and have the strength to carry out the plan.¹⁶⁵ This sense of identity based in ethical principles and public purposes of the profession also can counteract Krieger's previously identified loss of faith in oneself and the law.

At the end of the clinical experience at CUA and CUNY, many students reflect in their last class or in their final written reflection that clinic made them remember why they enrolled in law school. Many students describe increased self-confidence in their individual values. They often state that they now feel able to practice law in furtherance of those values.

CONCLUSION

We wrote this article to share how clinical law teachers can harness the power of intrinsic motivation and the theories regarding the human needs of autonomy, mastery and purpose to improve the quality of our law students' learning as well as encouraging habits of being that promote life satisfaction. Perhaps the most effective conclusion we can offer is the following journal from a student who, in her last year of law school, took Leah Wortham's Professional Responsibility (PR) class while being enrolled in the CUA Families and the Law clinic in which Catherine Klein teaches.¹⁶⁶ Students in the PR class can choose to do five two-page journals for a small bit of extra credit, but they are not required to do so. The guidance gives a long list of types of topics including those chosen by students in the past and concludes with the following instruction.

Topics can be anything concerning application of the law regulating lawyers or more general issues such as the meshing of legal and personal ethics, the role of lawyers in our society, public perception of lawyers, professionalism, or other concerns that

¹⁶⁴ THE CARNEGIE REPORT, *supra* note 29, at 135-36.

¹⁶⁵ THE CARNEGIE REPORT, *supra* note 29, at 133-35. See discussion *infra* Part III. D.

¹⁶⁶ This CUA clinic student was also enrolled in Leah Wortham's Professional Responsibility course.

you have regarding entering the profession. I mainly care that what you have chosen to write about is of significance to you.

Many students choose to write about issues arising in in-house clinics, externships, or situations arising at work or with friends and family. The final class unit, assigned for the last day of class, is called *The Profession and Society; The Profession and You*. The only reading assigned is Krieger's previously discussed *The Hidden Sources of Law School Stress*. Like the journal that follows, the booklet has prompted many thoughtful, and often poignant, journal responses. The following journal seems to the authors to track much of what this article is about: the frustrations students can feel with a diet of primarily classroom doctrinal courses and a disconnect from any larger purpose in becoming a lawyer.

This semester has been the busiest and most stressful semesters of my law school career thus far. It is surprising that I would say this, considering how stressed out I was during my first year. When I began law school and friends asked me about my experience, I was never positive. I never voluntarily recommended law school to anyone. When I think back at the Thanksgiving break of my first year, about a week before finals, I remember that I wanted to avoid all conversations having to do with law school. I was invited to a college friend's house, and I was clearly stressed, unhappy, and doubtful of my performance on exams. I had extremely low self-confidence and confusion about my study and grasp of the law. At the time, I wanted to pretend that I wasn't even in law school so that I could at least sit down and enjoy my Thanksgiving dinner. Despite my efforts to keep the topics of conversation flowing, law school immediately and inevitably came up on numerous occasions. My friends wanted to know how it had been and whether I was enjoying it. It was troublesome for me because I felt that I did not have many outlets during the semester to discuss what I was learning or even apply it in real life. I was intimidated by the other students in class, and I rarely volunteered to speak. Furthermore, I never had an opportunity to reflect on what I was learning and how it applied to my life, which I think would have been extremely helpful for me.

Thinking back, I realize that the only class that I enjoyed and did "well" in, at least during my first year, was my *Lawyering Skills* class. Despite the fact that it was the busiest class with the heaviest workload and a high amount of stress (for only 2 credits), it was a class for which we wrote several memos each semester that reflected our understanding of the law, a set of facts, and the application of the law to the facts. We got constant feedback from our professors, and we were able to make significant improvements in our writing skills as well as our analytical skills. Overall, it was our first glance at the actual practice of the law through researching and advising on an issue to a hypothetical client that we had throughout the semester. We learned not only legal writing skills, but also how to write a letter to the client about a complex legal issue. The class prepared us for real-life legal representation. Unfortunately, my second year courses – which were mostly substantive bar courses – did not allow me to reflect on and apply my understanding throughout the semester in a way that is most helpful for me.

This semester, as I stated, has been the busiest and most stressful semester thus far. However, it is important to note that it has been one of the most rewarding and

happiest semesters for me as well. I leave the semester with a higher sense of self-confidence as a future lawyer and a positive outlook to my legal career. I believe that not only have I learned to appreciate the ways in which I can take advantage of my law school experience to suit my needs and interests, but I have also been able to recognize my highest demands and moderate my response to them (as noted in *The Hidden Sources of Law School Stress* book you handed out) in a way that reduces the negative effects of the stress and allows me to maintain a sense of enjoyment. My clinic experience and Professional Responsibility journals have really provided me with an outlet to reflect on my experiences. Specifically in PR journals, I have really taken advantage of them to think back on my past externship and current clinical experiences to assess various situations that I have encountered. By having a conversation about my understanding of a Rule or factual situation, I have been able to balance my stress levels by bringing all aspects of my law school and personal experiences together. Overall, taking the time to reflect, whether it is in class or in clinic or in real-life, and having someone read it and respond to it, has been extremely helpful for me to legitimize my worries and concerns as well as motivate me to trigger my thoughts and build confidence in my observations and analyses. Now, I recommend law school to almost every undergraduate student or young professional that I encounter with great enthusiasm, and I hope that I will not have to feel the way I did my first year during even the points of highest stress in my professional legal career.¹⁶⁷

¹⁶⁷ Melissa Nonaka, Journal #5 Submitted for Leah Wortham's Fall 2010 Professional Responsibility course (December 6, 2010) (unpublished journal on file with the authors). When Wortham contacted Ms. Nonaka for permission to reprint the journal in this article, she learned that Ms. Nonaka is now working at a well-respected immigration firm. Ms. Nonaka said "I have always wanted to pursue a career in immigration law (since before law school) so I am happy to be doing what I love!" E-mail of Melissa Nonaka to Leah Wortham (June 16, 2012) (on file with the authors).

A Model for Interdisciplinary Clinical Education: Medical and Legal Professionals Learning and Working Together to Promote Public Health

Lisa Bliss, Sylvia Caley, and Robert Pettignano¹

Interdisciplinary training for professionals is becoming more common in higher education. Educators are beginning to understand the benefit of jointly training students in complex and interrelated skills that improve and complement the primary skills needed to succeed in a particular profession. Legal educators have recognized the value of encouraging flexible, collaborative

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thinkers who become better problem-solvers through interdisciplinary learning.² Many of these are also coming to realize the importance of interdisciplinary training as a component of readiness for professional practice.³ For many law students, law school clinics are the first opportunity they have to learn legal skills and to engage in problem-solving for real clients. This experiential learning opportunity is often powerful and transformative, and can imprint skills, values, and practice habits that stay with students throughout their professional careers. Incorporating interdisciplinary learning opportunities into the law school clinic experience affords opportunities for co-learning, holistic problem-solving, and community building during young professionals' formative years. Learning to be a lawyer in the context of an interdisciplinary law school clinic combines the experience of working with real clients and academic inquiry into the nature of the lawyering process itself and the ethical and fundamental practices of other professionals. Clinics serve as incubators for professional development. They provide opportunities for reflection on the practice of law, professionalism, social justice, and countless skills that help ready students for the profession of law.⁴ The HeLP Legal Services Clinic at Georgia State University College of Law aims to create an interdisciplinary dimension to such practice and inquiry, and thus influence the way in which the professional students from the law and medicine disciplines work together as learners and future professionals.

The Clinic is an innovative interdisciplinary education program at Georgia State University College of Law in which law students learn side-by-side with medical students, residents, attending physicians, and other health care providers, as well as social work and public health students. The education program is part of a medical-legal partnership known as the Health Law Partnership (HeLP). This unique educational collaboration helps students understand that health disparities experienced by minorities, individuals and families with low economic status, and those with low educational attainment contribute to poorer health outcomes. Law students and students from the health professions learn first-hand the effect that socioeconomic determinants have on health

2 Lawyer-social worker teams have been recognized as role models for student attorneys. For example, one American scholar calls them "a refined third wave therapeutic jurisprudential practice methodology, capable of addressing twenty-first century legal and social needs of the client." Christine A. Zawisza, *Two Heads are Better Than One: The Case-Based Rationale for Dual Disciplinary Teaching in Child Advocacy Cases*, 7 FLA. COASTAL L. REV. 631, 683 (2006). Others have noted the benefits of interdisciplinary collaboration for the University as a whole, insofar as such clinics "provide a public relations benefit to the university as well as opportunities for students to carry the public interest ethic into their careers as lawyers, legislators, or governmental administrators or in other professional occupations." Katherine C. Pearson & Lucy Johnston-Walsh, *Partners in Outreach and Advocacy: Interdisciplinary Opportunities in University-Based Legal Clinics*, J. HIGHER EDUC. OUTREACH & ENGAGEMENT, Sept. 2007, at 163, 171-72.

3 See C.K. Gunsalus & J. Steven Beckett, *Playing Doctor, Playing Lawyer: Interdisciplinary Simulations*, 14 CLINICAL L. REV. 439, 441 (2008) (describing an innovative interdisciplinary simulation course and the view that interactions with differently-trained professionals improves the acquisition of fundamental skills.)

4 Educators who collaborate in interdisciplinary learning environments have noted that problem-based learning, including the opportunity to practice lawyering skills with real clients in a supervised setting, is a valuable way to help students learn, insofar as students receive ongoing, ungraded feedback to help them improve their skills. Antoinette Sedillo Lopez et al, *A Medical/Legal Teaching and Assessment Collaboration on Domestic Violence: Assessment Using Standardized Patients/Standardized Clients*, 14 INT'L J. CLINICAL LEGAL EDUC. 61, 63-64 (2009).

and how to better address issues that can affect the health and well-being of low income families.⁵ The curriculum provides a multi-faceted interdisciplinary learning experience for students of multiple disciplines including, law, medicine, social work, public health, pediatric residents and other professionals.

The interdisciplinary components of the HeLP Clinic are multilayered, involving different activities and students from different professions. For example, fourth year medical students participate in the Clinic course as part of a four-week Law and Medicine elective offered through Morehouse School of Medicine. Clinic students also attend joint classes with third year medical students at Morehouse School of Medicine where they engage in group learning exercises. Residents from Emory School of Medicine attend the Clinic class case rounds to discuss ongoing Clinic cases and engage in interdisciplinary problem-solving. Clinic students attend patient rounds within the hospital and perform client intake in the hospital's Emergency Department and Primary Care Clinic. A masters in social work student from Georgia State University dedicates sixteen hours per week to the Clinic to meet the requirements for her practicum placement. A fellow from the Masters in Public Health program at Georgia State University spends twelve hours per week in the Clinic.

The article describes the how the authors have incorporated professional students from multiple disciplines into a law school clinic environment. It also provides examples of students' reactions to their interdisciplinary learning experiences. Finally, the article discusses the challenges and opportunities in using this clinic model.

Introduction to the HeLP Legal Services Clinic

The HeLP Legal Services Clinic was developed in 2006 as a component of the Health Law Partnership ("HeLP"). HeLP is a medical-legal partnership and interdisciplinary community collaboration among Children's Healthcare of Atlanta⁶, the Atlanta Legal Aid Society⁷, and

5 As one American scholar has noted, clinics provide students with a model for integrating social justice into their practice by ingraining in them a definition of social justice as empowering the powerless. This definition fuels their dedication to addressing social disparities through legal advocacy and helps direct their work towards achieving social justice. Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Empowerment Approach*, 13 CLINICAL L. REV. 459, 463 (2006). Furthermore, clinical education that combines traditional skills-based curriculum with an emphasis on how particular systems (such as the health care system) function has been proposed as one means of resolving the traditional tension between teaching students lawyering skills and training them to think of the law as a practical tool for achieving social justice. Meredith J. Ross, *A 'Systems' Approach to Clinical Legal Education*, 13 CLINICAL L. REV. 779, 781 (2007).

6 Children's Healthcare of Atlanta formed in 1998 when Egleston Health Care System and Scottish Rite Medical Center merged forming one of the largest pediatric health systems in the United States. In 2006, Children's assumed administrative and managerial responsibilities for Hughes Spalding Children's Hospital. Children's now consists of three hospitals and seventeen neighborhood locations all designed to meet the health care needs of Georgia's children.

7 The Atlanta Legal Aid Society, established in 1924, provides free civil legal services to low-income individuals in Atlanta, Georgia. Attorneys work to help clients with some of life's most basic needs – safe housing, access to sufficient, nutritious food, access to a free and appropriate public education, access to quality, affordable health care services, personal safety, and protection against fraud.

Georgia State University's College of Law⁸ to address the socioeconomic barriers affecting the health and well-being of low-income children and their families. The defining characteristic of a medical-legal partnership is the integration of lawyers directly into the healthcare system by making attorneys part of the healthcare team.⁹ Thus, if a doctor, nurse, or social worker identifies a patient whose basic social needs are not being met, the medical provider can refer the patient's family to the lawyer working next door.¹⁰ The medical-legal partnership movement in the United States has spawned a number of partnerships between physicians, clinics, hospitals, lawyers and other care providers. Physicians, nurses, attorneys, and social workers are now partnered in more than 235 health institutions in the United States at 83 medical-legal partnership sites.¹¹ Most of these partnerships focus on the provision of direct legal services to low income clients who are patients of the partnering health provider. HeLP has expanded upon the characteristic delivery of legal services model to incorporate professional education programming, systemic advocacy, and a research agenda as part of its mission. HeLP's primary premise is that by combining the health care expertise of medical professionals with the legal expertise of attorneys, it can provide a multi-disciplinary, cooperative, and coordinated set of services to address the multiple determinants of children's health.

HeLP was born from a realization that the social and economic conditions in which children live can seriously affect their health.¹² For example, poor housing conditions, such as unsanitary conditions or lack of heat, can exacerbate health conditions like asthma or sickle cell disease.¹³ Poverty can prevent children or their families from obtaining needed medications and other medical treatment. Lack of protection from domestic violence can result in serious injury to children and family members. Failure to protect the legal rights of developmentally disabled children can lead to their inability to get remedial special education or other needed services. By partnering with medical providers, lawyers can intervene to address such issues and improve the physical, social, or economic environments in which many children live, resulting in their

8 Georgia State University's College of Law was established in 1982 to offer quality legal education to traditional, full-time day students as well part-time students primarily studying at night. The College of Law is committed to providing an excellent, affordable, and distinctive legal education to a diverse student body, to promoting legal scholarship and service, and to capitalizing on the unique environment in which the College is located in downtown Atlanta, Georgia.

9 Marybeth Musumeci, *Augmenting Advocacy: Giving Voice to the Medical-Legal Partnership Model in Medicaid Proceedings and Beyond*, 44 U. MICH. J.L. REFORM 857, 886 (2011).

10 *Id.*

11 MLP Network, NATIONAL CENTER FOR MEDICAL LEGAL PARTNERSHIP, [HTTP://WWW.MEDICAL-LEGALPARTNERSHIP.ORG/MLP-NETWORK](http://www.MEDICAL-LEGALPARTNERSHIP.ORG/MLP-NETWORK) (last visited Apr. 4, 2012).

12 For a detailed discussion of the development of the Health Law Partnership and its components of direct legal service, education, advocacy and evaluation, as well as a template for developing a successful community collaboration and a medical-legal partnership, see Lisa Bliss, Sylvia Caley & Robert Pettignano, *An Interdisciplinary Collaborative Approach to Wellness: Adding Lawyers to the Healthcare Team to Provide Integrated Care for Patients*, INT'L J. HEALTH, WELLNESS & SOC'Y, no. 2, 2011 at 129.

13 Paying more than 50 % of the available household income on rent and/or living in substandard housing often results in poor health outcomes, especially in children. Monisha Cherayil et al, *Lawyers and Doctors Partner for Healthy Housing*, CLEARINGHOUSE REV. J. OF POVERTY L. & POL'Y, May-June 2005, at 65.

improved health and quality of life.¹⁴

The lawyers and doctors working together at HeLP recognized that focusing on changing the culture and professional attitudes of the next generation of physicians and lawyers is an opportunity to improve the socio-economic determinants of health.¹⁵ Training the next generation of physicians and lawyers to work together to enhance patient outcomes can positively impact the socio-economic determinants of health. Although a primary goal of medical-legal partnerships is to address the socio-economic barriers, and thereby improve client health and well-being through the provision of legal services, pursuing that goal in the context of interdisciplinary professional education inures to the benefit of all professions involved.¹⁶

The HeLP Legal Services Clinic was developed as a vehicle for delivering interdisciplinary collaborative training to professional students from law, medicine, social work, public health, and other disciplines. Advocates of medical-legal partnerships have noted that joint medical and legal education provides a unique opportunity to engage law and medical students in interdisciplinary problem-solving while also expanding their understanding of the complex issues of social justice and inequality in our legal and health care systems.¹⁷ Cited among the benefits of interdisciplinary education are: developing respect and appreciation among the disciplines, teaching team work and collaboration, developing a knowledge-base about other disciplines, teaching communication among disciplines, and teaching other disciplines' rules, beliefs, and ethical principles.¹⁸ Through the HeLP Clinic interdisciplinary education model, many of these benefits are being realized. HeLP Clinic students and faculty have both reported that their interdisciplinary experiences have deepened their understanding of the healthcare system, as well as their understanding of the training and problem-solving approaches of the medical field. Residents have remarked that attending the HeLP Clinic case rounds gave them a better understanding of the legal requirements for proving disability under the law and a better appreciation for the work that lawyers do. As the HeLP Clinic program has matured, the relationships among the law and medical faculty

14 Physicians are generally trained to inquire about the social history of their patients, but often are unfamiliar with the resources and solutions to conditions that contribute to health disparities. For example, pediatricians are generally trained to trace the biological causes of illnesses but are reluctant to inquire about housing conditions, violence, and other social conditions since they are unsure about how to rectify the problems such a line of inquiry might uncover. Chen Kenyon et al, *Revisiting the Social History for Child Health*, PEDIATRICS, Sept. 2007, at e734, e735.

15 David Schulman and colleagues have noted that “by understanding that social determinants are a frame for unmet legal need, public health legal services can bridge the gap to address the social determinants at their root. Public health legal services are an emerging revolution in service delivery for vulnerable populations in communities ... that seek to vigorously attack the social determinants of health that affect poor people.” David I. Schulman et al, *Public Health Legal Services: A New Vision*, 15 GEO. J. ON POVERTY L. & POL’Y 729, 729, 732 (2008).

16 Lisa Bliss & Sylvia Caley, *Medical-Legal Partnerships Connecting Law and Health Care to Improve the Health and Well-being of Low-Income Children: Promising Initiatives*, 20 HEC Forum 2, 102-106 (2010). See also C.K. Gunsalus & J. Steven Beckett, *Playing Doctor, Playing Lawyer: Interdisciplinary Simulations*, 14 CLINICAL L. REV. 439, 441; Elizabeth Tobin Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality*, 11 J. HEALTH CARE L. & POL’Y 249, 250 (2008). Gunsalus and colleagues note that law students do not generally interact with other professionals and thus have little opportunity to develop relationships with other professionals and engage in interdisciplinary collaboration despite shared values and goals. See Gunsalus, *supra* note 3, at 441.

17 Tobin, *supra* note 16, at 252-53.

18 *Id.* at 272.

collaborators have strengthened. This in turn has stimulated more interdisciplinary collaboration, including joint presentations and collaborative scholarship.¹⁹

Interdisciplinary learning can help improve the problem-solving abilities of all of the professions participating in the program. An interdisciplinary approach to learning helps law students prepare to deal with real-world situations – because real clients do not present problems with the cut-and-dried fact patterns of appellate cases.²⁰ Exposure to HeLP Clinic clients helps medical students and residents appreciate the barriers many patients experience when trying to comply with a prescribed treatment plan. Noncompliance may be caused by lack of funds, lack of understanding, or lack of transportation rather than disregard. Most of the interdisciplinary learning students engage in under the HeLP Clinic model takes place outside the classroom, and is reinforced during joint classes, interdisciplinary case rounds, and interdisciplinary team meetings. The goal of these varied interactions is to expand students' problem-solving abilities through exposure to the thinking process of different professions while working jointly to solve a single problem. The interdisciplinary approach also forces students from both the health and legal professions to consider their patient/client in the context of the client's life. For lawyers, this can mean understanding that the client has a medical condition that impacts the nature and purpose of the representation. For physicians, it can mean understanding that there may be legal remedies or legal issues intertwined with the client's illness.

The HeLP Clinic Course

The HeLP Clinic is structured as a one-semester, three credit course offered by Georgia State University College of Law to law students.²¹ Students who wish to continue beyond the first semester to deepen their learning may enroll for a second semester. Like most law school Clinics, the course is designed to teach lawyering skills by connecting theory and practice via direct client interactions. All cases referred to the HeLP Clinic come from the hospital based law offices of HeLP.²² Although the cases handled by the staff attorneys at HeLP cover a broad range of civil legal problems, the cases typically referred to the HeLP Clinic are limited to children's disability

19 See, Lisa Bliss, Sylvia Caley & Robert Pettignano, *Client and Patient Relationships: Understanding Cultural and Social Context*, in POVERTY, HEALTH AND LAW at 125-156 (Elizabeth Tobin Tyler et al. eds., 2011); Lisa Bliss, Sylvia Caley & Robert Pettignano, *An Interdisciplinary Collaborative Approach to Wellness: Adding Lawyers to the Healthcare Team to Provide Integrated Care for Patients*, INT'L J. HEALTH, WELLNESS & SOC'Y, no. 2, 2011, at 129; Lisa Bliss, Sylvia Caley & Robert Pettignano, *A Case for Including Lawyers on the Care Team*, PHYSICIANS EXEC. J., Mar.-Apr. 2011, at 34; Robert Pettignano, Sylvia Caley & Lisa Bliss, *Medical Legal Partnership: Impact on Patients with Sickle Cell Disease*, PEDIATRICS, Nov. 14, 2011, at e1.

20 Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. U. J.L. & POL'Y 11, 37 (2003).

21 The course is open for cross-enrollment by students from the schools of nursing, psychology, and public health. To date, one public health student has enrolled in the clinic. Two additional public health students are working with HeLP and the HeLP Clinic as part of their educational requirements.

22 Healthcare providers at Children's Healthcare of Atlanta, including attending physicians, residents, social workers, nurses, and therapists refer patients and families experiencing legal problems affecting the health and well-being of the patient to HeLP. During the weekly new case acceptance meeting HeLP staff triage cases to determine whether the potential client is eligible for HeLP's free legal assistance and if yes, to decide placement of the case. Options include providing direct legal assistance, referring the case to a volunteer attorney, providing self-help assistance, and referring the case to the HeLP Legal Services Clinic for supervised student representation.

claims, Medicaid and other health insurance claims, housing conditions cases, education cases, and wills. Because the cases are referred to the Clinic through the main office of HeLP, all of the cases involve a child who has a health condition that is being treated by HeLP's partner, Children's Healthcare of Atlanta.²³

Students in the HeLP Clinic work in pairs under the close supervision of Clinic faculty. Pairs meet at least once a week with their assigned Clinical supervising faculty. Like many Clinical courses, the law students meet before the semester begins for a day-long orientation program, and the early course sessions are focused on interactive simulations to teach skills of interviewing, counseling and negotiation. Classes meet biweekly. The classroom simulations are specifically designed to incorporate issues that are common to the HeLP Clinic caseload. The simulations all involve matters in which a parent of a very ill child is seeking legal assistance for housing, access to care, educational services, employment, disability, or wills and advance directives.²⁴ Students are also specially trained to do interdisciplinary research using medical research databases. These resources can be helpful to law students in understanding their clients' diagnoses, and also in determining what evidence might be necessary to support their cases or claims.

The course emphasizes the development of skills in client interviewing and counseling, fact finding and analysis, legal research and document drafting, pursuit of administrative and other legal remedies where appropriate, and creative problem-solving for the benefit of clients.²⁵ However, through the HeLP Clinic model, students learn these skills in the context of interdisciplinary team and group work, with an emphasis on interdisciplinary collaboration and problem-solving.²⁶ This interdisciplinary collaborative work takes place in the classroom, in supervision meetings, at hearings, or in meetings with clients. Students also gain exposure to the terminology and culture of various healthcare disciplines, especially the medical profession.

Developing an Interdisciplinary Course

The HeLP Clinic was created as the result of an award of a grant to establish an experiential learning program for law students to address and develop the educational mission of the medical-

23 There is some debate about whether legal clinics best serve their dual mission of educating students and providing legal services via specialization or general practice. Despite a general trend towards specialized legal clinics, Antoinette Sedillo Lopes argues that clinics achieve their dual goals of legal skills training and social justice when they serve a particular community or client base. This approach provides both greater access to legal services for the community while enabling students to observe widespread inequalities in the legal system and develops creative problem-solving skills. 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, 325 (2001).

24 See also Gunsalus, *supra* note 3, at 444.

25 Clinical educators have noted that "one discreet skill that is essential and often under-emphasized" in traditional law school curriculum "is listening, especially as it relates to interviewing. Our experience shows that professional training related to interviewing, across disciplines, emphasizes the drafting of questions, acquiring methods of asking questions in order to obtain particular answers and efficiently documenting information obtained." V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multi-disciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 90-91 (2002).

26 Such an approach also benefits the clients served by such clinics by enabling the lawyer and the treating medical professional to see the client's legal goals and health needs as interrelated, thus both empowering the client/patient while also providing therapeutic benefits. Susan Daicoff, *Law as a Healing Profession: The "Comprehensive Law Movement"*, 6 PEPP. DISP. RESOL. L.J. 1, 12 (2006).

legal partnership. From the outset the goal was to incorporate interdisciplinary learning into the Clinic. Building relationships and establishing trust are key to success in any collaborative venture. Because relationships take time to build and strengthen, the interdisciplinary components of the HeLP Clinic course were developed over time, through multiple connections. A pivotal event for the Clinic was the selection of a Medical Champion for HeLP.²⁷ The Medical Champion immediately became engaged in operationalizing the many interdisciplinary aspects of the HeLP Clinic.²⁸ As an initial matter interdisciplinary education meant creating collaborative experiences among different disciplines, invariably from different academic institutions. In addition to the College of Law, Georgia State University has schools of public health and social work, but no medical school. Therefore, the HeLP Clinic faculty reached out to the two medical schools located in Atlanta: Emory University School of Medicine and Morehouse School of Medicine.

Creating joint experiences with medical students and residents has proved challenging due to differences in schedules and program requirements for law students, medical students, and residents. Because the social work and public health students are also from Georgia State University, students from those disciplines have been more easily incorporated into the HeLP Clinic course. The willingness of the medical education partners from Morehouse School of Medicine and Emory University School of Medicine to be flexible and experiment with different kinds of joint learning opportunities has resulted in the development and growth of interdisciplinary education experiences for law students, medical students, and residents. There are natural complexities inherent in combining students from the three academic centers. Nevertheless, the positive response from law and medical students makes it clear that the interdisciplinary elements of the course should be continued.

Introducing Law Students to the Hospital Environment

Many law students have never set foot in a hospital. Those who have likely did so as a visitor. A small handful may have been admitted as patients, but almost none have participated on the provider side of health care. Even before the semester starts, law students are exposed to the pediatric hospital environment. In order to be allowed access to the hospital, hospital regulations require that HeLP lawyers, staff, and students obtain the same immunizations as required of other

27 “Medical Champion” is a term of art suggesting a person in the medical field (usually a physician) who is the lead medical partner in the partnership. The role of the medical champion varies; however, generally it encompasses responsibility for medical direction and interpretation of medical data as it relates to the cases referred to HeLP and the HeLP Clinic. In HeLP, the medical champion dedicates a significant amount of time to cultivating relationships to increase awareness of the partnership and its goals to all members of the medical staff.

28 The Health Law Partnership began as a lawyer-driven medical-legal partnership. Law faculty from Georgia State University College of Law, lawyers from Atlanta Legal Aid Society, and the General Counsel at Children’s Healthcare of Atlanta conceived the vision and worked to bring the project to life. While HeLP achieved great successes in the early years, dynamic progress began with the identification of the physician medical champion. This physician embraced the mission of HeLP and the HeLP Clinic and set about opening doors, creating opportunities, making introductions, cajoling colleagues, giving presentations, developing hospital experiences for law students, and attending clinic classes.

hospital personnel.²⁹ Children's at Hughes Spalding is conveniently located near the Georgia State University College of Law campus so students' introduction to the healthcare environment continues via a hospital tour by the Medical Champion for HeLP.³⁰ The tour includes the emergency department where the students later will hold office hours, the primary care Clinics, and the inpatient areas of the hospital. The Medical Champion also educates students about the history of the hospital, the demographics of the patient population served at Children's, and about the specialty Clinics and centers specifically developed to address the needs of children seen at this inner city hospital. The tour is the first chance for many Clinic students to be exposed to a pediatric hospital and to the referral source for their clients. Our goal in walking students through the hospital, and introducing them to the hospital environment, is to begin to help students become comfortable inhabiting another professional environment – one in which their service on legal matters is a component of patient service. The tour assists in accomplishing another goal: getting members of the hospital team familiar with seeing lawyers and law students in their surroundings. Bilateral familiarity facilitates communication, the identification of patients experiencing both medical and legal problems, the efficient referral of those in need of legal services to HeLP, and the establishment of interdisciplinary collaboration.

A Rounds Exchange: Pediatric Residents from Emory School of Medicine

Through the HeLP Clinic, law students learn about the training and professional lives of pediatric residents, and vice versa. Pediatric residents from Emory University School of Medicine collaborate with law students in the Clinic case rounds. HeLP Clinic case rounds provide an opportunity for the whole class to meet to discuss Clinic cases. All cases assigned to the Clinic may be discussed at case rounds at some point during the semester. These group discussions focus on legal, ethical, medical, and other issues arising from client representation in the context of a medical-legal partnership. During rounds, the group may collaborate to resolve a problem, debate an ethical issue, or collaborate in the performance and critique of mock counseling sessions, moot hearings, or other aspects of case work. Case rounds are held approximately seven times during the semester. The rounds classes help students explore and deepen their understanding of the benefits of interprofessional problem-solving.³¹ Pediatric residents attend rounds and participate in the case discussions. The discussions are focused on different educational goals for the Clinic

29 Because students will be in the hospital, in close proximity to members of the health team and to patients and their families, they must be tested to ensure they have not been exposed to tuberculosis, that they have adequate immunization against common childhood diseases and that they have immunization against flu and hepatitis B. Before being permitted to enroll, students are tested and must show proof of the required immunizations to the hospital's office of Occupational Health.

30 Dr. Robert Pettignano, the Medical Director for Children's at Hughes Spalding Hospital and HeLP's Medical Champion, orchestrates students' introduction to the hospital environment. He works closely with HeLP clinic faculty and law students to create an interdisciplinary learning environment at the hospital.

31 Rounds offer many benefits for legal education, insofar as students combine "what they know about research methods with the clients' experiences. In rounds, students explicitly build on one another's knowledge. Learning located in experience is powerful; once students integrate learning into prior experiences they recall it more readily and can use it effectively." Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195, 208 (2007).

and are geared toward problem-solving of both legal and medical issues for clients.³² By attending interactive case rounds, the residents learn about legal issues that affect their patient population, share medical knowledge pertinent to the Clinic cases, and gain a deeper understanding of the legal system. The de-identified clients and cases under discussion represent the very same patient population they are treating, complete with all the same challenges. The residents' attendance and participation in HeLP Clinic rounds satisfies two of the core competencies that they must attain during their three-year residency.³³ Emory residency program directors³⁴ require that each pediatric resident attend one case rounds class. However, many have returned voluntarily two, three or more times because they find the experience rewarding. These residents are the next generation of health care providers and expanding their awareness of the socioeconomic determinants of health is a best practices endeavor. Once exposed to the discussion of HeLP Clinic cases, residents often begin to appreciate the value of interdisciplinary discussion and holistic problem-solving. Students, residents, and faculty alike agree that case rounds is the most dynamic example of the interdisciplinary learning environment the HeLP Clinic aspires to achieve.

The rounds exchange is completed as law students make their way over to the hospital to join one of the faculty attending physicians³⁵ as he or she makes daily patient rounds with the pediatric residents. At the hospital, law students are exposed to the dialog, language, learning, and problem-solving process that takes place during rounds and medical training. They also learn about individual diseases and the process of diagnosis in medicine. Law students are invited to ask questions and participate actively in rounds. Their presence reminds the attending physician and residents that a previously untapped resource exists for families who may have a legal problem affecting the health or well-being of the patient. For example, students attending patient rounds have suggested to the attending physician or residents that an asthma patient's family be referred to HeLP for a consult regarding housing conditions that may be impacting the child's disease.

Law students generally react favorably to this experience. The rounds serve not only as an opportunity for the attending physician to teach residents, but also an opportunity for the residents and law students to teach and learn from one another. Participating in rounds allows law students to see how patient care is coordinated and how medical professionals communicate with one another to help patients get well. By joining patient rounds, law students gain a greater appreciation for what it is like to work in the hospital environment, and learn how medical professionals solve patient problems.

32 Goals to be achieved during case rounds include developing professional identity, appreciating the ethical frameworks of the different professions, focusing on client-centered lawyering techniques, understanding complex medical diagnoses that affect the legal services to be provided, developing and improving effective communication skills, and developing appropriate professional boundaries.

33 These competencies are set by the American Council of Graduate Medical Education, <http://www.acgme.org>.

34 The authors would like to extend their gratitude to Dr. Lynn Gardner, Associate Director, Pediatric Residency Training Program, Emory University School of Medicine, and Dr. Susie Buchter, Director, Pediatric Residency Training Program, Emory University School of Medicine, for their dedication to excellence in medical training and the pursuit of innovation in resident education.

35 An attending physician is one "having the privilege to admit patients to a particular hospital and to treat them during their stay at the hospital or a physician on the staff of a hospital, but not residing in the hospital, who treats patients admitted to the hospital by the hospital itself (rather than by a private practitioner) and also instructs the interns and residents with regard to treatment of such patients." J.E. SCHMIDT, ATTORNEY'S DICTIONARY OF MEDICINE (1997).

Intake Mondays: Law Students in the Hospital

In addition to attendance at hospital patient rounds, law students enrolled in the HeLP Clinic continue their hospital experience by taking turns covering shifts for a program called “Intake Mondays.” Law students are trained to perform initial client intake interviews and then are allowed to do so in the Emergency Department (ED) and the Primary Care Clinic at the hospital. During their shift, students set up in a dedicated workspace either adjacent to the main nurse’s station in the hospital emergency department or in the residents’ workroom. Students first greet the nurses to remind the nurses that they are available to conduct initial intake interviews with patients identified as having legal problems and in need of referral to HeLP. The law students are also available via an on-site wireless telephone for a referral from one of the other care Clinics inside the hospital. There is a private consultation room available for client interviews when a client is referred. The purpose of this exchange is twofold: to provide students with an opportunity to perform initial interviews of potential Clinic clients within the hospital, and to provide hospital patients with the opportunity to directly access legal services while their child is getting medical care. Students also learn communication skills since they are often asked by hospital visitors and staff why they are in the hospital. Law students are trained to educate anyone who may ask about the Health Law Partnership, the HeLP Clinic, and our goal of collaboration to address the socioeconomic determinants of health for children.

Encouraging healthcare providers in the hospital to use the law students as a resource to perform legal intakes has taken time. This is due to multiple factors including the fast pace and the number of patients seen in the ED and the Primary Care Clinic on a daily basis, the fact that performing a “legal checkup” has not been ingrained into the fabric of the medical interview, and the time it takes to educate the hospital staff about the purpose of the law students’ presence. In spite of the challenges, the program has proved beneficial to students, even in its early stages. During their time in the hospital, students observe the nurses and doctors in their interactions with each other and the patients and reflect on those observations in class.

Over time, the purpose of having law students in the hospital is becoming better understood by the hospital staff. Slowly they are becoming part of the fabric by which holistic service is delivered at Children’s at Hughes Spalding. Residents now take the time to chat with the law students on duty. Many of these residents have participated in Clinic case rounds at the law school and encountering the law students in the hospital further solidifies the benefits of interdisciplinary, holistic problem-solving on behalf of patients/clients. Law students and medical professionals are finding opportunities to learn from one another formally, as well as informally. As familiarity with the program has increased, the number of legal referrals and intakes also has increased.

Joint Classes: Third Year Medical Students from Morehouse School of Medicine

During the early development of the HeLP Clinic course, Clinic faculty approached the Director of Predoctoral Education at the Morehouse School of Medicine Department of Pediatrics to

explore collaborative opportunities.³⁶ The parties agreed to pursue the creation of joint class experiences for law and medical students. The collaboration began with four joint classes between HeLP Clinic students and third year medical students. All HeLP Clinic students go to Morehouse twice each semester and attend “Fundamentals of Medicine III,” a mandatory, year-long class for all third year medical students. Attendance at these joint sessions is also mandatory for HeLP Clinic students. The HeLP Clinic faculty and Morehouse faculty have collaborated to develop the curriculum for these joint sessions, which are co-taught by faculty from both schools. The classes are interactive, often involving small group work and discussion.

Bridging Professions: Introducing Law Students and Medical Students to One Another

Combining a class of medical students and law students requires an introductory activity to help bridge the gap between the two professions and help the students to become comfortable with the idea of collaborating with one another. Putting these two groups of students together is something akin to an arranged marriage: both sets of parents think the pairing will be a success based on attributes that the parties may have in common, but the actual introduction and beginning interaction between the parties can be awkward and uncomfortable. We expected this and created some activities to help create a bridge during the first meeting of the two groups.

The first exercise is called “Who are we?” In this exercise the students are asked to form small groups within their own disciplines. The law students are asked to brainstorm answers to the question, “As a patient, I would like my doctor to be _____.” The medical students are asked to brainstorm answers to the question, “As a client, I would like my lawyer to be _____.”

After a few minutes of small group work on this task, the whole group comes together. The faculty writes on the board “Doctors” and begins by asking law students to name the qualities they discussed in their small group that they would like to have in a doctor. Characteristics such as “educated,” “sensitive,” “caring,” “not charge too much,” “not make me wait,” etc. are quickly accumulated and written on the board. If a law student makes a comment that implies a judgment, negative assumption, or stereotype about the medical profession, he or she is pressed to say more about it and the assumption is explored.

Next, the faculty writes “Lawyers” on the board, and the medical students are asked to identify the qualities that, as a client, they would like to see in their lawyer. Similar ideas generally surface, and the faculty facilitator begins to make connections about the two professions and the clients and patients we serve. The medical students often state they would like their lawyers to be “tenacious,” “on my side,” “honest,” etc. Judgments, stereotypes and negative assumptions about the legal profession are similarly explored, and lines drawn between the similarities on both sides of the board. Finally, all students are asked to reflect and comment on why they think they were asked to perform this exercise. This is the point at which law and medical students begin to warm to one another, and begin to discover that they may share some common ground, not only in what they expect from one another, but what is expected of them. It is also here that the first examples of

36 The authors would like to thank Dr. David Levine, Professor of Medicine and Chief, Division of Predoctoral Education, Morehouse School of Medicine for embracing the opportunity to participate with HeLP Clinic faculty in creating interdisciplinary learning opportunities for medical students and law students.

the benefits of interdisciplinary education become evident.³⁷ After the first class, students begin to think about the other profession's rules and beliefs, and the window to develop appreciation and respect is opened.

A striking aspect of the joint sessions is the realization that the medical students and law students have much in common. Generally, they chose their professions because they wanted to help people. Most chose their specific school because of the focus on service and giving back to the community. Both groups of students are learning about health disparities and the effect of socioeconomic determinants on the health of vulnerable populations. The joint classes afford yet another opportunity to influence the professional development of the next generation and better prepare them for twenty-first century professional practice. These joint classes contribute to an overall program of best practices in professional education of law and medical students.

Elective Rotation in the HeLP Legal Services Clinic: Fourth Year Medical Students in “Law and Medicine”

Building upon the success of the joint classes in the third year, a subsequent course was developed for fourth year medical students from Morehouse School of Medicine. The course, “Law and Medicine,” is an elective rotation.³⁸ Students who choose “Law and Medicine” participate in the HeLP Clinic and HeLP activities for four weeks, forty hours per week. Up to three medical students are permitted to participate in any given rotation to ensure an optimal rotation. Because the medical school schedule does not sync perfectly with the law school schedule, medical students are given a brief training and then folded in to whatever activities are happening in the Clinic at the time of their rotation. This could be at the beginning, middle or end of the semester. The medical students are assigned to different supervisory teams and attend weekly team meetings with law students. They also engage in case work with students, do medical research, and interpret medical records and legal rules that may have a medical component. They attend case rounds, case hearing moots, and even case hearings. One group of medical students was able to attend a federal appellate court oral argument on a case dealing with an access to healthcare issue that affects many of HeLP's clients.

The Law and Medicine elective is part of a continuum. For Morehouse students, an integral aspect of the medical school curriculum is understanding and addressing health disparities. By the time HeLP Clinic faculty and students meet third year medical students in the “Fundamentals of Medicine III” class, the medical students already are developing awareness of the need for community solutions to patients' problems. The FOM class opens that window for collaborating directly with lawyers and law students to address health disparities more holistically. The entire third year class is exposed to the message. While fourth year medical students clearly self-select to enroll in the Law and Medicine elective and only a limited number do so, information about their experiences and the value of the time spent at HeLP and the HeLP Clinic spreads throughout

37 Some other benefits of interdisciplinary education have been identified as the development of “necessary analytical skills; necessary practical skills; teamwork training; future marketability; recognition of the increasing client desire for one-stop shopping; understand... roles... knowledge of the limitations of legal training; and adding fun to the classroom.” Connolly, *supra* note 20, at 36.

38 The authors, Lisa Bliss and Sylvia Caley, were appointed as Adjunct Assistant Professors in the Department of Pediatrics at Morehouse School of Medicine and are the Supervisors of this elective rotation.

the class. A form of indirect “learning by association” takes place. Morehouse graduates begin their professional careers as physicians and surgeons appreciating the utility of comprehensive solutions to patients’ problems. The law students, who experienced the opportunity to work shoulder-to-shoulder with medical students in the HeLP Clinic, feel both valued and hopeful that relationships between lawyers and doctors will be more collaborative in their generation of professional practice.

Student Assessment

The HeLP Clinic course is three credit hours of the ninety credit hours students must successfully complete to be eligible for a juris doctor degree. Unlike some experiential learning opportunities that are pass/fail, this course is graded. Law students in the Clinic are assessed in their performance of the multiple learning objectives of the course, including professionalism in relationships and client-centered practice, legal problem-solving, research and writing, professional identity and independent learning, ethical and professional practice, case management, and course participation and collaboration with legal and other professionals.

The only other professional students who receive formal assessment of their HeLP Clinic participation at this time are the Morehouse School of Medicine fourth year medical students who enroll in the Law and Medicine elective. The medical students are evaluated on Clinical utilization of knowledge, academic preparedness, oral presentations, case notes, interpersonal relationships, insight, student effort, reaction to supervision and overall performance. This elective is pass/fail.

Challenges of the HeLP Clinic Model and Opportunities for Further Development

Many of the components of the HeLP Clinic that make it unique and exciting also provide challenges in keeping the program manageable and cohesive. Involving medical students and residents from two different medical schools in different and meaningful ways can be difficult to coordinate. Law students, medical students, and even the residents sometimes experience a feeling of “culture clash,” when they are first asked to learn together. While the Clinical law students are required to journal about their experiences engaging with the medical culture and their observations, up until now there has been no formal journal requirement for the medical students. Medical school may not encourage this kind of reflection, but we have decided to incorporate a reflection component for the medical students participating in the four-week elective. The only feedback received from medical students taking the elective thus far is through the course evaluation forms. However, medical students have responded positively to the course overall. While their comments are encouraging and helpful, a more guided reflection about the experience of medical students may reveal more about the value of the course to them and the faculty.

Another challenge that has been identified is the cultural differences in the amount of class preparation engaged in by law students and medical students. Even though the preparation time required for the joint classes is deliberately kept to a minimum, some is expected. Generally, the law students arrive prepared to discuss a short reading or prepare in advance an assignment to write a brief paragraph that contains as much legal jargon as possible, which they will share with the medical students. By comparison, the medical students are not accustomed to doing a great deal of class preparation for this particular course, and are more likely to prepare on the spot while

class unfolds. Some law students have commented on the differences between the two professions on the issue of preparing for class.

Finding sufficient time to cover all the useful topics and to practice skills exercises remains a challenge. Given the small number of credit hours allocated to the HeLP Clinic course, it is difficult to approach the course itself with depth. An enormous amount of material is covered together with the multiple interdisciplinary experiences, which can be viewed as “too much of a good thing.” Although it may be possible to add more credit hours for the law students who enroll, it may not be possible to increase the amount of time spent by the medical students and residents, who have their own professional and educational requirements to satisfy.

Other challenges exist with the development of the Intake Monday rotation. Some students were able to do client intakes during their shift at the hospital and some were not. Some enjoyed being part of the busy ED and Primary Care units, but others felt the time spent was not meaningful unless they actually had a client, and there is no way to control for this possibility. On the other hand, while law students tend to see this experience only through the lens of how it may benefit their own experience, from the medical side the benefit of their presence is to remind medical providers that legal service is available for patients who need it. The intake program was retooled to incorporate the hospital primary care Clinic, while also serving ED patients when needed. Over time this location may be a richer source of referrals and thus client intake opportunities for students.³⁹

The best opportunities for deep, meaningful joint experience have arisen from the Morehouse School of Medicine Law and Medicine elective rotation for fourth year medical students and the rounds exchanges for pediatric residents from Emory University School of Medicine. The intensive immersion of students enrolled in the Law and Medicine elective allows the law and medical students to experience working together on cases, and to learn through experience how they can be of help to one another. It also gives them opportunities for informal, friendly conversations, which helps to build bridges between the professions. Occasionally, deeper bonds develop. In the age of social media, it may be significant that the law and medical students have become Facebook “friends,” and stay in touch with one another long after their time together in the Clinic has ended.

The future opportunities for development of the HeLP Clinic are unlimited. For the first time, during the fall semester 2011, the HeLP Clinic served as a placement for a Master of Social Work student who is working in the Clinic sixteen hours per week providing case management services on behalf of Clinic clients. This proved to be a valuable service for Clinic clients and another chance for law students to work side by side with another professional. Also, during the fall semester of the academic year 2011-12 two Master of Public Health students fulfilled their practicum placement requirements by working in the HeLP Clinic. Again, these students brought yet another perspective to the issues affecting low-income, chronically ill, or disabled clients. Beginning in

³⁹ Children’s Healthcare of Atlanta at Hughes Spalding hospital was constructed with an open floor plan on the first floor of the hospital to house the Emergency Department, the Urgent Care Center, and the Primary Care Center (PCC). Patients flow between the three areas based on the acuity of their health situation and patient census. If a patient presents in the ED in stable condition and also is treated in the Primary Care Center, the patient will be moved to the PCC for assessment and treatment with their primary care physician. The open flow provides a good opportunity for the law students to be easily accessible to both members of the healthcare team and families in multiple contiguous areas.

January 2012, a neonatologist attending physician working on a Master in Bioethics degree spent 150 hours working with HeLP Clinic faculty and students. The ethics discussions in case rounds were very rich. By building bridges, being open to opportunities, and effectively communicating the benefits of collaboration, the HeLP Clinic truly has become an interdisciplinary enterprise.

Conclusion

The course is evolving as the partners continue to deepen their relationships. Feedback in the form of formal course evaluations, the HeLP evaluation instrument, and informal exit interviews of the law and medical students assists the faculty in implementing changes and validating successes of particular class sessions. With the number of people participating, new ideas continually become apparent, and the faculty share a willingness to experiment with new ways of doing things. While this means that the course and its components are in a constant state of flux, and materials must be redeveloped on an ongoing basis, the rewards that come from seeing new ideas take root more than make up for the trouble it takes to reinvent things. The revelation that sprouts from the ever changing environment of interdisciplinary work is that it is never static, and the number of players and disciplines moving in and out of the project creates opportunities for invention. As such, it provides constant fertile ground for ideas to emerge about the development of education for each profession, and ways in which students can engage with one another to become better doctors, lawyers, social workers, and public health professionals. An ongoing opportunity exists therefore for each type of student to become prepared for the practice of their profession in a fast moving, ever changing modern world.

The Opportunities and Challenges of an Interdisciplinary Clinic

Paula Galowitz

Introduction

Law school clinics in many countries increasingly provide the major opportunities that law students have to engage in interdisciplinary collaborations with other professionals.¹ The collaboration may be with a wide range of professionals, such as: doctors and medical students; social workers and social work students; business school students; engineering faculty and students including biomedical engineering students; nursing students; and experts in public health, education, mental health or palliative care.² It can occur in diverse contexts or targeted to specific populations, such as children, the elderly, victims of domestic violence or low-income business owners.

Some examples of these interdisciplinary clinics illustrate their variety. Clinical legal education initiatives in South Africa, Thailand and Ukraine promoted public health through programs that partnered with the Law and Health Initiative of the Open Society Institute's Public Health

1 One of the ways in which the practice of law, including public interest law, is changing in this century is the increased focus on interdisciplinary and collaborative lawyering. See Karen Tokarz *et al.*, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 Wash. U. J.L. & Policy 359, 362 (2008).

2 Although beyond the scope of this article, the literature on interdisciplinary higher education generally is insightful and has implications for legal education. See, e.g., Elisabeth J. H. Spelt *et al.*, *Teaching and Learning in Interdisciplinary Higher Education: A Systematic Review*, 21 Educational Psychology Review 365 (2009), available at <http://www.springerlink.com/content/k737068167hl2007/fulltext.pdf>;

Martin Davies and Marcia Devlin, *Interdisciplinary higher education: Implications for teaching and learning* (Centre for the Study of Higher Education, The University of Melbourne, 2007) available at http://www.cshe.unimelb.edu.au/resources_teach/curriculum_design/docs/InterdisciplinaryHEd.pdf

Information about interdisciplinary models of service learning in higher education is available at the National Service-Learning Clearinghouse at http://www.servicelearning.org/instant_info/fact_sheets/he_facts/interdisciplinary (last visited on June 3, 2012).

Programs.³ In South Africa, palliative care was integrated with legal services; law students worked with staff at a hospice association to conduct workshops on wills, debts and family law for hospice caregivers.⁴ In Ukraine a Medical Law Clinic was started to advise and represent clients; in Thailand a law clinic wrote an HIV/AIDS Community Legal Education Manual, collaborated with organizations working on health and human rights issues to discuss harm reduction and incarceration, and implemented community education programs in prisons, detention centers and community centers.⁵ At Palacky University in the Czech Republic a new Patient's Rights Legal Clinic, which prepares students to give legal advice, is taught by lecturers of the medical faculty and lawyers from a human rights non-profit.⁶ A clinic in the United States provides business planning and legal advice to small businesses; law and business students collaborate to assist with community economic development.⁷ Another United States clinic combines students in law, business, medicine, social work, biomedical engineering, and arts and sciences in a collaboration focused on intellectual property and business formation, with an emphasis on biodiversity and agricultural-biotechnology innovations.⁸

These clinics teach students to represent clients effectively and offer the possibility to advance social justice. The nature of these collaborations varies considerably, from the kinds of professionals that collaborate to the nature of the populations served.⁹ They provide an opportunity for a range of services beyond the representation of individual clients. The interdisciplinary clinics also create

3 For a discussion of these clinical legal education initiatives, see Tamar Ezer *et al.*, *Promoting Public Health through Clinical Legal Education: Initiatives in South Africa, Thailand and Ukraine*, 17 *Human Rights Brief* 27 (2010). The objectives of these programs “range from legal empowerment of marginalized communities to client-centered services to norm-setting and policy advocacy. This diversity reveals the variety of methods through which law and health partnerships can improve global public health.” *Id.*

4 *Id.*

5 *Id.* at 27-28.

6 A description of the Patient's Rights Legal Clinic at Palacky University can be found at http://en.wikipedia.org/wiki/Centre_for_Clinical_Legal_Education_%28Palack%C3%BD_University,_Faculty_of_Law%29#Patient.27s_Rights_Legal_Clinic (last visited May 17, 2012). In addition, an interprofessional medico-legal problem-based learning program was developed for medical students and students of law at Palacky University. See http://oto.sagepub.com/content/143/1_suppl/124.1.full

7 See Susan Jones, *Promoting Social and Economic Justice through Interdisciplinary Work in Transactional Law*, 14 *Wash. U. J.L. & Policy* 249 (2004).

8 The Intellectual Property and Business Formation Clinic at Washington University in St. Louis is described in the article by Anthony J. Luppino, *Minding More Than Our Own Business: Educating Entrepreneurial Lawyers Through Law School-Business School Collaborations*, 30 *W. New Eng. L. Rev.* 151 (2007).

9 There are many articles that discuss these collaborations and aspects of these collaborations. For example, see Karen L. Tokarz, *Introduction to Poverty, Justice, and Community Lawyering: Interdisciplinary and Clinical Perspectives*, 20 *Wash. U. J.L. & Pol'y* 1 (2006) (series of conferences and scholarship on the “practical, pedagogical, ethical, and social justice aspects of interdisciplinary clinical teaching and practice”), *Id.* at 2; Alexis Anderson, Lynn Barenberg and Paul Tremblay, *Professional Ethics in Interdisciplinary Collaboratives: Zeal, Paternalism and Mandated Reporting*, 13 *Clinical L. Rev.* 659 (2007) (ethical issues in collaborations between lawyers and social workers); Rose Voyvodic and Mary Medcalf, *Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor*, 14 *Wash. U. J.L. & Pol'y* 101 (2004); Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 *Wash. U. J.L. & Pol'y* 195, 203 (2003).

linkages between schools within the university and initiatives for outreach to the community.¹⁰

Each of the professions in an interdisciplinary collaboration has its own culture, values and definitions of roles that impact effective collaboration. Exposing students to these different professional cultures can create opportunities for improved, more complete service for our clients, and for students to develop into more reflective practitioners as they use the other professions' approaches as a mirror to deepen reflections on their own professional role. The clinics also provide opportunities for clients/patients to be part of the collaborative team. Among the cultural challenges are conflicts around differing views of responsibilities to the client, duties of confidentiality, and what constitutes a conflict of interest.

This article focuses on one such collaboration: the Medical-Legal Advocacy Clinic, a medical-legal partnership in a law school clinic, in which law students and medical providers collaborated to address health care issues more effectively. That clinic, which I co-teach, is a medical-legal partnership with a multidisciplinary and holistic approach to provide legal advocacy in a medical setting for clients referred by medical professionals. The model of medical-legal partnerships is used in this article to examine the opportunities and challenges of interdisciplinary clinics for students, clients and faculty, and to provide a way to reflect critically on interdisciplinary clinics generally. In Section I, definitions of interdisciplinary clinics are discussed along with exploring reasons for their growth. Section II describes the attributes of and models for these clinics. The Medical-Legal Advocacy Clinic at New York University School of Law is discussed in Section III. Section IV addresses the opportunities of interdisciplinary clinics for students, clients and the faculty. Section V discusses the challenges of these clinics, including suggestions to address some of the challenges and enhance the opportunities of interdisciplinary clinics.

I. Definitions of Interdisciplinary Clinics and Reasons for Their Growth¹¹

Typically, an interdisciplinary¹² clinic is collaboration between or among law students and other students in professional schools, or other professionals, to help address the multidimensional problems faced by clients. It is a “multidisciplinary model [that] can respond to the myriad needs of those who are poor or marginalized by their social, medical or psychological circumstances.”¹³

10 See, e.g., Katherine C. Pearson and Lucy Johnston-Walsh, *Partners in Outreach and Advocacy: Interdisciplinary Opportunities in University-Based Legal Clinics*, 11 *Journal of Higher Education Outreach and Engagement* 163 (2006); Anita Weinberg and Carol Harding, *Interdisciplinary Teaching and Collaboration in Higher Education: A Concept Whose Time Has Come*, 14 *Wash. U. J.L. & Pol'y* 15 (2004).

11 There is a long history of lawyers and social workers working together to serve low-income clients. In the early 1900s, lawyers and social workers discussed whether to join forces and, if so, how. One of the original models for the provision of legal services in the 1960s involved the placement of such a program within a multi-service social service agency, premised on a belief that legal services could be part of an anti-poverty program. Since the beginning of the legal services movement in the 1960's, lawyers and social workers have worked together to address the legal needs of their clients. See, e.g., Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 *Fordham L. Rev.* 2123, 2130-31 (1999).

12 The terms “interdisciplinary” and “multidisciplinary” are sometimes used interchangeably but they have different meanings. “Multidisciplinary” implies that each discipline approaches issues from its own perspective, staying in its own “silo,” more akin to separate but equal, while “interdisciplinary” implies a more integrated teaming among disciplines. See R. L. Jessup, *Interdisciplinary versus multidisciplinary care teams: do we understand the difference?*, 31 *Australian Health Review* 330-31 (2007).

13 Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice—Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 *U. Colo. L. Rev.* 787, 792 (2002), cited in Ezer et al., *supra* note 3, at 27.

There are a number of reasons for the growth of interdisciplinary clinics. One is the crisis in many countries about the lack of availability of legal services in civil matters for indigent populations, leading to the need for new and innovative ways to deliver legal services. Another is the growing recognition that legal problems arise in larger contexts that require additional services and the clients' issues are not typically only legal in nature.¹⁴ Many clients have issues in which it can be difficult to separate the legal aspect from that which is typically associated with other disciplines.¹⁵ Professionals are increasingly aware that working together with other professions can better serve clients and improve outcomes.¹⁶ Leveraging limited resources can result in improved service for clients, where the professions working together can address problems more effectively than could be done by the professions working separately.¹⁷ In addition, there needs to be a "more conscious coordination and integration of delivery of services" to low-income communities.¹⁸ Non-lawyers can be important participants and actors in legal institutions¹⁹ and can help facilitate the interactions between the lawyer and the client.

II. Attributes and Models of Interdisciplinary Clinics

Certain attributes typify interdisciplinary clinics in which there are integrated interdisciplinary teams.²⁰ One is a shared expertise, so that it is not legally focused and lawyer-directed. In this model it is not just the other professions assisting the lawyer, but rather the lawyer and other professional undertake a joint approach. In addition, the collaboration uses and relies on the knowledge of all of the participating disciplines. It is important that the various professionals understand that there are many ways that the law can be part of a comprehensive approach to meet the needs of the clients: litigation is not the only way. An additional component of interdisciplinary service is a team commitment to the importance of developing creative approaches to assist clients. Moreover, there should be a structure that formalizes the relationship

14 Multidisciplinary practices for low income and middle income clients recognize the "centrality of nonlegal as well as legal needs and the barriers clients face in accessing legal services." Louise G. Trubek and Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 Clinical L. Rev. 227, 229 (2000). Some of the common elements in these collaboratives are shared expertise, the lawyer as both a professional and collaborator, and a long-range commitment to the client group. *Id.* at 257-63.

15 Mary Daly discussed this in the context of law and accounting and financial planning (Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 Geo. J. Legal Ethics 217, 222 [2000]), but it is even more applicable in the public interest arenas.

16 Multidisciplinary programs "offer a potentially significant advance in the way legal services are provided to low-income and other marginalized programs." Brustin, *supra* note 13, at 794.

17 For a discussion of the effective leveraging of limited resources in medical-legal partnerships, see Randy Retkin, Julie Brandfield and Margo Hoppin, *Medical-Legal Partnerships: A Key Strategy for Mitigating the Negative Health Impacts of the Recession*, 22 The Health Lawyer 29 (October 2009).

18 Schlossberg, *supra* note 9, at 210.

19 There is increasing recognition of "non-lawyers as important actors in legal institutions while simultaneously facilitating the engagement between lawyers and their clients." *Id.*

20 There are different models of interdisciplinary clinics. Three different models discussed in the literature are: 1) the "in-house" model in which clinical faculty include non-traditional legal skills such as community education and lobbying; 2) the "professional consulting/collaboration" model in which clinics use professionals from other disciplines on a consulting basis; and 3) an "integrated partnership model" in which professionals from different disciplines plan, develop and co-teach a clinic "to students from different disciplines who jointly provide legal and technical services to the clients of the clinic." Tokarz *et al.*, *supra* note 1, at 382-384. Instead of falling clearly within only one of these models, some interdisciplinary clinics can operate on a continuum. *Id.* at 384.

between the professionals and anticipates the possible problem areas in joint service provision.²¹ Some of the interdisciplinary clinics also pursue approaches that foster systemic change.

Although true for all clinical education programs, it is particularly critical in interdisciplinary ones that the goals and values of the program are transparent and agreed upon by the various partners. For example, the success of the interdisciplinary program in Windsor, Canada depended on a shared understanding of its goals and values, curriculum design that reflected those goals and values, and institutional support and sanction for the goals and values.²² Effective interdisciplinary models “minimize the limitations imposed by differing professional roles, the pressures of time, the vagaries of personalities, and the imbalances in collaborative practice that are a reflection of existing power imbalances between the...professions in our culture.”²³

III. Description of the Medical-Legal Advocacy Clinic at New York University School of Law: An Interdisciplinary Clinic

The opportunities and challenges of an interdisciplinary clinic for students, clients and faculty teaching the clinic are discussed, using the model of and through the lens of a medical-legal interdisciplinary clinic that I co-teach. The Medical-Legal Advocacy Clinic at New York University School of Law (hereinafter MLAC) is a medical and legal collaboration. Most of these medical-legal collaborations in the United States are partnered with legal services offices; only a relatively small number are clinics based at law schools as part of an in-house clinic.²⁴

The MLAC employs a multidisciplinary and holistic approach to provide legal advocacy in a medical setting for clients referred by medical professionals. Many legally-related issues can affect the health of low-income families and many of the problems that affect the health of the children and families have legal remedies. This clinic is a medical-legal collaboration to improve health outcomes for patients/clients by providing on-site legal advocacy and training to medical providers.

21 As stated by J. Michael Norwood and Alan Paterson in their description of a multidisciplinary practice in which the University of New Mexico Child Advocacy Clinic is the legal services provider, the professionals need to work out “an organizational structure that formalizes their relationship and addresses the complexities of responding to ongoing client needs in a manner that both maximizes efficiency of effort and minimizes ethical pitfalls.” J. Michael Norwood and Alan Paterson, *Problem-Solving in a Multi-Disciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9 *Clinical R. Rev.* 337, 357 (2002).

22 Voyvodic and Medcalf, *supra* note 9, at 102. This interdisciplinary clinic involving law students, social work students, lawyers and social workers had the following values: the joint effort of a university law school and government agency that links the clinic to professional education and engagement with social policy; service to low-income communities that shows a commitment to justice and social justice; an interdisciplinary approach that combines law with social work services; an inclusive range of services including casework, public legal education, community development and law reform activities; and a learning environment that suggests a balance between the academic curriculum and service to the community. *Id.* at 102-03.

23 Jacqueline St. Joan, *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 (2001). In this article, Professor St. Joan discusses collaboration between law students and social work students.

24 According to the website of the National Center for Medical-Legal Partnership, there are medical-legal partnerships at over 235 health institutions and, of those, fourteen are in law school clinics and sixteen, including two in Canada, are in law school externship programs. See <http://www.medical-legalpartnership.org/mlp-network/law-schools> (last visited May 17, 2012).

Jane R. Wettach discusses the model of a medical-legal partnership in a clinical setting, particularly one that focuses on education and government benefits. Jane R. Wettach, *The Law School Clinic as a Partner in a Medical-Legal Partnership*, 75 *Tenn. L. Rev.* 305 (2008).

In the first few years that the MLAC was taught, law students, who were in their second or third (last) year of law school, and pediatric medical residents (in the second and third year of a three year residency program after completing four years of medical school) collaborated to address more effectively the health issues of their clients/patients. The medical residents were in the Residency Program in Social Pediatrics at Montefiore Medical Center in New York City. These residents intend to practice in clinical practice, community health and advocacy; they spend a significant part of their clinical time in their second and third years of residency in a federally-funded community health center serving primarily low-income African-Americans and Latinos. The patients of the community health center present a multitude of psychosocial issues, including family disruption (due to illness, incarceration, violent injury, child abuse and/or neglect), poor housing, unemployment and poverty, domestic violence, lack of access to health care, and immigration problems. Many legally-related issues can affect the health of the patients of the community health center, such as: asthma triggered by mold from leaky ceilings or rodent infestation; lead poisoning from paint not removed; burns caused by families heating apartments with stoves; and children who suffer due to insufficient nourishment. The patients of this community health center were referred by the medical residents to the law students for assistance.

The law students and the medical residents were trained together to practice an interdisciplinary and holistic approach to their patients/clients. The program was planned jointly by me and Iman Sharif, M.D., M.P.H., who was then Associate Director of Residency Training in Social Pediatrics and Associate Professor of Clinical Pediatrics at the Albert Einstein College of Medicine/ Children's Hospital at Montefiore Hospital. Dr. Sharif had initiated the collaboration; she had heard about medical-legal partnerships and wanted to start one with the social pediatric residents at the community health clinic as the medical partner. She contacted the clinical faculty at NYU School of Law and, as a result, I began working with her to plan the program. As part of developing the program, Dr. Sharif and I had to learn to collaborate, including understanding each other's language, culture, ethics, professional values, and approaches to our clients/patients.

In the clinic seminar, the law students and medical residents learned together. They met for eight two-hour joint seminars over the course of the law school semester, covering such topics as: collaboration and interdisciplinary work; ethics and confidentiality; asthma and environmental triggers; substantive law training on advocacy; early childhood education advocacy; lobbying training; holistic advocacy; and health law. The joint seminars were co-taught with Dr. Sharif. For each joint seminar, the law students and medical residents were given readings and learning objectives. Seminar speakers included practicing doctors, ethicists, lawyers, social workers, and leaders from child advocacy and legal advocacy.

The fieldwork had a three-fold approach: 1) direct client representation; 2) education of the medical residents and other health professionals about how to identify legal issues and incorporate advocacy into their treatment plans, as well as education of the clients/patients about their legal rights; and 3) identifying and exploring health care issues and presenting interdisciplinary strategies to address the issues. For the direct client representation, procedures were implemented to enable the medical residents and faculty at the outpatient community health center to refer patients to the law students for legal advocacy. Each week, law students provided a free legal clinic for clients referred by the medical residents. A joint electronic account was created to allow the doctors to schedule the legal appointments for their patients, after obtaining the consent of their patients. Legal assistance was provided on such areas as housing, government benefits, education and other

issues that had an impact on the family's health. Before the fieldwork began, we discussed with the medical residents areas in which the law students could provide legal services and those that they could not (e.g., if the patient wanted to sue the doctor or needed representation in a lawsuit by the hospital for payment of a medical bill). Although we tried initially to limit our legal services to a few areas (to enable the law students to develop expertise in those areas), they were expanded to better serve the needs of the clients in a holistic manner.²⁵

In addition to the joint seminar and the referral of cases, there were other parts of the collaboration. The law students developed policy projects by identifying and exploring health care issues and presenting interdisciplinary strategies to address those issues; students presented those policy projects at a joint seminar of the law students and medical residents. The law students and medical residents, after receiving joint training on how to lobby legislators, participated in an all-day lobbying effort of state legislators at the New York State capital in Albany, New York on an issue affecting their patients/clients. At the beginning of the semester, the law students and medical residents together observed proceedings in Housing Court. In addition, there were a few informal gatherings outside of class to help build rapport and relationships.

IV. Opportunities

There are many opportunities and advantages presented by interdisciplinary clinics²⁶: for the students and professionals involved in the collaboration; for the clients/patients who are better served; for the faculty who create and participate in the interdisciplinary clinic; for the professions and educational institutions; and for the pursuit of justice.²⁷ "...[I]nterdisciplinary teaching and practice can promote collaboration, communication, cultural awareness, ethical understanding and justice."²⁸ These interdisciplinary clinics also address concerns about the narrowness of legal education and medical education raised in reports issued by the Carnegie Foundation for the Advancement of Teaching.²⁹ The opportunities in this section are subdivided into those applicable to students, clients and faculty; many of these opportunities apply to more than one of these categories.

25 As discussed in Section V (C), one of the challenges for the clinic was getting the students ready to represent clients in a variety of subject areas.

26 Some of the opportunities and challenges in interdisciplinary projects and classes are also applicable to interdisciplinary clinics. For very helpful discussions of the benefits and barriers to interdisciplinary law school courses, see Kim Diana Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 Wash. U. J.L. & Pol'y 11 (2003) and Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 Wash. L. Rev. 319 (1999). For a discussion of an interdisciplinary training program for law students and emergency medicine residents on domestic violence, see Antoinette Sedillo López *et al.*, *A Medical/Legal Teaching and Assessment Collaboration on Domestic Violence: Assessment Using Standardized Patients/Standardized Clients*, 14 IJCLE 61 (July 2009).

27 For other articles that discuss some of the advantages and disadvantages of interdisciplinary clinics, see, e.g., Luppino, *supra* note 8, at 163-179, 201-218; Jones, *supra* note 7, at 309-313; Voyvodic and Medcalf, *supra* note 9, at 116-27; Schlossberg, *supra* note 9, at 199-206, 212-226.

28 Tokarz, *supra* note 9, at 3.

29 William M. Sullivan *et al.* Carnegie Foundation for the Advancement of Teaching, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007); Molly Cooke *et al.*, Carnegie Foundation for the Advancement of Teaching, *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* (2010).

A. For Students

While there are many advantages for students in interdisciplinary clinics, there are six categories that I think are the most important. The first, and in some ways the most important, is the broadening of perspectives.³⁰ The law students and medical residents learned from each other and appreciated the differing professional cultures and skills as well as the problem-solving approaches of the other profession.³¹ As described by Professor Connelly:

Legal problems are like elephants; examining them from only one perspective gives a distorted image of the whole. In order to understand legal problems, lawyers often need to examine them from the perspective of multiple disciplines. Likewise, successful legal problem-solving sometimes means that lawyers need to be able to collaborate with other professional in order to address a client's problems.³²

The law students and medical residents began to understand what they had in common and not just what separated them. They learned about the roles, boundaries and limits of each member of the collaboration, as well as a familiarity with the knowledge base of the other profession. We specifically discussed some of the similarities in the two professions, including the shared set of core social and ethical values (including shared respect for the individual, the commitment to reason, and using experience as a basis for decision-making); valuing of professional autonomy and decision-making; the primacy of serving their patient's/client's interests; the fiduciary obligation each owes to their patient/client; and the aspiration of each profession to provide services to the poor. To highlight the similarities, we also used an exercise³³ in which the law students and medical residents wrote anonymously on color-coded cards (so that we could know whether the cards were completed by a law student or a medical resident) the attributes of a "good" lawyer; the attributes of a "good" doctor; the attributes of a "bad" lawyer; and the attributes of a "bad" doctor. The results of these cards were written on the blackboard so that all could see the responses; the similarities in the positive attributes for the two professions were surprising to many of the students and helped to emphasize the commonalities between the two professions.³⁴

This broadening of perspective can lead to what is described as a higher level of cognitive

30 The broadening of perspectives in interdisciplinary clinics has been noted by many commentators in a variety of different types of interdisciplinary clinics. See, e.g., Ezer *et al.*, *supra* note 3, at 32. Interdisciplinary clinics "offer many opportunities for the acquisition of valuable skills by means of collaboration with and exposure to the culture, professional strengths, and limitations of other disciplines in a group setting." Margaret Martin Barry *et al.*, *Clinical Education for This Millennium: The Third Wave*, 7 *Clinical L. Rev.* 1, 69 (2000).

31 "With these diverse cultures and problem-solving approaches, collaboration between these professionals [lawyer, doctor, social worker and other professionals in a medical-legal collaboration] results in a formidable team that provides holistic interventions." Marcia M. Boumil, Debbie F. Freitas and Cristina F. Freitas, *Multidisciplinary Representation of Patients: The Potential for Ethical Issues and Professional Duty Conflicts in the Medical-Legal Partnership Model*, 13 *J. Health Care L. & Pol'y* 107, 123 (2010).

32 Connolly, *supra* note 26, at 13-14.

33 This exercise was developed by Dr. Marc Schwartz and myself for a class that we co-taught for law students and medical students at New York University; the name of the course was "Doctor-Patient, Lawyer-Client: The Nature of Professional Relationships."

34 Some of the positive traits of both professions were empathetic, compassionate, good listener, ethical, caring, and zealous advocate. The results of the card exercise are on file with the author.

processing, what some psychologists define as “wisdom.”³⁵ Particularly for the law students, they learned the skills and values to function in a variety of forums (i.e., not just litigation) and learned skills and approaches from the other disciplines.³⁶ It helped the law students and medical residents to move away from the narrow approach of seeing the patient’s/client’s issues as only medical or legal ones; it helped remove the “blindness” and minimize the “silo” effect. They also began to appreciate the shared professional values³⁷ and more broadly viewing medical and legal problems in their larger social context.³⁸ As stated by one of the medical residents, this interdisciplinary clinic:

provided the invaluable opportunity of learning from each other. As doctors and lawyers we seldom get the chance to gain knowledge and insight into each other’s fields and professions. Most importantly, the legal clinic provided the unique and excellent venue to be able to serve as better advocates and lend a helping hand to our patients. In short, the experience gave both doctors and lawyers the ability to work together for change.³⁹

To help facilitate the broadened perspective and ease into the collaboration, Dr. Sharif and I created case examples that were used in our first joint seminar. While the class discussion became animated (and heated), it was, upon reflection, critical to the success of our collaboration. As described by one of the medical residents:

The opening discussion that involved a case of potential child abuse was very revealing to me. I have been so engrossed in the medical world for so long, that their [law student’s] opinions and approach were really shocking at first. But in the end, it was a great opportunity to appreciate the complexities of such situations.⁴⁰

35 “It is this higher level of cognitive processing – what some psychologists define as ‘wisdom’ – that we see as the ultimate outcome of interdisciplinary higher education.” Weinberg and Harding, *supra* note 10, at 23.

36 For example, in the interdisciplinary program in South Africa of integrating palliative care, the law students were trained in facilitation skills in order to be able to run the workshops for hospice caregivers. Ezer *et al.*, *supra* note 3, at 29.

37 An article about an interdisciplinary course for law students and medical students discusses discovering the shared goals and values in the two professions as part of the process of designing the course. “The similarities in our professions gave us faith that, despite our differences, we could create something special – a learning experience for law and medical students that would not only bring a different discipline into their classroom, but also could help them to re-envision their roles and responsibilities as professionals.” Elizabeth Tobin Tyler, *Teaching Social Justice and Health: Professionalism, Ethics and Problem-Solving in the Medical-Legal Classroom*, 38 *J.L. Med. & Ethics* 701, 702 (Fall, 2010).

38 Interdisciplinary collaborations “challenge students to consider medical and legal problems in their social contexts as well as to broaden their concepts of their professional roles and limits.” Elizabeth Tobin Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality*, 11 *Journal of Health Care Law & Policy* 249, 275 (2008).

39 Quotations of the medical residents and law students cited in this article were from reflection papers submitted by the law students, from written comments, and from surveys of the medical residents and law students that were completed in the first joint class and in the last joint class to evaluate the collaboration. The reflection papers, surveys and other written comments are on file with the author or Dr. Iman Sharif, the co-teacher of the seminar.

40 *Id.*

The law students spoke of their loyalty to their client, who was the parent, and felt bound by the duty of confidentiality to their client to not reveal to the doctors what the client had told them about what the doctors might consider potential child neglect by the parent who was not the client of the lawyers.⁴¹ The doctors discussed their responsibility to the entire family and were initially disturbed by what they saw as a narrow focus of the law students of preserving the confidentiality of the mother (the lawyer's client) over the possible health needs of the child and risk to the child. The law students explored the possible conversation with the client about consequences and possible actions which helped the residents understand more of the nature and parameters of the lawyer-client relationship. The discussion in that first class became a bonding experience for all, and one referenced in many other of our joint sessions as a mirror to help each of the professions appreciate the other.

The second benefit is that it helps to build trust, understanding and respect amongst the members.⁴² The third is that it teaches the importance of collaboration.⁴³ The law students and medical residents in our joint seminars were taught skills to help them collaborate successfully.⁴⁴ In the joint seminar, we first discussed their own experiences in collaboration, including what they had found to be helpful in successful collaborations and what had been problematic. We also highlighted, based on assigned readings⁴⁵ and their comments in the class discussion, some things that can be done to improve collaboration, including the value of listening and effective communication; understanding and appreciating the "other," including the competencies of each profession; clearly stated role expectations; attitudes of respect and openness; learning skills for shared decision-making; and the importance of setting boundaries at the outset of the collaboration. (For our collaboration, one particular boundary issue was differing approaches to confidentiality and how it could limit what client/patient information could be shared between the

41 In New York, as in most states in the United States, lawyers are not mandated to report suspected child abuse and neglect while doctors are mandated reporters. For a discussion of the challenges posed by the differing mandated reporting requirements of lawyers and doctors, see, e.g., Boumil *et al.*, *supra* note 31, at 124-127; Anderson *et al.*, *supra* note 9.

42 In a multi-disciplinary program in which the Child Advocacy Clinic at the University of New Mexico is the legal partner, a curriculum was developed and implemented to build trust amongst the various team members. See Norwood and Paterson, *supra* note 21, at 363-64. This clinic is part of a multi-disciplinary program that includes law students, pediatricians, social workers, child development specialists, psychiatrists, case managers, nurses, program administrators, community planners, program evaluators and educational technology experts. *Id.* at 356.

43 "In order to creatively solve problems, attorneys must focus not only on a client's legal issues, but also the client's needs that can best be met through professional interdisciplinary collaboration. To be effective as creative problem solvers, students must learn the art and skill of collaboration. However, most law school curricula, including clinical courses, do not recognize the value of collaboration as a skill for problem solving, and therefore do not emphasize it in their teaching." Schlossberg, *supra* note 9, at 203.

44 Janet Weinstein, in an article on interdisciplinary education in law practice, identifies five skills for effective collaboration: communication skills; knowledge of non-legal resources; awareness of self and others; an understanding of and appreciation for group process; and leadership skills. Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 Wash. L. Rev. 319, 335-40 (1999).

45 See Sue Bryant, *Collaboration in a Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 Vermont Law Review 459 (1992-1993).

doctor and lawyer.)⁴⁶

The fourth advantage of an interdisciplinary clinic is what I call a “window.” It is a window in two very different ways. One is that it can help students prepare for the “real world” by modeling the experience of practicing law, which increasingly uses interdisciplinary collaborations. The other, and what I think is more important and unique to interdisciplinary clinics, is that it can cause law students to reconsider their own roles as lawyers and advocates. Also, it helps each of the professions form (and change) their views of their own profession and their roles within it.

The fifth point is that the collaboration can be a more satisfying and fulfilling professional and personal experience for all. The sharing of experiences and approaches to assist clients/patients can result in increased satisfaction. It can also result in increased comfort in being able to learn from and rely on the other professionals. Collaboration can help reduce the stress that lawyers can experience.⁴⁷ From their comments in class as well as their written reflections, it was apparent that it was a more fulfilling model for each of the professions involved. A typical comment by one of the medical residents was that the collaboration “provided the invaluable opportunity of learning from each other.... This experience gave both doctors and lawyers the ability to work together for change.”⁴⁸ Connected to the collaboration amongst the students and residents, there was also collaboration between the faculty teaching the seminar, with the faculty modeling for the students and medical residents.

Finally, interdisciplinary clinics offer more creative and better service for the clients.⁴⁹ It can result in the professionals being engaged in more creative problem-solving to promote justice.⁵⁰ Collaboration empowers the professionals to serve their clients/patients in new and better ways. As stated by one of the medical residents in the clinic, it “helped me to realize that the things we learn about our patients are often limited by what we are willing to explore and the resources that we have at our disposal.”⁵¹

B. Opportunities for Clients

One of the most important advantages of interdisciplinary clinics is improved service for the

46 For a detailed discussion of various ethical issues in a collaboration between lawyers and doctors, see Paula Galowitz, Jerome Tichner, Paul R. Tremblay and Steven D. Blatt, *Ethical Issues in Medical-Legal Partnership* (Chapter Six), in *POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP* (Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel, and Barry Zuckerman eds., Carolina Academic Press, 2011).

47 See Galowitz, *supra* note 11, at 2128.

48 See note 39, *supra*, for a discussion of the comments of the law students and medical residents.

49 “An interdisciplinary model also has the potential to encourage lawyers to create innovative programs that not only respond to the perceived needs of client communities but also actively involve clients in bringing about social change.” Brustin, *supra* note 13, at 794.

50 In her article on interdisciplinary education in law practice, Janet Weinstein discusses five skills needed for collaborative problem solving: communication skills; knowledge of non-legal resources; awareness of self and others; an understanding of and an appreciation for group process; and leadership skills. Weinstein, *supra* note 26, at 335-341. Some of the professions involved in interdisciplinary collaborations, such as social work, teach these skills in professional school. See Voyvodic and Medcalf, *supra* note 9, at 123.

51 See note 39, *supra*, for a discussion of the comments of the law students and medical residents.

clients.⁵² The complementary skills of the other professions can help the lawyer serve the client,⁵³ as can the legal information assist the doctor to be a better medical provider and advocate for his or her patients. For example, the medical residents became more familiar with laws affecting their clients (such as educational services for children with special health care needs and eligibility for disability programs) and developed practical skills for advocating for their patients to receive the services to which they were entitled. They also felt more knowledgeable and comfortable exploring with their patients how the realities of their patients' lives (such as housing conditions) impacted on their health. For the law students, they understood the medical conditions that could impact on their clients' disabilities and were able to use that information to argue more persuasively for the benefits for which their clients were eligible.

As discussed in the previous section on opportunities for the students, law students are helped to move from the narrow approach of seeing the client's "issues" as only legal ones and all of the students and professionals are better trained to see the clients/patients in a more holistic way, understanding the roles that each profession can bring to help identify the legal and social barriers that affect the health of their clients/patients and that impact on the social issues underlying inequalities in health. As noted by one of the law students, the clinic was "helpful in exposing me to different ways that doctors and lawyers can collaborate to make inroads to achieving health outcomes for vulnerable populations...[and] ensure that laws that promote health and safety are being enacted and followed."⁵⁴ Moreover, in the MLAC, it seemed to be easier for the clients to establish relationships with the law students since someone with whom the client already had a relationship made the connection to the law student. Research about the impact of interdisciplinary collaborations on clients would reveal if there are other benefits for them.

C. Opportunities for Faculty

Teaching in an interdisciplinary structure has benefits that parallel those for the students described in Section IV (A): it can broaden the perspectives of all of the participants so that each of the professionals has a better understanding of the other's attitudes and values, approaches to problem solving, language, and ethical constraints; help build trust, understanding and respect amongst the members; provide a "window;" result in better and more creative services for the clients; and can be more personally satisfying. Teaching in an interdisciplinary structure also has unique additional advantages for the faculty. One is that it helps emphasize the importance of teaching creative problem-solving and collaboration. In the seminar and in the fieldwork, the students can be helped to see the issues that the client faces in the broader context of the client's life and the students can be helped "to think about prevention of future problems, not just solving current ones."⁵⁵ It also helps the faculty to expand the approaches to assist students' learning through collaboration with other disciplines.

52 Doctors and lawyers working together can improve the health outcomes for the patients/clients. See, e.g., Boumil *et al.*, *supra* note 31, at 137.

53 "A multidisciplinary approach provides an ideal way to address complex social issues such as domestic violence, concerns facing the elderly, community economic development, and poverty more generally. Professionals from different disciplines can use their skills to develop more comprehensive solutions for clients." Brustin, *supra* note 13, at 794.

54 See note 39, *supra*, for a discussion of the comments of the law students and medical residents.

55 See Tobin, *supra* note 38, at 275.

I personally found that the collaboration with Dr. Sharif in our development and plans for the seminar and fieldwork, as well as in co-teaching the seminar, resulted in unexpected beneficial results. We initially had to explore and try to understand our different professional values and norms, including language and approaches to issues. Fortunately we had given ourselves time to develop our relationship and plan for the challenging issues; we started our planning approximately a year before the clinic began. Not only did we need to plan for our law students and medical residents but we also had to plan for our own collaboration and co-teaching. We openly talked with the law students and medical residents about this interdisciplinary experience as being new and approaching things together as we sorted out the opportunities and challenges. This had the effect of freeing us all to be more open and transparent. For me personally, this transparency and the creativity in designing and implementing this interdisciplinary clinic resulted in a much more satisfying teaching experience.

V. Challenges

There are many challenges in designing and implementing an interdisciplinary clinic.⁵⁶ However, there are ways to minimize the challenges and enhance the opportunities. One important way is to spend sufficient time with the other professionals in planning the clinic and the program. Many of the challenges can be anticipated and addressed before the clinic officially begins. The design of the program can help implement successful collaborations. “Interdisciplinarity ...is not a ‘magic bullet’...; collaboration must be taught as a skill, and the needs of the individuals who will be collaborating must be anticipated and met with information and appropriate training.”⁵⁷ The challenges in this section are subdivided into those applicable to students, clients and faculty; many of these challenges apply to more than one of these categories.

A. Challenges for Students

While there are many challenges in interdisciplinary clinics, there are five categories that I think are the most significant. The first (and an especially pervasive) one was the differences in the language, customs, and norms of the collaborating professions. Each needed to learn and appreciate the other. Since Dr. Sharif and I understood this to be key to the success of the collaboration, we each spent time discussing this in our individual seminar sessions before we started our joint one and addressed this directly in our first joint class. Dr. Sharif and I developed the case examples described in Section IV(A) to highlight these issues.

The second category is that of ethical obligations and professional values. There are differences in ethical obligations such as confidentiality, conflicts of interest and the professional independence of the lawyer that must be addressed. While dealing with them can be challenging, they are not barriers, particularly if the anticipated issues are discussed and addressed amongst the various professionals when forming the collaboration.⁵⁸ Guidelines and protocols for the anticipated ethical issues (such as what information received from the client can be shared with the other

⁵⁶ Barriers to interdisciplinary work include the lack of skills training; the narrow and competitive nature of legal education and practice; different professional cultures; and personality issues in law students and lawyers that can interfere with collaboration. See Weinstein, *supra* note 26, at 328-351.

⁵⁷ Voyvodic and Medcalf, *supra* note 9, at 116.

⁵⁸ See Galowitz *et al.*, *supra* note 46.

professionals) should be drafted together as part of the development plan.

The third area is student discomfort and anxiety. It can be very challenging for law students in any clinic to learn about and become comfortable with a range of skills and substantive areas of the law. Any discomfort and possible anxiety can be compounded by working with other professions when the students may be unsure of their own professional roles and values.⁵⁹ To minimize this discomfort, Dr. Sharif and I found it very helpful to have an informal gathering early in the semester for the law students and medical residents to get to know each other. In addition, a curriculum with hypothetical examples can be created to help build trust and understanding amongst the various professions and members of the interdisciplinary clinic.⁶⁰

Fourth, the nature of the professional norms in law school can create challenges. Law students tend to be more competitive (which would also make it more difficult for them to collaborate)⁶¹ and that they have less experience in collaboration than other professions (such as students in business school).⁶² Collaboration as an important skill and value for professionals needs to be directly addressed. In the MLAC, as mentioned in Section IV (A), we discussed collaboration in a joint seminar, including what interferes with collaboration and what can be done to improve our abilities to collaborate.

Finally, there are many logistical and situational challenges in an interdisciplinary clinic.⁶³ For example, the law school schedule and the definition of a semester differ substantially from medical schools and residency training programs.. Another challenge is that collaboration and interdisciplinary work can take longer and therefore appear to be less efficient.

B. Challenges for Clients

For the clients, there can be confusion about the roles and approaches of the various professions. The client may not be sure which issues should be addressed with which professional. In addition, there may not be consistent information or opinions conveyed to the client by the various professionals who are interacting with the client. The client may also have unclear expectations. Research about the impact of interdisciplinary collaborations on the clients would reveal any other drawbacks.

C. Challenges for Faculty

Teaching in an interdisciplinary clinic has challenges that parallel those for the students described in Section V (A), including differences in language, customs and norms of the profession; ethical

59 Some law students may display resistance and discomfort with collaboration. See Voyvodic and Medcalf, *supra* note 9, at 121-23.

60 Various strategies to build and enhance the interdisciplinary relationship are discussed in the article by J. Michael Norwood and Alan Paterson including: learning from each other to understand and appreciate the diversity of professional cultures and problem-solving approaches of the members of the team; learn and understand the roles, boundaries and limits of each member of the team as they relate to the purposes of the multi-disciplinary project; and create a formal curriculum in order to build understanding and trust amongst the members of the team. Norwood and Paterson, *supra* note 21, at 362-366.

61 See Weinstein, *supra* note 26, at 340-44.

62 See Schlossberg, *supra* note 9, at 216-19.

63 Some of these logistical and situational challenges are discussed in Section V (C), Challenges for Faculty, *infra*. See also, Luppino, *supra* note 8, at 201-16.

obligations and professional values; discomfort and anxiety; the nature of the professional norms in the law school; and logistical and situational issues. It can be difficult and uncomfortable to step out of one's comfort zone.⁶⁴ Each profession has its own emphasis on independence of professional judgment.⁶⁵ Each (including faculty and students) needs to learn to understand and appreciate the other.

The ethical requirements of each of the professions need to be addressed,⁶⁶ particularly the varying definitions of who is the "client," confidentiality, conflicts and capacity of the person to make decisions. Scholarship has addressed ways to deal with the confidentiality requirements of the various professions in interdisciplinary collaborations, particularly the confidentiality requirements of lawyers, by obtaining informed consent from the client⁶⁷ or creating a confidentiality "wall" so that there are boundaries between the professions relating to access to certain client information.⁶⁸ As with many other challenges, ethical and professional value issues can be anticipated and dealt with in the design and planning of the curriculum, including developing protocols to address them.⁶⁹

As to the assumptions that may be made about the "other" professions in the collaboration (with some of those assumptions being negative stereotypes), it can be helpful to surface them in a non-threatening way. One example is the exercise described in Section IV (A) in which we asked each student to write the positive attributes of lawyers and doctors as well as negative characteristics of each of the professions. We then discussed those attributes and characteristics and helped surface their assumptions in a non-threatening format.

There may also be different pedagogical goals for the students and different learning experiences in the relevant professional schools. One example is that law school emphasizes getting law students to think like a lawyer compared with a business school focus on problem solving.⁷⁰

An issue that I found particularly difficult was getting the law students ready to be "lawyers" in many different kinds of subjects, approaches and practice. While getting students comfortable in a variety of subject areas can be a challenge in any clinic that practices holistic advocacy, it can be more difficult in an interdisciplinary clinic since the students need some knowledge about the

64 "Collaborative interdisciplinary medical-legal teaching, like professional practice is challenging. There is no question that there are times when sticking to one's comfort zone and chosen field would be much easier." Tobin, *supra* note 37, at 705-06.

65 "Independence of professional judgment is the hallmark of a profession, regardless of whether that profession is medicine, social work, or law. When professionals who are educated and trained differently, practice different trades, and follow different ethical codes combine efforts to provide one holistic remedy, each may be required to compromise some of the professional autonomy that each practitioner typically exercises." See, e.g., Boumil *et al.*, *supra* note 31, at 123.

66 Some of the ethical issues and professional conflicts in medical-legal collaborations is discussed in the scholarship. See, e.g., Boumil *et al.*, *supra* note 31; Norwood and Paterson, *supra* note 21; Galowitz *et al.*, *supra* note 46.

67 See, e.g., Galowitz *et al.*, *supra* note 46.

68 See, e.g., St. Joan, *supra* note 23.

69 It has been suggested that there need to be changes in each of the relevant professions to support interprofessional collaboration; there should be an explicit standard in each of the profession's standards or codes of conduct that support interprofessional collaboration. Linda Morton, Howard Taras and Vivian Reznick, *Encouraging Physician-Attorney Collaboration Through More Explicit Standards*, 29 Hamline J. Pub. L. & Pol'y 317 (2008).

70 See Jones, *supra* note 7, at 311-12.

other profession or professions with whom they will be collaborating. There were two things that Dr. Sharif and I did in the MLAC to help address these challenges. The first was to front-load the clinic to spend the first few weeks discussing the substantive law areas and professional skills, including a simulation of a client interview for which the law students reflected and received feedback to prepare them before seeing their first clients. I was also at each of the fieldwork clinics when the law students interviewed their clients so that they could check-in with me before the interview was completed. This ensured that critical issues, such as deadlines and statute of limitations, weren't missed.

There are several logistical and institutional challenges in an interdisciplinary clinic, such as: scheduling of joint classes that are convenient for each of the professions; different academic calendars; defining the criteria for the credits and grades (if graded); and the allocation of tuition between or among the relevant schools.⁷¹ These issues need to be anticipated as much as possible and dealt with as part of the planning. As more interdisciplinary programs are created, it should become easier for the institutional challenges to be addressed.

Not surprisingly, it takes more time and energy for the faculty to develop and teach an interdisciplinary clinic than one that is not interdisciplinary. There is also a steep learning curve for the faculty and for everyone involved in the clinic. While the learning curve is included in the section on challenges, it also is part of the opportunities of such a clinic, and can lead to exciting ways to teach, learn and provide services for clients.

Conclusion

An interdisciplinary clinic has many different advantages for the students, faculty, professionals, clients and the professional schools. While there are challenges for all involved, they are far outweighed by the multiple benefits. I have found that all, including myself, were enriched by the interaction with our medical colleagues. The clinic also helped model for the law students and medical residents the value of interdisciplinary approaches to help meet the needs of our clients/patients. Interdisciplinary clinics can “help develop a cadre of future lawyers with the sensitivity and expertise to play a leading role in addressing complex health and human rights issues.”⁷² As stated by one of the medical residents in the clinic, it

provided the invaluable opportunity of learning from each other. As doctors or lawyers we seldom get the change to gain knowledge and insight from each other's fields and profession. Most importantly, the legal clinic provided the unique and excellent venue to be able to serve as better advocates and lend a helping hand to our patients. In short, this experience gave both doctors and lawyers the ability to work together for change.⁷³

For me, it is a very exciting way to teach, for students to learn, for clients to be served, and to help all of the participants reflect on the role of law and being a professional.

71 For a discussion of additional challenges, see, e.g., Jones, *supra* note 6, at 310 – 313 (discussion of administrative/financial impediments, cultural and ethical impediments); Luppino, *supra* note 8, at 206-215 (issues include managing and addressing student expectations, and helping the professional teams work together).

72 Ezer *et al.*, *supra* note 3, at 33.

73 See note 39, *supra*, for a discussion of the comments of the law students and medical residents.

Holding Up the Mirror:

A theoretical and practical analysis of the role of reflection in Clinical Legal Education.¹

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Key words: *clinical legal education, reflection, reflective writing, teaching and learning framework*

ABSTRACT

This article provides a summary of the broader literature on reflection that has been published over the last twenty years in a variety of disciplines. It then examines the literature from two major clinical legal education journals in relation to reflective writing as a component of clinical legal education courses. It attempts to provide answers to the questions: *What do we mean when we say we ‘teach’ students to be ‘reflective’? How do we do that? How do we ‘teach’ students to write reflectively?* The article looks at the problems we face in teaching ‘reflection’ in the clinical context and examines issues stemming from the reality of reflection being an important part of a clinical program. It also argues that being ‘reflective’ is not necessarily intuitive for students and that clinical teachers must teach students how to ‘be reflective’. The article demonstrates an example of reflection in action by the provision of examples from the writer’s own teaching experiences. Finally, the article collates and reproduces suggestions from the literature on best teaching practice on the use of reflection as a teaching and learning tool within clinical legal education courses.

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1 This article had its origins as a conference paper at the Clinical and Experiential Legal Education Conference held at the University of New South Wales on 7-9 September 2011 (See http://www.law.unsw.edu.au/centres/klc/doc/conference_program.pdf.)

PART A: INTRODUCTION

This article has metamorphosed from a few disparate ideas over several years. It was born out of a desire to ensure that the reflective journal that I ask students to submit in my *Legal Professional and Community Service Experience* course² is appropriate as a teaching and learning tool. I wanted to explore the literature in this area and to see if other clinicians had written about their own ideas, so that I could use those ideas and develop best practice in teaching reflection and reflective writing. Having taught in this area for over a decade, and having attended conferences and met with many other academics who teach similar courses to mine, I was reasonably confident that the use of a reflective journal has many benefits. However, I have been conscious that it can be difficult to 'teach' reflection and I was very keen to find out if other teachers had experienced similar dilemmas and how they had overcome them. Researching this article has uncovered a wealth of material that was initially overwhelming. Scholars from almost every discipline have researched and written about 'reflection'. One wonders whether there is really anything left to say. However, the many practical ideas that have been developed merit further exposure and deserve to be shared. Immersing myself in the various theories about reflection has provided a useful basis upon which to develop a scholarship of teaching and learning in this area. I have not only found articles that are useful to me as a teacher, but I have also found several that are useful as reference materials for my students.

Clinical legal education involves the placement of law students either within a legal advice clinic that is directed and supervised by legal practitioners (usually law school staff) or within external organisations (usually referred to as 'externships'). Placements provide not only an opportunity to develop professional skills but also experiences upon which students can then reflect critically.³

Vast research has been completed across several decades on the topic of reflection and reflective practice and the use of reflective writing as a means of assessing student performance in a variety of fields (especially nursing, medicine, psychology and education). Over the last fifteen to twenty years, legal scholars have also written about the benefits of reflective writing in clinical legal education. This article is premised upon the assumption that reflection does enhance the learning process in the context of clinical legal education.⁴ There is nothing in the literature to date to rebut that assumption.

Clinical legal education engages students in authentic legal experience by providing legal services to real clients (under supervision). The clients are usually marginalised or disadvantaged members of the community who would otherwise be unable to access legal advice. Clinical legal education may also involve external work placements or simulated settings.⁵ The goals of clinical legal education have been variously expressed, and not all clinicians agree. '[A]n ethic of preparation, practising

2 At my university, the term 'course' is used where other universities might use the term 'subject', 'topic', or 'unit'. In this article, the term 'course' has this meaning.

3 See, for example, Jaszi P, Shalleck A, Valdez M and Carle S, 'Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University', (1998-1999) 5 *Clinical Law Review* 403.

4 See Moon, J A *Handbook of Reflective and Experiential Learning*, London and New York: Routledge Falmer, 2004, p 84 – 94 for a discussion about this.

5 See Grimes R, 'The Theory and Practice of Clinical Legal Education', in *Effective Learning and Teaching in Law*, Burridge, R et al (Eds) , Kogan 1996, p 140, cited in Ledvinka, above, n10.

ethical lawyering and developing critical thinking⁶ have been said to be three major goals whilst another view is that the 'primary goal of clinical legal education is to teach students how to learn from experience.'⁷ Other scholars are of the view that of the twin pillars of education and justice access, it is the latter which is the primary goal of clinical legal education. Another view is that the aim of clinical legal education is to analyse and reflect upon what constitutes ethical conduct, not upon skill acquisition⁸ and that in a clinical legal education course, students are encouraged to reflect on the practice of law, the values, dynamics and effectiveness of the legal system, the role of lawyers in society, issues around access to justice and human rights and the potential of law to achieve justice for economically and socially disadvantaged people.⁹

Irrespective of the view that one takes in this ongoing debate, it appears to be widely accepted that a major element of clinical legal education is reflective learning. Georgina Ledvinka describes reflection as 'the magic ingredient which converts legal experience into education.'¹⁰ William Berman speaks of reflection as 'one of the cornerstones of clinical pedagogy'.¹¹ Colin James notes that the 'learning' in experiential learning 'actually happens through the reflection during and after the activity.'¹²

The clinical legal education literature suggests that reflection can take two main forms. The first form is oral reflection or 'debriefing', especially after an experience like interviewing a client or appearing in court.¹³ Berman, for example, describes the role of post-mistake reflection in the clinical context as important in the development of students' 'ability to engage in informed decision making.'¹⁴ The second form is written reflection, suggested to be '[t]he best way to harness the powerful tool of reflection...to provide a structured format for the development and

6 Berman W, 'When will they ever learn? Learning and teaching from mistakes in the clinical context', (2006-2007) 13 *Clinical Law Review* 115, 118.

7 Dunlap JA and Joy PA, 'Reflection-in action: designing new clinical teacher training by using lessons learned from new clinicians', (2004-2005) 11 *Clinical Law Review* 49 at 52-53, citing Kreiling KR, 'Clinical education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision', (1981) 40 *Modern Law Review* 248.

8 Noone MA and Dickson J, 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers', (2003) 4 *Legal Ethics* 2, 139, cited in Curran L, *Responsive Law Reform Initiatives by students on Clinical Placement at La Trobe Law*, 7 *FJLR* 287.

9 Curran L, *Responsive Law Reform Initiatives by students on Clinical Placement at La Trobe Law*, 7 *FJLR* 287, 288.

10 Ledvinka, Georgina, 'Reflection and assessment in clinical legal education: Do you see what I see?' (2006) 9 *International Journal of Clinical Legal Education*, , 29-30.

11 Berman, above, n6, 131.

12 James C, 'Seeing Things As We Are. Emotional Intelligence and Clinical Legal Education,' (2005) 8 *International Journal of Clinical Legal Education* 123, 138.

13 See, for example, Grundlach JA, "'This is a courtroom, not a classroom": So what is the role of the clinical supervisor?' in (2006-2007) 13 *Clinical Law Review* 279, 280.

14 Berman, above, n6, 126-127. Berman describes a protocol for dealing with mistakes which includes:

1. Admit the mistake
2. Student and supervisor should apologise to the client
3. Take action to correct the mistake
4. Reflect upon the mistake in supervision
5. Reflect upon the mistake with other students
6. Implement changes to avoid similar mistakes in future, pp 128 – 132.

nurturing of meaningful and considered student reflection.’¹⁵

Although not all clinical programs use reflective writing as an assessment tool,¹⁶ many clinical legal education courses do require the submission of a reflective journal as an item of assessment. In my course, a reflective portfolio is a major component (50%) of the assessment.¹⁷ I have been involved in clinical legal education for over a decade¹⁸ and have used a reflective journal as the main assessment tool for most of that time. I agree with Ogilvy that ‘[t]hrough writing about what and how they are studying, students can move from superficial comprehension to employing critical thinking skills in their engagement with the material.’¹⁹ I co-ordinate and teach a course which has two main aims. The first aim is to broaden students’ awareness of access to justice issues and to develop a critical approach to legal ethics. The second aim is to develop professional skills and values, including the generic graduate qualities²⁰ of the university in which the course is taught, with a structured analysis of, and reflection on, experience gained in the workplace or in a community service setting. In their reflective journals, students are required to analyse and reflect on their personal placement experience whilst also contemplating the role of legal professionals in the legal system and in society generally. In particular, students are required to refer to the issues that have been discussed in the classroom context: placement preparation, learning in a workplace context, self-awareness, personality types, client-centred practice, active listening, access to justice, legal ethics, law reform and the role of lawyers in society.

Reading students’ reflective journals is a task that I genuinely enjoy. I take great pride and vicarious satisfaction in following how students have developed in confidence and skills across the period of a clinical placement. I am not alone in enjoying the articulation of their goals for the course and how their goals have been fulfilled, and what they have learned across the placement period.²¹

15 Hyams R, ‘On teaching students to ‘act like a lawyer’: What sort of lawyer? (2008) 13 *International Journal of Clinical Legal Education* 21 at 27.

16 E.g. La Trobe in 2004 did not – see Curran L, ‘Responsive Law Reform Initiatives by Students on Clinical placement at La Trobe Law’ in (2004) 7 *Flinders Journal of Law Reform* 287 at 291.

17 For a wider discussion of assessment of reflective writing see Ledvinka, n10; Burton K and McNamara J, ‘Assessing Reflection Skills in Law Using Criterion Referenced Assessment’ 19 (1&2) *Legal Education Review* (2009), pp 171-188; Hyams R, ‘Student assessment in the clinical environment – what can we learn from the US experience?’ (2006) 9 *International Journal of Clinical Legal Education* 77; Hyams R, ‘Assessing Insight: Grading Reflective Journals in Clinical Legal Education, (2010) 17 *James Cook University Law Review* 25; Tummons J, ‘It sort of feels uncomfortable’’: Problematising the Assessment of Reflective Practice’, (2011) *Studies in Higher Education*, vol 36, no. 4, pp. 475-6.

18 First at Flinders University, Adelaide, South Australia and now at the University of South Australia in the same city.

19 Ogilvy JP, ‘The Use of Journals in Legal education: A Tool for Reflection’ in (1996-1997) 3 *Clinical Law Review* 55.

20 See: University of South Australia website: <<http://www.unisa.edu.au/gradquals/default.asp>>. A graduate of the University of South Australia:

1. operates effectively with and upon a body of knowledge of sufficient depth to begin professional practice
2. is prepared for life-long learning in pursuit of personal development and excellence in professional practice
3. is an effective problem solver, capable of applying logical, critical, and creative thinking to a range of problems
4. can work both autonomously and collaboratively as a professional
5. is committed to ethical action and social responsibility as a professional and citizen
6. communicates effectively in professional practice and as a member of the community
7. demonstrates international perspectives as a professional and as a citizen.

21 Usually ten weeks in my course.

Other commentators have expressed similar sentiments, for example about the enjoyment of ‘the ability to talk to students in depth about their experiences and seeing them become more questioning and actively engaged with making sense of those experiences’.²² However, some students write better journals than others. Some students appear to ‘reflect’ better than others, prompting me to improve my own skills in teaching students how to write reflectively. A capacity for personal reflection has been said to be ‘essential for the development of ethical wisdom’²³ and the benefits of reflective writing are well documented. My aim in preparing this article was to examine my own teaching practices and develop a teaching methodology that will equip students to maximise the benefits of writing a reflective journal. In order to do that, I embarked upon a literature search of scholarly work about reflection and reflective writing. The results of that search are provided in parts C and D of this article.

One of the attributes of reflective writing is the ‘licence to write in the first person’ and I have deliberately adopted this technique in this article. It is the first hurdle over which students tread very cautiously because usually they are entering ground which has hitherto been out of bounds. Law students are familiar with writing a particular form of academic essay. The requirement to abandon the traditional third-person discourse²⁴ is confronting to most law students and indeed also to law academics. The use of the third person (e.g. ‘the writer found, the writer is of the view’) and the passive voice (e.g. ‘the literature was analysed’) which form the basis of scientific scholarship style – personal involvement must be eschewed at all costs – are anathema to reflective writing. The fundamental premise of reflective activity is self-awareness, so reflective writing must be owned and acknowledged as personal. Accordingly, this article is deliberately written in a reflective and therefore personal style.²⁵

Paul Ramsden²⁶ poses the following questions which have helped to shape my research: ‘What exactly is teaching about? What do we mean when we say we ‘teach’ someone something? What are the main problems we face in teaching? What methods should we use and why? What helps our students to learn? What stops them learning?’²⁷ I have transposed these questions into the clinical legal education context. Part A of this article provides a background and introduction. Part B explains the methodology I used to research this article. Part C investigates the meaning of reflection and what it means to actually teach reflection and reflective practice. This part analyses reflection theory and the importance of instructing students about the act of reflection. It provides a literature review of work completed by a range of scholars on the theoretical pedagogical base for reflection. Part D examines the methodology of teaching students to write reflectively in the

22 Sparrow C, ‘Reflective Student Practitioner – an example integrating clinical experience into the curriculum’, (2009) 14 *International Journal of Clinical Legal Education* 70, 74.

23 Harris H, ‘Promoting ethical reflection in the teaching of business ethics’, 2008, *Business Ethics: A European Review*, vol 17, no 4, 379, 381.

24 Tummons, above, n17, 475.

25 Brookfield uses the analogy of the lens to demonstrate that there are multiple ways to analyse our own teaching. ‘Our autobiographies as learners and teachers represent one of the most important sources of insight into teaching to which we have access. Yet in much talk and writing about teaching, personal experience is dismissed and demeaned as “merely anecdotal” – in other words, as hopelessly subjective and impressionistic.’ See Brookfield, Stephen, *Becoming Critically Reflective: A Process of Learning and Change*, Jossey-Bass, San Francisco, 1995, 23.

26 Ramsden P, *Learning to Teach in Higher Education*, (2nd Ed) RoutledgeFalmer, Oxon, 2003.

27 Ramsden, above, at 14.

context of my own clinical legal education pedagogy. Part D also includes a reflective analysis of my own teaching, including some of the techniques that I have found helpful and some that I have adapted, changed or improved over the years. I draw on the literature to develop my own teaching methodology and I explain how that is done. Part D also includes reference to assessment of reflective writing but is not an exhaustive examination of the topic of assessment. The focus is on the development of a teaching methodology for reflective writing. The article concludes by acknowledging the vast scholarship in this area and summarises the innovations that I intend to introduce in my own teaching as a consequence of this research. Finally, the appendices include a range of teaching aids which I have compiled. Some are derived from the work of others (who are duly acknowledged) and some are my own.

PART B: A CRITICAL METHODOLOGY

The primary aim of this article is to review the literature about reflective writing in the specific context of clinical legal education. That context has two major components. The first contextual component is the fact that clinical legal education is a type of experiential learning; it has been argued that optimal experiential learning involves a circular sequence of experience, reflection, theory and application.²⁸ The second contextual component is in relation to the learning outcomes of the particular clinical legal education course that I teach. The learning outcomes of my course are articulated as follows:

On completion of this course, students should be able to:

- **Explain** the practical operation of the law in a workplace or community service setting
- **Reflect** upon and **evaluate** their own learning and performance in a workplace or community service setting
- **Identify** and **articulate** the dynamics of various relationships that can arise in a workplace or community service setting
- **Evaluate** the roles of lawyers in the Australian legal system and in Australian society generally by reference to their workplace or community service experience
- **Discuss** the importance of legal ethics and professional conduct and **demonstrate** an appropriate ethical and professional attitude.²⁹

These learning outcomes provide the framework for my teaching methodology and the contextual background for the research I conducted for this article. However, teaching reflective writing is not exclusive to legal scholarship. It is a multidisciplinary phenomenon. It has therefore been important to explore the literature not only in law, but in other professional education fields.

My original title for this article included the words 'Reflecting on Reflection'. I (naïvely) believed this to be an original thought. A preliminary search of education literature about the use of reflection in teaching revealed an article about music teaching entitled 'Reflecting on Reflection'. Curious that someone else had already published an article under 'my' title, I searched 'reflecting on reflection' within the 'title' search box in the online digital library of Education Research and Information (ERIC), unearthing over 151,680 results. Clearly there has been a great deal of

28 Stuckey R, 'Teaching with purpose; defining and achieving desired outcomes in clinical law courses', (2007-2008) 13 *Clinical Law Review* 807, 813.

29 *Legal Professional and Community Service Experience*, LAWS 4007 School of Law, University of South Australia.

reflecting on reflection, especially in the last ten years. Narrowing the search down to articles published between 2000 and 2011 produced 120,197 results. In the last five years, 74,355 articles have been published about reflecting on reflection; 46,931 are scholarly publications. Refining the search further within 'education' yielded 1,754 results.³⁰

I then limited my search using the search terms 'reflection' and 'professional education.' I was particularly interested to find articles which highlight the issue of 'teaching' reflection or reflective writing. This produced a number of articles (predominantly in the psychology, medical, nursing and social work professions³¹) that were useful in the context of providing background information about reflection as an educative tool. Several of them also contained literature reviews of the vast literature that exists on the subject of reflection in professional education. My attention was also drawn to a number of articles about reflection and reflective learning by colleagues.³²

Finally, I also searched the two major journals that publish articles about clinical legal education: the *International Journal of Clinical Legal Education*³³ and the *Clinical Law Review*,³⁴ using the search terms 'reflective learning', 'reflective writing' and 'reflection'.

What follows in this article is a summary and analysis of my findings.

PART C: WHAT DO WE MEAN WHEN WE SAY WE 'TEACH' STUDENTS TO BE REFLECTIVE? HOW DO WE DO THAT?

Experience has taught me that reflection and reflective writing are not innate skills and that students benefit greatly from being taught how to reflect. Ledvinka provides useful ideas about how to promote student reflection³⁵ but notes that it may not be possible to 'teach' reflection.³⁶

30 Routledge publishes a journal called *Reflective Practice*, although I was unable to find anything directly relevant to this article in an on-line search of that journal.

31 For example, Bogossian F, Storytelling, Concept Mapping and Reflection: A Case Study of an Innovative Teaching and Learning Approach to Promote Critical Thinking about Professional Issues [online]. *Focus on Health Professional Education: A Multi-disciplinary Journal*, Vol. 7, No. 1, June 2005: 91-104. Availability: <<http://search.informit.com.au/documentSummary;dn=056078964510213;res=IELHSS>> ISSN: 1442-1100. [cited 10 Apr 11]; Elkin, SA, The Integration of Ethics Teaching in the Therapy Professions [online]. *Focus on Health Professional Education: A Multi-disciplinary Journal*, Vol. 5, No. 3, Feb 2004: 1-6. Availability: <<http://search.informit.com.au/documentSummary;dn=165845798192269;res=IELHSS>> ISSN: 1442-1100. [cited 10 Apr 11] and Dempsey S; Warren-Forward HM and Findlay N, Development of the Newcastle Reflective Analysis Tool [online]. *Focus on Health Professional Education: A Multi-disciplinary Journal*, Vol. 11, No. 1, July 2009: 32-40. Availability: <<http://search.informit.com.au/documentSummary;dn=127940648462956;res=IELHSS>> ISSN: 1442-1100. [cited 10 Apr 11]; Griffiths L, 'Time for Reflection', *Occupational Health*, May 2004 Vol 56 Issue 5, p 20-21.

32 Special thanks to Phiona Stanley who provided me with suggestions and references; to Howard Harris whose slides for his paper *Make them think about it! Using reflection techniques in university courses* presented at the 18th Australian Association of Professional and Applied Ethics National Conference, Hobart, June, 2011 provided further references and also to Michele Leering, Executive Director, Community Advocacy and Legal Centre, Belleville, Ontario *Introduction to "reflective practice" and a working conceptualisation for discussion purposes*, distributed at the Global Alliance for Justice Education Conference, Valencia, 2011.

33 Published by the University of Northumbria since 2000.

34 Jointly sponsored by the Association of American Law Schools, the Clinical Legal Education Association and New York University School of Law; published since 1994.

35 Ledvinka, above, n10, 36-37.

36 Ledvinka, above, n10, 38. See also Race, P. *Evidencing Reflection: Putting the "w" into reflection*, ESCALATE Learning Exchange (2002).

However, after several years of developing a pedagogy in this area, I believe that teaching reflection is indeed possible. Definitions of reflective practice remain contested³⁷ and it is therefore necessary to accept the multiplicity of meanings that students may understand about reflective practice.

Steve Dillon observes that in twenty years of teaching music, he always 'emphasised the practical and experiential. Making music was the priority, composing, improvising, performing, students were intrinsically motivated to make music...'³⁸ He then explains that Dewey's work³⁹ convinced him that 'experience was meaningless without reflection,'⁴⁰ a notion that I have espoused for some time, although I do not recall a particular single event or a specific academic article that convinced me of this. Dillon describes his ten year quest to examine reflection in the classroom⁴¹ and outlines the ways that he introduced reflective components into his music curriculum.

The concept of 'reflective practice' was brought into the academic arena with Donald Schön's *The Reflective Practitioner*.⁴² Jennifer Moon points out that reflective practice was developed initially in the nursing and teaching professions⁴³ and it is in those disciplines that the bulk of scholarship has occurred in this area. The rationale behind teaching students to be reflective is that it encourages reflective practice which, according to Schön and his disciples, is of benefit in professional practice. Moon also argues that '[r]eflection also plays an important part in employability skills and student work experience.'⁴⁴ It is for these reasons that I teach students about reflective practice and use the (assessable) reflective journal as a tool for developing and encouraging reflective practice. It is my aim that students will take the skills of reflection with them into practice after graduation. The use of a journal is an example of what Schön calls reflection on action (conscious reflection after the event⁴⁵), which can lead to the skill of reflection-in-action (the ability of professionals to think about what they are doing while they are doing it).⁴⁶

Georgina Ledvinka provides a useful and comprehensive overview of the theoretical pedagogical basis for reflection, particularly the theories of Kolb (the experiential learning cycle) and Schön (the reflective practitioner). She also contextualises reflection by noting that it is an element of deep learning as opposed to surface learning.⁴⁷ However, Ledvinka asserts that reflection is a method of learning, 'not a cure-all which is guaranteed to turn out sensitive, ethical lawyers, or those who have particularly good negotiation/ advocacy/interviewing skills.'⁴⁸ Ledvinka summarises the meaning of 'reflection' as defined by various scholars⁴⁹ and concludes that 'reflection is a method

37 Tummons J, 'It sort of feels uncomfortable': Problematising the Assessment of Reflective Practice', (2011) *Studies in Higher Education*, vol 36, no. 4, pp. 475-6, p. 479.

38 Dillon S, 'Reflecting on Reflection', 1999 *Victorian Journal of Music Education*, 8.

39 Dewey, J. (1980) *Art as Experience*, USA: Pedigree Books.

40 Dillon, above, n38.

41 Dillon, above, 9.

42 Schön DA, *The Reflective Practitioner: How Professionals Think in Action*, London: Basic Books, 1983.

43 Moon, above, n4, 80.

44 Moon, above, n4, 81.

45 Waters M, 'Educating the Reflective GP: Schön revisited,' in *Teaching Exchange*, Radcliffe Publishing, 2004, 632.

46 Waters, above, 631.

47 Ledvinka, above, n10, 35.

48 Ledvinka, above, n10, 35.

49 Ledvinka, above, n10, 31.

of teaching and learning.⁵⁰ Ledvinka's work is therefore a useful addition to the student reading list. My personal objective in using reflection as a teaching and learning tool is to introduce students to the 'habit of processing cognitive material which can lead students to ideas beyond the curriculum, beyond learning outcomes, and beyond their teachers.'⁵¹ Many of my students have discovered that the process of reflection enables them to articulate their thoughts, their goals and their career aspirations. At a time when more and more law graduates are being produced by universities but fewer graduate positions are available, many law students tell me that they are confused and uncertain about their future. Many have told me that keeping a reflective journal has helped them to identify how they hope to utilise their legal knowledge and skills and to articulate their goals.⁵² Ultimately, developing tools for life-long learning is one of the most important aims of reflection.⁵³

Michael Eraut notes that 'before Schön wrote his seminal work, the concept of reflection tended to be used in the context of Dewey's central emphasis on learning from experience.⁵⁴ Then Kolb re-popularised the idea in 1984 in the contexts of adult education and management education;⁵⁵ its educational purpose was to learn from past experience in order to be better prepared for future problems and decisions.⁵⁶ Eraut argues that Schön advanced the idea of reflective practice into 'reflection on current and ongoing actions to improve the quality of actions through on-the-spot decisions or decisions made soon after the reflective period has concluded.'⁵⁷ It is important to remember though, that 'Schön rarely wrote anything about law or lawyers. If he ever saw a law school class, there is no trace of it in his writing.'⁵⁸ The index of *Educating the Reflective Practitioner* contains only six references to legal education, one of which is incorrect⁵⁹ and the other five of which 'are so obvious that they might be the products of casual chats with law faculty acquaintances.'⁶⁰ Importantly, '[a]t the time he wrote his most oft-cited books, [Schön] seems not to have known about law school clinics.'⁶¹

50 Above.

51 Ledvinka, above, n10, 31, citing Moon J, *Reflection in Higher Education Learning* PDP Working Paper 4, LTSN (2001).

52 I am currently compiling data about this for future publication.

53 See Ledvinka, above, n10, 31.

54 Eraut M, 'The Practice of Reflection,' in 2004, 3,2 *Learning in Health and Social Care*, 47, 48.

55 Kolb DA, *Experiential Learning – experience as the source of learning and development*, Prentice Hall, 1984.

56 Eraut, above, n54, 48.

57 Above.

58 Neumann RK Jr, 'Donald Schön, The Reflective Practitioner, and the Comparative Failures of Legal Education, (1999-2000) 6 *Clinical Law Review* 401.

59 Schön alleges that 'in the law school classroom ... there is presumed to be a right answer for every situation', Schön, *Educating the Reflective Practitioner: Toward a New design for Teaching and Learning in the Professions*, (1987, 1990) at 39, cited in Neumann, above, n 58 at 404, n 16.

60 Neumann, above, n58, 404, citing Schön, *Educating the Reflective Practitioner: Toward a New design for Teaching and Learning in the Professions*, (1987, 1990) 4, 8, 11, 14, 34.

61 Neumann, above, n58, 404. This is evidenced by an edited version of Schön's address to the annual meeting of the Association of American Law Schools in 1992, where Schön refers to 'post-law school training' as an example of the way lawyers have learned, 'probably not in school but through some kind of apprenticeship in a practice setting, to become competent lawyers.' See Schön DA, 'Educating the Reflective Legal Practitioner,' (1995-1996) 2 *Clinical Law Review* 231 at 248.

In 1993, Sue Atkins and Kathy Murphy published a literature review of articles about reflective writing in the context of nursing 'in an attempt to unravel the important aspects of reflection and to identify cognitive and affective skills required to *be* reflective' (my emphasis).⁶² Atkins and Murphy noted a 'lack of definition and clarity of the concept of reflection'⁶³ and that questions can be raised about the meaning of the term 'reflection' and the extent to which readers can make comparisons between the works.⁶⁴ Moon also notes the 'extraordinary complexity of the literature in this area'⁶⁵ and the fact that the 'common sense view of reflection' differs from the 'academic view of reflection'.⁶⁶

Atkins and Murphy argue that the skills of self-awareness, description, critical analysis, synthesis and evaluation are required in order to be reflective. They propose that 'emphasis should be given to developing these skills in professional courses in order to facilitate the use of reflection as a learning tool'.⁶⁷ They note two definitions:

'Reflective learning is the process of internally examining and exploring an issue of concern, triggered by an experience, which creates and clarifies meaning in terms of self, and which results in a changed conceptual perspective.'⁶⁸

'Reflection in the context of learning is a generic term for those intellectual and affective activities in which individuals engage to explore their experiences in order to lead to new understandings and appreciations.'⁶⁹

Atkins and Murphy have distilled various authors' ideas into three key stages in the reflective process:

1. An awareness of uncomfortable feelings or thoughts (Schön's idea of 'surprise'⁷⁰) or inner discomfort (as described by Boyd and Fales⁷¹)
2. Critical analysis of the situation – an examination of feelings and knowledge
3. Development of new perspective, leading to an outcome of *learning*.⁷²

Another analysis of 'good reflective practice' is as follows:

1. Direct experience of a situation
2. Thoughtful examination of existing beliefs, knowledge or values, and

62 Atkins S and Murphy K, 'Reflection: a review of the literature,' in *Journal of Advanced Nursing* 1993, 1188 – 1192, 1188.

63 Above, 1189.

64 Above.

65 Moon, above, n4, 82.

66 Moon, above, n4, 82.

67 Atkins and Murphy, above, n62, 1191.

68 Boyd EM and Fales AW, 'Reflective learning key to learning from experience', (1983) 23(2) *Journal of Humanistic Psychology*, 99-117.

69 Boud D, Keogh R and Walker D, *Reflection Turning Experience into Learning*, London: Kegan Page, 1985.

70 Above, n37.

71 Above, n62.

72 Atkins and Murphy, above, n62, 18, 1188 – 1192, 1189-90.

3. The systematic contemplation of observations and potential actions.⁷³

A further interpretation of the three different stages of reflection is expressed as: **descriptive reflection**, **dialogic reflection** (weighing competing claims and viewpoints, and then exploring alternative solutions) and **critical reflection** (in the context of the ethical criteria of one's profession).⁷⁴

None of these threefold definitions include a specific reference to an acknowledgement of emotions and the development of emotional intelligence. Colin James argues that theories that ignore opportunities for reflection on feelings are inadequate.⁷⁵ He argues that '[r]eflection on feelings and emotions helps us to understand the choices we make ... [and] helps to prioritise our ideas because we know more about their source.'⁷⁶ I agree. Law students engaged in clinical programs are often confronted by unfamiliar feelings. Personal reactions to clients and to fellow students can create tension and anxiety. They can also promote a sense of satisfaction and achievement. One of the exciting yet daunting aspects of clinical practice is that no two days are the same. Reflection on their differing experiences allows students to synthesise what they are learning in a highly personal way, and adapt their learning to their sense of self, helping them, as James suggests, to understand their personal and professional choices.

Reflection often requires stimulation. Moriarty and McKinlay provide a variety of suggestions to stimulate reflection including oral presentations; learning journals, logs and diaries; reflective exercises; reflection on work experience; portfolios and personal development planning.⁷⁷ My own experience supports the recommendation of Moriarty and McKinlay to introduce students to ideas about reflection including what it is and how it is different from other forms of learning. Since introducing a seminar about reflection and what constitutes 'good' reflective writing to my own students, I have observed a marked improvement in their reflective writing.

Howard Harris describes four aspects of teaching students to be reflective:

1. Categories of reflection
2. Helping the neophytes – reflection on action, interactive workshops, early, encouraging feedback⁷⁸, licence to write in the first person.
3. Assessment criteria including depth of reflection, reflection towards a purpose, more than emotional outpouring, comprehension of the topic.
4. Privacy⁷⁹ – not forcing students to disclose themselves, not confessional.

73 Francis D, 'The Reflective Journal: A Window to Preservice Teachers' Practical Knowledge,' (1995) 11 *Teaching and Teacher Education* 229 at 230, cited in James, above, n12, 139.

74 Harris H, *Make them think about it! Using reflection techniques in university courses* presented at the 18th Australian Association of Professional and Applied Ethics National Conference, Hobart, June, 2011; conference power point slides provided by Howard Harris to the author.

75 James, above, n12, 139.

76 Above.

77 Moriarty HJ and McKinlay E, 'Reflective journals reveal the transformative nature of early community-based experience', in *Focus on health Professional Education: A Multi-disciplinary Journal* Vol 10, No 1, 2008, 59.

78 For a thorough discussion about feedback including a 'six step feedback model' see Blaustone B, 'Teaching Law students to self-critique and to develop critical clinical self-awareness in performance,' (2006-7) 13 *Clinical Law Review* 143.

79 Harris, above, n74.

Jennifer Moon's three works on reflective writing⁸⁰ provide an introduction to the academic literature on reflective practice and reflective writing. Moon compiled a major summary of the literature on reflection in 1999,⁸¹ and elaborated on that review in 2004,⁸² noting the work of Burns and Bulman⁸³; Taylor and White⁸⁴; McAlpine and Weston⁸⁵; Stewart⁸⁶ and Lowry.⁸⁷ Moon also identifies that the literature extends to how to introduce reflection into disciplines,⁸⁸ and how to embed it into programs.⁸⁹

In 2000, Sue Duke and Jane Appleton conducted a literature review of articles published between 1985 and 1999, using the key words 'reflection', 'reflective practice' and 'reflective process' in the databases MEDLINE and CINAHL.⁹⁰ They focus on reflection as a means of encouraging integration between theory and practice within professional education, particularly palliative nursing care. Their results suggest that students are able to describe their practice but find it harder to analyse knowledge, the context of care and to action plan. Duke and Appleton summarise the various ways that reflection is depicted in the literature: 'an everyday activity that can be refined for learning from experience'⁹¹ 'a continuum with technical rationality,'⁹² 'a hierarchy of levels

80 Moon, J. *Reflection in learning and Professional Development*, London: Kogan, 1999; Moon, J. *Learning Journals: A Handbook for Academics, Students and Professional development*, London: Kogan, 1999; Moon, above, n4.

81 Moon, J., 1999, above.

82 Moon, above, n4, 81.

83 Burns, S. and Bulman, C. (Eds) *Reflective Practice in Nursing*, 2nd Ed, (2000) Oxford: Blackwell Science.

84 Taylor C. and White, S. (2000) *Practising Reflectivity in Health and Welfare*, Milton Keynes: Open University Press.

85 McAlpine L. and Weston, C, 'Reflection: improving teaching and students learning', in N. Hativa and P. Goodyear (Eds) *Teacher thinking, beliefs and Knowledge in Higher education*, (2002) Dordrecht: Kluwer Academic Publishers, 59-77.

86 Stewart, M, 'Encouraging Reflective Practice,' (2002) *Learning and Teaching Press*, Spring 1 (2), 4-6.

87 Lowry, A, 'Reflective practice and web-based learning', (2002) *Learning and Teaching Press*, 1 (2), 10-11.

88 Jones, J, 'Reflective Learning: helping learners and teachers to see more clearly: the learner's perspective', (2002) *Learning and Teaching* 2(2), 4-6; Race, P. (2002) 'Evidencing reflection – putting the "w" into reflection', ESCALATE Learning Exchange.

89 Knowles, Z, Borrie, A and Stewart, M, 'Embedding reflection within a degree programme', (2001) *Learning and Teaching Press*, 1(2), 8-10.

90 Duke S and Appleton J, 'The use of reflection in a palliative care programme: a quantitative study of the development of reflective skills over an academic year', 2000 *Journal of Advanced Nursing*, 32(6) 1557-1568.

91 Dewey J, *How We Think: A Restatement of the Relation of Reflective Thinking to the Educative Process*, (1933) Chicago: DC Heath; Boyd E and Fales A, 'Reflective Learning: Key to Learning from Experience', (1983) 23 *Journal of Humanistic Psychology* 99-117; Boud D, Keough R & Walker D, 'Promoting Reflection in Learning: A Model' in Boud D, Keough R & Walker D (Eds), *Reflection: Turning Experience Into Learning*, (1985) London: Kogan Page, 18-40; Gibb G *Learning by Doing. A Guide to Teaching and Learning Methods*, (1988) Further Education Unit, Oxford Polytechnic; Boud D and Walker D, 'Barriers to Reflection on Experience' in Boud D, Cohen R and Walker D (Eds), (1993) Buckingham: Open University Press; all cited in Duke and Appleton, above, n90.

92 Powell J, 'The Reflective Practitioner in Nursing', (1989) 14 *Journal of Advanced Nursing*, 824-832; Day C, 'Professional Learning and Researcher Intervention', (1985) 11 *British Educational Research Journal*, 133-151; Day C, 'Reflection: A necessary but not sufficient condition for professional development', (1993) 19 *British Educational Research Journal*, 83-93, all cited in Duke and Appleton, above, n90.

between technical ability and ethical and moral justification of practice',⁹³ 'a process of critical dialogue',⁹⁴ 'a process of emancipation',⁹⁵ 'the integration of calculative and contemplative thinking – transformation of thinking into learning'.⁹⁶ It is the final description that in my view describes most accurately what I require of my own students and the process that I encourage them to engage in, not just during their studies but in their future legal practice. The skills inherent in the act of reflection provide a vehicle for students to engage in a paradigm shift, from passive recipients of information to active learners who ask questions, view information critically and use emotional intelligence.⁹⁷ I have adapted these skills for use as marking criteria for reflective writing exercises (see Appendix A).

In the context of occupational health nursing, reflection has been said to be an important component of experiential learning 'because it can promote the ability to engage in self-assessment, to adapt to change and develop autonomy'.⁹⁸ Ian Weinstein notes that clinical programs can offer 'a rich context for reflection upon [professional] motivation'.⁹⁹ Jane Harris Aiken takes the role of reflection an important step further in the context of clinical legal education. She points out that one of the four fundamental values of the legal profession¹⁰⁰ identified by the MacCrate Report¹⁰¹ is striving to promote justice, fairness and morality. Aiken describes how using Fran Quigley's phenomenon of the 'disorienting moment'¹⁰² in clinical legal education can encourage students to develop compassion and therefore encourage them to promote justice, fairness and morality.

93 Goodman J, 'Reflection and teacher education: a case study and theoretical analysis', (1984) 15 *Interchange* 9-26; Mezirow J, 'A critical theory of adult learning and education', (1981) 32 *Adult Education*, 3-24; Mezirow J, 'How critical reflection triggers transformative learning', *Fostering Critical Reflection in Adulthood* (Mezirow, J. Ed) San Francisco; Jossey Bass, 1991, 1-20; Day C, (1993) 'Reflection: a necessary but not sufficient condition for professional development', 19 *British Educational Research Journal* 19, 83-93; all cited in Duke and Appleton, above, n90.

94 Brookfield S. (1987) *Developing Critical Thinkers*, Open University Press, Buckingham; Brookfield S. (1991) 'Using critical incidents to explore learners' assumptions', *Fostering Critical Reflection in Adulthood* (Mezirow J. Ed), Jossey Bass, San Francisco, 177-193; Brookfield S. (1996) 'On impostership, cultural suicide and other dangers: how nurses learn critical thinking', 24 *Journal of Continuing Education in Nursing*, 197-205; Johns C. (1994) 'Nuances of Reflection', 3 *Journal of Clinical Nursing* 71-73, Johns C. (1995), 'Framing learning through reflection within Carper's fundamental ways of knowing in nursing', 22 *Journal of Advanced Nursing* 226-234, Johns C. (1998) 'Illuminating the transformative potential of guided reflection', *Transforming Nursing through Reflective Practice* Johns C. And Freshwater D. Eds), Blackwell Science, Oxford, 78-90, al, cited in Duke and Appleton, above, n 90.

95 Carr W. and Kemmis S. (1986) *Becoming Critical: Education, Knowledge and Action* research, The Falmer Press, London; Fay B, (1987) *Critical Social Science*, Polity Press, Cambridge, both cited in Duke and Appleton, above, n90.

96 Pierson W, (1998) 'Reflection and nurse education', 27 *Journal of Advanced Nursing*, 165-170, cited in Duke and Appleton, above, n90.

97 See Duke and Appleton, above, n90.

98 Griffiths L, 'Time for Reflection', *Occupational Health*, May 2004 Vol 56 Issue 5, p 20-21.

99 Weinstein I, 'Teaching reflective lawyering in a small case litigation clinic: A love letter to my clinic,' (2006-2007) 13 *Clinical Law Review* 573, 599.

100 The other three values are the provision of competent representation, striving to improve the profession and professional self-development.

101 American Bar Association Section of 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*, 1992.

102 Quigley F, 'Seizing the Disorienting Moment', 2 *Clinical Law Review* 37, 51, cited in Aiken JH, 'Striving to Teach "Justice, Fairness and Morality"' in (1997-1998) 4 *Clinical Law Review* 1, 24.

Aiken explains that law students ‘typically come from backgrounds far more privileged than those of their clients’¹⁰³ so they are likely to experience ‘disorienting moments’ in the course of a clinical program, largely because the experience is new. In Aiken’s experience, ‘[t]he majority of these students had been shielded from the reality of people they perceived as different. Experiencing difference is often “disorienting”.’¹⁰⁴ Further, clinical programs can bring students into contact with emotionally challenging situations. Aiken found that ‘[s]uch emotional turmoil also created a willingness to engage in self-reflection and an openness to learning about privilege.’¹⁰⁵

Aiken says that it is at this point that we must add a step in the reflection phase:

‘Not only should we help our students reflect carefully on the disorienting moments caused by the insights into “different” worlds [e.g. realisation of the difficulty of surviving on unemployment benefits, lack of childcare causing a client to miss an appointment] but we must help our students in reflecting on why the moments are disorienting. This requires students not only to analyse the world outside of them but also to turn inward and analyse themselves. They must seize the moment of disorientation and deconstruct it.’¹⁰⁶

According to Aiken, even in classroom moments that are difficult or uncomfortable, ‘[t]he disorienting moment is not enough. This is an opportunity to have the learner reflect on how her values affected her analysis of the problem and, consequently, the delivery of justice...you cannot let the moment fade.’¹⁰⁷ Aiken also suggests questions to assist this reflection process in class (see Appendix D).

Aiken’s idea about injustice being disorienting is compelling. She argues that we should seize upon that disorientation ‘and help our students develop a critical consciousness of the operation of power and privilege both in the situation that they are observing and in themselves.’¹⁰⁸ I am excited by her idea of teaching students to be compassionate and do justice by changing the focus from the ‘other’ and turning the focus onto themselves.¹⁰⁹ This is reflection with a goal for both learner and teacher: striving to promote justice, fairness and morality.

Some clinicians argue that it is important for students to learn about reflection theory.¹¹⁰ Teacher knowledge of educational theory on reflection can be critical to assisting students in their reflective thinking.¹¹¹ I always provide materials about reflective writing to students and in 2011 I introduced a session on reflective writing in class time (see part D). Instruction is provided on

103 Aiken JH, ‘Striving to teach “Justice Fairness and Morality”’, (1997-1998) 4 *Clinical Law Review*, 1, 25.

104 Aiken, above, 37-38.

105 Aiken above, n103, 41. Aiken stresses throughout her article that a recognition of privilege is essential for the development of compassion and an understanding of justice. ‘Learners will not strive to promote justice unless they understand how their own privilege prevented them from seeing injustice as well as how their own privilege allows them to benefit indirectly.’ (at p 44)

106 Aiken, above, n103, 26.

107 Aiken, above, n103, 51.

108 Aiken, above, n103, 63.

109 Aiken, above, n103, 63.

110 Sparrow provides an introduction to the work of academics in the field such as Donald Schön, David Kolb, Georgina Ledvinka and Jenny Moon; see also Maughan, C. And Webb, J., ‘Taking Reflection Seriously: How was it for us?’ in Maughan, C. and Webb, J (Eds), *Teaching Lawyers’ Skills*, Butterworths (1996).

111 Ledvinka, above, n10, 36.

reflective theory, and students complete reflective writing exercises. Informal feedback indicated that this was well accepted and appreciated by students and I have now embedded into the course longer periods of class time for reflective writing training.

There are a number of practical ideas that clinical teachers can employ. For example, the classroom can be arranged to encourage reflection by avoiding placement of the teacher in the ‘power’ role at the front; my own experience confirms that in a circle is best,¹¹² although this is not always possible if the class is held in a lecture theatre, or a room with immovable furniture. In the latter situations, asking the students to sit in the front few rows is helpful, especially if the teacher can join them, or at least avoid being above or detached from them (such as behind a lectern or desk). Ledvinka advocates the idea of the teacher acting as a facilitator of discussion rather than as the ‘master’ who can give the answers on every issue.¹¹³ The encouragement of genuine and egalitarian classroom discussion is indeed one of the most pleasurable aspects of clinical legal education, and provides a non-judgmental learning environment. Small group or pair discussions provide opportunities for peer and self-assessment¹¹⁴ and also encourage discussion amongst less extroverted students who prefer not to speak frankly about personal experiences in front of a larger group. James asserts that ‘[p]eer sharing helps [students] discover they may not be alone in having an emotional reaction or sympathetic response to a client’s situation. It is an opportunity for the students to discuss their attitudes and values, and the reasons for them, and can lead to very productive learning situations and long-lasting relationships.’¹¹⁵ Ledvinka cautions, however, that it should be a supporting group not a support group. There are no right or wrong answers but it is a learning environment; reflection is not just to make people feel better.¹¹⁶

PART D: HOW DO WE ‘TEACH’ STUDENTS TO WRITE REFLECTIVELY?

Sparrow’s research indicates that ‘students do find reflective writing very difficult since it is so unlike any assessment task they have previously undertaken.’¹¹⁷ A study by Kenny, Styles and Zariski in 2004 concluded that law students found the completion of a reflective report confronting, even excruciating, and that ‘they needed to have the tools to deal with it.’ Further, they concluded (as I have from my teaching experience) that students ‘needed to explore ways in which students could develop reflective skills.’¹¹⁸ Further, a primary disincentive of reflective writing is the fact that students might be reluctant to report all their experiences if they fear that they have made mistakes or acted inappropriately.¹¹⁹ It is important to be responsive to students’ feelings of vulnerability with regard to the ‘confessional element’ of reflective writing and their

112 Above.

113 Ledvinka, above, n10, 36; Maughan C & Webb J, above, n 110, 268.

114 Ledvinka, above, n10, 37.

115 James, above, n12, 140.

116 Ledvinka, above, n10, 37, citing Maughan and Webb, above, n110.

117 Sparrow, above, n22, 74.

118 Kenny MA, Styles I & Zariski A, ‘Looking at You Looking at Me Looking at You: Learning Through Reflection In a Law School Clinic,’ (March 2004) 11(1) *E Law – Murdoch University Electronic Journal of Law*, 8.

119 Varnava T and Webb J, ‘Key Aspects of Teaching and Learning: Enhancing learning in legal education’ in (2000) Krathwohl DR & Anderson LW (Eds.), *A taxonomy for learning, teaching and assessing: A revision of Bloom’s taxonomy of educational objectives*, Longman Publishing, 379.

nervousness about being judged when engaging with this unfamiliar genre.¹²⁰

The first component in my pedagogy of teaching reflective writing is the establishment of an appropriate environment. I spend a great deal of class time generating an atmosphere of trust between myself and the students and between the students themselves, to encourage them to disclose personal feelings and to analyse their own reactions to events. Classes are structured so that this relationship of trust builds gradually. The first exercise involves students introducing themselves and articulating why they have chosen to enrol in the course. Subsequent written exercises involve personal goals, self-awareness, personality types, identification of strengths and recognition of opportunities for improvement. These exercises are private, and students are not required to divulge their thoughts. The next task involves discussing 'an unexpected situation which I handled well' in pairs. Then they select a different partner with whom to discuss 'an unexpected situation which I handled badly'. After this, there is usually at least one student who is prepared to share this experience with the class, leading to a discussion about the best way to deal with unexpected situations that might occur on the placement or in a work environment. These early class exercises lay the foundation for later discussions about what they are learning in their clinical placement environments. As the term progresses, students are encouraged to relate experiences from which they have learned something. Divulging personal reactions to work experiences involves an element of risk. In my experience, students are prepared to take that risk if they feel supported and know that the risk will produce a positive result in the form of a validation of their feelings and encouragement for the future.

The next step is to generate reflective writing from the material that is mined from class discussions. The translation of an informal discussion into an assessable piece of reflective writing is not a simple progression. What do we want from our students when we ask them to produce 'a piece of work which demonstrate[s] genuine depth of reflection'?¹²¹

Moon explains that taking the step from reflection to reflective writing involves various factors. It is important to consider the reason for the writing (personal, academic, assessable, to be presented to the class), who else might read it, and the students' emotional state at the time of writing.¹²² Roy Stuckey sets out the importance of the creation of structures and protocols in order to assist students' self-learning. He suggests that students should be given materials on the value of reflective thinking, that they should write journals and do self-evaluations during and at the end of the study period¹²³ and that they need informative feedback.¹²⁴

In defining reflective writing, Jennifer Moon articulates what it is **not**:

- Conveyance of information, instruction or argument
- Straightforward description (although there may be descriptive elements)
- A straightforward decision about whether something is right or wrong, good or bad (i.e. not judgmental)

120 Tummons, above, n 37, 475-6.

121 Sparrow, above, n22, 73.

122 Moon, above, n4, 186-7.

123 Stuckey, above, n28, 824.

124 Stuckey above, n28, 818.

- Simple problem solving¹²⁵

Moon explains that in the educational context,

‘reflective writing will usually have a purpose...it will usually involve the sorting out of bits of knowledge, ideas, feelings, awareness of how you are behaving...it could be seen as a melting pot into which you put a number of thoughts, feelings, other forms of awareness, and perhaps new information. In the process of sorting it out in your head, and representing the sortings out on paper, you may either recognize that you have learnt something new or that you need to reflect more with, perhaps, further input. Your reflections need to come to some sort of end point, even if that is a statement of what you need to consider next.’¹²⁶

Michael Meltsner writes about ‘stimulating reflective writing ... to raise issues of professional values [as] ... an alternative to the use of open-ended journal writing.’¹²⁷ His aim is to deliberately force students to reflect on ‘who they are, what they believe and how this might play out in what they do or expect to do as lawyers.’¹²⁸ Meltsner, unlike Duke and Appleton¹²⁹ stresses that he is ‘trying to stimulate reflection, not teaching a formal set of skills.’¹³⁰ His methodology is influenced by his belief that ‘growth and development proceed from stimulating the natural agenda of the learner’ [and that] these narratives, conversations and personal assignments offer a writing experience that can be deeply supportive and nurturing.’¹³¹ Meltsner requires students to submit short reflective papers every week.¹³² Students are then given written feedback in the next class, and with students’ permission, their work is read out in class.¹³³ The assignment topics are deliberately personal and designed to stimulate reflection about working as a lawyer. Appendix C contains a list of Meltsner’s assignment topics, to which I have added some of my own ideas.

Ogilvy defines the following as goals for journal assignments:

- a) To encourage the exploitation of the demonstrated connection between writing and learning;
- b) To nurture a lifetime of self-directed learning (especially in the context of self-awareness of learning styles; ‘journals can help students engage more deeply with what they learn about themselves’;¹³⁴
- c) To improve problem-solving skills;
- d) To promote reflective behaviour;
- e) To foster self-awareness;¹³⁵

125 Moon, above, n4, 187.

126 Above.

127 Meltsner M, ‘Writing, Reflecting and Professionalism’, in (1998-1999) 5 *Clinical Law Review* 455.

128 Meltsner, above, 467.

129 Above, and see also appendix A.

130 Meltsner, above, n127, 463.

131 Meltsner, above, n127, 467.

132 Meltsner, above, n 127, 459-560.

133 Students may elect not to share their papers with the rest of the class and retain their privacy if they wish.

134 Ogilvy, above, n19, 69

135 Ogilvy, above, n19, especially 80 – 82.

- f) To allow for the release of stress; and
- g) To provide periodic student feedback to the teacher¹³⁶

Whilst Ogilvy specifically declares that his list of aims for the use of a reflective journal is not in any order of priority, he makes it clear that the promotion of reflective behaviour is ‘one of the principal goals of [his] teaching.’¹³⁷ Ogilvy strongly emphasises the use of the journal as a tool for encouraging reflective behaviour because it provides ‘a specific time and place in which to engage in reflection.’¹³⁸ He also suggests using journals with a problem solving emphasis. He provides examples to demonstrate that students are reflective when they contemplate they still need to learn, when considering their relationship to the course material, when monitoring their own learning and when seeking to clarify values, examine assumptions or express tentative understandings, and also when writing about their experiences in legal education and how it affects their lives.¹³⁹

Students in my course augment their placement experiences by engaging in class discussions about what they are learning during the placement, in order to develop a critical perspective on such issues as legal ethics, professionalism, justice access, and law reform. They are challenged to consider their own personal values and beliefs and how these values might affect the choices that they make in later professional life. In addition to analysing and reflecting on their personal experiences, students are required to consider the role of legal professionals in the legal system and in society generally. There is no ‘black letter law’ in my course. It has been acknowledged that one of the challenges of modern legal education is that students need to be taken beyond their own assumptions about the parameters of what the study of law entails.¹⁴⁰ This course recognises this need.

Students in my course are required to produce three pieces of written summative assessment: a seminar presentation, a critical incident report and a reflective portfolio.

The critical incident report is a short (1000 words) reflective exercise, designed to prepare students for the larger reflective portfolio. In the critical incident report, students are required to identify a critical incident or situation that has taken place either during the first few weeks of their placement or in preparing for their placement. It may be critical because it was a learning experience, it was significant in some way, it identified an area of law that the student was either attracted to or repelled by, it may have generated excitement or influenced the student in some way. Students are required to describe the incident and its impact and to reflect on the reason for the impact. This involves the students considering their own values, preconceived ideas and prejudices. It also involves a consideration of the perspectives of others involved in the incident. Students must describe how they dealt with the incident and its impact and what they learned from the incident, including if they have learned something about themselves. Finally, they have to consider how they will approach similar incidents in the future. (Full details are provided in Appendix I.) The questions are designed as prompts to encourage the students to reflect and also to avoid ‘writers’ block’. This assessment is summative (it is worth 25% of their final grade) as well

136 Ogilvy, above, n19, 63. Ogilvy points out that these goals are idiosyncratic and subject to constant revision.

137 Ogilvy, above, n19, 75-76.

138 Ogilvy, above, n19, 77.

139 See examples from student journals in Ogilvy, above, n19, 77 – 79.

140 Varnava T and Webb J, above, n119, 363.

as formative. It is submitted early in the term and students are provided with extensive feedback to assist them with their reflective portfolio that they must submit at the end of the term. The desired outcome is that responses to formative feedback will produce an improvement in student writing.

My personal reflection on this assessment activity has caused me to ensure that the assessment is aligned with the course aims. Jonathan Tummons has noted that there is an established body of literature positing that reflective practice should be a component of professional behaviour and development but he notes that the validity of the assessment of reflective practice is contestable.¹⁴¹ This led me to ponder the rationale behind giving a grade for the reflective exercises in my course and also led me to examine exactly what the assessment criteria are. I asked myself: What exactly am I trying to teach them? What am I trying to assess? Revisiting the course objectives was (is) a useful activity to ensure that each assessment activity meets one or more of the learning objectives of the course. The table in Appendix J addresses whether each of my course objectives are fulfilled by each particular assessment item. Upon considering the taxonomies of Bloom and Gagne¹⁴², I decided that greater specificity was required in my assessment questions; a variety of alternative and more action-specific verbs was necessary. Students are encouraged to be critical and not just descriptive, but the original wording of my assessment activity required my students to merely identify and describe (see Appendix H). Realising that this was potentially confusing for them, I recently amended the wording to that set out in Appendix I. The use of much more powerful verbs indicates to students that critical analysis is required. The improved language is more instructive and less ambiguous, in accordance with the principle that good assessment requires clear articulation of purpose, requirements, standards and criteria.¹⁴³

The use of reflective journals as formative rather than summative assessment has been strongly advocated¹⁴⁴ and many articles about reflective journals encourage the idea of providing feedback to students soon after the journal entries are written.¹⁴⁵ However, in my experience, the submission of reflective writing as formative assessment only is rarely effective. Ross Hyams has investigated the advantages and disadvantages of grading reflective writing and concludes that 'reflective journals can and should be graded'¹⁴⁶ whilst Simon Rice has argued against grading in a clinical environment.¹⁴⁷ My original practice was to invite and encourage students to send me extracts from their journals each week so that I could address any difficulties they were experiencing in their placements and also to give them constructive feedback on their writing. Over many years, very few students availed themselves of this formative assessment opportunity. In 2011 I incorporated two reflective writing workshops into class time in order to 'workshop' their pieces and for them to critically examine each other's writing. This formative experience offers students

141 Tummons, above, n37.

142 Bloom BS, (1956) *Taxonomy of Educational Objectives. The classification of educational goals.* Handbook, New York: David McKay Co Inc.

143 University of South Australia, *Assessment Principles and Requirements* [online]. Availability: <<http://w3.unisa.edu.au/policies/manual/2012/s1-assessment%20principles%20and%20requirements.pdf>>

144 Tummons, above, n37.

145 See, for example, Ogilvy, above, n19, 97 – 101 and Sparrow, above, n22, 74.

146 Hyams, R, 'Assessing Insight: Grading Reflective Journals in Clinical Legal Education, (2010) 17 *James Cook University Law Review* 25.

147 Rice S, 'Assessing – but not Grading – Clinical legal Education' (2007) *Macquarie Law WP* 16, 1.

the opportunity to self-assess and peer-assess.¹⁴⁸ This has resulted in a much stronger response from students seeking formative feedback on their journal entries. They then submit their final edited journals in the form of a portfolio at the end of the course. The portfolio requirements of my course are set out in Appendix F. The reflective portfolio must contain a series of reflections written in a similar manner to the critical incident report. It must also contain reflections on and reference to the literature which has been included on their reading lists. Students are expected to draw from their own experiences in order to illustrate and explain the articles that they have read. The portfolio is assessed and graded. It is hoped that students will have learned to identify 'good' reflective writing from the first piece of assessment and how they can improve it. The two assessment pieces are integral components of the course design; the design of the tasks is intended to have a significant impact on student learning.¹⁴⁹

Showing students written examples of what constitutes 'deep' reflection is extremely helpful, such as excerpts from past students.¹⁵⁰ However, it is not always possible to do this, given the private nature of some reflective writing. Moon provides a chapter entitled "Resources" which includes a map of reflective writing, guidance for students, samples of reflective writing and exercises in reflective writing. These may be copied freely for use with learners.¹⁵¹ Karen Hinnett and the UK Centre for Legal Education have also produced a series of resources about reflective practice which law teachers are encouraged to use and reproduce as resources (with appropriate acknowledgements).¹⁵²

Moon suggests the use of a double entry journal in order to engage in 'second order reflection'.¹⁵³ Students write on one half of a vertically divided page and leave the other side blank. The next time they write, students go through the initial material writing further comments. My experience to date suggests that only the very keenest students will do this; others may need to be encouraged in this task by enforcing it through summative assessment. I have yet to experiment with this idea.

Race¹⁵⁴ suggests providing 'cluster' questions to focus students' thinking, for example:

- a) What worked really well for you?
- b) Why do you now think that this worked well for you?
- c) What are you going to do as a result of this having worked for you?

Another way to encourage deeper reflection is to encourage students to reflect on a situation/ event/ incident from a different perspective, such as the perspective of another person involved.¹⁵⁵ For example, I ask students to reflect on a client interview from the point of view of the student and the client, and any other student (if interviews are conducted in pairs). Weinstein also notes that

148 Brown S and Knight P, (1994) *Assessing Learners in Higher Education*, London, Philadelphia: Kogan Page, 51.

149 This is consistent with the assessment principles of the writer's university. See above, n143.

150 E.g. Sparrow, above, n22.

151 Moon, above, n4, 2004.

152 Hinnett K, *Developing Reflective Practice in Legal Education*, UK Centre for Legal Education, University of Warwick, 2002.

153 Moon J, *Reflection in Higher Education Learning* (2001) PDP Working Paper 4, LTSN, 14.

154 Above, n 36.

155 Moriarty HJ and McKinlay E, 'Reflective journals reveal the transformative nature of early community-based experience', in *Focus on health Professional Education: A Multi-disciplinary Journal* Vol 10, No 1, 2008, 59.

reflection on relationships is important, as is reflection on values. Getting students to reflect on the relationships involved in the clinical experience (e.g. student/client; client/other side; student/supervisor; student/other student(s)) can be an excellent starting point for deeper reflection on an incident or experience that goes beyond mere description. Asking students to reflect on their values in a given situation can also stimulate further self-awareness, especially if one student's reaction differs from that of another student.

In 1997, it was noted that 'the literature on legal education contain[ed] only a few scattered references to journal writing by law students.'¹⁵⁶ Ogilvy has defined a journal as:

'a regular, written communication from a student to a teacher, related to the courses of study, that is authored by the student at the request of the teacher and to which the teacher may respond in writing. The journal, unlike a diary, is only semi-private in that it is intended to be read by at least one person other than the author, the teacher. The journal tends to be more factual and objective than emotive and subjective, but its contents may span the continuum reflected by these terms.'¹⁵⁷

Ogilvy notes that of the thousands of student journals that he has encountered, 'most do not seem to demonstrate sophisticated critical thinking, [but] overall they do consistently represent a quality of introspection and reflection that, while not deeply philosophical, is substantial.'¹⁵⁸ For me, this raises three questions:

1. What is the purpose of journal writing in the clinical setting?
2. Is it necessary or preferable to have students demonstrate sophisticated critical thinking?
3. If yes to question 2, then how do we as clinical teachers develop sophisticated critical thinking skills?

Ogilvy responds (as if anticipating these questions) that 'the journal encourages writing; probing beneath the surface of problems; thinking more deeply about the materials, products and processes of learning; and taking more responsibility for their own learning. It offers some students a less threatening alternative to in-class questions and can provide a safe place for healthy release of the intense emotional stress that is generated by the law school experience.'¹⁵⁹ This philosophy which appears to encourage the privacy of journals, is in contrast with the suggestions made by Michael Meltner who encourages the sharing the journal entries and discussion of them in class.

Aiken recognises that peer pressure in law school can prevent students from discussing their personal feelings.¹⁶⁰ Her strategy for overcoming peer pressure 'not to be personal' is to 'create opportunities for learners to use their own sense of justice in analysing legal problems and to make that a part of the 'normal' discussion'¹⁶¹ such as in small groups. Aiken also notes that journal writing is a way to 'offer learners a chance to reflect on their experiences, bring their own perspective to a problem, and analyse the issues without the pressure and immediacy of a class

156 Ogilvy, above, n19.

157 Ogilvy, above, n19, 56.

158 Ogilvy, above, n19, 59.

159 Ogilvy, above, n19, 60.

160 Aiken, above, n103, 50.

161 Above.

discussion. Such an exercise can result in a disorienting moment¹⁶² (see above).

Ogilvy points out that '[t]o be successful, the journal assignment must be presented to the students with care. It is important that the purposes and benefits underlying the assignment be presented fully to the students. It is also important that the teacher continually reinforce the value of the journal by making stimulating comments on journal entries before returning them to the students and, with appropriate regard to issues of privacy and confidentiality, by sharing student journals with the entire class.'¹⁶³

The vulnerability of students writing about personal experiences merits consideration. Students completing my course are usually in their final year of a law degree, often uncertain about their futures and often lacking in confidence about their skills. Being objective about their performance in a work experience environment and submitting their reflection about their performance for scrutiny by the course co-ordinator can be a daunting prospect for many students. Stephen Brookfield, for example, has noted that '[n]o matter how much we may think we have an accurate sense of ourselves, we are stymied by the fact that we're using our own interpretive filters to become aware of our own interpretive filters – the pedagogical equivalent of trying to see the back of one's head while looking in the bathroom mirror.'¹⁶⁴

Michael Devlin and others comment on the importance of providing feedback on reflective essays.¹⁶⁵ Their rubric for feedback, from which instructions can be developed, is at Appendix B. Wald and others view feedback as part of the process of *interactive reflective writing*¹⁶⁶ i.e. 'providing individualised guided feedback about their experiences to support learners during important transitions in an authentic, transparent manner'¹⁶⁷ that 'helps to foster students' reflective capacity, self-awareness, and self-confidence as the insights they share are illuminated, reflection is invited with targeted queries, lessons are derived, and concrete recommendations are provided, as relevant.'¹⁶⁸ Wald *et al* emphasise that the provision of feedback creates a 'commonality of experience' within a 'universe of shared experience and shared humanity.'¹⁶⁹ Wald *et al* use the Brown Educational Guide to the Analysis of Narrative (BEGAN) for preparing feedback to students' reflective writing.¹⁷⁰ Wald writes about how reflective writing by medical students when encountering death for the first time provides valuable opportunities for transformative professional growth and student well-being.¹⁷¹ Feedback can guide students to

162 Aiken, above, n103, 53.

163 Ogilvy, above, n19, 106-7.

164 Brookfield S, above, n25, 28.

165 Devlin MJ, Mutnick A, Balmer D & Richards BF, 'Clerkship-based reflective writing: a rubric for feedback' in *Medical Education* 2010, 1117-1147 at 1143.

166 Wald HS, Reis SP, Monroe AD & Borkan JM, 'The Loss of My Elderly Patient: Interactive reflective writing to support medical students' rites of passage,' in *Medical Teacher*, 2010; 32(4): e178-e184.

167 Wald, Reis, Monroe & Borkan, above, e182.

168 Above, e183.

169 MacCurdy M, 'From trauma to writing – A theoretical model for practical use', in CM Anderson & M MacCurdy (Eds), 2000, *Writing and healing: towards an informed practice*, Urbana, I L: National Council of Teachers of English.

170 Wald, Reis, Monroe & Borkan, above, n165, e179. See also Reis SP, Wald HS, Monroe AD, Borkan JM, 2010, 'Begin the BEGAN – Brown educational guide to the analysis of narrative', *Patient Education Counselling*. DOI:1.1016/j.pec.2009.11.014.

171 Wald, Reis, Monroe & Borkan, above, n165, e178.

acknowledge, explore and learn from their emotional experience, potentially bolstering resilience and student well-being'.¹⁷² Similar emotionally powerful experiences can occur in the clinical legal education context – e.g. client being imprisoned; client accused of heinous crime e.g. paedophilia, difficult client; delivering bad news etc. This can also develop emotional intelligence and lessen the sense of emotional isolation.¹⁷³ Ogilvy also recommends using prompts to address some common problems when providing feedback; some of his suggestions are included in Appendix E.

CONCLUSION

This article has critically examined the vast scholarship about reflection and reflective writing in order to inform my own approach to teaching in this area as well as to add to the body of pedagogical knowledge about how reflection assists adult learning. In particular, the article has highlighted the different ways that reflection can be encouraged in the clinical context. Many clinicians use reflection as a teaching tool; this article aims to disseminate the many varied and excellent suggestions that have been published. It is hoped that the compilation of these teaching ideas into one article will provide a useful resource for anyone involved in clinical legal education. For clinical supervisors, the suggestions may enhance their interactions with students and ultimately result in an improved service to clients. For academic staff engaged in classroom teaching, the ideas articulated here will hopefully contribute to student engagement with the aims of clinical programs and foster improved relations between students and teachers.

Finding articles about reflective writing and how to teach reflective writing has been an important step in my own learning journey towards a better understanding of what it means to teach 'reflection'. This article shares my exploration of ideas about reflective writing in the hope that other clinicians will find the ideas useful, as indeed I have. Over the next twelve months I plan to develop my own course to implement my findings and then seek feedback from students about the use of reflection in the course. The work of Ogilvy, Moon, Ledvinka, Devlin, Aiken, Sparrow, Meltzer and others provide a rich source of inspiration to those of us who are always looking for new ways to develop the potential of our students.

The various definitions of 'reflection' have caused me to consider what I actually want my own students to reflect on in their portfolios and what it means to be reflective and will be useful to incorporate within instructions to students. James' work has encouraged me to continue to require students to reflect on their feelings and emotional reactions to clinical experiences, with a view to developing their emotional intelligence. I also plan to experiment with providing feedback to students on a weekly basis. I look forward to experimenting with other ideas that I have found in my extensive reading. One of the great joys of clinical legal education is the genuine camaraderie amongst those of us who teach and supervise clinical programs. This article has been written in the spirit of generosity and sharing that I have encountered in my contact with other clinicians and I hope that this article will be of benefit to other clinical teachers and supervisors, and ultimately our students and our clients.

172 Wald, Reis, Monroe & Borkan, above, n165, e183.

173 Pololi LP and Frankel RM, 2001 'Reply to 'Vanquishing Virtue': The impact of medical education,' *Acad Med* 17(12):1172 cited in Wald, Reis, Monroe & Borkan, above n165, e183.

Appendix A

Marking Criteria for Reflective Writing Derived from Duke and Appleton's Skills Inherent in the Act of Reflection¹⁷⁴

- Ability to describe the event or situation.
- Ability to identify and focus on salient issues from the situation.
- Ability to analyse own feelings and those of others.
- Ability to use knowledge from a variety of sources in order to analyse the situation.
- Ability to place the event or situation in the context of broader social, political and professional perspectives and to analyse how these perspectives influence the event or situation.
- Ability to draw together and summarise description and analysis in order to present a new perspective or to re-vision an existing perspective.
- Ability to identify and discuss the implications for practice that arise from analysis and synthesis.
- Ability to identify learning achieved and learning needs.
- Ability to draw up an action plan based on the implications raised.
- Ability to write clearly and coherently.
- Ability to accurately cite sources of knowledge.
- Ability to self-evaluate own work.

¹⁷⁴Duke and Appleton, 'The use of reflection in a palliative care programme: a quantitative study of the development of reflective skills over an academic year', 2000 *Journal of Advanced Nursing*, 32(6) 1561, Table 1, 1559-1560.

Appendix B

The Devlin-Mutnick-Balmer-Richards Rubric for providing feedback on reflective essays.¹⁷⁵

Dimension 1: clarity of the elaboration of the reflection topic as a problem or question for enquiry.

Is it clear what triggered the reflection?

Can you complete the following sentence from the writer's standpoint: In the course of this reflection, I would like to learn more about...

What is the writer's dilemma or puzzle?

Dimension 2: consideration of relevant alternative perspectives of the problem

Does the writer include all relevant personal perspectives, including her own?

Are perspectives justified by data?

Are perspectives juxtaposed in a way that promotes additional reflection?

Dimension 3: expression of personal intellectual and emotional engagement in the reflection.

Is there evidence of personal struggle on cognitive and emotional levels?

Is it apparent why the writer chose this particular incident for reflection?

What is at stake for the writer?

Dimension 4: commitment to strengthen or alter one's personal understanding and subsequent related behaviours.

Is there an explicit statement of what was learned?

Is there evidence of movement from previously held assumptions or of the deepening of beliefs?

Is there a plan for action or commitment towards personal or systemic change?

¹⁷⁵ Michael J Devlin, Andrew Mutnick, Dorene Balmer & Boyd F Richards, 'Clerkship-based reflective writing: a rubric for feedback' in *Medical Education* 2010, 1117-1147 at 1143.

Appendix C.

Meltsner's questions to stimulate reflection, adapted by the author.¹⁷⁶

How did I get here? (i.e. into law school

Do I like being a law student?)

Is law school what I expected? Why or why not?

How have I changed since I started at law school?

Do clothes make the lawyer?

Could I work with or for someone I don't like?

What do I think about lying?

What is the first sentence of my autobiography?

How do I want clients to think of me?

Would a client recommend me as a lawyer? Why or why not?

¹⁷⁶ Meltsner, M, 'Writing, Reflecting and Professionalism', in (1998-1999) 5 *Clinical Law Review* 455, at 460.

Appendix D

Aiken's questions to assist the reflection process in class after a 'disorienting moment', adapted by Rachel Spencer.¹⁷⁷

Many of you appear moved and surprised by this story. Why were we surprised by what we have learned?

What surprised you?

What values do you have that have perhaps shaped your reaction to this story?

What structural realities of our lives encouraged us to believe ...?

How are the law and society affected by the idea that poverty is escapable?

Who benefits from that belief?

How does believing that everyone is like you influence your ability to be an effective lawyer?

Do you believe that class status is earned? Why or why not?

How do you benefit from the belief that your class status is earned?

How does that belief affect current local and national policy initiatives?

How are poor people harmed by that belief?

How is access to justice affected by that belief?

How does the element of surprise affect your ability to be an effective lawyer?

¹⁷⁷ Jane Harris Aiken, 'Striving to Teach "Justice, Fairness and Morality" in (1997-1998) 4 *Clinical Law Review* 1, 24, 51-52.

Appendix E

Feedback prompts to address common problems in journal writing [from Hettich citing Ogilvy, adapted by Rachel Spencer].¹⁷⁸

Problem in Journal	Prompt from teacher
Concept(s) used superficially	Be more specific. Check text/ notes. What do other authors say about this? Do you agree or disagree? Why?
Concept / information is inaccurate.	Not true. Check text / notes. What does [author on reading list] say about this?
Comments not connected to course material.	How does this relate to the course? Explain. Does this alter your attitude to [client centred practice / access to justice / etc]?
Illegible or long paragraphs.	This paragraph is unclear – please revise and think about the concepts we have discussed in class so far. Rewrite this using one concept per paragraph.
Repeats information verbatim; no personal contribution.	Don't repeat information. Give an example from your own workplace / clinic experience. What are your personal thoughts about this? What might the perspectives of others be?
Uses single concept where related concepts easily fit.	Also, you could consider [client-centred practice / law reform ideas / etc] here.
Entry or pattern of entries shows little evidence that concept is understood.	Briefly explain why this experience is an example of [client-centred practice / a problem with access to justice / etc].
Entries appear to have been written (crammed) on one occasion or hastily.	This seems to have been written in a hurry. Write regularly, and revise your entries. Take your time. Do you feel the same now as when you first had this experience? This journal is for you, not me. Explore and analyse your thoughts and reactions.
Uses concepts superficially that are covered later in course.	Write about this again after we have discussed it in class. What questions do you have? What answers have you found?

¹⁷⁸ Paul Hettich, 'Journal Writing: Old Fare or Nouvelle Cuisine?' In (1990) 17 *Teaching Psychology* 36, reproduced in J.P. Ogilvy, 'The Use of Journals in Legal education: A Tool for Reflection' in (1996-1997) 3 *Clinical Law Review* 55 at 100 from a presentation by Paul Hettich, *Journal Writing for Teaching and Learning in Psychology* at the 99th Annual Convention of the American Psychological Association (San Francisco, CA 1991).36.

Appendix F

Rachel Spencer's Reflective Portfolio Assignment¹⁷⁹

Assessment Item 3

Reflective Portfolio: 3,000 words

This assessment focuses on developing the following graduate qualities:¹⁸⁰

- preparation for **life-long learning** in pursuit of personal development and excellence in professional practice (GQ 2);
- **Commitment to ethical action and social responsibility as a professional and citizen**, especially in relation to ethics in a legal professional context (GQ 5); and
- Effective communication in professional practice and as a member of the community (GQ 6).

Students are required to maintain a reflective journal during the placement. One definition of a journal is:

‘a regular, written communication from a student to a teacher, related to the courses of study, that is authored by the student at the request of the teacher and to which the teacher may respond in writing. The journal, unlike a diary, is only semi-private in that it is intended to be read by at least one person other than the author, the teacher. The journal tends to be more factual and objective than emotive and subjective, but its contents may span the continuum reflected by these terms.’

J.P. Ogilvy, ‘The Use of Journals in Legal Education: A Tool for Reflection’ in (1996-1997) 3 *Clinical Law Review* 55, 56.

The aims of keeping a journal are:

- To encourage the exploitation of the demonstrated connection between writing and learning
- To nurture a lifetime of self-directed learning
- To improve problem-solving skills
- To promote reflective behaviour
- To foster self-awareness
- To allow for the release of stress
- To provide periodic student feedback to the teacher

J.P. Ogilvy, ‘The Use of Journals in Legal Education: A Tool for Reflection’ in (1996-1997) 3 *Clinical Law Review* 55, 63.

¹⁷⁹ *Legal Professional and Community Service Experience Course Information Booklet Study Period 6, 2011*, University of South Australia, 2011. This is one of three assessable items for the course. The other two items are a seminar presentation and a Critical Incident Report.

¹⁸⁰ University of South Australia Graduate Qualities available at <<http://w3.unisa.edu.au/gradquals/default.asp>>

The benefit of keeping a journal will be in direct proportion to the time you spend on it. You are invited and encouraged to send journal entries to me on a weekly basis so that we can engage in a 'conversation' about your placement and how it is going. It will also give you the opportunity to receive feedback about any problems you may be having or indeed to share in your successes and 'high points' of the placement. It will also enable me to give you ideas about how to reflect more deeply on certain issues before submitting your final portfolio.

You are also encouraged to read widely about topics we cover in class.

You are then expected to use the journal as the basis for either option 1 or option 2 of this assessment item.

Option 1: Reflective Portfolio

The Reflective Portfolio is worth 50% of the final grade. Your portfolio will consist mainly of your EDITED journal entries but it should also contain extracts from other writers (correctly attributed) and commentary and reflection upon what these writers have said about certain topics. The portfolio may also contain newspaper cuttings, tables, graphs, cartoons, quotes, notes about films and television shows, descriptions of conversations, and anything that you have found or written about that relates to your placement experience or topics covered in class. It will be a bit like a scholarly scrap book. All work of which you are not the author **MUST BE** properly attributed in footnotes and a bibliography.

The portfolio is not intended to consist of anecdotal recitation of activities. It is intended that the portfolio consist of students' observations and insights into their experiences on placement in the context of the specific topics that we cover in classes. In particular, the portfolio must show your development as a reflective learner. You are expected to describe an experience, analyse what happened, why it happened, what you learned from it, and how you would approach it next time. Your reflections must be critical reflections, not merely descriptive.

The portfolio must contain:

- 1) Your Attendance Record; and
- 2) At least four and a maximum of six of the following written items:
 - A reflective analysis of your preparation for the Placement.
 - A reflective analysis of an ethical issue that arose within your placement.
 - A reflective analysis of an access to justice issue that arose within your placement.
 - A reflective analysis of a law reform issue that arose within your placement.
 - A reflective analysis of a client-centred practice issue that arose within your placement.
 - A reflective analysis of a client interview.
 - A reflective analysis of your personal goals for the placement and whether or not you have achieved those goals or perhaps changed the goals as the term progressed. This analysis should include reflection on your own learning, your performance in the placement and your achievements, as well as plans for personal, educational and career development.
 - A reflective analysis of an incident during your placement which involved you considering your personality type compared with the personality of someone else at the placement office (self-awareness).

- A reflective analysis of your view of the role of lawyers in society in the context of your placement experience(s).

Each item must be clearly identified under one of the above headings. Each item may contain information or reflections from more than one day, especially if the incident took place over several days, or you want to talk about a series of events. You are also expected to integrate the material discussed in seminars with your reflections about your placement experiences. Even though this is quite a personal piece of work you are still expected to write formally and to use proper footnotes and cite all articles correctly. Remember that you will need to edit your work stringently. The writing is the first part of the job. Editing it properly will take longer than the actual writing.

The portfolio will be assessed according to the following criteria:

- 1) Ability to identify and focus on salient issues from each situation;
- 2) Analysis of your own perspective and the perspectives of others;
- 3) Use of a variety of resources in order to analyse the situation and to cite them appropriately;
- 4) Ability to place the event(s) or situation(s) in the context of broader social, political and professional perspectives and to analyse how these perspectives influence the event or situation;
- 5) Identification of the learning that you have achieved and your learning needs;
- 6) Ability to write clearly and coherently.

Option 2: Project Portfolio

You may only select this option if you prepared the Project Plan for Assessment Item Number 2.

The submission of your project as assessment item 3 must include:

- 1) Your Attendance Record; and
- 2) Two of the following written items:
 - A reflective analysis of an ethical issue that arose within the Project.
 - A reflective analysis of an access to justice issue that arose within the Project.
 - A reflective analysis of a law reform issue that arose within the Project.
 - A reflective analysis of a client-centred practice issue that arose within or because of the Project.
 - A reflective analysis of your personal goals for the Project and whether or not you have achieved those goals or perhaps changed the goals as the term progressed. This analysis should include reflection on your own learning, your performance in the placement and your achievements, as well as plans for personal, educational and career development.
 - A reflective analysis of an incident that occurred while working on the project which involved you considering your personality type compared with the personality of someone else at the placement office (self-awareness).
 - A reflective analysis of your view of the role of lawyers in society in the context of your project.

- A reflective analysis of the success or otherwise of the project; and
- 3) A section including the work you have done towards the project. This must include drafts, plans, file notes of telephone conversations, meeting notes, research, and everything you have done to bring the project to its final form. This is particularly important if the project is to be handed to another student for completion of a further stage of its development.
 - 4) A copy of the Project Plan that you submitted as assessment Item 2, together with a reflective analysis of whether or not you abided by the plan, and if not, why not.
 - 5) The final version of the project. This must include any written work, power point slides, reports, brochures, DVDs, etc. If the final project included a presentation, please include as much evidence as possible about the presentation (e.g. photos) and include a detailed analysis of the presentation in the Project report (see item 4 below).
 - 6) A Project Report including exactly what has been done in the project and what still needs to be done (if relevant).

The Project Portfolio will be assessed according to the following criteria:

- 1) Reflective analyses: ability to identify and focus on salient issues from each situation; analysis of your own perspective and the perspectives of others; use of a variety of resources in order to analyse the situation and to cite them appropriately;
- 2) Identification of the learning that you have achieved and your learning needs;
- 3) Achievement of the project goal.
- 4) The overall effort put into the whole project and the overall final result.
- 5) Ability to write clearly and coherently.

Appendix G

Marking Criteria for Reflective Portfolio¹⁸¹

	Fail	Pass	Credit	Distinction	High Distinction
Marking Criterion 1: Analysis & synthesis of experiences	No coherent position discernible. No evidence of self-reflective analysis.	Placement experience is only partly clear. Some evidence of self-reflective analysis.	Placement experience is clear. Clear evidence of self-reflective analysis.	Placement learning experiences and impact are well articulated. Clear evidence of self-reflective analysis at a high level.	Placement learning experiences and impact are clear and compelling. Clear evidence of self-reflective analysis at a very high level.
Marking Criterion 2: Critical Thinking	Negligible critical thinking.	Placement has been described but no evidence of interpretation or application of any principles of reflective learning beyond standard.	Placement has been analysed well in the context of reflective learning. Limited critical thinking.	Student has clearly articulated the learning experiences of the placement. A high level of critical thinking.	Student has applied reflective learning principles to the placement in a sophisticated manner and has demonstrated a superior level of critical thinking.
Marking Criterion 3 Use of appropriate professional writing style and tone	Errors in grammar, spelling and punctuation, and overall poorly written.	Some errors in grammar, spelling and punctuation; overall writing style is satisfactory	Minor/very few errors in grammar, spelling and punctuation; overall uses a writing style that requires little amendment.	No errors in grammar, spelling and punctuation, and overall uses a clear and concise writing style.	No errors in grammar, spelling and punctuation; uses a sophisticated and professional writing style.
Marking Criterion 4: Use of Resources	No reliable sources used; no reference to seminar discussions; or sources not appropriately cited.	Uses a few reliable sources with citation. Limited and superficial reference to seminar discussions.	Uses a range of reliable sources with correct citation. Good references to seminar discussions.	Uses a broad range of pertinent resources with correct citation style. Integrates seminar discussion topics, demonstrating high level of engagement with materials.	Uses a broad range of pertinent resources, with correct citation style; evidence of independent research. Sophisticated integration of seminar discussion topics.
Marking Criterion 5 Overall presentation	Poorly presented; portfolio has not been maintained appropriately over the term.	Adequately presented; portfolio has been maintained at a basic level.	Well presented. Portfolio has clearly been maintained, edited and improved across the term.	Very well presented. Portfolio has been maintained across the term and has been well edited to a high standard.	Exceptionally well presented. Portfolio has clearly been maintained and improved across the term and edited to a sophisticated level.

¹⁸¹ *Legal Professional and Community Service Experience Course Information Booklet Study Period 6, 2011, University of South Australia, 2011.*

Appendix H

Original Assessment Item 2¹⁸²

Assessment Item 2 Critical Incident Report

This assignment focuses on developing the following graduate qualities:

- **life-long learning** in pursuit of personal development and excellence in professional practice (GQ 2);
- **Commitment to ethical action and social responsibility as a professional and citizen**, especially in relation to ethics in a legal professional context (GQ 5); and
- **Written communication skills**: in particular, your ability to use clear, effective and grammatically correct English (GQ 6) and your ability to write reflectively.

Word limit: 1000 words.

Instructions

1. Identify a critical incident or situation that has taken place either during your placement or in preparing for your placement. It may be critical because:
 - you learned something from it;
 - it worried you in some way;
 - it was significant in some way;
 - it identified an area of law where you now think that you would like to work or would not like to work;
 - it excited you; or
 - it has influenced you in some way.
2. Describe the incident.
3. Describe the impact that it has had upon you.
4. Describe why you think this incident had this impact on you. Is there some background to the incident? Has it made you question your values?
5. Consider the perspectives of others involved in the incident.
5. Describe how you dealt with the incident and its impact.
6. Describe what you have learned from the incident. Have you learned something about yourself?
7. How will you approach similar incidents in the future?

¹⁸² *Legal Professional and Community Service Experience Course Information Booklet Study Period 6, 2011*, University of South Australia, 2011. This is one of three assessable items for the course. The other two items are a seminar presentation and a Critical Incident Report.

Appendix I

Revised Assessment Item 2¹⁸³

Assessment Item 2 Critical Incident Report

This assignment focuses on developing the following graduate qualities:

- **life-long learning** in pursuit of personal development and excellence in professional practice (GQ 2);
- **Commitment to ethical action and social responsibility as a professional and citizen**, especially in relation to ethics in a legal professional context (GQ 5); and
- **Written communication skills**: in particular, your ability to use clear, effective and grammatically correct English (GQ 6) and your ability to write reflectively.

Word limit: 1000 words.

Instructions

1. **Identify** a critical incident or situation that has taken place either during your placement or in preparing for your placement. It may be critical because:
 - you learned something from it;
 - it worried you in some way;
 - it was significant in some way;
 - it identified an area of law where you now think that you would like to work or would not like to work;
 - it excited you; or
 - it has influenced you in some way.
2. **Interpret** the incident from the perspectives of everyone involved.
3. **Evaluate and explain** the impact that the incident has had upon you.
4. **Evaluate and appraise** how you dealt with the incident and how you dealt with its impact on you.
5. **Examine, assess and evaluate** what you have learned from the incident.
6. **Formulate and defend** a plan of how you will approach similar incidents in the future.

¹⁸³ *Legal Professional and Community Service Experience Course Information Booklet Study Period 6, 2011*, University of South Australia, 2011. This is one of three assessable items for the course. The other two items are a seminar presentation and a Critical Incident Report.

Appendix J

Course objectives as fulfilled by each assessment item.

<p>Objective 1: On completion of this course, students should be able to explain the practical operation of the law in a workplace or community service setting.</p>	<p>This objective MAY be fulfilled by this assessment, if the student selects an incident that involves the operation of law, especially as to how it has affected a particular client. However, this objective is not the primary focus of this assessment. This objective is fulfilled in the other two items of assessment. On the other hand, this assessment is formative in that it provides students with an opportunity to practise their reflective writing, which is an essential component of assignment 3 which does fulfil this objective. This assessment provides scaffolding for the skill of explaining, the requisite verb in the objective.</p>
<p>Objective 2: On completion of this course, students should be able to reflect upon and evaluate their own learning and performance in a workplace or community service setting.</p>	<p>Assignment Number 1 does fulfil this objective. Students must provide answers to specific questions that encourage and lead them to reflect upon and evaluate their own learning and performance in their placement environment. Students are provided with a lecture and materials on <u>how</u> to reflect. The assignment questions are carefully and deliberately worded, with the aim that in the other assignments, the students will ask themselves these questions, and base their assignments on similar reasoning and critical thinking. In particular, this introduction to reflective writing includes considering the perspectives of others, thinking about what has been learned from an incident and how to approach similar incidents in the future.</p>
<p>Objective 3: On completion of this course, students should be able to identify and articulate the dynamics of various relationships that can arise in a workplace or community service setting.</p>	<p>Prior to submitting this assignment, students participate in a class that explores personality types and the idea of looking at problems from different perspectives, and the fact that different personality types approach problems in different ways. In focussing on the different perspectives of all those involved in the chosen incident, this objective is fulfilled by this assignment.</p>
<p>Objective 4: On completion of this course, students should be able to evaluate the roles of lawyers in the Australian legal system and in Australian society generally by reference to their workplace or community service experience.</p>	<p>This objective might or might not be fulfilled by this assignment, depending on the incident chosen. However, this assignment provides scaffolding for later assignments which do address this objective.</p>
<p>Objective 5: On completion of this course, students should be able to discuss the importance of legal ethics and professional conduct and demonstrate an appropriate ethical and professional attitude.</p>	<p>If a student chooses an ethical issue as the critical incident, this objective will be fulfilled. However, this objective may not be entirely fulfilled by this assignment. In the later reflective portfolio assignment, students are required to critically reflect upon and discuss the importance of legal ethics and professional conduct, so this assignment provides scaffolding for the skills required to complete that reflective work in the later assignment.</p>

Clinical Practice

Street Law Based CLE: A Student-Impact- Assessment

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Nur Farzana Mohd Zulkifli graduated with LL.B from University of Malaya and is currently an advocate and solicitor of the High Court of Malaya. She was one the most active members of the Community Outreach Programme at the Faculty of Law, University of Malaya, having been a member since her first year and was elected as the Deputy Director of the programme in 2009. Her responsibilities included teaching, training of members, programme planning and lesson plan developments for the programme. After graduation, she occasionally trains the members of the Community Outreach Programme for the teambuilding session and lesson plan development.

INTRODUCTION

The term ‘Street Law’ authentically refers to the specially-created, experimental teaching syllabus developed by a group of students of the Georgetown University Law Center, Washington D.C., United States of America in 1972.¹ The syllabus merged legal content together with unconventional teaching methods, taking the ‘law’ out of the typical lecture-classroom setting directly to its intended target audience: non-lawyer members of society; aiming to educate them in basic legal principles in simple and practical ways so that it would be easier for the audience to comprehend. The defining character of the course, i.e. its straight-forward connection to its ‘on-the-street-learners’ became its own name. In fact, it took on an identity of its own becoming a recognized part of the legal curriculum and the founding brand-name of a non-profit, non-governmental organisation known as Street Law Inc, based in the state of Maryland, U.S.A as early as 1986.²

STREET LAW & COMMUNITY LEGAL EDUCATION IN MALAYSIA

Taking off from the platform of teaching only law students, Street Law also kicked off the movement for the education of law not just for law students or lawyers *per se*, but more importantly the everyday people – empowering them with knowledge and access to the law. This in turn led to the popular synonym for Street Law, the term “Community Legal Education”.

As Street Law became in its own right, a legal discipline, it became a component with a compelling case for incorporation into the existing practice of legal education across the globe. The case for the assimilation of street law or community legal education into existing legal curricula was that it complemented legal education as it stood, with ethical and social components that were lacking in the current legal education system: clinical legal education. Clinical legal education is a system that essentially teaches law to students by getting them to identify, research, and apply legal knowledge in situations replicating, or actually involving, real-life problems.³ The system is ‘clinical’ in every sense of the matter, in that it allows students to readily examine and diagnose legal problems, then ‘treat’ them, exactly in a problem-solving mechanism.

Though clinical legal education was never limited in scope or application, its working mechanisms in law schools were more often than not, exclusively academic in nature. It was this factor that had led to the fast-paced acceptance of Street Law into legal curricula across the globe. The call to incorporate Street Law into the existing clinical model in Malaysia actively began after the year 2000. In 2005 at the 13th Malaysian Law Conference, the Malaysian Bar was urged to take an active part in the promotion and facilitation of community legal education as a part of the effort to improve legal education in Malaysia.⁴ This was followed by the first Clinical Legal Education Conference in Malaysia, held in the International Islamic University Malaysia on 16th June 2006, attended by members of the legal fraternity including the Malaysian Bar, and also academicians

1 *Who We Are, Street Law Inc*, 16 Feb 2011, <<http://www.streetlaw.org/en/Page.WhoWeAre.aspx>>.

2 “Street Law” remains a registered trademark of Street Law Inc.

3 Grimes, R., “The Theory and Practice Of Clinical Legal Education”, *Teaching Lawyers’ Skills*, Webb J. and Maugham, C. (eds.) (London: Butterworths, 1996) at p 138.

4 See Lasky, Bruce A, “Clinical Legal Education and the Role of the Bar Council”, *13th Malaysian Law Conference*, (Kuala Lumpur, 16th November 2005).

from the leading law schools in the country. This was the take-off point for Street Law in the country, igniting local awareness on the matter and stimulating an array of local publications on the subject. What followed however, is of more significance to this research, as illustrated next.

COMMUNITY LEGAL EDUCATION & UNIVERSITY OF MALAYA

Despite positive feedback from especially the Malaysian academic community, there is only one existing academic programme which is Street Law-based in Malaysia, offered as an elective academic paper known as the Clinical Legal Education course by the Faculty of Law, University of Malaya. The oldest university and law school in the nation, the university has been a pioneer in the introduction and incorporation of Street Law, Community Legal Education and the improvement of the clinical legal education model in Malaysia.

The Street Law and Community Legal Education concept in Faculty of Law here is a product of student and professor involvement. It began when four students of the faculty attended a clinical legal education programme workshop in the Philippines, Manila in the academic year of 2006/2007. What they brought home was an idea that broke new ground in establishing a faculty-based project for the teaching of law to marginalised groups, using the law students themselves as the primary educators. The project was named C.L.E., which then stood for Community Legal Education. By the following academic year, the teaching project was in full swing, with the founding members already trained in the unorthodox Street Law teaching methodologies. A chain reaction from fellow student-members created a teaching team from within the faculty, together with the faculty's professors and lecturers being trained in the same manner acting as advisors on the project. The project works on an entirely voluntary basis and is non-profit.

The University of Malaya (UM) CLE project began training its own educators, developing lessons, and started teaching a select group of juvenile offenders in a state penitentiary, Kajang Prison, immediately in the same year. The project grew and received national acknowledgement when it was officially launched as a university project by a representative from the Ministry of Women, Family and Community Development in the International Juvenile Justice Conference, held in the Faculty of Law, University of Malaya on 16th March 2008. By then, it was renamed C.O.P., or 'Community Outreach Programme'⁵ to avoid misnomer and confusion when the faculty received a mandate to introduce the academic course of Community Legal Education that very year. The 2nd and 3rd year undergraduates became the first academic batch of students for the course, with a majority of them being separate members of COP.

The academic course to date receives continuing support from students for its own unique qualities but the COP remains an integral part of the faculty identity as an established programme. Its student-trainers have in fact participated in the consultation and training programmes for other law schools in Malaysia which intend to set up a similar project of their own, managing projects such as the training workshop for students of the Faculty of Law, University Teknologi Mara (UiTM) in the academic year of 2009/2010 and many others. It continues to promote growth of clinical and Community Legal Education on a national and even international level, through cooperative efforts with regional law schools via exchange programmes with similar structures

5 Hereinafter the Community Outreach Programme is referred to as the "COP".

like the UiTM workshop, enriching its own band of educators in the process. It is this underlying reason that the COP is the focus of this paper.

THE STUDY: PROGRAMME STRUCTURE & STUDENT MOTIVATIONS

The COP Programme emphasizes a two-fold objective: in that it allows societal-empowerment through the teaching of law, but more importantly teaches the students to be more effective in the legal craft, infuse ethics, and inspire social and communal responsibility within them. It does this by training the student-educators in five major modules: lesson planning and content development; teaching methodologies, teaching evaluation and assessments; classroom management; and ethics and inter-personal skills.

To summarise, each module either on its own or in combination with the others is designed to help achieve the programme objectives. The foremost module: lesson planning and content development is one that sharpens the legal craft in the students. This module compels the student-trainers to perform in-depth legal research on a subject matter they collectively decide to teach. As they obtain the necessary material on the subject matter, they must selectively choose a topic according to its relevance to their target audience, then narrow it down in terms of actual bulk-content and rename it in a simplified and direct manner to make it possible to be taught. This second exercise sharpens issue-identification skills and application skills, which are fundamental skills in legal practice.

The second, third, and fourth modules together improve the students' inter-personal and management skills. The training in teaching methods which are designed to avoid the typical lecture/classroom environment the students are so accustomed to, provide working alternatives to their own methods in learning their academic material. It also trains them to teach in the same way; maximising attention and concentrating on 'learning-by-doing' methods. Training in evaluative measures and classroom management strategies encourage them to objectively assess the efficacy of the lessons they planned and taught almost immediately, asking them to self-reflect and learn from their mistakes while learning to manage interaction and person-to-person communication all at the same time. This builds their confidence, boosts the effectiveness of their own presentation and allows them to empathise while interacting.

The fifth module instils ethics, specifically in direct and sub-conscious ways, because the student-educators are constantly faced with learners from a diverse range. To date, our student-educators have taught a variety of target-audiences- from their peers (both in-house and from international backgrounds) to juvenile offenders, secondary/ high-school teenagers to young high-risk children in high-risk environments, and, on occasions, lawyers and law professors. The teaching style would have to be varied in each and every case, especially when dealing with offenders as certain ethical issues with regard to legal counsel, advice and personal attachments arise. The students as trainers are co-dependent on each other and themselves in dealing with ethical issues as they discuss potentially raised issues as part of prior preparation for each teaching session and are consciously reminding each other to maintain professional and ethical stands in all cases.

Throughout their involvement in the programme, the students have shared thoughts on their experiences with each other in open debrief sessions and personal reflective journal entries- only

the senior trainers and programme-advisors are privy to these. Though they have all demonstrated personal and varying versions of their own learning as well as emotional and other changes in themselves, there has been no formal research which assesses on a macro scale the effectiveness of the clinical legal education modules in the COP Programme, the trend of student motivation for the programme, and if any, the rate of improvement in the students' legal, ethical and interpersonal awareness.

SURVEY DEMOGRAPHICS AND METHODOLOGY

The students are to be considered as the main driving force of the COP and the dynamism and enthusiasm of the students have allowed the COP to flourish at the University of Malaya. At the beginning of every academic session, the potential members of COP were informed of the objectives, the activities and the intensity of the programme. Despite the high level of commitment and dedication expected out of them, we found that all members chose to remain in the COP and had actively participated in the activities, and some of them are still interested to volunteer under the COP despite being in their final year of law school. In order to identify the motivation behind their participation and commitment in the COP, we had conducted an online survey where the students filled out questionnaires. The survey also intended to study the role of the programme in improving interpersonal skills of the students.

The existing COP Programme members are all full-time undergraduates from the first to final year students. Together, they make the up the team of educators for the programme; and the majority of the demographics of this study. The total demographic is made up of students who have completed their undergraduate studies but were participants of the programme during their course of study in addition to current members. Throughout the lifetime of programme, it has had a majority of female members compared to male ones, by a ratio of 1:3, at an age range of 19-23 years. It should be noted at this juncture that this demographic profile is not influenced by any form of character-selection, as the participants of the programme are retained on an absolutely voluntary basis.⁶

The questionnaires were sent to the past and present members of the COP who were notified of the survey through their email, the COP Facebook group account and their individual Facebook account. 31 of them responded to the questionnaires.⁷

The duration of students' involvement in the COP is as shown in Table 1.

6 They do however, reflect a specific and restricted sample category, and do not in any way reflect the perceptions and attitude of the entire undergraduate population of the faculty.

7 For the purpose of this survey, the respondents are referred to as 'students'.

Table 1: Duration of involvement in the COP

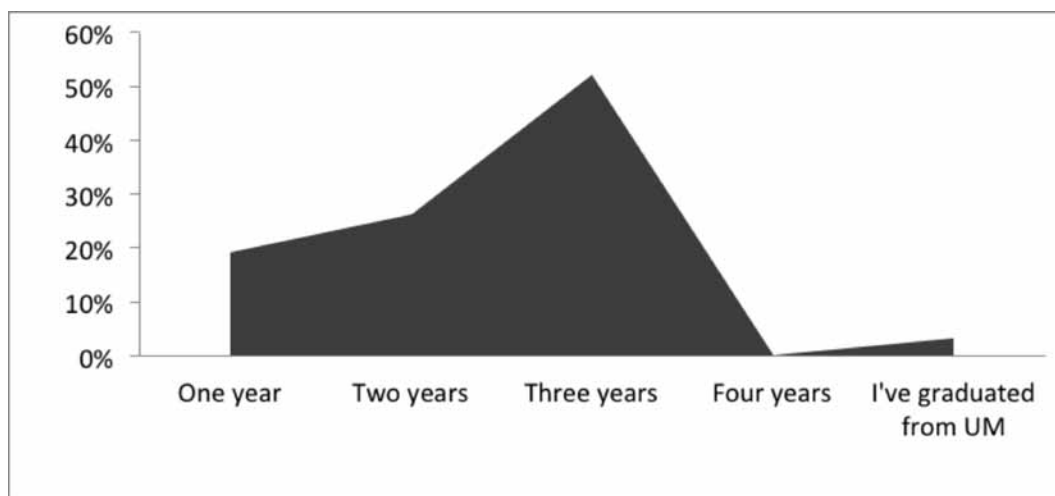


Table 1 shows that majority of the students have been members of the COP for three years, followed by the students who have been involved for two years and for one year respectively. None of the students in the final year responded and only one alumnus responded to the survey. The feedback provided by the senior students here was very significant and valuable considering they have been involved the COP activities for more than one year and are able to share and evaluate their experience. Another finding from the survey was that majority of them spend more than five hours per week for the COP, which further triggers our interest to ascertain the main reasons why the students decided to take part in the COP.

The Students' Motivational Pattern

In order to ascertain the motivational factors of the students in joining the COP, we listed 18 factors and for each factor, the students were to choose from a scale of “strongly agree”, “agree”, “maybe”, “disagree” and “totally disagree”. Apart from that, the students were also given the flexibility to explain what made them join the COP in the first place. The motivational pattern of the students who joined the COP is as shown in Table 2.

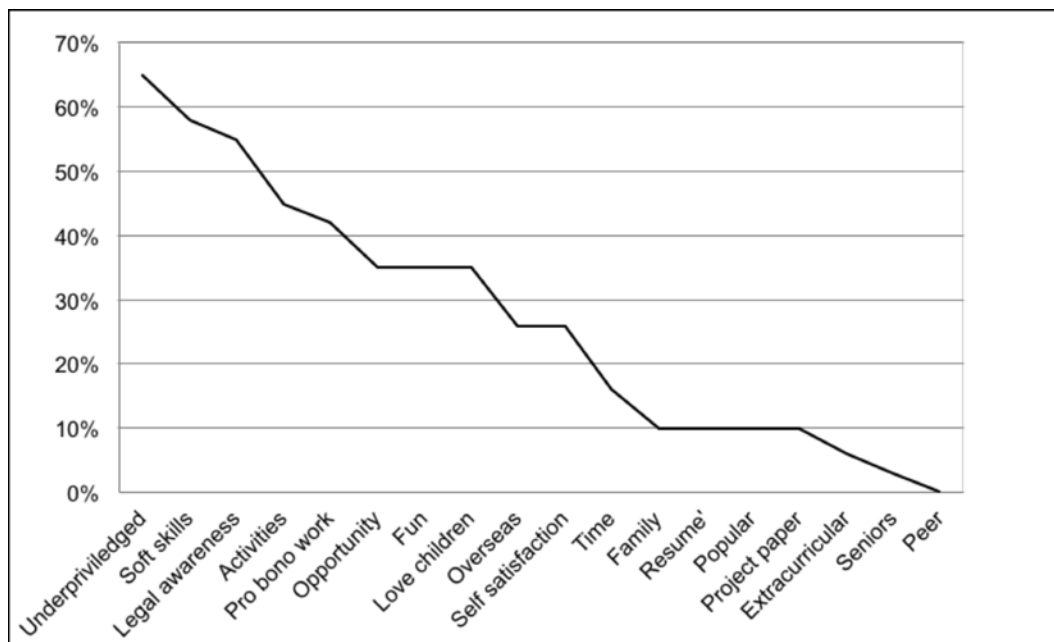


Table 2: Motivation – Percentage of “Agree” and “Strongly Agree

Based on our survey, we found that most of the students strongly agreed with the suggestion that they joined COP to help the underprivileged members of the society. 65 per cent of them ‘strongly agreed’ with this and 29 per cent of them ‘agreed’. Only six students answered ‘maybe’, but none of them disagreed with this suggestion. One of the students explained that she wanted to help the ‘unseen’ and ‘forgotten’ group of people. Four of them commented that they would like to contribute to the community and COP offers a platform which allows them to get close to the ‘people in need’. Since the nature of the activities of the COP focuses mainly on the marginalized section of the society particularly on the juvenile offenders, the students’ participation in COP’s activities would enable them to fulfil this aspiration.

The second most popular motivational factor was to improve soft skills or inter-personal skills. 58 per cent responded ‘strongly agree’ with another 32 per cent responded that they ‘agree’ with the suggestion. One student commented that she joined COP to learn more about the practical side of learning law, while another one wrote that she was interested to improve her personal skills. The relevance of the COP programme in improving the students’ inter-personal skills is discussed in the next topic.

This third most popular response was to create legal awareness amongst the public. We found that 55 per cent and 29 per cent of the students responded that they ‘strongly agree’ and ‘agree’ to the suggestion, respectively. In fact, the majority of the remarks that were made by the students were relating to their interest in making the law accessible to the public and raising the legal awareness of society. Some of the students believe that they have the responsibility to educate members of society about their rights and to empower the public to enable them to share the knowledge with

others in their community.

From the survey, it appears that the students least agreed with the proposition that they joined the COP due to the programme's popularity. They were also not influenced by their peers and by their seniors in deciding whether or not to join the COP. This is based on the percentage of the students who agreed and strongly agreed with the suggestion. This finding proves, to a certain extent, that those who joined the COP did so independently; a pivotal trait that would encourage volunteering spirit amongst the young legal practitioners in the future.

Improvement in Interpersonal Skills

As mentioned before, the second most popular reason why the students joined the COP was to improve their inter-personal skills. In our survey we inquired whether students believed that certain inter-personal skills had been improved upon as a result of joining the COP and taking part in the activities provided. The results of the survey are as shown in Table 3.

Skills	Percentage (%) of Students Responded "Significant" Improvement in these Skills
Teaching	58
Ability to empathise	52
Legal ethics	42
Stress management	42
Communication skills	39
Legal knowledge	39
Self confidence	35
Self discipline	35
Research	35
Time management	32
Administrative responsibility	26
Writing	23
Financial management	13

Table 3: Significant" Improvement in Skills

From our survey we found that the majority of the students claimed that their teaching skills, the ability to empathise with the society and their legal ethics have improved significantly after taking part in the COP. Before joining the COP, the students did not have much teaching experience and some even disliked the idea of having to deliver legal knowledge to prisoners probably due to the stigma attached to them. After getting to know the juveniles, particularly those who were incarcerated in Kajang Prison, they were able to empathise with those juveniles. Working within the setting of the prison also exposed the students to legal ethics, for example the responsibility to safeguard confidential information relating to the identity of the juveniles detained in the prison.

The students, however, were not of the opinion that working in the COP improved their financial management skills as the COP did not have much money to begin with and also the fact that the money is being held by the Treasurer of the programme.

Besides playing a role to improve the inter-personal skills of the students, the students also felt that COP also played a major role in improving their academic performance, with 79 per cent of the students agreeing with the suggestion. As the COP emphasises punctuality, preparation and good legal research, the level of discipline and the attitude of the students improved and this was reflected in their academic performance, particularly evident in the effort they put in during preparation for their own tutorials and their level of participation during class. None of the students were of the opinion that the COP had negatively affected their academic performance.

Interest in Participating in a Traditional Legal Clinic

Since the COP is considered as a teaching clinic which consists of street law programme, we were interested to find out whether the students considered participating in the CLE programme in the form of a traditional legal clinic as the prospect of having a legal clinic at the faculty is being weighed by the faculty. We found that 97 per cent of the students who responded in the survey would like to participate in a traditional legal clinic if they are given the opportunity to do so in the future. Out of this, 68 per cent would still like to remain in the COP and 29 per cent would like to participate in the legal clinic alone. One student did not wish to participate in the clinic and was only interested in the street law programme by the COP. The level of interest reflected by the survey indicates that the COP was able to generate the interest of the students to serve the public in a clinical setting, with a majority who still wish to remain in the street law programme.

Conclusion

The members of the COP at the Faculty of Law, University of Malaya exhibited considerable admiration for the programme, as seen from the continuing support from the students who make up the frontline of the programme. The students themselves have moved from a stereotypical perception that the programme lacks academic substance and is like any other extra-curricular activity which merely generates enjoyment. The findings of the survey have shown that the students believe that they have made a significant improvement where legal skills are concerned, have allowed them to empathise with the marginal members of the society and upgraded their inter-personal skills. Many of them have achieved fulfilment of their original motivations for joining the programme, ultimately translated into their commitment and fidelity to sustaining the programme in the future.

Reflections Upon Transitions: An Essay on Learning How to Teach after Practicing Law

C. Benjie Louis*

Abstract

Every academic year, new law school faculty enter legal academia. Many of these new teachers are practitioners with varying levels of legal practice experience. While the transition from practice to teaching is particular to each person, for clinical professors there are some specific challenges that transform our professional identity. Clinical professors wear many hats: teacher, lawyer, mentor, and scholar. Navigating those many hats and adjusting to various goals of teaching emerging attorneys is only a couple of challenges. Other challenges include changing the focus of our professional identity from career-centered, in its many facets, to student centered.

A core component of clinical legal education is the reflective process. A reflective lawyer is one who thoughtfully digests information and thinks about how an experience affects his or her professional growth. A reflective teacher does the same. This article shares some of my reflections on becoming a clinician and what I learned through experiences about becoming a more effective teacher.

In Part I, I reflect on my role as a supervisor of emergent attorneys and a goal facilitator for these same students who are exploring their educational and professional development. Part II includes lessons unique, I believe, to a clinician of color. Finally, Part III concludes with reflections on five core tools I have used that helped me in my transition; these tools, I believe, could be useful to new clinicians, especially those that have been practicing for a long time before teaching.

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Reflections upon Transitions: An Essay on Learning How to Teach after Practicing Law

“The only person who is educated is the one who has learned how to learn and change.” Carl Rogers

Introduction

Four and a half years ago, I began teaching at Albany Law School (Albany Law) after more than a decade of practicing law as a public interest attorney. Most of my time at Albany Law has been spent teaching a clinical course; I spent one year teaching non-clinical courses.

I did not know a great deal about the mechanics of teaching at the graduate level before I started, but I just knew I was extremely excited about the opportunity. Having supervised summer law interns, I was confident that my transition would be seamless. While some aspects of teaching came naturally to me, others did not; moments, particularly during my first semester at Albany Law, created opportunities for personal growth.

A core component of clinical legal education is the reflective process.¹ A reflective lawyer is one who absorbs information and thinks about how an experience affects his or her professional growth. A reflective teacher does the same. This article shares some of my reflections on becoming a clinician after many years away from academic life and includes challenges that are universal to teachers.

My preparation for teaching my first semester at Albany Law was brief and I, like all new teachers, learned a great deal on the job during that first semester. There is wonderful scholarship that introduces new clinicians to the historical context of clinical legal education and to the hallmarks of clinical pedagogy, such as case rounds, client-centered representation, and the stages of supervision²; this article focuses on the essential ingredient that makes teaching so fascinating and challenging: the students. I ascertained that my professional persona, which was principally self-centered and client-centered, had to modify to being student-centered.

My interactions with students, especially during the first semester of teaching, give a snapshot of the typical challenges of a new clinician. I had to adjust my desire to control cases³ and, thus, figure out what my role as a supervisor entailed.⁴ Appreciating the nuances of fostering student autonomy was another important matter to be learned. In addition, my role as a clinician of color impacted my experience as well.

In Part I, I reflect on my role as a supervisor of emergent attorneys and a goal facilitator for these same students who are cultivating their educational and professional development. Part II includes lessons unique, I believe, to a clinician of color. Finally, in Part III, I conclude with reflections on

1 William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 Akron L. Rev. 463, 481-82 (1995).

2 See generally Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training By Using Lessons Learned From New Clinicians*, 11 Clinical L. Rev. 49 (2004); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 Akron L. Rev. 463 (1995).

3 Dunlap & Joy, *supra* note 2, at 67.

4 David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. Rev. 1507 (1998).

five core tools I have used that helped me in my transition (and which I still use); tools that could assist new clinicians, especially those that have been in practice for many years prior to teaching.

PART I

A. Reflection on the beginning

In January 2007, I took a sabbatical from my job as a housing attorney in a legal services office in order to teach a clinical course at Albany Law called “Introduction to Litigation”; the subject matter of the course was unemployment insurance benefits. Albany Law is a private, independent law school in New York’s capital.⁵ I had been a legal services attorney for many years before I started to teach and my entry coincided with the genesis of major changes to legal education where criticisms on the delivery of legal education were taking root from different factions.⁶

I was far removed from my own law school experience and my familiarity with law students prior to teaching was limited to interaction with summer interns. I remembered participating in a clinic in law school but I could no longer fully appreciate what it was like to be a student. What was foremost in my mind during those couple of weeks in early January were two things: what would the students be like and what will I say during the first class?

So what is my most striking memory of my first class? A story that I have told to almost every subsequent clinic class since I started teaching (7 classes altogether) is when I asked a returning student to share thoughts on the student experience of the litigation clinic from the previous fall semester. She stated that “all of the clients lied”. There was laughter in the room and, after I took my jaw off the floor, the wheels spinning in my head were calculating how long it would take me to pack my bags and return to my old job. I asked her what she meant and she elaborated that when talking to her fellow student interns about their experience at administrative hearings, the testimony of the clients differed when they were under oath during those hearings from the stories they told the student interns. I was so taken aback that I really did not know how to respond and I mumbled something about not all clients lie.

After class, I wondered about their cynicism at such an embryonic stage of their professional development. My experience with clients was so different. Sure, some do lie, but the amount of facts and information culled from a client and understanding those facts and what facts really changed could be a complex process at times; consistency in stories is critical to a client’s credibility. At that moment I figured out that the initial impact of a live client experience had the power to shape the students’ view of the attorney/client relationship in a negative way. I wondered how many students had experience in law firms and how many had conversations with practicing attorneys about fact gathering that occurs during the attorney/client relationship.

Later that week, the student told me that she felt bad about her statement, but I appreciated her honesty. Honesty is important, especially in the clinical setting where there is so much close

5 About Albany Law School, http://www.albanylaw.edu/sub.php?navigation_id=1 (last visited Aug. 4, 2011).

6 See generally Jill Schachner Chanan, *Re-engineering the J.D.: Schools Across the Country are Teaching Less about the Law and More about Lawyering*, 93 A.B.A. J. 42 (July 2007); Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007); William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007).

interaction between students and teachers. Her statement in class taught me a few lessons. One, my mindset that first semester was that, as a teacher, I needed to have an answer or sage comment for everything said in class. Room for the unpredictable was not something that I thought about in the beginning. Having practiced and gained some expertise and confidence in my ability to practice, I was in a place in my professional life where there was little variability. So, very soon into my legal teaching career, I was snapped out of that complacency. Two, the live client experiences, and unpleasant ones at that, would exist and I needed to think about different scenarios that can shape the student experience in a potent way. Third, if you plan to call on a student about sharing a specific topic for a specific purpose, it is sometimes beneficial to find out what the student is going to say ahead of time. This last lesson is not to suggest that you script your class; on the contrary, some topics, like client credibility, are ripe for exploration and discussion. But treading carefully with the unpredictable is an important part of the transition.

On a more pedantic note, after the class, someone asked me a practical question that did not occur to me as I was preparing for my first class: where did the money to pay for unemployment benefits come from? I answered the question, but started second-guessing myself about the amount of material I covered. How much to cover in one class (or one semester) and in what amount of detail is a universal struggle for any teacher. Asking yourself what the students should absolutely know by the time they leave your class that day is a way to overcome this issue; this was a question I would ask myself when I would prepare for court appearances. The idea behind this method is akin to one of the components of backward design where designing with clarity about what you want the student to learn before teaching it is critical.⁷ I did not know the theory of backward design when I started teaching; however, I, and many professors, employ it without necessarily knowing its details.

Another memory of that class is that I talked a lot. The Socratic Method⁸ is the predominant model in law school, depending on class size.⁹ However, creating a classroom where there is active student engagement is the aspirational clinic seminar model.¹⁰ I was unaware of this when I started because I was focused so much on what I needed to tell the students that I had very little time to absorb andragogical methodology prior to commencement of the first semester. Having taught now for four and a half years, and having read about active learning and student engagement, scaling back on lectures has been a conscious goal. I think it would be wise to cutback even more

7 “One starts with the end-the desired results (goals or standards)-and then derives the curriculum from the evidence of learning (performances) called for by the standard and the teaching needed to equip students to perform.” Grant Wiggins & Jay McTighe, *Understanding By Design* 8 (Assoc. for Supervision and Curriculum Development 1998).

8 “**Socratic Method.** A technique of philosophical discussion – and of law-school instruction – by which the questioner (a law professor) questions one or more followers (the law students), building on each answer with another question, esp. an analogy incorporating the answer... Most law professors who employ this method call on students randomly, an approach designed to teach students to think quickly, without stage fright.” *Black’s Law Dictionary* 662 (3d pocket ed. 2006).

9 William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* 48-50 (Jossey-Bass 2007).

10 Stuckey et al., *supra* note 6, at 196-97 (where the authors list the variety of activities that a clinical seminar can undertake, most of which, like “group case planning exercises” or simulations, require active student engagement to succeed).

and use a more problem-solving approach.¹¹ A clinical seminar is a great place to have students talking in a meaningful way.

So how do you seek to engage students during the classroom component of a clinic? What I have done is incorporate questions into my teaching outline, ask students during class if they agree or disagree with a statement that has been made, and I try not to interrupt a dialogue between me and a student or two students until an objective is reached. Also, do not be afraid of the awkward silence,¹² what I like to call the crickets singing in the night, in a classroom. There is a level of comfort that a student must feel in speaking up in class and eventually either someone will say something, or you can use a follow-up question to stir discussion. Anticipate misunderstandings¹³ and questions that your material does not cover. This is easier said than done in some instances because some of the most interesting issues arise organically.

B. Reflection on Supervision

Frequent supervisory meetings with students are a part of the clinical teaching experience.¹⁴ Prior to the first official supervisory meeting, at the beginning of the semester at Albany Law, students fill out an Educational Planning form which asks a series of questions about, among other things, the student's most enjoyable law school class, reasons for enrolling in the clinic, and what special skills the individual brings to the clinical experience. The next step is to meet with the student to discuss the content of the form. So, the form gives the student an opportunity to think about goals and gives the teacher insight into student goals and expectations for the semester.

In my transition during the first semester, having the Educational Planning Form proved to be a great launching pad into forming supervisory objectives and progressively developing my relationship with the students. The questions not only allowed me to start a conversation but also crystallized key targets of each student's expectations and the form is student-centered.

A valuable insight that I got from a colleague prior to starting to work was about the different prototypes of students that he had encountered during his years of teaching. I have named these prototypes as the following: the overconfident, the under confident, the workaholic, the adequate, the well rounded, and the unmotivated student.¹⁵ I could not discern upon the first meeting which prototype a student conformed to, but I kept it in mind as I talked to each of them. Which category a student falls into takes me, at most, until mid-semester to decipher. Their characteristics are as follows: the over-confident student believes, without a strong frame of reference, that (s) he knows the answers right away. The under confident student is one who is unsure about his or her decision-making and is constantly looking for answers from the teacher. The workaholic

11 The Carnegie Foundation's report on educating lawyers provides parallels of the problem-based method utilized with success in business and medical schools, saying that the technique, "in its wanderings... has enriched many other forms of professional preparation. Welcoming it back with its various enhancements would be to reclaim a legacy while acquiring new resources for legal education's own renewal." Sullivan et al., *supra* note 9, at 199-200.

12 Laurie Shanks, *Whose Story Is It Anyway? – Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 *Clinical L. Rev.* 509, 522-23 (2008) (highlighting the "beachballing" technique, where the role of a professor's questioning is to "[lob] a beach ball into a group," placing the onus on the students to "keep the ball in the air.").

13 Wiggins & McTighe, *supra* note 7.

14 Dunlap & Joy, *supra* note 2, at 67, 90-91; William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 *Akron L. Rev.* 463, 478-481 (1995).

15 Dunlap & Joy, *supra* note 2, at 90-93.

is the type of student that does clinic work to the detriment of other studies, thereby exposing a lack of work-life balance, another clinical teaching hallmark.¹⁶ The “adequate” student does the necessary work, but just scratches the surface on the intricacies of practice and is not particularly reflective. The well-rounded student is one who considers all components of the clinical learning experience. The unmotivated student is one that needs continual prompting in completing tasks and being reflective.¹⁷

These descriptions are not meant to be pejorative since; in fact, a good clinical experience meets these students where they are and facilitates their journey, hopefully, into a self-aware, reflective, and ethical practitioner.¹⁸ I give these descriptions to help the new teacher attune to the different personality types. As practicing law is a social profession, teaching law is a social profession multiplied tenfold.

My expectation in supervisory meetings is that the student is prepared to convey fact developments in a case or their research and those they have thought of, or struggled with, next steps in their preparation. I found that asking the student many questions and then having the student wrap up our conversation with a conclusion is sometimes helpful. It is an extension of the common clinical pedagogical technique of asking “what do you think.”¹⁹ For example “what is your legal authority for making this argument or reaching that conclusion?” “What is your frame of reference for that comment?” “What would you do if this happened to you? The more questions asked, the less likely my own viewpoint intrudes into their process of coming to a conclusion.

C. Reflection on fostering student autonomy

I was away at my first clinical conference, in New Orleans, Louisiana. The conference took place right after the last week of Albany Law School’s spring semester. There were a few cases that were still pending at the end of the semester and one of the cases involved a client, I will call him John Doe, who was waiting for a hearing date. The student on the case stated that he wanted to continue representing the client even after the semester ended, something he was not obligated to do as per Albany Law clinic policy, so I allowed him to continue working on the file.

While in New Orleans, I checked my e-mail periodically. One day, the student handling Mr. Doe’s case sent me an email documenting how he was having a hard time with his client. Doe had not been returning calls thereby hindering the student’s preparation of the case. In the email, the student told me that he reached the conclusion that the lack of communication with this client was such that he felt we should withdraw from representing him.

My reaction was swift and decisive. The case was still in its preliminary stages so my immediate reaction was “no” and that is what I replied to the student. My decision was neither deliberative nor reflective; I just decided to handle this as I would have in practice which was to basically give the client “another chance” to get in touch with me. Rather than engage in a dialogue with the student, albeit via e-mail, to explore whether the student’s recommendation was an action that was warranted, I substituted my judgment for that of the student. I did not consider his own deliberation or reflection until I had a face-to-face meeting with him when I returned from the

16 *Id.* at 92 .

17 *Id.* at 90-93.

18 Quigley, *supra* note 1, at 489.

19 Quigley *supra* note 1, at 482-83.

conference. I realized, in hindsight, that by this juncture in the semester, the student had worked in the clinic for four months, had developed a good understanding of unemployment law, had the capacity to exercise judgment on the struggles on communication within this attorney/client relationship and was really in the best position to make a recommendation of withdrawal from representation. The decision-making process is part of being a lawyer and my quick, substituted judgment did not allow the student the opportunity to experience this essential part of lawyering.

What I learned from this experience is the foremost issue, in my opinion, that must be grappled with for a new clinical law teacher – when and how to let go of control over a case.²⁰ This decision encompasses two clinical theories: directive versus non-directive,²¹ as well as the role of a supervisor in client decision-making.²² This is a recurring issue that is written about extensively and discussed at clinical conferences. I overheard a colleague say once that in teaching a clinic the “clients” were our students and the students had clients. This was a hard lesson to learn early on in my transition because I thought of myself as a lawyer first and, at that point, I could not wrap my mind on the idea that I was a “professor”. The struggle between being directive and non-directive varies per student.²³ In this anecdote, the student had represented two other individuals and he had a good grasp of unemployment insurance law. Yet, I was eager to seize control of Doe’s case without much thought because I was quick to assume, without reflection, that the student was not making a good choice and I, with experience under my belt, could “fix” the client with a reality check. It turned out that the student’s judgment of Mr. Doe was accurate and I ended up having the same communication problems with Mr. Doe once I officially took over the case when the student started a summer job.

So the lesson that I learned here was that the key to giving up control of a case was in reserving judgment on a decision until I let a student present a recommendation, and then probe the steps by which the student reached a conclusion. Probing such steps could take one supervisory meeting, or it could take multiple meetings. A student’s decision could be simple or complex. Asking the question “why did you reach that conclusion” is only the first step. But, autonomy and exercising professional judgment are aspects of professional development that are essential to any lawyer’s progress. The opportunity to do that as a law student should be cultivated by a teacher. So, the nuances of fostering student autonomy include giving the student the time and space to reach a conclusion, asking the student his or her decision-making process, and respecting a student’s thoughtful determination.

The example I just gave involved a very serious decision. Also important, but more mundane, is decision-making on what could be perceived as minor, administrative tasks. I assigned a case to a student that was transferred from one semester to another. The client had been retained and during the course of a month, he was hard to reach via telephone. The client had been waiting for

20 Dunlap & Joy, *supra* note 2, at 64.

21 “Non-directive supervision may be viewed as the manifestation of the Socratic method within clinical teaching. The questions that the teacher asks the student – guiding the student to explore issues, angles, facts, and theories the student may have left unconsidered and untested – is the measure of directiveness. On the more directive end of the scale, the teacher asks fewer questions and gives more instructions. At the opposite end, the teacher gives virtually no instruction but rather asks the students questions such as “what do you think?” Dunlap & Joy, *supra* note 2, at 84.

22 See generally David F. Chavkin, *Am I My Client’s Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. Rev. 1507 (1998).

23 Dunlap & Joy, *supra* note 2, at 85.

an administrative hearing so the new student was understandably anxious to speak to him.

I advised the student that we should send a letter to the client advising him that his case would be closed if he did not contact us. A few days later, the client called during a time outside of the assigned student's clinic hours. I spoke to him and he asked me to not close his case and also advised me that he received a hearing notice. The hearing was scheduled within two business days of our conversation, so I told him I would speak to the student about reopening his case and requesting an adjournment.

When I saw the student again, we discussed the situation and whether to continue representation; I had decided that we would but wanted a dialogue with the student about the impact of the lack of communication. I directed him to send a letter to the hearing office, via fax and regular mail, requesting an adjournment. After approving the letter, the student was left to follow up with getting it in the mail and faxing it.

The next day, which happened to be a Friday, the student did not have office hours, so I checked the client file. The hearing was on Monday, so I wanted to call the client to confirm the fax had been sent. I saw the letter I had approved, but no fax transmittal sheet. I checked the copy machine area, but no transmittal sheet was there either. I asked the paralegal for my clinic to confirm with the hearing office that the fax had been received (it was).

When I saw the student the following Monday, I asked about the whereabouts of the transmittal sheet. He said that in his haste, he stuffed the transmittal in his knapsack and left the clinic. Nothing adverse happened to the client's case, but that missing piece of paper caused me momentary panic. I talked to the student about how documentation is so important, especially in litigation, and it would have taken a minute to put the sheet in its proper place.

This incident highlighted for me that in addition to the clinic offering an environment where theory and practice are bridged; it also offers an example of working in a law office. Autonomy does not only include the ability to make decisions on a client's case; it includes the ability to function in a professional setting. There have been calls to make students more "practice ready" by the time they graduate from law school.²⁴ What does practice ready mean? I posit that it not only includes the ability to see a case or a client holistically, but it also includes the ability to function within an office with its myriad responsibilities.

Following the administrative tasks can be bothersome and cumbersome. Filling out time records, making multiple photocopies of documents, and properly picking up a call that is on hold are a few examples of tasks that lawyers must do, especially if administrative support is scarce. I remember the tedium of proofreading my letters and making copies of pleadings. Taking care of these unexciting tasks can lead to awareness of the more serious things such as, re-reading an ethical rule on confidentiality or remembering to call a client back at a precise time when the client is available.

By reinforcing the fact that clinical work, even the uninteresting, mirrors real world work expectations, and having real consequences for failing to follow work rules, students can at least

24 The American Bar Association Section of Legal Education and Admissions to the Bar's 1992 "MacCrate Report" is perhaps the most notable call for increasing the practical aspects of modern legal education. *Legal Education and Professional Development – An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, July 1992.

see that part of being practice ready is adhering to office rules. I learned that teachable moments are also contained in routine office procedures. By keeping expectations high of all aspects of the clinic, students get a better picture of expectations that would be made of them in the “real” world.

D. Reflection on being a goal facilitator

Teaching in the clinic is a constant source of activity. Between supervising cases, preparing for seminar lectures, meetings within and outside the clinic, supporting school events, and supporting the work of the institution, finding the balance has not been easy for me, a sentiment shared by many clinicians of varying experience levels.²⁵

However, being a clinical professor gives me the opportunity to interact with students on a cognitive and social level that is unique in the clinical environment. Most law school clinics have an 8 to 1 student/teacher ratio.²⁶ This is true of the clinics at Albany Law and the student clinic office hours vary from 10 to 14 hours per week.²⁷ In addition to the seminar component of the clinical course, you can expect to spend a lot of time with your students. Naturally, more personal information is being exchanged because an organic component to working in a clinic is collegiality. More than mentoring, students and clinical professors are at a level where the actual practice of law, something that the student may be doing for a life time, is dissected, probed and examined. In practice, there is always time for socializing and the line between what is appropriate socialization with students and what is not is one that you should discuss with your colleagues.

Because of the close nature of teacher/students in clinics, supervisory meetings and discussions on cases allow for many hours with a clinic professor.²⁸ As students became more comfortable with me, it was not unusual for me to have conversations with them about more than their casework. Some have been initiated by students, others by me. Conversations about their career goals, learning styles, and reputations have been recurring topics with my students. Since many clinic students are second years, the exploration of what to concentrate on and where to focus a job search are typical issues.

Students, understandably, are focused on finding a job as soon as they graduate, especially in this bleak job market.²⁹ Therefore, their stress level can be more intense. However, I think it is also wise to encourage students to think beyond the first job, examine their talents and be open to exploring what their law degree can be used for beside practicing law, especially with the glut of law students that are graduating compared to the number of legal jobs that are available. Over the years, I have listened to the anxiety of students who wonder whether going to law school was a mistake. Some of the procedures used in client interviewing and negotiations, such as identifying

25 Dunlap & Joy, *supra* note 2, at 60.

26 “The most frequent student-teacher ratio for the classroom component of in-house clinics is 8 to 1 (38.1%), followed by 4 to 1 (11.2%), 6 to 1 (9.3%), 5 to 1 (8.7%), 10 to 1 (7.9%), and 12 to 1 (5.2%), with all other reporting ratios below 4%.” Center for the Study of Applied Legal Education, Report on the 2007-2008 Survey 15, available at <http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf>.

27 Albany Law Clinic and Justice Center registration material on file with author.

28 Quigley, *supra* note 1, at 488.

29 William D. Henderson and Rachel M. Zahorsky, *Paradigm Shift*, 97 A.B.A. J. 40 (July 2011), available at http://www.abajournal.com/magazine/article/paradigm_shift/.

goals and active listening, are useful tools in developing the teacher/student relationship.³⁰ Because of time constraints, it is not easy to take the time to listen to students about non-clinic related subject matter, but I think it is important to do so. Clinical professors have access to students that carries significant capital. With the amalgam of factors that are weighing on a student's time, taking the time to listen to the student allows for insight into the student's professional development.

My clinic has a litigation focus and I am able to decipher, at least by the end of the semester, who is good litigator material and who would struggle within that setting. I can also identify those who will work well in an office setting and those who should be a solo practitioner. Having a sense at least of the solid skill set they would need and how to translate that into a successful presentation was essential.

Our charge includes helping students to think beyond their clinical experience, as well, to gravitate towards classes that will help them achieve their goals. I have incorporated questions about career goals in some of my supervisory meetings and I try to address it in some form during the end of semester meeting. All future litigators are advised to take negotiations and mediation. For students that are afraid of public speaking, I suggest that they take small seminars to build their confidence in talking in front of a group.

I say during my first class of the semester that a semester in the clinic is a snapshot of what kind of lawyer a student will be. Sometimes, however, the student doesn't know fully what s/he wants once the reality of practicing law sets in. It is not glamorous and it is hard work. As we encourage students to look at a client's case holistically, we should do the same with our students. Clinicians could be the first exposure to a practicing attorney that a law student has, therefore, an innate knowledge of the rigors and benefits of real life practice can only enhance a student's comprehension.

PART II. Reflections on being a clinician of color

I am the only clinician of color at Albany Law and shouldering that status has been a learning process for me, one that really started towards the end of my first semester. At that time, I was casually approached by two students of color who were not in my clinic. We spoke for a few minutes about the stresses of the end of the semester; then the conversation turned to comments about the discomfort they felt in expressing themselves in class. The conversation was in the clinic's kitchen, a public but distant part of the clinic. I listened to them and while we were talking, someone, who happened to be white, came to the kitchen. I, and the two students, immediately stopped talking and just looked at each other. It was a familiar, and universal, halt of conversation that is had when you do not want the new person entering the room to know about the content of a conversation. I realized at that moment that I did not consider that my presence in the clinic was positive for these particular students. I do not think they could have the same conversation with a white professor and I told them to come and speak to me again.

This conversation illustrates the most personal aspect of my teaching transition which is the impact that students of color have had on me. I am Haitian-American and grew up most of my life in New York City. I am acutely aware of the feelings of isolation and discomfort that can be exacerbated when entering a new environment. It is the mission of law schools, including Albany

³⁰ See generally Harriet N. Katz, *Stories and Students: Mentoring Professional Development*, 60 *J. Legal Educ.* 675 (2011).

Law, to increase and encourage diversity at their institutions.³¹ Much has been written about the importance of having racial diversity in law schools³² as well as law school clinics.³³ When I practiced law in Chemung and Dutchess counties in New York, there were very few lawyers of color. I have had a few memorable and disturbing interactions with clients that were directly related to my race, but for the most part, I was used to being the minority in many situations.

Over the years, other students of color, even those who were not in my clinic class, have talked to me about their social struggles at Albany Law; mainly identified as fitting into the culture of the school and the law where you do not have a lot in common with the people around you, feelings that are endemic in the academic setting for students of color.³⁴ I have heard about feelings of exclusion and perceiving that their voice was not heard, not sought after or respected. I did not have the benefit of having someone in my family that was a lawyer, so I really did not know what to expect from law school. My experience is not unusual for people of color, especially African-Americans and Latinos.³⁵

Comments that are common among minority groups; feeling uneasy around white students, a lack of outreach made by the “majority” at the school, feeling uncomfortable with verbal expression because of limited English proficiency, unfamiliarity with or indifference to the social expectations of practicing law (e.g. presence in business related social events), and feeling the burden of educating people about the complexity of the minority experience in America are recurring themes in my conversations. These types of topics are not unfamiliar to me. My experience that first semester made me aware that I should be an outlet for students of color and that race, in spite of the assertion by some that we live in a “post-racial” society,³⁶ is still a palpable topic in the minds of some students.

For a student of color who is entering a workplace or a profession with unfamiliar rules, the clinical experience affords an extra dimension when they can open up to a teacher who has faced similar struggles. For those who have limited English proficiency, navigation of the dominant language is an extra weight attached to learning social norms. My background, especially my

31 For the purposes of this article, the use of the term “diversity” will be relegated to people of color.

32 See generally Kevin R. Johnson, *The Importance of Student and Faculty Diversity at Law Schools: One Dean’s Perspective* (U.C. Davis Legal Studies Research Paper Series No. 242, 2011), available at <http://ssrn.com/abstract=1769285>.

33 See generally Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 *Hastings L.J.* 445 (2000).

34 Pamela Edwards, *The Culture of Success: Improving the Academic Success Opportunities for Multicultural Students in Law School*, 31 *New Eng. L. Rev.* 739, 757-59 (1997); Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 *J. Legal Educ.* 402, 403-04 (1998).

35 According to the Law School Admission Council, of all students that entered law schools in Fall 2010, Black/African-American and Latino/a students represented 7.2% and 6.1% of matriculants, respectively. Law School Admission Council, *Matriculants by Ethnicity*, <http://www.lsac.org/LSACResources/Data/matrics-by-ethnicity.asp> (last visited Aug. 9, 2011). These numbers stand in stark contrast to the percentage of Blacks/African-Americans and Latinos/as present in the general population: 12.6% and 16.3%, respectively, according to the 2010 Census. U.S. Census Bureau American FactFinder, *Profile of General Population and Housing Characteristics: 2010*, http://factfinder2.census.gov/faces/tables/services/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1&prodType=table (last visited August 8, 2011).

36 “Just as John F. Kennedy was only incidentally a Catholic, so is Obama only incidentally a black man. It is not just that he is post-racial; so is the nation he is generationally primed to lead.” Richard Cohen, *The Election That LBJ Won*, *Wash. Post*, November 4, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/03/AR2008110302609.html?hpid=opinionsbox1>.

immigrant upbringing, makes me sensitive to the concerns of students and I have come to be mindful of my availability to this population of students and providing them a safe place to express sensitive topics.

I have had informal conversations with students of color in my office about practicing law in a predominantly white profession.³⁷ Giving them anecdotes of blatant and subtle racism that I have encountered with different factions of the legal world has offered them a taste of reality and validated their fears, to some extent. And, it has offered them a forum to vent their frustrations about racism's impact on their professional development.

Being very specific about why I am asking a question related to race is another lesson. The teaching of cultural competence is a hallmark of clinical legal education. The teaching of cultural competence has another dimension to the conversation because of my race. How or when to offer personal anecdotes is a delicate balance, in my experience.

The benefit to having faculty diversity in clinics is well documented.³⁸ The lessons that I have learned are to make myself emotionally available to talking about race, be open to bringing up the topic of race, no matter what the color of the student, when I think the topic should be considered, and encourage students of color that the pursuit of a law degree will not only benefit them, but the legal profession as well.

Part III- Reflection on practical aids

As clinicians we spend a great deal of time tracking the progress of our students throughout the semester. We juggle assessment of their intellectual capacity, interpersonal skills, and ethical knowledge. While supervisory meetings give tangible opportunities to assess a student, I have found that other tools, such as rubrics, are very useful. The clinical community is generous about sharing information on rubrics and other assessment tools.

I did not have the benefit of attending a new clinicians conference before I started teaching. My first semester teaching was jam-packed with information that required much effort to absorb in a short period of time. Different people have different approaches to teaching, especially because of the nature of the subject matter of their clinic.³⁹ Having the benefit of hindsight, I can reflect on tools that really helped my transition in being less self-focused and more student-focused. In reflecting on what practical tools have helped me in doing so, I relay five the five below that were critical tools in my transition to clinical teaching.

37 Among those students entering law school in Fall 2010, only about 26% of those who responded were minorities. Law School Admission Council, *Matriculants by Ethnicity*, <http://www.lsac.org/LSACResources/Data/matrics-by-ethnicity.asp> (last visited Aug. 9, 2011). In practice, the picture is even bleaker. Among private law firms, only 6.16% of partners were minorities. National Association for Law Placement, *A Closer Look at NALP Findings on Women and Minorities in Law Firms by Race and Ethnicity*, http://www.nalp.org/jan2011wom_min (last visited Aug. 9, 2011). Only 15.4% of federal judges are minorities. Pat K. Chew and Luke T. Kelley-Chew, *The Missing Minority Judges*, 14 *J. Gender Race & Just.* 179, 179 (2010).

38 See generally Dubin, *supra* note 35.

39 Dunlap & Joy, *supra* note 2, at 109 (survey results from the 2003 Conference participants show the variety of clinics available, from Criminal Defense and Prosecution to Elder Law to Immigration Law).

i. Agendas

One of the greatest challenges, and part of fostering autonomy, is to have students take ownership of their cases.⁴⁰ Taking ownership means investing the time, diligence, and intellectual discernment to be thoughtful about every step in a case. I remember agenda setting as an instrument that was suggested at the first new clinicians conference that I attended after my first semester teaching. In my supervisory meetings, I ask the student or student team to give me agenda items first. They do not need to give me something in writing, they just need to think about it first and then I jot down the item when they come in my office. I then add my own agenda items after theirs.

Giving the student the first opportunity to set the agenda is helpful, I think, to furthering ownership goals of a case. Often times, especially in the beginning of the semester, a student is grappling with what the next steps are in a case. I do remember that the start of my clinical experience as a student was overwhelming. Navigating what ownership means is a delicate balance for a novice because (s) he does not necessarily have the requisite experience to think two steps ahead in a case. In having an agenda and sticking to it, I find that I listen more than speak; I identify struggles more pointedly because the student can tell me what he or she is struggling with. This will allow you to use the time more efficiently and a consensus can be reached from the very beginning on what needs to be addressed before the meeting is over. Such structure may not be feasible if an emergency situation comes up in a case, but agenda setting is a valuable tool. I am thankful that allowing the student to set the agenda in the first instance minimizes my desire to control the case.

ii. Case plans

At Albany Law (and other clinics nationwide), several clinic professors have students use case plans for their cases: the template for the plan depends on the individual clinic director.⁴¹ When I started teaching, I used the case plan template of my predecessor and I found it to be the most useful device to track a student's thinking and struggles, particularly in the area of legal analysis. The format is similar to an appellate brief and it can go through multiple drafts throughout the semester. I give comments on each draft, give praise for some items, and point out when an issue has not been addressed.

The ability to follow the student's progress in a way that contains the essential components of a litigated case: the facts, legal issues, opponent's arguments, and the client's arguments, also helps me as a supervisor identify the needs of the case in a way that is balanced. Reading multiple drafts of a case plan has allowed me to give comments and suggestions in a time efficient manner and, I believe, it helps the student to see gaps in their formulation of the different aspects of building a case (factual theory, legal theory, and persuasive theory). Feedback from students about case plans has been mostly positive, including feedback that they will use them in practice.

iii. Going beyond "what do you think"?

I have had some blank stares when I ask this question. Being mindful of the inexperience of students is important. While the question is a critical tool, thinking about what comes after the answer from the student is equally useful. I think it is important to challenge students to express fully how they reach a conclusion. This means giving them space to think about a situation and

⁴⁰ *Id.* at 62.

⁴¹ The case plan that I use for my clinic appears at Appendix A.

help them along the way to reach a legal argument. It may mean that you give the student a few hours or a few days to mull over the situation. Or, you could give the student hints about where they need to go to find an answer. Students need to develop professional judgment and ownership of a decision or conclusion is salient when they are encouraged to develop the steps to reach a conclusion.

iv. Survey

At the end of several semesters, I have administered an evaluation survey⁴² to my class that is different from the clinic's evaluation and Albany law's faculty evaluation.⁴³ The idea for a survey came from a colleague with whom I co-taught a skills course. My clinic survey is very short and asks questions about what worked and did not work in the clinic that semester and I ask for reactions on something new that I have introduced. For example, I have used the movie "Rashomon"⁴⁴ three times as a companion to the lecture that I give on fact investigation; one semester I used the short story on which the movie is based, "In a Grove," by Ryunsuke Akutagawa. I use the film for several reasons. First, to encourage my students to listen to the same story, with conflicting testimony, in an effort to demonstrate that there are different "facts" they must investigate in their efforts to create a persuasive argument. Second, to impress upon students the fact that a lawyer cannot have tunnel vision when it comes to looking at a case holistically. Third, the film serves as a view into a different culture and generation, so it can serve as a springboard to discussing cultural competence, an important component of a lawyer's professional growth.

The first time I showed the film, there were positive comments about the movie being a nice change from regular class work. I also got some comments that it was hard to connect the movie to the aims of fact investigation. So, I refined the assignment⁴⁵, with the help of a more experienced colleague, by taking the feedback from the students and modifying it to better fit the lecture on fact investigation. I have had a couple of comments that I need to select a more "current" film at least from the "90s" but my goal would be skewed, I believe, if the students recognized the actors.

Why have the survey completed anonymously? For the same reason that faculty evaluations are administered anonymously, in order to encourage honesty. In an office setting, complete honesty is not to a rule of thumb; you need only review blogs or books on proper office etiquette to know it is wise to keep certain comments to yourself.

Getting this extra feedback from students has given me better insight on what I needed to clarify for some assignments.

v. Confidential notes

Developing a system of keeping track of an individual student's progress and problems is especially useful. Unlike a traditional class where one exam or a mid-term measures a student's legal knowledge, a clinical professor can see dramatic changes on a weekly basis. Having a mechanism to remind me of milestones, issues, and observations of the student has helped me in providing

⁴² I got this idea from my colleague, Laurie Shanks.

⁴³ Both evaluation forms on file with author.

⁴⁴ *Rashomon* (Daiei Studios 1950). David Chavkin suggests this film, among others, in the teacher's manual for "Clinical Legal Education."

⁴⁵ I was helped a great deal by my colleague, Nancy Maurer.

feedback throughout the semester and especially at mid and end of semester meetings. Giving meaningful feedback is essential to the clinical experience.⁴⁶ However, giving good feedback is a universal pursuit of teachers and one that is encouraged in the current push for law schools to create outcome and assessment tools.⁴⁷

Either at the end of the day or the end of the week, I jot down notes about the performance of each student.⁴⁸ The notes are basically in three categories-supervisory meetings, seminar, positive and negative anecdotes. I do not share these notes with anyone but I use them to refresh my memory when I meet with my students. Taking time to write notes to yourself throughout the semester on how each individual student is growing, or not, so that your feedback can not only be supplemented with concrete examples, but can also remind you of the noteworthy highlights of each student's progress.

Conclusion

The transition into teaching in the clinical setting has been a process filled with many highs and lows. The aspects that are familiar to practice- interviewing, formulating arguments, thinking about strategy- take on a new dimension when they are being cultivated in an emerging lawyer. Being student-focused is what teaching is all about; what I have talked about regarding relinquishing control, being a mentor, and being available to students is a balancing act that is part of being a clinical teacher. These aspects flow and change depending on the student and they continue as each semester brings the same and new challenges. While my aim in writing this article was to convey concrete examples and ideas for new clinical teachers, my hope is that it resonates with experienced ones, as well. There has been much talk about reforming legal education⁴⁹ and I think that seasoned practitioners add to the richness of legal education in ways that complement the traditional law school curriculum. Seeing someone's professional growth, someone who will be a future colleague, is a tremendous privilege.

46 "The guidance and feedback that students receive in experiential education courses influences the quality of the experience more than any other component." Stuckey et al., *supra* note 6, at 175

47 *Id.* at 239-40.

48 A sample is attached as Appendix B. This is an example only. The names in this form have been made up, as have the notes attributed to these fictional students.

49 Karen Sloan, *AALS Urges Delay in Debate Over Law School Accreditation Standards*, *The Nat'l L. J.*, March 30, 2011, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202488584781&slreturn=1&hbxlogin=1> (highlighting the American Association of Law Schools' objections to several proposals being floated by the American Bar Association's Standards Review Committee, which is currently updating law school accreditation standards).

APPENDIX A

CASE PLAN TEMPLATE

Client: _____

Date of File Origination: _____

Intern Responsible: _____

Supervising Attorney: Prof. C. Benjie Louis bloui@albanylaw.edu

Dates and pages of case plan updates and comments: _____

Case Plan Initiated: _____

Case Plan Updated _____

I. Parties in this action:

Name of Dwelling's owner: _____

Address: _____

Phone: _____

Contact: _____

II. Summary of Facts:

III. Factual Questions/Problems specifically to be addressed:

IV. Questions of Law specifically to be addressed:

(i.e., notice to vacate, eviction notice.)

V. Statutes and regulations involved:

VI. Legal Position: (Prior legal decisions)

A. Lower Court Decisions

B. Appellate Court Decisions

C. Court of Appeal Decisions

VII. Owner's position:

A. Factual

B. Legal

VIII. Best Facts to support Owner's version of the issues:

ISSUE

BEST FACT

SOURCE

HOW TO GET FACT

IX. Apply law relevant to specific issues (from 8 above):

X. Our Position

A. Factual

B. Legal

XI. Best facts to support our version of the issues:

ISSUE	BEST FACT	SOURCE	HOW TO GET FACT
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XII. Apply law relevant to specific issues (from 11 above):

XIII. Notes for Negotiation/Oral Argument/Closing:

(i.e., summary of testimony, arguments)

APPENDIX B

INTRODUCTION TO LITIGATION CLINIC

Spring 2011

Week One (1/10)

Doe, John

- Missed scheduling a meeting to discuss educational goals. I had to send two emails to remind him. Apologized for oversight.
- Meeting – Made very little eye contact. During meeting, he took notes and advised me that he struggles with writing. Stated contracts was his favorite class so he was able to follow the overview on landlord/tenant law during class very well. States he does not like public speaking.

Moe, Molly

- Meeting was very productive. She was thoughtful about her strengths and weaknesses. Both parents are lawyers. She was clear about her desire to be a litigator. Does not think that she will like writing reflections. She had to do so for Field placement and found them boring.
- Came to court appearance with me on Friday. Asked pointed questions about client's legal argument and got a good grasp of the two main issues in the case. She was able to relay the legal issues to me on the way back to school.
- on a journal and states she has time management problems.

Jones, Jane

- Disorganized at the meeting. She did not answer all of the questions on the educational planning form. Stated she hated law school so far and hopes clinic will give her motivation to continue. (2L) Feels at a disadvantage because she is first in her family to go to graduate school.
- Per AA, she was distracted during computer training.
- In class, she stated during introductions that she has had family members who were homeless and came to live with her and her mom. Seems open to sharing her feelings.

Smith, Bob

- Hard to read so far. He missed extra class this week but gave no explanation of why.
- EPF had thoughtful answers about his skills (strong writer, hates public speaking, legal research skills are efficient). He already knows he does not want to be a litigator. Thinks this clinic will take him out of comfort zone. Does not like idea of collaboration.

Week Two (1/17)

Doe, John

- assigned a case from last semester. Seemed very uncomfortable in class when it was his turn to present his case during case review. The facts were not presented in chronological order (as I had advised). Talked to him about this and he said he forgot my suggestion. I suggested that we do a run-through of his case before the next class.
- he initiated a meeting with me before he called the client (proactive)

Moe, Molly

- assigned a case from last semester. Gave the facts in chronological order. She was following a written outline-good preparation.
- She made some suggestions to JD about research and offered to help him (collegial)

Jones, Jane

- Did not contribute to discussion forum on TWEN and her first timesheet was not detailed enough. Was late for class and did not participate. Appointment made for Monday to discuss this.

Smith, Bob

All assignments completed. I advised him that I would assign a case to him and Jane to work on together. I gave some suggestions on collaboration and lent him a book; told him to read the chapter on collaboration. I asked him to come to my office on Tuesday to discuss the reading.

Week Three (1/24)

Doe, John

- good reflection paper about his fear of messing up a client's case. Lots of typos even though I suggested spell check. He seemed more comfortable with me during supervisory meeting. More eye contact and more questions about next steps in the case. We looked over the paper together. He stated he is dyslexic but that will not stop him from improving. I suggested seeing the writing specialist in the main building.

Moe, Molly

- reflection was a recitation of what she did over the past two weeks. I made suggestions at end of paper on how to tie the information into a comment about her professional growth.
- We discussed conference call with client. She feels that the client was rude because he asked so many questions. We talked about her perception of "rude" and she realized he was anxious about

a new person on his case.

- good comments in class about lack of access to lawyers in housing court

Jones, Jane

- honest reflection paper on her difficulty with school and life and how the clinic's law firm format will give her a dose of reality.
- During our meeting, she said that she was recovering from an illness and missed deadlines. She has job on the weekends so she is adjusting to a lot. We discussed her schedule, principles of professionalism and strategies.
- Told her she would work with Bob on a new case. She was relieved; states she is a good collaborator and Bob will help her stay on schedule. We discussed balancing work and school.

Smith, Bob

- well-written reflection on how he would have to make many adjustments because of the clinic. He hopes to get along with co-counsel.
- articulated good points from this week's reading in an organized manner during class.
- we discussed collaboration and he said he decided that dividing tasks will be best way for him to work. I urged him to talk to co-counsel first before making a decision on that.

