



2012

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Georgetown Public Law and Legal Theory Research Paper No. 12-016

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18 Clinical L. Rev. 505-591 (2012)

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WHERE TO BEGIN? TRAINING NEW TEACHERS IN THE ART OF CLINICAL PEDAGOGY

WALLACE J. MLYNIEC¹

Legal educators and the legal academy have long made the mistaken assumption that new teachers have an intuitive grasp of teaching methodology based on their experiences as students, and that therefore they can begin and continue teaching throughout their careers without any understanding of teaching methodology. Clinical teachers in particular face unique pedagogical challenges relating to class goals, supervisory methods, feedback, and grading. These challenges are magnified by the existence of clients and by the need to engage with students regarding the ethics of legal practice and cultural difference.

This article attempts to set forth some of the critical questions new teachers must answer by describing the goals and content of a clinical pedagogy course designed by the Georgetown Law Center faculty to train graduate clinical teaching fellows and facilitate their entry into the academy. The article (and program it describes) rests on six fundamental beliefs: clinical teaching is different from and more expansive than doctrinal teaching or professional legal practice; clinical teaching is goal driven and based on backward design; faculty intervention must be intentional and based on making choices that further a student's education; clinical education should be based on an expansive theory of justice; client and student needs are equally important in a clinical program and neither need be sacrificed for the other; and clinical teaching is personal and designed to accept students where they are and to maximize their learning potential.

The Georgetown training program emphasizes intentional and reflective supervision and creative and adaptive teaching methods.

¹ I have many people to thank for their contributions to this article. The original group joining me to design the Clinical Pedagogy course included Professors Hope Babcock, Deborah Epstein, Chai Feldblum, and Jason Newman. The faculty members who have taught the course since its inception contributed many of the ideas upon which this article is based. My research assistants, Katie Kronick and Alex Berg, researched, edited, and drafted portions of several sections of the article. Georgetown Librarian Sara Samson provided research guides for this article. Jane Aiken, Deborah Epstein, Paul Holland, Kris Henning and Ben Barton read early drafts of the paper and made significant contributions to its success. Anna Selden and Abby Yochelson provided editing support. I owe a lifetime of thanks to them, to my colleagues at Georgetown, to clinicians throughout the country whose articles and conversation helped me formulate my thoughts, and to all my deans who have supported me in my career and supported our clinical program.

The major focuses of the course are the history of clinical education and its contemporary status in the academy; techniques of supervision and reflection; relevant values, ethics, and morals of clinical teaching; pedagogical methods for structuring classroom teaching; and the interrelationship of feedback, evaluation, and grading in clinical courses. The article provides the syllabus for the program and engages in an in-depth discussion of each element of the course to help new clinical teachers answer the question “where should I begin?”

Clinical faculty members have been dedicated to perfecting the art of clinical pedagogy² since its tenuous and controversial reemergence in the 1960s.³ Clinical education has grown dramatically in terms of the number of law schools supporting clinical courses⁴ and the number of faculty members now teaching in them.⁵ The dedication of clinical educators to creating a distinct pedagogy has resulted in hundreds of articles being written about lawyering, teaching methods, supervision techniques, grading, and a host of other topics related to teaching the reflective practice of law, the role of lawyers, and the place of lawyers in a democracy where the rule of law is sometimes applied unequally.⁶ Books have been written with guidelines for starting and operating a clinic,⁷ and others have collected excerpts from various law review articles focusing on specific topics that arise in a clinical course.⁸ This academic discourse, oral and written, about clinical education has created a sophisticated pedagogy that is at once

² John Bradway was an early theorist and practitioner of clinical education. In the modern era, Gary Bellow, Anthony Amsterdam, and William Pincus provided the theory to support the increasing number of clinical teachers in the 1960s and 1970s. See Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium*, 7 CLINICAL L. REV. 1, 16-17 (2000).

³ See *id.* at 5-12. Of course, some clinical programs began earlier, but the movement to incorporate clinical education into all law school's curricula began in the late 1960s. *Id.* at 5.

⁴ All accredited law schools now have some form of clinical program. E-mail from Professor David Santacroce, to author (Feb. 20, 2011) (on file with author).

⁵ The clinical section of the American Association of Law Schools (hereinafter AALS) is now the largest single section. More than 1,500 teachers identified themselves as clinical teachers in the 2010-2011 AALS Directory of Law Teachers. E-mail from Ian Weinstein, Associate Dean, Fordham Law School, to author (Feb. 28, 2011) (on file with author). The Clinical Legal Education Association has approximately 950 members. *Id.*

⁶ For a thorough but non-exhaustive collection of these sources, see J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, CATHOLIC UNIVERSITY OF AMERICA (April 13, 2011), <http://faculty.cua.edu/ogilvy/Biblio05clr.htm> (earlier version available at 7 CLINICAL L. REV. 1-4 (2001)).

⁷ See, e.g., DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* (2002); PHILIP G. SCHRAG & MICHAEL MELTSNER, *REFLECTIONS ON CLINICAL LEGAL EDUCATION* (1998).

⁸ See, e.g., CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS (Alex J. Hurder et al. eds., 2d ed. 2011).

rich and yet elusive. New clinical teachers, even those who once were clinic students themselves, must find the amount of information daunting. When approaching their new tasks, new teachers often ask themselves “Where should I begin?” This article seeks to answer that question and perhaps do a little more.

Law schools have seldom encouraged new teachers to study the methodology of classroom teaching.⁹ There has long been an assumption in legal education that since the new teachers were once law students, they intuitively understand how to conduct lectures, plan and direct seminar activities, engage students in problem-based classes and simulations, and perform traditional Socratic exercises. Experience suggests that this is a false assumption, but the attitude continues to prevail today. One would think that clinical teachers would know that teaching is not simple, but that is also not always the case. Fellows and new teachers often tell me that clinical teaching is harder than they thought it would be.

Teaching is hard work. It requires a deep understanding of educational motivators, an appreciation of and for different learning styles, a thorough knowledge of legal theory and practice, and the ability to convey that knowledge in an understandable fashion to others. Clinical teaching also requires an understanding of which teaching techniques best suit the faculty member’s goals for the course. It also demands an understanding of which techniques best convey the knowledge and the insights the faculty member seeks to impart to ensure that students learn and that clients’ needs are met.¹⁰ Clinical teachers also need to be aware of students’ cultural understanding in ways that are different from and more immediate than those usually encountered by classroom teachers. The freedom, resources, and welfare of clients are at stake whenever students undertake representation. The weight of that responsibility can create impediments to learning and to performance that do not occur in classroom-based courses. As such, clinical teachers must pay close attention to the human interaction that occurs between students and clients and be aware of the psychological and anthropological impediments that such interactions can produce. Moreover, a clinical teacher must be acutely aware of the strange hierarchy that exists

⁹ Articles on teaching do appear in the JOURNAL OF LEGAL EDUCATION and others can be found online in the LAW TEACHER published by the Institute for Law Teaching and Learning sponsored by Gonzaga and Washburn Schools of Law and in EDUCATING TOMORROW’S LAWYERS, published by the Institute for the Advancement of the American Legal System, sponsored by the University of Denver Law School. Articles about clinical teaching regularly appear in the CLINICAL LAW REVIEW.

¹⁰ See Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 110-13 (1995).

when the professor is both a partner in strategizing about a case or project and the hierarchical source of all power in the class.

Despite the complexity of clinical teaching, few schools train new clinicians to understand and incorporate “reflective learning teaching techniques as they make the transition from law practice to clinical law teaching.”¹¹ Practical constraints generally dictate this shortcoming. Most law schools do not have large clinical faculties. Even fewer schools hire more than one new clinical teacher at a time. Creating an elaborate training program for one or even two people taxes the already strained resources of the incumbent clinical teachers. Deans, perhaps justifiably, expect their own faculty members to train new teachers and are reluctant to use limited fiscal resources to bring senior teachers from other schools to perform this task. The result is that little formal teacher training exists at most law schools. Instead, more experienced faculty, to the best of their ability, mentor their newer colleagues during their early years as teachers, but rely on clinical conferences and experience to impart, over time, the knowledge and skill required to perform the work well.

From the earliest days of the clinical teaching movement, the AALS has supported yearly teaching conferences and workshops to assist new and veteran clinical teachers in their quest to develop the best methods for teaching students the art of lawyering in an academic setting.¹² These conferences have been supplemented by day-long sessions at the AALS annual meeting and at regional clinical conferences throughout the country. The Clinical Legal Education Association (CLEA) has also sponsored conferences for both new teachers and clinic directors.¹³ These national and regional conferences have been wonderful sources of learning for both new and experienced teachers. I have been attending these conferences for almost forty years and still find new and exciting ideas almost every year. The efficiency of using large conferences to teach clinical pedagogy cannot be underestimated given the paucity of training at our own schools. Yet the modern large conferences seldom satisfy the needs of new clinicians. Attendance at the conferences has grown dramatically since the

¹¹ 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, 49 (2005).

¹² The first Clinical Teaching Workshop was held at Cleveland State University Law School in October of 1977. The first Clinical Teaching Conference was held at Georgetown Law Center in July of 1978. Since 1977, AALS has sponsored thirty-five conferences and workshops. Telephone interview with J.P. Ogilvy, Professor of Law, Clinical Education Archive, Catholic University Columbus School of Law (2008).

¹³ These conferences include the New Clinicians Conference and the Applied Legal Storytelling conference. CLINICAL LEGAL EDUCATION ASSOCIATION (April 13, 2011), <http://www.cleaweb.org/index2.php#/home/>.

early ones, eliminating the intimacy and trust needed to display one's mistakes or to have the hard conversations that spur improvement.¹⁴ The plenary sessions and small groups often target complex issues that can best be understood only after one has taught for several years. In addition, new clinicians tell me they often feel intimidated participating in small groups with seasoned clinical teachers who sometimes consciously, or unconsciously, convey impatience at what the veterans perceive to be a lack of knowledge concerning the basic tenets of the clinical method.¹⁵ Thus new teachers seek out other new teachers to discuss various issues or listen respectfully rather than fully engage in conversations with senior teachers.

This is the first of two articles that attempts to answer the question "Where do I begin?" This article describes the classes we conduct at Georgetown to initiate graduate clinical teaching fellows into the academy of clinical teachers. The fellows training course, now called "An Introduction to Clinical Pedagogy," began in 1998. Since that time, many clinical teachers have asked for the syllabus we use in the course. Until now, we have been reluctant to share it because we were still trying to clearly articulate the goals for the course, still unsure whether we were achieving the goals we chose, and unsure whether the path we took would be helpful to others. Although the course is still a work in progress, we believe that it is now sufficiently developed to share with others who are intent on improving the work of new teachers.

This article describes the content our course and explains why we believe the topics we chose for it help new clinical teachers determine what is important as they begin their new work. It also describes the methods we use to convey the information to new teachers and why we chose those methods. Finally, it identifies the readings we chose to inform the class. The second article, to be published in the next issue of the *Clinical Law Review*, describes how the faculty at Georgetown, over a period of many years, created and revised the training program. The two articles together will explain the reasons why we believed a teacher-training program was needed and the choices we made in developing the course. It will also provide an outline for others to use when developing similar programs tailored to meet the needs of their

¹⁴ Both the AALS Clinical Conferences and those conferences sponsored by the Clinical Legal Education Association have become quite large. Attendees include a mix of teachers from the brand-new to those who have been teaching for more than thirty years. The needs of the new teachers are addressed in one-day sessions but seldom discuss all that new teachers need to know.

¹⁵ See generally Praveen Kosuri, *X Marks the Spot*, 17 CLINICAL L. REV. 205 (2010) (describing the challenges for new teachers who participate in clinical education conferences).

own schools and faculties.

There are multiple audiences for these articles. The main audience is the many new teachers who come to clinical education every year. At a minimum, the articles will help them define the critical features of the profession that they must learn as they begin their work and learn how to make pedagogical choices. In addition, the articles will help the new teachers choose some articles to read from the many existing excellent articles about clinical education so that they can begin to understand clinical teaching goals and techniques. More importantly, this article might help them identify their goals and strategies for teaching students, and understand the differences between the techniques that drive a clinical teacher in a law school course devoted to students and those that drive a trainer from legal practice who seeks to maximize the efficiency of his or her team. Finally, the article might help new teachers understand how to make choices that maximize both the educational goals of the students and the legal needs of clients.

A second audience for these articles is more experienced teachers who have not had the opportunity or the time to think critically about the conceptual bases for their own programs. Most mid-career clinical teachers were hired at law schools that already had established goals for its clinic to which they were asked to adhere. Perhaps this article will provide a framework to rethink the goals and methods that guide their school's clinic. A third audience is more experienced teachers within a region whose schools regularly meet to discuss issues relating to clinical education, and clinic directors at schools that hire several clinical teachers in a short period of time. Faculty members at schools wishing to develop a training program for their new teachers will read these articles and understand the choices we made in developing the teacher-training program at our school and have an outline to use when developing similar programs tailored to meet the needs of their own schools and faculties.

In developing our course, we found that the teaching model used in most of the Georgetown clinics embodied six truths. First, we believe that teaching in a clinic is different from and more expansive than training lawyers in a purely professional setting and different from teaching in a doctrinal course. Second, clinical teaching is goal driven and based on backward design. Third, faculty intervention is intentional and based on making choices that further a student's education. Fourth, clinical education should be based on "Justice" in the most expansive meaning of the word. Fifth, client and student needs are equally important in a clinical program and that neither need be sacrificed for the other. Finally, clinical teaching is personal and de-

signed to accept students where they begin and to maximize their potential to learn.

The most critical decisions we made as the course evolved concerned the substance of the classes we taught. As the literature about clinical education demonstrates, there are many substantive and pedagogical topics from which to choose. After many conversations and many experiments, we decided that there were several aspects of our craft that new teachers had to learn as they entered the profession. These topics are 1) the history and contemporary status of clinical education in the academy; 2) techniques of supervision and reflection; 3) the relevance of values, ethics, and morals to teaching students in a clinic; 4) pedagogical methods for structuring classroom teaching; and 5) the interrelationship of feedback, evaluation, and grading in clinical courses. The remainder of this article describes how we teach these topics to the new clinical teachers.

I. BEGINNINGS

Beginnings are always important.¹⁶ New fellows are eager but anxious about being at Georgetown and about undertaking their new responsibilities. The faculty is similarly eager and anxious about first impressions, wondering whether they chose the right fellows from the applications they received, and thinking about the difficulties that they and the fellows will encounter in the coming year. We all, faculty and new fellows, want to know why we are here and what are our shared goals for this new endeavor.

The faculty members who teach each class session intentionally choose the content and structure of this class. The goals of the first classes are to introduce the new fellows to the history of clinical education, to the fundamentals of clinical pedagogy and to the way those fundamentals have evolved in the Georgetown clinical program, to each other, and to the faculty. Another goal is to demonstrate techniques from this form of learning and teaching, and to subtly begin the transformation of the new fellows into clinical teachers and supervisors. We also have some interpersonal goals. We want to instill a sense of confidence among the fellows going forward but also a sense of humility about the work we and they are about to undertake. We seek to create a learning team whose members will rely on each other during the next two years and a safe space in the classroom where difficult issues can be discussed, where the fears that accompany all

¹⁶ Professors Susan Bryant of CUNY Law School and Deborah Epstein of Georgetown pointed out the importance of structured beginnings in the first Georgetown Clinical Teachers Summer Institute in 2008. Fellows must learn to set the right teaching tones, describe their goals, and establish trust if the enterprise is to begin on a positive note.

new endeavors can be allayed, and where the joy we will experience as we undertake this new and exciting role can be shared.

Most new fellows were exposed to clinical education as students at schools other than Georgetown. They do not know each other, barely know their new clinical directors, and because clinical pedagogy has been around for almost fifty years, they usually lack the knowledge of the historical antecedents of the clinical movement. Fellows and other new clinical teachers seldom know the pioneer theoreticians of clinical education or the early battles that were waged for its acceptance into the academy. We believe that such knowledge is important both for understanding the theoretical basis for the pedagogy and for participating in a movement that has, throughout its history, remained outside the predominant canon of legal education. Names like Jerome Frank, William Pincus, John Bradway, William Greenhalgh, Anthony Amsterdam, and Gary Bellow generally mean nothing to new teachers. Even the names of contemporary master clinical teachers like Susan Bryant, Elliott Milstein, Jane Aiken, and Stephen Wizner¹⁷ are often meaningless, unless one happens to have gone to a school where one of them teaches. As we developed the pedagogy course, we thought that all new teachers, especially those who hope to have a career in academia, should be familiar with the work of the pioneer clinical teachers and be grounded in the work that has evolved into clinical pedagogy.

As William Faulkner once wrote, “the past is never dead, it isn’t even past.”¹⁸ We continue to see that today. One would have thought that the battles years ago over 405(e)¹⁹ were the beginning of a universal recognition that clinical education has value and that it has earned its place in the legal academy. Today, however, the battles continue as the American Law Deans Association (ALDA)²⁰ fights to

¹⁷ Of course, there are many others who have made significant contributions to the development of clinical pedagogy.

¹⁸ WILLIAM FAULKNER, *REQUIEM FOR A NUN* act 1, sc. 3 (1951).

¹⁹ Section 405(e) of the Accreditation Standards set forth by the American Bar Association (ABA) is now memorialized in § 405(c):

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of faculty members, or in an experimental program of limited duration.

A.B.A. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2010-2011, § 405(c); *see also*, Peter A. Joy & Robert R. Kuehn, *The Evolution of A.B.A. Standards For Clinical Education*, 75 TENN. L. REV. 183 (2008) (tracing the evolution of the A.B.A. standard for clinical education).

²⁰ The American Law Deans Association (hereinafter ALDA) is an organization that

remove the academic freedom and security of position protections we gained years ago during the A.B.A. and A.A.L.S. debates about accreditation standards for law schools.²¹ Knowledge of those debates and the strategies used by the teachers who secured the passage of 405(e) will help the next generation of clinical law teachers fight the new battles and continue the debates. Moreover, the writings of the early clinicians still resonate as we continue to enhance and adapt our teaching methods. For all these reasons, our first sessions seek to acquaint new fellows with the clinical movement, with Georgetown's role in its development, with each other, and with the fellows' place in the history of our constantly evolving movement.

To present the material, we use several teaching techniques that will continue to appear throughout the course. We use them because a variety of techniques enhances the quality of teaching. Using them also serves to model their use for the fellows who will be called upon to teach in the classroom as well as supervise. We begin the first class by showing a slightly edited version of the movie, *The Seeds of Change*, an oral history produced by Professor Sandy Ogilvy's that traces the early history of the modern clinical education movement.²² After watching the movie, we ask the fellows to engage in a quick-write²³ about what brings joy to their teaching endeavors, basing it on past or anticipated experiences. We also suggest that they write about their fears and expectations as they begin their new work and about issues that were raised in the movie. We then begin the process of introduction, asking the fellows to describe what led them to the fellowship program, but focusing on the substance of their quick-writes.

gives the impression that it speaks for the deans of American law schools. See AMERICAN LAW DEANS ASSOCIATION (Apr. 13, 2011), <http://www.americanlawdeans.org/> ("The [ALDA] represents more than 140 law school deans."). It is in fact a group of deans led by a self-perpetuating Board of Directors that does not necessarily speak for its membership when taking positions. The positions it takes are the positions of the Board. Since its inception, this organization has been hostile to clinical education and its recommendations to the A.B.A. concerning governance, security of position and academic freedom demonstrate this.

²¹ In February 2011, the A.B.A. House of Delegates unanimously reaffirmed its support for the independence of clinical education programs. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT TO THE HOUSE OF DELEGATIONS (2011), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20110201_legaleducation_resolution_on_interference_with_clinics.pdf.authcheckdam.pdf.

²² AN ORAL HISTORY OF CLINICAL EDUCATION, PART ONE: SEEDS OF CHANGE (2006) [hereinafter ORAL HISTORY]. Professor Ogilvy is a former Prettyman fellow at Georgetown and a Professor of Law at Catholic University's Columbus School of Law.

²³ Quick-writes are short, three-minute reflection pieces based on recently encountered ideas or past experiences. See generally STEPHEN BROOKFIELD, BECOMING A CRITICALLY REFLECTIVE TEACHER (1995) (explaining the theory and purpose of introspective writing exercises by students).

Some say they came to the program only to improve their lawyering skills while others are intent on pursuing clinical teaching careers. Most are motivated by a public interest ethos, a love of the academic environment, and a desire to make a positive contribution to a just society. This discussion serves their common sense of mission and helps to inculcate in them an understanding that they are learning to be teachers of the lawyering process as well as learning to be public interest lawyers, and that teaching about lawyering is not the same as lawyering.

We try to relate their previous experiences, fears, and expectations to the history of the clinical education movement as gleaned from the movie and the assigned readings to demonstrate to the fellows that they are part of something greater than they even imagined. The readings for this session are a combination of articles of historical and contemporary importance to the clinical education movement.²⁴ To place this history into the Georgetown context, the fellows learn about the importance of William Pincus and the Council on Legal Education and Professional Responsibility (CLEPR) to the Georgetown program and the accomplishments of Bill Greenhalgh, John Kramer, and Dean David McCarthy in developing and expanding the program.²⁵ We assign these readings and the film to expose the fellows to the foundational concepts of clinical education, to place the work in which they will be engaging for the next two years into a historical context, to motivate them to fulfill the academic aspirations of the pioneers of clinical education, and to begin to create an identity of interest with the other new fellows and with the Georgetown clinical program.

The movie and the readings also place the clinical education movement into its political and social context. Fellows learn of the work of Jerome Frank²⁶ and Karl Llewellyn.²⁷ They come to understand that the roots of clinical theory were nurtured in the Legal Realist movement of the 1920s in reaction to the shortcomings of Christopher Columbus Langdell's case method of legal education. They learn that clinical pedagogy remerged in the political and cul-

²⁴ See Appendix A for a list of the articles.

²⁵ See Wallace J. Mlyniec, *The Intersection of Three Visions: Ken Pye, Bill Pincus, and Bill Greenhalgh—And the Development of Clinical Teaching Fellowships*, 64 TENN. L. REV. 963, 964-77 (1997).

²⁶ See, e.g., JEROME FRANK, *COURTS ON TRIAL* (1949); JEROME FRANK, *LAW AND THE MODERN WORLD* (1930); Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

²⁷ See, e.g., KARL W. LLEWELLYN, *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* (1962); KARL W. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR STUDY AND ITS STUDY* (Oceana Publications 1960) (1930) (providing a *sine qua non* of the legal realist movement, targeted at first-year law students).

tural upheavals of the 1960s when social justice became a motivating force for students and the “personal became the political.”²⁸ The fellows learn that this social justice dimension continues to drive the agenda of clinical education theory and of most clinics today.²⁹ They also learn that notwithstanding this noble history, clinical education remains under attack.

New fellows are intrigued by both the recency of the modern clinical movement and by its antecedents that stretch all the way back to the legal dispensaries of the 1890s.³⁰ They often find the stories of the clinical movement’s struggles for acceptance bewildering, perhaps because practice in a law school setting seems like such a natural extension of one’s theoretical legal education. If they come from schools with limited clinical opportunities, they are amazed at Georgetown’s relatively seamless acceptance of clinical pedagogy into the academy and the equal status of the clinical and non-clinical faculty, and by the wide array of clinical courses.³¹

The discussions during this class and the one that follows attempt to define clinical education, place that definition in the context of the overall history of clinical pedagogy, and explain how that pedagogy is used at Georgetown. The conversations during the first class tend to bring to the surface the major systemic issues facing clinical education. Questions regarding the tension between education and service, methods for intervening into the student’s cases, the structure and case selection methods of various clinical programs, the fellows’ role in the clinic, and the notion of goals always seem to arise. Conversations about these topics tend to turn towards the fellows’ fears about their

²⁸ “The personal is political” was a frequently heard feminist rallying cry, especially during the late 1960s and 1970s. Feminist and writer Carol Hanisch’s essay titled “The Personal is Political” appeared in the anthology *NOTES FROM THE SECOND YEAR: WOMEN’S LIBERATION* in 1970. She is therefore often credited with creating the phrase. However, she wrote in an introduction to the 2006 republication of the essay that she did not come up with the title. She believed the editors of the anthology, Shulamith Firestone and Anne Koedt, who were both feminists involved with the group, New York Radical Feminists, selected the title. Some feminist scholars have noted that by the time the anthology was published in 1970, “the personal is political” had already become a widely used part of the women’s movement and was not a quote attributable to any one person.” Linda Napikoski, *The Personal is Political: Widespread Slogan of the Woman’s Movement*, ABOUT.COM (Apr. 13, 2011), http://womenshistory.about.com/od/feminism/a/consciousness_raising.htm.

²⁹ The American Bar Association recognized this coalescence about justice and noted that through clinics, students are exposed to skills and important values, including “justice, fairness, and morality.” See generally Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, 4 CLINICAL L. REV. 1 (1997).

³⁰ See Barry et al., *supra* note 2, at 5-12.

³¹ The Georgetown clinical program has been fortunate in that the school has graduated a large number of successful trial lawyers and has had a succession of deans since 1955 who have valued clinical education.

acceptance by their J.D. students and faculty members, their lack of experience, balancing client-centeredness and student-centeredness, and the many other fears that any new teacher would have as he or she begins the new task. All new teachers will experience similar fears and elation as they begin their new endeavors. Locating their personal entry into the profession in the context of the history of clinical education and with the fundamentals of the pedagogy will ease the fellows' transition into their role as teachers and will instill a sense of confidence in their ability.

The second class session continues these introductory themes. The new fellows hear descriptions of each Georgetown clinic, interwoven with clients' stories, to enrich the narrative of a fellow's work. The fellows are generally surprised at the differences and similarities that exist within our teaching methods. We use this session to further explain the evolution of our program and to explain how we think about and address some of the historical maxims of clinical education such as "directive and non-directive" instruction and the so called "difficult student." This and the prior session begin a conversation that continues throughout the course about clinic goals and student motivation; the differences among feedback, evaluation, and grading; and the nuanced differences between ethics and values. All of our efforts find their foundation in the "common vocabulary of discourse"³² that Gary Bellow and Bea Moulton first introduced and that the pioneers at Georgetown and elsewhere advanced. The evolution of that discourse continues today.³³ In these introductory classes, the faculty acknowledges that there are many appropriate ways to teach and to perform our supervisory tasks. Fellows also learn that clinical pedagogy is a dynamic methodology that requires exploration and study throughout one's tenure in clinical education. Validating these precepts makes it easier for new teachers to confront the work that they will soon undertake.

Most of the faculty and second-year fellows attend the first two days of the Pedagogy Course to help meld the new fellows into a group that will support each other and be supported by the program's faculty and staff. These sessions bring to life the interaction of theory and practice and are always inspiring. They also serve to further integrate us into a coherent program and demonstrate a pride in our pro-

³² This phrase originates in scholarly writing with Gary Bellow. See GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978); Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Methodology*, in *CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING* 374, 375 (1973).

³³ We attempt to demonstrate the methods we use not only to our new fellows but to other clinical teachers during the Georgetown Clinical Teachers Summer Institute.

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gram that will help all of us through the difficult case and supervision activities that the new year will bring.

II. SUPERVISION

A. *General Techniques*

Understanding the history of clinical education leads easily into the next classes that introduce the new fellows to the central methods of the pedagogy. Supervision is the essence of clinical education and all new teachers must learn appropriate intervention techniques to maximize student learning and client satisfaction. Clinical pedagogy is intentional, experiential, reflective, and dependent upon the context of the interactions among faculty, students, and clients. Because it is experiential, the concepts discussed in the articles and books only begin to make sense when new teachers practice their supervision skills in simulated or live interactions with students and reflect upon their use.

We introduce supervision and intervention techniques in three classes during the first two days of the course. Methods of intervention, not the substantive issues such as values, difference, law, skills, or ethics that prompt an intervention, are the focus of these classes. These substantive topics will be addressed specifically in later classes. Our goals for these three classes are to explore the methods of directive and non-directive intervention, modeling, and other intervention techniques that teachers use when students are developing case theories, investigation strategies, and policy alternatives; when they are researching and drafting various legal and policy documents; and when they are planning and performing interviews, counseling sessions, and hearings. We discuss the purpose of intervening into student performances on projects and cases, demonstrate the various methods a teacher can use when supervising students, and permit the fellows to practice intervention techniques through role-playing. New teachers need to understand that intervention does more than move the case or project towards the client's goals. It also helps the students understand the process they used to arrive at their decisions and how that process can be used and adapted by the student in other decision-making contexts. New teachers also need to learn that supervision is not a random process based on an unknown agenda with little or no preparation. Thus, another goal is to ensure that the new teachers are intentional about the subject of the intervention, the methods they choose to address those subjects, and outcomes they expect when responding to a student. By intentional, we mean that interventions should be planned to achieve a specific outcome and that the method

chosen for the intervention should be specific to the context in which it occurs.

There is a “mantra” among many clinical teachers that direct supervision does not empower a student. In truth, all teaching is directive and it should be.³⁴ That is why teachers exist. Moreover, what clinical teachers call indirect supervision is actually quite directive. Clinical teachers are always “directing” a student in an exploration that leads to new knowledge or a solution to a problem. This is true even when we are merely asking them what their goals are or why they took a particular course of action. How a student is led to the knowledge or resolution involves the degree, not the existence, of directiveness. Long ago, Peter Hoffman reminded clinical teachers that new learners need more guidance than more experienced learners.³⁵ Experienced clinical teachers continue to act with that understanding, but now respond in ways that do not easily fit into the directive/non-directive dichotomy. We try to explain to the fellows that much of what they will read and hear about directiveness and non-directiveness is an anachronism, bred from an incomplete understanding of our work that prevailed in the early years of clinical teaching. This is not to say that telling a student what to do is the equivalent of engaging a student in an exploration that leads to new knowledge. It is a recognition, however, that teachers have goals for their actions and that those goals can be accomplishment in multiple ways. Although engaging in an exploration is properly the “default” method of supervision, it need not be employed in every interaction.

Experienced clinical teachers now recognize that appropriate intervention can be telling a student what to do, leading them through an analysis of a problem using a questioning method that is not so different in style from the Socratic Method, or modeling a task. Each choice of a method reflects an assessment of the case needs, the student’s mode of learning, and the student’s ability and level of understanding. It also reflects an understanding of the faculty member’s goals for the course and the shared goals that the faculty member and student have for the case, the clinic, the client, and the student. Sometimes, asking the student “why” is the catalyst for learning.³⁶ Other

³⁴ Statement by Stephen Brookfield at the 2007 Georgetown Clinical Teachers Summer Institute; *see also* STEPHEN D. BROOKFIELD, *THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST, AND RESPONSIVENESS IN THE CLASSROOM* (2d. ed. 2006).

³⁵ *See generally* Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986).

³⁶ German writer B. Traven once wrote, “the word why is the cause, I am quite certain, of all culture, civilization, progress, and science. This word why has changed and will again change every system by which mankind lives and prospers.” B. Traven, *The Word Why*, *quoted in* ROY PATEMAN, *THE MAN NOBODY KNOWS: THE LIFE AND LEGACY OF B.*

times, the lesson to be learned is simple and not worth processing through a conversation that leads the student to his or her own discovery of an answer. In some cases, time is of the essence and the supervisor knows that the answer must be given at that moment to protect the client.

Many “What should I do” moments must be responded to in a very direct fashion or the task will have to be modeled by the teacher. When pleadings are due in court in thirty minutes, a teacher can ask the student, “where in the Code will you find the sections that control the time rules for filing,” and send the student off to do the research, or the teacher can say, “you have thirty minutes to get to the court and get this filed and this is how you do it.” Using the latter intervention may generate a longer conversation at a later time and some deep reflection about why the papers were being filed so late; but at the moment of intervention, the papers need to be timely filed and the student needs to perform the task. With less immediate pressures pending, the “What do you think” moment will occur and the teacher can luxuriate in the wonderful reflective conversations that make our work so rich.

The same considerations may lie behind a decision to model lawyering behavior. Given other hearing preparation needs, a teacher may not have time to have the student work through the precise questions for a proper impeachment of a witness’s testimony. Thus, a teacher may use modeling as an appropriate technique or just give the student a litigation guide that provides the proper questions to ask. New teachers must learn when and how to choose consciously and intentionally from an array of supervisory techniques when intervening into a student’s work.

After completing the classes about supervision, fellows will begin to understand the various purposes and challenges of intervention; how to use multiple intervention methods in context; the advantages and disadvantages of each method; and the relationship between supervision and the clinic’s overall goals,³⁷ the client’s case or project goals, and the student’s educational goals. Fellows also will be aware of the difficulties they will face when choosing a particular issue for intervention out of the several that may arise in a supervision session. They will understand the competing pressures between advancing the

TRAVER 57 (2005).

³⁷ Although the fellows read excerpts from an anthology of clinical educational materials, see CLINICAL ANTHOLOGY, *supra* note 8, we do not teach a specific class about setting goals for the clinic as a whole. The clinics to which the fellows are assigned already have developed their goals, so the fellows will not be involved in creating the structure of their clinics.

case or project and educating the students, and will understand why different intervention techniques are appropriate in particular situations. They will also learn that there is no orthodoxy in supervision. It is an art, dependent on context, and requiring multiple teaching tools that will improve with experience.

Supervising students has been the topic of far too many articles to name. Indeed, new teachers have great difficulty in deciding which articles to read in order to understand the basic tenets of supervision. Some of the published articles are about performing or supervising specific lawyering tasks. Many are about specific aspects of clinical pedagogy such as directive and non-directive supervision, role-modeling, ends-means thinking, transformative learning, and cultural competence. There are also articles about the nuances of teaching to adult learners,³⁸ about multiple forms of intelligence, and how to bring those theories and concepts to bear on clinical teaching.³⁹ Many of the articles contradict or challenge one another, leaving new teachers in somewhat of a quandary. Without some guidance, new teachers often find it difficult to choose which articles to read as they prepare for their first teaching and supervision assignments. Nonetheless, new teachers need to read some articles about supervision theory before they begin.

The readings we chose come from the formative stages of clinical pedagogy, supplemented by more recent work concerning supervision. Articles by Peter Hoffman,⁴⁰ Ann Shalleck,⁴¹ Minna Kotkin,⁴² and George Critchlow⁴³ continue to provide a good foundation for under-

³⁸ See, e.g., Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417 (2002); Angela McCaffrey, *Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years*, 24 HAMLINE J. PUBL. L. & POL'Y 1 (2002); Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

³⁹ See HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (1983) (arguing that each student has not one, but seven different categories of intelligence, and thus students learn differently based on relative proportions of these intelligences); see also HOWARD GARDNER, *INTELLIGENCE REFRAMED: MULTIPLE INTELLIGENCES FOR THE 21ST CENTURY* (1999); HOWARD GARDNER, *MULTIPLE INTELLIGENCES: THE THEORY IN PRACTICE* (1993) (updating Gardner's 1983 theory); Aida M. Alaka, *Learning Styles: What Difference Do the Differences Make?*, 5 CHARLESTON L. REV. 133 (2011) (describing more recent scholarship on types of intelligences).

⁴⁰ Hoffman, *supra* note 35.

⁴¹ Shalleck, *supra* note 10.

⁴² Minna Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989).

⁴³ George Critchlow, *Professional Responsibility, Student Practice and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1991).

standing the nature of supervision methods.⁴⁴ They consider clinic, client, and student goals, the timing of supervision, the relationship of supervision to other teaching spaces in a clinical course, and the learning styles of adult learners. Although more has been said and written about supervision, we have chosen articles that complement the methods we use in our teaching and provide a good basis from which to introduce new teachers to the art of supervision.

We have taught this class in different ways depending on who is teaching. Generally, we begin by discussing the importance of having goals for supervising and teaching that will guide the fellows' decision about when, whether, and how to intervene. Supervision encompasses every interaction between a teacher and a student. Although one most often thinks about supervision as the formal meetings that occur weekly between the student or team and the supervisor, informal encounters arising from quick questions, e-mails, and conversations on the way to court all present teachable moments that can be at least as powerful as events occurring in the formal supervision session. Thus, the fellows are encouraged to be intentional when choosing the time to engage the student, to consider the techniques they will use during that engagement, and to contemplate a desired and observable outcome from the intervention.⁴⁵

We also reinforce the importance of "naming" our activities and techniques for students so that they are clearly identified for later use. Naming involves giving students frameworks within which they can fit the teachers' questions. For many students, a failure to "name" may result in the student knowing how to do a specific task but not how to translate the lesson to other similar tasks.⁴⁶ Naming also serves to create a shared vocabulary for the teachers and students to use during the clinic and for the student to use as he or she develops into a professional.

To get fellows thinking about goals for supervision, we begin the classes with a discussion of possible goals that a teacher might have in any supervision session. Doing so produces a long list of possible goals, including encouraging role assumption, resolving professional

⁴⁴ We recommend others and refer the fellows to the Clinical Legal Education Bibliography if they wish to read further. See Ogilvy & Czapanskiy, *supra* note 6.

⁴⁵ Admittedly, not all supervision sessions will be successful. Nonetheless, planning for observable outcomes will help measure whether learning is actually occurring.

⁴⁶ "How one accomplishes the naming will be different depending on the teacher's teaching method and hopefully, the student's learning style. The teacher does not have to do all or most of the naming; the student can also be asked to extrapolate from the conversation what has been learned about the subject of the class or supervision." Susan Bryant & Jane Spinak, *Report on Georgetown University Law Center's Clinical Programs* (Jan, 31, 2000) (on file with author).

responsibility quandaries and lawyer-client conflict, improving lawyering skills, and others that most teachers would recognize. More importantly, the discussion demonstrates that there are many possible reasons to intervene and that teachers have to make choices about the most important issues to address given the timing and context of the intervention. New teachers must also understand the relationship between those choices and other clinic, client, and student goals.

The fellows also explore the qualities that they believe good teachers and supervisors exemplify. Using quick-writes and discussion, they create a list of traits such as intellectual excitement, interpersonal concern, effective motivation, and commitment that successful teachers possess.⁴⁷ We build on these discussions to remind the fellows that the work of a teacher is to enable students to learn and that students learn best from teachers who embody those traits. Moreover, good supervision is equated with good teaching. Each act we take and the words we use must be directed towards improving the student's ability to make choices, take actions after the intervention, and reflect upon the reasons for his or her actions.

After these discussions, we introduce videos of simulated supervision sessions to model different supervisory techniques.⁴⁸ We have created role-plays that lend themselves to intervening on a number of different issues. The issue may be one of client relations, skills technique, values or ethics, client or partner dynamics, or personal difficulties. The simulations are also designed to show the different forms that an intervention can take. Some are very directive and others are non-directive. Some are hard to categorize. Some demonstrate modeling techniques. Some aspects of the intervention are done well and some are done poorly because new teachers must learn both the value of good supervision and the damage to learning, lawyering, and client satisfaction that poor supervision techniques can cause.⁴⁹

After watching the first video, a very directive supervision ses-

⁴⁷ The factors they list are reminiscent of the attributes usually noted by educational theorists such as Joseph Lowman. See, e.g., JOSEPH LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* (2d. ed. 1995).

⁴⁸ We have used an on-the-spot simulation of a prepared case, a more scripted supervision, and a prerecorded video of a simulated supervisory session.

⁴⁹ We often use negative examples in our work. In discussing how students can learn to question the validity of theories, Joseph Lowman suggests professors ask students to read examples of these theories and then asks the students to reflect on what is wrong with those theories. Students are asked to write about why these theories are incorrect. LOWMAN, *supra* note 47, at 241. The National Survey of Student Engagement found that "[c]ourses that emphasize applying course material, making judgments about value of information and arguments, and synthesizing material into more complex interpretations and relationships are highly related to educational and personal gains." GRANT P. WIGGINS & JAY MCTIGHE, *UNDERSTANDING BY DESIGN* 206 (2d ed. 2005).

sion, the fellows break into small groups to critique the goals of the supervisor portrayed in the video, to ascertain lost learning opportunities in the session, and to determine the value of the session to the student in the context presented. We then play a second video that shows another supervision session. The fellows are asked to prioritize the possible topics for intervention, determine which issue they would have chosen for an intervention and why they made that choice, and to specify how that intervention might relate to the overall goals of the clinic, client, and the student. This exercise demonstrates that not all issues arising in supervision need to be or can be addressed in one session. Clinic efficiency may require that an event arising in a supervision session with one student be the subject of a case round or a class discussion supplemented by various readings because the issues are too complex for a single session or because an approach will be applicable to many of the students' cases. Some may take multiple supervision sessions while others can be handled by a student herself if directed to appropriate readings. Once that is understood, the fellows conduct a supervision session concerning the most salient issues that they saw in the video.

The main lessons to be learned are that supervision is intentional, that choices have to be made, and that techniques have to be appropriate. Fellows come away with an understanding of the importance of choice, style, and method in the context of case needs and clinic structure and goals. This class is successful if the new teachers understand that a supervision session is part of a larger learning continuum that includes subsequent supervision sessions, classroom work, case round sessions, and post-task reflection.⁵⁰ It is successful if the fellows understand that while some interventions may have to be made instantaneously, it is important to spend time thinking about issues and potential outcomes in advance of the supervision session in order to maximize the success of the intervention. Implicit in the goals and outcomes of the class is that a teacher's approach to a student may be the most important consideration in the student's learning.

B. Special Considerations for Writing Projects

The second class on supervision concerns the special considerations that arise when teachers intervene into a student's writing project. This class seeks to demonstrate that although the same questions about intervention strategies arise when supervising writing projects and non-writing projects, there may be differences in the nature of the teacher's response. Some of the goals for this class are consistent with

⁵⁰ Shalleck, *supra* note 10, at 178-81.

those of the prior class. Additional goals for this class are to identify the discrete differences in intervention techniques for supervising writing projects, to ensure that the fellows recognize those differences, and to enable them to alter the techniques taught in the prior class when necessary to advance client goals and student learning.

There are several reasons why most clinicians intervene more directly into writing projects than they do when supervising non-writing tasks. Writing projects, unlike hearing preparation, often provide more time for critiquing both the mechanics and substance of the writing task. Writing projects, unlike other lawyering tasks, are usually critiqued by the teacher outside the presence of the student. The written critique is then sent to the student for a future discussion, leaving the student to interpret the critique alone. Intervention into and critiques of oral presentations to tribunals, clients, or opposing counsel may occur before, during, and after the presentation. A student's letters, memos, pleadings, briefs, and policy documents, however, undergo multiple drafts and critiques only before the final product is submitted. Thus, the performance and the post-performance critique of a student's written products are actually part of the pre-performance critique. Finally, supervisors usually have to sign the student's written work, making ownership of the document more personal to the supervisor. This is true even though the supervisor is equally responsible for the student's oral presentations.

These differences require some adaptation to the usual methods of intervention. When supervising non-writing lawyering tasks, teachers engage students in conversations wherein the critique unfolds in response to a suggested plan or idea. Although writing projects ultimately become collaborative endeavors between teacher and student, the first intervention into the writing project is often a solitary act by the teacher, the results of which are presented to and interpreted by the student outside the presence of the teacher. Because writing styles tend to be very personal, most writers are possessive about their work and defensive when their written work is critiqued. Thus, the initial and perhaps subsequent intervention can be interpreted as a personal attack.

New teachers need to be intentional and transparent about their interventions into writing projects. They need to understand and be able to convey to students the purposes and nature of intervening into a writing task before the intervention takes place and to make the student aware that the collaborative nature of clinic writing gives both the supervisor and student some degree of ownership of the final product. As the supervision sessions continue, teachers need to demonstrate that good legal writing is not particularly different from

just good writing. Although certain conventions like citation forms and the use of authority differentiate a legal document from another form of written communication, good legal writing, at its core, is just good writing. Students often forget this and become confused searching for words and approaches to “formalize” a legal document. They also may not recognize that the skills they have as a writer or the conventions they learned in their first year writing courses can be transferred to the writing projects they pursue in a clinic. New teachers need to adapt their intervention techniques so that students learn these concepts and maximize their talents as they produce persuasive written documents.

Little has been written about supervising writing in the context of a clinical course. We rely on an article by Angela Campbell,⁵¹ and on books and articles by John Bean,⁵² Nancy Sommers,⁵³ and Tonya Kowalski⁵⁴ that describe methods for supervising student writing in non-clinical settings. The techniques described have proven to be effective in helping clinic students and new teachers gain knowledge about the process of writing. These articles also discuss the process of learning substance through writing and methods for reflection about the writing process.

The class begins with a discussion of the fellows’ experiences as writers and editors, weaving in some general suggestions about writing that they and the faculty employ in their own writing. We reintroduce concepts from the earlier supervision class, and place the methods into the context of supervising writing projects. We then play a video of an inappropriate supervision session concerning a draft of a pleading and ask the fellows to critique the supervision session focusing on choices, directive and non-directive interventions, timing and tone of the intervention, and the differences in purpose and approach a teacher might take when supervising a writing project rather than another legal task. After that discussion, we show a second video that demonstrates more appropriate methods of supervision. After the second video is critiqued, we ask the fellows to determine what issues they would have selected for the supervision session and then ask them to role-play the session. During these role-plays, the fellows begin to feel the pressure they may face when disagreements over ownership, content, time

⁵¹ Angela Campbell, *Teaching Legal Writing in a Law School Clinic*, 24 SETON HALL L. REV. 653 (1993).

⁵² JOHN BEAN, *ENGAGING IDEAS: THE PROFESSOR’S GUIDE TO INTEGRATING WRITING, CRITICAL THINKING, AND ACTIVE LEARNING IN THE CLASSROOM* (1996).

⁵³ Nancy Sommers, *Responding to Student Writing*, 33 C. COMPOSITION AND COMM. 148 (1982).

⁵⁴ Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in a Law School Clinic*, 17 CLINICAL L. REV. 285 (2010).

pressures, client goals, and language arise.

Through the videos, discussions, and the role-plays, fellows learn that while first drafts of documents generally receive a direct form of intervention, they need not be returned with countless grammatical corrections and insertions of content. Given the context, supervisors might directly state that the draft may be addressing the wrong audience or be non-directive, by asking questions about the target audience. The supervisor might also ask the student to discuss the main arguments to be raised in the brief in the upcoming supervision session. Questions about structure, organization of ideas, the relationship between the audience and the style of a document, and the student's choice of content are far more important than grammatical precision and word choice in early drafts. New teachers need to understand that new clinic students seldom grasp the concept of writing towards a goal or of marshaling raw facts into an advocacy document and that they must lead the students to that understanding. The fellows also need to recognize that probing questions will help most students understand and achieve the goals of the document more productively than rewording or rewriting portions of the document. Although some students might benefit from reading the faculty member's rewrite, such actions should not be undertaken precipitously or without a prior discussion with the student about that course of action.

Because writing is often a personal expression of one's identity, the tone and nature of the intervention is critical. Students will most likely be alone when they first read the teacher's comments on a draft. The students may perceive these interventions either positively or negatively. His or her reaction may impact subsequent face-to-face conversations and impede learning and case or project development. New teachers have to be conscious of the student's sensibilities and need to learn how to convey the information to students in non-threatening ways. Since most people are protective of the words they write, new teachers need to learn to tailor the language of these interventions so that students understand that critique is not personal but directed to achieving the goals of the clients. Such interventions will produce a more knowledgeable student who will have more ownership of the document. They will also result in better supervision sessions, provide the student with a greater understanding of the purpose of the intervention, and better prepare the student for subsequent projects.

C. Reflection

After completing the first two classes concerning supervision with all of the new fellows in attendance, we introduce the fellows to a true

small group experience to further unpack the messages from the two main classes and to reflect upon how the concepts they have discussed have added to their understanding of clinical methodology. The fellows are divided into two groups that reflect the work they will be doing in their individual clinics. Thus, those fellows supervising in clinics representing clients in small, hearing-intensive cases are combined into one group while those in clinics focusing more on writing projects and policy move into a separate group. The small groups continue to focus on the multiple goals of the first two classes on supervision, and continue to use various teaching methods to reinforce the principle that methods are often as instructive as the content. We continue to demonstrate and discuss multiple supervision techniques to make the fellows understand that although the directiveness/non-directiveness debate continues in clinical education, good supervision may occur using any of the accepted forms of intervention. Our maturing understanding of clinical pedagogy, informed by learning theory regarding multiple intelligences and differences in student learning patterns, makes clear that not all students learn in the same manner.⁵⁵ Although a clinical teacher's goal is to create independent thinkers who will, throughout their lives, be reflective about their own learning and practice, we want the fellows to understand that there are many paths to that goal. The fellows learn the importance of teaching reflection by being reflective about the supervision process.

We also use the small group to further reflect upon the concepts of intentionality, methods of intervention, learning styles and teaching techniques, and the tension arising from client needs and student needs. In addition, the fellows explore the value of asking students to prepare agendas for upcoming supervision sessions to assist in the supervisor's planning, documenting tasks that will take place between sessions, taking clear notes about the supervision session, and reflecting on context before taking action. We punctuate the discussion with role-plays to reinforce the theory behind their interventions and to permit the fellows to experience the process of supervising themselves. The role-plays bring to the surface some of the deeper issues that arise in and sometimes surround the client-student-partner-teacher dynamic. They also permit the new teachers to experience and then reflect upon the process of making choices about how to

⁵⁵ See, e.g., GARDNER, FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES, *supra* note 39. But see, e.g., Christopher Ferguson, *Not Every Child is a Genius*, CHRON. HIGHER EDUC., Jun. 14, 2009 (arguing that Gardner's multiple categories of intelligence blur together); Lynn Waterhouse, *Multiple Intelligences, the Mozart Effect, and Emotional Intelligence: A Critical Review*, 41 EDUC. PSYCHOL. 207, 208-10 (2006) (criticizing multiple intelligence theory for its "lack of adequate evidence" in support); see also Alaka, *supra* note 39.

supervise an issue and the process of supervising in the context of their own kind of clinic.

Finally, we spend some time in the small groups talking about the timing of a supervision session in relation to the life of the case or project and in the context of student's development as a lawyer. Supervision techniques are situational and contextual because educational goals in a clinical course are always impacted by our clients' needs. Not every issue from a case or project that arises in a supervision session can be analyzed or probed. Choices have to be made and critical issues have to be discussed in a timely fashion.⁵⁶ Methods may vary depending on whether the supervision occurs in the planning stage, performance stage, feedback stage, or evaluation stage of the task,⁵⁷ and may depend on the stage of the student's development as a lawyer. Discussions in the small group demonstrate to the new teachers that they will have to use a blend of techniques, perhaps more directive ones as to agenda and immediate case concerns and less directive ones with planning and analysis. What is important is that new teachers understand that supervision encompasses every interaction they have with students and that they must always be intentional about why they are choosing one method of intervention over another or one issue for intervention rather than another.

Of course, three sessions do not provide enough time to have a complete conversation about all of the issues surrounding intervention and supervision. By now, however, the fellows have learned that supervision sessions require as much thought and planning as does the preparation for a case and that teaching is different from lawyering. More will come later in the course and in their on-going conversations with the faculty. These classes will be successful if the fellows understand that supervision techniques require flexibility rather than the rigidity, that there are many ways to move a student from the role of student to the role of professional, and that reflection is a foundation of all learning.

III. THE PATH FROM THE SO-CALLED DIFFICULT STUDENT TO ADAPTIVE SUPERVISION

The first three sessions about supervision occur during the fellows' orientation. This class, on the so-called difficult student, occurs in the second semester of the fellows' first year, after they have engaged in various supervision sessions and have begun to assess the abilities of their students. In between, we have conducted other clas-

⁵⁶ See Shalleck, *supra* note 10, at 172-74.

⁵⁷ See *id.* at 146-48.

ses where supervision techniques are discussed in relation to the specific topics of those classes. We delay the class on the so-called difficult student until the second semester because the issues we discuss and the method we propose for intervening into these difficult teaching/learning situations require that the fellows have actually encountered some of them in the work and that they have become more at ease with typical supervisory interventions.

Whenever clinical teachers get together, stories about a difficult student are sure to arise. In some schools, clinical teachers have even contemplated reporting a student to the state bar association because the student's behavior or omissions were considered flagrant.⁵⁸ It seems hard to believe that self-selected clinic students would intentionally neglect their work to that extent or that they would be so lacking in the skills necessary to be a lawyer that their academic performances would be deficient enough to compromise their client's cases. Nonetheless, students will sometimes perform at a level far below the faculty member's expectations. When this occurs, clinical teachers have an academic responsibility to ensure that students learn the skills needed to become competent lawyers and a professional responsibility to ensure that clients are well-represented.⁵⁹

Unquestionably, difficult situations arise in the course of teacher-student and student-client relationships in the clinic, and undoubtedly, some students are innately more talented than others. Teachers must be prepared to respond to these inherent tensions in clinical education and be prepared to address students' needs and client goals in ways that satisfy both without sacrificing either. Over the course of a career, good clinical supervisors learn many techniques to intervene with students. On most occasions, we identify the problem impeding success and work with the student to resolve it. Students then go on to achieve at some level of proficiency as they develop the new skills and practices needed to become competent lawyers. Sometimes, however, the normal methods that we use do not seem to work. This frustrates experienced teachers and is especially difficult for new teachers since they still do not possess all of the tools that their more experienced colleagues do.

New teachers may respond to a difficult supervision situation in

⁵⁸ Several years ago, Professor Gerry Glynn began an e-mail thread on the Clinic Listserv in December of 2008 that suggested that there were more such students than I would have thought.

⁵⁹ See generally James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Supervision*, 3 B.U. PUB. INT. L.J. 35 (1993) (describing a study of clinical educators that examined how clinical law professors balance the client's best interest with teaching students and establishing the appropriate level of direction the professor provides to the students).

one of three ways. First, they may assume that fault lies with the student without considering their own role in the unfolding dynamic, and focus solely on the student's conduct. Second, they may assume the opposite and begin to believe their teaching ability is inadequate or that they are too inexperienced to resolve the impasse. They then focus solely on themselves and fail to consider outside factors like the client's needs or behavior, or the student's emotional or cognitive challenges. Third, they may assume that their clinic's structure is sound and their supervision is appropriate and that this event is an outlier that cannot be resolved. If the problem is not affecting the client, it may remain unresolved. If it affects the client, the supervisor may just take over that part of the case or project.

Difficult client-teacher-student dynamics create real learning and representational impasses that are not easy to resolve. To help new teachers respond to these events, we created a class to help them understand the many forces that may impact a difficult supervision. We also suggest a method that generally leads to informed and successful solutions that will serve the students and clients, and helps the fellows navigate their early attempts at supervising these difficult events.

The focus of the class has evolved over time. Our original goals were to identify the most common shortcomings in student performance and to discuss why the performance was inadequate and how we could get the student to do better. We originally called the class "Dealing with Difficult Students." After teaching the class several times, we began to think that the term "difficult student" contributed to a misunderstanding of the problem. Thinking about solutions in terms of a difficult student suggested that only the student's behavior was the problem. Students fail to learn for many reasons. If a goal of clinical teaching is to help students achieve their maximum potential, focusing on the students' character rather than on the behavior and characterizing them as difficult or worse will not achieve that goal. Nor does it help to determine and address the root cause of the observed faulty behavior because focusing solely on the students diverts attention from other possible causes. Moreover, focusing only on the student will not always lead to the best solution for resolving the teacher-student impasse or protecting the client. Finally, focusing on the student alone will not help the student overcome the barriers that are preventing achievement if they are not really related to him or her.

This understanding led the course faculty to stop labeling students as "difficult," and to create a more systematic approach for discovering the source of the unproductive work and for choosing appropriate solutions and interventions. We now call the class "Adap-

tive Supervision.”⁶⁰ We do so because it recognizes that there are many possible causes of supervisor-student-client impasses. They may involve student capabilities, the faculty member’s teaching and supervision methods, or the clinic’s design. The name also suggests that the source of the less-than-optimum performance may require adapting new methods of intervention and new teaching strategies to resolve the impasse. The word “adaptive” also reminds the teacher that one form of intervention seldom can solve all of the difficult supervision issues that arise.

Our goals for the class are to demonstrate a method that helps fellows identify specific behaviors that contribute to an impasse or to the less than ideal performance, to identify possible contributing factors that might help to clarify the fellow’s understanding of the context in which the sub-par performance or pedagogical impasse is occurring, to review potential responses, and to analyze their appropriateness before an intervention occurs. The fellows read a description of the system written by Professor Robert Stumberg of Georgetown that explains how the adaptive method can be implemented in different situations.⁶¹ They also read articles by Margaret Barry,⁶² the late Kathleen Sullivan,⁶³ and Abbe Smith⁶⁴ that show a range of behaviors and situations that proved difficult for the authors to navigate. We chose these articles because they demonstrate that impasses to student learning and client success are not always related to the legal skills that the student has or has not mastered. The adaptive supervision model can be applied to each of the situations described by the authors. As Stumberg notes, however, supervisors are sometimes limited in what they can do to remedy situations in which students have personality clashes within the clinic.⁶⁵ The adaptive supervision model demonstrates a number of ways clinical supervisors can change methods in order to make the clinical experience more satisfying and productive for the student while protecting the client’s interest.⁶⁶

⁶⁰ The system guide appears at Appendix B. Professor Robert Stumberg of Georgetown’s Harrison Institute for Public Policy was the primary developer of the method.

⁶¹ Robert Stumberg, *Notes on Dealing with Difficult Students* (Feb. 3, 2011) (on file with author).

⁶² Margaret Barry, *Clinical Supervision: Walking that Fine Line*, 2 CLINICAL L. REV. 137 (1995).

⁶³ Kathleen Sullivan, *Self Disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 IND. L. REV. 115 (1993).

⁶⁴ Abbe Smith, *Carrying on in Criminal Court: When Criminal Defense is not so Sexy and Other Grievances*, 1 CLINICAL L. REV. 723 (1995).

⁶⁵ Stumberg, *supra* note 61, at 6.

⁶⁶ *Id.* at 7-10. Stumberg provides examples of ways supervision can be adapted to fit the needs of students. He suggests three areas in which professors can make changes: the

Prior to the class, we ask the fellows to submit examples of situations that they have found difficult to resolve in their supervisory work thus far. The class begins by sharing those events to remind the fellows that other new teachers encounter the same kind of difficult supervision, teaching, and learning situations that they have encountered. During the presentations, we also weave in examples from the class readings to show parallels between the fellows' difficulties and those of the experienced teachers to remind the fellows that all teachers are sometimes at a loss to devise and implement an appropriate intervention to a difficult problem. Doing so reminds the new teachers that neither they nor their students are unique. Learning is sometimes difficult. Encountering a seemingly irresolvable problem, either as a student or a faculty member, does not render one incapable. It is merely a call to design creative and adaptive teaching methods.

With the recognition that most difficult situations can be resolved, we introduce the fellows to the adaptive supervision method and begin to apply it to a particularly difficult situation that one of the fellows has presented. The method begins by identifying a dysfunctional behavior that the fellow could not remedy with typical planning and critique interventions. Our method contemplates four different categories of dysfunctional behaviors that commonly appear when students are not working up to expected standards. The first category relates to productivity. The behaviors usually associated with insufficient productivity are arriving late or failing to attend case meetings, or failing to produce work within previously set deadlines. Another example of productivity dysfunction is the confusion or conflation of concepts that should have been incorporated into the student's analysis of a project or case because they have been taught or researched before.

The second category of dysfunction involves interpersonal relations. This dysfunction is evidenced by persistent rejection of, or agreement with, the teacher's advice without analysis or critique. It may also appear as persistent conflicts among student partners or between the student and the teacher. It can also appear as an unusual attraction to or disaffection with a client that is impeding sound case or project planning and counseling.

The third category of dysfunctional behavior is emotional. It is typically demonstrated by anger, passivity or indifference, undue frus-

supervisor role (including avoiding emotional reactions, being more or less directive, and resolving role conflicts), the clinic operations (including, setting expectations, strengthening supervisor skills, and altering client intake), and the student role (including giving more or less freedom, reallocating work to others, and reducing the student's load outside the clinic). *Id.*

tration, pessimism, anxiety, or sometimes, hypercritical or volatile reactions.

The fourth category relates to cognition, which focuses on poor language skills or the inability to reflect on performance. Cognitive problems are usually the most amenable to conventional supervision. Yet in especially difficult cases, conventional methods may not suffice to achieve a legally competent performance.

All teachers have encountered these behaviors from time to time and all have attempted to resolve them. Often we are successful, but occasionally, our efforts do not succeed. Sometimes they fail because they are based on incorrect assumptions regarding the cause of the behavior. This can lead to solutions that are directed at solving the wrong problem. When they fail, as they often do, we sometimes resort to blaming the student and branding him or her as “bad” or “difficult.” We then run the risk of tainting all of our subsequent interactions with that characterization. New teachers need to learn early that they cannot jump to conclusions about the causes of or solutions to dysfunctional behavior and that labeling them can be counter-productive. The new teachers must also recognize that blaming the student obstructs their ability to recognize and understand their own possible pedagogical mistakes.

Discussing the fellow’s supervision difficulty through the adaptive model permits the fellows to observe and focus on the behavior that is creating an impasse rather than on the student’s character. Once the behaviors are clearly delineated, we introduce the fellows to the next stage of adaptive supervision. Both new and experienced teachers may assume that they know the cause of dysfunctional behavior because they have had former students who exhibited similar types of dysfunction. Such untested assumptions will sometimes be correct. Other times, the assumption will be inappropriate and may lead to an inappropriate intervention. Causes cannot be determined without a serious analysis of all of the many potential contributing factors. Most lie within the normal range of human understanding and interaction. Some, however, may lie deep within the student’s personality and are treatable only by mental health professionals.

We teach our fellows to begin the search for contributing factors by looking at the teacher first because it avoids premature labeling of the student and because the teacher may indeed be the cause of the behavior. Perhaps the teacher does not understand the factual or legal context of the case well enough to assist the student through the non-productivity. Perhaps the teaching methodology the supervisor chose does not resonate with the learning style of the student. In the language of classical clinical pedagogy, is the teacher being too direc-

tive or too non-directive? Excess direction can result in the student perceiving a demand for conformity with the teacher's perspective and sometimes non-direction can create a damaging opacity in instructions.

Alternatively, could the workload be too heavy given the student's other commitments to the clinic or to other aspects of his or her life? Might the personality of the faculty member be contributing to the dysfunctional behavior? We all have behavior traits built up throughout a lifetime, some of which may not resonate with every student. Teachers endure periods of stress from the case or project work during the course of a semester or from their own personal lives that may be affecting perceptions of or contributing to the students' behaviors. Not all students will adapt to the teacher's style, moods, and personality. When that occurs, the teacher has the responsibility to make the first observations of that disconnect and perhaps, the first changes.

Many of the same factors apply to clients and student team members. The complexity or direness of a client's legal or personal needs, or the client's or team member's temperament, moods, and cultural or political understandings can have an effect on a student's behavior. Conflicting positions or expectations among multiple clients or within members of a client group might also be contributing to the dysfunction.

The student's own mood or personality tendencies or disorders might be the cause. Learning or physical disabilities can also be contributing factors. Solutions to these kinds of problems may be beyond the expertise of the teachers.⁶⁷ Students with serious emotional or mental health issues may need to be referred to appropriate professionals to address those needs.⁶⁸ Accommodating a student with disabilities may need to occur. New teachers need to understand, however, that if they do not consider the many potential contributing

⁶⁷ Stumberg describes three common mood disorders from which students might suffer, as well as five common personality tendencies or disorders. *Id.* at 6. The mood disorders he highlights are depression; mania, hyperactivity, or irrational optimism; and anxiety. *Id.* The personality tendencies he notes are obsessive/compulsive, passive/aggressive, narcissistic, borderline, and the autism spectrum. *Id.*

⁶⁸ Ninety-one percent of directors report that the recent trend toward a greater number of students with severe psychological problems continues to be true on their campuses. Robert P. Gallagher, *2010 National Survey of Counseling Directors*, http://www.collegecounseling.org/pdf/2010_survey.pdf (last visited Feb. 22, 2011). In addition, directors noted increases in many categories of mental disturbances over the past five years. *Id.* Surveys also show that nearly half of students who visit counseling centers have serious mental illness. Trip Gabriel, *Mental Health Needs Seen Growing at College*, N.Y. TIMES, Dec. 19, 2010, <http://www.nytimes.com/2010/12/20/health/20campus.html?nl=todaysheadlines&emc=a23>.

factors leading to the dysfunctional behavior, the solution they choose may be inappropriate for the situation.

Once the contributing factors are identified and analyzed, the teacher can begin to think about potential responses. The response may involve adjusting the supervisor's approach or the student's role in the case. If the student is going through some form of acute distress that is hindering the pace of the project, providing more or less freedom of action or assigning longer- or shorter-term projects may resolve the impasse. Expectations may have to be adjusted. The teacher may strengthen the supervision by diminishing his or her emotional reactions to the student or to the behavior and focusing only on the tasks and the impediments to their completion. The teachers may adopt a different method of supervision, using more directive or modeling techniques or even changing supervisors if that is possible and appropriate. Workloads can be altered. Partners' disagreements can be mediated and partners can be changed. The teacher may need to provide additional substantive information and may need to be clearer in his or her explanation of the material.

Immediate problems will seldom be resolved by systemic changes to the clinic, but they may lead to a later reexamination of the clinic structure. Perhaps the clinic curriculum needs to be revamped to account for issues not seen before. The cases may be too complex for a clinic course. The complexity of the subject matter of clinic cases may require changes in student selection process of the clinic. Perhaps applicants need to be screened differently to avoid placing students with clients whose goals are inconsistent with their needs or expectations. Most teachers do not like to alter the subject matter of their cases or their lesson plans and methodologies because they are comfortable with their practices. Lesson plans, cases, and methodologies, however, must be related to the goals of the clinic and the learning goals the teacher has formulated with the student. The ultimate goal of any teaching is to ensure that every student achieves his or her potential.⁶⁹ This is especially true for clinical education, which is individually based and reflective. Although most students will not witness this process, those who do will see a good example of clinical faculty practicing what they preach about the importance of reflection and learning through the reflective process.

By the time the class on adaptive supervision is finished, the fel-

⁶⁹ BROOKFIELD, *THE SKILLFUL TEACHER*, *supra* note 34, at 18-24. Brookfield delineates three assumptions about teaching, the first is, "Skillful teaching is whatever helps students learn." *Id.* at 17. He discusses how as simple as that sounds, helping each individual and diverse student learn can be a challenge; but it also provides the teacher with the freedom to teach and act creatively in order to reach the students. *See id.* at 18-24.

lows will recognize that the student herself is not always the cause of a problem. They will know that not all students move through the clinic experience with ease. They will have worked through a model that will help them to identify dysfunctional behaviors, understand the potential contributing factors to the behavior, and understand that potential solutions, some of which may be unorthodox, have to be related to the actual contributing factors and not to a predetermined belief about the causes of the dysfunction. Only then will the student maximize his or her achievements and the client be protected.

IV. VALUES, ETHICS, AND DIFFERENCE

A. *Understanding the Importance and the Differences*

Legal reasoning is the predominant skill students learn in their first two years of law school. Students come to a clinical course to study the other skills that lawyers need to be successful in their careers. Lawyering skills can be taught in many classes, most notably trial advocacy, negotiation, and interviewing and counseling simulation courses. What distinguishes the skills taught in clinic from those in other courses is the existence of role assumption and context. A lawyer's ability to interview, plan, counsel, write, examine witnesses, solve problems, and advocate depends on the personality and values of the client and the lawyer and how those values affect the client's claims. It also depends on those same characteristics of third persons who either oppose the client or have an interest in the client's success. Finally, it depends on the culture of the tribunal in which the claims will be presented and its actors. Assuming the role of a lawyer and performing these tasks in the context of real cases and projects are basic tenets of clinical education. They are also essential to professional development and transformative learning. If lawyers, and thus clinical teachers, are not aware of how human traits and institutional character influence the pursuit of the client's claims and interests, their expertise in the mechanics of legal skills may be insufficient to maximize their client's interests.

Learning to teach and supervise those skills in the context of human interaction requires knowledge and understanding of what values clients, lawyers, and other people bring to legal representation.⁷⁰ Clinical education has been a values-based experiential educational

⁷⁰ It is difficult to determine what the "true self" is. A recent study reported in the New York Times suggested that there is a connection between people's own values and their judgments about other people's "true self." See Joshua Knobe, *In Search of the True Self*, N.Y. TIMES, June 5, 2011, Opinionator, <http://opinionator.blogs.nytimes.com/2011/06/05/in-search-of-the-true-self/>.

method since its inception.⁷¹ Like Jerome Frank in the 1930s,⁷² modern clinical educators reject the notion that new lawyers can be taught in isolation from the clients they serve. As a result, they developed a pedagogy that is focused on the needs of clients and students. As clinical courses expanded, some law faculties and some legislators began to equate a values-based education with a political agenda. Clinical educators, perhaps more than others, were not immune from the general critique that higher education discriminated against right of center political thought.⁷³ Such sentiments brought lawsuits⁷⁴ and state legislative actions⁷⁵ to curtail the work of clinical students.

The critique of values based education is not wholly without merit. Although teaching virtue has always been part of American education,⁷⁶ all educators must remember that students should be guided to new insights rather than proselytized towards particular points of view.⁷⁷ This tension, however, need not result in vocal support for any particular political party. Nonetheless, the very choice of whom to represent introduces students to the preferences of the faculty member. As long as those preferences are transparent and are situated within the basic values of the profession and the general justice mission of the law school, skillful faculty can facilitate a student's exploration of difficult issues and allow them to reach their own conclusions about the events they experience.⁷⁸

⁷¹ Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 331-32 (2001); see Bellow, *On Teaching the Teachers*, *supra* note 32, 396-97 (explaining that through clinical education, students will gain experience making ethical decisions); William Pincus, *Legal Education in a Service Setting*, in CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING 27, 28-29 (1973) (arguing learning how to serve clients is an essential element of clinical education).

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⁷² See generally Frank, *Why Not a Clinical Lawyer-School?*, *supra* note 26 (providing a history of legal education and recommendations for future changes).

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⁷³ See, e.g., Heather MacDonald, *Clinical, Cynical*, WALL. ST. J., Jan. 11, 2006, at A14.

⁷⁴ See, e.g., *Sussex Commons Assocs., LLC v. Rutgers*, 6 A.3d 983 (N.J. Super. Ct. App. Div. 2010) (holding that as a public agency, a law clinic must disclose its records under the Open Public Records Act).

⁷⁵ David A. Fahrenthold, *Maryland Legislature Scrutinizing Law Clinic Over Chicken Farm Suit*, WASH. POST, Mar. 28, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/27/AR2010032702380.html>.

⁷⁶ See Thomas Lickona, *The Return of Character Education*, 51 EDUC. LEADERSHIP 6, 6-7 (1993) (explaining that education has traditionally had two goals: "to help people become smart and to help them become good").

⁷⁷ See, e.g., Stanley Fish, *Always Academicize: My Response to the Responses*, N.Y. TIMES, Nov. 5, 2006, <http://opinionator.blogs.nytimes.com/2006/11/05/always-academicize-my-response-to-the-responses/>.

⁷⁸ My purpose here is not to debate the proposition that law schools teach Kohlberg's conventional morality rather than a post-conventional morality. See Stephen Hartwell, *Moral Growth or Moral Angst, A Clinical Approach*, 11 CLINICAL LAW. REVIEW 115 (2004) (including the articles cited therein); see also LAWRENCE KOHLBERG, *THE PHILOSOPHY OF MORAL DEVELOPMENT: MORAL STAGES AND THE IDEA OF JUDGMENT* (ESSAYS ON

All new teachers should be aware of the historical antecedents and the more modern academic considerations concerning values-based education when entering the world of clinical teaching. The place of values in legal education is somewhat different from that in other academic endeavors. The legal profession espouses certain values that it requires or at least encourages all lawyers to maintain.⁷⁹ Indeed, after many years of study, the American Bar Association set forth the values of the profession in the so-called MacCrate Report.⁸⁰ The MacCrate Report established ten skills and four values lawyers should possess when they enter the practice of law and exhorted law schools to integrate them throughout the curriculum.⁸¹ The fundamental values are the following:

1. Provision of Competent Representation: Lawyers should be competent in their practice area both when they enter the legal profession and as they continue in the legal profession.⁸²

2. Striving to Promote Justice, Fairness, and Morality: Lawyers should not only promote fairness, justice, and morality in their own practice, but should help contribute to representation of those who cannot afford attorneys.⁸³

3. Striving to Improve the Profession: Attorneys should participate in the improvement of the profession through activities, providing training for new lawyers, and aiming to rid the profession of biases.⁸⁴

4. Professional Self-Development: Lawyers are encouraged to seek out opportunities to improve their own skills and remain engaged in the profession in such a way as to facilitate professional growth.⁸⁵

While lawyers can advance some of the values by non-controversial actions such as taking skills training and other continuing education courses and participating in the organized Bar activities, advancing others like promoting fairness, justice, and morality in legal practice

MORAL DEVELOPMENT) (1981).

⁷⁹ See generally MODEL CODE OF PROF'L CONDUCT (1983) (providing rules of conduct for attorneys regarding competence, diligence, truthfulness, and other values).

⁸⁰ 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), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [hereinafter MACCRATE REPORT].

⁸¹ *Id.* at 235-36.

⁸² *Id.* at 140.

⁸³ *Id.* at 140-41.

⁸⁴ *Id.* at 141.

⁸⁵ *Id.*

are complicated because those concepts mean different things to different people and may be affected by context.⁸⁶ Nonetheless, the profession is not value-neutral, and law schools are the place where the values of the profession must be discussed and inculcated into incipient lawyers.

State bar student practice rules are also value-laden. Most student practice rules restrict students in clinical programs to representing poor citizens and non-profit organizations.⁸⁷ Thus, legal work that emanates from a clinical program will necessarily show a preference for poor people and for those public interest organizations that often challenge political and commercial interests. The needs of the clients, however, are not always politically aligned with client claims. Small business, community development, tax, and even environmental law clinics need not be politically partisan. Tenants and landlords, criminal defendants, and victims of crime all seek justice under the law. In all of these instances, clinicians and students will provide services that are consistent with the law and the values of the legal profession. Personal values, however, cannot be ignored. No matter how neutral a teacher tries to be, the values he or she maintains with respect to the legal profession and with respect to the common good will imbue the work of the clinic.

Students and clients will also bring their values to the clinic. Their values may differ from those of the faculty members because people's values are based on their own life experiences. Clients especially may come from non-privileged positions in society where issues of race, culture, national heritage, and wealth produce life experiences that may result in values that are very different from students or faculty members. These differences can compound the difficulty in making judgments and resolving clients' legal issues and may create clashes involving societal values, legal ethics, and moral philosophies that will test students, clients, and teachers. Many will create the disorienting moments⁸⁸ that challenge the assumptions and even the life narratives of the students and faculty members. For those reasons, we believe that new teachers must be given some insight into how to teach about value differences that arise in a clinical course.

We teach three classes, Values, Ethics, and Difference during the first semester of the Pedagogy course. In a well-structured clinical

⁸⁶ Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, 4 CLINICAL L. REV. 1, 4 (1997).

⁸⁷ WALLACE MLYNIEC, SURVEY OF STUDENT PRACTICE RULES (2009) (on file with author).

⁸⁸ See generally Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 47 (1995); see also Aiken, *Striving to Teach Justice*, *supra* note 86.

course, the issues of values, ethics, morals, assumptions, and difference can all be explored in classroom discussions or case rounds. More often than not, however, they will arise in supervision sessions concerning the theory supporting the claims raised in the case or project and by the methods used to advance the claim. For that reason, our classes for new teachers focus on how values, ethics, assumptions, and difference arise and are confronted and explored during supervision.

We begin with the premise that ethics, morals, and values are distinct, albeit related, concepts that create assumptions and affect judgments. We define ethics as the rules of conduct that circumscribe the actions of lawyers in the course of their work. These rules are explicitly stated in the Rules of Professional Conduct that are enacted by states to control the behavior of lawyers as they practice their trade. Ethics and morals are not synonymous.⁸⁹ Indeed, the demoralization of ethics rules can be traced through the progression of different codes regulating lawyer behavior beginning with the Canon of Professional Ethics through the Rules of Professional Conduct.⁹⁰ We define morals as states of mind that categorize conduct as good or bad. These have either religious or secular underpinnings that guide judgments about one's own or another's action.⁹¹ We define values as the ideals and customs of a societal group about which the group has an affective or emotional regard. They state preferences rather than rules and do not always involve negative judgments concerning those who do not share one's values.

To be sure, there is an inherent ambiguity in these terms, especially since expanded definitions of each often encompass references to the others and because certain ethics or values may be based on moral principles. For example, the ethical rules of the profession require that a lawyer zealously represent someone who has confessed to a crime, even if it means using tactics that make it appear that the person is not guilty.⁹² A lawyer who fails to do so runs afoul of his or her ethical duty.⁹³ Non-lawyers within our society, however, may

⁸⁹ Not all teachers would agree with this distinction. Some would separate the Rules into a distinct category and discuss ethics, morals, and values as more related concepts.

⁹⁰ David Luban & Michael Milleman, *Good Judgment, Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 41-53 (1995).

⁹¹ Paul J. Cain, *Doing the Right Thing: An Analytic Model of Examining the Interplay Ethical Professional Conduct, Morality, and Justice*, 10 T.M. COOLEY J. PRAC. & CLINICAL L. 149, 149-50 (2008).

⁹² For example, cross examining a complaining witness in a robbery case about the circumstances surrounding an identification of the defendant to suggest that it is unreliable is ethical even when there is no doubt that the defendant did commit the crime.

⁹³ See MODEL CODE OF PROF'L CONDUCT Preamble (1983) ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.").

place a lesser value on the notion of zealously representing guilty people, but because they are not lawyers, they will suffer no consequences from rejecting that value. Nor would they necessarily condemn one who chose to provide the representation since that action is constitutionally based and someone has to assume that responsibility in the American democracy. Finally, some people might find such behavior morally wrong based on religious or secular beliefs about truth telling. They may or may not seek to change the ethical rules of the profession regarding the behavior but they will assert that such behavior is wrong and that the zealous lawyer is morally guilty for distorting the truth.

The issues of ethics, values, and morals become more complicated when students represent clients from other cultures. Most law students, and perhaps most clients, are not particularly cross-culturally competent,⁹⁴ and most of us make assumptions about unfamiliar cultures. Experiences shape the way people see the world, so people from different cultures do not always experience the same event the same way.⁹⁵ For example, the assumptions students derive from their experiences may not be consonant with the assumptions immigrant clients derive from their life experiences. The same may be true in a single nation as well. People who live in cities experience life differently from those who live in rural areas, and people from different neighborhoods in the same city sometimes have very divergent perceptions of life around them. These schemas are further complicated by economic, educational, racial, and cultural differences.

Some of these differences create values clashes. Sometimes they create clashes of morals. Lawyers, especially those representing poor clients, clients of a different race or culture, or clients whose life experiences are unlike the lawyer's must develop cultural competence, learn to question their assumptions, and be able to separate moral and value dilemmas from ethical rules in order to serve their clients while acting in accordance with the rules of our profession.

Conversations among lawyers about these issues are often complex and difficult. Conversations between clinical supervisors and students are even more complicated because of the hierarchy built into the relationship, and because this is probably the first time students

⁹⁴ See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 41-42 (2001) (illustrating how cultural differences can lead to misunderstandings in the lawyer-client relationship).

⁹⁵ Mahzarin R. Banaji, Kristi M. Lemm & Siri J. Carpenter, *The Social Unconscious*, in BLACKWELL HANDBOOK OF SOCIAL PSYCHOLOGY: INTRAINDIVIDUAL PROCESSES 134-158 (A. Tesser & N. Schwarz eds., 2001); Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4 (1995).

will have responsibility for someone else's interests. The nature of a case or project and the values or morals of a client or team member sometimes force students to confront, and perhaps alter, their own beliefs and their own world views. They must do so while remaining true to themselves, in good standing with their profession, and loyal to their clients. Clinical teachers must sometimes confront their beliefs just as the students do. Teaching new teachers how to recognize the differences among these concepts and to act upon them in the context of a clinic case or project is not simple, but it is critical to the role teachers undertake with law students. Thus, our Pedagogy course presents these issues to the fellows through a series of classes.

B. Values

We teach the class on values first. The first goal of this class is to reinforce the concept that values, morals, and ethics are different and discrete and require different responses when they arise in a case or project. A second goal is to advance the notion that clinical education can teach students about more than doctrine and skills. Teaching jurisprudence and social justice are equally valid pursuits of a clinical course if teachers make a pedagogical choice to do so. A third goal is to ensure that those teachers who choose to include social justice and jurisprudence teaching into their course understand techniques for doing so and the sensitivity that such inquiry requires.

To prepare for this class, fellows read articles by Stephen Wizner,⁹⁶ Jane Aiken,⁹⁷ Carrie Menkel-Meadow,⁹⁸ and Spencer Rand.⁹⁹ These readings explore how teachers in a law clinic setting can do more than teach doctrine and improve students' legal skills. They demonstrate how teachers can also take advantage of opportunities to teach about justice and fairness in the legal system. Each of these articles addresses the disorienting moment, when a student is presented with a situation that challenges his or her fundamental beliefs or assumptions.¹⁰⁰ Additionally, the articles examine the fundamental reasons people choose to pursue social justice in their legal

⁹⁶ Wizner, *Beyond Skills Training*, *supra* note 71.

⁹⁷ Aiken, *Striving to Teach Justice*, *supra* note 86.

⁹⁸ Carrie Menkel-Meadow, *The Causes of Cause Lawyering*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 31 (Austin Sarat & Stuart Scheingold, eds., 1998).

⁹⁹ Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13 *CLINICAL L. REV.* 459 (2006).

¹⁰⁰ See Wizner, *Beyond Skills Training*, *supra* note 71, at 338-39; Aiken, *Striving to Teach Justice*, *supra* note 86, at 23.

careers and how law schools can help facilitate this interest.¹⁰¹

Stephen Wizner concludes his article, *Beyond Skills Training*, with the questions, “Who am I as a law teacher? What am I doing when I teach law?”¹⁰² Many clinic professors believe they should not only teach the law, but should advance the students’ understanding of justice.¹⁰³ Many of the Georgetown faculty have chosen to make teaching social justice a goal of their clinic, so the fellows need to learn strategies not only for resolving client claims, but also for teaching how our legal and political systems contribute to the clients’ legal problems. The majority of law school clinics serve poor and underprivileged clients. Most law students, however, come from privileged backgrounds, so working in the clinic might provide their first exposure to marginalized Americans.¹⁰⁴ If so, one of the students’ earliest challenges will be realizing that many of their assumptions about how society works do not apply to their clients.¹⁰⁵ New teachers must learn to lead students through this inquiry.

We begin the class with a discussion about the values that each participant brings to a clinic case or project. Values may be personal, institutional, or professional. Students have values that may be the same or different from the teacher. An individual clinic itself may have values that define its mission and the legal profession as a whole is based on certain values that give rise to its ethical rules and other norms of the profession. Clients also come to the lawyer-client relationship with values of their own. These values may be deeply personal like honesty, fairness, empathy, and altruism. Some, like equality, diversity, and inclusiveness, are societal. Once the fellows identify the values, the discussion turns to how some values are based on ethical rules while others are based on moral or political precepts. During this discussion, the distinctions between ethics and values become more apparent, helping the new teachers to determine what the ethical codes require and how student’s values are sometimes inconsistent with those codes. Moreover, they begin to see how a student’s statement, “I can’t do that because it is unethical or immoral,” requires a response that helps the student separate the issue being dis-

¹⁰¹ Menkel-Meadow, *supra* note 98, at 31-32.

¹⁰² Wizner, *Beyond Skills Training*, *supra* note 71, at 340.

¹⁰³ *Id.* at 330. Many founders of clinical education had been active in the civil rights movements of the 1960s and wanted law schools to increase their focus on social justice issues and to present law students with opportunities to work with poor and marginalized individuals. *Id.* at 331-32. Though many law school clinics now emphasize skills building rather than social justice, clinics still typically serve poor clients, presenting law students with exposure to social justice issues to which they may not have been exposed in the past. *Id.* at 332-33.

¹⁰⁴ Aiken, *Striving to Teach Justice*, *supra* note 86, at 38-39.

¹⁰⁵ *Id.* at 30.

cussed from the student's characterization of it.

Many students and most clinical teachers come to clinical education with some sense of social justice and some ideas about how justice is achieved within the larger society. Because social justice and other such values impact on the lawyer-client relationship, the class discussion is also directed to whether teaching values is a proper endeavor in a clinical course. Values-based education has sometimes come under attack and maintaining value neutrality is sometimes very difficult. As noted earlier, the legal profession is based on values and legal education is, at least to some extent, value-laden.¹⁰⁶ The values that the MacCrate Commission developed concerned professional competency, justice, fairness, and morality, improving the profession, and self-development.¹⁰⁷ To be sure, the MacCrate Commission merged concepts of ethics, morals, and values and the Report cites to various Ethical Considerations and Disciplinary Rules from the A.B.A. Code of Professional Responsibility. Nonetheless, the MacCrate Report espouses the notion that the practice of law is a learned profession bound by the "qualities of truth-speaking, of a high sense of honor, of granite discretion, [and] of the strictest observance of fiduciary responsibility that have throughout the centuries been compendiously described as 'moral character.'"¹⁰⁸ With this imprimatur, clinical teachers easily conclude that teaching at least the values of the legal profession is a valid undertaking.

Of course, the sense of "moral character" can be achieved in ways unrelated to professional ethics, ways that invoke other values that teachers, students, clients, and society at large possess. For example, client-centeredness is a value in which some, but not all, lawyers engage as they seek fairness, honor, discretion, and fiduciary responsibility. Seeking social justice involves values that may differ when viewed from a victim's or a defendant's perspective. Some lawyers treat their clients as partners and even friends in the process of justice, becoming more than just a lawyer to the client, while others represent their clients with tighter boundaries and a more detached level of professionalism.¹⁰⁹ Is one way better than another? Should the teacher's

¹⁰⁶ The A.B.A. encouraged law schools to use its statement on the values of the profession as a "focus for examining proposals to modify their curricula to teach skills and values more extensively than they do now" and to develop new courses concerned with professional values. It also exhorted lawyers to create in-house training courses around the values of the profession and to use the values as a means of self-assessment and development. MACCRATE REPORT, *supra* note 80, at 128, 129.

¹⁰⁷ *Id.* at 140-41.

¹⁰⁸ *Id.* at 213-14 (citing *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring)).

¹⁰⁹ Compare Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203

view on client-centeredness and boundaries be instilled or should students merely be guided to act in a manner most comfortable to them? Some students, for religious or secular reasons, object to same-sex unions. How should this value issue be discussed when a student is assigned to represent a client suffering from AIDS or a same-sex couple who seek to adopt a child? How do the personal values relate to the professional values and may one trump the other? Some of these discussions may involve ethics, but more often they involve a student's values or moral precepts. Values and morals that differ from those of a client can affect the quality of the representation that a student provides. Most new teachers have not confronted these issues. These value clashes, however, will soon become apparent as they confront the propriety of teaching values that are not directly related to professional ethics.

Confronting values that diminish the autonomy and power of disadvantaged groups in society is the stated goal of some clinics.¹¹⁰ It does not matter, however, whether social justice is a stated goal or not. These issues will arise. They will be related to the profession and they will be related to the student's worldview. Teaching of this nature makes many new teachers uncomfortable, especially if they believe that universities and their subsidiary law schools should be places where ideas are presented to students in a neutral fashion without proselytizing. Even experienced teachers shy away from these discussions if they can find some way to achieve a client's goals without having them. Students also are more comfortable discussing the client's interests rather than their own personal values related to the client's interests. New teachers must be aware that these issues will arise and that they must have some tools to address them. That is why we address them in this class.

With these issues identified and understood, the class begins to identify which student and client values are likely to emerge during a supervision session. We trace the source of these values and emphasize the sensitivity a lawyer must show towards a client's values if communication is to remain open as they pursue the client's goals. The faculty members then role-play a supervision session for a dis-

(2004) (arguing that essential characteristics of a great public defender could be respect for clients, honing one's craft, and a sense of outrage), with Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239 (arguing that public defenders will be able to sustain their careers if they have empathy for their clients and a feeling of heroism, meaning a desire to take on the "system" in the face of terrible odds).

¹¹⁰ Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, 510-11 (1990) (describing client-centered counseling as an effective method for law students working with clients in a clinic setting).

crimination case brought by an inter-racial, same-sex couple, that demonstrates the potential clash of values that can occur when sorting out the client's, student's, and supervisor's goals. It also shows the interplay of values concerning race, gender, and sexual orientation in selecting a strategy for the case, and raises issues of client autonomy and cultural practices when family members participate in lawyer client conversations. After watching the supervision session, fellows perform a quick-write identifying the issues they observed and then brainstorm about the supervision issues presented in the role-play. The fellows usually note the values conflicts and the difficulties surrounding the setting of, adhering to, and deviating from agendas when values conflicts become apparent during the supervision session. They note the impact of the time constraints of the case in relation to the discussion of the values issues, and the sensitivity required for the conversation when the client's or the student's unintended racism, sexism, homophobia, or culture-based behaviors arise. The fellows then reform into small groups to discuss which if any values they would address in a well-conducted supervision session, which were the most important and why, and what their choices demonstrate about their own values.

When the large group reconvenes, a fellow conducts a supervision session based upon the values he or she chooses to address. After the performance and critique of the simulation, the faculty lead a discussion about the importance of creating a safe environment in the clinic where difficult conversations about values can occur, whether those conversations are better had during formal classes or in case rounds than in supervision sessions, and the need to recognize the importance of values in order to provide the best representation possible for the client and the best preparation of the student for the practice of law. We close by looking at the quick-writes from the start of the class and evaluate the fellows' initial concerns in light of the issues we have just discussed.

Once the large session is completed, fellows divide into small groups based on their clinic work to further explore these issues. In these sessions, the faculty tries to anticipate what values issues might arise in the fellows' individual clinics, practice more supervision simulations, and then use the case rounds technique to identify the issues, get a full set of facts to comprehend the extent of the problem and its context, suggest possible diagnoses, and seek solutions. We also introduce the fellows to techniques for challenging assumptions such as "parallel universe thinking" and "untangling agendas"¹¹¹ to demon-

¹¹¹ MUNEEB I. AHMAD, SUSAN J. BRYANT & JEAN KOH PETERS, TEACHING OUR STUDENTS TO CHALLENGE ASSUMPTIONS: SIX PRACTICES FOR SURFACING AND EXPLORING

strate other ways to approach the issues that arise.

Understanding the nature of values education and identifying the values that students, faculty, clients, and others bring to a client's case is critical to situating clinical education into a law school curriculum and is critical to providing effective legal assistance. New teachers must understand how values affect their relationships with students and how they affect students' relationships with clients. We believe these classes and exercises about values lead to a better understanding of the new teacher's role in a clinical course and lead to a better understanding of future classes in the Pedagogy course concerning ethics, difference, and assumptions.

C. *Ethics*

Most law teachers believe that clinical courses are ideal venues for teaching ethics to J.D. students. Unlike traditional ethics courses, clinics challenge students with issues concerning the Rules of Professional Responsibility (RPC) in the context of client claims, uncertainty, and human behavior. Although we focus the fellows' attention on the separate duties placed upon clinical supervisors by the RPC¹¹² and the student practice rules,¹¹³ teaching the RPC is not a goal in this Pedagogy Course class. We assume that the fellows are already familiar with the ethical rules of the profession. Instead, our goals for this class are to teach the fellows how to help students identify ethical issues that arise in their cases, to distinguish ethical issues from moral and values issues in their supervision and teaching, and to demonstrate tools the new teachers can use to guide J.D. students as they resolve immediate and future ethical issues in their cases and projects. A final goal is to help the new teachers develop techniques to conduct these sometimes difficult conversations. As noted earlier, conversations about values and ethics are often difficult for students and teachers alike. Moreover, there is a tendency to avoid them when they appear too difficult to confront or to merely discuss them in terms of the RPC while ignoring their broader context. Because the RPC present themselves as formalistic rules, they are much easier to apply and discuss than the broader issues of morals or values. So a supervisor unversed or uncomfortable discussing the broader context might ask a single question (what do the RPC require?) and ignore the richer discussion surrounding the narrow question of rule compliance.¹¹⁴ Not-

ASSUMPTIONS, AND DESIGNING ACTION 8-11 (May 2007) (unpublished manuscript).

¹¹² MODEL RULES OF PROF'L CONDUCT R. 5.1.

¹¹³ Most student practice rules place the ultimate responsibility for the case on the supervisor. See, e.g., D.C. CT. APP. R. 48(e) (2).

¹¹⁴ Thanks to Professor Ben Barton of the University of Tennessee Law School for this

withstanding these temptations, teachers must engage students in these conversations to show them how ethics and values differ, how they impact the decisions lawyers make, and how effective lawyering is enhanced by a broad and deep understanding of ethics and values. In doing so, teachers will also expose students to the nature and boundaries of a lawyer's role.¹¹⁵

An abundant literature exists concerning professional ethics that helps prepare fellows for the class and for their coming duties. We assign excerpts from the "MacCrate Report" on legal education,¹¹⁶ as well as articles by Geoffrey Hazard,¹¹⁷ David Luban and Michael Milleman,¹¹⁸ and Peter Joy and Robert Kuehn.¹¹⁹ These readings discuss the foundations of the ethical rules and explore the respective duties of clinical supervisors and their students.¹²⁰ They emphasize the discipline that students will face if they commit misconduct, either through their own acts or because of bad advice from their supervisors.¹²¹ The readings further encourage supervisors to be mindful of the structural differences between the collaborative clinical setting and the often hierarchical nature of most law firms and organizations.¹²²

Prior to the class, we distribute case studies where ethical issues have arisen in the context of litigation, legislative advocacy, or transactional representation. We ask the fellows to analyze the issues presented in the case studies and to prepare a supervisory intervention for one or two of them. The class begins with a discussion of the concepts of ethics, values, and morals, reinforcing the distinctions among them that were raised in the prior Values class. The fellows then break into small groups assigned by the problem they prepared. Within the group, they share their thinking about the issues they spotted in the problem, determine whether the issue was based on morals, values, or ethics, and if the latter, what professional rule controls the resolution of the issue. We ask the fellows what lessons they want their students to learn from their supervisory intervention and how they would plan and execute the supervision. Finally, we ask them to

observation.

¹¹⁵ MACCRATE REPORT, *supra* note 80, at "Chapter 7A. The Law Schools' Role in Professional Development."

¹¹⁶ MacCrate Report, *supra* note 80.

¹¹⁷ Geoffrey Hazard, *Personal Values and Professional Ethics*, 40 CLEVELAND ST. L. REV. 133 (1992).

¹¹⁸ Luban & Milleman, *supra* note 90.

¹¹⁹ Peter A. Joy & Robert R. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLINICAL L. REV. 493 (2003).

¹²⁰ *Id.* at 499-503.

¹²¹ *Id.* at 502-03.

¹²² See, e.g., Catherine O' Grady, *Preparing Students for the Profession*, 4 CLINICAL L. REV. 485, 508 (1998).

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identify any discomfort they felt when contemplating the supervision session, and whether that discomfort was based on ethics, morals, values, or something else.

As the fellows report back to the full group about their conversations, the teachers introduce the concept of the timing of the supervision into the discussion. During the conversation, we ask the fellows to consider whether the supervision session they planned will occur during the planning stage, the performance stage, or the reflection stage of the case or project, and how the intervention might change depending on the context. When an ethical issue arises, supervisors must often act quickly to ensure that the case, the client, and the lawyer are not compromised. The supervisor might need to delay reflection until the immediate issue is resolved. At other times, ethical issues arise during the planning stages of the case, providing a different atmosphere in which to contemplate whether an issue is truly one of ethics or values. Students must learn to identify ethical issues when they occur in their clinical cases and later in their careers when they may not have a supervisor. Supervisors must help students determine how to quickly assess the scope of the problem, whether the source of the problem involves the ethical code, and how to ameliorate the danger of or damage from an ethical breach. In addition, students must learn how to confront ethical lapses when they see them committed by other members of their legal team.¹²³ New teachers need to understand that this may be the satisfactory end to the intervention if the clinic's only goal is to teach lawyering. If, however, instilling social justice is also a clinic goal, supervisors need techniques to conduct the more ambitious task of helping students identify and question the source of the assumptions that underlie the values that surfaced as they attempted to identify an ethical violation and the proper response to the possible breach.

After this discussion, the fellows conduct supervision sessions concerning the ethical issues that arose in the case studies they prepared prior to the class. The critique of the role-plays has several goals. They are designed to improve the fellows' ability to help students understand the client's position before determining whether an ethical issue is involved; to demonstrate techniques that help the student separate the known facts from the unknown facts to prevent premature decisions; to test the assumptions that are driving the resolution of the ethical issue; and to sort out strategic issues from

¹²³ See *id.* at 507; see also MODEL RULES OF PROF'L CONDUCT R. 8.3 (2002) (imposing an affirmative requirement upon lawyers to report conduct of other lawyers that "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer" to the appropriate authority).

ethical issues. Teachers who accomplish these feats can combat students' beliefs that ethical dilemmas are either obvious or irresolvable.¹²⁴ In the critique, we stress the importance of teaching students how to gather relevant information from the client, analyze the choices that can be made, counsel the client concerning the choices, and ultimately implement the client's decision.¹²⁵ After all, one's substantive knowledge of legal doctrine is only useful to the extent that an attorney, acting ethically and competently, is able to apply it to the client's facts and interests.¹²⁶ The new teachers are encouraged to use a variety of techniques, including, but not limited to, thoughtful storytelling from their own experiences, hypothetical questions, role-plays between students or between students and the teacher, and simulations based on the real cases students are assigned.¹²⁷

The critique also helps prepare the fellows to lead J.D. students through a discussion of how the students' own values and morals interact with ethical rules of the profession. Students come to the clinic with individual perceptions about ethical matters. Often they are unaware that their personal opinions are at odds with professional standards.¹²⁸ Conversations about the difference between their values and the ethical rules cannot be casual. The conversation must be an intentional inquiry that not only leads to the resolution of the immediate legal problem but to a discussion about the assumptions and values that underlay the student's choices. Such conversations will almost always involve inquiry into the student's values. They may also require a discussion of the teacher's values as they affect the resolution of the issue. The role-plays help supervisors recognize and separate their own personal morals and values from ethical issues so that they can lead the students towards progress on the case and, perhaps, to a reflection on how the student's own morals or values are affected by the ethics of the profession. We do not seek to impose the "correctness" of any particular approach to the law. Most decisions about ethical issues require individualized, subjective evaluations of ethical guidelines in the context of the case or project and the players.¹²⁹ As such, we emphasize that the fellows should insist that students be systematic in their inquiry concerning the facts, assumptions, and context of the potential ethical problem, and that they require the student to

¹²⁴ Leonard Niehoff, *What Makes It Tough Teaching Legal Ethics*, 72 EDUC. DIGEST 58 (2006).

¹²⁵ MACCRATE REPORT, *supra* note 80, at "Chapter 5B, §6: Fundamental Lawyering Skills— Counseling."

¹²⁶ *Id.*

¹²⁷ See Robert Bennett, *Taking the Long View*, 27 J. LEGAL STUD. EDUC. 163-70 (2010).

¹²⁸ Luban & Milleman, *supra* note 90, at 42-43.

¹²⁹ See Hazard, *supra* note 117, at 137.

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consciously make choices about their values and lawyering styles within these ethical boundaries.¹³⁰

D. Difference

Issues implicating morals, values, ethics, and assumptions often involve issues of difference. Uncertainty may arise when the differences are unfamiliar (as with foreign languages), unexpected (as when one's appearance or demeanor does not fit an expected role), unsettling (as when one appears physically or emotionally traumatized), or recognizable (as when age, gender, disability, or race differences are apparent).¹³¹ Most clinical programs represent clients who are members of groups that are often under-represented. Students usually represent low-income tenants, criminal defendants and incarcerated men and women, abused women, children, immigrants with little or no proficiency in English, low income workers and people out of work, people of color, and disabled or sick people. Law students sometimes come from such groups and share some of the same values and life experiences of their clients. More often than not, however, they share few similar life experiences with their clients and have had little exposure to individuals similar to their clients or to the cultures from which they come.

Because they are unfamiliar with the lives of people who are not like them, students and teachers often make unwarranted assumptions about clients' values, experiences, wishes, and motives. Assumptions about people that do not take into consideration the impact of differences can undermine a lawyer's understanding of the case or project and a client's interests. Most clinical courses include classes on interviewing and counseling because questions implicating these issues regularly arise in supervision sessions. They must be addressed as clients' interests are determined and cases are planned. In addition, issues about personal and professional values concerning those differences may become topics of conversation even when they do not affect the student's case or project. They arise if the supervisor or the student chooses to address them. New teachers must be attuned to the impact that issues of difference have upon students and need to develop strategies and techniques to address them.

Implementing cultural understanding into the practice of law is not easy. Nor is it easy to teach. Culture is defined as "the systems of values, beliefs, and ways of knowing that guide communities of people

¹³⁰ *Id.* at 140-41.

¹³¹ See, e.g., NANCY B. MILLER & CATHERINE C. SAMMONS, EVERYBODY'S DIFFERENT: UNDERSTANDING AND CHANGING OUR REACTIONS TO DISABILITIES 3 (1999).

in their daily lives.”¹³² Because clients and lawyers in public interest practices seldom share a similar culture, acquiring multi-cultural competence is necessary for anyone who wants to be a public interest lawyer or a clinical teacher. Of course, cross-cultural understanding is not limited to poverty law. Effective lawyering in any context requires that the lawyers familiarize themselves with the communities they serve, educating themselves about the values, morals, language, and the larger culture of their clients.¹³³ This is especially true, however, in the public interest context. Lawyers who possess multicultural competence are conscious of the differences that may exist between themselves and their clients and can adjust their behavior and style to suit a client’s individual background. Teachers working with students who do not share their life experiences face the same challenges.

The goals for the class are to help new teachers identify issues of difference that occur in our teaching, supervision, and representation; to understand the relevance of difference to the case, project, and client issues that will arise; to explore and practice techniques to confront the issues when they arise obviously or latently; and to explore techniques for having deeper conversations about difference if either the student or the teacher chooses to do so. We chose these goals because we believe that issues of difference permeate all aspects of modern life and that a truly post-racial American society does not yet exist. All contemporary studies show that people whose characteristics are at odds with the predominant culture fare poorly within our legal systems.¹³⁴ Since almost all of our clients are outside of the predominant culture, factors of difference will appear in almost every case or project undertaken in a clinic.

Articles by Professors Susan Bryant,¹³⁵ Carwina Weng,¹³⁶ and others provide the background for the discussions and role-plays we use to teach the fellows methods for confronting the issues of difference that they will encounter in their supervision sessions. The class begins by asking the fellows to perform a quick-write identifying the issues concerning difference that they believe will arise as they begin their work as teachers. Professor Bill Ong Hing lists issues of class,

¹³² CARRIE ROTHSTEIN-FISCH & ELISE TRUMBULL, *MANAGING DIVERSE CLASSROOMS: HOW TO BUILD ON STUDENTS’ CULTURAL STRENGTHS* 35 (2008).

¹³³ Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 *STAN. L. REV.* 1807 (1993).

¹³⁴ See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); DAVID COLE, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* (1999).

¹³⁵ Bryant, *Five Habits*, *supra* note 94.

¹³⁶ Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 *CLINICAL L. REV.* 369 (2005).

race, ethnicity, gender, sexual orientation, physical disability, and age as the types of difference issues students will encounter.¹³⁷ The fellows generally add political, religious, cultural, educational, geographical, language, and economic differences. After the potential differences are identified, we then begin to discuss the harder questions about why we as teachers should care about difference.

The first reason to care is because many student-lawyers have not thoughtfully or carefully considered the significance of interacting with clients from different backgrounds.¹³⁸ An ethical lawyer must, of course, put the client's interests at the heart of his or her representation.¹³⁹ Doing so, however, requires that the lawyer be able to appreciate what matters to the individual client. Lawyers most effectively gain information when they are culturally aware of how they perceive a client and how a client perceives them. Lawyers must be aware of nuances in language so that the lawyer actually understands what a client is saying. New teachers must learn to increase students' abilities to situate their client in a cultural context, become aware of their own cultural context, and improve their communication skills accordingly in order to maximize client service.¹⁴⁰

A client-centered lawyering approach more easily adapts to cultural differences than other forms of lawyer-client relationships. In many cases, particularly among those handled by public interest lawyers and law school clinics, clients come from racial minorities and lower-income communities and often do not speak the same language or have the same level of education as a law student. Because each person has pre-existing biases and prejudices, it is important to be aware of the differences that exist and determine whether the students' or teacher's assumptions about the differences are affecting their work. The heightened attention to assumptions is used to move students and supervisors alike from so-called "unconscious incompetence" that leads to the formation of stereotypes to a state of "unconscious competence," in which each individual is able to appreciate the

¹³⁷ See Ong Hing, *supra* note 133.

¹³⁸ See LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT (LSSSE) 2008 ANNUAL SURVEY RESULTS, STUDENT ENGAGEMENT IN LAW SCHOOL: PREPARING 21ST CENTURY LAWYERS, available at http://lssse.iub.edu/2008_Annual_Report/ (wherein roughly 20 percent of students at A.B.A. accredited law schools self-reported that their school did little or nothing to encourage contact and understanding with "people of other racial and ethnic backgrounds"); Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 229 (2002) (noting that almost half of the largest cities in America have fewer whites than racial groups who have historically been minorities).

¹³⁹ See MODEL RULES OF PROF'L CONDUCT R. 1.1–1.6 (2002).

¹⁴⁰ Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J. L. & POL'Y 37, 39 (2008).

cultural dynamic between teachers, students, and clients and to communicate effectively.¹⁴¹ Thus, new teachers must learn to account for the individual differences in clients and help students to develop a deeper understanding and awareness of the world surround them.

Clinical supervisors have told stories over the years about how their students must balance their role as a legal authority figure and advice-giver in a clinic case or project with their role as a listener and one who appreciates the cultural context of their client.¹⁴² Those students who have difficulty empathizing with their clients' situations may find their clinical experience frustrating.¹⁴³ Thus, teachers must be able to clarify these cross-cultural issues as they arise,¹⁴⁴ addressing rather than avoiding issues of difference. Doing so can help to broaden understandings of fairness and justice in society¹⁴⁵ and inspire students to strive for successful and rewarding careers in public service.¹⁴⁶ As voices of authority and teachers of culturally different practices, supervisors must be competent and tolerant themselves, as their own values are likely to influence those of their students.¹⁴⁷ Unless new teachers are prepared to guide students through these conversations, they will be stilted, difficult, and may even not occur.

Another reason to care about understanding the power of difference is because clients care about how they are treated. They come to attorneys from individualized backgrounds within their communities

¹⁴¹ See Bryant, *Five Habits*, *supra* note 94, at 57-64. Unconscious incompetence is when students are unaware that they are lacking cultural awareness, while unconscious competence is when they unconsciously incorporate cross-cultural awareness into client interactions. *Id.* at 62-63.

¹⁴² See, e.g., Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 HARV. C.R.-C.L. L. REV. 1 (1993); Bryant, *Five Habits*, *supra* note 94.

¹⁴³ See, e.g., Robert Rader, *Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants*, 1 CLINICAL L. REV. 299 (1994).

¹⁴⁴ After being exposed to cultural otherness, an individual may experience the phenomenon now widely referred to as "culture shock." Within the phenomenon, first given a name by Kalvero Oberg in 1960, the person experiences four successive stages: first, an initial fascination and excitement at the newness of the encounter; second, anxiety that what that individual knows will be inadequate to fit in within such newness; third, an initial understanding of what differences are present; and fourth, complete adjustment as the individual adapts what they know to fit this initially foreign situation. See Kalvero Oberg, *Culture Shock and the Problem of Adjustment in New Cultural Environments*, 7 PRACTICAL ANTHROPOLOGY 177-182 (1960), reprinted in CULTURE, COMMUNICATION AND CONFLICT: READINGS IN INTERCULTURAL RELATIONS 117-168 (Gary R. Weaver, ed., 2d. ed. 1998); see also Delia Flanja, *Culture Shock in Intercultural Communication*, 4 STUDIA EUROPAEA 107-125 (2009), available at <http://www.thefreelibrary.com/Culture+shock+in+intercultural+communication.-a0221850915> (discussing concretely the four stages of culture shock).

¹⁴⁵ See Aiken, *Striving to Teach Justice*, *supra* note 86.

¹⁴⁶ See Ogletree, *supra* note 109, at 1290-94.

¹⁴⁷ See TAMAR JACOBSON, CONFRONTING OUR DISCOMFORT: CLEARING THE WAY FOR ANTI-BIAS IN EARLY CHILDHOOD 7-8 (2003).

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and with unique, personal issues that carry significant emotional importance. Many also come with a resistance to the legal system that developed from their past experiences with the law and the courts. Clients' perceptions of competence depend on the cultural sensitivity that they are shown, not by culture-blind behavior.¹⁴⁸ Since personal boundaries may be disparately defined, even relatively tiny variations in communication style such as shaking versus not shaking hands, the degree of eye contact, and using first names rather than titles and last names can lead to widely disparate reactions depending on the cultural background of the client.¹⁴⁹ Students will not always be aware of these differences and interact with their clients in ways that reflect the student's and not the client's culture. Consequently, new clinical teachers must learn to create an environment where students are comfortable discussing this critical feature of lawyering. Psychologically healthy environments for communication and education occur when there is a "spirit of mutuality" and each party feels respected, accepted, and supported.¹⁵⁰ New teachers must learn to adapt their actions and attitudes in their classroom and supervision sessions to each individual in order to foster similar environments and communication patterns between clients and students.

A separate reason to care about race issues is that there is great resistance in our society to discuss questions of race honestly. Most new teachers share this resistance. We teach this class to intentionally force the conversation. Education is meant to open the minds of our students and to inspire a search for knowledge. If teachers do not have the courage to address the issues in a non-threatening fashion in an academic environment, who else will and where else will those conversations take place? It is not uncommon to sense resistance among some of the fellows as we begin the discussions in this class session. We anticipated this reaction and have planned the conversation in ways that attempt to reduce the anxiety that the fellows feel and to demonstrate that it is possible and necessary to have these hard conversations if they want to achieve the goals we set forth for this class.

¹⁴⁸ See ROBERT F. COCHRAN, JOHN M.A. DiPIPPA, & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 205-23 (2d ed. 2006).

¹⁴⁹ See *id.*; JACOBSON, *supra* note 147, at 11; see also CARRIE ROTHSTEIN-FISCH & ELISE TRUMBULL, *MANAGING DIVERSE CLASSROOMS: HOW TO BUILD ON STUDENTS' CULTURAL STRENGTHS* 106 (2008). In the classroom setting, Carrie Rothstein-Fisch describes a situation where an administrator believed a Latino student was lying because he did not make eye contact with his superior when talking. However, the student's teacher—who had greater familiarity with the student and his culture—knew that his looking down was a sign of respect rather than of guilt. *Id.*

¹⁵⁰ See MALCOLM S. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION* 44 (1970); Bloch, *supra* note 38, at 330.

Discussions about difference issues are often easy to have in the abstract but difficult to have when real situations occur. They are easy when discussions involve hypotheticals or the inability of other people to recognize the difference issue. They become harder when those conversations involve our own perceptions or those that we see in our students. Conversations that carry the suggestion of racism, sexism, homophobia, or some other sensitive issue, whether or not intended, are difficult to have. They challenge one's worldview and value system in ways that other conversations in the clinic do not.¹⁵¹

Students' cultures are at the center of their identity. They have influenced their development and decision-making throughout their lives. As a result, conversations about culture and difference can be difficult and emotional.¹⁵² They are highly sensitive and require skill and tact. Members of minority groups in particular may be skeptical when presented with assistance or advice from members of majority cultural groups. They may wonder what makes the giver of the advice any different from other members of the majority group who have oppressed them or discriminated against them before.¹⁵³ While such generalizing attitudes may be harmful, that sense of oppression and discrimination are based on their prior experiences and therefore may arouse deeper sentiments.

These discussions are also difficult because they force students who actually engage in biases, prejudices, and untested assumptions to confront them. For many, this will be the first time that they actually contemplate these assumptions. In doing so, however, they may learn more about themselves.¹⁵⁴ In order to gain multicultural competence, one must "break" preexisting assumptions and develop habits of communication that serve to more effectively engage with others.¹⁵⁵ New teachers must learn to introduce dissonance into the ways students currently think of things to help them contemplate differing perspectives.¹⁵⁶ An active process to facilitate cross-cultural competency is one that encourages students to contemplate and answer questions like: "What is the difference? Why did it draw my attention? How did I react? Why did I react the way I did?"¹⁵⁷ Through discussions in

¹⁵¹ Attorney General Eric Holder found this out when he called us a "nation of cowards" when it comes to discussing the racial divide. This quote was reprinted in Charles J. Ogletree, Jr. & Johanna Wald, *After Shirley Sherrod, We All Need to Slow Down and Listen*, WASH. POST, Jul. 25, 2010, at A19.

¹⁵² See JACOBSON, *supra* note 147, at 49.

¹⁵³ See Silver, *supra* note 138, at 235. See generally DERALD WING SUE & DAVID SUE, *COUNSELING THE CULTURALLY DIFFERENT: THEORY AND PRACTICE* (2d ed. 1990).

¹⁵⁴ See JACOBSON, *supra* note 147, at 20; Weng, *supra* note 136, at 397-99.

¹⁵⁵ See Lopez, *supra* note 140, at 45-46.

¹⁵⁶ See JACOBSON, *supra* note 147, at 49-51.

¹⁵⁷ See Miller & Sammons, *supra* note 131, at 7.

class and in supervision sessions and through self-reflection exercises, students can develop more mature understanding and tolerance.

New teachers must learn that there are reasons why it takes time to truly break down the biases that affect good lawyering. Students may say little or nothing at all about these issues when talking among themselves, with clients, or with supervisors, fearing they might expose their own stereotypical thinking. Clinical students refrain from these conversations out of fear that they will lose favor with their peers and colleagues or negatively affect their grades if they say what they are really thinking.¹⁵⁸ New teachers and students who choose to engage in these thoughtful discussions must necessarily reveal their individuality by drawing upon their own experiences and identities.

Some of these conversations will involve the progress of a case or project and must be had if the client's goals are to be achieved. Others may occur because the teacher wants to expand a student's understanding of the world, believes that the student is ready for the conversation, and feels that it can be had in a non-threatening fashion. Such discussions may lead to arguments and hostile comments between students. New teachers must learn to intervene when comments exceed intellectual boundaries and become insensitive.¹⁵⁹

It is fair to say that nearly all of us have some inherent biases and prejudices. As a result, people often do not even realize when their reactions to someone different cause a negative effect. Rather than berate ourselves for being prejudiced, however, we should acknowledge these stereotypes as being merely human.¹⁶⁰ "[U]nconscious biases can be transformed . . . though they must be acknowledged."¹⁶¹ Over time, however, we are all capable of habituation; that is, of noticing differences less and evaluating them in a sensitive and capable manner.¹⁶² Teachers and fellows have had these conversations earlier in the classes about supervision, values, and ethics. Yet without a separate class on difference that both authorizes new teachers to confront issues of difference and gives them tools with which to do it, they will be reluctant or unable to have those conversations.

After the class discussion about why cultural competence is important and what goals a teacher might have when teaching about difference, the fellows begin to examine examples of cultural disconnects

¹⁵⁸ See Michael Meltsner & Philip Schrag, *Center for Applied Legal Studies, Grading Memo 5-6* (copy on file with author).

¹⁵⁹ See Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 557-60 (1996).

¹⁶⁰ See *id.*

¹⁶¹ Ogletree & Wald, *supra* note 151.

¹⁶² See Miller & Sammons, *supra* note 131, at 7.

that have occurred during their supervision experiences. We ask the fellows to perform a quick-write recalling an instance where they were addressing an issue related to difference that did not go particularly well. We ask them to disclose the reasons why they think it failed and whether the discomfort stemmed from the fact that race was playing a role. They then form small groups to discuss why they saw these events as involving issues of difference and how they tried to engage students in the conversation. After the small group discussion, we re-assemble in the large group to continue the conversation. Many of the issues are client based. Others are related to the teachers and the fellows themselves. Fellows and faculty of color may have wondered how an all-white group of students would perceive him or her as a supervisor. Women fellows may have wondered how male students would relate to them as supervisors. Many fellows worry about how students will relate to a teacher who is just a few years older than they are. Sexual orientation and viewpoint differences may also arise. We then use a modified case rounds process or a role-play to demonstrate ways to reduce the emotional and personal discomfort the conversation produces and to appropriately intervene to resolve the issues. After the discussion, the fellows engage in a role-play to try out the suggested solutions.

It is hard to say what the long-term impact of this class is. While our goals are large, we expect only small outcomes at this stage. We seek to “normalize” conversations about difference so that they become an expected part of the clinical experience rather than an emotionally charged aberration. If the conversations take place, some students may adjust their assumptions to better understand their clients’ interests. Others may have life-changing experiences. Some teachers cherish these moments and may build their clinic goals around such experiences. Others may choose to minimize the deeper conversations and concentrate only on those discussions that move the case along. Teachers who choose the latter course may nonetheless find that merely moving the case along will still require some conversations about the students’ assumptions about difference in order to do so. This class, however, opens a new conversation for some of the fellows and validates an approach for others.

V. CLASSROOM TEACHING

Although most interactions between a student and a clinical teacher occur in case or project supervision sessions, virtually every clinical course involves classroom teaching. Nonetheless, the literature about clinical teaching seldom focuses on the role and nature of the classroom component of a clinical course. The fellows at Ge-

orgetown teach classes either alone or in a team with the clinical teacher. Many will go on to academic careers. For those reasons, we include a class in the Pedagogy course about classroom teaching.

Because clinical courses seldom enroll more than twenty students, teachers are able to employ many techniques to convey information. Like most law school professors, clinicians employ traditional Socratic style lectures, discussions, and problem solving exercises in their seminars. The Socratic Method, however, is not always effective. Law students, as adult learners, do not always respond to the typical methods of the academy. Thus, many clinical teachers seek strategies that are effective for adult learners in other contexts and replicate them in the law school classroom.¹⁶³ They have added simulations,¹⁶⁴ performance critique,¹⁶⁵ and case rounds to their classroom repertoire.¹⁶⁶

Few law professors receive any training before they become teachers,¹⁶⁷ and as a result, many merely replicate the teaching strategies of their former professors.¹⁶⁸ Those former teachers may or may not have been good role models. Moreover, new teachers should be reluctant to implement strategies used in typical, large law school classrooms in the clinical setting unless there is reason to do so. The uneven performances new teachers have witnessed in the past often cause them to believe that creating and implementing proper classroom techniques is based on an innate talent that one either does or does not have. Like most of life's endeavors, however, hard work and clear guidelines can improve one's teaching performance. Although all teachers can become better at their art, few law schools assist new law professors to become adequate let alone good classroom teachers. As a result, most new teachers plunge into their first classroom experiences with little, if any, instruction on how to ensure that the manner in which classes are taught relate to what students are expected to derive from the lessons.

¹⁶³ See, e.g., Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 417-19 (2002) (explaining that many clinics put students through one to three weeks of simulation training prior to students engaging in actual clinic work).

¹⁶⁴ See generally Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 (1982) (describing how performance critique can help the student improve her skills in the clinic, as it fully engages the student in her learning).

¹⁶⁵ See generally Susan Bryant & Elliot S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007) (examining the effectiveness of case rounds at educating students in the clinical setting, why they are widely used throughout clinical programs, and how faculty can meaningfully be involved in case rounds).

¹⁶⁶ See Nira Hativa, *Teaching Large Law School Classes*, 50 J. LEGAL EDUC. 95, 101 (2000).

¹⁶⁷ *Id.* at 98.

¹⁶⁸ *Id.* at 101.

The goal for this class is not to turn new teachers into master teachers at the start of their careers. Rather, our main goals are to expose the fellows to the basics of planning and executing classroom teaching techniques and to encourage them to be intentional about the choices they make as they design a class or an entire curriculum. Our secondary goals are to allow the fellows to explore their concerns and anxieties about classroom teaching and to collaboratively explore methods to confront and overcome them. A final goal is to help the new teachers begin to identify their personal styles as teachers and to use the techniques they learn to complement their styles as they grow to be master teachers.

To prepare for this class and to familiarize themselves with various modes of teaching, the fellows read articles by Joseph Lowman,¹⁶⁹ Nira Hativa,¹⁷⁰ Stephen Brookfield¹⁷¹ and Grant Wiggins.¹⁷² The readings, small group exercises, and discussions in this class are designed to provide the fellows with an array of teaching strategies to use in classroom settings. This class was designed using the techniques developed by Stephen Brookfield and Grant Wiggins.¹⁷³ Wiggins' theory of backward design begins with the premise that teachers are designers, "crafting curriculum and learning experiences to meet specified purposes."¹⁷⁴ He asserts that curriculum should be designed to meet a particular end and not originate from methods or activities. Wiggins also posits that a curriculum that is intended to create understanding in students will fail unless the teacher knows ahead of time what he or she wants the students to understand.¹⁷⁵ Backward design has three stages: identifying a desired result, which involves clarifying priorities;¹⁷⁶ determining the acceptable evidence that will establish what is necessary to demonstrate that the students understand the material;¹⁷⁷ and planning learning experiences and instruction to formulate the most effective way to teach the material so that it will result in the desired outcomes.¹⁷⁸ Wiggins's backward design forces teachers to focus on building student's understanding of a concept when designing a curriculum and not merely on increasing their knowledge.¹⁷⁹ Teaching students to understand a concept entails more than just

¹⁶⁹ LOWMAN, *supra* note 47.

¹⁷⁰ Hativa, *supra* note 163.

¹⁷¹ BROOKFIELD, THE SKILLFUL TEACHER, *supra* note 34.

¹⁷² WIGGINS & MCTIGHE, *supra* note 49.

¹⁷³ All revisions to our classes are now made using Wiggins' concept.

¹⁷⁴ WIGGINS & MCTIGHE, *supra* note 49, at 13.

¹⁷⁵ *Id.* at 14-15.

¹⁷⁶ *Id.* at 17-18.

¹⁷⁷ *Id.* at 18.

¹⁷⁸ WIGGINS & MCTIGHE, *supra* note 49, at 18-19.

¹⁷⁹ *Id.* at 35.

knowing the facts. Students who achieve understanding are able to think critically about what they know, draw conclusions, and reflect on what they have learned.¹⁸⁰ Exposing the fellows to these concepts and then asking them to design and critique a single class accordingly will help them to design curricula later in their careers that focus on understanding and not merely on knowledge and methods.

Brookfield's theory is that teachers will be presented with situations, often uncontrollable,¹⁸¹ in which they have to improvise, or "muddle through."¹⁸² Brookfield suggests that practical reasoning is likely to be the best way for the teachers to get through uncommon situations.¹⁸³ Practical reasoning includes three characteristics: scanning, quickly identifying and understanding the situation; appraisal, interpreting the situation given previous experiences; and action, taking action that one believes best fits the situation based on one's interpretations.¹⁸⁴ Brookfield has three core assumptions around which his theory is based: "[s]killful teaching is whatever helps students learn; [s]killful teachers adopt a critically reflective stance towards their practice; and [t]he most important knowledge skillful teachers need is a constant awareness of how students are experiencing their learning and perceiving teachers' actions."¹⁸⁵

Brookfield delineates a number of methods and strategies that teachers can use to implement skillful teaching in the classroom. In order to encourage student engagement in the classroom, Brookfield suggests that a teachers engage students with reflective activities, including: the one-minute quick-write, wherein students are asked to write for one minute on some topic covered in class that day;¹⁸⁶ student learning journals, in which students describe their daily learning experiences;¹⁸⁷ and the critical incident questionnaire (CIQ), an instrument given to students at the end of the week that asks them to reflect back on what was "engaging, distancing, confusing, or helpful."¹⁸⁸ Brookfield also describes methods for establishing credibility and authenticity in the classroom, methods that he believes are essential to effectively teach students.¹⁸⁹ His methods generally focus on creating a relationship between the students and teacher such that the

¹⁸⁰ *Id.* at 39.

¹⁸¹ BROOKFIELD, THE SKILLFUL TEACHER, *supra* note 34, at 8-11 (comparing the unpredictability of the classroom to whitewater rafting).

¹⁸² *See id.* at "Chapter 1: Experiencing Teaching."

¹⁸³ *Id.* at 6.

¹⁸⁴ *Id.* at 6-8.

¹⁸⁵ *Id.* at 17.

¹⁸⁶ BROOKFIELD, THE SKILLFUL TEACHER, *supra* note 34, at 37-38.

¹⁸⁷ *Id.* at 39-40.

¹⁸⁸ *Id.* at 41-45.

¹⁸⁹ *See generally id.* at 55-74.

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students will trust the teacher when he or she must improvise or steer the class to discuss different and challenging issues.

New teachers need to learn that successfully engaging students in a classroom requires that the teacher instill an “intellectual excitement” in the students that creates “interpersonal rapport” with them.¹⁹⁰ A successful learning environment is one that is characterized by “clarity, organization, stimulation of interest and student engagement, and a positive classroom climate.”¹⁹¹ The absence of these elements can result in diminished student learning even when the class is properly designed. Law school classroom instruction is often ineffective due to an absence of visual information, written lesson plans or outlines, variety in presentation style, and a democratic classroom environment.¹⁹² While most teachers believe clarity is the most essential characteristic of effective teaching, engaging the students with the material is also necessary to successful teaching.¹⁹³ Similarly, creating an environment in which students feel comfortable voicing their opinions and are encouraged to pay attention will result in a more engaged and active classroom.¹⁹⁴

The class begins with a quick-write about the concerns and anxieties fellows have about classroom teaching. We record the responses on the board and organize them into five or six categories. Common categories include fears about selecting topics to cover in a class, having an adequate knowledge to teach those topics, answering students’ questions, and staying lively so that the students remain engaged in the class. We then break into three or four small groups to discuss different shared concerns and attempt to devise strategies to confront them.

As the fellows report back from their small groups, we begin a discussion about the fears and strategies the fellows raised in their groups. The conversation always concerns learning styles and a teacher’s response to the varied styles that students bring to the classroom. The styles identified by the fellows usually include auditory and visual learning; learning by reading, watching, or doing; and learning through abstract or concrete thinking. Recent studies have shown that no matter which learning style students prefer, students learn best when teachers use multiple teaching strategies in each class.¹⁹⁵ These

¹⁹⁰ LOWMAN, *supra* note 47.

¹⁹¹ Hativa, *supra* note 163, at 98.

¹⁹² *Id.* at 101.

¹⁹³ LOWMAN, *supra* note 47, at 23. Lowman also provides a list of suggestions for both good and bad lecturing. *Id.* at 154-56. These suggestions highlight the importance of providing clear information in an engaging manner. *Id.* at 154.

¹⁹⁴ Hativa, *supra* note 163, at 101.

¹⁹⁵ Benedict Carey, *Forget What You Know about Good Study Habits*, N.Y. TIMES,

studies suggest that teaching to a particular learning style does not necessarily lead to greater outcomes in the classroom. Using multiple teaching styles, however, results in all of the students having greater engagement.¹⁹⁶ The research also suggests that teaching methods that seek to improve the comprehension of specific types of learners often have a carryover effect to all students in the class irrespective of their learning style.¹⁹⁷

When this discussion concludes, we ask fellows to again break into small groups to create a class session on “Sustaining a Public Interest Career.”¹⁹⁸ We ask them to identify their goals and expectations, the format, setting, and materials that will be used in the class, and the presentation styles they would employ when teaching. As they report their lesson plans to the larger group, we develop a list of teaching methods,¹⁹⁹ kinds of materials that can be assigned,²⁰⁰ and the presentation formats²⁰¹ that can be used to convey the information to the students in ways that achieve the teachers’ goals. Obviously, this class is only the beginning of conversations that teachers will have throughout their careers. Good teachers constantly revise their methods, materials, and presentations to ensure that their goals are met in each class. Unfortunately, teachers often assume their goals are met because students tend to love their clinics and write glowing course evaluations at the end of the course. This general admiration for our work does not always tell us how successful individual classes have been.

New teachers need to learn that there are ways to get feedback on whether they have achieved their class session goals. To get accurate feedback, students must know the goals for each class. Good teachers often start a class session by explicitly telling the students

Sept. 6, 2010, <http://www.nytimes.com/2010/09/07/health/views/07mind.html>.

¹⁹⁶ *Id.*

¹⁹⁷ *See id.*

¹⁹⁸ We chose this as a topic for the class because fellows from any of the clinics could relate to the topic.

¹⁹⁹ Methods proposed are lectures, discussions, Socratic questioning, use of video or film, role-plays or simulation, hand-outs, readings, case parsing/analysis, problem solving, case rounds, inviting clients to come to class, narratives exploration, student presentations, guest lecturers, small group exercises in large class settings, and demonstrations.

²⁰⁰ The kinds of materials most often suggested are real world observations, case presentations, articles, books, transcripts, texts, movies, videos, television shows, research reports and case studies, judicial opinions, non-legal materials, reports, stories, literature, and problems.

²⁰¹ The presentation formats noted are teacher-led, student-led, class exercises, reports back from exercise out of class, before class homework/prep, report back from real world performance, live versus video demonstrations, Power point presentations, use of other technology, threaded conversations, computer ware, and e-mail.

what they want them to obtain by the end of the session.²⁰² Feedback may come from informal conversations with students after the class, but these single observations may reflect only one student's opinion. As previously mentioned, Brookfield suggests teachers use critical incident questionnaires (CIQs) to gain feedback from students on previous lessons.²⁰³ We suggest to our fellows that if they want to know whether they have achieved the goals of their class, they should give their students a CIQ at the end of a series of classes and ask the students to reflect back on what they learned or found challenging. The fellows should then read and reflect upon the students' responses.²⁰⁴ Brookfield suggests that the teacher then take note of any particularly confusing aspects of the prior classes, significant differences in student perceptions of the same portion of them, and the general themes in student comments.²⁰⁵ Since the CIQs are anonymous, the teacher may share the responses with the entire group at subsequent classes.²⁰⁶ The new teachers should then incorporate relevant changes into future presentations.²⁰⁷ CIQs are effective for improving the classroom experience because they alert the teacher to problems, encourage students to reflect on their learning, help improve diversity in teaching, build trust between the students and teacher, provide suggestions for development, and model critical thinking.²⁰⁸

Even if a fellow is able to create the right classroom environment and provides information in an accessible manner, engaging the students in discussion will be one of their most difficult tasks.²⁰⁹ Lowman provides a number of suggestions for teachers when trying to engage students in discussion, such as breaking them up into groups,²¹⁰ role-playing,²¹¹ and problem-solving discussions.²¹² Since we have designed the Clinical Pedagogy class with good teaching theory in mind, the fellows have already witnessed examples of these techniques. Indeed, most clinical teachers use them. They must, however, be used intentionally with a clear purpose and expected out-

²⁰² See BROOKFIELD, *THE SKILLFUL TEACHER*, *supra* note 34, at 100.

²⁰³ *Id.* at 41.

²⁰⁴ *Id.* at 41-42. The questions contained in the CIQ ask the students to identify when during class they felt most engaged, distanced, affirmed, helped, confused or puzzled, and surprised. *Id.* at 42-43.

²⁰⁵ *Id.* at 43.

²⁰⁶ *Id.* at 42.

²⁰⁷ See BROOKFIELD, *THE SKILLFUL TEACHER*, *supra* note 34, 43.

²⁰⁸ See *id.* at 45-52.

²⁰⁹ LOWMAN, *supra* note 47, at 179, 186 (explaining that while starting a discussion might not be the most difficult task a teacher faces, guiding the students through the discussion and on to the right topic can be very challenging).

²¹⁰ *Id.* at 168.

²¹¹ *Id.* at 169.

²¹² *Id.* at 170.

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comes in order to be successful. The literature explains that gaining control over a classroom and building a rapport with students takes time, but following the techniques described in the literature, combined with patience, can help the fellows provide a positive learning environment in the clinic.²¹³

We finish the class by reminding fellows that teaching, like lawyering, is not always instinctive even though some will become better teachers than others. All teachers, however, can become very good teachers if they are intentional about their work, have goals, prepare each class session with backward design to achieve those goals, and implement methods that allow each student to attain what they need from the class.

VI. FEEDBACK, EVALUATION, AND GRADING

The classes described thus far form the foundation of our Pedagogy course with respect to supervision and teaching. They have introduced the fellows to the complexity of the clinical teaching model, explained the importance of context and identity in lawyer-client relations, and provided the fellows with some supervision and teaching tools as they begin their work as clinical professors. Teachers in an academic setting, however, are also required to evaluate and grade the students they teach. Thus, the Pedagogy course begins a discussion with the fellows about the relationship among feedback, evaluation, and grading. The goals for this class are to help fellows understand the distinct yet overlapping concepts of feedback, evaluation, and grading; to explain how evaluation relates to and leads to grading; to introduce them to grading rubrics; to identify common challenges that arise in the evaluation process and to develop responses to those challenges; and to help the fellows learn evaluation techniques by simulating evaluation sessions with students.

Many clinical teachers acknowledge that evaluation and grading are two of the more difficult aspects of their jobs, in part because of the evaluation system required by their schools. Most law schools have mandatory or recommended curves that reflect statistical performance measures achieved during single events like exams, quizzes, and papers that all students complete, usually at the same time. These evaluations come after the performance, often with little feedback, so students are given few opportunities to learn from the experience.

Clinical courses present faculty with many challenges when they attempt to adapt the evaluations arising from clinical methodology to the school's predominant teaching and grading system because the

²¹³ LOWMAN, *supra* note 47, at 181.

two are inherently different. First, the number of students in a clinical course is small and the faculty often selects the students because of interest or talent. Thus, the class usually has too few students and insufficient disparity among them to develop a true curve. Second, students enter a clinic with different abilities and skill sets. Some students will be more innately talented at some lawyering skills and other students will have talents in other skills. Thus, the evaluator must decide both how to evaluate a student who is very talented in most skills, but who improved only moderately throughout the course, and a student who enters the clinic less developed talents, but who improves substantially throughout the course.²¹⁴ Third, clinics create atypical teacher-students relationships. Clinic students are encouraged to openly discuss with their professors the issues and problems they face with their cases. Grading inhibits that openness.²¹⁵ Fourth, clinical students receive a great deal of feedback for almost every action they take and every choice they make throughout the course. Not all of these events are contemporaneously graded, but they are evaluated. Fifth, students engage in multiple performances of multiple lawyering tasks that are repeated throughout a semester, not just at its end. Thus, students are evaluated on many tasks rather than on one and are capable of improving, and are expected to improve, their performances over time. Evidence of that improvement is as important as the ability to perform a task well or make a sound choice. Sixth, the tasks students perform during the clinic are not always identical to those that other students perform in the course. Each case or project creates its own distinct tasks and responsibilities. Seventh, if the clinic is well structured, the differences among the students in terms of growth and competence are likely to be small at the end of the course and comparisons among them are often imprecise. Eighth, the practice of law deserves a high and consistent level of work. Students cannot be permitted to do less than very competent work on behalf of clients, and supervisors must ensure that the student's work remains at a high degree of competence. Finally, legal work in the modern world is collegial and collaborative, not competitive. Thus, it seems inconsistent to grade students relative to each other as opposed to purely individually.

Assessments in clinical courses are based on patterns of behavior, performance, and growth reflected in multiple performances of many

²¹⁴ Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLINICAL L. REV. 299, 303-04 (1997) (noting some of the challenges professors and supervisors encounter in the clinical setting when grading students).

²¹⁵ See generally Meltsner & Schrag, *Grading Memo*, *supra* note 158.

different tasks rather than on the performance of a single examination or paper. Thus, clinical courses are inappropriate venues for typical curve grading. Nonetheless, most schools require some quantitative or descriptive assessment of students in clinical courses. Since such assessments are difficult to make, some clinical faculty engage in rigorous evaluations but award pass/fail or adjectival grades rather than traditional letter or number grades. Others, however, attempt to adapt a complicated evaluative process into quantitative rankings within a traditional grading system. Many who adapt their grading processes do so because they have no choice. Teachers who have a choice about their grading systems often adapt to the traditional system to avoid marginalizing the clinical course in the eyes of other faculty members.

Clinic fellows at Georgetown are expected to participate in mid-year or mid-semester evaluation sessions with students and to participate in a traditional grading process.²¹⁶ As new teachers, they may remember and be familiar with traditional grading systems, but they are often completely unfamiliar with the nature of assessments in clinical courses. If they are coming directly from law school, they have not engaged in a grading process. Those coming from practice never had to translate a substantive evaluation of a colleague into quantitative measurements. Nonetheless, both will be asked to contribute to discussions about students' grades and to suggest grades for their students. Thus, the fellows and all new teachers must have some understanding about how feedback, evaluation, and grading relate to one another; how qualitative evaluations translate into quantitative grades; and how one assigns grades for the multiple accomplishments or shortcomings noted in the evaluations of students.

To prepare for the class, the fellows are given examples of evaluation instruments and grading rubrics created by Georgetown clinicians, and read articles by Nina Tarr,²¹⁷ Amy Zeigler,²¹⁸ and Jerry Foxhoven.²¹⁹ These articles provide fellows with a framework for evaluating students and for teaching the students how to self-evaluate. Additionally, the readings help the fellows understand how the grading process works and identify some of the challenges that arise when using a traditional grading system. As valuable as these and other

²¹⁶ Georgetown clinics have used different grading schemes and variations of the letter grade system over the years.

²¹⁷ Nina Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967, 984-88 (1990).

²¹⁸ Amy Zeigler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575 (1992).

²¹⁹ Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLINICAL L. REV. 335 (2009).

readings are, however, they do not always distinguish clearly between feedback, evaluation, grading. Thus, the class is designed to clarify the purposes and methods of each.

A. *Feedback and Evaluation*

The class begins with a general discussion about the differences and similarities among feedback, evaluation, and grading. All clinical teachers give feedback to students. That is, we react or respond to a particular process or activity that the student either will perform or has completed. Sometimes these responses are “evaluative” in that they compare one method to another, but they are directed primarily at a particular action or choice and are not an evaluation of the student’s performance over time. When giving feedback, supervisors seek to improve the performance of the task. They report what they have observed, consider the student’s goals, discuss the student’s motivation for making a choice or taking an action, and discuss performance techniques.

Clinic teachers provide feedback at many stages of the lawyering process. While giving feedback, teachers often suggest that students consider different approaches to a witness or alternative ways in which an argument can be designed. They change or suggest changes in the tone or purpose in a document. Students are referred to code citations or cases that might change their case theory or improve their reasoning about the case. Supervisors make the student aware of different techniques for achieving the goals and correct improper performance techniques. These interventions occur in formal supervision sessions, and sometimes, albeit reluctantly, during the actual performance of an interview, a deposition, or a hearing. Teachers sometimes intervene and give feedback on the run as single questions arise through chance encounters with a student.

Most of this feedback is task focused and not student focused. It is objective, detailed, immediate, forward looking, non-judgmental, intentional, and sometimes, but not always, reflective. These moments of feedback are critical to moving a case or project along. The shortage of time that all clinical teachers experience seldom permits more than corrective suggestions, even when there is more to say in terms of evaluation and reflection. Although Donald Schoen²²⁰ would have us be reflective within all of our actions, other demands posed by the case, the student, and the other cases and students in the clinic do not always permit it.

²²⁰ See generally Donald Schoen, *The Reflective Practitioner, and the Comparative Failures of Legal Education* 6 CLINICAL L. REV. 401 (2000).

Evaluation consists of reflection rather than action. It is a process to determine the significance, worth, or quality of a series of actions that the student has taken to determine whether lessons from classes, prior supervision sessions, and performances have been learned, internalized, and used in similar subsequent actions. It is objective, detailed, retrospective, comparative, and demands transparent goals. Because evaluation concerns the evolution of learning and behavior, it focuses on the student as well as the actions taken. When focused on the student, however, it is about the student's assumptions and growth as a learner. Social science research explains that ineffective behaviors are rarely changed because people seldom challenge the assumptions that underpin the behavior patterns that develop over the course of a lifetime.²²¹ A reflective evaluation identifies, analyzes, and alters ineffective behaviors. That is why the focus of evaluation is on both the actions and the person.

New teachers are expected to not only evaluate the students, but also to help the students learn self-evaluation techniques so that they will be able to self-critique and continue to improve their skills once they become practicing attorneys.²²² Good faculty-led evaluation sessions require that the student engage in a prior self-evaluation that relates to the clinic's goals, to lawyering tasks, and to the student's own learning goals. Its purpose is to analyze the actions the student took over a period of time, to understand why the student took those actions as opposed to other possible actions, to determine whether the actions taken over time were successful and whether they were replicated in similar subsequent circumstances. If teaching social justice is a goal of the clinic, it enables the student to contemplate how those actions advance or detract from the the role of law and lawyers in American society. Self-evaluation forces the students to become engaged in the reflective process and enables them to explore their actions more critically.²²³ It will also ensure that the student has reflected on his or her actions in each of the areas the supervisor has identified as being essential for student progress.²²⁴ The supervisor's subsequent evaluation helps ensure the student is accurately evaluating her own skills²²⁵ and permits the student to determine what he or she has actually learned from materials studied, actions taken, and the choices made. Students who engage in self-evaluation over the course

²²¹ Tarr, *supra* note 217, at 971.

²²² *Id.* at 971-72 (explaining why creating the habit of self-reflection is important for long-term development as attorneys).

²²³ Foxhoven, *supra* note 219, at 345.

²²⁴ *Id.*

²²⁵ *Id.* at 354.

of the semester or year are able to improve and hone their self-evaluation skills, which might initially be weak.²²⁶ Requiring students to engage in self-evaluation, especially when it is an explicit goal of the clinic, helps the students acquire the habit of self-evaluation for use over the course of their lives.²²⁷ New teachers need to understand that the supervisor's and student's reflection about the evaluation will provide the student with meaningful information about his or her abilities, may confront larger issues of American society, and help the student establish a habit of self-reflection.

Having the students self-evaluate also helps the supervisor feel more comfortable critiquing the student.²²⁸ Supervisors sometimes feel uncomfortable when evaluating students. When self-evaluation is an explicit goal of the clinic, supervisors will feel more comfortable providing an evaluation and students will be less defensive about receiving it.²²⁹ New teachers must learn that evaluations are intentional and not casual conversations. They will be helpful only if they provide students with more than mere opinions about their work. The evaluation should not be a one-way conversation. New teachers need to learn to listen to the student's perspective on the issue being discussed. Doing so may bring forth information that the teacher neglected to consider and reminds the supervisors of how one feels when being evaluated.²³⁰ The evaluation should be conducted in the context of the clinic's learning goals. The teacher should explain exactly which aspects of the students' work were successful and which were unsuccessful.²³¹ The comments must be specific and identify the patterns, strong and weak, that emerged from the student's work during the course of the clinic. The student's progress should be evaluated against a standard of achievement that the faculty member believes is attainable given the goals of the clinic, the content of the classroom work, the nature of the cases, and the interactions that occur in the supervision sessions during the period of time in question.²³² Students may not be prepared to listen to honest comparisons of their work in relation to the standard of achievement prescribed by the clinic's learning goals. As difficult as these conversation may be, they will

²²⁶ See Tarr, *supra* note 217, at 970 (explaining that new lawyers have generally not developed the skill of self-evaluation).

²²⁷ *Id.* at 971-72.

²²⁸ *Id.* at 982.

²²⁹ *Id.*

²³⁰ BROOKFIELD, *THE SKILLFUL TEACHER*, *supra* note 34, at 187-88.

²³¹ *Id.* at 178.

²³² See Foxhoven, *supra* note 219, at 346 (finding that faculty evaluations, based on the same criteria as the student evaluations, provides a more objective evaluation that ensures the student has an accurate perception of the quality of his or her work).

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help students accurately judge their own progress and help them internalize what they have learned.²³³

This is the type of reflective supervision and evaluation that all clinical teachers long to conduct. New teachers need to understand that clinical teaching is not just about moving a case along in the most advantageous manner for the client. That is what supervisors in law offices do. The privilege and responsibility of an academic is to use the case or project to explore the larger questions about the role of a lawyer, the process of lawyering, lifetime learning, personal development and growth, and the values that support the profession. It is also about what the Jesuits call formation.²³⁴ At our best, clinical teachers engage in the evolution of students' lives, assisting in the fullest possible development of their talents as individual human beings in order to serve not only the profession but also the greater good of humanity.

The students' growth in the responsible use of their knowledge and power as professionals is facilitated by the personal relationship between student and teacher. This is what makes clinical education within the university different from a job in a public or private legal services organization, government agency, or law firm. New teachers have to remind themselves that they are no longer simply public interest lawyers. They are now members of the academy whose job is much broader than providing good representation to clients. This is where clinical education adds value to the law school curriculum. Clinicians bring not just our skills as lawyers, but also our critical skills to the development of new lawyers. New teachers often lack confidence in their ability to provide this critique, but they must learn to do it. Insufficient or less than honest evaluation will not give the students the evaluations they deserve. It may also be a recipe for surprise when the evaluation is turned into a grade.

After the discussion about feedback and evaluation, we play a video of an evaluation session gone wrong. We ask the fellows to perform a quick-write to consider what the supervisor could have done to make the conversation with the student more productive. We then continue the class discussion, stressing the need for both the student and the faculty member to prepare for the evaluation session and the

²³³ BROOKFIELD, *THE SKILLFUL TEACHER*, *supra* note 34, at 174.

²³⁴ Georgetown University is a Jesuit institution of higher learning. In Jesuit education, formation refers to the process of educating the whole student—mind, body, and spirit—and to instill a passion for learning, reflection, service, and the greater good of humankind. Its objective is to assist in the fullest possible development of all the God-given talents of each individual person as a member of the human community. *The Characteristics of Jesuit Education* (Apr. 15, 2011), found at http://www.google.com/#q=formation+jesuit+lay+people&hl=en&prmd=ivns&ei=5l1ZTc7UE4_PgAfq8IzRDA&start=10&sa=N&fp=92188ee12107320c (select "The Characteristics of Jesuit Education").

need for both to have a clear understanding about the faculty member's expectations for students in the clinical course. We expose our fellows to the importance of setting forth in writing clearly articulated tasks and goals for the clinic and for the student²³⁵ and of clearly communicating those goals to the students at the beginning of the clinic.²³⁶ Without such articulated goals communicated in advance, students will not understand what the teacher expects and the teacher's evaluation will necessarily be amorphous. Students intent on learning are frustrated when they hear, "You did a good job" or "You could have done that better," because that tells them nothing meaningful. Expectations need to be established and communicated in advance and so that the meaning of those comments can be explained in relation to the expectations during the evaluation session.

The video demonstrates why the evaluation must be intentional and not casual. An effective evaluation requires that the teacher review in advance his or her notes concerning the student's actions and progress, compare similar activities in multiple cases or projects, find patterns, draw inferences from those patterns, and relate them to the goals of the clinic. We encourage the new teacher to specifically identify both the student's strengths and areas in need of improvement, and describe them in relation to examples of the student's work. The teacher should also give advice about how those improvements can be attained. We advise the fellows to use evaluation sessions to explore how students overcame prior challenges, how they experienced "epiphany moments" to resolve those challenges, and how the process that led to those moments can be used in other situations. We reinforce the notion that evaluation sessions are also a time to celebrate. Most students who are intent on learning will have made great progress during the clinic in at least some of the areas set forth in the earlier articulated goal statement. Recognizing those achievements will reinforce a student's good habits.

To students, however, evaluation also connotes the notion of "How am I doing?" Because grades are the coin of the realm in law schools and currency for a student's first job, evaluation in the stu-

²³⁵ See generally Jane Aiken, David Koplow, Lisa Lerman, J.P. Ogilvy, & Philip Schrag, *The Learning Contract in Legal Education*, 44 MARYLAND L. REV. 1047 (1985) (describing how encouraging students to create learning contracts in a law school clinic provides many benefits for the students' educational experience and helps the professors provide the student with the learning opportunities for which the student is looking).

²³⁶ During the conversation about the video, we also discuss the different evaluation instruments used in the various clinics at Georgetown, stressing that there are many goals that a clinician can have for the course and the students. Each clinic has developed its own grading rubric. Some give a single grade and some give multiple grades. The grading system for the Juvenile Justice Clinic is attached as Appendix C.

dents' minds often means, "What grade are you giving me?" There is a relationship between the qualitative evaluation we prepare and the quantitative grade we give a student. Nonetheless, we advise new teachers to avoid grade conversations during evaluation sessions. The evaluation teachers provide at mid-semester or at the end of a student's term in the clinic is an assessment of the quality of the multitude of tasks that students have been asked to perform and that the teacher has observed during the student's tenure in the clinic. It is reflective and retrospective and identifies and analyzes the learning strategies the student has employed and the strategies the teacher has used to determine whether the student has demonstrated an increasing understanding of the role of lawyers, the tasks they perform, and the goals that we expect the student to achieve in the course. We believe evaluation sessions are about growth, not grades.

The video also demonstrates that evaluation conversations are often difficult. They are difficult because critique is often as hard to give as it is to receive. Most teachers want to communicate unequivocal respect and affection for our students, even when they are pointing out the students' shortcomings. Teachers like the students and want to be liked by them. Those emotions, however, should not cloud a teacher's judgment. A second reason the conversations are difficult is because teachers sometimes cannot find the precise words to describe the assessment. Sometimes this is the result of incomplete or unarticulated goals for the clinic. Teachers must be precise and name concepts to create a common vocabulary and to extrapolate from one situation to another.²³⁷ Without such clarity, the message teachers seek to convey for future learning may not be received.

A third reason the conversations can be difficult is that new teachers often have not developed clear rubrics for evaluation. Without clear rubrics, the conversation can appear random and unstructured. A fourth reason is that two years of the traditional law school pedagogy and grading have beaten down many students and made them defensive about evaluation. As a result, some students are not particularly accepting of serious critique. Finally, the fact that students, like most adults, can be fairly set in their ways increases the complexity of conducting good evaluations sessions. Clinical education sometimes challenges patterns of behavior that are so deeply ingrained that a criticism of the performance is not easily separated by the student from a criticism of the self.²³⁸ The evaluation may seem

²³⁷ See *supra* note 46 and accompanying text.

²³⁸ See BROOKFIELD, *THE SKILLFUL TEACHER*, *supra* note 34, at 174 (describing how evaluations can be personal for students and have long term consequences that professors should recognize when providing evaluations).

personal because students who hope to succeed sometimes believe that the teacher's opinion of the person is dependent on the value of their work. Watching the video also gives the fellows the opportunity to examine their fears about having these honest and sometimes difficult conversations and the concomitant fear of having the students not like them or their views. Such emotions will arise in evaluation sessions and new teachers have to be prepared to cope with them when they do.

Once we have concluded the critique of the video, we ask the fellows to prepare an evaluation session that would remedy its shortcomings. We ask them to remember that despite the difficulties in conducting evaluation sessions, these sessions are a hallmark of clinical education. New teachers will have to prepare for the sessions from their first day on the job. They must remember that the goals of these evaluations are to help the student to assess his or her own progress over the duration of the course and to show strengths, gains, and areas in need of improvement. New teachers must understand that evaluation is judgmental in that it assumes a certain level of quality of the task, but it is non-judgmental of the person. No one is only the sum total of his or her work output. Moreover, the duration of the clinic is only a small part of the student's career. For the student or the teacher to assume that the budding lawyer will be an accomplished professional at the end of the clinic is unrealistic. Thus, we teach our fellows the importance of conducting the evaluation sessions in ways that judge the task, not the person.

B. Grading

The discussion about grading in the class is interwoven with the discussions of evaluation because most schools require that qualitative evaluations be changed into quantitative evaluations at the end of the student's clinic experience. Although the fellows will not bear the final responsibility for a student's grade at Georgetown, they will participate in the grading analysis and must understand how qualitative evaluation relates to and is translated into a quantitative grade. This conversation is even more important for those who want to be clinical teachers.

Grading systems vary from school to school. Some schools use numerical grades, some use adjectival descriptions or pass-fail systems, and some use the traditional letter grade. All new teachers need to understand that no matter how much they dislike reducing a student's achievements into grades, they must do so in a fair and accurate manner. Grades are given in a clinical course for many reasons. First and most important, teachers must comply with the law school's re-

quirements. Grading may also send a message to some students that clinic courses should be taken as seriously as classroom courses. Clinic faculty members give grades because academic institutions use them to recognize students who do outstanding work. Clinic students should not be deprived of an opportunity to receive awards just because the methods and work in a clinical course differ from those of non-clinical courses. In some cases, grades serve to motivate students to do their best work or, at least, to keep from doing poorly. Conversely, warnings about grades can reinforce a message to students that their work needs improvement. A tangential benefit of grading is that lawyers will be evaluated on a non-anonymous basis by supervisors in their practices once they leave law school and for some years thereafter. Experiencing personal evaluation in a less competitive and more supportive environment will help make that transition a little bit easier.

There are several reasons, in addition to those mentioned about evaluation, why grading is hard. Students work very hard in clinical course. Most say they work harder than they do in non-clinical courses. Deciding how to reward that effort²³⁹ complicates the translation of a qualitative assessment into a quantitative assessment.

Credit allocations contribute to the difficulty. Clinics at Georgetown and at several other law schools award a high number of credits.²⁴⁰ Ten or fourteen credits of A or C can have a large effect on grade point averages, honors, awards, and job possibilities. Awarding a single grade for such a large number of credits is not easy. It requires combining assessments arising from evaluations of many different lawyering and academic tasks into a unitary quantitative assessment that most likely does not reflect reality. Some students perform consistently in all areas that are evaluated and graded. More often than not, however, a student will do A level work in some areas, A- or B+ level work in others, and maybe occasionally C level work in yet another. How does one balance superior performance in one set of tasks with less than stellar work in another? What weight is appropriate for each? Why is one weightier than another?

Determining what a grade means is important to each student, to

²³⁹ The Juvenile Justice Clinic statement on hard work reads as follows: Participation in this clinic requires hard work. Ethical obligations of competence and zeal require that attorneys work hard for their clients. It is expected that every student in the clinic will fulfill this obligation. It is likely that every student will work harder in this course than they have in any other course in law school. Even if that happens, not every student will get an "A" or "A-". Simply put, hard work is a minimum requirement of this course. It puts you in position to receive a passing grade. It does not guarantee an "A" or "A-."

²⁴⁰ Students at Georgetown can receive between eight and twelve credits in one semester clinic courses and up to fourteen credits in year long-courses.

the students as a whole, and to the faculty member who has to assign the grades. It is important to an individual student because grades have real effects on students' lives no matter how often teachers try to minimize their importance. They are important to the class as a whole because students will compare their grades, want explanations for why they received a different grade from their partner, and demand that the teachers grade fairly among them. Grades are important to the faculty because we owe it to our students and our universities to be honest, fair, and as objective as possible in our grading practices.

In our discussions with the fellows, we discuss two separate issues about grading that are related and yet distinct: first, what kinds of demonstrated behavior and performance constitute a particular grade; and second, how to merge multiple evaluated behaviors into a single grade. Explaining why a student received a particular grade requires that both the faculty and the student have a similar understanding of what a grade means. Thus, we teach our fellows that new teachers must have concrete descriptions of what a particular grade means and articulable reasons why a student deserves that grade. New teachers need to develop an understandable grading rubric that explains what constitutes a particular grade and must have specific examples of a student's work that demonstrates why their work falls into a particular grade level. Several of our Georgetown clinics define their grades as follows:²⁴¹

A: Consistently excellent work in all areas, with at least one outstanding piece of significant work.

A student who earns an "A" in Role Assumption, for example, will take full ownership of his/her cases, be organized and attentive to details, and will always allocate sufficient time and effort to carry out tasks responsibly and will recognize, consider, and appropriately resolve ethical issues. A student who earns an "A" in Case Planning will show initiative and creativity in planning and developing cases, rather than merely carrying out plans encouraged by the supervisor. A student who earns an "A" in Skills Development will have mastered the various lawyering skills necessary to be a highly competent attorney. A student who earns an "A" in educational growth will actively prepare, participate, and take initiative in all class sessions, simulation exercises, and supervisory sessions.

A-: Mostly excellent work in all areas, and some occasional very good work.

B+: Consistently very good work, or a mix of generally very good work, occasional excellent work, and some competent work.

B: Competent and adequate work with some very good work, but

²⁴¹ This rubric was first used at Georgetown by Professor John Copacino and has been revised for the Juvenile Justice Clinic by Professor Kris Henning.

with some weaknesses.

B-: On the whole, competent work but with some significant lapses or shortcomings.

Below B- Serious difficulties with performance; failing to make appropriate use of supervision; failing to meet responsibilities.

During the Pedagogy class, we explain the importance of having a clear rubric, explore the pros and cons of this grading rubric, and compare it with other systems.²⁴² What is important, however, is that new teachers learn that a grade has to have meaning and its meaning has to be transparent and shared with the students. All grading systems contain some elements of subjectivity and may produce disagreements at the end of an explanation. Using a system similar to the one above, however, gives the teacher and student a distinct and mutually understandable standard from which to discuss a grade.

In addition to having a rubric, it is imperative that teachers have data that permits assignment of a grade. We teach the fellows the importance of keeping records of all of their interactions with students. Keeping timely records of student-faculty interactions is often difficult because of the press of other work. Nonetheless, evaluation and grading will be meaningless without a collection of accurate and detailed data that were recorded soon after the intervention or performance. Grades are not merely guesses about remembered actions that the student performed well or poorly. We teach our fellows that proper evaluation and proper grading will only occur if the teacher and the student are aware of the clinic's goals and expectations, and if the teacher's recorded comments about their interventions and the student's performance are keyed to the goals and expectations that we have conveyed to students at the beginning of the clinic.

Our discussions about how teachers translate assessments about multiple and disparate tasks into a single grade implicate the crediting practices that a school has developed for its clinics. After years of giving one grade for multiple performances of multiple different tasks, several of the Georgetown faculty began to split students' clinic grades into three or more categories.

We did so for two reasons. The first had to do with classroom performance. Clinics using a single grade system seldom gave a separate grade for classroom work and a separate grade for case work because we believe that the work that the student prepares and performs in the classroom necessarily reflects the tasks they will employ in their

²⁴² "At its most basic, a rubric is a scoring tool that lays out specific expectations for an assignment." See generally DANIELLE D. STEVEN & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNERS (2004).

cases. Thus, we find the classroom-case work separation artificial and unhelpful. As a result, all lawyering tasks are evaluated in all teaching venues. As the semester wears on, students often place less emphasis on their classroom preparation and performance because of the demands of their cases. After some study, the faculty determined that devoting more time to case preparation at the expense of classroom activities diminished rather than enhanced case performance. Moreover, it tended to be overlooked in grading. Some students were getting unwarranted As or A-s for their final grades because their case work was stressed and their classroom performance was ignored. Conversely, superior classroom performance seldom enhanced a grade for students with lesser case-related skills. Although some students benefitted from this practice, it was unfair to those who maintained high quality classroom performance.

A second reason we abandoned the single grade concept was a recognition that some students did outstanding work in some areas of performance and merely adequate or less than outstanding work in others. Oftentimes, the less than outstanding work in one area became significant when grades were being tallied. Students who had performed outstanding work in most areas received a lower grade than expected because of less than stellar work in one area of performance. Since students, like most people, remember their successes rather than their shortcomings, they were often disappointed by the grade and felt unfairly evaluated. From the faculty's perspective, it was difficult to demonstrate why the less than stellar performance in one area took on so much significance in comparison to the stellar performances in others. The faculty began to believe that the weighing of the various factors that led to a single grade was indefensible with or without a rubric, especially when a large number of credits were involved.

To resolve these inequities, some of the faculty began to give multiple grades reflecting the discrete categories of work students performed in the clinic. Deliberations in the Juvenile Justice Clinic resulted in four grades. Students receive grades for: 1) role assumption, which includes recognition and resolution of ethical issues and zealous and responsible representation; 2) case planning; 3) skills development; and 4) educational growth. Reflection and self-critique are required for each area. Each grading cluster also contains an additional description of the relevant tasks.²⁴³ Once the grades were assigned, they were not combined into a single grade. A student's transcript reveals a separate grade for each of the four clusters. Since

²⁴³ See Appendix C. They were developed primarily by Professor Kris Henning.

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instituting the multiple-grade system, we believe that our grades more clearly reflect an accurate quantitative rating of the qualitative assessment. Even though the cumulative effect of four grades on a student's law school grade point average may not always be significantly different from that awarded in a single grade system, the multiple grade system has the benefit of celebrating the student's accomplishments and accurately reflecting where the student's work requires improvement. It has also resulted in fewer grade complaints at the end of the term and, when combined with the intensive self- and faculty-evaluation, makes post-clinic discussions of grades with students easier.

By the end of this class, the fellows understand the theory and process of evaluation and its relation to grading, and the factors upon which grades are awarded. As a result, they are better prepared for the task. When they leave Georgetown and become teachers on their own, the fellows will have a better basis upon which to create their own rubrics to accomplish these difficult teaching tasks.

CONCLUSION

The purpose of this article was to answer the question "Where do I begin?" when I become a clinical teacher. The article describes what we believe new clinical teachers need to consider as they begin their careers. It stresses the need for goals, intentionality, clarity, and the need to communicate those goals and expectations to students. It describes reasons why new teachers should focus on the difficult issues concerning values, ethics, and difference before they embark on case or project supervision. It offers some suggestions about supervision techniques and describes classroom teaching techniques that help translate the lawyering process into a meaningful education for students. It suggests books and articles new teachers can consult when planning their course, and provides suggestions for developing good evaluation techniques and understandable grading rubrics. Finally it provides the format for a complete course to help new teachers answer the question "where do I begin?" The course we have created has helped us prepare our new teachers for their teaching and supervision tasks. We hope that our experience provides some insight to other teachers as they begin their careers or begin to design a teacher-training program.

APPENDIX A

Georgetown University Law Center
Elements of Clinical Pedagogy

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I. TWO-DAY INTENSIVE ORIENTATION PROGRAM**Day 1**

9:00 - 9:30 a.m. WELCOME TO THE LAW CENTER, CLINICAL PROGRAMS AND FELLOWSHIP PROGRAM

9:30 - 11:00 a.m. SESSION #1: INTRODUCTION TO CLINICAL TEACHING

Required Reading:**CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS (Hurder, et al., 2nd ed.) (2011):**

- Pages 18-24: Association of American Law Schools, Section on Clinical Legal Education, Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 511 (1992)

Class Manual, READINGS FOR SESSION #1:

- Excerpt from Margaret Martin Barry, Jon C. Dubin and Peter A. Joy, *Clinical Education for This Millennium*, 7 CLIN. L. REV. 1 (2000)
- Minna Kotkin and Dean Rivkin, *Reflections from Two Boomers*, 17 CLIN. L. REV. 197 (2010)
- Praveen Kosuri, *X Marks the Spot*, 17 CLIN. L. REV. 205 (2010)
- *Glossary of Clinical Terms* and *A Taxonomy of Clinical Program*
- *Design*, in CLINICAL LEGAL EDUCATION ASSOCIATION HANDBOOK FOR NEW CLINICAL TEACHERS (2001) (Skim)
- Excerpt from Joy and Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183 (2008).

Recommended Reading:**Class Manual, READINGS FOR SESSION #1:**

- William Pincus, *Legal Education in a Service Setting*, in CLINICAL EDUCATION FOR THE LAW STUDENT 1973 27-39 (Working Papers Prepared for CLEPR Nat'l Conference, 1973)
- *Guidelines for Clinical Legal Education*, in Report of aals-aba Committee on Guidelines for Clinical Legal Education 12-37 (1980)
- 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) [THE MACCRATE REPORT]

CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:

- Pages 3-9: Excerpt from Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933)
- Pages 9-18: Excerpt from Anthony G. Amsterdam, *Clinical Legal Education — A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984)

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12:15 - 2:30 p.m. LUNCH AND CP CLASS SESSION #2: PRESENTATIONS ON GEORGETOWN CLINICAL PROGRAMS**Required Reading:****Class Manual, READINGS FOR SESSION #2:**

- Clinical Programs & Graduate Teaching Fellowships, Georgetown University Law Center (2010)
- Wallace J. Mlyniec, *The Intersection of Three Visions Ken Pye, Bill Pincus, and Bill Greenhalgh B And the Development of Clinical Teaching Fellowships*, 64 TENN. L. REV. 963 (1997)
- Excerpt from THE FIRST 125 YEARS: AN ILLUSTRATED HISTORY OF THE GEORGETOWN UNIVERSITY LAW CENTER (1995)

2:30 - 5:00 p.m. SESSION #3: SUPERVISION THEORIES AND METHODS**Required Reading:****CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:**

- Pages 72-83: Excerpt from Anne Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993)
- Pages 90-96: Excerpt from Minna Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N. MEX. L. REV. 185 (1989)
- Pages 188-195: Excerpt from George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1990/1991)

Class Manual, READINGS FOR SESSION # 3:

- Excerpt from D.C. Ct. App. Rule 48 (2008)
- Excerpt from Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (16)
- Excerpt from James Stark, Jon Bauer and James Papillo, *Directiveness in Clinical Supervision*, 3 PUB. INT. L. J. 35 (1993)

Recommended Reading:**Class Manual, READINGS FOR SESSION # 3:**

- David Binder and Carrie Menkel-Meadow, *Critiquing a Participant's Performance: Suggestions on How to Critique*
- Gary Bellow, *Clinical Education for the Law Student: Legal Education in a Service Setting* 374-413 (1973)
- Jane Aiken, David Koplow, Lisa Lerman, J.P. Ogilvy, Philip Schrag, *The Learning Contract in Legal Education*, 44 MARYLAND L. REV. 1047 (1985)

DAY 2**9:00 - 10:30 a.m. SESSION #4: SUPERVISION THEORIES AND METHODS —WRITING****Required Reading:****Class Manual, READINGS FOR SESSION #4:**

- Excerpt from Angela J. Campbell, *Teaching Legal Writing in a Law School Clinic*, 24 SETON HALL L. REV. 653 (1993)

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- Excerpt from John C. Bean, *ENGAGING IDEAS* (2001)
- Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLIN. L. REV. 285 (2010).

Recommended Reading:

CLASS MANUAL, READINGS FOR SESSION # 4:

- Nancy Sommers, *Responding to Student Writing*, 33 COLLEGE COMPOSITION & COMMUNICATION 148 (1982)

10:30 - 10:45 a.m. BREAK**10:45 a.m. - 12:15 p.m. SMALL GROUP DISCUSSION OF SUPERVISION**

- Group A: Fellows from Center for Applied Legal Studies, Criminal Justice, Domestic Violence, Juvenile Justice, Street Law
- Group B: Fellows from Appellate, Community Justice Project, Federal Legislation, Harrison, Institute for Public Representation, International Women's Human Rights

Required Reading:

READINGS FOR SMALL GROUP DISCUSSION OF SUPERVISION AND FEEDBACK:

CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:

- Pages 110-118; Excerpt from Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLIN. L. REV. 143 (2006)
- Pages 37- 41: Roy Stuckey et. al., *Best Practices for Legal Education* (2007)

2:00 - 3:30 p.m. CP CLASS SESSION #5: TEACHING VALUES IN A CLINICAL SETTING**Required Reading:**

Class Manual, READINGS FOR SESSION #5:

- Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327 (2001)
- Carrie Menkel-Meadow, *The Causes of Cause Lawyering*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 31, 31-68 (Austin Sarat & Stuart Scheingold, eds., 1998)
- Karla Mari McKanders, *Shades of Gray*, 17 CLIN. L. REV. 223 (2010)
- Excerpt from Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, 4 CLIN. L. REV. 1 (1997)
- Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13 CLIN. L. REV. 459 (2006)

Recommended Reading:

Class Manual, READINGS FOR SESSION #5:

- Robert Coles, *the Call of Service: A Witness to Idealism*, xi-30 (1993)

3:30 - 3:45 p.m. BREAK

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3:45 - 5:00 p.m. SMALL GROUP DISCUSSION OF VALUES

Group A: Fellows from Center for Applied Legal Studies, Criminal Justice, Domestic Violence, Juvenile Justice, Street Law

Group B: Fellows from Appellate, Community Justice Project, Federal Legislation, Harrison, Institute for Public Representation, International Women's Human Rights

5:00 p.m. RECEPTION**II. ONGOING CLASSES****SESSION #6: TEACHING ETHICS IN A CLINICAL SETTING****Required Reading:****CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:**

- Pages 127-133: Excerpt from Geoffrey Hazard, *Personal Values and Professional Ethics*, 40 CLEVELAND ST. L. REV. 133 (1992).

Class Manual, READINGS FOR SESSION # 6:

- Peter A. Joy & Robert R. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLINICAL L. REV. 493, 495-503 (2003).
- Catherine O'Grady, *Preparing Students for the Profession*, 4 CLIN. L. REV. 485-6, 488-94, 497-501, 505-12, 522-530 (1998).

Recommended Reading:**CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:**

- Pages 133-141: Excerpt from David Luban and Michael Milleman, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31 (1995)

SESSION #7: FEEDBACK, EVALUATION & GRADING**Required Reading:****Class Manual: READINGS FOR SESSION #7:**

- Peanuts Cartoon
- Amy L. Ziegler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575, 575-82, 585-90 (1992).
- Nina Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PACIFIC L. J. 967, 967-73, 982-8 (1990).
- Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLINICAL L. REV. 342, 342-8, 350-4 (2010).
- Center for Applied Legal Studies, Grading Memo
- Juvenile Justice Clinic, Evaluation Criteria

Recommended Reading:**Class Manual: READINGS FOR SESSION #7:**

- Cort and Sammons, *The Search for Good Lawyering: A Concept and Model of Lawyering Competency*, 29 CLEV. ST. L. REV. 397, 405-14, 422-8, 439-50 (1980).

- Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLINICAL L. REV. 299, 299-328 (1997).

SESSION #8: TEACHING DIFFERENCE & CULTURAL COMPETENCY IN A CLINICAL SETTING

Required Reading:

CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:

- Pages 350-358: Excerpt from Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 HARV. C.R. - C.L. L. REV. 1, 15-27 (1993)

Class Manual: READINGS FOR SESSION #8:

- Philip M. Genty, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLINICAL L. REV. 273, 275-81 (2000)
- Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 369-401 (2005).
- Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 9 CLINICAL L. REV. 33, 33-78 (2002).

Recommended Reading:

CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS:

- pages 275-278: Excerpt from Gerald P. Lopez, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992)

CLASS MANUAL: READINGS FOR SESSION #8:

- Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 9 CLINICAL L. REV. 33, 78-107 (2002).
- Excerpt from Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993)

SESSION #9: SEMESTER RECAP

Required Reading:

CLASS MANUAL: READINGS FOR SESSION #9:

- Kathleen A. Sullivan, *Self Disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 INDIANA L. REV. 115, 115-132 (1993)

SESSION #10: CASE ROUNDS

Required Reading:

CLASS MANUAL: READINGS FOR SESSION #10:

- Excerpt from Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007).

SESSION #11: ADAPTIVE SUPERVISION

Required Reading

CLASS MANUAL, READINGS FOR SESSION #11:

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- Robert Stumberg, *Adaptive Supervision*, January 2011.

Recommended Reading:

CLASS MANUAL, READINGS FOR SESSION #11:

- Excerpt from Margaret Martin Barry, *Clinical Supervision: Walking That Fine Line*, 2 CLINICAL L. REV. 137 (1995)
- Excerpt from Robert Rader, *Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Criminal Defendants*, 1 CLINICAL L. REV. 299 (1994)

SESSION #12: CLASSROOM TEACHING IN A CLINICAL SETTING**Required Reading**

CLASS MANUAL, READINGS FOR SESSION #12:

- Nira Hativa, *Teaching Large Law Classes Well: An Outsider's View*, 50 J. LEGAL EDUC. 95 (2000).
- JOSEPH LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* 154-157 (2d ed. 1995).
- GRANT WIGGINS AND JAY MCTIGHE, *UNDERSTANDING DESIGN*, excerpts from Chapter 1, (2nd ed. 2006).
- STEPHEN BROOKFIELD, *THE SKILLFUL TEACHER*, excerpts from Chapter 2 (2nd ed. 2006).

Recommended Reading

CLASS MANUAL, READINGS FOR SESSION #12:

- JOSEPH LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* 20-36, 166-190 (2d ed. 1995).
- GRANT WIGGINS AND JAY MCTIGHE, *UNDERSTANDING DESIGN*, (2nd ed. 2006).
- STEPHEN BROOKFIELD, *THE SKILLFUL TEACHER*, (2nd ed. 2006).

Reference Materials

CLASS MANUAL, SESSION #12:

- Paula Young, *Bibliography of Books and Articles on Active Learning and Other Techniques for Teaching Law*, published by The Institute for Law and Teaching, <http://lawteaching.org/resources/bibliographies/young-paula-activelearningbibliography200807.pdf>
- Philip Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. LEGAL EDUC. 555 (1989).
- Gerald F. Hess, *Monographs on Teaching and Learning for Legal Educators*, SPECIAL EDITION OF GONZAGA L. REV. [in conjunction with the Institute for Law School Teaching] 63 (2000)

APPENDIX B

Diagnostic Model for Adapting Supervision

Note: The categories in each column are not horizontally aligned or linked.

Observe behaviors	Analyze contributing factors	Adapt supervision
<i>Productivity</i> <ul style="list-style-type: none"> • Miss deadlines • Late to meetings • Seek to opt out • Show little initiative 	<i>Supervisor</i> <ul style="list-style-type: none"> • Supervision style • Knowledge of facts and law • Personality tendencies • Expectations of students • Reactions to students 	<i>Supervisor role</i> <ul style="list-style-type: none"> • Avoid emotional reactions • Be more / less directive • Be more / less demanding • Identify student patterns • Involve clinic director • Integrate previous experience • Resolve role conflicts • Change supervisors • Get psych / educat'n advice
<i>Cognition</i> <ul style="list-style-type: none"> • Speak / write poorly • Conflate / distort concepts • Cannot reflect objectively 	<i>Clinic</i> <ul style="list-style-type: none"> • Nondirective / directive • Extent of skills, analytic training • One vs. two semesters • Workload 	<i>Clinic operations</i> <ul style="list-style-type: none"> • Set expectations • Strengthen supervisor skills • Alter client intake • Strengthen curriculum <ul style="list-style-type: none"> ◦ Analysis and practice skills ◦ Managing role conflicts ◦ Managing culture differences
<i>Relationships</i> <ul style="list-style-type: none"> • Defensive • Hypercritical / argumentative • Rejects supervisor's advice • Agrees, then reject advice • Defers / passive w/teammate • Averse / attracted to client 	<i>Client</i> <ul style="list-style-type: none"> • Non-legal needs • Complex legal needs • Language and culture • Radical politics • Temperament • Directiveness on strategy • Multiple identities / roles • Other expectations 	
<i>Emotions</i> <ul style="list-style-type: none"> • Indifferent • Pessimistic, hypercritical • Vulnerable / defensive • Angry • Frustrated • Anxious • Volatile 	<i>Student</i> <ul style="list-style-type: none"> • Language education • Cognitive disorder <ul style="list-style-type: none"> ◦ E.g., learning disability • Mood tendency / disorder <ul style="list-style-type: none"> ◦ E.g., anxiety, depression • Personality tendency / disorder <ul style="list-style-type: none"> ◦ E.g., obsessive, narcissistic • Physical disability • Past trauma 	<i>Student role</i> <ul style="list-style-type: none"> • Give more freedom • Assign shorter / longer project • Reallocate work to others • Reduce load outside clinic • Resolve role conflicts • Dissolve team • Limit relations with client
		<i>Referral</i> <ul style="list-style-type: none"> • Psychological services • Language / writing • Public speaking

Method

1. Observe student behaviors that you might encounter in difficult supervision. While we begin by observing students, a student may not be the source (or the sole source) of the difficulty, even though the student's behavior may be the symptom that there is a problem.
2. Analyze potential contributing factors, starting with supervisor factors.
3. Adapt supervision, and note the factors for which adaptations are appropriate.

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APPENDIX C

EVALUATION OF STUDENT PERFORMANCE

This memo describes what is expected of you this year and discusses the factors we will consider in evaluating your performance. This description is detailed, but it cannot be exhaustive. We cannot list everything you will experience this year. We do not know just what your cases will require. You can expect to be asked to do the many things described below, and perhaps many other things as well. We will try to take it all into account when evaluating your work, just as we hope you will handle it all when representing your clients.

To best appreciate the system by which grades are assigned you should consider each of the criteria and factors we set forth in this memo. You are being trained to be a skilled and responsible practicing attorney. The center of the clinical experience is your clients and their cases, for which you are responsible. You will, therefore, be graded on your ability to take responsibility for your cases and do everything necessary to provide a zealous and legally sophisticated defense of your clients. To prepare you for your cases, the clinic also includes class readings and assignments designed to develop your proficiency in both the analysis and delivery of your cases. Finally, you are expected to learn from your experiences so that you will become a better attorney—both by learning in the clinic and learning the habits which will serve you in your professional life.

Participation in the clinic requires that you perform a number of tasks in a wide variety of settings. You will advocate in courtrooms. You will research in the library. You will conduct interviews in the office and on the street. You will draft opening statements and you will deliver them before you get to court (in your supervisor's office, in the classroom, and perhaps in the halls for your colleagues). You will counsel your clients (in the office, at their homes, and on the phone). You will perform simulations for class (sometimes on videotape). You will read cases for class and for your client's cases. This list could go on for pages.

We will be giving you four separate and distinct grades in the clinic. Full-year students will receive one 4-credit grade for Assumption of Role, one 3-credit grade for Case Planning, one 4-credit grade for Skills Development, and one 3-credit grade for Educational Growth. One semester students will receive one 3-credit grade for Assumption of Role, one 2-credit grade for Case Planning, one 2-credit grade for Skills Development, and one 2-credit grade for Educational Growth. We have made an effort to set forth the criteria that we will consider in evaluating your performance in each of these graded areas. We think this is important for two reasons: 1) the criteria will help us to provide consistent evaluation of all students in the clinic; 2) the criteria will let you know what is expected and what factors will be used to evaluate your performance. We have tried to be as thorough as possible, but you should not consider these factors to be the exclusive criteria for evaluation.

I. ROLE ASSUMPTION*Full-year students – 4 credit grade**Half-year students – 3 credit grade*

Having students assume the role and responsibilities of a lawyer is the foundation of clinical education methodology. Students in the Juvenile Justice Clinic will assume the role of an attorney in all of its manifestations.

A. Ethical Considerations

Professional responsibility is an indispensable feature of good lawyering. Knowledge of and adherence to ethical rules is obviously necessary to practice law. You will be expected to zealously represent your clients and, of course, to preserve client confi-

dences. You will also be expected to identify the ways in which these obligations and others contained within the D.C. Rules of Professional Conduct affect your work on any case. As with any other issue, we expect that, having become familiar with the rules, you will recognize ethical concerns in your cases, consider the choices presented, develop a plan of action that will respond to the issues presented, and initiate discussion with your supervisor. The penalties for noncompliance with ethical obligations and zealous representation may include grade reduction or course failure.

B. Zealous and Responsible Representation

Professional responsibility is not limited to the ethical considerations of lawyering. It also includes attention to cases and to other clinic responsibilities, effort in the representation of clients, and management of one's workload. Some specific factors are:

- * Putting forth effort to provide zealous representation and the best possible defense.
- * Taking personal responsibility for a client's case.
- * Ensuring that cases are prepared for court hearings.
- * Maintaining appropriate relationships with clients, other attorneys, and court officials.
- * Meeting deadlines imposed by the court, by your supervisors, and on your own initiative.
- * Being punctual and attentive to professional obligations, including court appearances and meetings with clients, supervisors, witnesses, and other students.
- * Maintaining files accurately and precisely, and complying with office procedures.
- * Allocating time and effort to carry out tasks responsibly.

C. Reflection & Self-Critique

Reflection applies to all four graded areas and is discussed at length below in Part IV. B.

II. CASE PLANNING

Full-year students – 3 credit grade

Half-year students – 2 credit grade

A. The Planning Process²

This is a broad area that encompasses the development of a case theory, deliberation about alternative strategies, and judgment exercised in the context of fluid information and uncertainty. Planning is the single most important feature of good lawyering. In the context of representing children charged as delinquents, planning must occur in several areas. In developing and executing your theory of the case, you must plan investigation, research, and examinations of witnesses. As you uncover new facts (or fail to uncover desired proof of expected facts) you must adjust your plan so that it corresponds to these developments. While hoping from the outset that your client will not be found guilty, you must start right away to plan for the possible

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disposition hearing. In addition, you must devise a plan that will help address the various other issues affecting your client's case (school, family, substance abuse). This plan will necessarily be designed in accordance with your client's directions. Some activities in this area are:

- * Developing a theory and strategy for each case, taking into consideration the application of evidence, statutes, regulations, and case law to develop a plan for using facts and law to the benefit of the client.
- * Modifying and reassessing strategy in light of subsequent developments.
- * Refining and improving work between planning and final draft or performance.
- * Considering consciously the ethical, strategic, and client-specific issues in cases.
- * Weighing consciously the risks and benefits attendant to different strategies.
- * Making appropriate judgments and decisions and setting priorities given available information and resources.

To make this more concrete, **we expect that, as the person chiefly responsible for the development of a case, you will come into supervision meetings having considered the various challenges you face and having identified several responses to them.** You will be able to articulate these challenges and responses for your supervisor. We expect you to realize that rules of ethics, the law of evidence, common sense, and many other factors may favor some responses and constrain you in implementing others. We do not expect that any of this will come naturally. Nor do we expect that each of you will enter your first supervision meeting with a plan that would be developed by an experienced lawyer. We do expect that your planning will show a serious application of time and effort and that, with time and effort, it will improve.

B. Reflection & Self-Critique

Reflection applies to all four graded areas and is discussed at length below in Part IV. B.

III. SKILLS DEVELOPMENT:

Full-year students – 4 credit grade

Half-year students – 2 credit grade

A. Lawyering Skills

Work in the clinic provides the opportunity to develop a wide variety of skills. Your performance in court will be evaluated, as will your performance of out-of-court lawyering skills.

- * Interviewing: Structure, rapport, obtaining information. (To be evaluated within the constraints of our decision not to have supervisors at client interviews.)
- * Counseling: Helping the client to understand his/her alternatives; keeping the client informed; remaining sensitive to full range of the client's needs.
- * Fact Investigation: Planning, thoroughness, effort, creativity.
- * Legal Research: Thoroughness, accuracy, appropriate analysis of relevant sources.

- * Writing: Organization, structure, use of language and writing techniques that are appropriate to the audience, and are concise and persuasive.
- * Hearing Performance: Executing of the plan; adequately performing the skills in court; dealing flexibly with unexpected developments.

B. Reflection & Self-Critique

Reflection applies to all four graded areas and is discussed at length below in Part IV. B.

IV. EDUCATIONAL GROWTH:

Full-year students – 3 credit grade

Half-year students – 2 credit grade

A. Classroom Work

Classroom work is an important aspect of your work in the clinic. Your thoughtful contributions will be essential to the success of the clinic. You are expected to be prepared for all classes, to participate in all discussions, supervision sessions and simulations. We do not want you to talk for the sake of talking any more than we would expect you to cross-examine a witness just for the sake of saying something. We choose the topics for class carefully, with an eye toward having the group learn with and from each other. We expect the same sort of preparation and participation from you in your supervision sessions. Some specific factors are:

- * Preparation for class.
- * Consistent participation in class.
- * Quality of class contributions including meaningful participation in discussion and analysis.
- * Participation in simulations and execution of assignments, while remaining in role.
- * Preparation for supervisory meetings.
- * Initiative and creativity in raising issues and planning case.
- * Class and supervision session attendance and punctuality.

B. Reflection & Self-Critique

Reflection will factor into all four of the graded areas. Reflection is a critical feature of clinical learning. You should be doing it during and after every task you perform in the clinic. What we mean by reflection is not simply reviewing what happened. Instead, we want you to engage in critical analysis of your work. We expect that you will ask yourselves questions such as those listed below, and be prepared to discuss them with your supervisor. *Then, when you are engaged in your next task, you will use what you learned through reflection to decide what to do.*

How did you come to make the decisions that you made? (E.g., Why did you choose to call one defense witness and not another? Why did you choose one defense theory over another?) How did you determine the choices that you thought you faced? Why didn't you see other choices? What led other people (clients, judges, and opposing counsel) to act as they

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did? How will the answers to these questions affect the way you approach your work in the future? What lessons can be drawn from this experience about the way in which the legal system actually works? How does that compare with your ideals of how the system ought to work? How do the cases we read and the exercises we do in class affect your actual case work?

V. THE GRADING PROCESS

The following is a rough description of the quality of work which corresponds to the various grades. These are necessarily general and limited descriptions, but ones which we hope will be useful in helping you to understand our grading criteria.

- A: Consistently excellent work in all areas, with at least one outstanding piece of significant work.
And a student who earns an “A” in Role Assumption will take full ownership of his/her cases, be organized and attentive to details, and will always allocate sufficient time and effort to carry out tasks responsibly and will recognize, consider, and appropriately resolve ethical issues. A student who earns an “A” in Case Planning will show initiative and creativity in planning and developing cases, rather than merely carrying out plans encouraged by the supervisor. A student who earns an “A” in Skills Development will have mastered the various lawyering skills necessary to be a highly competent attorney. A student who earns an “A” in educational growth will actively prepare, participate and take initiative in all class sessions, simulation exercises, and supervisory sessions.
- A-: Mostly excellent work in all areas, and some occasional very good work.
- B+: Consistently very good work, or a mix of generally very good work, occasional excellent work, and some competent work.
- B: Competent and adequate work with some very good work, but with some weaknesses.
- B-: On the whole, competent work but with some significant lapses or shortcomings.
- Below B-: Serious difficulties with performance; failing to make appropriate use of supervision; *failing to meet responsibilities*.

A NOTE ON EFFORT

Participation in this clinic requires hard work. Ethical obligations of competence and zeal require attorneys to work hard. It is expected that every student in the clinic will fulfill this obligation. ***It is likely that every student will work harder in this course than in any other course in law school. Even if that happens, not every student will get an “A” or “A-”.*** Simply put, hard work is a minimum requirement of this course. It puts you in position to receive a passing grade. It does not guarantee an “A” or “A-.”

