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CLINICAL EDUCATION: WHAT DO WE TEACH? A BRIEF INTRODUCTION TO CONCEPTS OF SKILLS AND VALUES

This document contains three sections: (1) a summary of the fact pattern that will be used for the first part of the presentation at the AALS New Clinicians conference; (2) a context and overview section to provide a discussion framework for skills and values; and (3) a list of resources on skills and values that might be helpful to newer clinicians as they reflect on the conference and prepare for teaching.

(1) Fact Pattern for Presentation and Discussion Purposes

Kim is a Clinical Law Professor in the Animal Rights Clinic at the University of Middle America. A local chapter of Students for the Ethical Treatment of Animals (SETA) has requested help from the clinic regarding the conditions at Duper's Chicken Farm. SETA claims that the chickens at Duper's are being treated cruelly and that the operations of the plant are causing serious damage to the environment. SETA want to put Duper's out of business. Duper's is a major employer in the county, with over 3,000 workers at the farm.

Alex and Paula are the Clinic students who have been assigned to evaluate and work on this case in the Clinic. Kim, Alex, and Paula have widely divergent perspectives on the issues in this case and what the appropriate goals should be.

You will observe the beginning of a clinical supervision session as the students and the professor discuss strategy and tactics. The meeting will include a discussion of the lawyering skills the students will be learning as they work on this case and the social justice dimensions involved. You will be asked to contribute to the supervision session and help the Clinic decide how to approach the case.

(2) Context and Overview

Clinicians often speak of two different directions for their teaching: towards the actions of lawyers in delivering legal services (“skills”); and towards the assumptions and orientations that affect lawyers’ work (“values”). No magic attaches to these categories, but they may prompt some useful reflection.

Skills:

We suggest that the term “skills” refers to the actions through which lawyers apply their analyses and pragmatic judgments to the solution of client problems. The following, very open-ended list suggests different kinds of behaviors, both general and specific, to which clinics expose students.

- **Lawyering process:** the overarching methodology through which lawyers encounter, assess, advise, and implement solutions to client problems.
- **Legal problem-solving:** the analytical process of integrating the lawyer’s grasp of the law with their understanding of the client’s situation, towards finding solutions to client problems.
- **General lawyering behaviors:** behaviors common to all lawyers, including: interviewing, investigation, legal research and analysis, counseling, and negotiation.
- **Role- or task-specific behaviors:** behaviors specific to particular kinds of lawyering or particular legal processes: litigation (including such tasks as taking depositions, drafting motions, oral argument, or managing evidence); transactional planning (including such tasks as deal-structuring or drafting); or legislative, administrative, or policy advocacy.
- **Client relationship:** in addition to interviewing and counseling, those behaviors through which lawyers create, sustain, and shape their work with clients.
- **Law practice management:** the mechanics of delivering legal services over time to multiple clients, including file and caseload management, record-keeping, scheduling, time-keeping, and working with non-lawyer staff.
- **Time management / professional balance:** the personal disciplines of managing time on task, coordinating disparate work demands, and maintaining a balance between in-office and non-office time.
- **Collaboration:** the behaviors helpful to work in groups of lawyers, both in supervisory relationships and in peer groups.

Values:

We suggest that the term “values” refers to a series of stresses or priorities that affect, sometimes powerfully, the lawyer’s approaches to legal work. As clinicians, we might speak of these values explicitly, but we are just as likely to model them for our students implicitly, or to offer lawyering experiences through which students must assess their own assumptions or mind-sets:

- **Political and social justice:** lawyering towards political and social justice, especially on behalf of oppressed clients and/or client groups.
- **Difference and diversity:** working as a lawyer with clients (and others) whose lives and values differ significantly from the lawyer's.
- **Client service:** devoting personal and professional loyalty to client goals and to solving client problems, whether for individuals, groups or legal issues.
- **Competence and quality of practice:** assessing ones own ability to handle a legal problem, mastering necessary skills and knowledge, assessing differences in practice quality, and improving one's own effectiveness as a lawyer.
- **Ethical awareness, evaluation & action:** noticing and assessing the ethical dimensions of particular lawyering situations, along with meeting ethical requirements and reaching for ethical aspirations.
- **Relational awareness:** engaging the interpersonal dimensions of legal practice (with clients, colleagues, opponents and institutional actors), coupled with assessing and employing different modes of engagement, from adversarial to collaborative.
- **Reflective practice:** engaging in thoughtful self-assessment in the midst of action, as a vehicle for professional self-development, personal engagement and renewal, and awareness of the broader dimensions of lawyering and law practice.
- **Professionalism:** assessing and enacting the lawyer's status as a public actor with special power and responsibilities, whether externally (such as dress or personal manner) and internally (such as diligence, loyalty, or an overarching sense of calling).
- **Work and life balance:** a focus on lawyering as a commitment that co-exists with others, including those to family, service, and personal health.

(3) Resources on Skills and Values for New Clinicians

Law Review Articles

Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLIN. L. REV. 1 (2002).

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

Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939 (1997).

Lester Brickman, *Contributions of Clinical Programs to Training for Professionalism*, 4 CONN. L. REV. 437 (1972).

- Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697 (1992).
- Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLIN. L. REV. 109 (2001).
- Mary Jo Eyster, *Clinical Teaching, Ethical Negotiation, and Moral Judgment*, 75 NEB. L. REV. 752 (1996).
- Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93 (1994).
- Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLIN. L. REV. 385 (1996).
- Ann Juergens, *Teach Your Students Well: Valuing Clients in the Law School Clinic*, 2 CORNELL J.L. & PUB. POL'Y 239 (1993).
- Janeen Kerper, *Creative Problem-Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998).
- Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405 (2002).
- Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLIN. L. REV. (2001).
- Robert MacCrate, *Teaching Lawyering Skills*, 75 NEB. L. REV. 643 (1996).
- Kenneth R. Margolis, *Responding to the Value Imperative: Learning to Create Value in the Attorney-Client Relationship*, 5 CLIN. L. REV. 117 (1998).
- Binny Miller, *Teaching Case Theory*, 9 CLIN. L. REV. 293 (2002).
- Eleanor W. Myers, *Teaching Good and Teaching Well: Integrating Values with Theory and Practice*, 47 J. LEGAL EDUC. 401 (1997).
- Jacqueline Nolan-Haley & Maria R. Volpe, *Teaching Mediation As a Lawyering Role*, 39 J. LEGAL EDUC. 571 (1989).
- Kimberly E. O'Leary, *When Context Matters: How to Choose an Appropriate Client Counseling Model*, 4 T.M. COOLEY J. PRAC. & CLINICAL L. 103 (2001).

Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648 (1996).

Paul R. Tremblay, *Coherence and Incoherence in Values-Talk*, 5 CLIN. L. REV. 325 (1998).

Rodney J. Uphoff, James J. Clark & Edward C. Monahan, *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381 (1997).

Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929 (2002).

Web Sites

American Bar Association Central and East European Law Initiative (CEELI)

<http://www.abanet.org/ceeli/home.html>

American Bar Association Section of Legal Education and Admission to the Bar

<http://www.abanet.org/legaled/home.html>

Association of American Law Schools (AALS) Section on Clinical Legal Education

<http://www.aals.org/sections/ce.html>

Clinical Education: An Annotated Bibliography, Revised Edition: The Czapanskiy Bibliography

http://www.law.umaryland.edu/facpages/kczapanskiy/Czapanskiy_bibliog.pdf

Clinical Law Review

<http://www.law.nyu.edu/clar/>

Clinical Legal Education Association (CLEA)

<http://cleaweb.org>

Clinical Legal Education – a directory clinical legal educators

https://cgi2.www.law.umich.edu/_GCLE/index.asp

Global Alliance for Justice Education (GAJE)

<http://www.gaje.org/>

A Humanizing Dimension for Legal Education

http://www.law.fsu.edu/academic_programs/humanizing_lawschool.php

Listservs

GAJE – email majordomo@list.vanderbilt.edu with the following command in the body of your email message: subscribe gaje

Humanizing Legal Education – to subscribe, send an empty email to: legaled-subscribe@mail.law.fsu.edu

LAWCLINIC – A clinician’s Listserv, to subscribe email lawclinic@lawlib.wuacc.edu with the following request in the body of the message: subscribe lawclinic [your first name] [your last name]

LAWPROF – to subscribe, email listproc@chicagokent.kentlaw.edu with the following request in the body of the message: subscribe LAWPROF

LEXTERN – to subscribe, email listserv@lists.cua.edu with the following request in the body of the message: subscribe lextern

LEGALETHICS – to subscribe, email listserv@lawlib.wuacc.edu with the following request in the body of the message: subscribe legealthics-l [your first name] [your last name] lawprofessor

NEW LAW PROFS – to subscribe, email listserv@listserv.uh.edu with the following request in the body of the message: subscribe newlawprofessors

PROF-ISM – a professionalism listserv, to subscribe email listserv@vm.sc.edu with the following request in the body of the message: SUB PROF-ISM [your first name] [your last name]