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DEEP LEARNING AND IMMERSIVE EDUCATION WITH A DEDICATION TO JUSTICE

Matthew I. Fraidin, Ibidun Roberts, Jeannine Winch (University of the District of Columbia David A. Clarke School of Law), and Larissa Chernock (Georgetown University School of Law)

In this piece, a law professor and students share thoughts about clinical legal education, a primarily experiential approach to teaching lawyering skills, values, and legal doctrine. The piece begins with an introduction to the substance and methods of clinical legal education by Professor Matthew I. Fraidin, who directs the HIV/AIDS Legal Clinic at the University of the District of Columbia David A. Clarke School of Law (UDC-DCSL). Three former students then respond to Professor Fraidin's comments and share their experiences as clinical students.

Professor Fraidin:

In law schools across the country, second- and third-year students enrolled in “live-client” clinical courses provide legal representation to individuals or groups with real legal problems. Students interview clients and witnesses, negotiate with opposing lawyers, counsel clients confronted with important decisions, research and write legal briefs, and present evidence in adjudicatory tribunals. In the HIV/AIDS legal clinic which I direct, for example, students petition the court on behalf of HIV+ parents seeking to transfer custody of their children to a friend or relative. Students also write briefs arguing that workers disabled by HIV or AIDS are entitled to public benefits. Some students help parents regain children taken by the District of Columbia foster care system. In transaction-based clinics, like UDC-DCSL's Community Development and Small Business clinic, students help entrepreneurs incorporate new businesses and help tenant groups purchase the buildings in which they reside. In other law school clinics, such as the UDC-DCSL Legislation clinic, students serve as staff members in the offices of District of Columbia Council members, and draft legislation considered for enactment.

Students' real-world work for clients is the core of a clinical course. Thus, the content and methodologies employed in once- or twice-weekly seminar sessions are driven by the skills, values, and content knowledge required to perform the lawyering tasks in clients' ongoing cases. In seminar, then, students learn such lawyering skills as interviewing, counseling, collaboration, and courtroom advocacy. They also learn values, such as client-centeredness and respect for difference. Finally, students learn substantive law, such as child custody law or social security benefits law. Learning also takes place in one- to two-hour case-supervision meetings with the professor. In those meetings, students share with the professor developments from the preceding week, and plan next steps for the following one. Finally, many clinics schedule “rounds” sessions, in which students present problems, concerns, questions, and triumphs to each other, and share insights born of related experiences.¹

Clinical legal education has been around in one form or another since the 1930s. For many years, however, clinical education was disfavored in the traditional academy as “too practical” and insufficiently scholarly. Since the early-1970s, however, clinical education has become widespread in law schools across the country. Clinical scholarship has forged new ground, illuminating teaching and learning, lawyering, and substantive law topics with insights gained in

the classroom and courtroom. Nonetheless, traditional doctrinal courses remain the staple of law school diets, and few law schools require a clinical experience for graduation.

Clinicians' fight for acceptance in the academy has been accompanied by ongoing reflection and self-assessment within the clinical "movement" about our goals and methods. We debate, discuss, and write about the interplay in our teaching of substantive content with lawyering skills: both "hard" skills, like direct examination and fact investigation, and "soft" skills, like counseling and negotiation.² Our courses also expressly incorporate teaching and learning about values, such as client-centeredness, collaboration, and social justice.

For many clinicians, then, an interest in education goes far beyond the substantive area in which we have experience and expertise. Many of us believe that, above all, lawyering is a series of decisions and choices, in which habits that permit a lawyer to exercise good judgment can not be untangled from, and are not subordinate to, a ready knowledge of substantive law. We see our role as teaching students to be lifelong learners, so that they can understand and respond to new experiences — a client walks into the office unexpectedly presenting an eviction case, or a child custody case, or a bankruptcy case, or a slip-and-fall tort claim — by contextualizing them with prior experiences. How can students learn to spot issues, even in unfamiliar substantive areas? How can a student learn to build contextually-appropriate problem-solving strategies?

That is much more interesting to us, and more long lasting, than merely solving the problem that has reared its head in the moment. How can students understand the role of the law as a problem-solving tool, and how can they learn a consistent approach to analyzing legal doctrine that will help them find or create answers to all kinds of legal issues? Indeed, the best lawyers recognize that no client is the same as any other, and few legal issues — even those which purport to arise in the same field of law — are identical.

Thus, flexibility and adaptability of learning are essential to our mission as clinical teachers. How do we try to get there?

Well, as a starting point, the roles of students and teachers in clinical courses are less-hierarchical, and, according to UDC-DCSL graduate Ibidun Roberts, "less intimidating," than in most traditional law school courses. In most courses, teachers are the boss — in command, establishing the ground rules, setting the schedule of learning, and, most traditionally, imparting knowledge like a mama bird dropping worms into her chicks' mouths. Students comply with instructions. And in most non-clinical law school courses, students are responsible only to themselves — they must attend class, listen, learn, speak up on occasion, and succeed on a summative exam. Increasingly, non-clinical teachers intentionally depart regularly from this stereotypic norm by leavening traditionally lecture-based courses with experiential instruction, discussion groups, and role-play exercises. Even under these circumstances, however, much of law school education is conspicuously directive.

In contrast, in a clinical course, students drive much of the learning. Clinical students are responsible to their partners for collaborative work on cases and systemic reform projects. Students also critique and teach their classmates in the seminar component of the course. Above all, students are responsible to their clients, for whom the most precious, fundamental elements

of life are at stake — children, housing, freedom, money, employment. Responsibility unlocks students' greatest capacities for self-actualization, and unleashes their courage to learn, achieve and accomplish.

To learn to use good judgment, students must have the experience of exercising judgment. We use a wide range of methodologies designed to build students' self-identity as professionals — as decision-makers. Most importantly, we challenge students' assumptions about their own competence and capabilities.

So, within minutes of the opening of the first class session in one clinic, students are interviewing each other and then presenting the findings of their interviews to the rest of the class. A few minutes later on that very first day, students argue against each other, in role as government lawyers or as lawyers for parents whose children have been placed in foster care. In the second class session, students conduct a mock trial! They first interview witnesses, then perform opening and closing arguments, examine witnesses, marshal facts, and cite to the law. By the end of the fourth hour of the semester, then, students see that they have co-created their own learning, and start to understand that this experience will be different. (A 2009 Washington Post article reporting on the UDC-DCSL HIV/AIDS clinic's work exaggerated only slightly by describing it as “student-run.”)

Clinicians team students with each other, and read, discuss, and write about collaboration. From this, we hope students learn to learn from difference. We also hope they learn that collaboration is itself an indispensable skill, and that this skill, like others, must be understood and continually developed.

The most important weapon in clinicians' arsenal is the “disorienting moment.”³ True to its name, these are the moments in which students are face-to-face with the unexpected, and in which the greatest learning can occur. “Expectations,” “assumptions,” call them what you will, but a challenge to them can disrupt students' worldview and, perhaps counterintuitively, open them to the reflection that permits true growth.

Sessions like the one described above, in which students interview each other, deliver oral presentations, and argue in role as lawyers, prime students to experience disorienting moments as safe, exciting opportunities for growth. And from that point forward, client-based legal clinics are a goldmine of disorienting moments, in large part because every client and every case is different from every other. Students learn that they cannot rely in the new case on the solution they constructed in the previous case. The methods of issue-spotting, legal analysis, and problem-solving may be similar — though even the sequencing and relative importance of each of those lawyering activities may vary from case-to-case — but the answers themselves will be different. They will be different because the facts are different, the client's constellation of personal history, family, education, and employment is different,⁴ and the decision-maker may be different. And students realize that they themselves evolve, and that their own changes affect their lawyering.

Legal clinics also generate disorienting moments — assumption-challenging moments — because students, acting as lawyers, come into such close contact with other human beings and

reflect deeply on the way that interaction affects their work. They ultimately understand that the interaction *is* their work, or at least an essential component of it. And their contact with other humans — clients, classmates, supervisors, court personnel, social workers — teaches them that experts sometimes aren't expert, that the government isn't always benevolent, that kindness sometimes appears in unexpected places, that unconscious racism remains a pernicious influence in our justice system, that clients who seem to have little in fact can have surpassing skills and knowledge, and, finally, that they themselves may not be just exactly who they thought they were.

All of this understandably scrambles the eggs. They're all good eggs, but they can get pretty scrambled. We try to put Humpty-Dumpty back together again. We do this, in part, by trying hard to keep things from ever completely falling apart. We try to find the delicate balance in which students' assumptions are challenged enough to build strength and skills, so that they are learning from experience and building their adaptive skills, but are not left defenseless and terrorized in a hostile, newly-foreign world in which nothing is as it seems, and danger and mystery lie in wait around every corner.

With these dangers in mind, we make our classrooms safe spaces. On the first day of class, we talk about feelings and the role of emotion in lawyering. From this, students become habituated to being open and vulnerable, and finding that experience energizing, enlightening, and empowering. Students do so much talking in our seminar sessions (which trains them to do *all* of the talking with clients and in court) that the classrooms feel like their spaces, places in which they can be open and honest and available to learn and grow. We build trusting relationships with our students in scheduled weekly supervision meetings and in countless "drive-by" supervision moments. We always build on students' strengths and achievements, which reminds them that their challenges are surmountable. We are transparent about our teaching and supervision choices, thereby modeling intentional decision-making. We teach and model preparation, action, and reflection. Finally, we engage constantly in formative assessment of ourselves and of our students, learning from students about their experience of the course as it progresses, and helping them understand their own learning and lawyering choices and outcomes.

Ibidun Roberts, J.D., University of the District of Columbia David A. Clarke School of Law 2009, commented on the "safety" of the clinical environment:

This safe haven is crucial. I didn't realize this until after I graduated from law school. In my first legal job, I witnessed others falter by not knowing the law themselves, advising clients of the wrong law, and improper contact with represented parties, among other things. I worked with my colleague by talking to her privately, but in enough time for her to correct her mistakes. This reminded me of my feelings during clinic — wanting to seem like an expert — but that taught me that I was confident in what I did know, which I put in the effort beforehand to know, *and* I was confident in what I did not know. I was confident enough to say I didn't know, that I would find out the answer, and I was not less of a lawyer because of it. The haven during clinic allowed me to build that confidence.

Sometimes it feels like we're building the airplane's engine simply to rebuild it, and sometimes we do it while the plane is flying at 30,000 feet, but that makes it fun for us. And even that models for students the experience of high-stakes problem-solving, challenging assumptions, and surpassing one's own limitations. Roberts says, "This is what makes me want to pursue a career in clinical education."

Larissa Chernock, J.D., Georgetown University Law Center 2007:

First of all, I should say that the clinic stands out as a highlight in my education and my life.

In the clinic, I felt like *how* I was as a person mattered. In the rest of my classes, for the most part, I felt like what grade we were going to get was all that ultimately mattered (and the attendant questions: How much would we study or blow it off? Would we worry about the grade or just learn for the sake of learning?). When I say that "I felt like *how* I was as a person mattered" what I mean is that in the clinic it seemed to matter how we treated other people — the professors, our classmates, our clients, the judge, the person against whom we were getting the restraining order, the clerks at the courthouse. Sure, in other classes we talked about morality — e.g. whether or not the law was the same thing as morality (obviously not) — but it didn't matter to the professor whether we shared notes with our fellow classmates or asked the person sitting next to us how she or he was doing. This was shocking to me. It matters how you are as a person in the legal profession and in life in general so why not make that a more ubiquitous part of law school education.

More on this point and why clinical education is so important: there is a real disconnect between what we learn in law school and the actual practice of law. Clinics help bridge that disconnect.

Another thought: I remember the clinic. I remember what my clients said to me, where I was standing or sitting when they said certain things. I remember xeroxing records at the court and running out of change. I remember organizing the paper file, spilling the holes in the hole-puncher. I remember setting up conferences in the conference room. I remember reading through my client's medical file, uncovering lost children. I remember crying in one of the teacher's offices because our client had been countersued. I remember researching statutory rape laws in Virginia at my desk. I remember conversations I had with my clinic partner when she dropped me off at my apartment building (I was upset because I felt like I cared more than she did about our case — we ended up joking that I was like a needy girlfriend and she was my distant boyfriend) or while we were waiting for a client to show up at court (had we ourselves ever been in an abusive relationship?). I remember the clinic more than I remember any of my other classes. I remember the last day of class when we were asked to reflect on our clinical experience (I said that I felt like I was ready to be paid for the work that I do and that I didn't used to feel that way — that what I did had value). I remember the actual words that were used (a client's ex-boyfriend's text message "I love you all"). I remember all of these things and more.

Vivid, ownership, meaningful — these are some of the words that come to mind when I think about my clinical education.

My experience as a clinic student is still a guiding light for me. After a bit of a detour (clerking for a federal judge and working at a big law firm), I actually want to do work that is quite similar to what I did in the clinic and I think that's because it's the last time I felt happy with what I was doing. I'm not joking. Clerking for a federal judge was intellectually stimulating, but I don't actually like to sit and write all day. Being a litigation associate was lucrative and occasionally interesting (mostly because the other lawyers fascinated me!), but you can spend years in those buildings without having an actual interaction with a client and again I don't like to sit and write or look at documents all day. Now I am trying to be a family mediator. I am back in school getting a clinical psychology degree (as you can see I like clinical education!), I volunteer at community mediation centers, and I work for a family lawyer and mediator (doing mostly divorce mediation). I want to wade back into messy relationships and help people sort them out. This time it's outside of court for the most part — but it feels close to my experience as a clinic student. *How* I am seems to matter again. And I am remembering all the details; it's hard to forget when it's about the things that are really important to people — seeing their kids, being able to stay in their homes, love, etc.

Jeannine Winch, J.D., University of the District of Columbia David A. Clarke School of Law 2008

I imagine my clinical law school professor as a butterfly catcher — jumping across a sunny field with students and handing to them a net, that they may capture moments of learning like butterflies. Oh sure — we could just have a lesson in the classroom about the kinds of butterflies we may encounter in the field, but butterflies — like teachable moments — lose their authentic spirit if canned in a jar or pinned on a corkboard. And with real clients and cases, you never know what is coming or when. Students have to act swiftly — and yet also softly and deftly — taking care not to crush something so beautiful and fragile. The professor freezes the moment because otherwise it's hard to examine its myriad colors, to think about what to do next and why. Has the student captured this learning opportunity, this choice, this moment — or did she blink and miss it?

Probably even harder than capturing teachable moments in a clinical setting or asking students to reflect on them afterwards is how to inspire in the student the awareness that the view of lawyering as a set of choices and decisions transcends the clinical law school experience. In fact, the key to authentic professional growth — as opposed to advancement through mere experience — lies in developing the tools that a reflective lawyer habitually uses to find these choices and decisions and to embrace them as opportunities to continue to learn. This insight is at the heart of the single greatest, over-arching skill set that I learned in my clinic — because it rises above, guides, and ripples through every other skill and value I embrace as a lawyer. It also extends into my personal world view.

I learned to develop the skill and habit of self-reflection in clinic as much by observing and articulating how and what I was learning as by mindful processing of how the professor taught or by describing the opportunities that he created to prompt my learning, including those unforeseen issues arising upon which the professor capitalized.

To that end, it may be worthwhile to incorporate more of this “meta-learning” into the student experience. In other words, if we’re going to have a mock trial exercise, why? The answer may be obvious: We’re going to practice – in this safe environment — what may happen in the courtroom next week; we’re going to have a tough judge who will ask all kinds of ridiculous questions — and we’ll learn that sometimes that’s exactly what judges do, and you want to prepare as much as possible for the most insane and unthinkable what-if’s. But you can add a level to this exercise by encouraging students to keep the idea of a mock trial in their toolbox by asking them when it may be a useful tool for them as practicing lawyers even after they graduate.

Even though I may find myself overwhelmed with the sheer volume of cases, the day-to-day problem-solving with clients, and the multi-tasking that lawyering invariably involves, I try to make time – even if it’s only the time it takes me to walk back to the office when I’ve finished at the courthouse that day — to reflect not just prospectively on upcoming cases but retrospectively as well. While lawyers readily acknowledge the necessity of the former, the “prep work,” not many take the time afterwards to evaluate and reflect on what just happened.

Moreover, at that time, while it is of course important to recognize the moments of paradigm-challenging discomfort (and to ask why they were so and how I have changed or grown as a result), it is equally important to reflect on accomplishment and success by asking, “What did I do here that worked – and why?” Otherwise, I am left wondering if the good outcome was just lucky. And sometimes — because I am taking a calculated risk that my client chose or wanted me to take — it is just that. And that’s OK, as long as I see it for what it’s worth.

Recently, I experienced a real-world lawyering problem that led to a great deal of healthy criticism and self-reflection focused on what I describe as a tension that I sometimes feel between my role as an advocate following the agenda and goals that my client has established and acting according to his wishes, versus my role as a counselor and even protector, where more potential conflict may be built into my role because I sometimes have to manage unrealistic expectations or point out potential negative consequences resulting from my client’s goals or intentions. I may even challenge the means that the client identifies to reach his or her stated goal because I want to ensure that my client is making an informed decision.

For example, in a hotly contested cross-civil protection order case, the opposing party, my client’s wife, represents to the court that she is feeling ill, and she wishes to dismiss her case against her husband. My client, who is my first male, heterosexual client survivor of domestic violence, didn’t really want to go forward with his case against her either. While he did not want to reconcile, he believed that the parties could resolve their dispute outside of court. The parties discuss mutual dismissals of the cases. I know that his wife has a history of vengeful, manipulative, and even vicious behavior. The cases are mutually dismissed. Not two days later, my client is arrested even though she is the one who assaulted my client. She lies convincingly to the police, to the hospitals, to prosecuting attorney for the government.

New cross civil protection order cases are filed. She files first this time — while my client is in jail. She gets custody of the kids this time — even though my client, as the only stable, responsible caregiver for his two kids – ages 4 and 8 at the time – had custody during the first round of cross civil protection order cases. We move to modify the temporary protection order to

at least return the custody to the status quo; however, now with the pending criminal matter, the same judge — who actually had reversed herself in the previous case when she awarded custody to my client — refuses to do so this time.

The criminal case against my client — with our cross civil protection order cases trailing — keeps getting postponed for months. It is painfully obvious that his defense lawyer is so bad — and with a disciplinary history — that my client’s family and church members pool together resources to hire a better defense attorney. I collaborate with him on the defense. Months and months go by in which my client is lucky enough to have some contact with his kids, but it’s only three days a week. In addition, my client is essentially evicted from his home; he continues to pay the mortgage while his wife — as before — does not work and contributes nothing. At least he knows that his kids have a place to stay when they are in their mother’s custody, but eventually he can’t afford to keep paying because he has to find a place of his own. His credit is ruined.

His daughter turns nine. At the birthday party that her father throws for her, she says she hopes her mother remembers it’s her birthday. Her mother forgets. My client also tells me about how his son cries when he has to be dropped back off at mom’s house. We try again to modify the temporary protection order to get my client more time with his kids — without success.

Luckily, we get a not-guilty on the criminal case. But still — months and months later — the civil cases remain.

So could I have prevented this disaster by at least counseling my client that he should have gone forward with his first case against her? Could I have changed this outcome by simply saying, “Look, I know she says now that she’s going to dismiss her case, but since she can re-file, why don’t you consider going forward on your case against her so that you at least have the order protecting you and keeping her away from you?” Shouldn’t I have foreseen and reminded my client of the opposing party’s history of manipulative, vindictive behavior? Could that reminder and my counseling my client to go forward with his case have changed his decision to dismiss his case and thereby prevented these excruciating complications?

I was very critical of myself on this one. While I firmly believe that my client knows the opposing party best and that he is of course driving the litigation and responsible for making the decision, for example, to continue to prosecute his case, I also feel that it was my responsibility to use my experience and counseling skills to question my client more vigorously and to confront him on his choice to dismiss his case in order to ensure a more informed decision. I did a lot of analysis and self-reflection about this missed issue. I even wondered if I would have seen it had the client been female — like all my others — instead of male — or if he were not so agreeable and non-confrontational. To what extent did the client’s gender or personality influence me?

I believe that I owe my ability to engage in this kind of necessary criticism, processing, and analysis — as well as countless other similar moments (most with thankfully better outcomes) that inform my reflective, client-centered approach to lawyering — to my experience as a student-lawyer in my law school clinic.

Ibidun Roberts, J.D., University of the District of Columbia David A. Clarke School of Law 2009:

In clinic, I learned to refrain from proceeding with a plan of action until I can answer why I am proceeding in that fashion — why am I omitting this person’s name, why am I including this fact, etc.

Some people say that one could gain from internships what they would gain from clinic. However, I found my clinic experience far more rewarding than any of the internship experiences I have had. I have interned in the legal departments of some great companies, such as PBS and AARP, but my work was always the result of someone else’s decision or giving them background to make a decision. I was available for group discussions and to make recommendations, but I often never knew what the decision was or what its impact would be. I was not accountable to the client. In clinic, I did the research for my own decisions. I deliberated with colleagues to form an opinion on a decision I would make. I had to account for my ethical duties in every aspect of my representation, such as maintaining communication with my client, keeping matters confidential, etc. I was accountable to my client and saw the impact of my decisions in a very real way.

I draw on my clinic experiences almost every day in my current job. The most basic skill (to me anyway) is being able to interview your client – to put them at ease with you as their representation and to gather information. I learned this through role playing in clinic and observing my classmates role-play, as well. We learned from each other’s mistakes and took notes on what we did well. When I interviewed my first actual client in clinic, it wasn’t perfect. Mid-way during the interview, she asked for legal advice. I didn’t know the answer. I thought, “Why isn’t the professor in here?” Then I turned it on the client, “Why is she asking me this? This is just an interview.” Then back to myself, “Her question is not at all unreasonable. I blew it.” During the course of these thoughts, I realized that I did not have to give her an immediate answer. I wrote it down and told her I would follow up on it. She wasn’t disappointed. She still seemed as eager as when she first walked in. I found power in that. I knew that I would get back to her. We finished the interview and I had enough information to start a plan of action.

Notes

1. Bryant, S., & Milstein, E. (2007). *Rounds: A “signature pedagogy” for clinical education?*, 14 Clinical L. Rev. 195.
2. Clinicians’ exploration of teaching and learning is reflected in the Bibliography of Clinical Legal Education, available at <http://www.udclawreview.com/clinic-bibliography/>
3. Quigley, F. (1995). *Seizing the disorienting moment: Adult learning theory and the teaching of social justice in law school clinics*, 2 Clinical L. Rev. 37.
4. Chavkin, D. (2002). *Clinical legal education: A textbook for law school clinical programs* 40.