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William P. Quigley

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**INTRODUCTION TO CLINICAL TEACHING
FOR THE NEW CLINICAL LAW PROFESSOR:
A VIEW FROM THE FIRST FLOOR**

by

WILLIAM P. QUIGLEY¹

I. INTRODUCTION

Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and, perhaps most critically, the student performance is subjected to intensive critical review.²

New clinical teachers, full of enthusiasm and energy, arrive at the law school having just crossed over into the new vocation of professor from their previous work as practicing lawyers. As many as ten eager, dedicated, inexperienced law students will shortly be representing several clients each, under the close supervision of the new clinical faculty member. There is a new office, new coworkers, new cases, new students, but most new of all, a new way of operating. No longer the lone advocate, now the advocate has become a clinical teacher, working with law students. Dedicated to education and service, the clinic teacher is ready to start. But where are the instructions on clinical teaching? Where is the clinic teacher's manual?

A person who has become a great lawyer is not necessarily a great or even good or even adequate clinic teacher. What then is the new teacher to do? There is no clinic teacher instruction book nor any clinic teacher's manual. While kindergarten teachers and grade school teachers and high school teachers are all required to study how to teach before beginning as teachers, law school teachers have no such prerequisites.

As two law school teachers recently noted:

Most of us came to the teaching of law after having practiced in the

1. Associate Professor of Law at Loyola University School of Law and Director of the Loyola Law Clinic.

The author thanks Ramona Almonte, Debra Dupre, Jack Nelson, Fran Quigley, Cynthia Tolbert, Louis Westerfield, and Barbara Wilson for their help with this article.

2. *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992) [hereinafter *Report*].

field. We generally brought with us the experience of having been highly successful in traditionally taught law school courses. Since few of us had any training in how to teach effectively, we often fell back upon these traditional methods – perhaps with a few changes designed to excise those elements of our training which we deemed ineffective or inappropriate.³

In addition to the traditional method of trying to remember and copy the best of the teacher's own clinical law professors, there are the shared thoughts and the wisdom of experienced coworkers who are very willing to help. There are also a few articles on advice for the new law professor.⁴ But there is precious little addressed to the new clinic teacher. Thus, this article was written.

How did clinical legal education get started? What is the purpose of clinical legal education in light of the traditional classroom approach to legal education? What is involved in supervising the work of students? How much control over cases should the student have? How do the teacher and the student work together to serve the clinic's clients and the student's education?

This article's goal is to introduce the new clinic teacher to some responses to these questions and give the new teacher a place to start the process of defining her own clinical teaching style.

Some thoughts about the history and goals of clinical education begin the article. The article then discusses the educational stages of the supervisory process and issues involving student control of cases. It concludes with brief discussion of the relationship between teacher and student and their relationships with the clinic clients.

There are many other matters that could, and need to be, discussed. These are a few introductory thoughts that will hopefully help the novice in

3. Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, 1994 GONZ. L. REV. 1 (special ed. 1994). Their bibliography contains book listings in 45 categories of law teaching, including clinical education. *Id.* at 10-12.

4. See Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247 (1993); Susan J. Becker, *Advice for the New Law Professor: A View from the Trenches*, 42 J. LEGAL EDUC. 432 (1992); Douglas K. Newell, *Ten Survival Suggestions For Rookie Law Teachers*, 33 J. LEGAL EDUC. 693 (1983); and Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L.J. 125 (1982). These articles offer valuable insights for the new law professor and should be reviewed by the new clinical teacher, but they focus primarily on the life and times of the classroom teacher and not the clinical teacher.

A 35-minute video is also available. *A Day in the Life of . . . Law School Teaching*, (Professor Larry Dubin & Institute of Law School Teaching, June, 1994). This tape covers traditional classroom teaching in Contracts, First Amendment, Criminal Law, Negotiations and Evidence by short interviews with teachers discussing their preparation before classes, a bit of the class and post-class interviews with students. Call (509)-328-4220, ext. 3740 to order.

the transition from advocate to teacher. These are not universal truths. They are offered to help the beginning clinic teacher learn how to begin to teach.⁵

II. A BRIEF HISTORY OF CLINICAL EDUCATION

Though law school clinics at many schools have been in existence only since the 1960s, clinical legal education has a rich historical tradition.

The earliest legal education in the United States was clinical.⁶ It came in the apprentice system, where the prospective lawyer "read law" in the office of a practicing lawyer. This apprenticeship system was based on the English practice of clerking with experienced practitioners, a system which was an outgrowth of the Inns of Court.⁷

While the experience of apprenticeship varied widely and changed over time, it usually consisted of students learning at the sides of practicing lawyers. This learning involved copying and drafting pleadings, reading law cases and texts on the practice of law, and observing their mentors in action.⁸ The problems of using such an approach as the exclusive method of legal education are apparent. While the system undoubtedly produced some of history's finest lawyers, such an approach is by nature uneven, narrow, and not at all an indicator of future competence as an attorney.

Law schools in the United States were, in the early years, the less-utilized path to the practice of law. Law schools originally were a supplement to the apprenticeship program. As one respected historical voice indicates "law schools first justified their existence on the ground that they were specially adapted for providing, not the whole, but a single phase, of the student's preparation."⁹

In 1800, the majority of the states required a period of apprenticeship, but by 1860, with the rise of law schools (there were then twenty-one law schools in existence) very few states required any sort of apprenticeship

5. The footnotes contain citations to law review articles on clinical education. The footnotes and quotes are provided to the new teacher to capture an important insight or hint of that author, and to provide ideas for additional readings in clinical education by the new teacher.

6. George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 163 (1974).

7. Leonard D. Pertnoy, *Skills Is Not A Dirty Word*, 59 MO. L. REV. 169, 174 (1994). Edward I ordered the creation of a system of training lawyers and the Inns of Court were ultimately the result.

8. Dominick R. Vetri, *Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education*, 50 OR. L. REV. 51, 57 (1970).

9. ALFRED Z. REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA, 210 (1928), reprinted in WILLIAM S. HEIN, HISTORICAL WRITINGS IN LAW AND JURISPRUDENCE (1987).

at all.¹⁰

The wide-spread creation of law schools followed the apprenticeship system, overlapped it in the early nineteenth century, and eventually overtook apprenticeships as the primary method of becoming a lawyer.¹¹

Early in this century, legal education by law schools rose as education by apprenticeship declined.¹² As late as 1928, only four states required any law school classes as an indispensable requirement for admission to the bar.¹³

There followed a fierce battle between the proponents of the apprenticeship system and the devotees of the law school classroom with both sides discounting the value of the other in a bid for dominance in the education of lawyers.¹⁴ This conflict was frequently fought out in the battles over raising

10. These requirements varied by state. In Massachusetts five years of apprenticeship was required with a one year reduction for college graduates. At the time of independence from England, only one state had no apprenticeship rules. For more discussion of these early structures of legal education see ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S*, 1-10 nn.14-15 (1983).

11. The movement to academic professionalism of legal education created the law school as a gatekeeper to the profession and had the unfortunate and unintended effect of decreasing the role of lawyer as public participant. As in many other professions, the law school raised the threshold requirements, deepened the financial prerequisite commitment, and essentially isolated the study of law from broader intellectual efforts. Paul D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, 41 DUKE L.J. 741, 776-86 (1992). Such efforts threatened "to unfit law graduates for public service, by imparting to them an insular notion of their discipline." *Id.* at 780.

But, this overlap can be seen in a story about Abraham Lincoln in 1855 related by Nathaniel W. Stephenson. Lincoln had encountered the condescension of a college-trained lawyer in a case and spoke of this to Ralph Emerson:

Lincoln: I am going home to study law .

Emerson: You stand at the head of the bar in Illinois now.

Lincoln: Oh, yes, I do occupy a good position there, and I think I can get along with the way things are done there now. But these college-trained men, who have devoted their whole lives to study, are coming west, don't you see? And they study their cases as we never do. They have got as far as Cincinnati now. They will soon be in Illinois. I am going home to study law. I am as good as any of them, and when they get out into Illinois I will be ready for them.

STEVENS, *supra* note 10, at 19, n.72 (quoting NATHANIEL N. STEPHENSON, *AN AUTOBIOGRAPHY OF ABRAHAM LINCOLN* 118).

12. The American Bar Association noted that in 1930 44 states still recognized "office study" as a sufficient to allow applicants to take their bar examinations. Will Shafroth, *The Rising Tide of Advocates*, 16 A.B.A. J. 451, 452 (1930). The ABA worked for the elimination of the states' practice of allowing an apprenticeship approach to admission to the bar calling it "one of their most backward elements." *Id.* at 452.

13. REED, *supra* note 9, at 212.

14. *Id.* at 213. Alfred Reed suggests that in 1928, this conflict led to the standoff still seen in some limited parts of contemporary legal education:

Unwillingness on the part of the profession at large to concede that law school training is indispensable has promoted unwillingness on the part of law school men to concede

bar admission requirements.¹⁵

In this transition period, select law schools tried to address the lack of actual preparation for lawyering in their students as contrasted with those still in apprenticeships by looking at clinical education.

Clinical legal education in law schools began as a series of individual programs at law schools. Frequently this clinical work was undertaken by students on a volunteer basis and for which they received no credit.¹⁶

The University of Pennsylvania incorporated some legal aid work into its law school as early in 1893. The University of Denver followed in 1904. Independent legal aid societies were started at Harvard in 1913, George Washington in 1914, Yale in 1915, and the University of Tennessee in 1916. Also in 1916, Wisconsin began requiring six months of office work from candidates for a degree.¹⁷ By 1925, Cincinnati and Northwestern also incorporated some form of legal aid work into their programs.¹⁸ The Harvard Legal Aid Clinic was started in 1912.¹⁹ In 1923, the University of Southern California began awarding credit for work at the Los Angeles Legal Aid foundation, which it helped establish.²⁰ Duke University School of Law opened a legal aid clinic in 1931.²¹

that any other sort of training is desirable, and has fostered a system of preparation in which neither of these two methods receives its appropriate emphasis.

Id.

Other authors dispute the efficacy and accuracy of using labels like the “theory” of traditional courses or the “practice” of clinical education. See Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577 (1987) (discussing this dichotomy and calls upon schools to describe differences in learning opportunities between traditional classroom methods and clinical education by focusing more on the actual methods of learning in each opportunity rather than broad brush categories).

15. A few states required some years of training in a law office, but most had nothing more than a perfunctory oral bar examination. The bar began organizing late in the nineteenth century and about the turn of the century began to elevate itself by imposing legal restrictions on admissions...The bar was most concerned by the image of the incompetent lawyer bungling either through stupidity or cupidity the affairs of his clients (usually, in this context, thought to be the poor). Leaving aside the ethical problem for a moment, the bar's cure for the disease of incompetency based on ignorance was admission restrictions, notably the bar examination designed to exclude the ill-trained.

Preble Stolz, *Clinical Experience in Legal Education; Why Has It Failed?*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 54, 60 (E. Kitch ed. 1970).

16. Vetri, *supra* note 18, at 58, n.3.

17. REED, *supra* note 9, at 216-17.

18. STEVENS, *supra* note 10, at 162 (noting the beginnings of such work).

19. Tilford E. Dudley, *The Harvard Legal Aid Bureau*, 17 A.B.A. J. 692 (1931).

20. Gary Bellow & Earl Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664, 667 (1971).

21. John S. Bradley, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH.

A series of law review articles in the 1930s gave impetus and encouragement to the proponents of clinical legal education in law schools.²²

In the 1933 University of Chicago Law Review,²³ John Bradway, the Director of the Duke Legal Aid Clinic, and one of the most prolific of the early scholars of clinical legal education,²⁴ set out five goals for the clinical method of instruction: first, bridge the gap between the theory of law school and the practice of the profession; second, synthesize the various bodies of substantive law and procedural law learned by the student; third, an introduction into the human element of the study and practice of law; fourth, an introduction into the unwritten lessons of advocacy in the practice of law; and fifth, teaching the student to think of legal matters and issues from the beginning of their development, rather than the end as appellate opinions.²⁵

The 1933 University of Pennsylvania Law Review article of Judge Jerome Frank, *Why not a Clinical-Lawyer School?*²⁶ criticized legal education centered on review of appellate opinions and called for expansion of legal education by including some parts of a modified version of the apprenticeship system. According to Judge Frank:

The trouble with much law school teaching is that, confining its attention to a study of upper court opinions, it is hopelessly oversimplified . . . is it not plain that, without giving up entirely the case-book system or the growing and valuable alliance with the so-called social sciences, the law schools should once more get in intimate contact with what clients need and with what courts and lawyers actually do?²⁷

Among others, Judge Frank specifically called for consideration of the following ideas: 1) Requiring a considerable proportion of law school teachers in any school to have at least five, and preferably ten, years of varied experience in the actual practice of law; 2) The case book system should be revised to contain the complete record of cases and not just the final appellate decisions; 3) Students should be given the opportunity to see actual legal operations by frequent visits with professors to trial and appellate courts; 4) Each law school should have, as medical schools have, a clinic providing

L. REV. 905 (1932). This article also offers a substantial bibliography of early scholarly writings on clinical legal education. *Id.* at nn.1-2.

22. Numerous law review articles precede the ones summarized in this text. See *Bibliography of REED*, *supra* note 9, at 220 n.1.

23. John S. Bradway, *Some Distinctive Features of a Legal Aid Clinical Course*, 1 U. CHI. L. REV. 469 (1933).

24. See Bradway, *supra* note 21, at 905 n.2 (listing writings of Bradway).

25. *Id.* at 470-71.

26. 81 U. PA. L. REV. 907 (1933).

27. *Id.* at 913.

free services. These clinics would be staffed by professors with significant practice background who would supervise students in the provision of services.²⁸ Judge Frank concluded that

. . . [T]he practice of law and the deciding of cases constitute not sciences but arts—the art of the lawyer and the art of the judge. Only a slight part of any art can be learned from books. Whether it be painting or writing or practicing law, the best kind of education in an art is usually through apprentice-training under the supervision of men some of whom have themselves become skilled in the actual practice of the art. That was once accepted wisdom in American legal education. It needs to be rediscovered.²⁹

In part as a response to Judge Frank's comments, the Council on Legal Education for Professional Responsibility, Inc. (CLEPR) in connection with the Ford Foundation provided substantial grants to law schools in the 1960s to institute legal clinics.³⁰

In 1969, Chief Justice Warren E. Burger added his influence to the call for increased clinical experience in legal education when he said:

The law schools of this country on their part have superbly trained students in legal principles and analysis but the question is whether that is enough. In my view that is not enough. . . . The modern law school is not fulfilling its basic duty to provide society with people-oriented counselors and advocates to meet the expanding needs of our changing world. . . . The

28. *Id.* at 914-20.

29. *Id.* at 923. Reaction to Frank's call is best summarized in this passage from Robert M. Hardaway, *Legal and Medical Education Compared: Is It Time for a Flexner Report on Legal Education?*, 59 WASH. U. L.Q. 687 (1982)

. . . there was fierce opposition to the call for practical training by those who saw skills training and clinical education as a detraction from academic respectability. Many critics viewed practical training as nothing more than superficial exercises. Hutchins referred to practical training as merely 'tricks of the trade.' Still other critics of practical training in law schools conceded the need for this type of training, but insisted that practical skills could be obtained after graduation and admission to the bar. . . . The notion that the law school had no responsibility to produce graduates able to practice law upon graduation and could rely on post-admission training has been attacked by William Pincus as a 'classic case of locking the stable door after the horse has escaped,' i.e., after a partly educated and untrained lawyer is given a license to practice.

Id. at 702.

Hardaway traces the development of clinical education in the medical profession and calls for a similar educational standards to be implemented for the legal profession. *Id.*

Unfortunately, opposition to clinical education has not completely abated. The opposition to Frank's observations continues in some law schools even to this day.

30. See William Pincus, *Clinical Practice Innovations in Law Schools*, 28 LEGAL AID BRIEFCASE 47 (1969).

shortcomings of today's law graduate lies not in a decent knowledge of law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made. It is a rare law graduate, for example, who knows how to ask questions—simple, single questions, one at a time, in order to develop facts in evidence either in interviewing a witness or examining him in a courtroom. And a lawyer who cannot do that cannot perform properly—in or out of court.³¹

In the early 1990s, a study by the American Bar Association called the MacCrate Report also lent its voice to the call for additional clinical education of law students.³²

There is a considerable body of literature describing the various types of clinics and approaches taken by different schools.³³

While some schools have simulation clinics, where students handle hypothetical cases,³⁴ the focus of this article is on teaching in the clinic which

31. Chief Justice Warren Burger considered the medical school clinical programs to be an apt analogy for legal education. In his speech, he indicated that medical schools operate with hospitals as adjunct classrooms and that medical students spend about 80% of their education time working with practicing physicians. Chief Justice Warren Burger, Address Before the ABA Convention Prayer Breakfast (Aug. 10, 1969), *quoted in* Vetri, *supra* note 8, at 59-60.

32. *Legal Education and Professional Development – An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, July 1992, at 330-34.

33. See *Selected Summaries of Law School Clinical Programs*, 29 CLEV. ST. L. REV. 735-815 (1980) (summarizing the operations of 57 law school clinics).

In depth examples of specific clinics are scattered throughout the literature. See for example, the Georgetown Center for Applied Legal Studies and its emphasis on utilizing learning contracts between clinical faculty and students is described by Jane H. Aiken et. al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985).

34. Patricia A. Hollander, *The Simulated Law Firm and Other Contemporary Law Simulations*, 29 J. LEGAL EDUC. 311 (1978); Philip G. Shrag, *Teaching Legislative Process Through and Intensive Simulation*, 8 SETON HALL LEGIS. J. 19 (1984); MICHAEL MELTSNER & PHILIP G. SHRAG, *TOWARDS SIMULATION IN LEGAL EDUCATION: AN EXPERIMENTAL COURSE IN PRE-TRIAL LITIGATION* (1975); Ralph S. Tyler & Robert S. Catz, *The Contradictions of Clinical Education*, 29 CLEV. ST. L. REV. 693 (1980).

Most schools use simulation in trial advocacy courses and moot court programs. This approach can be very rewarding as an introduction to becoming and acting and thinking as a lawyer. There are trade-offs for the school and the student. These courses are far more financially attractive for law schools than live-client clinics. One teacher using only simulations can teach a much larger group of students than a clinical professor handling live clients and their cases. On the other hand, "what is lacking from simulation courses is the excitement, motivation, and unpredictability of representing real, live clients." Pertnoy, *supra* note 7, at 171.

In addition to the simulation clinics and courses in law schools, a great deal of effective advocacy training is conducted by the National Institute of Trial Advocacy (NITA) using highly developed simulation techniques. See Thomas F. Geraghty, *Foreword: Teaching Trial Advocacy in the 90s and Beyond*, 66 NOTRE DAME L. REV. 687 (1991).

handles cases for individuals, the so-called “live client” clinics.³⁵

III. THE MISSION AND GOALS OF CLINICAL EDUCATION

The mission of clinical education has always had two goals: to educate students in an new way of learning;³⁶ and to provide legal services to the indigent.³⁷

Clinic students learn law by providing high quality representation to poor people, while under the supervision of clinical faculty members.

The AALS Committee on the Future of the In-House Clinic identified nine goals of clinical education which flow from its mission:

1. Developing modes of planning and analysis for dealing with unstructured situations as opposed to the “pre-digested world of the appellate case;”³⁸
2. Providing professional skills instruction in such necessary areas as interviewing, counselling, and fact investigation;
3. Teaching means of learning from experience;³⁹
4. Instructing students in professional responsibility by giving them first-

35. Arthur B. La France, *Clinical Education and the Year 2010*, 37 J. LEGAL EDUC. 352 (1987). La France notes that the option to work with “live” clients gives these clinics a distinctive flavor: “clinical education also bears the special burden of a distinct ethical and reformist thrust. To the extent that it chooses to work with “live” clients and cases, it deliberately chooses an indigent clientele and takes an egalitarian stance.” *Id.* at 359.

36. David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 71 (1979). “There is only one difference between the casebook method of law instruction and the clinical method. The Langdellian casebook method uses vicarious legal experiences as its central core of educational material while the clinical method uses direct or ‘first-hand’ legal experience.” *Id.*

37. Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L. J. 31, 32-33 (1993).

38. *Report, supra* note 2, at 512; *see also* Anthony G. Amsterdam, *Clinical Legal Education—A 21st century Perspective*, 34 J. LEGAL EDUC. 612 (1984). There are three types of analytical thinking that are traditionally taught in non-clinical legal education: case reading and interpretation; doctrinal analysis and application; and logical conceptualization and criticism. Amsterdam sees clinical education offering analytical opportunities in other ways of reasoning: ends-means thinking, a process that starts with a problematic factual situation and develops options for solutions; hypothesis formulation and testing in information acquisition, methods of thinking that enable one to gather information and to progressively test, modify and refine appropriate hypotheses; decisionmaking in situations where options involve differing and often uncertain degrees of risks and promises of different sorts, analyzing relative probabilities of various legal outcomes depending on the results in shifting factual circumstances. *Id.*

39. *Report, supra* note 2, at 513. Amsterdam, *supra* note 38, at 615-16.

hand exposure to the actual mores of the profession;⁴⁰

5. Exposing students to the demands and methods of acting in the role of attorney;

6. Providing opportunities for collaborative learning;

7. Imparting the obligation for service to clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people;⁴¹

40. *Report, supra* note 2, at 513-14. Teaching professional ethics is one of the reasons most frequently given to support the need for clinic. James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 115 (1991).

Lawyers and the profession have lost something of value . . . the sense of the lawyer as a moral force in society. . . . Hopes for regaining this moral sense rest primarily with the law schools. For law schools to fulfill these hopes, they must take advantage of the opportunity to socialize students into the profession by presenting the student, acting in the role of lawyer, with the moral questions that face lawyers.

Id.

In fact, a joint effort by the American Law Institute and the American Bar Association Committee on Continuing Professional Education, a text titled *Skills And Ethics In The Practice Of Law* was published in 1993 focusing specifically on teaching ethics in clinical practice by addressing clinical experiences with client interviewing, fact investigation, legal research, counselling, negotiation, litigation and the like. *Skills and Ethics in the Practice of Law*, A.B.A. & A.L.I. (1993).

41. Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992). Dinerstein states:

To many people, the relationship between clinical programs and the justice mission of American law schools is so clear as to be self-evident. Many live-client clinical programs represent indigent persons in criminal cases or in numerous kinds of civil cases, such as domestic violence, landlord/tenant, public benefits, and social security disability matters, where (in)justice themes predominate. These programs may pursue justice on behalf of individual clients or for groups of clients through class-action or other impact litigation. Moreover, clinical teachers frequently discuss with their students the need for the latter to serve justice in their legal careers, whether as the principal focus of their legal work or through pro bono publico activities. Indeed, for many law students, the law clinic may be the *only* place in which concerns about justice are discussed and, at least sometimes, acted upon.

Id.

But see Bellow & Johnson, *supra* note 20, which states:

. . . it is questionable whether service to the unrepresented, despite the enormous need, can be a major function of clinical programs . . . the need for a work load sufficiently limited to encourage reflection and analysis by the student, the time required to teach effectively in a clinical setting, and the continual turnover of students each semester makes service to clients, even in legal aid clinics, a marginal benefit of such programs at best. A service orientation by clinical programs can too easily become a rationale for permitting law teaching to slip into vocational, how-to-do-it instruction. Where the courthouse is, or how a legal form is to be filled out, can be learned without the

8. Providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law;⁴² and

9. Critiquing the capacities and limitations of lawyers and the legal system.⁴³

Each of these goals is a part of the overall purpose of clinical education.⁴⁴ All recognize that “none of us can be perfect exemplars of all of these qualities, and none can teach all of these goals in our clinic with perfect emphasis.”⁴⁵ But, as goals, clinical teachers can strive towards these qualities and build relationships with students that make progress towards these goals possible.⁴⁶

IV. LEARNING A DIFFERENT WAY OF LEARNING

A. *Learning From Experience*

“Law school cannot possibly teach even most of the ‘law’ in three years. For better or worse, that learning will occur in practice. Because the student’s performance is the heart of the clinical experience, many clini-

commitment of resources, time, or energies that are part of most clinical undertakings.

Id. at 670-71.

42. *Report, supra* note 2, at 515-16.

43. *Id.* at 516-17.

44. Stephen F. Befort, *Musings on a Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990s*, 75 MINN. L. REV. 619, 624 (1991). Article notes that eight of these goals relate to the clinic’s paramount education mission, while only goal seven reflects the public service component of clinical education. According to Befort, that “puts to rest the old service versus education debate.” *Id.*

45. *Report, supra* note 2, at 517. “The actual impact of live-client clinical experience inevitably depends upon the often uncontrollable nature of real cases.” Befort, *supra* note 44, at 624.

46. There is dispute whether this listing of clinical goals does a service to clinical education or not.

. . . clinical education does not have a predetermined, inherent set of goals. Instead, the clinic offers a format from which instructors may select from a number of possible goals. In the future, legal educators ought to view clinical education as a pedagogical method that is capable of facilitating a great many potential educational objectives. The Report makes an important contribution by providing a thoughtful list of possibilities. It is unrealistic, however, to expect any one clinic to accomplish all or even most of these possible goals. A successful clinical program will focus its energy on a narrower set of attainable objectives.

Befort, *supra* note 44, at 625.

cians recognize as an explicit goal the inculcation of methods by which the student can learn from experience."⁴⁷

"Clinical education is as much a new methodology—a system for teaching law—as it is a vehicle for teaching new areas of the law."⁴⁸

Clinical education, at its essence, is a process of learning how to learn from experience.⁴⁹ If the student's experience in clinic results in merely the transmission of certain skills from teacher to student in the course of representing people in legal matters, is not actually clinical education.

Despite the best intentions of many legal educators, legal education itself can all too often be characterized as following the "banking" concept of education. The banking concept of education is described by Friere as knowledge as a gift bestowed by those who consider themselves knowledgeable upon those who consider themselves to know nothing.⁵⁰ Such an approach allows the teacher to retain the power position in the educational experience. Characterizing the students as ignorant and passive justifies the need for and the role of the professor.

Clinical education offers an opportunity for a liberating education, an opportunity for teacher and student to join in a common quest for developing self-conscious reflection from experience. As a result, students transform into self-learners, teachers become reflective self-evaluating transformative agents of education, and clients get a chance to participate in fashioning their own futures.

Clinical education is but one step in learning how to learn from experience. A person who learns how to learn from their experience is building, shaping, changing, and modifying their advocacy with each experience. The difference between persons who learn how to learn from their experiences and those who do not is the difference between a person who after five years as a lawyer has progressed and developed into a different kind of lawyer versus the

47. *Report, supra* note 2, at 513.

48. Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 323 (1982). Bloch says clinical education follows the modern educational concept of andragogy (*andr* meaning adult, as opposed to *peda-gogy*, from the word for child *paid* in the Greek) or "the art and science of helping adults learn." *Id.* at 327. Bloch identifies four basic assumptions in this type of adult learning: (1) Learning should be through mutual inquiry by teacher and student; (2) emphasis should be on active, experiential learning; (3) learning should relate to the student's readiness to learn; and (4) learning should be presented in the context of problems that students are likely to face. *Id.* at 333-44.

49. See generally Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981).

50. PAULO FRIERE, *PEDAGOGY OF THE OPPRESSED* 58 (Myra Ramos trans., 1970).

person who has essentially been repeating their initial year in practice five times.

B. *Learning by Doing*

“The life of the law has not been logic: it has been experience.”⁵¹

“Experience is the law’s peerless leader.”⁵²

“I hear, and I forget,
I see, and I remember,
I do, and I understand.”⁵³

The single most critical defining element of clinical education is that it is experience-based learning.⁵⁴

Without undermining the importance of other forms of learning, clinical education stands squarely for the proposition that students learn most effectively by participating in their own education by actually representing people.⁵⁵

51. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

52. Tom C. Clark, *Student Advocates in the Courts*, 1 *SETON HALL L. REV.* 1, 4 (1970).

53. Chinese proverb quoted in Lee Stuesser, *Skills For The Masses: Bringing Clinical Skills to More Students at Less Cost*, 10 *J. PROF. LEGAL EDUC.* 119, 121.

54. Kreiling points out:

Traditional classroom legal education is concerned with the process of learning through information assimilation. Usually the information to be assimilated is applied within the narrowly circumscribed confines of the instructor-defined classroom. In contrast, clinical education is primarily concerned with the process of learning from actual experience, learning through taking action (or observing someone else taking action) and then analyzing the effects of the action. The data of learning are provided primarily by the students’ actual performances and experiences with clients who have legal problems. Such performances arise in a world where some facts cannot be ascertained, where personal qualities and interpersonal relationships are often critical, where the “problem-solver” must take action and choose solutions while faced with unpleasant contingencies. Clinical education provides a model of the multi-dimensional world of practice that traditional classroom education simply cannot provide.

Kreiling, *supra* note 49, at 285-86.

55. The medical school model of incorporating experience-based clinical learning into the educational process is a theme sounded repeatedly in the literature about clinical education. Dean Elliott Milstein noted this in his observations in *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 *CATH. U. L. REV.* 337, 350 (1987).

There is a part of the medical school model that has something important to say to clinical legal education. We need to reach beyond our students, to the practicing lawyers. We should do for the legal profession what the medical schools do for the medical

As Professor Amsterdam points out:

We realize that law schools cannot hope to begin to teach their students "law" in a scant three years. The students who spend three years in law school will spend the next thirty or fifty years in practice. These thirty or fifty years in practice will provide by far the major part of the student's legal education, whether the law schools like it or not. They can be a purblind, blundering, inefficient, hit-or-miss learning experience in the school of hard knocks. Or they can be a reflective, organized, systematic learning experience-*if* the law schools undertake as a part of their curricula to teach students effective techniques of learning from experience.⁵⁶

"The supervisors' experience in legal practice led them to conclude that a lawyer who learns particular skills but not how those skills are acquired is doomed to learning obsolescent knowledge."⁵⁷

profession, to lead them to better ways to practice. We should send out from our law clinics the 'wisdom' we have accumulated from our analysis of the lawyering process.

Id.

Stephen Wizner & Dennis Curtis, "*Here's What We Do*": *Some Notes About Clinical Education*, 29 CLEV. ST. L. REV. 673, 677 (1980). This article explains the role of experience in the development of the Yale Law School clinical program by stating:

[While] it is not entirely true that students learn by 'doing' only in the clinic . . . It is essential, however, to recognize that clinical programs do offer an educational experience which is different from and simply cannot be provided in the traditional law school curriculum. While not seeking to force the analogy, one need only consider the respective functions and activities of a hospital clinic, a laboratory, a library, and a classroom to appreciate the significant differences in the content and methodology of learning in those settings. Our central belief, taken for granted in medical education, is that professional education involves the constant interaction of the theoretical and the practical, not just in the classroom and the library, but also in those settings where the profession is actually practiced.

Id.

But see Ralph S. Tyler & Robert S. Catz, *The Contradictions of Clinical Legal Education*, 29 CLEV. ST. L. REV. 693, 709 (1980), which cites the second-class treatment afforded to clinicians and the potential for burnout in clinical teachers as likely to cause sustained turnover among the most experienced clinic teachers.

Educationally effective clinics will remain an impossible dream if they are viewed as analogous to the much and rightly admired teaching hospital. The history of law school clinics indicates this analogy is misleading for there is a total lack of evidence that any clinicians are willing to staff the teaching law firm on any basis resembling permanency.

Id.

56. Amsterdam, *supra* note 38, at 617.

57. Michael Meltner & Philip G. Schrag, *Scenes From A Clinic*, 127 U. PA. L. REV. 1, 9 (1978).

V. STAGES OF SUPERVISION

“It is the teacher’s function, within the individualized teaching relationship, to structure each student’s learning experience and to participate in it at critical junctures to open up to the student implications of the experiences that might not otherwise occur to him.”⁵⁸

Clinical teachers engage students in variations of the following four stages of supervision:⁵⁹ planning by student for activity; conference between student and teacher reviewing student’s activity plan; performance of activity by student with observation by teacher; post-activity analysis and evaluation by student and teacher.⁶⁰

A. *Planning by Student for Activity*

It is important that the initial planning for all clinic activity, and all subsequent planning, be first conducted by the student alone.⁶¹ Only once the student has developed a plan of action should the teacher become involved. The student is assuming the position or role of attorney and must accept the responsibility that comes with that independence.⁶²

58. Barnhizer, *supra* note 36, at 75.

59. Peter T. Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277. Supervision is a dynamic process that defies precise definition because it covers many activities like spontaneous exchanges with students, planned conferences, observing the student in action, and cooperative work. *Id.* at 280. It is precisely this range of activity that student and teacher do together that makes clinical teaching so difficult and “presents the clinical teacher with opportunities unavailable to his counterpart teaching within the traditional curriculum.” *Id.*

60. *See generally* Kreiling, *supra* note 49. Kreiling, from whom I learned a great deal used in this article, speaks insightfully about these stages and breaks this down slightly differently and posits a six-part supervisory cycle: initial conference; preperformance conference; observations; preconference analysis and strategy; post performance conference; and, final evaluation. *Id.* at 318-36. I recommend this section of his article to those beginning as supervisors, it goes into more depth than I do here.

See also Barnhizer, *supra* note 36, at 111-31. (for a detailed illustration of how a teacher, student, and client might interact in a criminal case from initial interview through a plea bargain and the educational interaction in between contact with the client and the judicial system).

61. Amsterdam, *supra* note 38, at 616. This article underscores the importance of the student assuming responsibility for the problems in the role of attorneys: “They bore the responsibility for decision and action to solve the problem. They had to: (a) identify the problem; (b) analyze it; (c) consider, formulate, and evaluate possible responses to it; (d) plan a course of action; and (e) execute that course of action.” *Id.*

62. Hoffman, *supra* note 59, at 286. Hoffman notes that it is in this assumption of the role of attorney that students first confront “. . . the realities of legal practice. In real life, lawyers must often perform functions, such as developing case strategy, under the pressures of time

This is particularly difficult for students used to having the teacher (or fellow students) highlight what is important. Students who ask "How do I start?" should be advised to give some thought to that question and come up with their own answer before having the teacher give answers or guides.

At this point, the particular activity that the student is to engage in, be it interviewing or any of the other activities common to clinics,⁶³ is not as important as the actual planning for the activity.⁶⁴

Only when the student confronts her own lack of knowledge and begins to grapple with the hesitation and awkwardness of setting out to blaze her own trail, will real self-learning begin.⁶⁵

Some students will confine their planning to the files they are presented with, others will conduct factual or legal research, and many will seek help from other students. What is important is that the student decide what to do so they assume responsibility for what they develop.

B. Conference Between Student and Teacher Reviewing Student's Activity Plan

Teacher and student now review the activity plan together. In these conferences several issues are addressed: the contents of the student's plan; what are the goals of the activity as planned by the student; how the student developed the plan; how teachers react to the student's ideas; and the amount of teacher control and direction that goes into the planning. Finally, there often should be some form of practice, simulation or walk-through of the activity planned by the student with the teacher's participation.

limitation, inadequate information, and conflicting factual and legal demands. Other teaching methods can, at best, only suggest these pressures; role assumption forces students to respond to real pressures by making decisions and acting on them." *Id.*

63. Clinical activities typically include interviewing, counselling, negotiating, drafting, fact investigation, legal research, mediating, voir dire, opening statements, direct examination, cross examination, introduction of exhibits, and closing argument. Nina W. Tarr, *The Skill of Evaluation As An Explicit Goal of Clinical Training*, 21 PAC. L.J. 967, 967 (1990).

64. It is a fact of non-simulation clinic life that students' initial activities do not usually start with interviewing clients because there are cases left over from prior students that must be picked up midstream. Thus the first activities of new students may be becoming familiar not only with a client, but how prior students addressed the client's needs. An insightful review of this challenge and how it can be addressed can be found in Naomi R. Cahn & Norman G. Schneider, *The Next Best Thing: Transferred Clients in a Legal Clinic*, 36 CATH. U. L. REV. 367 (1987).

65. Elliot M. Burg, *Clinic in the Classroom: A Step Toward Cooperation*, 37 J. LEGAL EDUC. 232. "The vast majority of students I have supervised over the years have come to their clinical work with only the barest understanding of what lawyering entails, little inclination toward self-reflection, limited client-centered skills, and a tendency to be overwhelmed by facts." *Id.* at 247-48.

Before reviewing the substantive issues raised in this conference, some thought must be given to how communication between student and teacher occurs. Clinic is a unique student opportunity to consistently communicate one on one with a law teacher. As the learning is different, the communication differs. Listening as the student works through a problem is more important than telling the student the answer. New teachers, particularly, must be aware of the tendency in some students to parrot back to the teacher the opinions first expressed by the teacher, rather than think for themselves.⁶⁶ Communication is challenging in most contexts,⁶⁷ but students and teachers must be aware of issues of authority and hierarchy that obstruct efforts at true communication. This unique opportunity would be wasted if the clinical teacher approached student communication in the same manner as classroom teaching.⁶⁸

The student's plan of activity must be of competent quality and contain realistic expectations for achievement. Competence alone, of course, is insufficient as a final product but is a base for all planned activity.⁶⁹ Competence includes a realistic understanding of the client's problem, as well as adequate investigation and preparation. While realistic expectation is an alien concept to those without the experience of reality, it must be a working goal for the supervisor to point the student towards. If the student does not possess it, the teacher must find a way to help the student learn it.

66. Hoffman, *supra* note 59, at 293, observes: "Students tend to concentrate their efforts on those aspects of the task or skill which they perceive as important to the teacher's evaluation. For example, if the teacher's evaluation of the drafting of complaints consistently focuses on problems of style rather than substantive doctrine, then the student will devote his learning efforts to style to the exclusion of doctrine."

67. See MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* 227 (1990). "There is a Chinese fable about two men who are walking along the river. One said to the other, Look how happy the fish are as they swim in the river! The other said, You are not a fish. How do you know whether the fish are happy? The first one said, You are not me. How do you know whether I know what fish think?" *Id.*

68. See Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981). Condlin warns clinical teachers not to slip into and reinforce negative traditional law school teaching habits like domination and manipulation by substituting persuasion (trying to have the student do what the teacher wants), instead of learning (teacher and student clarifying an ambiguous situation in an interdependent manner).

69. The student must be encouraged to aim beyond the typical standard of the marketplace, a standard often based on "theories" that do more to make the lawyer's work easier than to serve the clients, and that include elaborate rationalizations for ineffectiveness so as to make it easier to externalize failure. The law school clinical education program must start the student along the road to excellence. The program must encourage and the supervisor must reflect the complex of personal characteristics, attitudes and values necessary for competent lawyering. There is no justification for squandering precious resources to teach the mediocre practice of law.

Kreiling, *supra* note 49, at 305-06.

The teacher must help the student articulate what goals the student's planned activity attempts to achieve.⁷⁰ This is important for two reasons: first, what the goals are may not be readily apparent; and second, the goals, once apparent, may benefit from critical communication about them. In the early stages of the supervisor-student relationship, the teacher should not assume that she knows what her student is trying to accomplish. In fact the teacher may well misunderstand the goals of the planning because of the lack of familiarity with the student's thinking processes. Only once the student clearly sets out her goals for the planned activity can the teacher assist the student in exploring whether the goals themselves are appropriate, and, if so, whether the plan can have a reasonable chance of meeting the goals.

How the student developed the plan should be reflected upon. For the rest of their career as lawyers, they will be frequently faced with incomplete pictures and uncertain outcomes. Some choose to inquire only of certain books, while others look to people for guidance, some fear the process and avoid doing it. How the student chooses to gather information, reviews it, and evaluates options will, in part, determine the quality of the activity planned. This is the learning process. Reflecting on how the student learns helps the student learn several interesting things about themselves: first, how they learn, and, secondly, how they might improve their learning process.

The reaction of the clinical teacher to the student's ideas and plans, particularly in the beginning stages of the clinical experience, set a tone for the remainder of the educational experience. The teacher's reaction to the student's plan tells the student what kind of teacher the teacher will be. Reaction will indicate whether the teacher is critical, affirming, challenging, aggressive, laid back, one with high expectations, brutal, gentle, or, most likely, some combination of all of these.

It is also at this point that the teacher's preferred degree of control begins to assert itself. Does the teacher observe that there is a better way to plan the activity and suggest it? Does the teacher probe possible problems and pose options for further reflection? Or does the teacher nod sagely and say "Let's see how this works out once you've tried it?" Each of these reactions reflect the teacher's comfort with control or lack of control.

70. See Tarr, *supra* note 63, at 985. This article gives a good example of why this is important. The teacher may observe a student in negotiation and criticize the student for being too conciliatory with the opponent. The student's goal may well not even be to win the negotiation, for which a different approach would be more helpful but which they consider an impossible goal, but rather their goal was to conduct informal discovery with the opponent, for which a conciliatory approach may well be the most effective. *Id.*

See also Barnhizer, *supra* note 36, at 75-79 (for twenty major educational goals potentially surfacing in a clinical experience).

A rehearsal by the student of what she plans to do in the activity can be very helpful for the student and teacher.⁷¹ The student by simulating the planned activity can gain confidence and reduce some of the anxiety that goes with new activities. Identification of potential problem areas often occurs when the student actually tries to implement the plan. Likewise, the teacher can begin to more accurately assess the student's strengths and weaknesses in her actions and follow through on her plans.

C. Performance of Activity by Student with Observation by Teacher

Assuming the new teacher can allow the student to perform the planned activity without intervening, the teacher must become an active observer. The entire panoply of verbal and nonverbal communication should be observed and noted for later communication with the student. The substance of the issues addressed and the skills utilized should be noted. Likewise, the student's adherence to her plan and her reaction to the unplanned must be recorded.

Specific detailed notes of the performance enhance the ability of the teacher to give the best feedback.⁷²

D. Post-Activity Analysis and Evaluation by Student and Teacher

"Clinical education is first and foremost a method of teaching."⁷³ Feedback and evaluation are central to the self-directed, experiential learning method of clinical education.⁷⁴

71. Kreiling, *supra* note 49, at 324. See also Hoffman, *supra* note 59, at 290-92. Hoffman suggests most adversarial discussion of simulation versus casework as missing the benefits of using both in combination. He suggests that simulation is a great preparation for actual casework, a valuable opportunity for teaching specific skills, and, when combined with casework offers a dynamic interchange between the two learning systems. *Id.*

72. Hoffman notes the importance of a specific, detailed record kept by the teacher when later evaluation occurs: "Without specific substantiation of the evaluator's comments, the student is left with useless generalizations such as, You asked too many leading questions. An accurate record allows the teacher to tell the student exactly which questions were leading." Hoffman, *supra* note 59, at 294.

73. Report, *supra* note 2, at 511.

74. The evaluation being described here is not the ultimate grading of the student, which could take up another entire article. Described here is feedback and evaluation of the student's prepared action, usually only a part of the student's overall grade. As an aside, even though this article does not address clinic grades (pass/fail or letter) this issue is clearly of great interest to the clinic students. The new clinic teacher would be well served to get the grading criteria used by the other members of the clinic, learn the criteria, and share the criteria for grading with the students at the teacher's earliest convenience.

As to the feedback and evaluation discussed in this article, Bloch suggests: "the student, together with the instructor, should assess the student's performance at critical points during

The most important analysis and evaluation of the activity performed is that of the student herself for this is what, in the long run, will be critical to self-reflection and self-directed learning.⁷⁵ While most students (and lawyers and law professors for that matter) are ready and likely prepared to evaluate other lawyers, accurate self-critique is not likely to come quite as smoothly, especially in the initial stages.⁷⁶

Thus the role of the teacher is not primarily to cogently review the good and bad of the student's performance, but to assist the student in honestly and realistically reviewing her own performance. "How did I do?" should first be responded to by "How do you think you did?"⁷⁷

At the beginning of the supervisory relationship the student may need considerable help from the teacher in evaluating her performance because of her unfamiliarity with both the process of self-critiquing and the substantive areas of the critique.⁷⁸ The student should take the lead in the critique as soon

representation in order to evaluate the work in the case, to determine the student's learning needs and to measure the student's overall progress." Bloch, *supra* note 48, at 350.

Another commentator states: "An implicit goal of clinical and skills training is to teach students to assess their own work and to observe with a critical eye the work of those around them." Tarr, *supra* note 63, at 967.

75. "[T]he evaluation process assists the student in developing a system of self-critiquing. By showing the student a framework for evaluation and illustrating a method of critiquing, the student learns to apply these techniques to his or her own performance. The student, in effect, is learning to learn." Hoffman, *supra* note 59, at 292-93.

76. Professor Tyler suggests that asking students to evaluate their opponents is a good first step towards the realization that there are objective, or at least commonly agreed upon, criteria for evaluation. Once these criteria are identified for others, the student can begin to self-evaluate using the same criteria. *A.A.L.S. Clinical Legal Education Panel: Evaluation and Assessment of Student Performance in a Clinical Setting*, 29 CLEV. ST. L. REV. 603, 614-15 (1980).

77. Anthony Amsterdam gives examples of the kinds of questions the student should be encouraged to ask:

What were my objectives in that performance? How did I define them? Might I have defined them differently? Why did I define them as I did? What were the means available to me to achieve my objectives? Did I consider the full range of them? If not, why not? What modes of thinking would have broadened my options? How did I expect other people to behave? How did they behave? Might I have anticipated their behavior—their goals, their needs, their expectations, their reactions to me—more accurately than I did? What clues to these things did I overlook, and why did I overlook them? Through what kind of thinking, analysis, planning, perceptivity, might I see them better next time?

Amsterdam, *supra* note 38, at 617.

78. Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157, 1188 (1990). Unlike in traditional classroom learning, Lesnick observes that clinical evaluations evaluate "a range of qualities more closely comparable to those that are constitutive of excellence work in a lawyer." These indicia of quality, at one law school, include: Legal

and as much as possible in order to develop her self-reflective abilities. For in the long run, it matters not so much that a student did well or did not but whether the student is able to accurately determine whether she performed in accordance with her plan and her abilities or not. If the student was successful and knows it, her accurate self-awareness will allow them to build on that success in the future. If the student was deficient and knows it, her accurate self-awareness will allow her to craft alternative plans and strategies for the next time. Either way, she is increasingly self-reflective and self-directive and poised for life long learning from her experience.

The teacher's first responsibility is to help the student accurately reconstruct the activity. For this reason the conversation should occur as soon as it is possible to sit and thoughtfully discuss what occurred. It is unrealistic to expect the student to be able to comprehensively recall and evaluate each part of her activity, particularly in early activities when anxiety and relief take turns in the student's psyche, so the teacher must help full recollection occur.⁷⁹ The observations and notes of the teacher can guide the discussion and refresh the student's memory about different phases of their presentation so the entire experience can be evaluated, not only from her own perspective but from that of the client, the supervisor, the judge, the witnesses, and others.⁸⁰

Secondly, the teacher should guide the student towards honest evaluation of what occurred. This should be specific review of specific parts of the activity. General observations like "I failed," or "I was too nervous" are not the kind of feedback that assist learning.⁸¹ Did the student's performance measure up to their goals for the activity?⁸² How well the student measured up to her articulated goals for the activity will form the foundation for all future self-directed evaluation and learning. Honesty about this measurement is imperative-neither false modesty nor delusions of grandeur help students accurately learn about themselves.

Reasoning; Professional Responsibility; Communication (oral, written and the ability to listen); Theoretical Perspective; Clinical Judgment; and Management of Effort. *Id.* at n.41.

79. Hoffman notes that novice clinic students have a very tough time accurately recollecting what occurred in live interactions because of several factors: the emotional dimension of new activity; the need to appear in the best possible light to teachers; concerns about grading; and the tendency of many to summarize and generalize rather than give a detailed account. Hoffman, *supra* note 59, at 295.

80. Kreiling, *supra* note 49, at 330 (suggests having the student recreate the role of one or more of the courtroom participants to help understanding).

81. Michael K. Mangess, *Managing Associates and Legal Assistants*, 40 PRAC. LAW. 25, 26-27 (1994). "The most effective feedback has four characteristics: it follows soon after the associate completes a work assignment; it includes specific comments on the specific parts of the task; it occurs as part of the discussion which should accompany the review of written edits to a memo; and whenever possible, feedback should be positive as well as negative." *Id.*

82. Hoffman, *supra* note 59, at 296.

Likewise, when the teacher finally gives her own observations, the same rules apply: honesty and accuracy. Tendencies towards being overcritical are just as inaccurate and ineffective as overpraising.⁸³ While kindness is always appreciated, it must not obscure.

Finally, the teacher and student should discuss where they go from here.⁸⁴ What lessons for the future can be learned, what needs work, where were there surprises, and why?

VI. ALLOWING STUDENTS TO TAKE CONTROL

While the lawyer who excels in the heavily advocacy-related areas of lawyering may produce good copy, he will not make a good clinical supervisor unless he can somehow shed the advocate's desire to control the situation.⁸⁵

Unlike legal advocacy itself, clinical education about legal advocacy involves a sharing of responsibility between the student and the teacher for the cases in the clinic.⁸⁶

New teachers are immediately confronted with the delicate dilemma of determining precisely how their clinical students are allowed to become counsel for the client. Should the clinical teacher assume the role of the senior partner with the student a new associate? Should they be co-counsel? Should

83. Barnhizer, *supra* note 36, at 133. "Many of the evaluative judgments that must be communicated are potentially threatening to students. The teacher must be sensitive to the dangers both of causing damage to a student's self-concept and of avoiding specific critical judgements to escape the extreme anxiety of such interactions."

"If the evaluation consists entirely of praise and does not confront the student's deficiencies, the student will not know what he or she is doing incorrectly. In contrast, continuous criticism unmitigated by praise quickly leads to frustration and discouragement, causing the student to give up without trying to improve." Hoffman, *supra* note 59, at 297.

Susan B. Apel suggests that teachers can grow in appreciation of the value of a good word by a teacher if the teacher takes a course as a student: "While I had never seen myself as being stingy with positive reinforcement, I gained a heightened awareness of how powerful a simple nod of the head can be." Susan B. Apel, *Teaching Law, Learning French*, in *THE LAW TEACHER* 1, 1 (Gonzaga Inst. for Law Teaching, Fall 1994).

84. Hoffman, *supra* note 59, at 297-98.

85. Kreiling, *supra* note 49, at 301.

86. Bloch, *supra* note 48, at 339. Bloch sees close supervision by clinical faculty as a necessity but acknowledges the co-counsel relationship is a continually shifting "spirit of mutuality" between teacher and student. *Id.* He sees the teacher as a guide, especially initially, but not necessarily in control of the experience, except to the extent necessary to ensure competent representation in a particular case: "In other words, the student should help the teacher decide when the teacher needs to direct and teach, and when the student can be left alone. Close supervision, therefore, does not mean a constant faculty presence." *Id.* at 350.

the teacher fade into the background allowing the student to take and keep the lead?⁸⁷

It is at this point that the dual responsibilities of clinic faculty are most apparent: responsibility as a teacher to the student to allow her to take maximum control of the case and learn by the fullest possible experience of representing the client versus the ethical responsibility of the lawyer-teacher to their client to make sure the client's interests are well served.⁸⁸

Divining the appropriate mix of freedom and direction/control in the teacher-student relationship is one of the ongoing challenges of clinical educators.⁸⁹

Some clinics have the faculty member take a very secondary supervisory role allowing substantial student initiative and control of the cases.⁹⁰ In some

87. Hoffman suggests that the clinic student may well be served with a combination of all three modes, with authority and control phased in over the clinical experience. Hoffman, *supra* note 59, at 280.

88. As one clinical professor noted: "Granting that the clinic is good for students, the question arises whether it is good for clients." A.F. Conrad, *Letter from The Law Clinic*, 26 J. LEGAL. EDUC. 194, 198 (1974).

89. "It is an ongoing struggle for each clinical teacher to intervene appropriately with each student based on the student's competence and responsibility." Gary Palm, *Reconceptualizing Clinical Scholarship As Clinical Instruction*, 1 CLINICAL L. REV. 127, 129 (1994).

See also James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Supervision*, 3 B. U. PUB. INT. L.J. 35 (1993). The authors find that the twin goals of maximum student control and best possible representation in serious conflict. They surveyed over 100 clinical teachers about their opinions on the twin goals of client service and educational achievement particularly as the goals relate to student control and initiative in case handling. *Id.* at 36. The authors found that while a high percentage of clinic teachers are committed to giving their students as much independence and authority and case control as possible, the same teachers were usually also committed to providing the client the best possible representation, even at the expense of educational opportunity. This is more than a source of tension in these authors' eyes, these are unrealistic goals: "Clinicians cannot supervise in a way that simultaneously gives students broad responsibility and clients the best possible representation." *Id.* at 67. The solution offered by these authors is for clinicians to acknowledge the primacy of educational opportunity and, rather than insisting on the best possible service to clients, settle for competent or quality representation. According to the research presented in their article, most clinicians would be unwilling to adopt the authors' proposed solution. *Id.*

90. *See* Meltsner & Shrag, *supra* note 57, which states:

In the beginning when the interns are just learning the rudiments of the files and the institutional processes they will be dealing with, we encourage frequent meetings and take the lead in raising certain issues about the cases. At the same time, however, we try to make it clear that, as lawyers, they have the power to decide both how to handle their cases and how to use supervisory time. As time goes by and interns become more familiar with the options open to them in handling their cases and learn more about their own learning priorities, we try to be available to interns only at their initiative. Of course, because we are obligated to deliver high quality service to clients, we must periodically check the interns progress on each case, even though the intrusiveness of this checking process could impede our other goals. Nevertheless, it is still the interns' prerogative to decide whether (and how) they want to use us as a resource.

schools, this approach results in faculty members declining to even sit at counsel table with the students, staying rather at the back of the room “in order to curb their own tendencies to intervene.”⁹¹ The ultimate goal of many of these clinic teachers is that the faculty member never participates or intervenes in the representation of the client by the student.⁹² One author calls this the “irreparable harm” school of supervision, because it is really only when such harm is occurring that these teachers think intervention is appropriate.⁹³

Others suggest the faculty should be much more involved in the handling of cases and that it is not sufficient to simply avoid malpractice, that in a conflict between student educational opportunity and the client’s need for service, the client’s need always trump.⁹⁴ These teachers frequently utilize several different methods of supervision. They posit that clinical faculty must not force all students into learning in the same manner but allow students who can to assume the role of the lead lawyer in representation but allow other students to learn from model of representation demonstrated by the faculty member.⁹⁵

Many teachers adopt a version of the supervisory techniques outlined by Professor Hoffman: when the students first enter clinic, the teacher continues substantial control, similar to the senior partner - associate relationship; as the students become more acclimated to the new type of learning and responsibilities involved in clinic, the relationship of teacher and student shifts to more of cocounsel; as the student becomes more confident and competent, the student ultimately takes the leading responsibility for the representation and the teacher operates much more as a backup or safety net allowing the student the maximum initiative while preventing mistakes from harming clients.⁹⁶

Clinic teachers want their students to independently assume as much authority and responsibility for their cases as they can handle.⁹⁷ The key is

Id. at 22.

91. Aiken, et al., *supra* note 32, at 1074.

92. See Meltsner & Schrag, *supra* note 57, at 22-31 (for discussions about student responsibility and the role of the faculty member).

93. George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher’s Duty to Intervene*, 26 GONZ. L. REV. 415, 428 (1991).

94. *Id.*

95. See Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 196 (1989), which criticizes total reliance on the educational method of clinic students assuming the role of lawyer for clients. She thinks that faculty modelling the role of lawyer can prove helpful to students, particularly at the beginning of the clinical education process: “Given that some students may not learn best by being thrust into role, the next question is whether clinical teachers can or should adjust their methodology to account for these differences . . .”. *Id.* at 196.

96. See generally Hoffman, *supra* note 59.

97. Barnhizer, *supra* note 36, at 74-75 (views the student acceptance of responsibility for

accurately and responsibly determining how much independence each student can handle.⁹⁸

Clinical education is partly based on the premise that the more independence the student can assume in representing people, the better their learning will be. Unnecessary control of the student's actions inhibits the learning process.⁹⁹ On the other hand, irresponsibly handing off authority for a client's case to undertrained and undersupervised students violates the teacher's ethical responsibility to the clients.¹⁰⁰ Thus, there is a dilemma.

Further, immediately assuming an active, leadership role in representing a client is an experience that many, but by no means all, students accept.¹⁰¹ After spending several semesters as relatively passive learners, shifting into a self-directed, active mode of learning is a difficult transition for many.¹⁰² Some students freeze up, assume the "deer caught in the headlights" position, and are temporarily numbed into paralysis.¹⁰³ There is no book to hide behind, no sitting in the back of the room in the hope that they will not have to perform. Some students may well not thrive in a "sink or swim" environment and need the considerable assistance of the clinic teacher to avoid being overwhelmed by the changes in their educational processes, particularly in the initial stages of clinic.¹⁰⁴

their cases as the first step toward learning real professional responsibility).

98. Critchlow suggests the answers to several questions should be considered in determining how much control students should have in actual case representation. What are the client's expectations? How competent is the student? How competent is the teacher? What about delay, financial costs, and emotional discomfort for client, student and/or the court? Critchlow, *supra* note 93, at 429-41.

99. Kreiling, *supra* note 49, at 300-01.

100. See Moltinero, *supra* note 40, at 129. "Real peoples' lives are at risk in the in-house clinic setting; this simple fact quite rightly forces clinic supervisors to intervene more frequently and with greater force than simulation supervisors." *Id.*

101. Bloch notes that "the students for whom a self-directed learning setting is designed do not necessarily welcome this type of environment. When first placed in the position of having to participate actively in the planning and execution of a learning experience, students can be skeptical and even resentful before coming to realize the benefits of this aspect of [adult education] methodology." Bloch, *supra* note 48, at 339.

102. See Peter T. Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986) which states: "In a typical clinical course, the beginning student is thrust into a new and bewildering experience. Even if the student has previously clerked or taken a clinical preparatory course, he or she is usually emotionally and intellectually unprepared for the entirely new role of student-lawyer. Not surprisingly, the average student feels overwhelmed by this experience." *Id.* at 303.

103. Kreiling discusses the high level of anxiety generated in new clinic students by this shift from passive to active. Since anxiety can be both a powerful motivator and a debilitator, the supervisor has a considerable challenge to discern the appropriate amount of anxiety that each student can tolerate. See Kreiling, *supra* note 49, at 287-88.

104. Peter Hoffman, in an excellent article for new clinical teachers, sees the clinical teacher

Deciding how to share responsibility for clinic cases with the student is an immediate and ongoing challenge to the new clinic supervisor.

VII. STUDENT-TEACHER RELATIONSHIP

Because the clinic teacher directly supervises only a few students, the clinical student-teacher relationship is much more intense and personal than most relationships with teachers the student is likely to have in her career as a law student.¹⁰⁵ Clinic students also tend to be highly motivated to learn.¹⁰⁶ This combination creates intense student-teacher relationships.

As a clinical teacher, you will need to become increasingly comfortable with diversity. If you have ten clinical students under your supervision, you will learn at least ten different ways to communicate, cocounsel, and evaluate. As you experience more students you will grow amazed at the varieties of the human condition.¹⁰⁷

assuming different supervisory roles in the initial, middle and final stages of the clinic student's education. Initially the teacher must be more a senior partner working with an associate: directive, supportive, and reducing unnecessary anxiety. As the student becomes more familiar with handling clinic cases, the teacher backs off a bit, assumes more of a cocounsel role and serves as a sounding board, coaxing and prodding the student to do more for herself. As the student becomes more accomplished the teacher consistently defers to student initiative and assumes more of a position of a safeguard against serious error. Hoffman, *supra* note 102, at 301.

105. Bellow and Johnson, *supra* note 20, at 693.

The clinical process radically alters the usual relationship of faculty to student. The students have, at last, a body of their own experience which they can compare to the faculty's assertions and statements. They also sense some of their inadequacies are shared by their instructors as well, and that solutions to problems in practice are always a matter of informed choice and always reflective of a combination of uncertainty and knowledge. As a consequence, their relationship with the faculty and supervisors in the program causes a sense of shared purpose and equality which we believe is different from their prior experiences in law school.

Id.

On the other hand, as Norman Redlich observes in *The Moral Value of Clinical Legal Education: A Reply*, 33 J. LEGAL EDUC. 613 (1983), the clinic student has far more to worry about than just the clinic teacher:

I do not minimize the teacher's role. But one of the great values of clinical teaching is that the "situation" emerges as a teacher in its own right. There is a real client with a real legal problem, other lawyers, deadlines, judges, adversaries, other clinical teachers, a law school milieu, other courses in professional responsibility—all of these factors are exerting an influence on the student. As a role-model for a value system of professional responsibility, the clinician is a far less dominant figure than the traditional law teacher in a Socratic-method traditional law school course.

Id. at 615.

106. Hoffman, *supra* note 59, at 287.

107. Barnhizer, *supra* note 36, identifies sixteen separate identifiable behavioral and

You will supervise some students who are so naturally talented that they will amaze you. Others will appear to be woefully unprepared to become advocates for clients. There are natural inclinations to focus on the very best students, because it is such a joy to see them soaking up knowledge and developing skills, or on the very worst students, because they need your attention so badly. The challenge of good teaching is finding a way to manage the teacher's resources in order to help the very talented, the barely talented, and those in-between learn how to become the best possible advocate. Bill Walsh, the highly successful football coach, sees much of coaching as teaching. He focuses his organization's teaching on neither the best nor the worst. Recently, Walsh was asked how he organizes his own thinking in trying to teach skills to his players. His response:

Take a group of ten players. The top two will be supermotivated. Superstars will usually take care of themselves. Anybody can coach them. The next four, with the right motivation and direction, will learn to perform up to their potential. The next two will be marginal. With constant attention, they will be able to accomplish something of value to the team. The last two will waste your time. They won't be with you for long. Our goal is to focus our organizational detail and coaching on the middle six. They are the ones who most need and benefit from your direction, monitoring, and counsel.¹⁰⁸

Because of the combination of the varieties of students in clinic, their high motivation, and the intensity of the relationship, the clinical teacher becomes more than a mere dispenser of principles and analysis: the teacher

attitudinal traits of clinic students, each of which call the clinic supervisor to a different teaching relationship. *Id.* at 143-45. Summarizing these traits are: the novice, totally inexperienced, everything is new; the lawyer, experienced from clerking or prior employment, already has idea about what lawyers are to be; the dilettante, wants a variety of cases, surprised by the work involved; the graduating senior, tired of classroom education, wants to coast to the end; the "I'm only taking clinic to get out of hard courses" student, thinks clinic will be less demanding than traditional classes; the able student, the student with great potential who needs great challenges; the slow student, needs inordinate amount of time to complete ordinary tasks, may be lazy or overwhelmed or traumatized; the frightened student, afraid to commit to client, the work, and representation; the helpless student, turns to teacher at every turn, never independently responsible; the passive student, seems to be "going through the motions" and lack depth of understanding; the defensive student, reacts badly and antagonistically to all evaluation and criticism; the aggressive student, overbearing to clients, students, staff, and teacher, always in overdrive; the demanding student, never satisfied with the amount of supervisory time being received; the iconoclast, all education is resented, never fully participates; the radical, rigid political belief, uses clients and law as means to an end; the racist, stereotypes clients, and is surprised at misunderstandings that develop. *Id.*

All clinic teachers could add to this list. But it shows an example of the wide variety of challenges teachers face in individualizing learning.

108. Richard Rapaport, *To Build a Winning Team: An Interview with Head Coach Bill Walsh*, HARV. BUS. REV., Jan.-Feb. 1993, at 110.

becomes a role model, a trusted coworker, a judge, and frequently a friend.

As role model, or mentor, the teacher must realize that students are reviewing every part of their presentation, all the time. Students will see and learn not only from what is said and done but also from how the supervisor lives the day to day, hour to hour, existence of an advocate-teacher. Promptness, organization, kindness, willingness to follow through, even speech and appearance of the teacher, are being observed and evaluated by the same students who are learning interviewing, nonverbal communication, and cross examination. As with all role models, there will be cycles of admiration, disappointment, and an eventual sorting out of the attributes the student thinks are worth emulating.

As coworker, the student relies upon the advice and direction and support and feedback of the teacher.¹⁰⁹ Honesty, sensitivity, dependability, and competence are what students are expecting and deserve from their teachers.

The teacher is also a judge of the student. The teacher reflects with the student on her performance, helps the student self-critique, and offers the teacher's own judgment on the student's work.

Friendships develop as good people work hard together. While not every student-teacher relationship results in friendship, many do.

These relationships are more important at the beginning of the clinical experience when the students are laboring furiously in the totally new role of lawyer for clients. The novice clinical student looks more to the teacher than the seasoned clinic veteran.

In each instance, the relationship needs to be attended to and monitored. Supervisors need to be aware of the need to take sufficient time to allow development in these relationships with students.

VIII. RELATIONSHIP WITH THE CLIENT

The practice of law cannot be accomplished in isolation from the interaction of people. Although the practitioner knows that the client is a significant variable in any legal problem, legal educators, in their zeal for logical purity, invariably ignore the human side of legal problems. Clini-

109. See Bellow & Johnson, *supra* note 20, at 693-94.

Teaching in this environment is considerably different from the usual law teaching experience . . . he cannot adequately answer questions solely by relying on a prior reading of the case book and his own law school experience . . . in a setting in which faculty and students find themselves in a shared enterprise, and in which inquiry is concerned with emotional reaction as well as analysis, the classroom, although rigorous, becomes a mutual search for solutions and knowledge.

Id.

cal program work provides an opportunity to remedy this omission.¹¹⁰

In addition to the relationship between student and teacher is the relationship of each, separately and together, to the clinic client.¹¹¹ The provision of free legal work by students to an indigent client, in a teaching context with a teacher about, complicates the already problematic relationship between most lawyers and most clients.¹¹²

110. Vetri, *supra* note 8, at 68.

Clients and their narratives are often unconsciously re-constructed and re-packaged by teachers in order to fit the needs of the teacher. See Ann Shalleck, *Construction of the Client Within Legal Education*, 45 STAN. L. REV. 1731 (1993). Doing so in the classroom is unfortunate and frequently illegitimate, however, doing so in the clinic is counterproductive for client, student, teacher, and the legal system because the advocate and her work may well be missing the focal point of the client's concern. See e.g., Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Anthony Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992).

The challenge of really listening to the poor who are the clients of law school clinics should not be underestimated:

... lawyers must *relearn* the sociolegal world. We must learn that a client's speech acts – whether in the form of uncomfortable answers to interview questions, vague assent to counselling options, or rambling testimony at trial – are rhetorical strategies of accommodation and resistance that enable her to maneuver within relationships and institutions under the cover of ambiguous and sometimes inconsistent stories. We must learn to enlarge the discourses of law and legal institutions to fit, rather than silence, these stories. And we must learn to redefine institutional roles and relations to permit clients and communities to collaborate in telling their stories, even if the bridges of collaboration are makeshift and short-lived. Anthony V. Alfieri, *Practicing Community (Review of Lopez: Rebellious Lawyering)*, 100 HARV. L. REV. 1747, 1747 (1994) (book review).

111. Tarr thinks the implications of what she calls “the triangular relationship” between student, teacher, and client have been overshadowed by concentration on the student-teacher relationship. Tarr, *supra* note 37, at 95.

112. See Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987). This article points out many of the ambiguities, complexities, and opportunities for manipulation that occur in the unequal relationship between lawyers and clients. This situation is only aggravated by the additional injection of the indigence of the clinic client.

See also Edwin H. Greenbaum, *How Professionals (Including Legal Educators) “Treat” Their Clients*, 37 J. LEGAL EDUC. 554 (1987) (reviewing the ethical and political issues in the clinic's relationships with its clients).

See also Mark V. Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education* 52 GEO. WASH. L. REV. 272 (1984) which suggests that the clinic relationship with poor clients is one of the reasons that traditional faculty have problems with clinical education:

... clinical education concerns primarily the poor; traditional education concerns primarily the rich. Only the rich can afford to litigate cases to the point that issues are presented in a form that is useful for traditional instruction. Moreover, non-clinical instructors convey, not always consciously, the message that students will work, and ought to work, for the rich. By contrast, only the poor need legal assistance

Clinic teachers clearly have ethical and moral responsibilities to the clients of the clinic. However, these responsibilities extend beyond what the teacher herself should do but also include what the teacher must insist that the student do as well.

Respect is the fundamental premise of all ethical relationships and must be the foundation of all interaction with the student and the client. Teachers who disrespect students will have a difficult time convincing students to respect clients.¹¹³

The teacher must respect both the student and the client and insure that they know the basics of clinical representation: that students, not lawyers, are going to be acting as their advocates; that clients have rights to information, preparation, and consultation in all phases of their representation; and, that as clients they have responsibilities to the clinic as well.

It is a good idea, and in fact required in many states, to have the client give written consent to being represented by the law student.¹¹⁴ Going over such a consent form can be an exercise for the student and client in getting to know and understand each other.

Issues such as class, income and resulting power differences between student and client should be discussed and critiqued along with race, gender, sexual preference, age and language differences.¹¹⁵ These should be examined in the same manner as the other legal issues in the matter.

so desperately that they willingly accept what relatively untutored students can provide.

Id. at 274.

See generally Donald G. Gifford, *The Synthesis of Legal Counselling and Negotiation Models: Preserving Client-Centered Advocacy in the Negotiation Contest*, 34 UCLA L. REV. 811 (1987).

113. See Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Education*, 88 NW. U. L. REV. 695 (1994).

The practitioner's jaundiced attitude toward the people she represents may also typify teacher attitudes about students. To the extent that clinicians perpetuate such attitudes, they replicate the lawyer-client power disparity which they seek to remedy. Ironically, once students become lawyers, they will view citizens with the same impatience they absorbed from their professors.

Id. at 699.

114. Critchlow, *supra* note 93, at 431-33.

115. A substantial hurdle to addressing these issues in clinical education has already been pointed out by Professor Schrag: traditionally clinicians do not get into contact with students until their third year and their values and their legal world-view has, in large part, been molded by traditional legal thinking. Meltsner & Schrag, *supra* note 57, at 348.

See also Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555, 569-73 (1980).

As Professor Eyster says

When we prepare our students to enter the profession, we must teach them both the ideal and the reality of legal practice. They must be aware that injustice persists in many forms. They must have the understanding to perceive what needs to be changed and to develop strategies to effect change, and they must be prepared to advance their client's interests effectively. . . . They must also learn to recognize that sometimes factors other than the controlling legal doctrine may-unjustly but actually-affect the justice system. Although an individual may have little power to eliminate all illegitimate influences, she can be prepared to confront them in a way that minimizes their impact on her interests and those of her client.¹¹⁶

Examining differences, and the way the legal system and society react to these differences, are part of what effective advocates need to aware of and consider.¹¹⁷

Direct contact with people in need can have a transformative effect upon clinical law students.¹¹⁸ Students, however, need to understand that the clinic clients, though indigent and not paying for their services, are not clinical cadavers to be poked, prodded, sliced, and examined for the student's educational benefit.

There is the further goal that, in addition to doing the client no harm, the clinic provide legal assistance to the client. Addressing the client's individual legal needs in a respectful manner must be, at a minimum, the continual aim of the clinic teacher and student.¹¹⁹

116. One article finds that clinical education offers a prime and necessary forum for teaching about bias (gender and race) in the courts and in the legal system. This can be done by analyzing the ways that women and persons of color who are faculty, students, and witnesses are treated in the handling of the clinic cases. Offensive conduct which is patronizing and/or unprofessional must, like all other parts of the clinical experience, be first identified, then reflected upon, and finally a strategy for resolution must be formulated and put into practice. Eyster discusses several examples that arose in her clinical practice and the various manners in which the students resolved the experiences. Mary Jo Eyster, *Analysis of Sexism in Legal practice: A Clinical Approach*, 38 J. LEGAL EDUC. 183 (1988).

117. "Students may be willing to reflect about their attitudes towards clients, which lawyers often camouflage with an air of professional detachment." Margulies, *supra* note 113, at 705.

Tarr suggests that students dealing with poor and mentally ill clients should read WILLIAM KENNEDY, *IRONWEED* (1983), to get a better understanding of the whole life experience of life on the streets. Those students with female clients with severe family law problems might read Nancy Cook, *Behind the Shades*, 1 Circles 1 (1992), to get a different perspective on how clients feel disempowered by the legal system. Tarr, *supra* note 37, at 47.

118. Robert L. Doyel, *The Clinical Lawyer School: Has Jerome Frank Prevailed?*, 18 NEW ENG. L. REV. 577, 599 (1983): "In my own clinical teaching, I have observed a humanizing attitudinal change, sometimes of striking proportions, during a student's semester working with real clients."

119. In addition to assisting clients with their individual pressing legal needs, clinic teachers

IX. CONCLUDING THOUGHTS FOR NEW CLINIC TEACHERS

While this article provides some reflections on some of the threshold issues in clinical teaching, there is much more ahead for the clinic teacher. New clinic teachers will soon discover that teaching is not so much a task that can be accomplished but a process that never ends.

In order to make the most of the teaching process, remember to structure time for reading and reflecting.¹²⁰ There are several law review articles that should prove immediately helpful to the new clinical teacher.¹²¹

The goal of clinical education is reflective, self-critiquing students. It is difficult enough to get to that goal when the teacher is reflective and self-

need to be conscious to the potential for empowering clients and client groups to be able to develop the power to take the lead in handling their own problems.

As an empowering lawyer noted: "If [the relationship between lawyer and client] is handled with sensitivity on both sides the lawyer can fulfill a most important function in empowering community and worker groups" Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 741, quoting G. BUBLENDER, *LAWYERS AND POVERTY: BEYOND ACCESS TO JUSTICE* 21-22 (1984).

For discussions about these types of relationships see: Anthony V. Alfieri, *Impoverished Practices*, 81 GEO. L.J. 2567 (1993); S. Bachmann, *Lawyers, Law and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1 (1984-1985); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987/88); William P. Quigley, *Lawyering for Empowerment of Community Organizations*, OHIO N.U. L. REV. (1995); GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE*, 1992.

120. CLEA publishes a good newsletter on clinical teaching, give the address and how to subscribe.

For example, in the September 1994 CLEA Newsletter, Professor Jean Koh Peters provided a list of "Top Ten Ways To Ease Into the Semester: 10. Create a readable clinic manual and ask students to read it; 9. Remember the primacy principle; 8. Ask students their goals; 7. Emphasize professional responsibility; 6. Ask them to pick their partners; 5. Remind them that support staff must be treated with respect; 4. Let students know your style; 3. Ask them to "walk a mile in their clients' shoes"; 2. Ask them to interview and be interviewed on the first day of class; 1. Make up your own technique."

The AALS has an active clinical education section that puts on yearly clinical conferences. There is also an active internet bulletin board for clinical teachers.

Clinic teachers are known for their innovation and generosity. You will quickly notice that there is more sustained discussion of teaching at meetings of clinical teachers than any other law school teacher meetings.

121. Four law review articles on clinical education that are particularly clear and helpful in learning more about clinical education are: Bloch, *supra* note 48 (an easy to read article on the educational underpinnings of clinical education and should prove helpful to new teachers); Hoffman, *supra* note 102 (a very short (12 pages) plain spoken article suggesting how the teacher should react to new clinical students and how they should change their supervisory relationship as students become more accomplished); Hoffman, *supra* note 59, (a clearly written summary of how students should be taught by their supervisors); Kreiling, *supra* note 49, at 318-36 (discussing the elements of the supervisory cycle).

critiquing, it is near impossible when the teacher is not.

Learning as much about teaching itself as possible is part of the lifelong task of a good teacher.¹²² There are many readings available on learning how to be a better teacher.¹²³

Feedback and evaluation are important for the student's ability to learn, but they are likewise important for the supervisor's ability to continue their learning. Periodic opportunities for feedback from students will help a supervisor do "mid-course" corrections. Are students receiving enough direction? Is the teacher available enough? Is there specific training that would be helpful? Responses to these and other questions can be of considerable assistance to the teacher.¹²⁴

Finally, do not be afraid of using a different method of clinical teaching than those around you. Try different techniques than those practiced by oth-

122. One of my best teachers compiled a list of Fifteen Characteristics of Great Teachers which can serve as an excellent guide for teachers new and old:

1. A great teacher is a real authentic person – not an actor playing a role;
2. A great teacher believes that most students can and want to learn;
3. A great teacher believes that teachers can make a significant contribution to the development of other people;
4. A great teacher has a special sensitivity to the feelings and state of mind of other persons;
5. A great teacher has the ability to put oneself in another person's situation;
6. A great teacher strives to build a relationship with students based on respect and appreciation for one another;
7. A great teacher has a genuine concern for each individual student;
8. A great teacher is a good listener – a teacher can gain great insight into the uniqueness of a student by really listening to the student. By listening a teacher frees the student to think out loud, to work through thoughts and feelings and – in the process – to learn;
9. A great teacher is an active learner – an inquiring, growing person, ready to share new knowledge that is gained and eager to find materials, experiences and ideas to use to help students learn as well;
10. A great teacher is open to new ideas and techniques – and to the creative analysis of information and experiences, using new perspectives;
11. A great teacher reacts rationally and not impulsively – trying to get at the facts first and understand the total situation before responding;
12. A great teacher tries to temper structure with flexibility – recognizing the need for organization as a way to facilitate the learning process and not as an end in itself;
13. A great teacher recognizes that the greatest reward of teaching is the deferred response of students over a long period of time, as students slowly learn, grow and develop. A great teacher plants, others will harvest;
14. A great teacher is a person who wants to help others, whose life has goals and who is moving in a planned direction;
15. A great teacher is a committed person in a profession requiring much energy, humility, patience and love.

Professor Raphael Rabalais, Loyola University School of Law, 1993.

123. See the bibliography of Torres and Harwood, *supra* note 3. See also Paul T. Wangerin, *Teaching and Learning in Law School: An "Alternative" Bookshelf for Law School Teachers*, 1994 GONZ. L. REV. 49 (Special Ed. 1994) (for reference to numerous books).

124. Give students as many opportunities as possible to give the teacher their observations: verbal opportunities should be both one on one and in group meetings; verbal opportunities with other clinic teachers; written opportunities, even anonymous written opportunities can be helpful to some students.

ers, how else do improvements occur?¹²⁵

Students of clinic expect much from their clinic teachers. Research suggests that clinic students make quite an investment in their clinical education, in fact more time per credit hour than students in traditional classes.¹²⁶ Since the students give so much to the learning process, it is easy for new teachers to respond in kind and work with these newest advocates. The result is teacher and student learning how to learn better from shared experience.

Good luck.

125. As one example, some clinic faculty have had great success with use of a learning contract where students and faculty develop a written agreement governing their relationship and the representation of the clients. See Aiken *supra* note 32 (describing the use of learning contracts in one of the clinical courses taught at Georgetown University Law Center).

126. *Report, supra* note 2. After surveying seventy law schools, the committee concluded "Based on these calculations, it is possible to conclude that the average clinic student spends approximately one hour more per week per credit than his nonclinic compatriot: three and one-half hours per credit for the nonclinic student (one hour of class plus two and one-half hours of preparation, as compared with 4.91 hours per clinic student (case-work time, plus class time, plus two and one half hours of preparation per class)." *Id.* at 547.