

Session 1: Goals for Clinical Programs

Elliott S. Milstein, American University, Washington College of Law
Jane Aiken, Georgetown University Law Center¹
AALS New Clinical Teacher's Conference
June 2008

¹ These materials were compiled by Sue Bryant of CUNY, Barbara Schatz of Columbia, as well as by Elliott Milstein and Jane Aiken

To: New Clinical Colleagues
From: Jane and Elliott
Date: June 28, 2008
Re: Setting Goals for Clinical Programs

We have attached four different versions of goal statements.

- a list from a report done in the early 90's by a clinical teachers as part of the AALS Section on Clinical Education and published in the *Journal of Legal Education*;
- an article by Elliott in which he lays out and explains the goals for clinical education
- a list of Jane's goals for her clinic.
- an excerpt from Philip Schrag's article, "Constructing a Clinic," setting out a list of possible goals for a clinic; the article is well worth reading because of the way it relates the choice of goals to the other choices a clinical teacher needs to make in designing a clinic.

Also attached are excerpts from two articles written by Steve Wizner and Jane Aiken, respectively, as part of a symposium celebrating 30 years of clinical legal education at the University of Maryland School of Law. They describe the "clinical tightrope": finding the balance between service and pedagogy. Should the primary goal of clinics be to provide legal assistance to underserved clients, with other goals secondary, or should the emphasis be on reflective pedagogy?

We hope these materials will be useful to you as you shape the goals for your own programs.

AALS Committee on the Future of the In-House Clinic²

The AALS Committee on the Future of the In-House Clinic³ 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;"
2. Providing professional skills instruction in such necessary areas as interviewing, counseling, and fact investigation;
3. Teaching means of learning from experience;
4. Instructing students in professional responsibility by giving them firsthand exposure to the actual mores of the profession;
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
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; and
9. Critiquing the capacities and limitations of lawyers and the legal system.

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

Elliott's List of Goals For Clinical Programs

The most important goals of our in-house clinic are to teach the following:

- Client-centered lawyering
- Theory-driven preparation and advocacy
- Professionally responsible legal work
- Fact investigation and development
- Persuasive advocacy
- Strategic planning and problem-solving
- Critical analysis of the justice system/skills need for social justice lawyering

These are described more fully in the following article.

Papers from the La Pietra Conference of International Legal Educators

***375 CLINICAL LEGAL EDUCATION IN THE UNITED STATES: IN-HOUSE CLINICS,
EXTERNSHIPS, AND SIMULATIONS**

Elliott S. Milstein [\[FN a1\]](#)

Copyright © 2001 by Association of American Law Schools; Elliott S. Milstein

The core idea of clinical legal education is that teaching students while they are in professional roles is an essential component of professional education. [\[FN1\]](#) Modern clinical education grew out of the progressive reform movement of the 1960s and 1970s and responded to students' desire to learn how to use law as an instrument of social change and to be involved in the legal representation of poor people. [\[FN2\]](#) It has evolved into a distinctive academic field that includes sophisticated models of pedagogy [\[FN3\]](#) and experience-based scholarship about teaching, [\[FN4\]](#) lawyering, [\[FN5\]](#) law, [\[FN6\]](#) and legal institutions. [\[FN7\]](#)

***376** There are three different branches of clinical education in the United States: in-house live-client clinics, externship programs, and simulation courses. In-house live-client clinics are built around an actual law office, usually located in the law school, that exists for the purpose of providing students with a faculty-supervised setting within which to practice law and learn from the experience. [\[FN8\]](#) Students learning in externship programs are placed in professional settings external to the law school, including law offices within governmental agencies and nongovernmental organizations. [\[FN9\]](#) Law schools use the students' experience in those offices as the basis for teaching and learning. [\[FN10\]](#) Simulation is a teaching method in which students are put into simulated lawyer roles to perform some aspect of the lawyering process in a controlled setting. [\[FN11\]](#) Each of these uses the students' experiences as the subject matter for analysis, both within and outside the classroom.

Most references to clinical legal education in the U.S. are to the in-house model. The advantage of this model is that the primary purpose of the law office in which students work is education. In these clinics, students' first professional experiences are undertaken under the supervision of faculty. The pedagogy is designed to engender appropriate professional values while also teaching students the theory and practice of lawyering.

Students in clinics are given complete responsibility for handling an actual legal matter for a real client. [\[FN12\]](#) This is possible because every state has a "student practice rule" permitting students who are supervised by law school faculty to practice law. Students' work includes the trial of cases in court, negotiations with opposing counsel, client interviewing and counseling, writing opinion letters, and all of the other tasks associated with legal representation. While most clinics represent clients in litigation or other contested proceedings, there are now many clinics in which students represent individuals and groups in transactional and other business matters. [\[FN13\]](#) Schools have chosen a variety of ways to organize the legal work of their clinics, and so there are clinics that specialize in such areas as criminal law, family law, domestic violence, international human rights, community economic development, and tax; others are set up as general practice clinics handling a variety of civil ***377** cases. Another way that clinics are organized is to target a particular clientele, such as juveniles, women, the elderly, prisoners, or AIDS patients. [\[FN14\]](#)

Clinical teachers use a number of learning modes, both to be certain that students competently handle the matters entrusted to them and to ensure that students learn from their experiences. The most intensive mode is supervision--meetings between teacher and student teams (many clinics require students to work in collaborative teams of two [\[FN15\]](#)) to discuss preparation or to analyze critically work that has been done. These meetings are frequent and include, among other things, review of the students' written work, strategic choices, and reflections on what has been learned. The best supervision deals with the particular problems in the pending case and also uses that case or student experience as a metaphor for larger recurring issues that the students will face in their careers. Helping students extract theory from experience, apply theory to solve real-world problems, and revise theory in light of experience is the supervisory ideal.

Another learning mode in clinical programs is case rounds. These are conducted in a seminar format and focus on the students' experience in their cases. Students are called on either to present a case in preparation for group input on the decision-making necessary to the next actions in the case or to report on an event that has occurred in the case. The group process is used sometimes to look forward, by helping a team make a strategic decision, and sometimes to look back, analyzing the relationship between a result and the actions the legal team took to produce the result. The empirical data collected by each student is shared with the group so the students can begin to develop a more general and theoretically sound approach to lawyering. Among the topics that are discussed are professional values, legal ethics, strategy, tactics, and the process of reflection.

The third learning mode is a seminar using readings, simulations, and classroom discussion to teach the lawyering process. The widespread use of simulation in legal education began from the pioneering use of it in the seminar component of clinical programs. The syllabus for the seminar typically includes client interviewing, client counseling, case theory, strategic planning, fact investigation, negotiation, persuasion, and trial skills such as direct and cross-examination and closing arguments. [\[FN16\]](#) In the clinic in which I teach, for example, the seminar is built around a simulated case; for each of the topics we teach a theory class, then give students the opportunity to apply the theory in a simulated exercise that is videotaped and critiqued. Some of ***378** the classes are built around edited videotapes of the students conducting the simulated exercise.

The most important goals of our in-house clinic are to teach the following:

- . client-centered lawyering
- . theory-driven preparation and advocacy
- . professionally responsible legal work
- . fact investigation and development
- . persuasive advocacy
- . strategic planning and problem-solving
- . critical analysis of the justice system
- . reflective practice

Client-centered lawyering, perhaps the ideological core of clinical education, is the idea that lawyers represent clients and must do it in a way that ensures the autonomy of the client as the primary decision-maker over the life of a case. It assumes that all important decisions involved in solving a legal problem involve value choices and that a primary job of a lawyer is to help a client make those decisions in a way that is consistent with the client's values. [\[FN17\]](#) Teaching legal interviewing, problem-solving, and legal counseling is, therefore, fundamental in nearly all clinical programs. In addition, as is the case with all of the parts of the lawyering process, one of the scholarly projects of clinical teachers has been to develop theories or models of how each of these lawyering tasks might best be carried out and theories of what pedagogy would best teach them.

Theory-driven preparation and advocacy refer to the idea that all of the lawyer's strategic decisions in a case need to be organized around a theory of how the client's case may be won. This "case theory" is a way of telling the client's story that emphasizes favorable facts and explains unfavorable facts in the context of the legal elements necessary to prove the client's cause. [\[FN18\]](#) Decisions, for example, about what facts to investigate, what evidence to present, and what arguments to make are determined by their relationship to this case theory. Students in clinics are taught how to develop a case theory early in their presentation of a case, how to revise it as necessary as situations change, and how to organize their work on the case in ways that are consistent with the theory.

Teaching students to engage in professionally responsible legal work is one of the most basic duties of a clinical teacher; that this is done in a clinic is one of the fundamental justifications for locating the clinic within the academy. Ethical and moral dilemmas occur daily when one works in the real world, and clinic students are responsible for resolving them, usually for the first time in their lives. Students engaged in practice must decide (for example) what to do ***379** when a client proposes to tell a lie or wants to advance a position the student finds morally repugnant; how to deal with a conflict of interest; whether to file a complaint against an incompetent or unethical cocounsel or opposing counsel. In addition to questions involving compliance with the formal rules of professional conduct, clinical teachers engage students in an exploration of their role in creating a just society. [\[FN19\]](#)

In most of the rest of the American law curriculum, facts are given. In the study of appellate court decisions, facts are distilled into a few short paragraphs and students do not develop an understanding of where these facts come from. In the clinic students learn the facts through a client interview (often across language and cultural barriers), through research and investigation, and through formal and informal discovery procedures. In learning fact investigation and development, students are taught what facts to look for, how to distinguish relevant from irrelevant facts, methods for searching for facts, the importance of legally sufficient evidence to support factual propositions, and how to organize the evidence to tell the story that is consistent with the case theory. [\[FN20\]](#)

Persuasive advocacy is important to lawyers in both litigation and transactional settings. Persuasiveness depends upon both the quality of the case theory and the skills necessary to carry it out. Clinics teach students theories of advocacy, including, for example, the relationship of learning theory to conducting a direct examination, and the relationship of rhetorical reasoning to conducting a cross-examination. [\[FN21\]](#)

Strategic planning involves recognizing the maximum number of choice moments in the life of a legal matter and making decisions about taking action or withholding action in order to maximize the likelihood of achieving the goals. Learning how to make decisions that predict how people and institutions will behave in response to particular actions, including analyzing both legal and nonlegal factors, is basic to legal problem-solving. The real-world setting of the clinic forces students to engage in the complexity of analysis that is inherent when the multiple actors who affect outcomes are identified. Clinical teachers work closely with students both to teach them a sound process for decision-making and to ensure that the decisions they make in the cases they are handling are analytically sound. [\[FN22\]](#)

Clinics are also uniquely positioned to provide a vantage point from which students can engage in critical analysis of the justice system. Because they typically represent the poor and the disenfranchised, students see the legal system through the eyes of clients who are indigents, women, convicts, or members of ***380** racial or sexual minority groups. They witness, for example, the way in which status often disadvantages their client, sometimes as a result of legal doctrine or other times because of the prejudices of judges or other actors in the system. Clinical teachers work with students to help them understand the sources of injustice and to explore their ideas for reform. [\[FN23\]](#)

Ultimately clinical pedagogy is intended to teach students to be reflective practitioners, [\[FN24\]](#) lifelong learners who know how to learn from experience. Throughout students' time in a clinic, they are asked to evaluate themselves, analyze their experiences, and articulate what they have learned about themselves, about their abilities, about the validity of the assumptions underlying their strategic predictions, about the lawyering process, and about the justice system. [\[FN25\]](#) In this way, we try to build their abilities both to gather useful empirical information and to develop that information into generalizable conclusions.

As I've said, simulation is often used in the seminar portion of clinical programs. And a number of the skills that are taught in clinics are also taught in simulation programs. For example, many law schools have simulation courses in interviewing and counseling, negotiation, legal writing, alternative dispute resolution, and trial and appellate practice. Simulation is also used to teach substantive law courses--either the entire course or, more commonly, a portion of the syllabus.

Externship programs place students in various kinds of legal jobs in the nonprofit and government sectors where they perform legal work under the supervision of a lawyer in the agency. Many schools try to create a three-way relationship between professor, student, and supervisor so that the faculty member can monitor the student's work and the supervisor's evaluation of it. Other schools rely on the student's reflections upon the work in the externship as fodder for learning. In most externship programs, students write reflective journals, have tutorial meetings with faculty, and participate in seminar discussions. Learning goals of externships include providing students with a milieu within which to learn a substantive area in depth while developing a critical perspective on the organization of legal work. Externship teachers often explore the ethical dimensions of the student's experiences and observations, as well as explore the justice issues that are inherent in most of the settings in which students practice.

Although there are more than 1,000 law teachers in the United States who identify themselves as clinicians, only a few schools are able to serve all of their students with a clinical experience. Even though nearly every American law ***381** school has some form of clinical program and the number of students served grows each year, the expensive faculty-student ratio that this form of teaching requires (1:8 is the informal standard for in-house programs) inhibits schools

from making clinical education universally available. Our challenge now is to accept that as a goal and to assemble the resources necessary to make it a reality.

[\[FNa1\]](#). **Elliott S. Milstein** is a professor at the Washington College of Law, American University.

I want to acknowledge and thank my research assistant, Amy Pugliano, for her able work on an extensive set of footnotes to this article, most of which have been omitted at the editors' request. I will be happy to send the original article, fully footnoted, to any interested reader.

[\[FN1\]](#). See William Pincus, *Clinical Legal Education for Law Students* (New York, 1980). Pincus was president of the Council on Legal Education for Professional Responsibility, which sought to combine hands-on experience for law students with the increasing need for legal representation for all people. Funded by the Ford Foundation in 1968, CLEPR supported experiments in clinical legal education by giving grants and guidance to law schools that established quality clinical programs.

[\[FN2\]](#). See Richard A. Boswell, [Keeping the Practice in Clinical Legal Education and Scholarship](#), 43 *Hastings L.J.* 1187 (1992); Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* at 215-16 (Chapel Hill, 1983); Alan A. Stone, [Legal Education on the Couch](#), 85 *Harv. L. Rev.* 392 (1971).

[\[FN3\]](#). See Mark Spiegel, [Theory and Practice in Legal Education: An Essay on Clinical Education](#), 34 *UCLA L. Rev.* 577 (1987); Joseph D. Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in *Clinical Legal Education: Report of the Association of American Law Schools--American Bar Association Committee on Guidelines for Clinical Legal Education* 191 (Chicago, 1980).

[\[FN4\]](#). See, e.g., Ann Shalleck, [Clinical Contexts: Theory and Practice in Law and Supervision](#), 21 *N.Y.U. Rev. L. & Soc. Change* 109 (1993-1994).

[\[FN5\]](#). See, e.g., Binny Miller, [Give Them Back Their Lives: Recognizing Client Narrative in Case Theory](#), 93 *Mich. L. Rev.* 485 (1994); Robert D. Dinerstein, [Client-Centered Counseling: Reappraisal and Refinement](#), 32 *Ariz. L. Rev.* 501 (1990).

[\[FN6\]](#). See Boswell, *supra* note 2; Susan D. Bennett, ["No Relief But Upon the Terms of Coming into the House": Controlled Spaces, Invisible Disentitlements, and Homelessness in an Urban Shelter System](#), 104 *Yale L.J.* 2157 (1995).

[\[FN7\]](#). See Richard J. Wilson, *Prosecuting Pinochet: International Crimes in Spanish Domestic Law*, 21 *Hum. Rts. Q.* 927 (1999).

[\[FN8\]](#). See [Report of the Committee on the Future of the In-House Clinic](#), 42 *J. Legal Educ.* 511 (1992).

[\[FN9\]](#). See J. P. Ogilvy, [Introduction to the Symposium on Developments in Legal Externship Pedagogy](#), 5 *Clinical L. Rev.* 337 (1999); J. P. Ogilvy et al., *Learning from Practice: A Professional Development Text for Legal Externs* (Eagan, 1998).

[FN10]. See Peter Jaszi et al., [Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University](#), 5 *Clinical L. Rev.* 403 (1999).

[FN11]. See Harbaugh, *supra* note 3.

[FN12]. See David F. Chavkin, [Am I My Client's Lawyer? Role Definition and the Clinical Supervisor](#), 51 *SMU L. Rev.* 1507 (1998).

[FN13]. For additional information regarding transactional clinics and community economic development clinic programs, see Peter Pitegoff, [Law School Initiatives in Housing and Community Development](#), 4 *B.U. Pub. Int. L.J.* 275 (1995); Susan R. Jones, [Small Businesses and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice](#), 4 *Clinical L. Rev.* 195 (1997).

[FN14]. A searchable compilation of the varied clinics and clinicians that exist in law schools nationwide is maintained on the Internet by David Chavkin. See *Clinical Legal Education: A Directory of Clinical Legal Educators*, available at <<http://www2.wcl.american.edu/clinic>>.

[FN15]. See David F. Chavkin, [Matchmaker, Matchmaker: Student Collaboration in Clinical Programs](#), 1 *Clinical L. Rev.* 199 (1994).

[FN16]. See Gary Bellow & Bea Moulton, *The Lawyering Process: Materials for Clinical Instruction in Advocacy* (Mineola, 1978). This book, along with its criminal and civil simulation supplements, has, perhaps more than any other, influenced the agenda and methodology of clinical seminars. It remains the only comprehensive attempt to define a theory for the field of lawyering and to provide the materials necessary to teach it.

[FN17]. Two useful and widely adopted texts for teaching client-centered lawyering are David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (St. Paul, 1991) and Robert M. Bastress & Joseph D. Harbaugh, *Interviewing, Counseling, and Negotiation: Skills for Effective Representation* (Boston, 1990).

[FN18]. See, e.g., Paul Bergman, *Trial Advocacy in a Nutshell* (St. Paul, 1997).

[FN19]. This role that clinicians play in teaching students about the moral and ethical responsibilities of lawyers was, of course, central to the original vision of clinical education. See Pincus, *supra* note 1.

[FN20]. See David A. Binder & Paul Bergman, *Fact Investigation from Hypothesis to Proof* (St. Paul, 1984).

[FN21]. See Bergman, *supra* note 18.

[FN22]. See Shalleck, *supra* note 4, at 146. (At footnote 42 Shalleck discusses strategic planning using a concept explicated by Anthony Amsterdam called "end-means thinking.")

[FN23]. See Jane Harris Aiken, [Striving to Teach "Justice, Fairness, and Morality."](#) 4 *Clinical L. Rev.* 1 (1997); Leslie

G. Espinoza, [Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender](#), 95 [Mich. L. Rev.](#) 901 (1997); Ann Shalleck, [Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused](#), 64 [Tenn. L. Rev.](#) 1019 (1997).

[FN24]. See Donald Schon, [Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions](#) (San Francisco, 1987).

[FN25]. See Susan L. Brustin & David F. Chavkin, [Testing the Grades: Evaluating Grading Models in Clinical Legal Education](#), 3 [Clinical L. Rev.](#) 299 (1997).

The Goals for Jane's Clinic

- **To have students leave the clinic with some appreciation of the complex legal problems of the poor and marginalized and the role they can play in either working toward solving those problems or making those problems worse.**
- **To assist students in their transition from being a student to being a lawyer.**
- **To ensure that students recognize that lawyers have power and understand that with that power comes responsibility that cannot be ducked.**
- **To recognize ethical problems when they arise and to have some confidence that they can engage in the difficult conversations that addressing ethical problems often require.**
- **To appreciate that lawyering is often hard work and chaotic but that the students leave the clinic with faith that they have the ability to learn from experience, create order out of chaos and be comfortable with ambiguity.**
- **To develop the ability to perform skillfully and provide excellent representation for their client.**
- **To impress upon the students that lawyering requires organization, time-management and communication skills, the ability to follow directions, investigate, think holistically, and plan and the capacity to exercise judgment.**
- **To learn how to listen to their clients, appreciate cultural differences, intuit when their own cultural context may be influencing how they see and evaluate the case and to zealously represent their client (even when they are “flawed”).**
- **To inspire students to emotionally connect with their clients, their professional identity and the importance of social justice.**
- **To remind students that the law is merely one avenue for solving clients' problems and may not be the best avenue.**
- **To understand that justice is not irrelevant to legal decision-making and to embrace their capacity to make change and to be creative problem-solvers.**

Copyright (c) 1996 Clinical Law Review, Inc.

Constructing a Clinic
Philip G. Schrag

3 *Clinical L. Rev.* 175 (Fall, 1996)

* * *

Goals

I begin with goals, partly because rational planning generally begins with goals¹² and partly because, after teaching clinic students for 25 years to start any project by defining their goals, I find it nearly impossible to do anything else. Over the years, my CALS colleagues and I have identified more than a dozen plausible teaching goals for a law school clinic, and we try to do at least some work on all of them with each student. With one exception,¹³ these goals do not seem to be inconsistent with each other, but of course the limited time available in a semester or even a year necessitates emphasis on some of the goals over others with any particular group of students. Other clinic supervisors will have different priorities, and they may also have goals that do not appear on our list. In addition to teaching goals, all clinical teachers have some non-teaching goals that influence clinic design, such as leaving enough time in the week for non-clinical courses, scholarship, public service, and family life.¹⁴

[*180] *Responsibility.* One possible goal is to teach students to accept and assume responsibility for matters of great importance to real clients. Emphasizing student responsibility need not be a goal of every clinic; for example, some clinics may place greater weight on teaching research and writing skills, leaving relatively more decision-making to the teachers. As noted below,¹⁵ it is important for clinical teachers to decide consciously how significant this goal is, because decisions about supervisory methodology will be affected by this question. At CALS, this goal is primary. While representing a client, students must struggle with questions such as which decisions to make themselves and which to leave to the client; how closely to keep a client informed; what the student should do if the client seems not to be revealing the whole truth; how to advise a client when every possible course of action involves some degree of risk; and how to balance the demands of clients' cases against all the other demands on the student's time. We have found that the more responsibility we give to students, the more apt they are to perform at a level worthy of that responsibility.¹⁶

Doctrine and institutions. A second goal of many clinics is to teach students about a new area of law. Some clinics are general practice civil or criminal clinics, but many clinics specialize in one or two areas of substantive law and, among other goals, hope to familiarize students with the doctrines, institutions, procedures, conflicts, folkways, and ethical problems unique to that area.

Service. A third goal of nearly all clinics is to provide free service to people in need. Pursuing this goal in certain ways may conflict with other important goals. For example, a clinic in which students worked on appeals in capital cases or on civil rights class actions might serve needs that seem most compelling or affect the largest numbers of people, but because so much is at stake, students might not be able to take as much responsibility for those cases as they could in some other types of cases. n17

Problem-solving. Most clinics also want to try to improve students' problem-solving abilities, a fourth possible goal. How much the clinic emphasizes this goal (as opposed, for example, to the goal of [*181] serving as much community need as possible) will affect structural decisions such as the caseload per student. At CALS, we have always chosen to make the students' case load very low so that they could examine with great care every one of their decisions and actions. n18 We have thought that by taking an hour to make a decision that a busy practicing attorney would make in a minute, students not only make better decisions but also learn a decision-making process that can later be applied to more complex problems. Of course, in any particular year and for any particular subject matter of clinic practice, even the idea of a "low" case load has to be translated in practice into a precise number, a problem of no small difficulty. n19

Clinic supervisors are more likely to adopt as a goal the enhancement of problem-solving skills if they have a model of good decisionmaking. Since attorneys differ among themselves about the relative roles of deliberation and intuition in good legal practice (particularly trial practice), not all clinicians may emphasize this skill. But CALS does try to offer students a model of planning and decision-making, and it encourages students to experiment with that model, though some of them may eventually reject it. We suggest to them the familiar cognitive model that emphasizes deliberate planning rather than working from hunches; identification of all possible options (including less conventional ones); assessment of the relative advantages and risks of each; identification of what further research can be done to reduce the risks; appreciation of the effects on the decision-making process of time pressure, interpersonal factors, and emotions; and constant re-evaluation of decisions as facts change. n20

Collaboration. A fifth possible goal is to teach collaboration. Most law school work is done individually and usually competitively, but real legal work is usually done cooperatively in small groups (e.g., three or four lawyers working together on a case, or a small task force) within larger organizations (e.g., a law firm, a corporation, or an agency). The reason for this constant collaboration is that joint effort usually produces better results (albeit with the expenditure of more time) than individual work. Learning to work with a partner and with the other members of a larger work group is a critical skill, yet it is one that is not usually taught in law schools, except through extracurricular settings such as journals and through clinics that choose to emphasize cooperative work. This, too, is not a *necessary* goal of a clinic. Some clinic supervisors prefer to emphasize other skills and might find collaboration a distraction. But at CALS and its [*182] Columbia University precursor, n21 learning by working together has always been on the agenda.

Cross-cultural awareness. Many clinicians are interested in helping law students to learn by interacting closely with people from other cultures, because although most law schools teach abstractly about diversity, only small numbers of law students live in abject poverty or come to law school from other countries. Clinic supervisors who make inter-cultural experience one of their goals tend to make structural decisions to facilitate it. For example, they might decide that the clinic

will represent only poor people, or they might encourage students to meet clients in the clients' homes rather than at the law school.

The role of emotions. A seventh possible goal involves the emotional aspects of being a lawyer, although this is a side of practice that not all clinicians want to address as part of a law school course. The transition from the role of student to the role of lawyer is a period of rapid emotional as well as intellectual change. Most law school courses do not give explicit attention to the emotional aspects of becoming a lawyer. But practicing law with real clients and before real judges often generates very strong feelings, and a clinic can help students to become more aware of those feelings and better able to make feelings work for them rather than prevent them from achieving their work goals. For example, anxiety about confronting an older, more experienced adverse attorney may prevent a law student from discussing a case with that attorney before trial. But when a student realizes that anxiety has distorted strategic decision-making, the student can address the anxiety directly, better serving the client's immediate needs and the student's long-term development as an advocate. In CALS we have long explored the entire spectrum of emotions that lawyers inevitably experience while working on cases, including anger, competitiveness, frustration, and elation.

Coping with facts. The tendency in most law school courses to take facts as given and study only law and policy suggests an eighth possible goal for clinics, because in clinical practice it quickly becomes clear that developing a legal theory is only one step, and usually not the most important one. Most litigators spend relatively little time developing *theory*, and far more time discovering *facts* and then figuring out how to turn those facts into admissible *evidence*. One objective of CALS is to help students understand the practical relationship between these three concepts; working on cases inevitably requires the appropriate linkages to be made. Furthermore, cases involve not [*183] only conflicting versions of complicated events, but often the perceptions of experts who speak in the specialized jargon of another discipline (e.g., history or psychology or medicine) which must be mastered to present a case properly. Learning to cope with complexity -- including learning to translate the language of specialists to laypersons -- is one of the things many students learn best in clinics.

Values. A ninth objective, for many clinics, is to create opportunities for students to think about their own social values. In the United States, lawyers have a great deal of power to affect not only individual clients, but also society as a whole. Yet many lawyers do not realize how much power they have to achieve their vision of a just society, and others have not allowed themselves the luxury of asking what kind of a society they would like to help produce.

Some clinicians not only ask their students to think about social values but also encourage their students to consider a broader range of professional choices than they may have thought about before enrolling in the clinic. Coming to clinical teaching from legal services or public defender work or some other type of public interest practice, they desire to expose some of their students, who have never imagined anything but corporate law careers, to the possibility of spending part or all of their post-graduate years representing poor people or other under-represented groups or communities. Most clinics represent primarily or exclusively indigent people, and clinics are places where law students sometimes meet poor people for the first time in their lives. These encounters cause some students to appreciate how much privilege they enjoy. Some clinicians urge students to think very hard about class differences and about whether the students' relative wealth and education imposes on them an obligation for public service, and for continuing reform of the laws

and the legal profession itself, after the clinic experience ends. n22 Also, clinical teachers, who often come to know their students well, can encourage them to think deeply about what they want to accomplish after graduation, rather than drifting into traditional career paths for lack of anything better to do. n23

[*184] A decision to work on values has structural implications. For example, a clinic that will focus on helping students to think about their future roles in social life must create some classroom time for it, and the clinic must strive for an atmosphere so open that students will feel free to talk about and then begin to make conscious choices about the settings in which they will later work. The clinic might also teach techniques (which can be analogized from advocacy on behalf of clients) for asserting authority in the students' future work settings (e.g. by organizing fellow law firm associates to insist that *pro bono* work be credited as billable hours).

Ethics. Early in the development of law school clinics, it became clear that students' cases often presented challenging ethical issues, and that clinicians could encourage students to struggle with those issues while working on cases. n24 Exploring ethical dilemmas before they are resolved, and while students and teachers must make agonizing decisions and then live with the consequences, makes this aspect of clinic work lively. Students' ethical struggles in the clinic can also enrich their subsequent classroom courses in professional responsibility.

Creativity. An eleventh possible goal is to enhance students' creativity. One of the hallmarks of an effective lawyer is that he or she can (1) recognize those occasions when doing a task by the book is not likely to achieve satisfactory results, (2) figure out a creative alternative, and (3) find the courage to deviate from the accepted norm of practice. A clinic can encourage professional creativity, and clinic students are sometimes startled by how successful they can be by allowing themselves to be imaginative. For example, a student in our clinic, seeking to distinguish himself from the teeming throng in a law firm interview for post-graduate employment, succeeded by handing [*185] the interviewer a written agenda of what he wanted to talk about. Clinics use many techniques to encourage creativity, including discussions of alternative ways of working, consideration of emotional factors that inhibit creativity, and the use of acting and role-playing. Indeed, even after a generation in which they have become part of the landscape of American legal education, clinics themselves are typically among the most creative institutions within their respective law schools.

Authority. Some clinics might set as an objective another amorphous but important interpersonal skill: teaching students to exercise authority. If the clinic supervisors so choose, the clinic can enable students rather than teachers to make and execute virtually all the caserelated decisions, and even to make certain educational decisions such as what subjects will be the primary issues for supervisory meetings and what kind of feedback they want from teachers at various stages of the cases. After all, what distinguishes clinics from classroom instruction is that in clinics, students must take actions, and learning about decision-making under the weight of responsibility can be an important part of the experience.

Learning to learn. Another goal, one that acknowledges the limitations of any kind of educational experience, including clinics, is to help students to study their own learning processes so that they can continue to use the insights they have gained long after the brief clinical experience has ended. For example, if a student discovers that he or she learns well by brainstorming with a partner, or by arguing with an authority figure, or by role-playing an upcoming event on videotape, the student gains an asset that can be used repeatedly in new settings.

Traditional skills. A final goal, listed last here because it is so obvious, and so widely shared by clinics, is to give students experience, guidance, and detailed personal feedback as they execute such standard legal activities as interviewing, case planning, investigating facts, counseling, legal writing, witness examination, and oral argument. This is the goal that non-clinical faculty most often attribute to clinics, sometimes not realizing how many more subtle skills clinics can teach along with traditional skills.

Students' goals. In addition to institutional teaching goals like these, and any personal goals of the instructors, clinics will inevitably also work on goals that the students identify before or during the clinical experience. Many of those goals will be similar to the goals listed above (such as client service or the development of traditional or non-traditional skills). But some may be surprising; for example, a student may choose a clinic because taking the course will apparently [*186] help him or her to become more (or less) serious about the law, to become less defensive in response to criticism, or to become more (or less) assertive when dealing with colleagues or adversaries.

WALKING THE CLINICAL TIGHTROPE: BETWEEN TEACHING AND DOING

Stephen Wizner

4 *RRGC* 259 (2004)

* * *

As clinicians, we believe that most of what law students should learn from us is learned most effectively experientially, by students acting in role, under appropriate instruction and supervision, as lawyers for disadvantaged clients. And so the question we need to ask ourselves is this: Can we represent more clients and handle more cases, spend less time on clinical pedagogy, and still ensure that clients are well represented and that students learn what they need to learn? We need to ask ourselves this question because the time that we devote to teaching about doing is time that we and our students do not spend in the direct provision of legal services to clients. Can we teach through doing if we do not first or simultaneously teach about doing?

Even though we call our program at Yale Law School a legal services organization - and we are the largest provider of legal services to low-income clients in New Haven - it is clear to all of us on the clinical faculty that, were we to devote full time to serving as supervising attorneys, we could accept more students into our program, represent more clients, and handle more cases. This makes it appropriate to ask ourselves whether we are doing all that we should be doing to help alleviate the shortage of legal assistance to the poor people of New Haven, consistent with our duty to provide appropriate instruction and supervision to our students.

Years ago, during the "dark days" of the Reagan administration - they don't seem quite so dark these days - Reagan's Attorney General, Edward Meese, who was no friend of legal services for the poor, proposed that federal funding for legal services be diverted to law schools as a way of reducing or eliminating federally funded legal services programs and backup centers. Many law school clinicians joined their legal services colleagues in opposing this move, arguing that law school clinical programs should not be taking poor peoples' legal services funds away from legal services programs. Those of us who opposed taking legal services money away from legal services programs for the support of law school clinics maintained that law schools should be financing clinical programs, not taking money away from poor peoples' lawyers, and that, in any event, clinical programs were, by design, inefficient deliverers of legal services, since so much of what goes on in clinics is teaching. In order to use clients' cases for teaching, we argued, clinicians had to handle smaller caseloads and spend time with students examining, preparing, reflecting, and in other ways using clients' cases as teaching texts.

Nevertheless, some law schools did apply for and receive federal legal services dollars to support their clinical programs. Gary Bellow n1 was one of those who did apply. He received, as I

recall, a \$ 500,000 grant to support Harvard's Jamaica Plain Legal Services Center. Bellow's decision to apply for and accept a substantial amount of federal legal services funding to support the Harvard clinical program was, and continues to be, controversial. However, in all fairness to Gary, who was a true visionary and a major force in both legal services and clinical legal education, the center that he founded has been a significant provider of legal services to low-income clients in Boston.

The controversy surrounding the Harvard program concerns not only the acceptance of federal legal services funding in the beginning, but the design of the program itself. Supervising attorneys in the Harvard program have never traveled the path from supervising attorney to clinical professor. The Harvard supervising attorneys have no faculty status, other than the quasi-faculty title of "clinical instructor," and no job security. Their full-time job is supervising students handling cases for clients. They are not expected to teach classes, write articles, or participate in any of the institutional activities engaged in by members of the faculty. The clinical faculty, Gary Bellow, until his untimely death, and Charles Ogletree, who directs the Harvard Criminal Justice Institute, do the teaching. Harvard Law School, a school with more than 1500 J.D. students, today has only one clinical faculty member: Charles Ogletree. But it also has more than thirty supervising attorneys in its various clinical programs.

Harvard Law School provides a lot of legal services to low-income clients, more than any other law school that I know of. Harvard has chosen, for whatever reason, to construct its clinical program as a legal services program, and all of the supervision is performed by staff attorneys. It has created as efficient a legal services delivery program as possible, using law students to do most of the legal work. In so doing, however, Harvard has avoided or evaded the educational and political winds that have swept through most law schools, primarily from the A.A.L.S. and the A.B.A., which have resulted in the movement of clinical legal education from an adjunct role outside the regular curriculum, to the more established, accepted and central role that it now plays in legal education. By having only two clinical faculty members - one since Gary died - Harvard has been able to hire a large number of staff attorneys at considerably lower salaries than those paid to the members of the law school faculty. Staff attorneys don't function on an academic calendar, they don't receive academic leaves, they don't enjoy the other perquisites of law professors. They supervise students representing clients. If you want to maximize the amount of clients that you represent in a clinical program, that's how you do it.

I think we need to examine and reflect on the tradeoffs between law schools, which have an integrated faculty in which clinicians enjoy all of the perquisites, and all of the academic and institutional responsibilities of non-clinical faculty, and a program in which all of the case supervision is provided by staff attorneys. I think we need to evaluate these tradeoffs in terms of meeting the law school's obligation to address the access to justice problem, its educational obligations to its students, and the role and status of clinical teachers in the institution. It may well be that teaching and institutional citizenship responsibilities of clinical professors, including non-clinical teaching, committee work and writing, the educational focus of clinical courses, and the many other claims on the time of clinical teachers, make it unrealistic to expect law school clinics to play a significant role in addressing the access to justice problem. Perhaps the best contribution that law schools can make, as Jane Aiken has argued so forcefully in her writing, n2 is to sensitize students to social justice issues through exposure to actual victims of social injustice, and to inculcate in students the professional value of service to the unprivileged.

But I wonder whether we law school clinicians, and I include myself in this critique, should not be striking a better balance between teaching and doing. I think we need to think about returning to the root notion of experiential learning. It seems to me that too many clinics overemphasize learning from teaching, at the expense of learning from doing, and that the core of our teaching - the doing - needs to be putting students in role, representing real clients under supervision, even if that means deemphasizing fictional simulation exercises and other forms of artificial skills training and classroom instruction. I have come to believe that unless we design our clinics to immerse students in the delivery of legal services to clients, we teach them too little about legal services work, we underexpose them to the real world of low-income clients, and we fail to meet the law school's obligation to make a meaningful contribution to addressing the access to justice problem.

So, this is my point, which I believe is both an ethical and a moral one, although it may not be an educational one. Law school clinicians need to emphasize the primacy of the social justice objectives of clinical legal education by providing legal assistance to unprivileged and underserved clients in communities through supervised law student representation. Everything else we do should be seen as secondary and, to the extent possible, should support the primary objectives. When we employ simulation, it should be in the form of mooting students for actual representational events on behalf of real clients. When we write, it should be writing that will advance the project, that will assist students with their representation of clients, assist clinical teachers in their clinical teaching, explain to the non-clinical world what we are doing in order to gain support for our work, and use the unique knowledge we gain from practice to propose and advocate reforms in the law. When we teach non-clinical courses, the courses should relate to and support our clinical teaching. This means that we should teach trial advocacy, legal ethics and evidence, but not torts or contracts. When we engage in activities of institutional citizenship, such as serving on faculty committees, we should consider those activities as opportunities for encouraging our law schools to commit financial and intellectual resources to addressing the misdistribution of legal services through support of clinical programs, and teaching, research and writing directed towards the amelioration of the crisis in access to justice. And when we engage in bar activities, we should try to activate the bar to assist in our social justice mission. Providing and facilitating access to justice for unprivileged and underserved clients and communities should be the focus of both our teaching and our doing. Only then can we claim to have achieved an appropriate balance on the tightrope between teaching and doing.

There are many inefficiencies built into the design of most law school clinics that result in limiting the numbers of clients represented and cases handled by clinic faculty and students. I do not mean to suggest that all of this should be abandoned. But I do wonder whether we do not spend too much time - our time and our students' time - on pedagogy not directly related to the handling of individual clients' cases. I wonder whether we do not devote too much time to fictional simulations and skills training, when the lessons we seek to teach through these methods could be taught equally as well and more realistically by devoting that time to the preparation and handling of actual cases for real clients. I wonder whether students and clinical teachers devote time to student journals and to engaging in guided reflection, such as the type that Jane has been describing so beautifully, about how students and clients experience their personal interactions, at the expense of actually representing clients and handling cases. I wonder whether law school clinics could not increase the provision of legal services that they provide to low-income clients and communities without impairing, and perhaps even enhancing, students' educational experience. I wonder whether law

school clinics should not increase students' learning through doing, and decrease the time and effort we devote to teaching them about doing.

FOOTNOTES:

n1. The late Gary Bellow was Professor of Law, founder, and former faculty director of Harvard Law School's Clinical Programs.

n2. See Jane H. Aiken, *Walking the Clinical Tightrope: Embracing the Role of Teacher*, 4 *U. Md. L. J. of Race, Religion, Gender & Class* 267 (2004).

WALKING THE CLINICAL TIGHTROPE: EMBRACING THE ROLE OF TEACHER

Jane H. Aiken

4 *RRGC* 267 (2004)

* * *

It is not an unimportant question to ask ourselves why we do what we do. Why are we in the academy and not out in the trenches working for social justice? I take as a given that we are dedicated to social justice but it seems to me to be a waste for us to use our positions as clinical teachers merely to add a few more services, albeit good services. If all we are trying to do is "show" students what it means to work for social justice by having them work in the clinic, are we reduced to tour guides? Why not set up an elaborate externship program? We should have the courage to claim that effective teaching is critical to the clinical endeavor. We often say that clinical legal education is a far more effective means to teach students but then we run from embracing our roles as teachers. We are teachers and it is time that we proudly claim that role. Our students and our clients deserve at least that.

Clinical education has always created opportunities for law students to recognize injustice, and to appreciate the role they can play in the legal system and have an effect on justice and the delivery of justice. We can inspire them to do just that. I believe we've been inspiring them this way for a long time, but if we can motivate them well, clinical legal education will have an even greater impact on the delivery of justice in this society, greater than if we handled more cases. We will be producing students who leave law school with a sense of both the necessity to do this work and the confidence that they can make a difference. To achieve that goal, we need to be effective teachers, not just effective doers. I do not think it is enough to give students the experience. We need to help them reflect. We need to have them look at the experience to learn much larger lessons than what they learn when they learn how to handle a particular case.

The lessons have to be larger. I do not want my students just to learn how to obtain an order of protection for a domestic violence victim. I want them to reflect on how the courts dealt with my client and how the courts respond to domestic violence. I want them to realize that their client has a lot going on in her life besides just this violence. I want them to understand how violence operates as a means of control and how little the law does about that. All of those things are really important lessons, and those insights come from reflecting, not just doing the cases, but spending some time looking at the context from which the case arises, the structures we have chosen to address these issues, and the effectiveness of the remedy.

We can do a lot of damage if we do not reflect. Students learn to "handle" the case and client, and become skilled at doing the cases. Treating these cases as individual rather than systemic problems encourages a stance of blaming the victim. If we just expose our students to injustice without addressing it explicitly, we are complicit in the

desensitization that happens when we encounter injustice after injustice. Maintaining a sense of outrage is critical to the justice mission. Perhaps we become part of the problem because it is not possible to be a neutral observer of injustice. We need to name it and we have to help our students name it.

We must also be careful not to communicate futility as the students see the complexity of the problems facing our clients. We need to leave our students with a sense that they can have an effect on the world; that they can make change. If we throw them into the legal arena and we don't take the time to reflect, we risk students feeling helpless. That will reduce the number of people who work in social justice. Now, if I am going to do all of this, then I necessarily will be handling fewer cases. It's a tradeoff that I'm willing to tolerate. I think we are becoming better teachers. I think we embrace this role now, and we can write and reflect on it and share that information with others. By not taking our role seriously, we miss opportunities to become more effective. Steven Wizner has said that we need to "nurture [each] student's capacity for moral indignation at injustice in the world." Now such nurturing takes time and it takes skill, not lawyering skill but teaching skill. What it means to be a grown-up clinician is to have an appreciation for both doing and teaching.

As clinicians, we can help our students reflect on their work, not just on developing effective lawyering skills but also in larger ways. We often talk about reflective learning but we haven't examined how to utilize reflection to maximize each student's awareness of social justice issues. Our goal for our students should be to develop a deep understanding of what it means to represent a client, how one approaches real legal problems and, especially, how the legal system often fails the poor and disenfranchised. Their work in the clinic should result in an appreciation of the role they can play in providing access to justice. In order to achieve reflective learning, we must engage in reflective teaching. As long as we are ambivalent about our role, we limit our ability to be more intentional about our teaching. I would love to have discussions with fellow clinicians about what cases provide the greatest insight into social justice. What teaching methods are the best for teaching goals? How do we promote critical reflection on the part of the students? What teacher interventions are the most effective? What legal events are most likely to inspire insight? How important is student responsibility for the cases? How important is it that they see varied kinds of cases? How much client contact is optimum? How do we know if our methods work?

Teaching critical reflection is important for our students and for ourselves. We need to confront the hard questions. Are we really making certain choices because they are easier, or do they really promote our mission of educating students concerned about social justice? Are we serving our clients, or are our clients serving us? Are we working on improving our teaching and checking to see if it is effective? Are we making the best use of our privileged positions in the academy to challenge practices that the practicing bar is just not in a position to do? Are we filling those gaps where public funding has failed our clients? Are we bringing new-found status as law professors to policy making in the law school and the community? Are we being intentional about the next thirty years? Where do we see ourselves? Where are we going, and will we be satisfied with that?

We can also affect the "justice mission" of law schools by influencing what happens outside of our clinics. Ironically, as clinicians have become more integrated into the traditional law school, we've also had more power to influence where the curriculum goes and how that curriculum incorporates more experiential opportunities for the students.

The University of Maryland is a shining example of this. Its roots are deeply set in an understanding about the role of law schools in producing social justice by training its students. The Cardin Program grew out of that belief. n2 In fact, from what I understand, when the Cardin Program came into being, the bar recognized the need to train students to do work in public service, partially to teach students the sense of professional responsibility to provide service to the underserved and to work toward social justice. We can communicate to students that providing legal services to the underserved is important because clinical education is treated as important in the law school and not marginalized. It is as important as taking your contracts class.

* * *

Maryland's Law School has recognized that it is through doing that students open themselves to real learning about social justice. It is through teaching that we help our students appreciate the broader lessons about power and privilege and about their role in bringing about or inhibiting social justice. Students feel the fear, vulnerability and the reliance of their clients inspiring them to strive to be effective lawyers with excellent skills. That happens because it is real. We need to be there when our students make these kinds of observations; we need to be there when they recognize vulnerability and feel their own vulnerability, their own fear. And we need to help them reflect on that experience and hone their skills and examine their values. Therefore, we need to resist the pressures that make teaching and doing mutually exclusive. If we do not resist, we will lose the soul of clinical education.

FOOTNOTES:

n1. Stephen Wizner, *Beyond Skills Training*, 7 *Clinical L. Rev.* 327, 330 (2001).

n2. See University of Maryland School of Law, *The Cardin Requirement*, at http://www.law.umaryland.edu/aboutus/cardin_req.asp.

n3. See Brenda Bratton Blom, *Finding Your Balance on the Tightrope: Reflections from a Clinical Life*, 4 *U. of Md. L.J. of Race, Religion, Gender & Class* 273 (2004).