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Fifty Years of Clinical Legal Education at American University Washington College of Law: The Evolution of A movement in Theory, Practice, and People

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FIFTY YEARS OF CLINICAL LEGAL EDUCATION AT AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW: THE EVOLUTION OF A MOVEMENT IN THEORY, PRACTICE, AND PEOPLE

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Clinical legal education has evolved substantially in the fifty years since Elliott Milstein initiated the clinical model at American University Washington College of Law (“WCL”) that, notwithstanding numerous changes in program and personnel since that time, remains essentially in effect today. In this Article, we explore the theoretical, pedagogical, structural, programmatic, and personnel developments that have occurred during this period. We link these developments to broader developments
within the national and international clinical legal education spheres. WCL’s Clinical Program, and its clinical faculty, have been leaders in shaping these developments, but, in the best clinical tradition, we have not done so alone but in dialogue with other colleagues. We conclude with a discussion of the unfinished business of the clinical legal education movement.

In 1972, the WCL Clinic consisted of an externship program, the Criminal Justice Clinic (prosecution and defense), and LAWCOR (a program in which lawyers, assisted by students, provided civil legal assistance to DC prisoners). Since then, clinical education has proliferated into numerous areas of legal practice. At WCL, we have added clinics that collectively address important social justice needs: exploring the role of gender in the legal system (Gender Justice Clinic, formerly the Women and the Law Clinic), seeking relief for those who experience domestic violence (the Domestic Violence Clinic), combatting wage theft (Civil Advocacy Clinic), advocating for the rights of people with disabilities (Disability Rights Law Clinic), advocating for the rights of immigrants (Immigrant Justice Clinic), addressing human rights violations on behalf of individual clients and organizations (International Human Rights Law Clinic), representing community organizations (Community Economic and Equity Development Clinic) and entrepreneurs (Entrepreneurship Clinic), low-income taxpayers (Janet R. Spragens Federal Income Tax Clinic), incarcerated individuals seeking to re-enter society (Re-Entry Clinic); and pursuing the public interest while representing small content providers in intellectual property (Glushko-Samuelson Intellectual Property Law Clinic). Many law schools have added similar clinics, but a key element of our programmatic development is that we have always insisted on the centrality of the individual client in our work. For example, although a number of law schools have human rights clinics, many of them focus on writing reports or submitting amicus curiae briefs, while our International Human Rights Law Clinic has focused primarily on the rights of individual clients, supplemented by these activities. Our client-centered clinical program reflects not only our belief that representing individual and organizational clients addresses a pressing societal need, but also our pedagogical goal of giving students the primary responsibility in their representational work.

In addition to subject matter development, we have experimented with different clinical structures that have shaped our understanding of what is most important to teach our students. We sought to go beyond seeing the clinic as simply a place to teach lawyering skills, to de-brief cases, or to cover

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the substantive law in the clinic’s subject matter area. We developed the weekly clinical seminar as a site for the inculcation of lawyering skills and values that could be generalized to different practice settings. To the basic seminar, we added the element of case rounds to provide an opportunity for students to take the lead in organizing a space in which they could exchange ideas, get feedback on their cases, and function as lawyers in a group setting. We focused not only on the content of our teaching—lawyering skills such as interviewing, counseling, negotiation, case theory, and trial skills—but on the teaching methods best calculated to demonstrate the generalizable lessons we thought most critical for our students. By not building our teaching goals around the subject matter of our clinics, we forced ourselves to think more broadly and theoretically about the lawyering process. In essence, we rejected the description of clinical education as practical but rather saw it as education about both the theory and practice of lawyering.

The Practitioner-in-Residence (“PIR”) program, which we launched in 1998, was an important innovation of our clinical program, going beyond the relatively few clinical fellowships that existed at the time in its emphasis on hiring relatively experienced lawyers, training them in the theory and practice of clinical teaching, and emphasizing the importance of, and support for, their production of clinical scholarship. Practitioners-in-residence have not only expanded our capacity to provide clinical education to more students, but, coming directly from a variety of practice settings, they have ensured that we constantly update our knowledge about practice.

To give some historical context to the early stages of the clinical program, we go into some detail regarding how the WCL clinical program evolved. Elliott Milstein, who was “present at the creation,” describes those beginnings in the following section.

II. THE FORMATIVE YEARS

Modern clinical education began in the late 1960s when the Ford Foundation created a separate entity called the Council of Legal Education for Professional Responsibility (“CLEPR”) to encourage the growth of clinical education. CLEPR was headed by William Pincus, who was a

2. See discussion infra Section IV.A.3 (describing the PIR program more fully); see also Susan Bennett, et al., Building a Culture of Scholarship with New Clinical Teachers by Writing About Social Justice Lawyering, 31 AM. U. J. GENDER, SOC. POL’Y & L. 311 (2023).

3. The phrase is from the title of Secretary of State Dean Acheson’s memoir. DEAN ACHESON, PRESENT AT THE CREATION: MY YEARS IN THE STATE DEPARTMENT (1969).

4. Margaret Martin Barry et al., Clinical Education For This Millennium: The Third Wave, 7 CLINICAL L. REV. 1, 12 (2000) (detailing a comprehensive history of legal
zealous and charismatic advocate for involving law students in providing legal representation to real clients as part of their legal education. CLEPR gave seed-money grants to encourage experimentation with different clinical models and hosted conferences at which clinicians could exchange ideas. Milstein calls those who were able to be part of this exchange in those years “the founding generation of clinical teachers.” Milstein started as a clinician in 1969 at the University of Connecticut, then worked for a year with clinicians at Yale Law School, and considers himself fortunate to be a member of this generation of leaders. When WCL hired Milstein in 1972 to direct the clinic program, he was already part of the national clinical movement that CLEPR had created.

Milstein came to WCL with a set of beliefs about the starting assumptions that should guide the creation of the program. Importantly, he believed that a program should be “in-house,” meaning that there should be a teaching law office inside and run by the law school, that students should represent real clients in the real world, and that students should be supervised and taught by faculty members. These principles were inconsistent with what existed in the law school at the time. For example, in addition to the criminal externship clinic and LAWCOR, there was a civil externship program run by a popular adjunct professor who placed students with private practitioners in Montgomery County, Maryland. There were student-run organizations that operated as clinics without faculty involvement. Additionally, there was a simulation course called Fundamentals of Legal Practice and, outside of the clinical program, a trial practice course.

A series of fortuitous events made it possible to establish an in-house clinic soon after Milstein arrived at WCL. First, and most important, outside grant funding was available from a CLEPR grant. In addition, the federal program Law Enforcement Assistance Administration (“LEAA”) provided block grants to states. Maryland had decided to use some of that money to support law school clinics working in the criminal justice system. That opportunity enabled us to obtain a grant to convert our criminal clinic into

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6. For example, Drug Offenders Rights Clinic (“DORC”) students connected people charged with drug offenses with lawyers and sometimes helped the lawyers with the cases.
an in-house one. Combining the two grants permitted us to immediately hire a full-time supervising attorney and a secretary, and to buy clinic equipment such as a video recorder. Our first supervising attorney was an experienced criminal law practitioner who was appointed to the faculty rank of Lecturer in Law (with a maximum term of two years). We decided to keep in place a unique feature of the pre-existing program in which students spent a semester defending criminal cases in one county and another semester prosecuting cases in a different county. We believed that giving students the experience of being on both sides of a criminal case over the course of the year provided them with opportunities to reflect upon and appreciate the ethical demands of each role. Although we were unable to work with prosecution students on particular cases, we were able to use their reflections as the entry point for discussions about ethics and values. Even though we experimented with different models of providing in-house supervision of student prosecutorial and defense case work in our early years, finding a satisfactory solution remained elusive, and thus the program existed as a hybrid in-house and externship model.

Once the hybrid model was in place, we needed to make decisions about what to teach and how to teach it. There needed to be a classroom component and the hybrid feature of the program dictated that, to avoid conflicts of interest, there needed to be some time for the prosecution students and the defense students to meet separately and with separate instructors. We decided to spend the bulk of our seminar time teaching the whole group at a more general level and to reserve an hour each week for small groups. That decision was the precursor to what later developed as “rounds” pedagogy. For the remaining instruction time, there were many competing ideas for what we should do and many influences on us in making choices. We started with a course in the law and tactics of criminal practice, or an advanced course in criminal procedure. We emulated an approach Georgetown University used that focused heavily on substantive and procedural law, with students conducting role-plays for different stages of the cases.

Meanwhile, clinical teachers who were networking nationally under the auspices of CLEPR had many other ideas about what to teach. Milstein’s participation in the movement of clinical teachers, and later the participation of other WCL colleagues, heavily influenced the decisions we made and supported the enduring idea of experimentation that we embraced. The conferences that CLEPR sponsored always featured a formal program in which clinicians presented new ideas about how to organize a clinic and what and how to teach in it. The initial idea of involving law students in practice was obviously a good one, but, how you would prepare them, what you would teach them while they were doing it, and what teaching methods would be best, were all the subject of disagreement and experimentation.
Not everyone agreed that a clinic needed to have a classroom component. Some clinicians maintained that it distracted students from focusing on the cases and clients. We chose to have a classroom component from the very beginning, notwithstanding that some students were resistant to it. We saw the seminar as a vehicle to ensure that every student got a broader exposure than the serendipity that their particular cases would provide.

There was also a political purpose for including what some called “the academic component.” That clinic is a course worthy of academic credit and deserving of law school resources, and that clinical faculty are entitled to equal status with the rest of the law school faculty, have been issues requiring sustained advocacy at nearly every law school in the country. CLEPR wisely insisted that if clinical education was to have a permanent place in the academy, there needed to be a “classroom component.” Otherwise, clinics would be seen as too “practical” to be part of a university education.

Milstein was taken with some of the earliest discussions of taking a functional approach that emphasized lawyering rather than law. This approach was very different from what the WCL clinic had adopted. It revolved around the tasks that lawyers commonly perform in handling a client’s problem, from initial interview and problem definition to finding and implementing solutions. Having been exposed to the lawyering process focus of clinical teaching at a CLEPR conference when Professor Gary Bellow demonstrated it, Milstein spent some time observing him teach clinic students at Harvard Law School. Impressed with what he learned there, Milstein adopted “the lawyering process” and gradually transformed the content of the clinical curriculum to teach it. Teaching materials to support this approach appeared in draft form and ultimately resulted in the publication of a textbook that heavily influenced the development of clinical legal education.

A. Hard Money vs. Soft Money

The creation and expansion of the clinical program was made possible by external grants, or “soft money.” The clinics became permanent parts of the law school only when the institution included recurring funding in its annual tuition-supported budget, known as “hard money.” Nearly all of WCL’s clinics started solely with soft money, and when they proved their worth through enrollments and other indicia of success, we were able to convince the law school to provide hard-money support.

The major sources of grants changed over time. After CLEPR and LEAA

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funds were no longer available, we benefitted from grants from the U.S. Department of Education under Title IX of the Higher Education Act that were specifically designated to support law school clinical programs. The regulations required that the money fund something “new and different,” that it not displace hard money, and that the school demonstrate a financial commitment to the program. They favored schools that awarded academic credit, had a well-designed in-house clinic that had faculty members as supervisors, and that gave students responsibility for real clients and their legal problems. To get a second year of funding, a school needed to put more hard money into the program. This feature of the rules enabled the institutionalization of many clinical programs nationwide and was instrumental to building the clinics at WCL.

However, there was a major disadvantage to running a clinic on soft money. Any personnel hired under a grant could not occupy a permanent faculty position. Their continued employment was dependent upon getting another grant and most grant standards made this unlikely. Although when Milstein started in the clinic there was a second tenure-track professor teaching in the prosecution side of the clinic, both of the colleagues who filled that position had other interests and left the clinic to teach doctrinal courses. We were eventually able to convince the dean to authorize two soft-money positions, each of which was for a limited two-year term. That meant that we had a revolving door of teachers, and we were constantly training and then replacing them. Only one of the early clinicians was appointed to the tenure-track faculty, although his appointment was outside of the clinic.

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8. The Law School Clinical Experience Program began in 1968 as Title XI of the Higher Education Act of 1966, although funds were not awarded until 1978. The program was renumbered as Title IX in 1980. See Barry et al., supra note 4, at 19–20.

9. Title IX funds were used to start the Women and the Law Clinic, the Public Interest Law Clinic, the Appellate Advocacy Clinic, and the International Human Rights Law Clinic. All, except the Appellate Advocacy Clinic, ultimately received hard-money funding from the law school. We chose to start the International Human Rights Law Clinic instead to match the programmatic priorities of the law school and the interests of faculty. In time, other major sources of start-up money included the Methodist Church for the Women and the Law Program, and the Internal Revenue Service for the Janet R. Spragens Federal Income Tax Clinic. In fact, the late Professor Spragens’s advocacy was a major reason that there was IRS funding for tax clinics nationwide.

10. See infra text accompanying note 23 (providing that one advantage of program tenure is that the tenure slot remains in the program even if the occupant moves on to another position).

11. The colleague, James Stark, eventually moved to the University of Connecticut School of Law, where he has had a distinguished career as a clinician.
B. Early Program Design

1. LAWCOR

LAWCOR, a precursor to the in-house clinic, was started by Professor Nicholas Kittrie. Kittrie received a grant to demonstrate that providing civil legal assistance to prisoners would reduce recidivism. Staff attorneys, with the assistance of law students, provided representation. Social scientists on staff analyzed the recidivism question.

When the program ended, we incorporated the parts of it that involved direct representation by students in prison disciplinary hearings into a new in-house clinic. The law school funded one supervising attorney slot. Each day there were hearings scheduled at the prison for inmates charged with disciplinary offenses. The students would interview and then represent anyone who wanted help. The hearings were held the same day, making supervision of the students’ case preparation nearly impossible.

Students had to develop a case theory and a cross-examination in short order, typically without faculty input. Learning came from after-the-fact analysis of the choices, actions and results of the day’s activities. While it was occasionally possible for the supervising attorney to attend a hearing, we did not have the resources to have someone present all the time.

We learned a lot about program design from the LAWCOR experience, particularly about case selection and opportunities to supervise. Perhaps most important, small cases enabled students to take full responsibility. But supervising and teaching about case preparation is fundamental to clinical teaching and if the pace of the case is too fast, there is no effective way to do it. Having students conduct their first hearings without a faculty member available to consult and to critique had obvious disadvantages, both as to learning and quality of work. Moreover, when there is no appeal and the tribunal is biased, our representation provided little benefit to the clients. For all of these reasons, we ended the program and folded its funding into the creation of the Public Interest Law Clinic (“PILC”), in which we took on legal work for veterans.

2. Public Interest Law Clinic and the National Veterans Law Center

In 1978, we had an opportunity to partner with a pre-existing public interest law firm whose project was ending. We partnered with the ACLU Military Discharge Review Project and broadened its scope to include all veterans’ legal issues. Together we were interested in both representing individuals seeking veterans’ benefits from the Veterans Administration and reforming the substantive and procedural issues that plagued that system. However, the agendas of the public interest law firm (d/b/a The National
Veterans Law Center) and the clinic (d/b/a Public Interest Law Clinic) were not always in synch.

Students worked on individual veterans’ disability cases and petitions for discharge review. In addition, students assisted attorneys who were working on federal class action litigation. The individual veterans’ cases were ideal clinical cases, as some were similar to tort cases. Students had to find and master complex substantive and procedural regulations as well as conduct investigations and find and sort evidence to support each claim. There was ample time to supervise; there were administrative hearings similar to trials and written decisions. All these factors made individual veterans’ cases excellent vehicles to teach students basic lessons about lawyering.

Conversely, the law reform cases had significant deficiencies as clinic cases, particularly because the attorneys were understandably unwilling to give students much responsibility for the litigation. With a few exceptions, lawyers believed that students did not have the background to argue the cases in court. It was even true for Milstein, who argued a Post-Traumatic Stress Disorder case rather than have the students do so.\(^\text{12}\)

NVLC legal positions were funded either by teaching resources or law reform resources. A series of Title IX grants plus hard-money law school funds paid for the educational side of the program. Funding from foundations and, ultimately, the Legal Services Corporation, supported the rest of the work. When the NVLC was named a Legal Services backup center, it received funding for specific services that were not part of the educational program.\(^\text{13}\) NVLC grew to include eight attorneys and a psychiatric social worker. It provided support to legal services programs nationwide.

In the end, the structure of the NVLC had too many incompatibilities and the public interest law firm portion left WCL. Nonetheless, NVLC’s successes continued, though renamed as the National Veterans Legal Services Project. NVLC has thrived and has achieved many victories in major litigation, including cases granting retroactive disability benefits for

\(^{12}\) Milstein and colleagues believed the case to have been the first criminal case in the country where Post Traumatic Stress Disorder was proffered as a defense. In hindsight, he believes the students could have handled the argument and would have learned a lot in the process.

\(^{13}\) For reasons that are beyond the scope of this Article, we joined most other law schools in refusing to take funding from the Legal Services Corporation for direct client service. Knowing that using law students to serve indigent clients was an inefficient way to deliver service, we did not want to compete with Legal Services Programs for scarce resources.
veterans with diseases and disabilities caused by Agent Orange.  

The underlying clinic, PILC, continued with two clinical faculty members, Susan Bennett and Nancy Polikoff, supervising students doing individual client veterans’ work. Ultimately, though, changes in the adjudication system eliminated the evidentiary hearing and thus made those cases less useful for teaching purposes. Subsequently, the faculty shifted their focus to representing clients before the Merit Systems Protection Board. In 1998, however, Professor Bennett responded to the need for the law school to have a transactional clinic and therefore ended PILC and created the Community Economic Development Law Clinic.

The experience with NVLC led us away from big cases. There has been an ongoing debate within the clinical community about whether big or small cases are the best vehicle for student learning, and we came down on one side of that debate. We had assembled some top-notch litigators and thought that students would learn by assisting in their legal work. In the end, though, the lawyers’ commitment was to their cases much more than to their role as teachers. More importantly, we could see that when students had responsibility for a client for the first time their motivation to learn what they needed to know to carry out that responsibility was exponentially higher. Working on a small piece of a larger project did not have the same resonance. Milstein learned that by putting students in situations in which they were professionally responsible for a client’s well-being, we created for many of them the first moment when their actions mattered to someone other than themselves. This “magic” moment is the key to clinical education’s successes, and we have tried in the design of new clinics to be sure that students have that kind of responsibility.

C. The National Scene: The Fight Over Title IX Leads to the Creation of the Clinical Movement

Notwithstanding the arguments of many critics of traditional legal education, modern clinical legal education would likely not have come into existence without funding and advocacy from outside of the academy. As discussed in Section II, the first of those funds and the strongest advocacy came from Bill Pincus and CLEPR. Few law schools could resist the lure of that money. Still, the question remained whether the programs would survive once the funding ended. One of Pincus’s greatest legacies was to turn us into an organized political force that was able to take over from him and to push the academy, the American Bar Association, and the federal

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Early clinicians became part of the CLEPR family, including participation in conferences and symposia where they met each other and exchanged stories and ideas about political survival. But CLEPR had a limited lifespan and dissolved at the end of 1980. We faced a future without its funds and without its leadership.

Federal funding of our work was within reach with the passage of Title IX of the Higher Education Act and an appropriation of $1 million in funding in 1979. We hoped for increased amounts going forward. Once clinicians learned, however, that the Association of American Law Schools (“AALS”) was lobbying to change the legislation so that the money could support both empirical research and simulation programs, Pincus taught us that we had to be organized. And, so, organize we did.

A group of eight clinicians became the steering committee, Milstein among them. The committee worked over a number of years on issues it identified as of importance to the future of clinical legal education. The committee agreed that clinical education fundamentally required that a student represent a real client under close supervision. It created a list of needs that had to be satisfied if clinical legal education was to thrive, including funding, training, teaching materials, research about the lawyering process, conferences, and faculty status. Milstein, along with most of the others, spent the rest of his career working on those very things. Brought together by the fight over funding, the group worked on all of these other issues by pushing for participation and representation in all of the relevant committees and organizations that set the agenda for legal education. Many of its members were ultimately elected or appointed to serve on those bodies. Milstein became the point person on Title IX funding and was one of the clinicians who worked with the Department of Education officials who were in charge of the program that helped draft the regulations that governed the grant process. The outcome involved rules that favored the CLEPR vision of clinical education. In 1981, we hosted a well-attended conference at WCL to explain the grants process and to help people around the country apply for funding.

Like most categorical grants programs, awards were based on recommendations of peer readers. The readers scored applications based upon the criteria set out in the regulations. As mentioned in Section II, each year the grant needed to be for something new and the application needed to demonstrate increasing support from the law school. These provisions were very useful to us as we sought institutional support for creating new clinics and expanding old ones.
D. Creating a Clinical Faculty

In most law schools during the 1970s, the clinical program and its faculty had insecure status. Many law professors were opposed to adding clinics to their curricula, characterizing them as without sufficient intellectual content to justify their inclusion. They also worried that the resource demands of clinical education would swamp their own priorities for funding. Many also believed that clinicians were insufficiently scholarly to qualify for membership on a law faculty. While we faced all these obstacles in building our clinical program, we were ahead of most schools in getting past them.

Few clinicians around the country were considered full-time, long-term members of their faculties. This situation is still true for at least some clinicians at many schools. These clinical teachers have no role in faculty governance, including decisions about what courses will be taught, what programs will be supported, how resources are allocated, and who is hired or promoted. Denying clinical teachers a meaningful role in faculty governance keeps them from advocating for expansion and growth of clinical programs and other practice-related changes. Clinicians in this situation are also typically paid less and are ineligible for the kind of job security that comes with tenure.

At WCL, we made steady progress toward solving this problem. The two-year limit gradually relaxed, and starting in the mid-1980s, we were able to recruit a group of people interested in staying long-term. Instead of hiring, mostly, local practitioners with direct experience in the types of cases they would handle, Milstein began to hire people whose academic backgrounds would make them attractive as faculty candidates. As candidates began to see that they could have careers as clinicians, they became full partners in the invention and experimentation that has characterized our program.

Among this group of candidates were four people who ultimately had long-term careers as clinical professors: Nancy Cook, Robert Dinerstein, Ann Shalleck, and Susan Bennett. Professor Cook eventually left for another faculty, but while she was at WCL we all worked together to improve and build the program. They attended clinical teachers’ conferences and embraced their identities as clinical teachers. Even so, Milstein remained the only tenure-track faculty member in clinic until 1988, a full sixteen years

15. As an example of their collaboration and involvement in clinical conferences, Nancy Cook, Robert Dinerstein, Elliott Milstein, and Ann Shalleck presented a joint plenary session entitled “Variations in Teaching Techniques,” at the Association of American Law Schools 1988 Clinical Teachers’ Conference, in Bloomington, Indiana. The session demonstrated the teaching strategies used in the joint clinical seminar discussed in the next paragraph.
after he had started the program.

A vivid example of the kind of collaboration that these relationships made possible came with the creation of the Women and the Law Clinic (“WALC”) and combining that clinic with the Criminal Justice Clinic (“CJC”) for their weekly seminars. WALC was part of the Women and the Law Program that was created in response to a consensus decision by the whole faculty at a retreat. The challenge at the retreat was to create programs and curricula that took advantage of the law school’s history and identity. Because the law school had been founded by women (the first US law school so founded),\(^{16}\) emphasizing the ways the law uniquely affected women fit very nicely. The faculty agreed that the new program should have a clinic. We hired Ann Shalleck as a director and she went on to give it shape and raise the money to give it permanence.

We wanted to teach theory and practice of lawyering and avoid what we saw as the lure to teach the particular law and tactics of either criminal law or the civil, family, and domestic violence cases handled in WALC. We maintained separate weekly meetings for WALC, and the two halves of CJC, prosecution and defense, which provided opportunities for students to share information about and learn from their cases. But, we preserved the bulk of the seminar time for a joint seminar involving all of the students. We essentially followed a syllabus that emphasized the skills, values, and conflicts involved in representing clients from interview through trial. We began to teach lawyering theory, application, reflection, and revision using simulations, role-plays, small group exercises, and discussions. We eschewed all but mini-lectures, instead emphasizing student voices in the classroom as much as we could. For each of us, planning the content and methods of each class together was foundational, and what we learned affected our pedagogical choices for the rest of our careers.

With the addition of Professors Cook, Dinerstein, Shalleck, and Bennett to the clinical faculty, Milstein was no longer the only one attending the AALS Conferences on Clinical Legal Education or the AALS Annual Meeting. We all had the opportunity to meet and network with clinicians from all over the country. We learned from their experiences and ideas and they learned from ours. We found new teaching materials and methods that we used to improve our classes.\(^ {17}\) Looking back, we are not surprised that our curiosity about the lawyering process and how to teach it led all of us


\(^{17}\) See discussion infra Section III.A. for a more detailed discussion of the role that clinical conferences played in the development of clinical scholarship.
who stayed at WCL to write books and articles about lawyering pedagogy. \(^{18}\) We became part of the national movement of clinical teachers.

The faculty status of clinical teachers has long been contested. Proponents of equality of status turned to the accrediting agency for law schools, the Council of the Section on Legal Education and Admissions to the Bar of the American Bar Association. In 1982, the Accreditation Committee proposed an amendment to the standards for accreditation that would require equality of status for clinicians. The AALS opposed such a rule and pushed back aggressively to thwart its passage. Each year the AALS holds an annual meeting that includes a meeting of delegates from each law school to hear an address by the in-coming president of the association. This issue was of such importance at the 1983 annual meeting that President David Vernon’s\(^ {19}\) address denounced the proposal, arguing that it would cut off experimentation and would have a negative effect on the scholarly mission of law schools. At the time, Milstein was chair of the Section on Clinical Legal Education and so he responded to the President’s arguments on behalf of clinicians. In the end, after various drafts of the rule diluted it, the rule passed in mid-1984. Rather than requiring schools to comply with the rule, it said that schools “should” provide clinicians with a form of job security reasonably similar to tenure and that a separate tenure-track or long-term contract track for clinicians would comply.\(^ {20}\)

Nevertheless, that the ABA said that law schools should primarily staff their clinical programs with full-time faculty with similar, if not identical, employment conditions as the rest of the faculty proved persuasive in getting WCL to review its practices. A committee was formed to make recommendations and its chair consulted with clinicians about what we wanted. The choices we made and that the faculty ultimately adopted shaped the future of the clinic in profoundly positive ways.

Perhaps the most important decision was whether we wanted a tenure-track with its concomitant evaluations that assessed teaching, service, and...

\(^ {18}\) See discussion infra Section III.D.

\(^ {19}\) Vernon was then the law school dean and later the provost of the University of Iowa. In 1995, he was chair of the ABA/AALS accreditation team inspecting WCL for its sabbatical visit. At the end of the visit, he told Milstein, then the dean of WCL, that after seeing the accomplishments of our clinical faculty, “We pursued different ideas of clinical faculty. You were right, I was wrong.”

\(^ {20}\) For a full discussion of the development of ABA Standard 405(c)(later re-numbered as 405 (c)), see generally Peter A. Joy & Robert R. Kuehn, The Evolution of ABA Standards for Clinical Faculty, 75 TENN. L. REV. 183, 212 (2008) (describing how the ABA in 1996, persuaded that too many law schools had not enhanced the status of their clinical faculty, amended the standard to change “should” to “shall”).
If so, did the existing criteria for non-clinicians need to be modified to adapt to the very different work lives of clinicians? Would clinicians be able to meet the stringent scholarship requirements the law school required of others and would the likely different content of that scholarship be acceptable?

In the end, we decided that although clinicians might write fewer pieces in order to get tenure, the scholarship would need to be qualitatively equal to that of the rest of the faculty. We decided that briefs and other litigation documents did not count as scholarship. Now, looking back on more than thirty-five years of achievement, we see that the choice we made to embrace scholarship was the right one. Our clinical faculty is perhaps the most published clinical faculty in the country and many of them are among the leaders of the WCL faculty in both the quality and quantity of books and articles produced.\(^{21}\) We worked to help each other, first by creating an intellectual community within the clinic and also by giving each other informal advice and more structured feedback.

All of the clinicians were teaching a non-clinical course as a paid overload along with teaching their clinics. We adopted that as the teaching load of clinical faculty. They were each primarily responsible for their clinical course but also had to teach a non-clinical course. That course allowed them to develop deeper substantive knowledge about a subject and gave them opportunities to use clinical methodologies in a non-clinical course. Over time, many of the non-clinical faculty learned and successfully used those methods across the curriculum. Also, folding the stipend from the extra courses into clinicians’ base salaries allowed us to get closer to equalizing clinical and non-clinical faculty salaries without adding a disproportionate amount to the law school budget.\(^ {22}\)

Though we assumed there would be opposition to our proposal, the faculty voted to create a separate but equal tenure track for clinicians. Those tenured in the clinical track were obligated to continue to teach in the clinic but otherwise the two tracks carried the same meaning and conferred the same rights. Presumably, the clinical tenure track meant that the clinic would not lose a faculty position if a faculty member’s interests changed and wanted to leave the clinic but stay on the faculty.\(^ {23}\) In time, however, the faculty erased

\(^{21}\) See infra note 38.

\(^{22}\) Although the clinicians derived many advantages from teaching their non-clinical courses, the level of work required to teach both in the clinic and the non-clinical course in one semester could be daunting. See discussion infra note 83.

\(^{23}\) See infra text accompanying note 10 (noting that in the earlier days of the program two tenure-line faculty left the clinic but the faculty slots went with them).
all distinctions and eliminated the separate clinical tenure track.  

Three of the eligible clinicians applied for and were approved by the faculty for appointment to the separate tenure track. From that point forward they were treated like any other faculty member. However, we still had to get the university to approve our amended faculty manual and to formalize the appointments of Professors Bennett, Dinerstein and Shalleck. In a lovely twist of fate, in 1988, Milstein was appointed interim dean and was able to convince the Provost and ultimately the Board of Trustees of the merits of the proposal. He was then able to welcome Professors Bennett, Dinerstein and Shalleck to the professoriate. As the following section of this Article will demonstrate, being one of the first schools to award clinicians full faculty status proved to be enormously beneficial. We have been able to hire excellent faculty who have accomplished great things.

III. THE ROLE OF WCL CLINICAL FACULTY IN CONCEPTUALIZING THEORIES OF CLINICAL LEGAL EDUCATION — A DEEPER DIVE

To a remarkable extent, WCL clinical faculty have been at the forefront of conceptualizing and developing the theories that animate clinical legal education and lawyering. Our faculty have articulated these theories in several books and abundant law review articles, many of which have been widely recognized as classics in the field. WCL clinicians have presented their theories in many settings, including the AALS annual clinical conferences and workshops, regional workshops, other conference settings, and as guest speakers at law schools around the country and world. Collectively, this faculty has played a major role in establishing that, without question, clinical legal education is not only a place where faculty and students can pursue social justice or practical results for their clients, but also

24. In the mid-1990s, a clinical faculty member wanted to apply for a non-clinical opening (after having taught non-clinical courses for two years), but our faculty manual provided only that the faculty member had to be “evaluated” before such a move would be approved. The faculty manual also required an evaluation for non-clinical faculty who wished to move to full-time clinical teaching. The manual provided no guidance on what the criteria for such evaluation would be. At the Rank and Tenure Committee meeting called to discuss the matter, a non-clinical faculty member said that because the entire faculty was familiar with this faculty colleague’s high-quality teaching, scholarship, and service, and knew her as a valued colleague, it did not make sense to evaluate her anew. The committee concluded that there was no longer a rationale (if there ever was) to limit clinicians’ tenure to the clinical program, and so eliminated the distinction and created a fully unitary tenure system. Undoubtedly, the faculty’s post-1988 exposure to the clinical faculty’s work (which included annual evaluations of tenure-track clinical faculty by three-person subcommittees of the Rank and Tenure Committee), made the full integration seem like a “no-brainer.”
a place in which theory influences practice and practice shapes theory.

A. Our Scholarly Beginnings

WCL clinical faculty could not have made such major theoretical and conceptual contributions to developing theories of clinical education had we not embraced the scholarly project from the program’s early stages. We saw and experienced scholarship as a site for developing our own thinking about the content of a clinical approach to legal education and the process of clinical teaching (i.e., what to teach, how to teach it, and how both connect to achieving social justice). We also sought through our scholarship to provoke conversations within the clinical community about what the clinical project involves. Sharing our thoughts and reflecting with others within the clinical community about emerging ideas helped to galvanize clinical thought and scholarship nationally. The goals for our scholarship were to move forward the collective project of establishing clinical education firmly within the legal academy in ways that changed legal education and influenced legal thought.

During the 1980s, the early years in terms of scholarly identity, as clinical education was going through an initial period of rapid programmatic expansion, our faculty, like other nascent clinical scholars, had little scholarly literature to consult, with a few exceptions. There was the tradition of the fact-skeptic branch of Legal Realism, most prominently represented in the work of Jerome Frank. There were also accounts of much earlier and mostly forgotten efforts to bring law practice into law schools. With the renewed interest in building a clinical movement during the 1970s, there came the pioneering work of extraordinary innovators who were creating conceptual frameworks that linked theory and practice. Gary Bellow and


Bea Moulton in their ground-breaking book, *The Lawyering Process: Materials for Clinical Instruction in Advocacy* (1978), created a framework for naming and examining the work of lawyers. As the first systematic conceptualization of the activities that lawyers perform in representing clients, the book created more than teaching materials: it established an initial scaffold for thinking about and analyzing a new field of inquiry. Anthony Amsterdam, too, was beginning to theorize the failure of traditional legal education to teach students how to think as lawyers and to re-conceptualize the modes of thinking characteristic to lawyers, framing them as analytic modes. Like Bellow and Moulton, Amsterdam began the project of designing ways to understand and teach how lawyers effectively engage in legal practice. Without much on which to rely, clinical teachers of this era set out to create out of their work in clinics the understanding and the materials that would serve clinicians in defining the content of, and creating a process for, clinical education. Today, we can see that we were creating a new academic enterprise within law. At the time, we did not conceive of our efforts as changing the content and practice of academic thought, but these early endeavors, in which our clinical faculty played a key role, created the foundation for a distinctive inquiry that we now recognize as clinical thought.

Because we had few written sources, the library was not our primary research site. We did have annual AALS clinical conferences, which by the 1980s had become a regular site where clinicians from around the country gathered to develop both our craft and our theory. Clinical teachers used these gatherings to construct more formal, collective knowledge out of our daily practices in figuring out how to teach clinics at our own schools. WCL clinical faculty were not only leaders in securing AALS sponsorship of these conferences, but also planned them and gave presentations at them. At these conferences, faculty presented their emerging ideas about clinical teaching: what to teach (the content of lawyering); the values that infuse

30. Id.
31. See discussion infra Section IV.C. (describing the roles that WCL faculty played).
lawyering, including client-centeredness; how to teach lawyering to students (clinical methods); and the centrality of social justice to lawyering and the teaching of lawyering.

Conference planners and presenters grounded learning at the conferences in activities derived from and based on experiences teaching in our clinics. Presenters developed and used innovative methods and materials to engage the audience in collective exploration of and learning about the content, values, and methods of clinical education. Because clinicians shared a belief that knowledge was connected to experience (doing, thinking, and reflecting were all necessary), interactive formats grounded in experiences, either from our own clinical teaching or in activities embedded in the presentations themselves, predominated in presentations. Participants used a lawyering or pedagogical framework to analyze a particular lawyering or educational activity that participants had done or watched in the session. Participants then had to assess the adequacy and usefulness of the frameworks based on how they had experienced the analytic structure in the session. The discussions that ensued contained insights that expanded and enriched the collective knowledge that emerged from the conferences. The early materials that clinicians created for their presentations often served as initial drafts of emerging knowledge about the content and methods of clinical education. This early inclination toward the connection between knowledge and experience revealed the link between the development of contemporary clinical thought and the pragmatist roots of the ideas of Jerome Frank and other legal realists of an earlier generation.  

Looking back, we see these activities as primary research sites that generated scholarly thinking. As faculty prepared presentations built around interactive activities for participants, we simultaneously developed and wrote down our frameworks for describing and analyzing lawyering and pedagogical practices and activities, which we then used in our presentations and included in our conference materials. Conferences were places to try out new ideas within a receptive and engaged community. Conference documents often served as initial drafts of thinking about the content of clinical education. They also served as valuable sources for the scholarly writing that our clinical faculty were beginning to produce. As clinicians

32. Legal realists had engaged in realist and pragmatic thought rooted in the work of philosophers such as John Dewey, who stressed the centrality of experience in the development of thought. ROBERT B. WESTERBROOK, JOHN DEWEY AND AMERICAN DEMOCRACY 121–30, 497 (1991).

began in their scholarship to write more formal, structured analyses about the different aspects of clinical thought, we often sought out materials from conferences as sources for prompting, shaping, or expanding our own thinking.

The second research site for our emerging scholarship was our own clinical program. The structure and operation of WCL’s program with our outstanding clinical faculty served to inspire our scholarly projects. The collaborative process we created in our clinical program for all aspects of developing our vision of clinical education had particular salience as we ventured bravely into creating a new form of legal scholarship. We taught together, planned together, debriefed together, trained each other, and analyzed incessantly what we were doing, how we were doing it, and how we could do it better. Our ideas for scholarship arose out of this shared activity and were nurtured through it. Further, we encouraged each other in seeing scholarship as an opportunity to do sustained thinking about all the different components of the clinical project.

When the law school put clinicians on tenure track, scholarship also became a formal part of our obligations and responsibilities as faculty members. We, like other faculty, got support for our scholarship, through periods when we were freed from our teaching obligations, research leaves and sabbaticals, grants to support our research, research assistants, and funds for attending conferences. Our clinical scholarship became integrated into the entire scholarly activity and identity of the law school. Part of the strength of WCL’s clinical program has been the full integration of the clinical faculty into all aspects of the faculty, including scholarly activities.

A third source of scholarly interchanges on clinical education was the series of Lake Arrowhead, California conferences on international clinical legal education co-sponsored by UCLA and the University of Warwick in the United Kingdom (and later by the University of London Institute of Advanced Legal Studies). These conferences, which began in the mid-1980s, brought together clinicians primarily from the U.S. and the British Commonwealth, providing one of the earliest opportunities for international

Clinical Legal Education (May 1989); see also Jean Koh Peters, Thoughts on Helpful Elements of Training Programs for Two Kinds of ‘New’ Clinical Teachers, in Workshop Materials, 1989 Association of American Law Schools Workshop on Clinical Legal Education 36 (on file with author)).

34. See supra note 15 (identifying collaborative nature of WCL Clinical Program).
35. See supra Section II.D.
36. Summer coverage of cases has always presented a complicated issue for clinical faculty as summers provide the longest, continuous period for research and writing but cases continue.
cross-pollination of clinical ideas. Although the attendees at the conferences came from diverse national and international backgrounds, the format of the conferences, with panels of clinical faculty who made presentations on papers they had written, was more traditionally academic in nature than the AALS clinical conferences. In this important respect, the Lake Arrowhead conferences announced that clinical legal scholarship was a promising, if nascent, category of robust legal academic scholarship.

B. The Characteristics of Clinical Scholarship

The clinical theory that emerged from these conditions has been a transformative force in challenging and changing established forms of legal thinking. The work and contributions of lawyers are now common subjects of scholarly endeavor. The lives of clients as reflected in their experiences in the legal system and particularly in relationship to their lawyers are part of academic inquiry. Clinical thought has proceeded along several related paths that overlap and intersect. WCL faculty have been leaders and major contributors to all of them.

First, clinical scholarship began as developing and elaborating conceptual frameworks for the activities and the ways of thinking that comprise the work of lawyers, now commonly referred to as lawyering theory. Second, to teach students to understand and do the work of lawyers, clinicians began to create a complex, multi-faceted pedagogy, which clinical scholars then conceptualized as a theory of pedagogy. As clinics developed in new areas, clinical scholars have modified and adapted lawyering and pedagogical theories to incorporate understanding of legal practice in diverse practice contexts. We built understanding of what was common across practice areas and how different forms of legal practice areas shaped the content and dynamic of lawyering. Third, while early clinical scholars focused mostly on the content and pedagogy of lawyering, clinicians soon discovered that we had distinctive, mostly critical, perspectives on the operation of law and lawyering.

Situated both within and outside practice, clinicians saw and experienced law in action within the particular context of lawyers representing clients and through teaching students as they assumed the role of lawyer. We saw inequality, injustice, and exclusion in the raw form as experienced by clients. As supervisors of student lawyers, we often had access to client accounts of their experiences. Simultaneously, as teachers, we had to stay a step

removed to address pedagogically the ways that our students were experiencing the effects of the law and the legal system on their clients. Perhaps the scholarly work that emerged can be understood as a complex, dynamic form of critical participant observation. From this distinctive situation, clinicians developed a clinical jurisprudence, rooted in perspectives on law that complement other jurisprudential strands of critical theory. 38 This clinical jurisprudence augments the work of traditional critical theorists with theory grounded in practical experience and understanding.

In addition to bringing these layered perspectives to their scholarship, clinicians also developed a genre of writing that frequently included accounts of activities and events. Clinical scholars often include examples of particular lawyering or pedagogical experiences, whether real or hypothetical, that ground or connect to the analysis we are presenting. We often use dialogues, stories, or exercises to make our depictions of lawyering or pedagogical activities or choices reflect the experience of client representation or other lawyering activity. This format for presenting lawyering or pedagogical theory not only makes theoretical analysis concrete and accessible, but also highlights the ways that lawyering is a contextual enterprise grounded in the particular details of particular situations involving particular people with particular problems.

Finally, although perhaps not a form of clinical theory, clinical scholars often bring to more traditional doctrinal scholarship or analysis of legal institutions the perspectives and experiences of lawyers and clients. We have a kind of clinical sensibility that makes our work distinctive and innovative. The law we dissect, the courts we consider, the institutions we analyze, and the worldly consequences we address often relate to the practices we encounter in our clinical teaching. When clinicians look at law or legal institutions, we tend to view the law as it takes on meaning in trial courts, including the lowest trial courts in the judicial hierarchy, administrative agencies, including neighborhood outposts, as well as institutions, such as prisons, where the law gets interpreted and applied to people and communities. We observe the encounters between lawyers and other actors in the legal system, including in hallways, and through interactions in lawyers’ offices. Therefore, the doctrinal scholarship of clinicians is often informed and shaped in distinctive ways. WCL’s clinical faculty have been major figures in each aspect of clinical theory. 39

38. For example, insights and approaches common to clinical theory often overlap with the work of feminist legal theory, critical race theory, critical legal studies, disability studies, and the branches of Law and Society grounded in a focus on law in action and the role of the legal profession.

39. For a relatively early discussion of the subject nature of clinical scholarship, see
C. Lawyering Theory

At the beginning of clinical education, the list of lawyering activities was short and focused primarily on the work of lawyers within the context of litigation. Rooted in the work of Bellow & Moulton and Amsterdam, clinical scholarship expanded and deepened thinking about the activities of lawyers. The expansion began with the goals and methods of interviewing and client counseling; problem identification and definition; problem solving; case theory development; case planning; investigation; and negotiation. It moved on to advocating within different institutional contexts, going beyond trial advocacy to advocacy within administrative agencies; disaggregating the interconnected practices that constitute transactional lawyering, including working with diverse institutional clients and structuring deals in multiple contexts; and exploring the distinctive components of regulatory activities. As clinical education matured, the kinds of lawyering encompassed within our theories has expanded to reflect the diversity and differentiation of legal practice. Clinicians also critiqued initial models of lawyering activities, generating important modifications of early thinking.

WCL clinical faculty have been leaders in both the initial formative
understanding of lawyering and in the expansion of that understanding. For example, Robert Dinerstein created the concept of “engaged” client-centered counseling. Bellow and Moulton had begun the task of understanding what lawyers should do when they counsel clients about the choices they faced in any legal matter. Subsequent clinical scholars developed the idea of “client-centeredness” as an approach for guiding the actions and attitudes of lawyers as they pursued the complex and shifting facets of counseling a client in an often-uncertain situation filled with ambiguity. Many clinicians adopted client-centeredness and in their teaching used the materials developed by David Binder and Susan Price. While many clinicians welcomed client-centered counseling as a challenge to the reigning conceptualization of the lawyer-client relationship as it shifted responsibility and power from lawyer to client, this conception also presented problems in effective client representation. Dinerstein was a leader in articulating a critique of the concept and advancing a crucial adaptation.

The initial version of client-centeredness led students to defer too easily or quickly to a client’s preference without engaging meaningfully with the client based upon the student-lawyer’s knowledge about how the law could interact with the client’s situation, particularly in ways that the client could not anticipate. Thus, the model presented the danger that clients would make decisions that were rooted in their own values and preferences, without fully appreciating the meaning and legal consequences of their choices. Dinerstein developed principles and practices for students (and lawyers) to engage in fully developed and sometimes difficult dialogues between lawyer and client to promote more deeply informed decisions by clients. He analyzed how the engaged practices he proposed furthered the values animating client-centeredness, thus challenging some of the existing precepts of the existing model. His early and influential scholarship about the importance of active engagement by lawyers in the dialogic practice of client counseling resulted in common acceptance of the revised concept of engaged client-centered lawyering. Dinerstein returned to this subject throughout his career to extend his thinking, most prominently in his chapter


41. See generally Robert D. Dinerstein, Client-Centered Counseling: Reappraisal and Refinement, 32 ARIZ. L. REV. 501 (1990); Dinerstein, supra note 40.
WCL’s clinical faculty also played key roles in expanding clinical lawyering scholarship into new practice areas. For example, Susan Bennett broadened clinical lawyering scholarship to encompass transactional lawyering in community economic development projects. In her article *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, Bennett expanded the idea of problem identification as a key lawyering skill, first articulated by Tony Amsterdam, by examining it in the practice setting of advising non-profit client groups seeking to achieve economic development in their communities. In *On Long-Haul Lawyering*, Bennett emphasized the open-textured nature of the lawyering tasks that comprise the work of community economic development lawyers who work for clients in their communities. Bennett’s crucial adaptations of concepts basic to clinical thought helped to enable clinical education to develop increasingly sophisticated and differentiated understanding of lawyering in different areas of legal practice. Her thinking about these issues continued throughout her scholarly career and she brought her ideas together in her pivotal text *Community Economic Development Law: A Text for Engaged Learning*.

Several members of the clinical faculty played significant roles in the development of important new concepts in clinical lawyering scholarship. Before clinical lawyering scholarship, the term case theory as a guiding concept was not common in accounts of the work of the lawyer. To the extent that it had meaning, it usually referenced the legal theories a lawyer was considering or advancing in a case. Clinical scholars transformed the concept to incorporate the centrality of the client to shaping the theory that guided a lawyer’s client representation. In the new clinical version, case theory was an integration of facts, law, legal predictions, and client goals that served as a guide in the representation of a client in a legal matter. Clinical scholars initially used the concept in discussion of clinical pedagogy. For example, Ann Shalleck, in her analysis of clinic supervision, discussed shaping a case theory in light of the client’s experience as a critical


pedagogical activity.\textsuperscript{46} Robert Dinerstein, in his analysis of a clinic case he had supervised, described working with the students on developing a case theory when the client explicitly wanted “to tell her story” even after being counseled about the likelihood of conviction.\textsuperscript{47} Binny Miller then consolidated and deepened these emerging ideas to provide the long-prevailing description of case theory grounded in concepts of storytelling.\textsuperscript{48} Her approach brought together the literature about how lawyers tell stories in cases with the concepts of client voice and client-centeredness, and the role of law in achieving results that clients want.

David Chavkin then developed important modifications of the concept of case theory in advancing the idea of the theory of the client.\textsuperscript{49} With this concept, Chavkin conveyed two critical points. First, he stressed that clients are not cases. Clients have lives beyond their cases. Clients’ lives may affect the shape of a case theory. Second, Chavkin highlighted that the lawyer’s relationship with the client includes identifying and exploring possible solutions that do not directly involve the law or legal action. Thus, the lawyer needs to work to understand the client beyond the client’s legal problem. Chavkin’s adaptation of case theory has become part of the standard view of this concept.\textsuperscript{50}

WCL clinical faculty also introduced into clinical theory understanding of new facets of both the work of the lawyer and the relationship between lawyer and client. For example, Jayesh Rathod, in his work on attorney bilingualism, transformed an aspect of lawyer competence formerly treated completely functionally into an entry point for analyzing how multilingual practice both promotes lawyer development and transforms the relationship between lawyer and client, as well as the dynamics between a lawyer and

\begin{quote}
\textsuperscript{47} Robert D. Dinerstein, A Meditation on the Theoretics of Practice, 43 Hastings L. Rev. 971 (1992).
\textsuperscript{49} DAVID CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 39–40 (2002).
\textsuperscript{50} In addition to contributing to developments in new concepts within lawyering theory, our faculty have explored the assumptions of the lawyer-client model itself. A former clinical colleague, Nancy Polikoff, analyzed how models of the lawyer-client relationship are challenged when the lawyer and the client become merged. She examined examples of lawyers who took part in actions that required legal representation and then undertook aspects of the representation themselves. Nancy D. Polikoff, Am I My Client?: The Role Confusion of a Lawyer Activist, 31 Harv. C.R.-C.L. L. Rev. 443 (1996).
\end{quote}
Rathod explored the ways that attorney bilingualism may enhance the attorney’s cognitive and communicative capacities, promote creativity, expand problem-solving approaches, and contribute to communicative sensitivity and nuanced analysis of language.

Additionally, Rathod elaborated on how attorney bilingualism promotes the dignity of clients, particularly those who do not speak English or have limited English proficiency. Rooted in the intimate connections among language, culture, and social mores, communicating in the language of the client, while interacting with the legal system in English, helps lawyers to explain what is happening in a matter, understand the account of the client, and engage differently in the complex dynamics of counseling a client. Together, these activities may facilitate the lawyer’s forming a deeper connection with the client and promote trust in the relationship. With a deeper understanding of the client, the lawyer also is better able to communicate to other legal actors a more accurate and compelling account of the client.

In addition to these particular contributions to lawyering theory, WCL clinical faculty co-authored one of the basic books that comprehensively address central aspects of lawyering theory. In *Lawyers and Clients: Critical Issues in Interviewing and Counseling*, Robert Dinerstein and Ann Shalleck contributed to the renewal and elaboration of the framework of the lawyer-client relationship presented in the volume. Dinerstein elaborated a fully developed version of his early work on engaged client-centeredness in Chapter 3, *Engaged Client-Centered Counseling about Client Choices*. In Chapter 4, Dinerstein discussed the major conceptual work within clinical literature on lawyering when clients may have limited capacities. The chapter adapts lawyering principles for clients with intellectual disabilities, adolescent clients, pre-adolescent children, elderly clients, and clients with psychosocial or mental disorders. In Chapter 5, Shalleck wrote the first fully conceived use of narrative theory as a framework for re-conceptualizing basic precepts of interviewing and counseling, as well as practices for

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52. *Lawyers and Clients*, supra note 42. With all the authors, Dinerstein and Shalleck created the framework in the Introduction, Chapter 1, and also were principal authors of three of the chapters.
realizing this theoretical approach within the activities of client representation.

D. Clinical Pedagogy

1. The Clinical Seminar

Along with the growth of scholarship about the work and the ways of thinking of the lawyer, clinical scholars have created a pedagogy for teaching students how to be lawyers. Two fundamental components of this pedagogy—the clinical seminar and faculty supervision of students—took shape in the earliest days of clinical scholarship. The seminar, the site where clinicians taught lawyering frameworks, needed materials that provided a common set of concepts and methods that made teaching lawyering a recognized aspect of the law school curriculum. This scaffolding organized students’ understanding of the actions they were learning to take as lawyers. Based on integrating thought and action, lawyering pedagogy required engagement in and reflection on action within the seminar as a way to transmit to students what lawyering involved. Clinical scholars devised diverse and fluid methods to teach the fundamental concepts. Our methods included now familiar techniques: using out-of-class simulations of lawyering activities to be incorporated into the seminar; providing feedback; dividing a class into small group breakout activities to enhance collective work on a shared problem; designing in-class exercises; structuring in-class role plays; giving quick writes with clear prompts; showing segments from films; and soliciting accounts about participants’ own experiences.

Clinical scholars cultivated a reasonably standard process for understanding how and why each activity included in, as well as the overall structure of, the seminar, contributed to student learning. The assessment of seminar activities required identifying the multiple goals for each method, including the values animating the method, as well as a set of teaching possibilities for pursuing those goals. It also involved designing a structure for proceeding through the phases of the pedagogical method, including anticipating the challenges that each step presented for students and teachers. Importantly, the assessment involved analysis of how each activity fostered learning through the design of each class as a unified experience, and through the overall design of the seminar curriculum to achieve the goals for the seminar, as well as the learning goals of the entire clinical experience. This practice is summarized in Elliott Milstein and Sue Bryant’s chapters Choosing the Content and Methods for Teaching in the Seminar, and

53. Susan Bryant & Elliott S. Milstein, Chapter Three: The Clinical Seminar: Choosing the Content and Methods for Teaching in the Seminar, in Susan Bryant,
Planning and Teaching the Seminar Class\textsuperscript{54} in Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy.

2. Clinical Supervision

The second component of clinical pedagogy that began taking shape early in the development of clinical scholarship was faculty supervision of students who, in their clinics, were representing clients in actual cases. Student responsibility for the representation of clients has always been foundational to clinical education. Responsibility in role creates the possibility of intense and distinctive learning. Students could assume responsibility for clients, however, only if they were supervised by faculty who knew how to guide them carefully and knowledgably through the dynamic and uncertain experience of representing a client. Without such thorough and thoughtful guidance, students could not take responsibility and responsibility was key to both effective representation and the learning that clinical education produced. Thus, both student learning and effective and ethical client representation required a pedagogy of supervision.

Like other aspects of clinical pedagogy, clinicians developed knowledge about supervision goals and techniques by analyzing and assessing our own developing practices. Early clinical scholars used experiences of observation and analysis in small groups at clinical conferences to build frameworks that included regular, structured practices for clinical teachers to use in supervising students. The small groups, to which participants brought video tapes of a short segment of their supervision of a student, were like laboratories for collectively exploring different aspects of the supervisory process. Small group leaders became adept at building understanding of supervisory methods through group analysis and discussion of the many aspects of the supervisory process that each video revealed.

Clinical scholars faced the challenge of theorizing a dynamic and interactive supervision process, which previously had been seen as intuitive, with learning as its goal. Another challenge was the facile equating of the hierarchical supervision common in law practice with supervision in a clinical program. As an integral component of clinical pedagogy, clinical supervision had to be a productive source of learning for students. As clinicians learned from each other, they were creating another body of shared material that clinical educators could use to shape their own supervisory

\textsuperscript{54} Susan Bryant & Elliott S. Milstein, \textit{Chapter Four: Planning and Teaching the Seminar Class, in Transforming the Education of Lawyers, supra} note 53.
activities and to train new clinicians as they joined the expanding field of clinical education. Teachers were not on their own to figure out this new teaching role. Clinical scholarship about supervision served to disseminate a distinctive vision of the supervisory process, which connects it to the other components of clinical teaching, the seminar and case rounds, and also distinguishes it from supervision done within professional practice, where the goals and methods are different.

Ann Shalleck’s early development of principles and practices to guide supervision of students, grounded in analysis of critical supervisory decisions, was key in shaping a shared understanding of clinical supervision. Shalleck’s article, *Clinical Contexts: Theory and Practice in Law and Supervision,* presented a fictional case including a student memo to the supervisor, a “play” depicting three scenes of the students preparing with the supervisor for a hearing, the students conducting the hearing, and the students reflecting with the supervisor on the hearing after it was over. Shalleck then identified and analyzed three critical supervisory decisions threaded throughout the activities presented in the fictional case—the allocation of responsibility, the setting of the educational agenda for that case, and the relationship between client-based advocacy and student understanding of broader issues about legal and social institutions. The analysis of the decisions illustrated the critical and recurring issues in student supervision and the role of the supervisor in addressing them, all resulting in a vision of supervision. Later in her career, Shalleck revisited this vision of supervision in *Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy.*

3. Rounds

As clinicians developed the clinic, they also came to realize that they needed another place, distinct from the seminar and supervision, for students to talk and reflect together about their experiences representing clients. In many clinical programs, students talk together about their cases, with faculty leading the discussions, using the cases to draw lessons. Over time, as clinical scholars had developed theories of lawyering and theories of supervision, they realized that clinical education needed a theory to structure thinking about the goals and methodology of this discussion-based site for

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student learning. Led by the collaboration of Elliott Milstein and Sue Bryant, clinicians primarily from the New York City area met periodically over the course of a semester to share and develop their thinking about how to make peer discussions of cases and clients educationally productive.

Based upon these formative discussions, Milstein and Bryant wrote the article *Rounds: A Signature Pedagogy for Clinical Education*. They explained the distinctive educational activity of case rounds wherein students could engage with each other, under the guidance of clinical faculty, in exploratory discussions of the various issues they confronted as they experienced the legal system, legal practice, and the social world of the client through their individual experiences of representing a client. They learned much from each other in the process of talking together about the commonalities and differences in their experiences, their thoughts and worries about those experiences, and their insights about the legal system and injustice within it. For peer discussions to be productive, however, they needed goals and structure. Discussions needed to be guided by principles for shaping this shared exploration and to have structure and practices that students could follow when engaging in rounds.

The article identified rounds as a signature pedagogy that furthered the development of habits of reflecting on experience, engaging in contextualized thinking, generalizing from particular experiences, and exploring professional norms and skills. They identified the critical decisions clinical professors must make in guiding rounds, including choosing topics, maintaining a structured process, and fostering student preparation, as well as methods for intervening in student conversations to help make them productive. They explored the difficulties teachers commonly encounter in rounds and provided ways to approach them. Elliott Milstein, along with Sue Bryant, returned to this subject later in his career, in *Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy*, to expand and deepen analysis of this now well-established component of clinical education.

4. Fieldwork

As clinicians were building clinics and deciding what kinds of cases and matters to handle, we were learning what kinds of lawyering activities created productive learning experiences for students. Similarly, we were gaining contextual knowledge about how clinical pedagogy needed to be


adapted to different forms of legal practice. Clinicians began writing about how the lawyering activities associated with particular cases and matters related to the learning goals and structure of a clinic. Such analyses were important as clinicians learned the importance of structuring student responsibility for clients and cases or matters within different areas of legal practice within new types of clinics so that learning goals for students could be adapted to the context of their work. Carefully crafting lawyering experiences for students in which they could exercise responsibility became a critical aspect of clinic design in our expanding types of clinics. Our clinical program initiated innovative program design that focused on making the foundational student experience of representing clients central to the design of those clinics, with our faculty producing influential scholarship about these new clinics in new areas of practice. For example, Rick Wilson pioneered a human rights clinic built around student representation of clients in individual cases. Similarly, Peter Jaszi, together with Christine Farley Victoria Phillips, Ann Shalleck, and Joshua Sarnoff, pioneered an Intellectual Property and the Public Interest Clinic constructed around student representation of clients in individual cases. The design of that clinic demonstrated that examination of the public interest in intellectual property could be integrated effectively into students’ representation of individual clients in a variety of matters to promote dynamic student learning. Phillips’s later analysis of the vast expansion of intellectual property clinics as part of the growth of experiential education within legal education showed just how prescient and influential our own initial clinic design had been. Her work highlighted how access to justice, tensions in views of the public interest, and the relationship of cultural production to legal regulation could be powerful aspects of intellectual property clinics.

5. Integrating the Components of Clinical Pedagogy into a Unified Whole

The developing lawyering theories and pedagogical theories interacted with each other. For example, as clinicians were shaping the clinic seminar,
they were using lawyering scholarship about the subjects they were teaching. However, teaching the concepts in a variety of contexts often revealed limitations or conundrums in the lawyering theory. Similarly, in supervision, teachers had to rely on the pedagogy of the seminar, which instilled in students the transferability of the knowledge they were developing from one practice context to another, to enable students to transfer the concepts and practices from the seminar into the activity of actual client representation. As clinical teachers relied upon the lawyering concepts developed in the seminar in their supervision, we became increasingly aware of new complexities to each topic. The uncertainty, ambiguity, nuance, and sometimes conflicts clinical teachers encountered in real, highly textured, dynamic situations produced overarching insights that often spurred further scholarly inquiry and analysis about the nature of law and lawyering.62

WCL clinical faculty have played important roles in synthesizing clinical pedagogical theory. Elliott Milstein, Ann Shalleck, and Susan Bryant, created a major fully-developed statement of clinical pedagogy: Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy.63 They are co-authors of several major chapters in the volume, and are also editors who brought together the work of a diverse set of clinical scholars to create a coherent book that delineates the theory and values animating the many components of this transformative pedagogy. For example, in addition to his many other contributions, Elliott Milstein co-authored with Robert Dinerstein a theoretical chapter that analyzed one of the basic characteristics of lawyering that clinicians imbue in their students through this pedagogy—the indeterminacy and uncertainty of all aspects of the lawyering project.64

Similarly, Rick Wilson wrote The Global Evolution of Clinical Education: More than a Method,65 in which he analyzed the growth and development of a similar yet distinctive pedagogy of clinical education in many regions of the world. Wilson examined the history of experiential education in the United States, as well as the specific historical antecedents of clinical education in each region he scrutinized, in particular the active teaching movements and traditions in Latin America. He delineated the teaching

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63. Transforming the Education of Lawyers, supra note 53.
65. Wilson, supra note 4.
practices in each region and evaluated how these diverse practices both drew on developments within the United States, and also transformed the meaning of clinical education. Operating from a comparativist perspective, Wilson shows the reader common themes while appreciating the contextual and historical differences within each region related to goals and methodology.

E. Clinical Theory as Critical Theory

As clinical scholars elaborated and deepened their understanding of lawyering and fashioned a multifaceted, flexible pedagogy, they increasingly gained awareness that the content and methods of clinical thought produced critical perspectives on law and lawyering. These critiques sometimes overlapped with other critical traditions, particularly Law and Society, as well as the narrative strands in Critical Race Theory and Feminist Theory, while also yielding distinctive insights rooted in clinicians’ situated understanding as teacher-scholars. As clinicians teach students representing clients, their understanding of law in action, mediated through their students’ experiences in representing clients and their supervision of those students, enriches their critical insights into the operation of law and the legal system, the role of lawyers, and the consequences for the lives of clients.

For example, Ann Shalleck created a narrative theory and elaborated a set of practices applicable to the lawyer-client relationship that illuminated new ways to learn from clients about their experiences and desires through the client’s narrative that would help lawyers better identify and challenge dynamics of inequality, marginalization, or exclusion. Drawing upon the analogous work of Anthony Amsterdam and Jerome Bruner on the role of narrative in law, *Minding the Law*, which focused on argumentation in appellate cases, Shalleck identified two aspects of narrative theory that are essential to using narrative to foster the lawyer-client relationship in a way that makes the client experience in confronting the social world visible. Lawyers need both to think narratively in approaching and structuring interactions with clients and develop habits of listening, including listening for stories rather than facts, the client’s reasons for telling, and the expectations of clients and lawyers in listening to each other. Shalleck recognized two sets of practices for achieving narrative understanding. First,

66. See supra Section III.B.


she explored ways to use six basic elements of narrative that recur throughout storytelling to disassemble a client’s account and examine the interaction of the various elements. Second, she proposed using the structure of narratives, that is, the ways narratives cohere through the trajectories and dynamics of plot and the relationships of characters, to interpret tentatively the evolving stories clients tell in their relationships with their lawyers and the stories they want told in the world.

Llezlie Green, in her analysis of how federal and state wage and hour laws fail to provide protection or relief to low-wage workers who often litigate their claims in small claims courts, drew upon and integrated her experience of supervising students representing clients in just these sorts of cases. Green’s grounding of her multidimensional analysis of wage theft in a clinic case revealed how clinical theory can enrich and enhance critical thinking. By examining through a clinic case the statutory protections and policies of wage and hour law and the constitutional backdrop to those changes, Green presented in expansive and illustrative detail how the operation of small claims courts routinely erase well-established statutory protections, effectively recasting the clients’ claims from wage theft to contract disputes. She also showed how, by deploying counter-narratives that reflect the client’s experiences and harness the power of statutory protections, the students could achieve effective relief. The clinic case provided a recurring reference point for discussion of each aspect of Green’s analysis. Green also integrated the clinical concept of case theory and the critical race theory concept of counterstories in her examination of case theory development in the clinic case. Green compared her students’ closing arguments to show how critical effective and strategic use of law is in narrating a client’s experience. Finally, she relied upon the students’ work in scrutinizing the routine documents that structure much of the legal practice in small claims courts to reveal how the elevation of efficiency and informality in small claims court distorted the client’s experience and the principles of wage and hour law.

F. A Clinical Approach to Doctrinal and Institutional Analysis

While clinicians have created new forms of clinical scholarship, they have also integrated into their more traditional scholarship about law and legal institutions perspectives and approaches nurtured by their work and identity as clinicians. Clinicians understand that the meaning of law can be found in the work of lawyers, the lives of clients, and the daily operations of the many institutions through which people experience the power of law. They know

that the interactions among the various actors in the legal system shape how law gets interpreted and transmitted. They are familiar with the ways that all the courts in our legal system—from the lowest to the highest—shape not only how law affects the lives of the litigants, but also how it affects the workings of society. WCL’s clinical faculty in their traditional scholarship about law, legal institutions, and legal theory have brought these characteristically clinical sensibilities to their writing. The following examples provide a sense of how they have contributed to expanding understanding of the contours of established forms of scholarship.

In her extensive scholarship on sexual abuse and prison, Brenda Smith often included clinical perspectives. In one article on prison sex, she used narratives of prisoners to inform the understanding of prisoners’ rights to sexual expression.70 In another article, Smith proceeded in her analysis of cross-gender supervision from the perspective of the work of lawyers representing inmates who had experienced sexual abuse in prison and included nuanced presentation of the ways that prison life operates that make enforcement of sexual abuse policies difficult.71 In Uncomfortable Places, Close Spaces: Female Correctional Workers’ Sexual Interactions with Men and Boys in Custody, Smith critically examined feminist, queer, and critical race theories in interpreting the experiences and behaviors of female correctional officers who engage in sexual abuse and misconduct against men and boys. Smith kept her insights into the complex position of those women at the forefront of her analysis.72 Also, in the tradition of clinical scholarship about the substance and content of teaching, Smith wrote about pedagogy in an article expanding upon her keynote address at the New England Clinical Conference in 2015. In the article, Smith described how at the conference she spoke “truthfully and personally about race, gender, and class,” how she approached these topics in her teaching, and how she felt at risk in discussing those concepts in public.73

Likewise, Anita Sinha’s scholarship is built upon and shaped by her work as director of WCL’s International Human Rights Law Clinic. Looking at the legal structures that the United States and other countries have erected to

prevent migration, she proposed strategies to challenge them. In her article *A Lineage of Family Separation*, Sinha searched for ways to challenge the narratives that were used to justify separating children from their parents during the Trump Administration. She found multiple historical antecedents to that policy that, whenever employed, were used against racial minorities and other marginalized people. As a clinician, Sinha recognized the importance of counter-narratives that can be built from client stories, facts about experiences that when put together with other stories vividly explain the effect of those policies on real people. Sinha’s research into the tragic history of child separation showed the common threads in the policies underlying family separation and offered ways to use narratives recounted from the position of the victimized to force abandonment of those policies.

In *Transitional Migration Deterrence*, Sinha looked at the situation of migrants around the globe and the efforts of states to deter their entry, even when that choice violated international law and treaty obligations. Drawing from her clinical experiences with international tribunals, she proposed strategies for using these sources of law to frame challenges to domestic policies.

Priya Baskaran, too, has integrated her clinical knowledge and practice into her writing in addressing the content of the doctrinal business law curriculum. In her forthcoming article, *Teaching Theranos*, she argues for changing the teaching of corporate governance through focusing on the role of corporate counsel. Also, by moving transactional business law pedagogy away from a primary focus upon litigation mitigation to broader counseling of business entities about the many components of transactions affected by reputational, regulatory, and ethical concerns, she hopes to educate lawyers to be better prepared for corporate practice. Baskaran draws upon clinical pedagogy for ideas about new pedagogical tools to integrate into business law courses.

Jenny Roberts’s scholarship has focused on three areas of criminal law practice and procedure that are understudied yet crucially important to clients, especially to clients who are poor and people of color: (1) the collateral consequences of criminal convictions; (2) the experience of...
defendants charged with misdemeanors; and (3) plea bargaining. Roberts’s clinical practice in the Criminal Justice Clinic supervising students representing defendants charged with misdemeanors informed her scholarship and her scholarship informed her practice. For example, in her article *Informed Misdemeanor Sentencing*, Roberts argued that lawyers and judges in misdemeanor cases should be more aware of and attentive to the many negative consequences to defendants of a misdemeanor conviction, especially when the offenses are minor and the sentencing judge’s intention is leniency. Roberts used her insights as a participant in lower-level courts to paint three different courtroom scenarios “compositely drawn from [her] experiences as a public defender and clinical professor supervising students.”

IV. WCL CLINICIANS’ LEADERSHIP ROLES IN THE LAW SCHOOL AND IN REGIONAL, NATIONAL, AND INTERNATIONAL SETTINGs

A. Leadership in the Law School

1. Curricular Integration, Scholarly Connection, and Role in Governance

At many law schools, clinical faculty are treated as second-class faculty. They either have no security of position or they have a form of security that is separate and decidedly not equal, either through long-term contracts or a separate clinical tenure track. In contrast, WCL clinical faculty were integrated into the “regular” faculty in 1988 when the faculty adopted a clinical tenure track (that, in fact, was essentially equal to the non-clinical tenure track), and later did away with the distinction altogether. That integration meant not only that clinical teachers were included in law school governance as equals but also served to validate the importance of clinical scholarship. In addition, because WCL clinicians were required to teach one non-clinical course per year, they were able to develop their interests in

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81. *Id.* at 175, n. 15.

82. See supra Section II.D.

83. As discussed at the text accompanying note 22, supra, prior to their elevation to
other academic fields and gain exposure to a broader group of students. Expertise in areas beyond clinical legal education, and robust participation in faculty scholarship presentations and other gatherings, served to “validate” the clinical faculty as scholars/teachers in substantive areas in addition to clinical legal education. Teaching these other courses also provided an outlet for clinical faculty to pursue engaged scholarship and professional service that emphasized their commitment to social justice issues.

WCL clinical faculty have occupied numerous important positions within the law school and university, which has only reinforced the value of the skills clinicians have developed. Among WCL clinical faculty, we have had an interim university president (Elliott Milstein), law school dean (Elliott Milstein), acting law school dean (Robert Dinerstein), associate dean for academic affairs (Elliott Milstein, Robert Dinerstein, and Brenda Smith), four associate deans for experiential education (Robert Dinerstein, Binny Miller, Jayesh Rathod, and Llezlie Green), and associate dean for scholarship (Jenny Roberts). WCL clinicians have also chaired key law school committees, including faculty appointments (numerous times, including Dinerstein, Shalleck, Miller, and Roberts), curriculum (numerous times, including Shalleck, Dinerstein, and Green), the ABA-AALS Self-Study Committee (Dinerstein twice), and rank and tenure (five chairs among the WCL clinicians—Elliott Milstein, Robert Dinerstein, Ann Shalleck, Susan Bennett, and Binny Miller). Although clinical education, and clinical faculty, are often in the position of being the square peg in a round hole, the level of clinical faculty and program integration at WCL is second to none.

In retrospect, it is not difficult to see why a law school might turn to the tenure track, clinicians taught extra classes as adjunct faculty, teaching either one or two non-clinical courses per year. They did so not only to have an opportunity to develop expertise in their substantive areas of interest but also to supplement their salaries, which at that time were well below the salaries of the non-clinical faculty. When the clinical faculty were integrated into the tenure track, it was a straightforward matter to define their teaching load as two semesters of clinic and one non-clinical course each year. That teaching package provided many advantages, as outlined in the text, but, when combined with the requirement to produce high-quality scholarship, certainly added to the extraordinary workload for the clinicians. Although it is difficult to compare this teaching load with that of WCL non-clinical faculty, who teach three-four courses/seminars per year, there is no question but that the clinicians have the highest annual credit-hour loads (from 16–17 credit hours per year), though, of course, they teach many fewer students.

84. Clinical faculty members’ other areas of teaching, research, and service interest have included such disparate areas as disability rights, family law, feminist jurisprudence, poverty law, homelessness, criminal law and procedure, prison reform litigation, critical race theory, employment law, immigration, and legal ethics, among other areas.
clinicians to fill important administrative positions. Almost by definition, clinicians must, at minimum, have sufficient organizational and managerial skills to be able to successfully establish a clinic, manage a caseload, and handle various administrative matters. The in-depth nature of clinicians’ work with students requires a high degree of emotional intelligence and interpersonal sensitivity. Clinicians need political savvy to advocate for the importance of clinical courses, their value despite the small number of students they serve, and the importance of hiring clinical faculty. Many law schools, however, do not see their clinical faculty as a resource for law school governance because of the second-class status of that faculty. It was to WCL’s credit that it did not fall into this trap.

2. Enhancing Faculty Diversity

The clinical faculty in 1972 and through the mid-1980s was all white, which was not unusual in that era. Since that time, we have made a concerted effort to diversify our clinical faculty, and have been an important source of diversity for the faculty as a whole. At present, of the approximately twenty-two clinical faculty (including tenured, tenure-track, professors of practice, and short-term practitioners-in-residence), all but three are women, three are of South Asian descent, five are African American, one is Latina, and three are LGBTQ. During the 2022–2023 academic year, with one faculty member on sabbatical leave, there are only two male clinicians, one tenured (white male) and one a practitioner-in-residence (“PIR”) (who is African American). A new tenure-track African-American clinician will be joining the faculty next year.

85. WCL, of course, is not alone in elevating clinical faculty to positions of prominence within law school governance. Clinicians have served as deans at, among other law schools, Drexel University (Dan Filler), Wake Forest (Jane Aiken), University of Maine (Peter Pitegoff), University of Tennessee (Douglas Blaze), University of Richmond and Nova Southeastern University (Joseph Harbaugh), UC-Hastings (Shauna Marshall), University of the District of Columbia (Katherine “Shelley” Broderick and Renee Hutchins), University of Maryland (Renee Hutchins), University of Buffalo (R. Nils Olsen), Ohio State University (Nancy Rogers), and Northeastern University (Michael Meltsner). A significant number of clinicians also have served as academic deans at their law schools.

86. Another measure of clinical integration at WCL is that two non-clinical colleagues, the late Janet Spragens and Peter Jaszi, created clinical programs (in tax and intellectual property, respectively) and taught in them for many years with the assistance of three long-time professors of practice. A third non-clinical faculty member, Amanda Frost, directed the Immigrant Justice Clinic for one year to cover Jayesh Rathod’s sabbatical leave.

87. See Jon C. Dubin, Faculty Diversity as a Clinical Legal Education Imperative, 51 Hastings L.J. 445, 448–53 (2000); Barry et al., supra note 4, at 64–65.
Among the “permanent” clinical faculty, seven of the nine faculty are female; five are non-white (two African American and three of South Asian descent); and three are LGBTQ. Of the eleven PIRs, the one male is African American, while the ten women comprise two African Americans and two Latinas. The PIR program has been an important source of faculty diversity over the years, providing as it does more frequent hiring opportunities than does tenure-line hiring. Moreover, the program has served as a feeder for tenure-track hiring in the clinic (and one former PIR person of color who was hired as a tenure-line faculty member in the non-clinical curriculum), as four of the current tenured clinicians, all of whom are people of color, started out as PIRs. 88

Leadership within the clinic has reflected this diversity, as five of the clinical directors have been women, three have been people of color, and two of the last three associate deans of experiential education have been people of color and two LGBTQ. Clinical diversity is an important value—for our students, our clients, and ourselves—though law schools must be careful not to “use” the clinics to meet DEI goals that they do not implement for the faculty at large, especially when it comes to gender. 89

3. Internal Clinic Integration

From the beginning, we saw the importance of building community within the clinic itself. That meant, among other things, conceiving of the clinical program as one law office and seeing the clinical faculty as a coherent and cohesive group, rather than as a group of independent contractors. One simple way we achieved this coherence (which, based on our knowledge of clinical programs at other law schools, is relatively unusual) was to have weekly lunch meetings for the clinical faculty where clinicians could keep

88. The last white male clinician we hired on the tenure track was in 1998. Only a few of the PIRs hired since 1998 have been white males.

89. For example, until Fall 2022, the three WCL faculty of South Asian descent all taught in the clinic.

90. According to the most recent survey (2019–2020) from the Center for the Study of Applied Legal Education (“CSALE”), 67% of clinical faculty were female, up from 65% in 2016–17 and 60% in 2010–11. ROBERT R. KUEHN, MARGARET REUTER, & DAVID A. SANTACROCE, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE), 2019–20 SURVEY OF APPLIED LEGAL EDUCATION 52 (2020). The same survey reports that 81% of clinical faculty are white, 9% are Black/African American, 8% are Asian, and 6% Latino/Hispanic. Id. at 52; see also CLEA Committee for Faculty Equity and Inclusion, The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty, 26 CLINICAL L. REV. 127, 128–29 (2019) (expressing concerns about clustering of women faculty in so-called lower status positions in clinic, legal research and writing, and the library).
up with developments in other clinics, the law school in general, and legal education. Under the leadership of associate deans and clinical program directors Jayesh Rathod and Llezlie Green, the clinical program has created a series of committees to address issues of common interest to the program, such as clinic recruitment, staffing, and training; clinic-wide thematic programming; and event planning for clinic-wide events, such as the program’s 50th anniversary celebration. Service on these committees is in addition to the substantial law school-wide institutional service clinicians perform.

One of the most important developments in our clinical program in the last twenty-five years has been the creation of the Practitioner-in-Residence (“PIR”) program. The program differs from many law school clinical fellowship programs in that we actively seek out more experienced practitioners, compensate them at a higher rate than other programs, and give them their own clinical supervisory responsibilities in conjunction with teaching with a more experienced colleague, rather than have them serve more as assistants to long-term faculty without their own supervisory loads. Our PIRs learn how to translate their experience as lawyers into being clinical teachers and supervisors. They also receive support for translating their insights from practice into legal scholarship. For example, our PIRs have opportunities to present works-in-progress, receive feedback on drafts from experienced clinical faculty, and participate in junior faculty meetings on scholarship. A measure of the program’s success is the number of PIRs who have gone into long-term positions in legal education, both clinical and non-clinical. As of this writing, thirty-four PIRs have obtained law school teaching positions, with at least five more slated to begin long-term teaching positions in the 2023–2024 academic year.

91. As noted above, supra note 2, the article in this issue of the Journal written by Susan Bennett, Binny Miller, and a number of our current practitioners-in-residence, describes the outlines of the program. In this section, we highlight only some aspects of the program relevant to the themes discussed here. For a general description of the program see Clinical Practitioner-in-Residence Program at AUWCL, AM. U. WASH. COLLEGE OF L., https://www.wcl.american.edu/academics/experiential/education/clinical/practitioners/ (last visited May 10, 2023).

92. The motivation to create the program, which Ann Shalleck initiated when she was clinic director in 1998, was two-fold: to enable the clinical program to serve more students and to use our expertise and commitment to expanding clinical education at the national level by training a new cadre of clinical teachers.

93. Robert Dinerstein, WCL Practitioners-in-Residence in Teaching Positions (rev. February 21, 2023) (on file with the author). This list does not include two former PIRs who have had teaching positions since leaving their PIR positions at WCL but who are not in long-term positions or currently in legal education. For a list of where all PIRs are now working, not just those in legal education, see Past Practitioners, AM. U. WASH.
In addition to mentoring PIRs in their scholarly endeavors, we made a commitment in our PIR training program to conduct annual summer trainings for our new and returning PIRs, as well as having bi-weekly rounds on clinical supervision for the PIRs. We have also supported PIR attendance at the annual clinical conferences and Clinical Law Review writers’ workshops.

Because WCL clinicians are eligible for sabbatical and other forms of academic leaves, the program has needed to hire visiting clinical faculty members from time to time. It is a measure of the program’s stature that we have been able to attract such a distinguished group of visitors.96

The clinical program functions as one law firm for purposes of conflict of interest and attorney-client relationships. That structure also facilitates cross-clinic collaborations that permit us to serve clients more effectively while also meeting pedagogical objectives.

B. Regional Leadership

WCL clinicians have been active in the formal and informal meetings and relationships that have flourished in the greater Washington, D.C. clinical community. For many years, WCL clinicians have helped organize and participate in the Mid-Atlantic Clinical Theory Workshops. At these...
gatherings, D.C.-area clinicians—especially junior clinicians—have the opportunity to present, and receive feedback on, their works-in-progress. Mid-Atlantic clinicians also have gathered for more informal sessions on strategies for producing scholarship while also maintaining a heavy clinical teaching load.

In 2008, Elliott Milstein, Ann Shalleck and their Georgetown colleagues, Deborah Epstein and Jane Aiken, brought to Washington, D.C. the citywide rounds on clinical teaching that Milstein and Sue Bryant had initiated in New York City.98 Rounds are one form of peer-assisted learning that has been a hallmark of clinical legal education. Unlike the PIR rounds that focus on entry-level faculty, these rounds were geared toward senior clinicians first at WCL and Georgetown and then city-wide. These senior rounds lasted for approximately two years and were revived in the spring of 2023.

C. Leadership Roles Within National Clinical Legal Education Organizations

WCL clinical faculty have had a deep commitment to participating in the national organizations that have played such an important role in the development of clinical legal education in the United States and abroad. To an extraordinary degree, WCL clinicians have not only been participants but leaders. In addition, WCL clinicians have played a critical role in planning, organizing, and teaching at the annual AALS Conferences on Clinical Legal Education. Many WCL clinicians have chaired clinical conferences or served on planning committees. They have made presentations at every clinical conference and have played an important role in helping others plan their presentations.99

Earlier in this Article, we discussed the critical role that the annual AALS conferences and workshops have played in the development of clinical

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98. See supra Section III.D.3.

99. See, e.g., Ann Shalleck’s memorandum on how to plan a conference presentation (on file with the author).
teaching and scholarship. Especially in the earlier part of this fifty-year period, when there was no Clinical Law Review and many law schools had one or two clinicians at most, the sharing of ideas and networking at these annual conferences were crucial elements in the development of clinical legal education. WCL clinicians have served as important mentors to clinical teachers in other law schools, as well as to current and former PIRs. Moreover, because of their academic reputation and stature, many WCL clinicians are called upon by other law schools to conduct tenure and promotion reviews, including those for experienced clinicians making the transition from long-term contract to tenured status.

Significantly, the mentoring WCL faculty have provided to non-WCL clinicians has gone beyond clinical teaching and scholarship to include advice about how to improve their status within their law schools. Some of that advice has been informal, of course. In addition, however, the extensive service of several WCL clinicians on ABA-AALS site evaluation teams described below provided numerous opportunities to advise other clinicians on strategies they might employ to become more integrated into their law school faculties. The three of us—Dinerstein, Milstein, and Shalleck—have played important roles in the national political advocacy for clinical education and clinicians.

WCL clinicians have also had extensive involvement in the creation and functioning of the Clinical Law Review (“CLR”), which recently celebrated its twenty-fifth anniversary. The CLR is a peer-edited journal exclusively devoted to publishing articles on clinical legal education and lawyering. Co-sponsored by the AALS, the Clinical Legal Education Association (“CLEA”), and NYU School of Law, the CLR has been an important forum

100. See supra Section III.A.

101. The formal part of these site visits involved fact-finding regarding the law school’s compliance with ABA accreditation standards. But informally, WCL clinicians on site evaluation teams not only had an opportunity to provide peer advice to the school’s clinicians but also to speak with the dean and other faculty about the situation of their clinical colleagues.

102. Both Milstein and Shalleck have received CLEA’s Advocacy Award. Dinerstein co-chaired and co-edited an influential report on in-house clinical education, Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 508 (1992); see infra p. 306 (showing Dinerstein and Milstein served on numerous ABA-AALS site evaluation teams and chairing several).

for the publication of articles on clinical legal education, a role that was especially critical in its earlier days when traditional law reviews seemed reluctant to publish clinical articles.\textsuperscript{104}

Robert Dinerstein was chair of the AALS Section on Clinical Legal Education in 1992, and played a critical role in helping to create the CLR, including persuading the AALS to be a co-sponsor.\textsuperscript{105} He served on the founding board of editors for the CLR, and several WCL clinicians—Susan Bennett, Binny Miller, and Brenda Smith—have subsequently served on the board. Some years ago, the CLR initiated an annual writers’ workshop where clinicians from around the country present papers to small groups of clinical colleagues, from whom they receive detailed feedback. Dinerstein, Miller, Bennett, and Smith, along with Ann Shalleck, Jenny Roberts, and Jayesh Rathod, have been small-group facilitators at the annual workshops for many years.

WCL clinicians have also played important leadership roles in CLEA, an organization of clinical law teachers formed in 1992 to represent, and advocate for, the interests of clinical faculty. CLEA was able to fill a gap that existed because the AALS Section on Clinical Legal Education was limited in the advocacy positions it was permitted to take. Among other roles in CLEA for WCL clinicians, Jenny Roberts has been co-president and she, Binny Miller, and Llezlie Green have been board members.

The following list of involvement of WCL clinicians in organizations of critical importance to clinical legal education\textsuperscript{106} suggests the extraordinary depth and breadth of their influence and commitment. Considered mainly as institutional service—the shortest of the three legs of the academic stool (the others being teaching and scholarship), these activities would be impressive. But many of these activities blur the lines between teaching, scholarship, and

\textsuperscript{104} One possible reason for such reluctance was that student law review editors had insufficient exposure to lawyering and law practice and thus were less confident they could make wise article selections. There were exceptions, of course, and, over time, it appears that at many law schools, and certainly at WCL, more student journal editors have participated in clinical programs, which has made clinical scholarship more familiar to the student editors.

\textsuperscript{105} Nina Tarr, then of Washburn School of Law, and Martin Guggenheim, of NYU School Law, also played critical roles in the formation of the CLR, as did Carl Monk (executive director) and Curtis Berger (president) of the AALS. Dinerstein discusses the origins of the CLR in Dinerstein, \textit{supra} note 103, at 147–50.

\textsuperscript{106} The list that follows, extensive as it is, does not purport to capture the many presentations WCL clinicians have made at clinical conferences and workshops, whether in plenary, concurrent, or workshop sessions. Nor does it take into account the times, too numerous to count, in which WCL clinicians have served as facilitators or co-facilitators for small groups or working groups at clinical conferences or workshops.
service, such that their characterization is far less important than that they have occurred at all.

**AALS in General**
- President of the AALS—Elliott Milstein (2000)
- Member, Nominating Committee—Elliott Milstein
- Parliamentarian—Elliott Milstein
- Member (and chairs) Committee on Clinical Legal Education—Elliott Milstein, Ann Shalleck, Robert Dinerstein, Jayesh Rathod, Llezlie Green
- Chair, Awards Nominating Committee—Ann Shalleck
- Member, Membership Review Committee (previously Accreditation Committee)—Elliott Milstein, Robert Dinerstein, David Chavkin
- Chair, Professional Development Committee—Ann Shalleck
- Chair, Committee on Sections and the Annual Meeting—Robert Dinerstein
- Member Committee to Review Scholarly Papers—Jenny Roberts
- Member, Committee on Curriculum and Research—Ann Shalleck
- Member, Ad hoc Committees:
  - Solomon Amendment—Elliott Milstein
  - Consultant, AALS-ABA Committee on Guidelines for Clinical Legal Education—Elliott Milstein
  - Member, Advisory Committee to the AALS Executive Committee on the ABA Law School Accreditation Standards; AALS representative to ABA Section of Legal Education and Admissions to the Bar Standards Review Committee—Ann Shalleck
  - Member, Racial Justice Committee—Llezlie Green
- Panelist and Presenter, Faculty Recruitment Conference—Elliott Milstein
- Journal of Legal Education—Robert Dinerstein (associate editor and co-editor), Brenda Smith & Llezlie Green (associate editors)

**AALS Section on Clinical Legal Education**
- Chair of the Section—Elliott Milstein (1982), Robert Dinerstein (1992), Jayesh Rathod (2015), Anita Sinha (co-chair, 2023)
- Member, Executive Committee of the Section—Elliott Milstein, Robert Dinerstein, Jayesh Rathod, Anita Sinha
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- Co-chair, Clinicians of Color Committee—Priya Baskaran
- Co-chair and chair, Committee on the Future of the In-House Clinic, 1985–90—Robert Dinerstein
- Co-chair, Transactional Clinics Committee—Vicki Phillips
- Co-chair, Membership and Outreach Committee—Vicki Phillips
- Chair, Membership Committee—David Chavkin

Other AALS Sections

- Poverty Law—Llezlie Green (member and chair), Susan Bennett (chair, 1996–97 and member, Executive Committee)
- Disability Law—Robert Dinerstein
- Mental Disability—Robert Dinerstein
- Law and Community—Robert Dinerstein
- Community Economic Development—Priya Baskaran (chair-elect)
- Litigation—Ann Shalleck

AALS Planning Committees for Clinical Conferences and Workshops [not including presentations, small group facilitation]

- Chair of Planning Committee—Elliott Milstein, Robert Dinerstein, Ann Shalleck, Jayesh Rathod
- Member Planning Committees—Elliott Milstein (numerous times), Robert Dinerstein, Ann Shalleck (both, multiple times), Jayesh Rathod
- Chair (and member), Planning Committees for Transactional and IP/Tech clinics—Vicki Phillips
- Organizer, Human rights clinicians network—Rick Wilson
- Organizer, Low-Income Taxpayer Clinicians—Nancy Abramowitz (with the late Janet Spragens)

AALS/CLEA Planning Committees—General

- New Law Teachers—Elliott Milstein, Robert Dinerstein
- Member, AALS Mid-Year Meeting, Criminal Justice Section—Jenny Roberts
- Mini-Workshop on Evaluation (2005)—Elliott Milstein
- CLEA New Clinicians—Anita Sinha (twice), Robert Dinerstein

Clinical Law Review

- Board of Editors: Robert Dinerstein (Founding), Binny Miller, Brenda Smith, Susan Bennett
- Facilitators for CLR Writers’ Workshops—Robert Dinerstein, Binny
Miller, Brenda Smith, Susan Bennett, Ann Shalleck (all multiple times)

**CLEA**
- Co-president—Jenny Roberts (2013–14)
- Co-vice president—Jenny Roberts
- Board members—Jenny Roberts, Binny Miller (two terms), Llezlie Green
- Member, Faculty Equity and Inclusion Committee—Priya Baskaran
- Member, Steering Committee, CLEA Best Practices Project—Robert Dinerstein
- Member, Committee on Clinical Standards—Robert Dinerstein

**ABA Clinical and Legal Education**
- Member, Council of Section of Legal Education and Admissions to the Bar—Robert Dinerstein (2006–11)
- Member Section of Legal Education and Admissions to the Bar, Standards Review Committee—Robert Dinerstein (vice chair)
- Member, Section of Legal Education and Admissions to the Bar, Skills Training Committee—Elliott Milstein, Robert Dinerstein, Ann Shalleck
- Member, Section of Legal Education and Admissions to the Bar, Government Relations Committee—Elliott Milstein (Chair, 1997–99)
- Member, Section of Legal Education, Committee on the Professional Educational Continuum—Robert Dinerstein (2009–13)
- Co-chair, legal educators’ division, ABA forum on affordable housing and community development law—Susan Bennett (2000–02 and 2014–16)
- Member, ABA Commission on Homelessness and Poverty—Susan Bennett (2007–10)
- Site visits (AALS and ABA or AALS only)—Elliott Milstein, Robert Dinerstein (multiple times as members and chairs), Binny Miller, Jenny Roberts, Rick Wilson
- Member (2019–22) and Chair (2022–23), ABA Commission on Disability Rights—Robert Dinerstein

**Society of American Law Teachers (“SALT”)**
- Member, Board of Governors—Ann Shalleck (two terms), Robert Dinerstein (two terms)
National Conference of Bar Examiners and State Bar of California
- Multi-State Performance Test Drafting Committee, National Conference of Bar Examiners—Elliott Milstein, Ann Shalleck
- State Bar of California, Committee of Bar Examiners, Consultant—Elliott Milstein, Ann Shalleck

Miscellaneous
- Member, Carnegie Foundation for the Advancement of Teaching, Legal Curriculum Reform Study Project—Ann Shalleck
- Faculty member, Georgetown University Law Center Summer Institute on Clinical Teaching—Ann Shalleck
- Organizer, Human rights clinicians network—Rick Wilson
- Organizer and conductor of annual law student writing competition, Theodore Tannenwald Jr. Foundation for Excellence in Tax Scholarship, 2005–21—Nancy Abramowitz
- Testimony, US Congress House Ways and Committee, on the impact of 2017 tax law on low-income taxpayers and clinics—Nancy Abramowitz
- Testimony before Internal Revenue Service Oversight Board on Low-Income Tax Clinics—Nancy Abramowitz
- Convener, Mid-Atlantic Clinical Theory Workshop—David Chavkin

Awards
- William Pincus Award—Elliott Milstein, Robert Dinerstein, Ann Shalleck, Susan Bennett
- Stephen J. Ellmann Memorial Clinical Scholarship Award—Rick Wilson
- AALS Clinical Section, M. Shanara Gilbert Award for Emerging Clinician—Anita Sinha
- CLEA Advocacy Award—Ann Shalleck, Elliott Milstein
- CLEA best clinical project, Maryland Juvenile Lifer Parole Representation Project—Binny Miller, honorable mention with clinicians from Catholic University and University of Baltimore
- ABA Outstanding Nonprofit Lawyer (Academic Category)—Priya Baskaran
- SALT, Great Teacher Award—Jayesh Rathod (2023)

D. International Clinical Legal Education

WCL clinicians also have been active in promoting clinical legal education in international settings. Emeritus Professor Rick Wilson is one
of the pre-eminent scholars on global clinical legal education, with a long-time, special focus on the development of clinical education in Latin American countries.\textsuperscript{107} From 2007–2009, Elliott Milstein led a group of WCL clinicians, including Robert Dinerstein, Susan Bennett, and David Chavkin, in a three-year USAID Rule of Law-funded project to train Chinese law professors in clinical pedagogy and curriculum design. Milstein has trained law faculty in Japan in clinical methodology and Dinerstein has taught in ABA and State Department-sponsored international clinical workshops in Poland and Montenegro. WCL clinicians have hosted too many delegations of law professors to count from foreign law schools interested in learning about clinical education in the United States and how it might translate to their countries.\textsuperscript{108} WCL clinicians have also presented at and participated in international clinical conferences put on by the Global Alliance of Justice Education ("GAJE").\textsuperscript{109} The nature of clinical pedagogy and practice lends itself to its adoption, with consideration for local circumstances, in a number of different countries and societies, and WCL clinicians have very much been a part of the conversations about doing so.

IV. CONCLUSION

The story of the first fifty years of clinical legal education at the Washington College of Law is one of impressive programmatic, pedagogical, scholarly, and political achievements. Those achievements have been the product of coordinated and sometimes inspired collective action. Individuals have played a key part, of course, but we would not have accomplished nearly as much as we did without the support of each other and of the law school faculty and administration.

This is not the end of the story, however. For all of its successes, clinical education, both at WCL and nationally, has not transformed the law school’s curriculum and pedagogy as a whole as some of the founding generation may have hoped. Perhaps that goal was unrealistic, but clinicians may not want to give up on it. We also are keenly aware that clinical education is facing

\textsuperscript{107} See \textit{Wilson}, supra note 4.

\textsuperscript{108} Most recently (in February 2023), WCL clinicians met with professors and administrators from ADA University School of Law in Azerbaijan to discuss their development of a clinical program.

\textsuperscript{109} Strictly speaking, GAJE is not solely focused on clinical education. As it notes on its website, “Clinical education of law students is a key component of justice education, but GAJE also works to advance other forms of socially relevant legal education involving practicing lawyers, judges, non-governmental organizations, and the lay public.” \textit{Welcome to GAJE, GLOB. ALL. FOR JUST. EDUC.}, https://www.gaje.org/ (last visited May 15, 2023).


108. Most recently (in February 2023), WCL clinicians met with professors and administrators from ADA University School of Law in Azerbaijan to discuss their development of a clinical program.

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the inevitable aging and retirement of its earlier generation of teachers (including the authors of this Article) and needs to evolve to respond to current challenges, all in the context of an environment that seems increasingly constrained, economically and otherwise. It will be up to our impressive younger colleagues to pursue the next stage of clinical education. We are confident they are up to the task.

The lifelong friendships that clinicians forged in the early days of clinical education, when national conferences and workshops attracted perhaps 75 to 80 attendees, are more difficult to nurture when 700 clinicians are at the conference. It is not only a question of numbers: with the proliferation of AALS clinical conference concurrent sessions and workshops, as well as the de-emphasis and re-orientation of the small-groups, it simply is not possible for the clinicians to come away from these conferences with a common set of experiences.

This is not a plea for the good old days. The expansion of clinical programs, the diversification of clinical subject matter, and the expansion and diversification of clinical faculty have all been salutary developments. The next fifty years of clinical legal education will not look like the past fifty years—nor should they.

Unquestionably, clinical legal education, in some form, is here to stay, and legal education is the better for it. We could not be prouder of the role that the WCL clinical program has played in that development.
BUILDING A CULTURE OF SCHOLARSHIP WITH NEW CLINICAL TEACHERS BY WRITING ABOUT SOCIAL JUSTICE LAWYERING

SUSAN BENNETT
BINNY MILLER
MICHELLE ASSAD
MARIA DOONER
MARIAM HINDS
JESSICA MILLWARD
CITLALLI OCHOA
CHARLES ROSS
ANNE SCHAUFELLE
CAROLINE WICK

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This Article is a collection of essays about teaching social justice lawyering, as seen through the eyes of eight practitioners-in-residence in the clinical program at American University’s Washington College of Law (“WCL”). They include: Michelle Assad, Maria Dooner, Mariam Hinds, Jessica Millward, Citlalli Ochoa, Charles Ross, Anne Schaufele, and Caroline Wick. They teach in seven clinics, including the Civil Advocacy Clinic, the Criminal Justice Clinic, the Community Economic and Equity Development Clinic, the Disability Rights Law Clinic, the Immigrant Justice Clinic, the International Human Rights Law Clinic, and the Janet R. Spragens Federal Income Tax Clinic. We use the terms practitioner-in-residence and practitioner interchangeably throughout this Article. These practitioners have full-time faculty status and represent a range of experience in our clinical program—from those who are in their first year of teaching in the program to those who have been teaching for several years and are near
the end of their fellowships. Professors Assad, Millward, Schaufele, and Wick have now moved on to permanent teaching positions at other law schools, and Professor Dooner has returned to practice. They are all experienced lawyers who have brought their lawyering experiences in a variety of practice areas—criminal defense, criminal legal system reform, civil legal services, community and economic development, immigration, international human rights, employment, public benefits, health, tax law and policy, and special education—to their clinical teaching. They are diverse across a range of identities including race and ethnicity.

The idea for bringing this group of authors together grew out of the call for papers issued by the Journal of Gender, Social Policy, and the Law at WCL. Our colleagues, Professor Robert Dinerstein, Professor Elliott Milstein, and Professor Ann Shalleck, planned to write about the history of our clinical program.1 As long-standing clinical teachers and faculty colleagues at WCL, Professor Susan Bennett and Professor Binny Miller wanted to include the voices of our practitioners-in-residence—our newest faculty colleagues—in a jointly-authored piece on a cross-cutting theme that would speak to the work that we do in all of our clinics.

We settled on the theme of teaching social justice lawyering. Eight practitioners accepted our invitation to write an individual narrative about an aspect of social justice that is relevant to their clinical teaching. The choice of topic was up to the authors; the narrative need only relate to social justice. Professors Bennett and Miller wrote the introduction to WCL’s practitioner-in-residence program, the teaching of social justice as a fundamental lawyering skill, and the “connective tissue” that highlights common themes in the narratives.

The theme of social justice is a familiar one in clinical scholarship,2 and clinical scholars were among the first to pioneer the use of narrative in law review writing.3 We believe that the practitioners in our program, as lawyers


2. See, e.g., Jane A. Aiken, Provocateurs for Justice, 7 CLINICAL L. REV. 287 (2011); Sameer M. Ashar, Deep Critique and Democratic Lawyering in Clinical Practice, 104 CAL. L. REV. 201, 204 (2016) [hereinafter Ashar, Deep Critique and Democratic Lawyering].

transitioning from practice to the world of clinical teaching, can offer new insights into the connection between social justice and teaching and lawyering in a clinical setting.

Before turning to the content of the narratives, we describe WCL’s practitioner-in-residence program. Our program started in 1998 when we hired our first two practitioners-in-residence, Beth Lyon and Brenda V. Smith. The goal was to train clinical teachers who would first teach in our clinical program, and then go on to teach in other clinical programs; or, in some cases, return to practice or become leaders in public interest organizations. The work of our practitioners-in-residence is virtually indistinguishable from the work of our full-time permanent faculty who teach in our clinics. Practitioners-in-residence supervise students, teach the clinic seminar, and teach courses outside of the clinic curriculum, including large required classes such as Legal Ethics. They provide summer coverage for their own cases and those of many tenure-line faculty teaching in the clinic. They participate in a broad range of service to the law school, including serving on committees, collaborating with clinical and nonclinical colleagues, mentoring students in finding employment, and myriad other forms of service.

A good example of “three years in the life of a practitioner-in-residence” can be found in Professor Beth Lyon’s description of her responsibilities during her time (1998–2001) as a practitioner-in-residence in our program. Professor Lyon describes her work at WCL as a “[t]hree-year teaching fellowship at [the] International Human Rights Law Clinic teaching [the]
lawyering seminar and supervising students handling political asylum cases, habeas corpus litigation in federal district court, and petitions before human rights bodies.  

During her tenure as a practitioner-in-residence, Professor Lyon designed an LLM externship seminar entitled “Lawyering Across Cultures,” taught a seminar on “Economic, Social and Cultural Rights,” guest lectured in other law school courses, and assisted with developing an initiative on gender in the legal curriculum in India. In many ways, Professor Lyon’s teaching and service work in the early years of the practitioner program “appear[s] indistinguishable from that of the [permanent] faculty in most clinics,” and closely resembles the work of WCL’s practitioners-in-residence today.

Our clinical program also encourages our practitioners-in-residence to write scholarship, and the program provides support for doing so. For those who wish to pursue careers in legal academia, writing scholarship has been a critical component of taking the next step in academia and going on the market, particularly for those clinical teaching positions where scholarship is expected for the position. But for all of our practitioners, writing scholarship about clinic pedagogy—how we teach and what we teach—and lawyering can also make them better teachers. For those practitioners who go on the market, either for clinical or so-called “doctrinal” positions, our program supports them in a myriad of ways. We provide feedback on their writing, moot them for screening interviews and call backs, and connect them with available jobs. Practitioners often seek advice from nonclinical colleagues and these colleagues often volunteer to participate in moots. Clinical colleagues serve as references and advocate with our network of colleagues throughout the United States. Many of our practitioners have gone on to teach at law schools throughout the United States, including the University of Pennsylvania Carey Law School, UCLA School of Law, Georgetown University Law Center, William & Mary Law School, the University of Tennessee College of Law, Boston University School of Law, Boston College Law School, and the University of Arizona College of Law, among others.

This social justice narrative project is an accessible way for our practitioners-in-residence to write scholarship, and it offers different things to practitioners at different stages of their careers. It is an entry point for writing scholarship for our newest practitioners, those who have been

8. Id.
9. Id.
teaching for only a few months and have had little time to write scholarship. It also provides a means for our practitioners who have fully developed articles to write a short piece quickly as part of a collaborative project that can also launch a scholarly agenda. While each of the narratives stands on its own, we all had the opportunity to see the ideas in the individual pieces develop when we shared our thoughts about social justice in several working group sessions prior to the publication of this piece. The practitioners also saw their ideas come to fruition at the WCL Clinical Program’s fifty-year anniversary symposium, where the practitioners presented the ideas in their individual narratives.\textsuperscript{11}

In terms of process, the social justice narrative project gave our practitioners a glimpse of the work involved in getting a piece published. As the coordinators of the project, we handled these logistics and administrative tasks but shared the process with the practitioners as a way to introduce them to the process of publishing an article. The process began with the initial call for papers, and then moved to discussing our idea for an essay with journal staff, to the writing and submitting of an abstract, all the way through to acceptance of our essay for publication and signing a contract.

In focusing on developing our practitioners as scholars, this collaborative social justice narrative project is unique in the genre of clinical scholarship. Some essays have discussed training clinical teachers to teach, including Wally Mlyniec’s foundational piece, \textit{Where to Begin? Training New Teachers in the Art of Clinical Pedagogy}, where he describes Georgetown Law School’s course in clinical pedagogy.\textsuperscript{12} There is a vast literature about clinical legal education and lawyering theory, beginning in the early days of clinical scholarship and continuing to the present. There is a flourishing literature about the importance of scholarship written by clinicians—much scholarship written by clinicians is not clinical scholarship—and its contributions to scholarship more generally.\textsuperscript{13} But there is little (or nothing)

\begin{enumerate}
\item\textsuperscript{11} Symposium: “Where We’re Going”: Perspectives from AUWCL Practitioners-in-Residence (PIRs), AM. U. J. GENDER, SOC. POL’Y & L. (Oct. 28, 2022); see also Clinical Program: 50 Years of Clinic: A Celebration!, AM. U. WASH. COLL. L., https://www.wcl.american.edu/academics/experientialedu/clinical/fifty-and-forward-a-celebration/ (last visited May 17, 2023). In addition to the co-authors, Professor Olinda Moyd, a Distinguished Practitioner-in-Residence in our program, also presented her ideas at the panel presentation. Our group was part of Panel 1: The AUWCL Clinical Program: Where It Has Been, Where It Is, and Where It’s Going.
\item\textsuperscript{12} Mlyniec, \textit{Where to Begin? Training New Teachers in the Art of Clinical Pedagogy}, supra note 4. A shorter piece published the same year describes the goals, structure, and choices involved in structuring the program. Mlyniec, \textit{Developing A Teacher Training Program for New Clinical Teachers}, supra note 10, at 328.
\item\textsuperscript{13} A recent symposium issue of the Clinical Law Review includes a number of
\end{enumerate}
written about how to train clinical teachers to become scholars.

The project of two long-standing clinical teachers working with our faculty practitioners to craft this Article constitutes a means of “training” scholars. Our faculty practitioners saw their ideas grow from a paragraph or two (essentially an abstract for their narratives) to more fully fleshed-out narratives, and saw how their narratives fit into the broader project. In preparation for the practitioners’ panel at the Journal’s symposium—where nine practitioners compressed the essence of their narratives into an hour-long presentation—the practitioners distilled the major themes from their essays into three questions and each practitioner then presented on one question. That exercise also furthered their understanding of their collective concerns in approaching the teaching of social justice lawyering. The practitioners received feedback from their peers in the project—and from us—as the project progressed both before and after the symposium in order to have an impact beyond the publication of this Article. Practitioners Jessica Millward, Anne Schaufele, and Caroline Wick presented their narratives at the Mid-Atlantic Clinicians Writing Workshop. Practitioners Jessica Millward and Citlalli Ochoa—together with Professors Susan Bennett and Binny Miller—discussed the collaborative process described in this Article at the Mid-Atlantic Regional Clinical Conference hosted by George Washington University Law School.

Perhaps most importantly, the project was a doable writing project in the clinic environment where there is never enough time for writing. Clinicians bemoan the lack of time for writing amidst the multiple responsibilities clinical teachers have to students and clients, to teaching and to service, and articles reflecting on clinical legal scholarship. See Phyllis Goldfarb, Randy Hertz & Michael Pinard, Not (Just) a Clinical Lawyer-Journal, 26 CLINICAL L. REV. 1, 2 (2019) (“The overarching goal of this volume is to reflect on a generation of clinical legal education and clinical legal scholarship, examining where we as a clinical community have been and currently are.”).

14. See Symposium, supra note 11. The Journal’s symposium, in which the practitioners participated as part of the first panel, hosted clinical professors from across the country who presented over the course of the day. The three questions were: (1) what lawyering skills do you want your students to walk away with; (2) how do we as clinicians conceptualize social justice and teach it as a fundamental lawyering skill; and (3) how do we as clinicians select cases to facilitate students’ transition to practice?

15. The workshop was held virtually via zoom on November 4, 2022.

16. Mid-Atlantic Regional Clinical Conference, GEO. WASH. U. L. SCH. (Feb. 4, 2023). This project was accepted for presentation at the Ninth Applied Legal Storytelling Conference in London in July of 2023. The storytelling conferences are sponsored by legal writing scholars but are interdisciplinary in nature and academics from a broad range of disciplines, including clinical teachers, have participated.
But writing is doubly challenging for our practitioners who are new to both teaching and scholarship. Unlike many law school non-clinical fellowship programs that are designed around light teaching loads (one or two seminars each year) in order to provide significant time for the fellow to write and produce scholarship, clinical teaching fellowships are a heavy lift because they require intensive time devoted to students and clients. As we noted earlier, WCL’s program also requires that practitioners teach a course outside of clinic (after the first year in the program) and be involved in service in the law school. Finding time to write, especially in the first year of teaching in the program, is challenging. Our project sought to fill the gap in a way that was fun, thought-provoking, and not overwhelming.

In a provocative essay published in a recent Clinical Law Review symposium, Michele Gilman describes the work of clinical scholars and the purpose of clinical scholarship: “[t]heir works are based on observations generated through years of law practice; they aim to better the justice system and the lives of marginalized people; they steer clear of jargon, and they blend theory and practice.” We can all aspire to this standard. In addition, by situating narratives and personal experience within the theme of social justice, we hope that this Article is responsive to Gilman’s critique that many “law review articles are too long, weighted down with footnotes, focused on obscure topics, and unhelpful to the profession.”

II. THE TEACHING OF SOCIAL JUSTICE AS A FUNDAMENTAL LAWYERING SKILL

Our practitioners have all come to WCL from places of social justice lawyering. At this juncture of their careers in the academy, they now ask, “What is social justice teaching?” As we noted earlier, one of the formulations under which the practitioners chose to present at the symposium became the over-arching theme for these ensuing narratives: “How do we as clinicians conceptualize social justice and teach it as a fundamental lawyering skill?” Put another way, how can the practitioners turn their insights from practice and study into a pedagogy of social justice lawyering? For the students who enter clinic energized with a vision of social justice practice, or for the students who enroll in clinic because

19. Id. at 189.
someone told them it was the smart thing to do: how do clinicians engage them all to become reflective, not reflexive, lawyers?

The practitioners articulate in their narratives a myriad of considerations that are bound up in teaching social justice as a fundamental lawyering skill. These considerations derive from the many roles that the law school clinical program plays: that of a small law firm with procedures that must support the performance of basic professional and ethical obligations to clients; of a small teaching law firm that provides a site for modeling professional and ethical behavior for its student attorneys; of an aspirational home for transmitting values and habits of mind that students will carry forward with them; and of a meeting point for students, their clients, and their clients’ communities. None of these roles is separable from another.

Standard law firm functions and standard teaching functions set the table for teaching the fundamental lawyering skill of social justice. Standard law firm functions include selecting clients and documenting the work that clinic students, staff, and professors do for clients. Standard teaching functions include constructing syllabi and choosing readings. In points of clinic administration that are often taken for granted, our practitioners see manifold opportunities for elevating issues of economic inequality, systemic racism, and failures of the justice system. These issues could well present in every client and every case. The challenge for clinicians is to make sure that they do, and that they do so in ways that form the students’ skills and identities as social justice lawyers.

The practitioners’ narratives that follow identify three major entry points into teaching social justice lawyering. One occasion for teaching social justice lawyering emerges as students assume their roles as professionals, a challenging evolution that the past two years of isolation made even more

20. The topics of whom—or what—law school clinics should serve, and how, have stoked decades of debate. Central to these debates have been the issues of whether (1) clinics teach core habits of reflection and self-evaluation most effectively through discrete, short-term representations of individual clients; and (2) whether that type of case assignment thwarts the equally essential pedagogy of social justice lawyering. For a thoughtful and thorough summary, and refutation, of those assumptions, see Juliet Brodie, Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics, 15 CLINICAL L. REV. 333, 339 (2009).

21. These three major entry points derive from the three questions that the practitioners asked themselves in preparation for the symposium and that structured their presentation at the symposium: (1) what lawyering skills do you want your students to walk away with; (2) how do we as clinicians conceptualize social justice and teach it as a fundamental lawyering skill; and (3) how do we as clinicians select cases to facilitate students’ transition to practice?
difficult. A second occasion involves the fostering of client-centeredness, as a matter of individual connection and connection with the client’s context and communities. The third occasion presents itself through clinic structuring. As we noted earlier, selections of cases, clients, and venues contribute in ways that are key to students’ experience of social justice lawyering and social justice impact. Attention to any or all of these opportunities can assist in teaching social justice lawyering as a pervasive and fundamental skill for teaching throughout the clinical curriculum.

The sections that follow arrange the authors’ narratives under these three categories. While these narratives do illustrate the major topics under which they are grouped, all of the authors encounter all of the challenges highlighted in each narrative. All are concerned in some way with identifying the meaning of client-centeredness as it plays out in the relationships between their students and their clients. All are enmeshed in making decisions about selecting clients and cases: decisions that may not be perfect expenditures of precious clinic resources, and that sometimes carry more weight for achieving pedagogical and social justice goals than they should have to bear. And all worry about the pressures of family, finances, and careers on their students, pressures that have only increased over the events of the past few years.

III. THE NARRATIVES

A. Forging Professional Identities Under Stress: Providing Opportunities for Framing Success and for a Transition to a Social Justice-Informed Practice

One element of teaching social justice lawyering—the examination of the stresses underlying the formation of professional identity—is of concern to both the practitioners and their students. As we noted earlier, WCL’s practitioners are making a transition from working as seasoned social justice practitioners to working as instructors of future social justice practitioners.22 As Professor Millward describes in her narrative, the pandemic exacerbated both for her and for her students every “usual” anxiety and insecurity about the lawyer’s role and purpose.23 Focusing first on how the on-again, off-

22. See Caroline Wick, Reflections on Teaching Social Justice, infra pp. 339-45 (noting Professor Wick’s initial concern, when she moved from a high volume civil legal services practice to the relatively (and deceptively) slower pace of clinical supervision and teaching, that she might lose her effectiveness as an advocate for social justice).

again waves of COVID and the retreat to virtual school sapped her students’
direction and energy, Professor Millward described her deeply empathetic
reaction: that she “... felt their exhaustion in my core.” Her narrative’s title,
Teaching Through Uncertainty and Injustice, encapsulates the obstacles: the
“uncertainty” made it even harder than in pre-pandemic times for both clients
and students to cope with the longstanding “injustice” of the flawed systems
to which clients turned for some modicum of economic security. “Through”
intimates the sensation of pushing against a barrier so dense that it is almost
physical.

Professor Millward describes how these circumstances, heightened though
they were, only highlighted the ambiguity and sense of drift that all too often
accompany lawyering for clients in corrupt poverty law systems. She offers
prescriptions for how to preserve professional effectiveness and personal
health: to acknowledge even seemingly inconsequential movements in a case
as victories over stagnation and injustice; to frame the work in manageable
chunks; and most important, to acknowledge that, indeed, professional
effectiveness and personal health are inextricable from each other.

At the end of her narrative, Professor Millward expresses the complexities
of the professor’s dilemma in evaluating her obligation to provide strength
and to model professional behavior. Teaching often benefits from
spontaneity. But teachers do not enjoy the luxury of spontaneous disclosure
to their students of personal pain. It is a huge weight on any teacher to
consider, in the moment, first, the potential harm or benefit to students from
seeing a vulnerability in their professor; and second, the potential harm or
benefit to students from seeing a professor model vulnerability. As Professor
Millward notes, she constantly walked “... a fine line.” She describes how,
after she was dealt a crushing personal loss, at a time of so much other loss,
she turned to mending for solace. It is a physical act of affirmation and
completion, one with great metaphoric power.

Economic Development Clinic in Turbulent Times, 28 CLINICAL L. REV. 243, 272 (2021)
describing the efforts of faculty at the University of Michigan’s Community Economic
Development Clinic to take heed of their students’ vulnerabilities and to nurture their
strengths at this time).
I. Teaching Through Injustice and Uncertainty

JESSICA MILLWARD*

“This course is depressing,” wrote a student in their mid-semester feedback of my Poverty Law course. Well, yes, I thought. Welcome. I, in turn, was confounded about what to do. While I attempted to provide support, levity, and perspective in class, teaching Poverty Law in the spring of 2022 was indeed depressing. We had started another semester remotely due to COVID, returned to class wearing masks and unsure of social norms, and the semester lacked the cautious optimism about the new Biden administration proposals that buoyed many of us in spring 2021.

Teaching in the clinical space doing individual civil casework was also difficult. Our already-insecure clients were battling deep insecurity, especially when the emergency economic relief programs phased out one by one. My students were also having a hard time. One team was attempting to collect a seemingly uncollectable judgment. Our housing discrimination case was moving forward with all due delay, our promising wage claim case was floundering under several Small Claims Court procedural oddities and service issues, and an elderly client was ill. My teams of third-year clinical law students were understandably just trying to make it to graduation after a hard three years. I felt their exhaustion in my core and wondered how I would move us all forward so that we could think critically and meaningfully about justice, clients, and people living in poverty.

I recognized these students’ and clients’ struggles in myself. I knew that we were all exposed to trauma and were coping with the trauma. Some clients, students, and faculty were more insulated from the trauma than others were, depending on personal histories, mental health, economic need, family security, and race. Like some, I was deeply affected by the COVID

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24. I solicited anonymous feedback around the mid-semester point in this course.

25. The Civil Advocacy Clinic, where I teach, employs an economic justice framework for case selection. For us, this means that we represent individual plaintiffs in wage theft cases, former employees in unemployment insurance cases, and individuals in a smattering of other types of civil legal cases including housing and public benefits cases. As a practice, we prioritize the representation of individuals who may not otherwise be able to receive legal assistance usually because their case does not fit into the traditional legal services framework.

trauma exposure, although less than others. I had recently experienced the illness and abrupt death of a close family member, and I lacked the immediate family support that I needed as a new parent. Among other things, this meant that throughout the semester I was pushing myself hard to perform and to be present for students so that I could provide them with the support that they needed. However, it was a weekly challenge.

By the end of the semester, I had many answers and no easy solutions. My Poverty Law students seemed better able to contemplate the systemic changes they would implement if they could, were better able to talk about poverty and racial and economic stratification, and class conversations were lively. I worried, though, about students feeling shut out of conversations and did my best to slow them down and leave room for alternative viewpoints. My clinical students had reached some degree of success in most of their cases and were overall dissatisfied with what they learned about how the justice system functioned for their clients. I did not believe that this overall dissatisfaction with the justice system was a bad thing. Instead, the dissatisfaction came from a place of reckoning.27 Meanwhile, I was feeling, probably like my students, proud and relieved that we had all made it through.

These doctrinal and clinical teaching conundra parallel dilemmas found in social justice lawyering and were exacerbated by COVID. Social justice lawyering, or lawyering to advance equity and end systemic violence, racism, and systems that devalue other people, plays a large role in the clinical program at the Washington College of Law.28 As an experienced lawyer working in the social justice space throughout my career, I have found that at times it can be difficult to define goals and objectives and to

27. Fran Quigley, Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics, 2 CLINICAL L. REV. 37, 51 (1995) (disorienting moments are opportunities for significant learning for adult learners, as adult learners cannot explain these moments by referencing their prior understanding of how the world works).

28. See Our Definition of Social Justice, JOHN LEWIS INST. FOR SOC. JUST., https://www.ccsu.edu/johnlewisinstitute/terminology.html (last visited Feb. 7, 2023) (“Social justice is a communal effort dedicated to creating and sustaining a fair and equal society in which each person and all groups are valued and affirmed. It encompasses efforts to end systemic violence and racism and all systems that devalue the dignity and humanity of any person. It recognizes that the legacy of past injustices remains all around us, so therefore promotes efforts to empower individual and communal action in support of restorative justice and the full implementation of human and civil rights.”). For a thorough discussion of social justice lawyering, see Caroline Wick, Reflections on Teaching Social Justice, infra pp. 339-45.
measure success when the problems appear so vast. This can make it difficult to move forward with work, especially when the work of lawyering can be very tedious at times. Similarly, for students who have varying degrees of experience moving in and around injustice, and who have various degrees of trauma, the work can be very hard. At moments such as spring 2022, the work can be particularly hard because the world feels particularly hard. Many of my students seemed to just be trying to make it through and minimize their own personal collapse.

It is the professor’s job to provide a supportive framework for students as they learn to parse injustice in a doctrinal class or learn how to be the lawyer for individuals experiencing injustice within systems that, themselves, are also unjust. This work is particularly difficult when students are facing their own despair or crises, just as it is difficult for lawyers. However, social justice lawyers, student attorneys, and law students can often benefit from the same framing and methods of moving forward. I relied on the methods below, drawn from my lawyering practice, in my work with students in the doctrinal and clinical spaces. The intent of these methods is not to fix anything. Rather, they are tools that can help students and lawyers make space to continue to perform the work and continue to participate in the larger social justice lawyering project.

a. Defining Goals and Objectives

Part of a teacher’s job is to define clear learning goals and objectives for students. In doctrinal classes these learning goals and objectives are listed in the syllabus and help students determine if they want to register for the


30. True and lasting changing for marginalized individuals and for social justice lawyers, law students, and others would require an upending of our values system and societal structures. It would, at a minimum, require racial justice, economic justice, health justice, leveling wage gaps, and valuing paid and unpaid labor through substantial leave policies.

31. On Learning Goals and Learning Objectives, THE DEREK BOK CTR. FOR TEACHING AND LEARNING, https://bokcenter.harvard.edu/learning-goals-and-learning-objectives (last visited Oct. 26, 2022) (“The distinction between ‘learning goals’ and ‘learning objectives’ is actually pretty commonsensical: in this context goals generally refer to the higher-order ambitions you have for your students, while objectives are the specific, measurable competencies which you would assess in order to decide whether your goals had been met.”).
course and, later, to measure their own learning. For my poverty law students, I would identify sub-goals for each course section to increase student ability to link topics together and participate in their own learning.

In the clinical space, learning goals and objectives are also defined for assessment of student progress over the course of a semester. After identifying goals and objectives for students, we then ask students to participate in the process of identifying which learning goals and objectives are most important to them and consider what barriers they think they may need to overcome. However, these learning goals defined by faculty are different from a client’s objectives for representation, which must be defined by clients. Student attorneys face the difficult job of taking the client’s defined objectives for representation and defining achievable lawyering objectives. This task is especially difficult for students when they are struggling with what it means to be a lawyer, how to work with a client, and how to conceptualize the work that goes into a case. Often, students may plan for big picture lawyering goals, but feel defeated when they are not able to accomplish their client’s bigger goals over the course of a semester.

Students can learn from goal framing utilized in social movements or systems change work. Even with large change goals in mind, experienced lawyers know that true change is slow and that each case or subpart of a case contributes in some way to the overall goal, even when it feels like progress has stalled or regressed. We hold onto the large change goals for strategy, but to keep momentum we realize that we must define smaller goals and objectives along the way. These small goals may consist of understanding legal concepts in our cases, developing strategies, undertaking advocacy in specific types of case matters, or connecting with communities, to name a few. These smaller goals should be connected to change strategy or to an individual case strategy. These smaller goals allow us to check in on our

32. In the Civil Advocacy Clinic, we spend time in orientation examining defined learning goals and revisit them in mid-semester and end-of-semester student reflections and meetings.

33. See Model Rules of Prof’l. Conduct r. 1.2(a) (Am. Bar Ass’n 2020) (lawyers must abide by a client’s decision about the objectives of representation, which are the higher-order ambitions for the case and analogous to learning goals).

34. In the Civil Advocacy Clinic, we often represent in wage-claim matters, which can span multiple semesters. For these cases, we set targeted goals like completing and filing a complaint, so that students can see how their work fits into the larger case strategy. We also often take on matters that are more quickly resolved, like Unemployment Insurance cases in the administrative hearing phase. These cases provide a quick entry for students to participate in the hearing process from initial intake to hearing to administrative decision.
progress\textsuperscript{35} as well as provide us with something to celebrate as we complete them.

\textbf{b. Celebrating Small Victories}

I was a junior legal aid lawyer in Montana, but the only legal aid lawyer working on public benefits issues, when I received a fax from a lawyer in New York, asking me to be pro hac vice on a Medicaid case. We worked over the next few months, him educating me on legal issues surrounding the case and me educating him on Montana lawyering style and customs. At the end of the matter, which resolved in our favor but was not the triumphant victory I had imagined, he asked me what I was doing to celebrate. Turn to my other cases, I thought. He instructed me to go and celebrate. Take a walk, get ice cream, appreciate my hard work and consider what the victory meant for our client. I took this to heart and adopted it, much to the confusion of some of my students years later.

In my Poverty Law class, small victories were easy to frame for the students. We studied both policy and court victories, and I celebrated our progress as we moved from one section to the next. In clinic, when we set smaller goals for our cases it provides us with measures of our progress. Students may not feel like they deserve to celebrate merely filing a complaint or participating in a hearing because they have not achieved the client’s goal or have not improved the justice system and do not know if they ever will. However, finding small victories is crucial to our ability to continue the work, lifts our spirits, and helps us continue to lawyer through difficult times.

\textbf{c. Acknowledging that Work is Impacted by Life}

It seemed that in my spring 2022 microcosm, things were hard for many of my students. Starting the semester remotely and transitioning back to in-person learning was a difficult transition for many. For those who had been buoyed by the change in presidency, the policy stalemates were disheartening. We had been in a pandemic for years, and police killings of Black and brown people were affecting many of us, especially students of color. My students were struggling with more physical and mental health challenges than I had seen before, and more than a few were struggling with the death of loved ones. Things were hard for many reasons identified and unidentified.

In American society we spend a great deal of time and energy segregating our working lives from our personal lives. This segregation is evident in our society’s failure to provide adequate parental leave, sick time, bereavement

\textsuperscript{35} This is akin to formative assessments.
time, and vacation time.36 Workers, lawyers, and law students alike are expected to keep showing up and doing work, even when our physical and mental health is struggling. As lawyers, we have an additional obligation to our clients to continue to do the work and it often is not appropriate to share our own struggles with clients. Compounding this, many social justice attorneys are passionate about their work and derive a great deal of meaning from it. This passion can drive us forward yet can also blind us to our personal needs, to our own detriment. If we do not acknowledge our emotions or struggles then we cannot productively work through them.

Over the course of spring 2022, I spent a lot of time walking the fine line of modeling healthy boundaries by sharing small life challenges, like minor illness, while not adding to my students’ overall stress and worries. I did not want them to worry that I would not be there for them when they needed me, and I struggled with the right balance of what to share so that I was both authentic and modeling the professional boundaries that they will need in their professional lives. In turn, my doctrinal and clinical students grappled with what to tell me when their ability to do the work or simply attend class flagged. I sensed that they, too, wanted to be professional but struggled with what language to use when articulating the trouble was so hard. Other students needed the professional boundary and relied on work to ground them when times were tough. I did not want to pierce a self-protective boundary, especially because I know that because of my role as a professor and because of my race and gender, some students may not feel safe acknowledging trouble with me.

I treaded a fine line. For the students that self-identified struggles, I provided them with as much latitude as possible, offered to meet, and sometimes referred students to additional services. For clinic, I utilized our individual mid-semester meetings to check in on students who seemed like they were struggling. I used open-ended observations and pauses. I explained that they did not need to reveal anything to me, but that I could be a resource and a link to other resources. I normalized struggles by acknowledging that many students have a difficult time with the transition to student attorney and the associated higher stakes of work, especially if they have more to balance in their professional or personal lives.

Balancing Self Care and Justice Goals

As I grieved my mother, I took up mending clothing. This was a departure for me, as my typical self-care activities had, in the past, involved running or cycling. Mending required concentration and stillness. It was repetitive. It did not demand that I create; rather, I could simply fill existing gaps with cloth and thread. I was able to sit, stay off my phone, and think. It allowed me to let my body rest. The act of mending also allowed me to accomplish something that I could pretend was finite. In my teaching and lawyering work, end results can be difficult to envision as we complete the work, and truly, the work is never done. This mending was a productive act of self-care, as it provided me a refuge that allowed me to reenergize and continue my work as a social justice teacher and lawyer.

We are currently in a cultural crisis related to balancing the cultural need for productivity and our personal need to save ourselves. This crisis has been simmering in the social justice space for a long time. It is not and has not been uncommon to hear lawyers in the social justice space leave due to burnout. During the pandemic, productivity made gains, likely at the cost of work-life balance, as there was no balance. People worked out of their homes and it became difficult to distinguish between work and life. Caregivers, especially those caring for individuals requiring intense supervision, worked whenever they could, often beginning their work in the early morning and ending their work late at night. It is not surprising to me that now, as we enter into yet another new phase of the pandemic, worker productivity has hit lows that have not been seen since 1947. Many people


38. The concept of mending as a meditative, radical activity is not new. See generally NINA MONTENEGRO & SONYA MONTENEGRO, MENDING LIFE: A HANDBOOK FOR REPAIRING CLOTHES AND HEARTS xxv (2020) ("Mending is a powerful act of restoration, both for our clothes and for our relationship to the world. . . . When we sit down to mend, we cultivate a mindset that extends beyond clothing. Much like meditation, mending teaches us to embrace imperfection, and to practice patience and acceptance with ourselves.").

39. Realistically, mending is a circular act because an item will need continuous repair until it truly wears out. But, the goal of fixing a hole was clear and easy to meet.

40. I left direct client work due to burnout, and my five years was longer than many of my peers although shorter than others.


are exhausted and are attempting to reconstruct boundaries and balance.\textsuperscript{43} In the midst of this environment, law students have been trying to construct their own professional work ethos as they work to determine their professional identity. Personally, I have observed clinical and doctrinal students struggling with boundaries. Some work too much or are paralyzed because they know that they need to work yet are too stressed or exhausted to complete the work. They become entrenched in a cycle that often ends in collapse. During the collapse, students become unable to work for their clients and the larger justice goals suffer. For these students, I encourage self-care so that they can learn how to work productively. I suggest noting breaks and life activities into their calendars, and we discuss the value of rest.\textsuperscript{44} However, other students seem to establish boundaries for their personal time that do not leave enough time for the work that a lawyer must do. For these students, discussions of what the ethical rules require of a lawyer representing clients can help ground them in the reality of what our obligations are and what we must do to represent clients as we seek justice.

Balancing the need for self-care with our professional obligations can be difficult, especially when our society’s larger view of work-life balance is so skewed. By considering what we need to do to maintain ourselves as ethical, justice-minded lawyers, we can set or reset our self-care activities so that we can find some balance in whatever space we are in.\textsuperscript{45}

e. Conclusion

Many of the tools I rely on are patches rather than solutions, especially in the midst of such a high-stakes and deeply unsettling time. Here, too, I find resonance in the social justice work that I was doing as a public benefits attorney at a legal services organization that could not do class action work.


\textsuperscript{44} Tricia Hersey, founder of The Nap Ministry, connects the concept of rest to resistance against capitalism and white supremacy. Naps, she says, “bring us back to our human-ness” and allow us to connect to “who and what we truly are.” \textbf{TRICIA HERSEY, REST IS RESISTANCE: A MANIFESTO} (2022).

\textsuperscript{45} It is important to note that students and professionals who are out of balance may have mental health needs that should be attended to. An important aspect of a professor’s work is to check in with students and provide them with referrals to mental health resources. Clinical professors, especially, often serve as a front-line for noticing student mental health needs as our methodology means that we meet with students individually or in small groups on a very frequent basis.
I spent much of my time feeling as if I was patching up elements of a client’s safety net: I could mend a food stamps problem but not find my client long-term food security. I could convince Medicaid to cover a needed drug, but not immediately change the policy. There is value in seemingly small legal mends, just as there is value in structures that hold us up as professors and students so we can get through. I hope that with time and change, we can all thrive.

B. Teaching Client-Centeredness: Texts, Context, and Community

“Client-centeredness” is central to clinical pedagogy.\(^{46}\) To practice “client-centeredness” requires inculcating and developing abilities that are too often characterized as secondary “soft skills.”\(^{47}\) These include listening; developing and drawing upon reserves of empathy;\(^ {48}\) and responding to clients in ways that are accessible to them. This is far from an exhaustive list. Clinical professors who teach client-centeredness as integral to social justice will convey these skills of empathetic communication and more.

The practitioners whose narratives appear in this section take pains to encourage their students to consider attention to the communities in which their clients function as intrinsic to “client-centeredness.” Planners have described this awareness of the centrality of community, and of the preparation necessary to approach communities, as a skill all its own: the “skill of community entrée.”\(^ {49}\) The practitioners concur in valuing “community entrée” as a lawyering skill, one essential to the teaching of social justice lawyering.

As Professor Charles Ross notes in his narrative, whether lawyers serve as

\(^{46}\) The law review literature on the clinical pedagogy of “client-centeredness” is vast, and effectively summarized by Professor Mariam Hinds in her narrative, *The Danger Zone: Client-Centered Representation and Clinical Pedagogy*, infra notes 84-95 and accompanying text.


scholars, educators, or activists, they “. . . must view social justice as a form of action and method of lawyering.” In keeping with the choices of other authors of this Article, the Community Economic and Equity Development Clinic (“CEEDC”) makes it a priority to select organizations as clients, community-based social justice actors that will address long-term solutions to structural needs. Professor Ross emphasizes exposure to the history of the client’s community as a grounding from which students can center on their clients’ concerns. For the CEEDC’s clients, history is framed by officially sanctioned and privately enforced racial discrimination. The racial disparities in quality of life in the District of Columbia are stark. They ensue from racial segregation, visible in maps of racially restrictive covenants, and in patterns of denial of access to credit and other resources. Many of the Clinic’s clients are organizations whose mission it is to redress this legacy.

One cannot always take the students’ awareness of that history as a given: students may know little about, or have little in common with, the communities they are about to serve. So preparation for encounters with the clinic’s clients includes extensive readings on both the larger historical context, and the immediate context within which the clients live and do their work. Professor Ross describes how the student attorneys meet with the clients away from the office, in locations of the clients’ choosing, opportunities that the pandemic previously had snatched away. The on-site meeting, supplemented by the readings, serves as partial corrective to the gaps in students’ knowledge of their clients’ communities. Professor Ross describes his students’ preparation for, and execution of an interview of an organization’s founder in a church, a setting far removed from the conveniences and assumptions of the law office. The students researched


the organization’s history and projects. Using the site of this client’s interview site as an example, they also brainstormed how a particular meeting space might affect the dynamic between client and lawyer, and might yield information critical to the formation of a relationship and to the ongoing representation. This deconstruction of something as seemingly straightforward as a meeting venue illustrates how reflection and attention to detail can expand the students’ understanding of “client-centered” representation.

Context matters for the representation of individual clients as well. In the second narrative of this section, Professor Caroline Wick echoes Professor Millward’s observations about the many stresses induced by the pandemic. Professor Wick notes how the pandemic laid bare a universal lack of concern for the community of disabled clients whom the Disability Rights Law Clinic represents. Disabled persons became disposable persons when it came to assessing survival chances and treatments for COVID-19. Meeting clinic students where they are—which may not be at a point where they have any understanding of their clients—became even more critical as the Disability Rights Law Clinic students’ clients and clients’ communities became even less visible.

Professor Wick describes in detail the ways that a social justice outlook may be taught through centering on the client’s day to day reality. She integrates documentaries, other videos, and readings about disability and disability and race, into the curriculum, as well as historical accounts of the disability rights movement. Even more effectively, she suffuses her students’ “skills” training—the simulations of interviewing and counseling that are the bread and butter of clinical curricula—with awareness of how students can make themselves accessible to the clients’ particular needs. Above all, Professor Wick cites and follows Jane Aiken’s admonition to create moments for “compassionate insight” to predict the places where students’ humanity will be challenged and will grow, and to put students in those places wherever possible. 53

Professor Wick shows how to equip social justice lawyers to see their clients fully and to respect their clients’ agency. But our authors raise concerns of whether even these lessons can make client-centeredness genuine. Professor Mariam Hinds closes out this section by highlighting a different, disturbing issue in the credo of client-centeredness. After chronicling the history of the pedagogy of client-centeredness, Professor Hinds cautions against a potential flaw in an attorney’s approach to client

interactions, even with the grounding in the client’s community history, culture, and context: “. . . the insidious tendency to inadvertently center oneself.” Professor Hinds posits that a “savior mentality” may result from the student’s—or indeed, any attorney’s—self-satisfaction at feeling sufficiently schooled in the client’s milieu so that the student may make decisions in the client’s best interest. The professor must guard against the student’s complacency, however well-intentioned the student may believe their efforts to be. Professor Hinds describes the readings and materials she assigns to alert students to the potential of damage from making decisions on behalf of, rather than with, the client. She emphasizes that actions that compromise the client’s agency will never result from a fully explored approach to client-centeredness.


CHARLES ROSS*

While many law students are excited to represent underserved communities in an effort to promote social justice, many struggle to integrate into communities and fully understand the population they will represent. Students come to clinic with a baseline understanding of the relevant doctrinal law and are enthusiastic to begin representing clients. However, they still need to learn how to gain their clients’ trust and understand their role as a community lawyer. The Community Economic and Equity Development Clinic (“CEEDC”) at WCL represents organizations, including nonprofits and worker cooperatives in Washington, D.C. and Maryland. This requires students to gain a deep understanding of the communities that these organizations serve. Without this knowledge, students can miss key facts in cases, misrepresent their clients’ wishes, and even deeply offend community members. In order to zealously advocate for clients in these communities, advocates must understand the history, culture, and issues that the community faces.

It is our job as clinicians to guide students into a position to represent clients from a socially informed perspective and to guide them in finding their identities as lawyers. In my experience, this requires students to meet community members and learn the history of the community before they begin representation. In this Essay, I will articulate two community lawyering skills to instruct students who are unfamiliar with communities

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comprised of underrepresented persons on how to learn the history, issues the community faces, and most importantly—their role in entering a community for the purpose of legal representation in an effort to practice social justice lawyering.

a. What is Social Justice in the Community Economic and Equity Development Context?

Social justice is the act of dismantling systemic oppression through increasing social, economic, and political opportunities for those who usually do not have them. It encompasses not just reacting to the effects of inequality on society, but actively working towards dismantling the systems that create and perpetuate inequality. It requires advocates to understand the depth of the issues facing the affected communities and to commit to using the law to close the inequalities as much as possible. The National Association of Social Workers defines social justice as “the view that everyone deserves equal economic, political and social rights and opportunities.”

Scholars, educators, and activists define social justice differently. However, lawyers, who can serve in all of these roles, must view social justice as a form of action and method of lawyering. While impact litigation can produce landmark cases that transform the law, lawyers cannot solely rely on impact litigation as the vehicle for social justice lawyering. Lawyers must approach social justice issues with policy work and community advocacy as well.

Community development is a tool used to bring people together to assess their community’s needs and bring about change to meet those needs. Community economic and equity development includes cases in affordable housing, community revitalization, neighborhood-based planning, community engagement, business planning, supporting community nonprofit organizations, and rebuilding communities after disasters. Student attorneys in the CEEDC represent organizations where their client is the board of directors or a group of people.


55. The National Association of Community Development Extension Professionals (“NACDEP”) defines community development as “a practice-based profession and an academic discipline that promotes participative democracy, sustainable development, rights, equality, economic opportunity and social justice, through the organization, education and empowerment of people within their communities, whether these be of locality, identity or interest, in urban and rural settings.” What is Community Development?, NACDEP, https://www.nacdep.net/what-is-community-development- (last visited May 22, 2023).
Therefore, students in the CEEDC practice social justice lawyering by advocating for these groups. In doing so, student attorneys help the community build social power to close the inequality gaps and build equity. “Collective action grows in strength as individuals form groups, groups identify issues and develop projects, and projects form alliances that have the potential to become social movements.” Lawyers can enter this process at any point to support the community’s efforts by using their skills and knowledge of the law to help bring balance to an underserved community. Community lawyers help build community power by giving a voice to the community through litigation, representing local organizations, and overall community defense against the systems of oppression that it faces on a daily basis.

Social justice is less about individual acts and more about widespread systemic changes that combat oppressive systems and procedures that impede Black and brown communities from controlling their communities’ resources, gaining equity in the community, and ending poverty. Unfortunately, social justice is often diminished into small acts of charity or performative gestures that do not actually improve members of the community’s lives. This allows for the systemic inequalities to persist while oppressive systems continue to wreak havoc on Black and brown communities. Social justice lawyering involves using the law to leverage community power in a way that disrupts the systems of oppression that negatively affect that community. Systemic inequality requires a large community response because there is no other vehicle expansive enough to understand the depth of the problem or to create the necessary political power to dismantle it.

Social justice encompasses the principles of accountability, social advancement, and organizing. To practice social justice lawyering, a lawyer must understand the social, economic, and political systemic oppression in the community he or she serves and gain the community’s trust to represent it in fighting the oppression it faces. Social justice must be grounded in the people in the affected community. Community lawyering centers on understanding the community’s history and building trust with the community, an approach through which lawyers can use the tools of community development to practice social justice lawyering in alignment with community goals.

56. MARGARET LEDWITH, COMMUNITY DEVELOPMENT: A CRITICAL APPROACH 3 (2d ed. 2011).
b. Using Community Lawyering Skills to Accomplish Social Justice

Community lawyering is an effective method to practice social justice lawyering because it requires the lawyer to genuinely engage with the community’s struggles. This understanding positions the lawyer to address the problems at their core. Community lawyers must empower their clients, while providing guidance and zealous representation to achieve the community’s goals. Student attorneys must build strong relationships with community members and work alongside community groups to increase the community’s power to make change. This is different than what most students are accustomed to because this method of representing clients involves a more hands-on approach to client engagement.

Student attorneys must master the necessary skills to effectively represent community groups. First, student attorneys must learn to use historical context and community resources to gain their client’s trust. Second, student attorneys must learn and understand their role in representing the community. While many consider these to be “soft skills,” they are essential skills needed to represent clients in the community economic and equity development context. Students need to earn their client’s trust and understand their roles as student attorneys to benefit from the other skills that they possess.

c. Using Community Resources and Historical Context to Gain the Clients’ Trust

How can student attorneys represent Black-owned businesses if they don’t understand the business model in Black neighborhoods? How can student attorneys represent a housing cooperative if they do not understand the history of poverty and gentrification in the community? Student attorneys must have a deeper understanding of the communities’ clients come from in order to tell their stories in the courtroom and advocate for them in local government.

As clinicians we must first form relationships with these communities in a way that allows students to experience the community in a manner that is respectful and thoughtful. For example, students in the Community Economic and Equity Development Clinic met in a local church for student orientation, meeting the head of a local organization focused on providing art scholarships to young people. Students were instructed to research the church’s COVID-19 policy and discovered that the church served as a local

COVID-19 testing and resource center. This experience set the tone for community representation by placing students in a community space to meet a client that works to advance that community’s goals. Students were able to understand the role that the community space serves for the community before they began to address any legal issues. The conversation focused on adjusting to the physical space where clients operate. Professors led a discussion on how a client’s choice of meeting space often provides the attorney with more context of the client’s goals and needs. Students spoke to the organization leader about why she decided to found the organization and who else plays an integral role in the organization before learning about the role that they would play in representing the organization.

This example underscores one of the rules Michael Fox outlines in his article, Some Rules for Community Lawyers. Fox explains, “Unless you understand the organizational priorities of the group and have some appreciation for its dynamics you cannot hope to evaluate and analyze the legal questions facing the [client] from a client’s perspective.” Clinicians should also instruct students to conduct independent research on the community and any issues it has historically faced before students meet with their clients. For example, if a student attorney represents a housing cooperative, the student attorney should research the history of housing in that community and understand why the housing cooperative is the best model to meet the community’s needs. Student attorneys must begin with the context before advancing to advocating for the organization. In the CEEDC, student attorneys are instructed to attend at least one community meeting per semester and report back on the purpose of the meeting and how it contextualizes a legal issue that the community faces. This ensures that students will get the opportunity to engage with the communities where their clients originate.

d. Understanding the Student Attorney’s Role in the Community

The clinical experience should prepare students to empower their clients through legal advocacy. Community lawyering presents challenges for students and clinicians because each client requires the student attorney to play a different role in representing it.

Student attorneys in community-based legal clinics should aim to depart clinic with a strong understanding of their role as a community lawyer. While community lawyers want to empower their clients and give clients

58. Michael J. Fox, Some Rules for Community Lawyers, 14 CLEARINGHOUSE REV. 1, 2 (1980).
59. Id.
agency over decisions, they also need to make sure they are grounding advice in detailed research and knowledge of the relevant legal principles. Since students in the CEEDC represent organizations, not individuals, student attorneys must understand their role may be different from their peers. Some student attorneys will be an active part of organizational decision-making, while others will focus primarily on helping to form the organization. Other student attorneys might focus more on advocating for the organization to outside parties. Fox further notes, “Lawyers have many different skills both inside and outside the legal arena and community groups can utilize these skills if they know about them.” Following Fox’s suggestion, student attorneys should observe their clients and let the organization choose how to best use their skills. For example, one client might notice that the student attorney excels in voicing the organization’s needs to third parties. This could lead the client to ask the student attorney to serve in a role that resembles a public relations advocate. A different client might notice the same set of skills in that student attorney and ask the student attorney to organize and lead all of their meetings with city council members and government agencies. Student attorneys must learn to listen to clients and fill in where they are needed.

Student attorneys advance social justice principles by advancing community organizations’ goals and values. While students might expect to enact some form of monumental change, they build community power by giving a voice to community organizations. This non-traditional form of lawyering takes adjustment and patience. Each student attorney has a role to play in the community, but must immerse him or herself in the community to find that role.

2. Reflections on Teaching Social Justice

CAROLINE J. WICK*

In this Essay I reflect on how I have come to see teaching social justice differently since beginning as a clinical teacher in the Disability Rights Law Clinic (“DRLC”). After two-plus years of clinical teaching, I have come to appreciate that we are teaching social justice in all areas of clinical teaching.

60. Id. at 6.

61. Id. (“The group then can make allowances and use the lawyer’s skill in the particular role that the lawyer is best suited for”).

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where we question assumptions, discuss the context of their clients’ lives, and offer opportunities for compassionate insight. For this Essay, I draw from the John Lewis Institute’s definition of social justice:

Social justice is a communal effort dedicated to creating and sustaining a fair and equal society in which each person and all groups are valued and affirmed. It encompasses efforts to end systemic violence and racism and all systems that devalue the dignity and humanity of any person. It recognizes that the legacy of past injustices remains all around us, so therefore promotes efforts to empower individual and communal action in support of restorative justice and the full implementation of human and civil rights. Social justice imperatives also push us to create a civic space defined by universal education and reason and dedicated to increasing democratic participation.62

a. Introduction

I came to clinical teaching from working at a legal services organization where I represented clients with respect to some of their and their family’s most fundamental needs—education, housing, and healthcare. The small team I worked with all understood that we were doing this work because we live in a society that frequently fails poor and otherwise marginalized residents. We were inundated with cases—landlords ignoring atrocious housing conditions, children not receiving the mental health treatment they needed, and schools failing to provide special education services—only a fraction of which we could take. Entering academia was a shock to my system. My salary increased significantly. In legal services I worked at a frenetic pace. Academia, while requiring as many hours, offered the opportunity to slow down and to spend more time on each case. Despite wanting the change of pace and experiences teaching offered, for the first year of teaching I reckoned with whether I had given up my own social justice values.

I began clinical teaching in July 2020—a time of substantial national turmoil. George Floyd was murdered earlier that summer, waking up many Americans to the brutal epidemic of police violence. It was approximately five months into the pandemic, which was infecting and killing people, especially those with disabilities, at an alarming rate. One scholar has described COVID-19 as “a perfect storm of systemic flaws with people with disabilities at its eye.”63 At the start of the pandemic, public health officials emphasized that COVID-19 was affecting older adults and adults with

62. JOHN LEWIS INST. FOR SOC. JUST, supra note 28.
underlying health conditions—“intend[ing] to assuage public concerns by classifying those lives as ‘already lived’ or those ‘not worth living.’”\textsuperscript{64} During the height of the pandemic, some hospitals instated policies that rationed care, putting people with disabilities and older adults at the end of the list (or not on the list at all).\textsuperscript{65} As the pandemic progressed, society re-opened despite daily death rates in the hundreds. For people with disabilities, the pandemic has exposed—yet again—that disabled people’s lives are frequently not valued by society at large and policy makers, specifically.\textsuperscript{66} As a result, incorporating social justice into our curriculum was at the forefront of my mind as a I began my teaching career in the DRLC that summer.

\textit{b. The Disability Rights Law Clinic}

The DRLC is a year-long clinic with a three-credit seminar and four-credit fieldwork component each semester. Our seminar focuses on skills and values. In the fall semester, we cover interviewing, fact investigation, case theory, narrative theory, and counseling. In the spring, we transition to negotiation and trial skills. Students handle cases in a wide range of areas—special education, failure to accommodate, decision-making, public benefits, and many others.\textsuperscript{67} We do not cover substantive law in the seminar; our philosophy is that students will learn the substantive law they need through case handling.

Before beginning clinical teaching, I assumed that most students would take clinic because they were committed to social justice and were considering public interest careers. Of course, I recognize my assumptions now. I did not recognize that students take clinic for many different reasons.\textsuperscript{68} In reality, the students that enroll in the DRLC fall into three broad

\textsuperscript{64} Id.

\textsuperscript{65} Id. at 34.

\textsuperscript{66} Id. at 37; see also Dr. Joseph Stramondo, \textit{Eugenics: Historical Practice to Present Day Technology}, DISABILITY & PHILANTHROPY F., https://disabilityphilanthropy.org/resource/eugenics-historical-practice-to-present-day-technology/ (last visited Jan. 29, 2023).

\textsuperscript{67} We have decided not to focus on public benefits exclusively, which is not the choice that many law clinics make. For more information about the DRLC, see Abbott Brant, \textit{Seeing the Whole Person}, THE ADVOCATE, https://www.wcl.american.edu/community/alumni/the-advocate/2021/spring/disability-rights-law-clinic-turns-15/ (last visited Jan. 29, 2023) (“One of [Bob] Dinerstein’s motivations for founding DRLC was the community need for representation in both disability rights and special education cases.”).

\textsuperscript{68} I also under-appreciated the reasons why even students interested in public interest careers might not pursue them, including needing to take positions with a higher
categories. Some students are specifically interested in disability law—sometimes due to their own disabilities or because of a family member’s—and plan to practice in that area upon graduation. Other students enroll in the DRLC because they intend to pursue public interest work after law school and have public interest experience already through prior work experience or externships and summer internships. Others join our clinic because it is the only option available to them—they want the clinical experience, but the other clinics are full.

c. Teaching Social Justice

Given our students’ different exposure to and interest in social justice, I have been reckoning with how to teach it. Adult students arrive in clinic “with certain value preferences, expectations, and predispositions,” which “represent the convergence of many influences—cultural, familial, religious, political, and so on.” Katharine Bartlett writes in her essay, *Teaching Values: A Dilemma*, that we cannot be “value-neutral in our teaching, indeed, we should not be; but neither can we teach values.” I have come to realize that our teaching provides the tools for students to understand the importance of social justice. Further, our own commitment to social justice comes through in our teaching, which may influence the students in thinking that this is an important aspect of lawyering.

Professor Jane Aiken suggests that we can teach justice, fairness, and morality “provided we offer the kinds of experiences that make compassionate insight possible.” The DRLC’s structure and pedagogy provide ample opportunities for compassionate insight. After three years in clinical teaching, I strive to teach social justice in the four sites of clinical learning.

i. Seminar

In preparation for orientation, we choose readings that highlight “that the legacy of past injustices remain all around us.” In preparation for salary to pay off student loans or to support family members and wanting to find a job during their third year (before they are admitted to the bar) when most public interest organizations are not hiring.

70. *Id.* at 520.
orientation, the students read about the history of the disability rights and
disability justice movements. They also watch *Crip Camp: A Disability
Revolution.* A self-advocate joins us at orientation to talk to the students
about his life experiences—living in an institution, advocating to marry his
now-wife, and raising a child as a parent with a disability. When we
introduce the cases to the students, we discuss clients’ races and other
identities and use available data to make explicit the connection between
poverty and race in Washington, D.C.

In seminar, throughout the fall semester, while teaching skills we are also
teaching students to value and affirm their clients. In the first class on
interviewing, we discuss sympathy and empathy as well as engaged active
listening. When discussing narrative theory, we talk about the importance
of listening closely to a client’s experience. While these may be dismissed
as “soft skills,” they are human skills necessary to maintain the client-
attorney relationship. In classes on client counseling, we discuss different
approaches to client-centered lawyering and push the students to think
critically about which approach they are taking. We use these classes to
“explore social justice values within the microcosm of the lawyer-client
relationship.”

To provide additional opportunities for compassionate insight, we have
incorporated a seminar class on trauma-informed lawyering that we designed
in collaboration with a social worker. The purpose of this class is to give the
students further context about their clients’ lives. In preparation for the class,

74. Netflix, *Crip Camp: A Disability Revolution,* YouTube (July 23, 2020),
https://www.youtube.com/watch?v=OFS8SpwioZ4 (available to watch for free in its
entirety).

75. The students read the self-advocate’s statement to a U.S. Senate Committee
ahead of his visit. Ricardo T. Thornton, Sr., *We Can’t Go Back, Disability Visibility*

76. See *Teaching Social Justice,* Episode 9: Ishaq Kundawala on Using Data to
Teach Social Justice, Soc’Y Am. L. TCHR’s., at 1:59 (Oct. 9, 2020) (available at
https://apple.co/3eUKbes).

77. *Teaching Social Justice,* Episode 16: Carwina Weng on Confronting Trauma in
https://podcasts.apple.com/us/podcast/episode-16-carwina-weng-on-confronting-
trauma-in-clinical/id1493020901?i=1000516215696) (discussing that law school is a
“hyper-intellectualized environment” where students forget that being a lawyer is also
about being a human).

78. We discuss Professor Kruse’s article *Fortress in the Sand: The Plural Values of
Client-Centered Representation.* Katherine P. Kruse, *Fortress in the Sand: The Plural

79. *Id.* at 384.
students watch Nadine Burke Harris’ TED talk about childhood trauma.\textsuperscript{80} The students also read about the impact of poverty on our brains.\textsuperscript{81} With these exercises, our goal is for students to gain further insight into their clients’ lives and behaviors. Many students leave the class understanding the bandwidth taxes their clients face.

\textit{ii. Rounds}

We allow the students to lead rounds. In rounds, students volunteer to facilitate and present a case issue. We are judicious about when to speak in rounds and typically only choose to do so when needed to provide context regarding a case issue or to question a student’s assumptions. For example, during a recent class the students presented on a case issue where we interjected to provide context. Their client is on the waiting list for public housing in the District. After being on the waiting list for more than two decades, the client received a physical letter in the mail notifying them that they had ten days to visit an apartment and decide whether or not to take it. My co-professor and I both spoke up to underscore the absurdity of this process and to discuss current problems with the public housing stock in Washington, D.C.\textsuperscript{82}

\textit{iii. Case Work}

Students see the legacies of past injustices and the perpetuation of current injustices in their casework. For example, they routinely see the history and current practice of excluding students with disabilities from general education classrooms and schools. Student attorneys have also learned from their clients about the marginalization and devaluation of people with disabilities. Two students represented a client with an intellectual disability who sought to obtain an anti-stalking order against a family member who stole from them and verbally abused them on the basis of their disability. After the client obtained the anti-stalking order, they told the students that it was the first time that they had been in a position of power where they could tell someone not to treat them in a certain way and then take steps to enforce it.

\textsuperscript{80} Nadine Burke Harris, \textit{How Childhood Trauma Affects Health Across a Lifetime}, \textsc{YouTube} (Feb. 7, 2015), https://www.youtube.com/watch?v=95ovIJ3dsNk.


iv. Supervision

Clinic affords the opportunity for close supervision, so we can take time to work through students’ assumptions, biases, and choices. It is a place for students to recognize their power and deconstruct their privilege. For example, I conducted a mock school meeting with two students in preparation for the actual one. During the meeting, a student described an elementary-school-aged Black child who had engaged in a minor altercation as “violent.” After the mock meeting ended, the student and I discussed the implications of that descriptor and whether as the parent’s attorney the student would want to wield it. That discussion stuck with the student and they reflected on it in their end-of-year self assessment.

d. Conclusion

After almost three years, I appreciate that teaching social justice is a process and I have a better sense of how to engage in that process. I am committed to learning more about the history and context of our cases so that I can be better prepared to teach students. I also see that in slowing down cases—focusing on the micro—students can draw connections to the macro. I also see the results of our work. At a recent reunion, two DRLC graduates who now work at large firms described how their clinic experience prepared them for their pro bono cases—both of which involved fighting for justice for individual clients.

3. The Danger Zone: Client-Centered Representation and Clinical Pedagogy

MARIAM A. HINDS*

a. Introduction

Over the past fifty years, there has been a concerted effort to promote and practice client-centered representation, including in public defender work. The guiding principle of this approach to legal representation is to center client participation in order to promote client autonomy—a laudable social justice goal that goes hand in hand with the larger social justice movement aimed at combating mass criminalization and its disproportionate impact on low-income communities of color. As a public defender, I witnessed how the path to client-centered lawyering contains a tricky danger zone. In the name of achieving the best

83. Aiken, supra note 53, at 11.

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outcome for the client, it is quite easy to wander down a paternalistic path that further dehumanizes the client by substituting the lawyer’s agency and autonomy for that of the client. Ironically, the more committed counsel is to understanding a client’s life outside of the individual case, identifying and avoiding potential collateral consequences, and “saving” the client from the innumerable perils of the criminal legal system, the more susceptible counsel is to falling prey to this trap. Delving so deeply into a client’s life and having a greater understanding of the legal system can easily lead counsel to make dangerous assumptions about what is in a client’s best interest—a determination that should be client-guided.

Fundamental training on client representation—which often starts in the clinical classroom—must draw awareness to the insidious tendency to inadvertently center oneself. Training must emphasize how it is the clients, not counsel, who bear the burdens of criminal legal system involvement. It is the clients, not counsel, who can most accurately weigh options, consequences, and risk when engaged in decision-making. A critical part of promoting client autonomy involves practicing, counseling, and lawyering with a high degree of self-awareness about how one’s own values, judgments, goals, and interests affect representation. Introduction to the danger zone and building this self-awareness can begin in the clinical classroom.

b. The Client-Centered Model Versus Traditional Models

In 1977, David Binder and Susan Price introduced the client-centered model of representation in a pioneering textbook on client interviewing and counseling. In a later work building on the ideas in this text, these authors, together with an additional co-author, conceptualized lawyering as a problem-solving collaboration between attorneys and clients with the principal goal of “help[ing] clients achieve effective solutions to their problems.” Client-centered representation prioritizes four key values: “(1) it draws attention to the critical importance of non-legal aspects of a client’s situation; (2) it cabins the lawyer’s role in the representation within limitations set by a sharply circumscribed view of the lawyer’s professional expertise; (3) it insists on the primacy of client decision-making; and (4) it places a high value on lawyers understanding their clients’ perspectives, emotions, and values.” In other words, client-centered attorneys are

86. Kruse, supra note 78, at 377.
holistic, client empowering, and knowledgeable.

This conceptualization of lawyering sharply contrasts with the traditional model of the attorney-client relationship where the passive client looks to the all-knowing, powerful professional for their expertise. In the traditional model, attorneys occupy a position of authority and provide directive instruction, advice, and counsel to their clients. Here, clients provide information to their lawyers, but are not actively involved in brainstorming, formulating, or weighing possible solutions. Instead, their lawyer chooses the best solution to their problem.

Client-centered representation is the predominant method taught in clinical law school programs across the nation. The benefits of the client-centered approach are plentiful: first, there is some evidence that client-centered representation leads to better results for clients. For example, one 1970 study found that participatory plaintiffs’ attorneys obtained better results than traditional attorneys in personal injury cases. A more recent, larger-scale study that examined the impact of holistic defense—a model that prioritizes client-centered lawyering—found that while holistic defense doesn’t reduce conviction rates, it does reduce the likelihood and length of incarceration.

From a values perspective, another fundamental benefit of the client-centered model is that it respects and promotes human autonomy by encouraging clients “to pursue their own conceptions of the good.” The client-centered model respects autonomy by giving clients decision-making authority because it recognizes that the clients, not the lawyers, must live with the results. Proponents of the client-centered model argue that “clients who participated fully in their representation and made their own decision would be better satisfied with the outcomes, because the outcomes would best accord with their values, and having made the decisions themselves,

87. For example, many textbooks commonly used to teach fundamental lawyering skills adopt the client-centered approach. See, e.g., STEFAN H. KRIEGER, RICHARD K. NEUMANN, JR. & RENÉE M. HUTCHINS, ESSENTIAL LAWYERING SKILLS: INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS 25–36 (6th ed. 2020); DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 51–52 (2002).

88. Although the study uses the term “participatory lawyers,” the meaning is analogous to client-centered lawyers. DOUGLAS E. ROSENTHAL, LAWYER AND CLIENT: WHO’S IN CHARGE? 59–60 (1974).


they would better be able to live with the results.”

The client-centered model has other benefits. For example, it can lead to fewer errors because clients who are actively participating in their representation might catch them. Also, lawyers and clients who work collaboratively may engage in more effective problem-solving leading to more plentiful, creative, and effective solutions to clients’ problems. Clients may be less anxious about their legal troubles because they know what is being done to solve them. The client-centered model also “protects ‘the integrity of professionals by liberating them from . . . the burdens imposed [by a] paternal role.’”

Given these benefits, it is clear why client-centered lawyering is the dominant model taught in clinical programs. While strict adherence to its values is difficult, straying from its tenets can lead unwary attorneys down a path that is damaging to both attorneys and clients.

c. The Danger Zone of Client-Centered Representation

It is natural for lawyers—when confronted with a vulnerable client population that has historically been under-resourced, marginalized, over-surveilled, and over-policed—to want to help. But often, for empathetic attorneys committed to social justice and eager to dismantle systems of oppression, this manifests as a desire to “save” or protect their clients, even from themselves. In their bid to lessen their clients’ burdens, client-centered attorneys may adopt a savior mentality and inadvertently shield their clients from difficult aspects of their cases, perhaps by hesitating to include them in or share the nuances of strategic decisions. These attorneys may also fail to confront clients when they engage in behavior that is detrimental to their stated goals. For example, an attorney may elect not to plainly and emphatically explain the risk of jail time to a client who consistently fails to appear in court or attend court-ordered check-ins when on supervised pre-trial release. This can be motivated by a perverse understanding that the client “doesn’t know any better,” won’t understand the likely consequences of their behavior, or deserves to be protected from an overly carceral system. In other words, client-centered attorneys might unwittingly adopt a paternalistic role.

92. KRIEGER ET AL., supra note 87, at 27.
93. ROSENTHAL, supra note 88, at 169.
94. Id. at 168–69.
95. KRIEGER ET AL., supra note 87, at 27 (citing ROSENTHAL, supra note 88, at 169).
While this may appear to be just an attorney inadvertently practicing the traditional method (which is often characterized by paternalism), it is in fact different. The outcome may be the same—an attorney behaving in a paternalistic manner that undercuts client autonomy—but the path is distinct. While the traditional attorney willingly and intentionally occupies the role of an all-knowing, directive counselor, the client-centered attorney is behaving in a paternalistic manner in the name of being client centered and in an attempt to promote participatory values. They are attempting to be holistic by addressing a client’s problems beyond the legal case, they are trying to empower the client by diligently working to achieve the client’s stated goals, and they are knowledgeable because they have taken the time to learn the client’s values. Paradoxically, the more holistic, empowering, and knowledgeable the advocate is, the more susceptible they may be to stumbling into the danger zone. A well-intentioned lawyer with insight into the client’s circumstances and deep knowledge of the legal system’s perils may assume that they can shield their client from further suffering while advancing the client’s goals, by taking on the decision-making burden themselves.

There are real dangers to treating clients as people in need of saving. First, it can have harmful, detrimental effects on a client’s case. A client who is not fully advised of the consequences of a particular course of action may unwittingly make a decision that they otherwise would not have made and suffer consequences that could have been avoided. For example, consider a client who is held pretrial on unaffordable bail, suffers from substance use disorder, and has a case that is unlikely to prevail at trial. The prosecution may give the client two options: (1) take a plea and serve sixty days jail or (2) take a plea, get out of custody now, complete twelve to eighteen months of drug treatment programming, and receive a dismissal, if successful. However, if the client is unsuccessful at drug treatment, the client will not be permitted to withdraw the plea and the prosecutor will recommend an eighteen month jail sentence. For a client-centered, holistic lawyer who wants to see their client achieve sobriety, it can be tempting to present the second option as the better deal. But if the lawyer fails to have a frank and open conversation about the rigors of drug treatment (e.g. urine testing, frequent appointments, and the length of treatment), the client’s desire and commitment to achieving sobriety, and the harsher penalty for unsuccessful completion can lead the client to select an option that ultimately results in a lengthier period of incarceration. In other words, had the client been fully advised, they may have chosen differently.

A savior mentality also dehumanizes clients and robs them of autonomy—a fundamental benefit of client-centered lawyering. In the criminal legal system where low-income people of color are disproportionately arrested,
prosecuted, and incarcerated, it also promotes harmful, racist tropes of the client who needs to be saved from themselves through oversight, surveillance, and management. In other words, it promotes the very narrative that client-centered attorneys committed to social justice seek to combat and eliminate. This risk is particularly acute where attorneys are representing clients across lines of difference; many, if not most, lawyers will be of a different race, class, gender, or have obtained a higher level of education than their indigent clients. Their position of relative privilege makes the danger zone all the more dangerous because of the tropes their roles can inadvertently perpetuate.

Finally, adopting a savior mentality can be harmful to the lawyer themself. Taking responsibility for another person’s actions and attempting to control factors that are objectively beyond the attorney’s control is a fool’s errand. For example, expecting a client with a long history of substance use disorder to achieve sobriety while representing them in a criminal case is a laudable goal that is fraught with these tensions. The decision about whether to seek treatment, consistently engage with treatment, and abstain from substance use is ultimately the client’s. Yet it is challenging for even the best-intentioned lawyer to cope when a client who is being offered treatment fails to show up to appointments with providers, fails toxicology tests, or picks up additional criminal cases. It is easy for the attorney to internalize the client’s behavior as the attorney’s personal failures, and this in turn can lead to deep frustration, resentment, and even untimely burn-out. Attorneys should combat the tendency to infantilize clients and instead, respect them as adults\(^{96}\) capable of informed, autonomous decision-making and of bearing the consequences. By doing so, an attorney is freed from the burden of thinking about the consequences of their client’s decision-making as a reflection on their own self.

A brief note: This cautionary tale does not absolve attorneys of our fundamental duty to provide zealous counsel. This also does not mean that attorneys should be blind to their clients’ challenges or should fail to accommodate their clients’ needs. It does not mean that attorneys should lack empathy or fail to exercise sound judgment when determining how best to communicate with a client. But it does mean that attorneys should approach their clients as equals, as adults who have a right to self-determination and whose autonomy must be respected even when they make decisions that the attorney disagrees with or when they disregard the attorney’s advice; perhaps, especially then. It requires understanding that sometimes, clients know best.

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96. This assumes that attorneys are representing adults and not minors or juveniles.
d. An Approach in the Clinical Classroom

Students’ first introduction to client-centered representation often occurs in the clinical seminar. Indeed, a study examining criminal defense attorneys’ attitudes toward the allocation of decision-making power between attorneys and clients, found that “[those] lawyers who took a clinical course in law school . . . were more inclined to favor a client-centered approach.” This suggests that clinical teaching about the client-centered model, and use of that model in representing clinic clients, strongly influences student-attorneys’ future client relationships. This, combined with the low caseloads and ample opportunity for reflection, makes clinic an ideal venue for identifying, dissecting, and wrestling with the danger zone of client-centered representation.

Although it may arise organically, a clinical instructor can intentionally foster a conversation about the danger zone in the clinic seminar. In the Criminal Justice Clinic at WCL, we utilize a segment of the documentary, *The Plea*, that tells the tragic story of Patsy Kelly Jarrett who, despite having a credible claim of innocence, was serving a life sentence after being convicted of robbery and murder. The film includes reflections from the clinic professor and then-law student who were representing Ms. Jarrett and counseling her about a post-conviction plea offer that would require her admission of guilt (an admission that would violate Ms. Jarrett’s moral and religious belief that she should not lie and admit to a crime that she did not commit)—but that would result in her immediate release.

We use this clip to spark student consideration of the contours, limitations, and boundaries of client-centered representation. In the discussion, students wrestle with the ethical rules that govern the allocation of decision-making power between attorneys and clients, and their own conceptualizations of client autonomy and self-determination. They also confront the question, “how far would you go to convince a client to make a decision that you firmly believe is the right and best decision for them?” As they grapple with these issues, students naturally find themselves in the danger zone because there is a very real desire to “save” the client from an unjust life sentence. Regardless of the conclusions that the students ultimately draw about how they would handle counseling Ms. Jarrett, there is utility in simply

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identifying these competing goals and interests and acknowledging the ways that our own ethical and moral values impact our commitment to client-centered representation. Thus, when these issues organically arise in their own cases, students are primed to spot them and equipped with the tools and vocabulary to thoughtfully analyze, reflect on, and resolve them.

e. Conclusion

A commitment to promoting client autonomy and a commitment to the client-centered model often coexist harmoniously and are promoted by zealous attorneys. However, a commitment to the values of client-centered representation can unwittingly lead attorneys down a path that inadvertently robs clients of their autonomy and right to self-determination. By identifying and reflecting on this possibility—what I have named the danger zone—clinical instructors can prime their students to practice self-aware client-centered representation where they do not lose sight of how their values impact their representation. In other words, forewarned is forearmed.

C. Structuring the Clinical Experience: Selecting Clients and Making Common Cause with Coalitions

How do you structure a clinic to offer as many opportunities as possible for “compassionate insight,” or for social justice impact? Do these opportunities arrive through the identities and communities of the clients whom the clinic selects? Through judicial or administrative venues which highlight the burdens that these systems place on those unfortunate enough to become enmeshed in them? Or through representing or affiliating with coalitions that fight for systemic reform?

The authors whose narratives we include in this section offer perspectives on how intentionality choosing different tribunals and configurations of clients can yield a range of opportunities for the teaching of social justice lawyering as a fundamental skill. The Janet Spragens Low Income Taxpayer Clinic, which Professor Maria Dooner directs, shares some characteristics with high volume legal services clinics, whose clients are confronted by unresponsive bureaucracies with impenetrable procedures. The bureaucracy at issue is the IRS, which Professor Dooner describes as a macrocosm of every dysfunctional, understaffed agency.

Case selection in a Tax Clinic could easily succumb to case overload: the federal grant-funding of Low Income Taxpayer Clinics mandates a twelve month caseload and a certain level of client service. In the first narrative of this section, Professor Dooner explains how she has continued in the clinic’s founders’ philosophy of both meeting the service demands and varying the types of cases within the system to provide optimal opportunities for
problem-solving, fact-gathering, and empathy. Professor Dooner notes that even one adversary can provide a host of problems and opportunities for social justice advocacy, skills development, and growth. The examination, collection, and refund cases from which Professor Dooner selects the clinic’s cases (as do her students, who participate in intake) exercise many learning muscles: statute and regulation-reading, fact development and investigation, case theory development, and oral and written advocacy. Above all, the interactions with an agency that does not answer its phones opens students’ eyes to the plight of clients who face the same frustrations in dealing with bureaucracy that the students do, with fewer resources and at far greater risk.

Our other authors in this section teach in clinics that have pursued similar goals in choosing their cases and clients, but have done so differently. Professor Citlalli Ochoa’s students in the International Human Rights Law Clinic (“IHRLC”) advance their clients’ interests through advocacy before international human rights tribunals. The clinic’s frame of vision—a human rights framework—focuses case planning and approach even in domestic settings. The matters handled by the IHRLC offer opportunities comparable to those found in other clinics for problem-solving, building communications skills with individual and organizational clients, research, and persuasive oral and written advocacy. The IHRLC’s projects also offer a very different lens as to what problem-solving and resolution mean.

In the second narrative of this section, Professor Ochoa emphasizes the importance of collective mobilization work, with the potential for more lasting social justice transformation than may be possible through social justice advocacy on behalf of individuals. Professor Ochoa acknowledges both the difficulty and the rewards of educating law students, and even lawyers, to accept the long-term nature of such transformation and the occasional prioritization of those long-term goals over more tangible advantages to individual clients. She sees the client-centered relationships that the students form with coalitions as particularly beneficial to students’ training in the fundamentals of social justice lawyering, as the coalitions expect full participation in the exercise of co-constructing the goals of representation with their student attorneys.

In the third narrative of this section, Professor Anne Schaufele highlights from her teaching in both the Immigrant Justice and International Human Rights Law Clinic the clinics’ choice of a “rapid response” model of client and case selection. Typically, professors select clinic clients and their cases with an eye to pacing: will students have at least simulated interviewing before they meet their first clients, and counseling before they assist their clients in making decisions? The development of skills is linear; the understandable preference for cases is for those that promise some
semblance of linearity. With crises of family separations at the border with Mexico, and other human rights violations cascading into view, Professor Schaufele and others decided that the social justice imperatives were too urgent to walk away from. As important, the adoption of cases that evolve quickly and unpredictably promised unparalleled opportunities for teaching skills critical to any practice of law: flexibility, preparation in the face of ambiguous facts and law, and client communications when the client may be inaccessible.

Professor Schaufele describes the mechanics of the clinics’ involvement in rapid response projects. The shifting circumstances of rapid response work command constant attention, an expenditure of time and focus that can be exhausting for both students and professors. One way in which her clinics countered the fluctuations of the rapid response cases was to balance the students’ caseloads with more clearly defined individual representations. Another was to partner with human rights advocacy or relief organizations in the rapid response to crisis, carving out the particular research or investigative needs of the organizations for the students to address. This scoping out of the work resembled the “co-construction” of goals with the client in the manner that Professor Ochoa espouses.

The United States’ sudden withdrawal of troops from Afghanistan offered yet another opportunity to adapt clinical structure and classroom content to meet emerging legal needs. With the arrival of some 79,000 refugees in the United States, not even a re-direction of every clinical program in the country towards the task would be enough. Instead, clinics invented methods and marked off tasks for varieties of limited representation. In consultation with resettlement agencies, Professor Schaufele created workshops for asylum applicants who had already filed their applications for asylum, to prepare the applicants for their asylum interviews. The project served needs beyond those of the applicants: those of the clinic’s alums, who re-engaged with the clinic to prepare the students to conduct mock interviews with the applicants; of other attorneys who took advantage of this limited scope pro bono opportunity; and of course of the students, who coached the applicants in mock interviews. The class’s ongoing “cultural humility” session benefited from the participation of several of the asylum applicants, who helped sensitize students to the all-important context from which the applicants were proceeding.

In the final narrative of this section, Professor Michelle Assad’s work with the American University Dreamers’ Initiative (“AU Dream”) presents a different facet of the decision to select a particular type of client. While AU Dream represents clients in a wide range of immigration issues, in advocacy akin to that taken on by WCL’s Immigrant Justice Clinic and other
immigration clinics, the identity of its clients is unique. The clients of AU Dream are students of the University. While universities have long provided legal assistance to their students, they usually do so through staff attorneys. AU Dream is among the few legal services programs operating within a university that offer representation by law students. As such, the law student attorneys are their clients’ peers, even if the clients are enrolled in another part of the university.

Professor Assad describes the ethical issues, some of them involving confidentiality and boundary-setting, that confront the student attorneys in AU Dream at the outset. Professor Assad concludes that her students’ work alleviates the burdens resulting from the uncertainty surrounding the clients’ immigration status, and contributes significantly to the clients’ ability to continue with their educations and to anticipate futures in the workforce. These complicated client-lawyer relationships offer the student attorneys a rich opportunity to give back to the university community of which they and their clients are a part.

1. Developing Skills and Advancing Social Justice Within an Academic Tax Clinic

MARIA DOONER

Research has shown that clinical legal education can help students develop skills and ease their transition into the practice of law. In an ideal world, each student would have the perfect client case—one that provides the opportunity to develop legal research and writing, problem solving, advocacy, client interviewing, and client counseling skills. These skills play a critical role in a student’s ability to effectively represent a client; however, passion, empathy, and understanding the challenges faced by an underserved, low-income or disadvantaged population are also essential, especially for advancing social justice. In this Essay, I briefly discuss the value of low-income taxpayer cases and the importance of thoughtful case selection, the implications of lawyering before a bureaucracy, and how social justice is promoted and achieved through a low-income taxpayer clinic.

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100. See generally Rebecca Sandefur & Jeffrey Selbin, The Clinic Effect, 16 CLINICAL L. REV. 57 (2009) (describing the positive impact of clinical legal education on developing skills for the transition to the practice of law).

a. The Value of Low-Income Taxpayer Cases and the Importance of Thoughtful Case Selection

As a new clinician in a high-volume tax clinic, I spend considerable time thinking about how each case should be assigned so that every student has the best opportunity to develop lawyering skills and effectively serve their clients. I find that thoughtful case selection is particularly valuable in providing students with unique, diverse client cases that promote social justice.

A keen focus on case quantity and selection is not unusual for tax clinics, which face external pressure to operate efficiently and receive many requests for assistance. Most tax clinics receive funding from the Low Income Taxpayer Clinic (“LITC”) program, which is authorized through Internal Revenue Code Section 7526 and evaluates the number of taxpayers served when awarding grants. Professor Nancy Abramowitz, who directed the Janet R. Spragens Federal Tax Clinic at the American University Washington College of Law for more than two decades, highlighted the conflicting tensions between the service requirement of the grant and the pedagogical goals of law school clinics in 2007. Though fifteen years have passed, these conflicting tensions still exist, and after supervising students in an academic clinic for over a year, I fully empathize with her concerns. There is quiet pressure to efficiently serve as many taxpayers as possible. Yet the demand for efficiency conflicts with the ideal learning environment where student attorneys are instructed to carefully apply recently acquired knowledge to the practice of law. If a clinic feels it is in jeopardy of losing funds due to quantitative criteria, it may succumb to accepting only easy to resolve cases to the detriment of its students and social justice. In comparison, most tax clinics are more likely to find themselves in a situation where they accept and assign too many cases to students, surrendering “best practices” from clinical pedagogy to the service requirement of the grant. Consequently, tax clinicians may engage in a delicate dance that serves the low-income tax community (but does not overwhelm students with too many cases) and ensures that each student has the right types of cases to gain diverse lawyering skills as well as advance social justice.

While balancing pedagogical goals against a service requirement can be difficult, diverse cases are plentiful in the world of low-income tax controversies. There are many low-income taxpayer cases that encompass different enforcement and administrative functions at the Internal Revenue Service (“IRS”), provide a diverse set of skills to students, and promote

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https://digitalcommons.wcl.american.edu/jgspl/vol31/iss3/1
social justice in different ways. These cases frequently involve one or more of the following: 1) examinations, 2) collections, or 3) claims for refund.

*Examination cases* involve taxpayers contesting the validity of a proposed tax change before the IRS, the IRS’s Independent Office of Appeals, or the United States Tax Court. When a low-income taxpayer’s tax return is audited, it is common for the examination to be conducted through IRS correspondence that focuses on filing status, important refundable credits, and whether the taxpayer truly has a qualified child or other dependent. For these cases, students are exposed to the complexities in substantive tax law (every credit has a different test) and the challenges faced by low-income taxpayers who often lack access to substantiation or records and are initially required to satisfy their burden of proof through correspondence versus a telephone or in-person conference. Students also realize how nerve-racking an examination is for a low-income client who worries about a future tax assessment that he or she cannot pay.

*Collection cases* often involve taxpayers who have outstanding tax liabilities that cannot be paid in full and want to prevent enforced collection action by the IRS. For these cases, students are often required to interview clients on personal financial information, review IRS records (also known as account transcripts), determine the statute of limitations on collection (and how it may inform case strategy), decide whether to file an appeal over a collection action, and exercise their oral advocacy skills when requesting a collection alternative. Students quickly understand the gravity and stress of the situation when reviewing IRS collection letters, involving the words “seizure,” “intent to levy,” or “notice of federal tax lien.” Not only do they develop empathy, but they tap into skills involving problem solving, strategy, advocacy, client interviewing and counseling. They are also required to think about different ways to present information, such as how some taxpayers pay housing and utility expenses. For example, a client may be paying a specific bill of the landlord in lieu of monthly rental payments dictated by a formal lease agreement. Overall, these cases, which involve analyzing multiple collection alternatives, help students learn the importance of strong communications skills and effective client counseling.

*Refund cases* often involve taxpayers, who overpaid their tax or are entitled to refundable credits, claiming for refund through a return or other avenues. When it comes to these cases, students appreciate how low-income

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104. *Id.*
tax policy, such as the Earned Income Tax Credit, also known as the “single most effective program targeted at reducing poverty for working-age households,”\(^\text{105}\) can affect the lives of low-income taxpayers. These cases provide great exposure to both substantive and procedural law as the claim for refund rules can be complex. Like examination cases, they are very fact-driven, and strong research and client interviewing skills are important.

Within all these cases are ones that defy stereotypes. Frequently embraced by Professor Nancy Abramowitz, these cases are challenging but also perfect for students to think out of the box, hone their fact-gathering and interviewing skills, and persuasively advocate for their client. Over the years, Professor Nancy Abramowitz supervised students who successfully settled many of these cases. Some involved disabled taxpayers who had custody and cared for their children but were disallowed dependents since they did not fit the typical mold of a custodial parent or care-taker. Others involved taxpayers who were separated but continued to live in the same home (requiring students to take pictures of their separate living situations as evidence).\(^\text{106}\)

In sum, there are many fantastic tax cases that can provide students with the fundamental skills necessary to smoothly transition into the practice of law. However, a student will most likely not be able to attain all these skills through one type of case; therefore, thoughtful case selection can be helpful.

\(b\). Implications of Lawyering Before a Bureaucracy

Ensuring that students develop empathy, passion, and understanding for a client can sometimes be an easy task when representation involves an agency that has been substantially underfunded, lacking resources for adequate staffing, technology, and service needs.\(^\text{107}\) Students, within a federal tax clinic, are exposed to the everyday frustrations that pro se taxpayers encounter when trying to resolve an important issue before the IRS. For example, it is not uncommon for a student to make twenty or more attempts in one day to speak with an IRS representative and obtain critical information.


\(^{106}\) Interview with Nancy S. Abramowitz, *supra* note 103.

\(^{107}\) The Internal Revenue Service was recently allocated $80 billion over the next decade through the Inflation Reduction Act of 2022 to adequately address service, technology, enforcement, and operational needs. Kate Dore, *Reconciliation Bill Includes Nearly $80 Billion for IRS Enforcement Audits: What that Means for Taxpayers*, CNBC (Aug. 8, 2022, 11:22 AM), https://www.cnbc.com/2022/08/08/reconciliation-bill-includes-nearly-80-billion-for-irs-funding.html.
about a client’s case. If they do not receive the courtesy “hang-up” after two hours in the queue, they reach representatives with varying levels of expertise and must be ready to persuasively advocate for their right to access, what is sometimes, simple client information. In the beginning weeks of the clinic, access to IRS records for informational purposes, receiving a “collection hold” to prevent enforcement action, or obtaining information on the status of a refund request is a “win,” which students are eager to share with their client and tax clinic colleagues.

In addition to communication struggles with the IRS Service Center, students quickly realize that the IRS is not immune to mistakes and that resolving them requires much patience, commitment, and passionate advocacy. Some of these mishaps involve conflicting notices that impact appeal rights or coding errors that impact the statute of limitations on collections or claims for refund. Cases of this nature may be in the clinic for years, transferred from student to student with voluminous files and a great deal of frustration. But despite these challenges, students often observe how grateful the client is to have representation and the pure happiness that comes when the case is successfully resolved.

c. Social Justice Within a Federal Tax Clinic

Social justice encompasses tax justice. When a low-income taxpayer fails to contest an erroneous tax adjustment, the denial of a significant refund, or harmful collection measures, there is a negative financial impact that cannot be absorbed. Many rely on significant refundable credits, which they need to support their family. If they are denied a refund that they should have received, or the IRS assesses additional taxes that they do not owe, some may lose out on investing in a business, an education, or a home, whereas others may not be able to pay necessary living expenses.

By teaching and supervising students within a grant-funded low-income taxpayer clinic founded by Professor Janet Spragens and led by Professor Abramowitz, I am constantly reminded of the importance of social justice. Both women had a profound effect on the lives of low-income households by fighting for equitable tax administration. While Professor Spragens played a pivotal role in securing funding for low-income tax clinics at a national level, Professor Abramowitz was in the trenches, guiding and supervising students who represented low-income taxpayers before the IRS and the U.S. Tax Court. Both understood just how meaningful low-income tax policy could be; yet they also knew it was vulnerable to being undermined when low-income taxpayers could not successfully navigate a complex procedural process or satisfy their burden of proof. Professor Spragens’ persistent efforts and frequent congressional testimony led to
positive legislative action while Professor Abramowitz’s day-to-day battles led to insightful, heart-warming results. Each woman, in her own way, was a fierce advocate for social justice in the tax arena and any clinician passing through as a practitioner or future director of the clinic will undoubtedly be inspired to fight for a tax system that is fair and equitable for all.

2. Social Justice and the International Human Rights Framework

CITLLALLI OCHOA*

A key goal of clinical legal education is to provide students with opportunities to use the law as a tool for social change and impart skills that allow students to be effective agents for social change. We live in an increasingly globalized world that both facilitates collaboration with individuals across time zones and continents and presents new challenges for advocates working to address and advance social justice interests domestically. Globalization has contributed to global and transnational human rights harms (environmental rights and immigration being the most obvious) and resulted in a greater need to hold accountable non-state actors (e.g., multinational corporations). This environment provides an opportunity to reflect on how we think about the law and the role of international analysis as it relates to social justice efforts in the United States, specifically the variability of international analysis in terms of potential avenues for advocacy and redress for clients. In recent years, we have begun to see increased engagement with international human rights monitoring bodies. 108

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108. For example, the Alabama Center for Rural Enterprise (“ACRE”) was concerned about impaired access to basic water and sanitation affecting Alabama communities, and submitted a report to the UN Special Rapporteur ahead of his visit to the United States. The ACRE is a nonprofit that promotes sustainable initiatives in rural and impoverished communities in Alabama. See ALA. CTR. FOR RURAL ENTER. CDC, https://www.acrecdc.com/home/ (last visited Jan. 29, 2023). In 2022, individuals and organizations made interventions before the Inter-American Commission on Human Rights—an independent human rights monitoring body with jurisdiction over the United States and thirty-four other members of the Organization of American States—related to the death penalty in the U.S. and the forced displacement of indigenous people resulting from climate change. Many of these individuals and organizations were not considered “repeat players” in the system. See Comisión Interamericana de Derechos Humanos, 15 US ENG - Follow-up on Recommendations and Precautionary Measures on Death Penalty and Death Row, YOUTUBE (June 27, 2022), https://www.youtube.com/watch?v=otyWelBpNvE; Comisión Interamericana de Derechos Humanos, 17 US ENG - Indigenous Peoples and Forced Displacement in the Context of Climate Change in the U.S., YOUTUBE (Oct. 28, 2022),
that points to new directions of global engagement by public interest lawyers—directions that suggest an evolution in advocacy strategies and that acknowledge the limits of domestic law to effectuate change at home given both the tightening of federal rights and current composition of the U.S. Supreme Court.

Considering this context and my role as a practitioner-in-residence with the International Human Rights Law Clinic (“IHRLC” or “IHRL Clinic”), this Essay explores the relevance and benefits of international human rights law and its framework to address public interest issues that fall outside those most commonly associated with international human rights (e.g., migration and immigration issues). This Essay concludes by proposing that an advocacy model that intentionally integrates a human rights framework in clinical legal education is beneficial for both students and clients, allowing students to learn both legal and extra-legal advocacy skills and clients to have a language that reflects their long-term goals.

a. Social Justice and Clinical Education

Clinical legal education has its roots in providing legal services to marginalized communities and promoting social justice. While the clinical education commitment to social justice has evolved, often tested by institutional constraints, the clinical program at American University Washington College of Law (“WCL”) has maintained a shared social justice

https://www.youtube.com/watch?v=gHLNlp_sa3M.

109. I use the term “public interest” broadly to refer to issues that affect individuals or communities that are socially, politically, and economically marginalized in the United States and are generally associated with left/progressive political causes.

110. While a thorough analysis of human rights lawyering in clinical education and pedagogy is outside the scope of this Essay, I hope that this general overview sparks curiosity and reinvigorates discussions around this topic. For a more detailed discussion on this issue, refer to Caroline Bettinger-López, Davida Finger, Meetali Jain, JoNel Newman, Sarah Paoletti & Deborah M. Weissman, Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice, 18 GEO. J. ON POVERTY L. & POL’Y 337 (2011).


112. Ashar, Deep Critique and Democratic Lawyering, supra note 2 (explaining the need for a concerted effort to keep clinics as social justice spaces). Recent examples of a subtle shift away from social justice in clinical education include the emergence of clinics working on issues that serve corporate interests, see, e.g., Compliance Policy Clinic, B.U. SCH. L. https://www.bu.edu/law/experiential-learning/clinics/compliance-policy-clinic/ (last visited Feb. 7, 2023).
mission. In this collection of essays, we reflect on what the term “social justice” means to those of us practicing in different clinics. Although our definitions are not uniform, a common thread in the essays is our commitment to better the systems of injustice we work in and to teach students how to better navigate these systems. In my view, social justice requires a thoughtful assessment of power and power imbalance, the ultimate goal being to support the communities our clinics serve in developing collective power “to produce enduring social change through deliberate strategies of linked legal and political advocacy.” This power assessment is what may allow us to identify, with our clients, the specific social justice goals to address. Within this social justice paradigm, a key question as a human rights practitioner is: where does the international human rights framework fit and how do human rights mechanisms help us achieve the goals or repair the harms identified by the communities we serve?

113. See, e.g., Clinical Program, AM. U. WASH. COLL. L., https://www.wcl.american.edu/academics/experiential/clinical/theclinics/ (including the Civil Advocacy Clinic (emphasizing a “particular focus on economic justice”); Community Economic and Equity Development Clinic (articulating as a main goal “assist[ing] our clients in promoting equitable economic development.”); Glushko-Samuelson Intellectual Property Law Clinic (concentrating on cases that “help[] student attorneys better understand the concept of the public interest in copyright, patent, trademark, and allied fields.”)).


115. Scholars have encouraged law clinic models that prioritize teaching lawyering skills that center collaboration with community-based entities and individuals, decentering the attorney and instead focusing on building collective power in the communities where students work by reversing traditional power dynamics. See Sameer M. Ashar, Movement Lawyers in the Fight for Immigrant Rights, 64 UCLA L. REV. 1464 (2017); Susan L. Brooks & Rachel E. López, Designing a Clinic Model for a Restorative Community Justice Partnership, 48 WASH. U. J. L. & POL’Y 139, 139 (2015).


117. Ashar, Deep Critique and Democratic Lawyering, supra note 2, at 222 (discussing the need to connect “co-construct social problems and potential legal responses, alongside clients.”).

118. I use the term “human rights framework” to refer to the three levels of state obligations that exist under international human rights law—(1) to respect, or the obligation not to violate, a right itself; (2) to protect, or the obligation to ensure other parties do not violate a right; and (3) to fulfill, or the obligation to create the conditions
b. The Human Rights Framework as a Tool to Advance Social Justice

Scholars have argued for years now that there is an opportunity to develop human-rights-based advocacy strategies when addressing “private matters with public consequences, such as housing, consumer affairs and family law.” There are various human rights advocacy tools and strategies available to address domestic public interest issues. These include reporting compliance with United Nations (“UN”) treaties to which the United States is a signatory and periodic evaluation on a global stage at the UN Human Rights Council Universal Periodic Review. Strategies also include regional human rights monitoring before the Inter-American Commission on Human Rights and local implementation by human rights cities. These tools are not only useful in targeting and pressuring decision-makers, but they also offer a long-term vision to grassroots movements and community mobilization by providing language that is not strictly limited to legal terms or viewed exclusively through a legalistic lens. Nevertheless, the tools the human rights framework offers have not taken hold in clinical legal education, and are rarely used outside of international human rights clinics. Perhaps this is the result of two main challenges. The first is that the human rights approach will not always fit squarely within clinic pedagogical goals that center case-based teaching approaches. The second is the fact that a human rights approach will not always be a practical short-term solution necessary for exercising a right—as well as the human rights tools of accountability.


120. The Inter-American Commission on Human Rights has the authority to evaluate the United States’ compliance with the American Declaration of the Rights and Duties of Man by virtue of the United States’ membership in the Organization of American States.

121. Human rights cities, which are cities committed to “advanc[ing] knowledge about effective models and practices for local implementation of human rights,” have popped up all around the U.S. in recent years and may begin to play a more critical role in the domestic implementation of human rights. See Tamar Ezer, Localizing Human Rights in Cities, 31 Rev. L. & Soc. Just. 67, 72–74 (2022), https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/volume31/winter2022/ezer.pdf.

given limitations that include the United States’ lack of commitment to enforcement and oversight, as well as political realities that constrain international advocacy and reform.

Clinics are well positioned to overcome these challenges. The unique mix of substantive expertise in various issue areas, and “institutional legitimacy, along with an insider-outsider perspective,”\textsuperscript{123} creates an environment that can foster creative lawyering while maintaining credibility, and advance social justice issues using human rights tools to complement traditional advocacy models in the United States. With respect to the first challenge regarding pedagogical goals, clinical legal education has traditionally prioritized a case-centered model,\textsuperscript{124} focusing on individual representation and court-or-litigation-based skill sets.\textsuperscript{125} There is no doubt that this model results in more social justice—particularly for the individual clients who would otherwise not have access to legal representation—and professional training for the students involved. In many cases, it also ensures a timely resolution to a client’s problem, but whether this individual work results in \textit{lasting} social justice is less clear.

Legal scholars have made a compelling case for why clinical education should move away from individual client representation and towards the collective mobilization of groups and clients.\textsuperscript{126} Drawing on the definition of social justice I outline above as well as these scholars’ view of the role of clinical education in terms of collective mobilization, I posit that a human rights framework can be a guidepost for legal clinics that want to embrace collective mobilization to create lasting social change. In fact, clinicians at


\textsuperscript{125} The WCL Clinical Program, including the IHRL Clinic, prioritizes these skills as evidenced by the clinics’ syllabi, which include both an interview and counseling simulation that most clinic students are required to participate in. These skills are useful and relevant, but in many ways perpetuate an understanding of what a “successful” outcome is when advancing social justice by centering court or case-based approaches.

WCL already have embraced and engaged in collective mobilization-oriented work. The international human rights framework can provide a structure to teach students legal and non-legal (or extra-legal) advocacy skills needed to challenge the structural inequalities that give rise to the “small” cases or projects clinics undertake and train students to push for radical law reforms.

With respect to the challenge regarding the politics that surrounds human-rights-based advocacy and the lack of concrete outcomes that can come of it, I argue that this advocacy resembles that of collective and democratic lawyering in clinical practice. Leaning on the work of scholars in the areas of collective and democratic lawyering, we may begin to think about the opportunities that exist for students to apply a human rights approach to the issues they are working on, including but not limited to criminal law, domestic violence law, housing, or employment. This will require us, and therefore our students, to think creatively about how the human rights framework can propel us to outcomes that are more consistent with our clients’ long-term objectives or the objectives of grassroots movements. Moreover, this approach will require students and clinicians to accept that success cannot be measured by winning or losing a case but rather “whether the case [or policy advocacy] widens the public imagination about right and wrong, mobilizes political action behind new social arrangements, or pressures those in power to make concessions.”

127. See generally Susan D. Bennett, Creating a Client Consortium: Building Social Capital, Bridging Structural Holes, 13 CLINICAL L. REV. 67 (2006); Ashar, Law Clinics and Collective Mobilization, supra note 126, at 389–90 (including American University in the list of schools where clinicians have engaged in this work).


129. Strategic considerations, such as when to use human rights fora and how to discuss it with clients, publicize it to the larger community, and target decision-makers can be a collaborative undertaking with WCL’s IHRL Clinic.

130. This approach acknowledges that our cases fall within broader activism movements and presupposes that, in some cases, a human rights lens can complement those movements. While an immediate response and solution to the issues that our cases and projects present is critical and may be what our clients prioritize, as clinicians, we might consider long-term transformative changes and the role that broader human rights advocacy, including transnational networks and movements, can have.

131. Lucie White, To Learn and Teach: Lessons from Driefontein on Lawyering and
c. Conclusion

I began this discussion by highlighting that the tightening of federal rights as well as globalization demand an international vision to address domestic public interest issues and advance a broader social justice vision. I propose that the human rights framework can help us examine the political and economic processes that result in human rights violations, power relationships and power imbalances, as well as the specific mechanics of human rights law practice.

I have noted two main challenges, pedagogical and practical, that exist in embracing a human rights approach as a complementary advocacy tool. Nonetheless, clinical legal education as well as theories of lawyering rooted in clinical practice have evolved since the first generation of clinical scholarship. Clinical legal education can continue to evolve to create more opportunities for the international human rights framework to advance social justice in the United States by leveraging tools that have existed for a long time. These tools can be implemented differently by lawyers working with communities to build power and promote norm-setting, even if these are long-term goals. International human rights law clinics can drive these ideas forward and support the work of clinics that want to explore a human-rights-based model, but they cannot change the landscape alone; cross-clinic

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132. Most of our clinics already engage in work that many consider human rights work. Professor Olinda Moyd, Distinguished Practitioner-in-Residence and the Director of WCL’s Decarceration and Re-Entry Clinic, recently received the Human Rights Hero award from Interfaith Action for Human Rights for her volunteer work with the Maryland Alliance for Justice Reform (announcement on file with author).

133. See generally Ashar, Deep Critique and Democratic Lawyering, supra note 2, at 222 (proposing that “the open-ended nature of the search for legal mechanisms by which to repair harms identified by communities speaks to the larger pedagogical goal of preparing students to engage, in the words of Carrie Menkel-Meadow, in ‘process pluralism,’ particularly in response to difficult historically and macro-politically entrenched problems.”).

134. See generally id. at 220–24 (describing the waves of clinical legal scholarship and program development in the context of “democratic lawyering”); Phoebe A. Haddon, Education for A Public Calling in the 21st Century, 69 Wash. L. Rev. 573, 576 (1994) (asserting that legal education should give greater attention to services for the poor amidst accelerating economic inequality).

135. For example, in our own clinical program at WCL, we can explore a model in which students from the International Human Rights Clinic “consult” with students working on criminal justice issues, housing, workers’ rights, or any other issue that our clinics work on, to assess whether their work can benefit from broader human rights advocacy, either because they have reached a dead end in terms of what can be achieved using domestic legal mechanisms, or the remedies available domestically don’t meet

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https://digitalcommons.wcl.american.edu/jgspl/vol31/iss3/1
collaboration is imperative for this model to take hold.

As I push for the application of a human rights framework as an effective tool in our clinics, I want to acknowledge the valid critiques pointing to “imperialist narratives and ‘victim essentializing’” that human rights lawyering can perpetuate. 136 The type of human rights advocacy I envision is one that reflects a social justice-oriented vision and client-centered approach. If we accept that social justice goals should be “co-constructed”137 with our clients, then the use of a human rights framework to advance social justice will require lawyers and law students to do their work in partnership with the communities and individuals impacted by the human rights concerns.

3. Rapid Response in a Law School Clinic

ANNE SCHAUFELE*

Climate change disasters, mass shootings, the COVID-19 pandemic, police brutality, refugees, and forced displacement are among the crises of our times—and the list goes on. As a result, clinicians are regularly called on to address urgent legal needs in their respective communities. This Essay addresses some of the ways law school clinics engage in case and project selection to respond to urgent legal needs, the pitfalls and benefits of a rapid response practice, and how clinic pedagogy can support rapid response work. These reflections draw from particular examples from two clinics: the International Human Rights Law Clinic (“IHRLC”) and Immigrant Justice Clinic (“IJC”) at the American University Washington College of Law.

a. Case and Project Selection to Respond to Urgent Legal Needs

Prior scholarship on clinic case selection has addressed the perennial issue of how to select cases or clients for social justice impact and to teach social justice lawyering. 138 As clinicians design their seminar syllabus and fieldwork for the semester or year, we look for ways in which the clinic international human rights standards.


137. Ashar, Deep Critique and Democratic Lawyering, supra note 2, at 222.

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seminar classes will correlate with the development of the students’ cases. In backwards course design, we think of our learning goals for the clinic semester or year, and identify readings and exercises that will help us teach those core learning goals. For law school clinics, our learning goals are in large part to teach core lawyering skills, and to provide opportunities for our students to practice and hone those skills in their casework. We often design the seminar schedule in parallel with the arch of how their case will (likely) develop, starting with client interviewing and counseling, and building up to trial litigation and negotiation skills. Rapid response work often disrupts that linear process. It challenges us to be flexible both in our seminar design and client work. I explore here how we chose to respond in two clinics to urgent legal needs that cut across cultures, borders, languages and legal systems, while still teaching our students core lawyering skills.

Both the IHRLC and IJC are “hybrid” clinics that engage in both direct representation of individual clients, as well as issue-based advocacy with organizational clients. In both clinics, we ask the students before starting their semester or full-year clinical experience about their interest areas. This helps us address what issues might motivate and engage our incoming students. We then use those interests to identify appropriate direct representation cases, as well as issue-based advocacy, that match the expressed interests of the students in areas ranging from environmental justice and climate change to the criminal legal system and gender-based violence. We identify organizational clients that are active in the students’ areas of interest, and have work or an organizational need that would benefit from student support. We also have a number of ongoing matters or cases that may be outside of the students’ interest areas, but are beneficial to student learning for other reasons—developing particular lawyering skills, expanding the students’ experience and skill set, etc. Those ongoing matters are often more predictable in terms of the time required and the pace of the work.

Addressing urgent legal needs may fall under either our direct representation or our issue-based advocacy work. For our direct representation work, it may involve a client who is unexpectedly detained by Immigration and Customs Enforcement and is newly in removal proceedings, or who has some other urgent legal issue. For issue-based advocacy work, our two clinics either 1) assign a student team to rapid response work with an organizational client or 2) identify a bite-size portion

of impact litigation or related work.

Not all of our issue-based advocacy is rapid response work, but in the past several years, we have partnered with organizational clients that are addressing pressing and timely issues. In clinic orientation, we identify those projects that are less predictable in terms of the time required or the pace of the work, and allow the students to express interest, or not, in that area of work. Our students are typically grouped into teams of four to work with their organizational client. We then encourage the students to engage with the organizational client to define the parameters of the project and draft a Memorandum of Understanding. For example, we collaborated with a refugee advocacy organization and assigned the students to respond to the needs of the organization in a particularly volatile political climate. The students were tasked with writing a white paper on an issue the organization was championing on the Hill, and later with submitting comments on proposed rulemaking to the Department of Homeland Security.

In addition to rapid response work with an organizational client, we also work with organizational clients to identify a predictable, bite-sized portion of impact litigation work. For example, several law school clinics responded to the need for representation of families separated by the Trump administration’s “zero tolerance” policy by assigning students to represent formerly separated families. The students drafted and filed Federal Tort Claims Act (“FTCA”) complaints. The complaints allowed the students to engage in deeply sensitive client interviewing and counseling with both adults and children, as well as legal issue spotting as they considered the universe of relevant torts. Once the FTCA claim had been filed, the students engaged in a working group of nonprofits, other law clinics, and private attorneys to settle these claims with the government. When those negotiations failed, the students referred their FTCA complaints to private attorneys who could further litigate these cases in federal court.

As another example of our bite-sized approach to lawyering in a crisis, law school clinics have taken on the work of supporting the more than 79,000 Afghan nationals who entered the United States after the Taliban took over the Afghan government in August 2021. In the IHRLC and IJC, we reached out to community partners serving Afghans and learned about the immense need for legal representation. We had to identify what we could


and could not take on, given our existing cases and commitments, and in light of the fact that this representation need would outlast the semester or academic year. To address the reality that the legal community (especially nonprofits) was overwhelmed by the demand, our clinics organized clinics for pro se Afghan asylum seekers. We identified that resettlement agencies and pro bono attorneys were providing some limited representation support to file asylum applications, but that Afghan asylum applicants lacked additional support in pursuing their applications.

In consultation with resettlement agencies, we organized mock asylum interviews for applicants who had already completed their asylum applications. We recruited volunteer attorneys, many of whom are alums of our law school, to participate in mock asylum interviews with the student attorneys. This allowed the student attorneys and clients to benefit from the volunteer attorneys’ feedback and tips for the interview, and for the volunteer attorneys to engage in a limited scope pro bono project while also interacting with the community and students. Across the country, other clinics responded to the need with workshops dedicated to drafting asylum declarations or preparing Special Immigrant Visa (“SIV”) adjustment applications. Each initiative addressed a critical and time-sensitive legal need, with both benefits and pitfalls for the student attorney participants.

b. The Pitfalls and Benefits of a Rapid-Response Practice

Student attorneys are often excited to address a critical legal need in a timely manner and to learn how they, as attorneys, can collaborate with legal and non-legal partners to advocate for justice. However, they are also students who are often overcommitted and are learning how to manage their limited time. They look for closure or completion of a project, which often does not happen in rapid-response projects.

In a rapid-response practice, the students learn client-centeredness when approaching an urgent legal need, and importantly, to manage clients’ expectations about the scope and depth of the representation. We often have the students draft a Memorandum of Understanding with their organizational client in the first weeks of clinic. This gives them input into defining the parameters of the work and outputs. For our asylum interview workshop, we also had the students draft and review limited representation agreements with the Afghan participants. As the work progressed, the students learned how to exercise their judgment about how to counsel their clients, manage uncertainty, work on an imperfect timeline, and confront ethical

considerations in real time.

Due to the fast-paced and multifaceted nature of the rapid response work, clinical supervisors can feel like they are in constant triage mode. To address this pitfall, clinicians can preserve time in rounds and supervision following each major submission, workshop, or related activity to reflect on the work. During rounds, we break the traditional rounds model\textsuperscript{143} to use the space to reflect on one thing that worked well, and one thing that surprised us or that we would do differently. We also encourage the students to stay on top of their case management and office procedures, so that we have a record of the work completed. For example, if the students track their clinic hours contemporaneously, they are more likely to provide an accurate recording of their hours worked. In supervision, we reflect on how learning to keep their time will serve them in many future lawyering settings.

Students express frustration about balancing clinic with the other demands on their time during these moments of high-intensity work. They may feel they are neglecting coursework, partners, families, pets, part-time jobs, or other outside responsibilities. Rapid response work requires all hands on deck, which can frustrate students whose bandwidth is already limited. In addition, some students express frustration about some of the administrative or “non-lawyering” tasks that come with rapid response work. As mentioned, we allow the students to express preferences for their client matters and casework. We provide the students advance notice that their work will be fast-paced and responsive, and ask them to identify their availability for clinic work. In our final reflections, we discuss how the work prepared them to adapt to their clients’ needs, navigate unfamiliar terrain, and learn how to collaborate with their clients to accomplish their goals. But there are moments when they, and we, worry about the sustainability of engaging in rapid response work.

c. How Clinic Pedagogy Can Support Rapid Response Work

Ideally, the clinic seminar can be an adaptive space to address some of the lawyering skills that equip students to engage in rapid response work. As three examples, we incorporate rapid response work into in-class stimuli, make space in our syllabus for classes on cultural context and humility, policy advocacy, and working with the media, and encourage the students to address the issues that surfaced in their self-reflection memos.

First, we often use the first ten or so minutes of class to engage in a “stimulus”—typically a video, picture, cartoon, song, or other brief exercise that allows the students to transition into class. In the immigration and human rights clinics, the stimulus often draws from something that is current and on the students’ minds. It is a natural fit for discussing our rapid response work. For example, in our seminar class on direct examination, we brought in a short excerpt from John Oliver’s piece on children fictitiously being questioned in immigration court to counter the government’s narrative that children can represent themselves in immigration court. The stimulus presented an effective parallel to the rapid response work we were doing at the time on family separation.

Second, students are better equipped to partner with a community in need by engaging and discussing issues in seminar. For example, in order to address the cultural context of a client base or issue, we have invited guest speakers who represent communities we are serving in that particular year to our seminar class on cultural humility. In past classes, we invited attorneys who themselves are members of the LGBTQ community to present on terminology, experiences and barriers, and creating a supportive space for LGBTQ clients. In our work with the Afghan community, we invited two Afghan students, both of whom are asylees, to share an overview of Afghan culture, history, ethnicities, language, and politics, and their experience in the U.S. immigration system. We can customize this class to hone in on particular communities or issues that we are working with in our rapid response work.

In our media and policy advocacy class, we have invited the students to engage in mock interviews with working journalists about their work. For the students engaged in rapid response work, this gives them an opportunity to think about how they would message the issue that they have addressed over the past month(s).

Third, students’ written reflections also provide critical learning moments. We ask the students to consider systemic oppression and power dynamics in their clinic casework. Those issues are particularly acute when the students’ address urgent legal needs. For example, the spread of COVID-19 amongst our clients in solitary confinement in a federal prison, and their long-delayed case before a regional human rights system, provided rich reflections about how to address urgent legal needs in a slow-moving system.

144. Last Week Tonight with John Oliver: Immigration Courts (HBO television broadcast Nov. 5, 2018)
d. Conclusion

Rapid response work can be well-suited for law school clinics as a bridge to practice for our students, and to also mobilize the important resources of a clinic. Clinicians can intentionally design their seminar, supervision, and rounds to support the unpredictable nature of rapid response work, and to build in time for reflection from the fast-moving and intense workload.

4. Students Representing Students

MICHELLE ASSAD*

a. Introduction

In 2019, the Immigrant Justice Clinic at American University Washington College of Law (“WCL”), launched Defending the AU Dream initiative (“AU Dream”) to provide free immigration legal services to undocumented and immigrant university students in the D.C., Maryland, and Virginia metropolitan area (“DMV”).145 Since its founding, AU Dream has represented thirty-three undergraduate and graduate students in their applications for Deferred Action for Childhood Arrivals (“DACA”), Asylum, Special Immigrant Juvenile Status (“SIJS”), U visas (for victims of certain crimes), and in other complex immigration matters.146 Additionally, AU Dream has reached thousands of students through local and nationwide know your rights (“KYR”) presentations and formed community partnerships with advocates for undocumented and immigrant students at AU and other universities in the area including Trinity College, University of the District of Columbia, and Montgomery College.

AU Dream’s achievements would not have been possible without the initial support of William I. Jacobs, an AU and WCL alum, who wished to support undocumented and immigrant students. Mr. Jacobs entrusted the creation of AU Dream to the Immigrant Justice Clinic and its Director, Professor Jayesh Rathod. I was the first staff attorney hired to lead the initiative in 2019. That year, in addition to supervising four clinic students on AU Dream cases and projects, I worked with administrators at AU’s main

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146. Id. AU Dream aims to prioritize formal legal representation for students at AU.
campus and other universities to promote AU Dream’s mission and encourage them to share information about the initiative with their noncitizen students. AU Dream has since welcomed Saba Ahmed to lead the program. During academic year 2021–2022, AU Dream provided advice and counsel services to forty students from a variety of universities in the DMV.

Since its inception, AU Dream has endeavored to become a model program that universities across the United States can emulate. Unlike typical models of student legal services at universities—where the legal service providers are staff attorneys—Immigrant Justice Clinic student attorneys directly advise and represent AU Dream clients, some of whom were or are their classmates at AU. With social justice lawyering at the center of clinical programs, student attorneys working on AU Dream cases and projects have the opportunity to serve their own community of peers who face obstacles to furthering their studies and careers because of their immigration status.

In this Essay, I reflect on how the provision of legal services to students by law clinics benefits both the student clients as well as the student attorneys. In supervising these cases, I have seen tremendous opportunities for student attorneys to not only learn the lawyering skills traditionally taught in a clinic program, but also to learn how to anticipate and resolve ethics concerns that arise from students representing students. Through such representation, student attorneys further develop their identity as lawyers, gain confidence, and become motivated to invest in their local community. As for student clients, they not only benefit financially from the clinic’s free legal services, but also get a unique level of attention and guidance from their peers either in their immediate or broader university community. Similar benefits would flow from providing other types of civil legal services, such as divorce, taxes, criminal, or starting a business.

b. Brief History of University-Based Legal Services for Students

Legal representation and counseling of students by their own institutions is not a new practice. University-based legal services for students have existed since the 1960s, in response to students’ exercising their own and supporting others’ civil rights in the United States. For instance, the

University of Illinois, provided advice and representation to students facing evictions. It also provided pre- and post-arrest advice and, in limited circumstances, if students were indigent, representation in some non-felony matters. According to Donald C. Heilman, Director of the Rutgers’ University Office of Student Legal Services, the legal needs of college students have expanded and diversified since the 1960’s, likely because of the increasingly diverse demographics of students. He notes that “[o]ne generation ago, college campuses were much more homogenized in age group and socioeconomic status.” Heilman lists gender, age, socioeconomic status, race, and country of origin as some of the shifting identity characteristics observed on college campuses. For instance, a 2018 report by The Institute for Women’s Policy Research highlighted that the population of “independent” students (formerly known as “non-traditional” students), made up the majority of students enrolled in higher education as of 2012. Some of the defining characteristics of an “independent” student is someone who is married or has dependents other than their spouse. Thus, students arrive at their campuses with different life experiences, such as a student who is a single mother who may need family law support or advice on how to sign up for or contest denials of government benefits.

This diversification of college campuses has resulted in increased demand from students for immigration legal services in the last five to ten years. In 2021, there were approximately 450,000 undocumented students pursuing a

Legal Services for Students, 23 NASPA J. 21–26 (1983)); see also Student Legal Services, History, U. Ill., https://odos.illinois.edu/sls/about/history/ (last visited May 23, 2023).


150. Student Legal Services, History, supra note 148.

151. Heilman, supra note 148. The Office of Student Legal Services at Rutgers University advises and assists students with legal issues that arise at the school or elsewhere for free.

152. Id.

153. Id.


155. Id.
higher education in U.S. universities and colleges.\textsuperscript{156} In response to the need for services, law schools and their immigration clinics developed a variety of legal service provider models. For instance, in 2017, a single staff attorney joined the Harvard Representation Initiative (“HRI”) in the Immigration and Refugee Clinic to provide free legal consultations and representation to all undocumented students at Harvard. All of the legal services are provided by the staff attorney. Since then, HRI has expanded their services to all Harvard community members.\textsuperscript{157}

Pursuing a similar mission, the Undocumented Student Program at the University of California at Berkeley (“UC Berkeley”) joined forces with the East Bay Community Law Center (“EBCLC”) (a clinic of Berkeley School of Law) to provide undocumented students at UC Berkeley free legal services.\textsuperscript{158} Unlike HRI’s model, where all of the work is done by staff attorneys, EBCLC student attorneys take part in intakes, consultations, and full representation of student clients.\textsuperscript{159} It is also worth noting that some schools have not established in-house legal services for students but have contracted with outside nonprofit organizations to provide limited immigration legal support.\textsuperscript{160}

In providing legal services, colleges have acknowledged that a student’s success in school is impacted by their financial and social wellbeing.\textsuperscript{161} AU Dream was born out of this acknowledgement with a particular focus on helping DACAmented and undocumented students navigate status-related challenges.

\begin{thebibliography}{99}
\footnotesize
\bibitem{161} Lal & Phillips, supra note 159, at 578; \textit{see also} Heilman, supra note 148.
\end{thebibliography}
c. Benefits to Student Attorneys and Student Clients

At the 2021 American Association of Law Schools (“AALS”) Clinical Conference, Professor Ahmed and I participated with clinicians from Harvard Law School, UC Berkeley, and the University of Michigan in a presentation about the mutual benefits and challenges of providing and receiving legal services through university-based legal clinics and shared best practices. Here, I expand on the ideas that we discussed at that AALS session with AU Dream-specific experiences.

i. Benefits to Student Attorneys

(a) Opportunity to Learn Lawyering Skills and Ethics

Interviewing, counseling, and lawyer decision-making are just a few of the lawyering skills students learn in clinic. Any given clinic docket will have cases that provide students with the opportunity to practice and learn about these skills. Allowing for attorney-client relationships between students, in the clinical setting, is a unique way to teach students both lawyering skills and ethical duties. Cases that present ethical questions at the outset are valuable for students’ learning because they provide “multiple explicit examples of lawyering theories in action.” For instance, when students represent their peers, the representation immediately brings up issues of how to maintain confidentiality. Consider the following “elevator scenario.” If a student attorney runs into their student client at the law school in the elevator, would the student client feel comfortable if the student attorney acknowledged them? It is important for the student attorney to be aware of the rules of professional conduct relevant to these scenarios, but applying the rules requires skills in decision-making and interpersonal engagement, at the very least. In the context of student attorneys representing students, the opportunity to weave in the sensitive topic of the shared lawyer and client identity as students enhances the learning of the student attorney.

Fortunately, we, as supervisors, provide scaffolding for sensitive issues in all clinic case matters. First, we have the clinic seminar where we teach lawyering theory and use simulations to set the foundation for practicing lawyering skills. By the time a student attorney begins to interact with their

162. Saba Ahmed, Michelle Assad, Jason Corral, Mindy Phillips & Tifani Sadek, Students As Clients: Reflections on Models of University-Based Legal Services, Presentation at the AALS Clinical Conference (Apr. 28, 2021).


164. MODEL RULES OF PROF’L. CONDUCT r. 1.6 (AM. BAR ASS’N 2020).
student clients, they will likely have had a class on client interviewing and a client interview simulation. The interviewing skills class provides a blueprint for the first interviews through readings on the purpose and stages of an interview. While conducting a simulation, student attorneys will have the opportunity to practice interpersonal engagement and prepare questions that will help them not only understand the legal issues but also the client’s goals and concerns, which may include confidentiality. Second, we have weekly supervision check-ins with student attorneys to address issues that arise in working with their clients. In my first few supervision meetings with students assigned to AU Dream cases, I explicitly note the uniqueness of representing a peer and ask students to discuss what it might entail.

(b) Opportunity to Develop Lawyer Identity and Confidence

In representing student clients, student attorneys also gain the opportunity to develop their lawyer identity and confidence in their practice of law. Throughout law school, students face pressure to be competitive, stand out in their classes, and are often self-conscious about how their peers view them. In clinic, we ask students to be the lawyer and step into a new and uncomfortable role never before entrusted to them. While exposing student attorneys to the common discomforts of being a new attorney in clinic, assigning AU Dream cases adds a unique layer of discomfort and responsibility for the student attorney. One of my students commented, “Representing a fellow student not only taught me how to navigate complex client-lawyer relationships, which is helpful for my future practice, but also helped me understand the added stress and issues that an immigrant student faces when confronting immigration issues.”

Professor Nancy Polikoff’s article “Am I My Client?: The Role Confusion of a Lawyer Activist,” presents a scenario where a lawyer struggles with her role where she shares an identity with her clients and a personal investment in the outcome of the representation. Polikoff raises these issues in the context of her representation of clients who engaged in civil disobedience to protest the mistreatment of the LGBTQ+ community during the AIDS crisis. As a lesbian activist, she also participated in demonstrations and supported “radical social change.” Polikoff reflected that it was

168. Id. at 443.
difficult to implement client-centered counseling because she had a personal investment in the outcome of the representation.\textsuperscript{169}

Student attorneys do not have the same personal investment in the outcome of AU Dream cases as Polikoff did, unless they also are immigrants. But through their shared identity as students, student attorneys can relate to the importance of elimination of barriers and worries that impede the pursuit of education. Additionally, student attorneys working on AU Dream cases shared that they felt challenged by the idea of representing someone close in age and with a near equal level of education, including in some cases, training in the law. This concern gave us the opportunity to explore how they might address the student client who asked to read and proofread their work. In anticipating the elevator scenario, a student attorney might think about their student attorney role and discuss with the client what to reveal in that moment.

Moreover, as student attorneys begin to develop their lawyer identity, they also gain confidence in their abilities to practice law. Establishing good attorney-client relationships and overcoming obstacles in these relationships build on that confidence. Successfully representing a fellow law student will give the student attorney an enormous confidence boost given the pressure in law school to perform well and make a good impression with their professors and peers.

\textit{(c) Motivation for Investing in Their Community}

The students representing students model encourages and fosters the student attorneys’ interest in and awareness of their academic community’s needs. Student attorneys learn to empathize with their peers and appreciate the different life experiences often muted in the law school classroom. Based on my observations as a supervising attorney, student attorneys who represented AU Dream clients appeared to develop a special connection with their student clients and often went beyond their lawyer role to serve as a mentor. For instance, one team of students willingly took the time to share their experience in selecting courses and internships with their student clients.

Student attorneys have shared with me that working on AU Dream cases made them feel more connected to their student community and motivated to help their peers succeed. Clinics typically serve the underprivileged and meet access to justice needs while teaching the value of public service. AU Dream does this while also strengthening the student’s sense of connection and responsibility to their specific academic community. One student attorney was excited to work on AU Dream cases, and contrasted her role as

\textsuperscript{169} \textit{Id.} at 459.
a lawyer with her job before law school where she helped high school students apply to colleges and obtain scholarships. She noted that, “I can help kids apply to college and find scholarships, but at the end of the day it doesn’t solve the underlying issue, which is not having status.”

ii. Benefits to the Student Client

Universities recognized that a student’s legal troubles are extremely disruptive for their ability to continue their education. If legal issues preoccupy them, they might do poorly in classes or drop out of school, which leaves them to deal with lasting consequences of loan debt and no diploma. Thus, legal representation is of obvious benefit to the student because they will receive free legal advice and in some cases, even full representation. Having more information and representation lessens their stress and allows them to refocus on their studies. An AU student client shared her appreciation by saying, “I want to express my gratitude for all of your help, support, and legal advice thus far, as it has served to induce profound ease and certainty to the unnerving circumstances surrounding DACA and even more so during these times.” AU Dream has helped open doors to the job market for student clients through work permit applications and resolving their immigration status issues. Employment is critically important to soon-to-be graduates. There is also the opportunity to raise the student client’s morale by receiving crucial support from institutions where they have invested a great amount of time and money.

In addition to the benefits of receiving pro bono legal representation, student clients particularly benefit from representation by their peers rather than a clinician or staff attorney. Clinicians and staff attorneys are generally older than student attorneys, and in some cases are members of a different generation. The benefit for the student client who is represented by a peer is that they are working with a more relatable person or team, given their age and shared membership in a college or university student community. As mentioned above, AU Dream student attorneys became mentors for their clients. In some cases, clients have stayed in touch with their student attorneys after the representation has ended. In other cases, clients might also see their student attorneys as role models and are inspired to pursue related internships, leadership positions, or careers. Moreover, the low

170. See Andrew Erickson, Dreams Take Flight, AM. U. MAG. (Nov. 2021), https://www.american.edu/magazine/article/dreams-take-flight.cfm (sharing testimonials from students who navigated complex legal battles over their immigration status while in school).

caseload for student attorneys means that they have more time to invest in the cases than a private attorney would. This extra time is important for building trust and making the student client feel heard and validated.

d. Conclusion

My experiences in supervising cases where students represent students have been positive and inspiring. This model transcends the typical lawyer-client relationship and leads to a deep sense of purpose in serving one’s community. The students representing students model is not perfect given concerns about confidentiality and conflicts of interest. Nevertheless, we should not shy away from this unique opportunity to provide a much-needed service to student clients while also advancing our teaching goals.

IV. Conclusion

This Article reflects upon, and is a work of, “co-construction.” As the authors have written, commitment to collaboration with clients as agents for change lies at the core of their teaching and their lawyering. Their curricula and the structure of their clinics further that commitment. As the authors have demonstrated, their dialogue with each other in the development and presentation of this piece has elevated their individual contributions into a coherent whole.

Our practitioners remove any doubt that almost any venue for law practice can be a vehicle for the practice and teaching of social justice lawyering. “Big” case, “small” case; high volume, limited docket; transactions, litigation—any process for addressing conflict, any setting for calibrating relationships has potential for supporting social justice lawyering within a law school clinic. What matters is focus on a base of clients who suffer systemic inequity, a curriculum that prompts reflection on the sources and impacts of that inequity, and a dedication to exploration with students of their own growth as lawyers in the service of a social justice mission.
TRAUMA-INFORMED (AS A MATTER OF) COURSE

NATALIE NETZEL\

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I. INTRODUCTION

Law students are impacted by trauma and law professors are in a position to help by adopting a trauma-informed approach as a matter of universal precaution. The 2021 Survey of Law Student Well-Being ("SLSWB") revealed that over twenty percent of responding law students meet criteria that indicate they should be evaluated for post-traumatic stress disorder.
The study also revealed that almost fifty percent of responding students reported an important motivation for attending law school was experiencing a trauma or injustice. Put differently, law schools are full of law students who have experienced trauma, many of whom are actively struggling with trauma. Students are coming to law school not just in spite of their trauma histories but because of their trauma histories.

Law schools must respond accordingly. Armed with this new knowledge, legal educators have the opportunity to transgress and transform to provide trauma-informed legal education. It has long been known that legal systems are full of people with trauma histories and that interacting with the legal system can be traumatic. Given the pervasive presence of those with trauma histories in law schools and the legal system, law professors must have a basic understanding of trauma and trauma-informed practices to do their jobs well. If they do not, they risk retraumatizing both law students and clients they seek to serve.

This Article will explore what law professors need to know about trauma, why law professors need to understand trauma, and how to employ a trauma-informed approach in their doctrinal courses as a matter of universal design. It contributes to existing conversations on trauma-informed better practices.

1. David Jaffe et al., “It Is Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being, 60 U. LOUISVILLE L. REV. 441, 468 (2022). The SLSWB also revealed over eighty percent of responding law students have experienced one potentially traumatic event, and roughly seventy percent of students have experienced two or more potentially traumatic events. Id.
2. Id. at 496.
3. See Jan Jeske & Mary Louise Klas, Adverse Childhood Experiences: Implications for Family Law Practice and the Family Court System, 50 FAM. L.Q. 123, 123 (2016) (noting the need for those working with families in the court system to be aware of the ACEs studies); Phelan Wyrick & Kadee Atkinson, Examining the Relationship Between Childhood Trauma and Involvement in the Justice System, 283 NAT’L INST. JUST. J. 1, 1–2 (2021) (considering pathways from violence exposure and trauma involvement in the justice system); Samantha Buckingham, Trauma Informed Juvenile Justice, 53 AM. CRIM. L. REV. 641, 645, 648 (2016) (noting trauma as a frequent underlying cause of offending behavior and the need to avoid further traumatizing youth in the juvenile justice system); Courtney Evans & Kelly Graves, Trauma Among Children and Legal Implications, 4 COGENT SOC. SCI. 1, 6 (2018) (advocating for the legal system to understand the role that trauma plays in the lives of survivors and not re-expose them to added trauma).
4. See Jaffe et al., supra note 1, at 468.
5. I prefer the term “better practices” to the term “best practices” because “better practice” implies practices can always improve.
and trauma stewardship. Additionally, it provides practical, solution-focused, strengths-based tools for teaching through a trauma-informed lens. It adds to a body of legal scholarship on trauma-informed pedagogy and lawyering and is grounded in scholarship from other disciplines. It also relies on my own learned-experience from my efforts to teach and practice law in a trauma-informed manner.

II. BACKGROUND

I come by my knowledge of trauma-informed lawyering honestly. As a family defender I have observed how the family regulation system purports to be moving in the direction of being trauma-informed; however, much of the time, “trauma” and “trauma-informed” are just hollow words tossed around courtrooms without a true underlying understanding of what they mean. When systems label their actions “trauma-informed” without truly embodying trauma-informed principles, it can cause additional harm. My court experiences crystallized the importance of being able to articulate, with specificity, what I mean when I say I am engaging in trauma-informed lawyering.

One byproduct of striving to be a trauma-informed professor and lawyer is that I have become attuned to my own susceptibility to the negative effects and manifestation of vicarious trauma. While, like the overwhelming

6. See generally LAURA VAN DERNOOT LIPSKY & CONNIE BURK, TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS (Stacy Carlson & Karen Cook eds., 2009) (providing an in-depth explanation of how to effectively take care of oneself while taking care of others using the umbrella term “traumastewardship”).


8. The seed for this Article was planted years ago when my clinic was put in a position to litigate the definition of “trauma-informed” therapy in a termination of parental rights matter. We relied on the tenets of trauma-informed care. See SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., DEP’T OF HEALTH & HUMAN SERVS., TRAUMA INFORMED CARE IN BEHAVIORAL HEALTH SERVS. 1, 9, 23–24 (2014) [hereinafter SAMSHA’S CONCEPT OF TRAUMA] (describing foundational tenets of trauma-informed care).
majority of law students, the I have experienced potentially traumatic events in my own life, my trauma history is not extensive. Despite this fact, I have had significant struggles as a lawyer that can be readily explained as negative effects of vicarious trauma. Adopting a trauma-informed approach to teaching and lawyering has drastically improved my life, and the lives of those around me. It caused me to reevaluate the role of prioritizing my own self-care. This led to a radical transformation in how I discuss self-care with others, reframing it as a need for “mutual care”—a term I define as a communal response to self-care that recognizes people are best able to engage in self-care only when the systems they are a part of recognize the value and create circumstances that allow for self-care.

My personal and practical experiences also pushed me to reflect more broadly on my role as a law professor teaching students to be trauma-informed lawyers. I became curious about the application of the tenets of trauma-informed care in other arenas of my work, specifically my doctrinal law courses. This Article contributes to a growing body of legal

9. See Jaffe et al., supra note 1, at 468 (noting that over eighty percent of respondents in survey on law student mental health reported having experienced trauma).

10. See Natalie Netzel, Hiding in Plain Sight, 79 BENCH & BAR MINN. 20 (2022) (revealing my personal experience with vicarious trauma as a result of practicing law).

11. Along with my Mitchell Hamline School of Law colleagues, Lynn LeMoine, Miriam Itzkowitz, Leanne Fuith, and Debbie Shapiro, I first presented on Making the Shift to Mutual Care at the inaugural Institute for Well-Being in Law Conference in January of 2022. Our vision of mutual care was shaped through conversations with law students who felt harmed by our well-intentioned reminders to them to engage in self-care while in law school. As one delightfully insightful student, Adrienne Baker, wrote:

Schools have . . . noted the importance of ‘self-care,’ and encourage students to take breaks from school, to eat well, to get enough sleep, and to get exercise. Some law schools require students to create a self-care plan. The premise seems so simple, so easy. Yet, these measures fail because the expectation is that the individual responds to a system-imposed harm. It is not enough to promote “self-care.” Self-care is framed as an antidote, but the individual responsibility is still placed on the student. Rather, the issue is better resolved upstream. Law schools must transgress and transform.


12. Among other doctrinal courses, I teach first-year criminal law. Criminal law courses are often full of traumatic scenarios in case law that are deeply disturbing and run a risk of triggering, retraumatizing, and vicariously traumatizing law students. Mine is no different. One thing that seems to help students is a pedagogy centered on the tenets of trauma-informed care.
scholarship on a variety of topics related to trauma.13 Given the ever-deepening understanding that trauma and law are intertwined, this Article is responsive to calls for legal educators to become trauma-informed.14

Finally, a word for the skeptics. As I have presented on this topic and workshoped this paper, I have been challenged on the concept of “trauma drama”—the expansion of the use of the term trauma in popular culture such that the term loses its meaning.15 To avoid watering down the term trauma, this Article is careful to distinguish between potentially traumatic events (“PTEs”) and trauma. Further, it will not suggest that law professors lower standards nor will it suggest students should not be held accountable to their educational goals. Instead, it will ask law professors to recognize that, as the data clearly demonstrates, we have a significant number of students in our courses that have experienced trauma to the level they may meet a medical diagnosis. With this understanding, it will provide a positive, strengths-based approach to further adjust our pedagogy to minimize harm. I trust that law professors have a vested interest in educating their students. So, I humbly offer that, even if you do not buy into the trauma framework, the suggestions regarding the applications of the tenets of trauma-informed care to doctrinal pedagogy can strengthen your relationships with students and, thus, better help them achieve their ultimate learning goals.


14. See Harris & Mellinger, supra note 13, at 802 (“Legal educators must address issues of trauma and burnout within their clinical and nonclinical classrooms.”). See generally Myrna McCallum, The Trauma-Informed Lawyer, SIMPLECAST (May 21, 2020), https://thetraumainformedlawyer.simplecast.com/ (“This podcast was created for lawyers however anyone who works with people will benefit from this content. Through inspiring interviews, courageous conversations and thoughtful commentary, Myrna and her guests shine a light on a critical ethical competency lawyers missed in law school: trauma-informed lawyering.”).

III. WHAT LAW PROFESSORS NEED TO UNDERSTAND ABOUT TRAUMA: A CRASH COURSE

The vast majority of law professors were not educated about trauma as a part of their own legal education. However, much has been written about trauma responses over the last one hundred years, and conversations about trauma have reached the mainstream. There are numerous incredible resources, many outside of the scope of this Article, for any person who is interested in learning more about trauma. The depth and breadth of knowledge on trauma cannot be understated and, may in fact, be overwhelming to a law professor early in their journey to become more trauma informed. With that in mind, this section is meant to be a foundational “crash course” in trauma education.

16. See Katz, supra note 13, at 32 (“While psychologists, social workers and other mental health professionals are trained in trauma and trauma-informed practice as part of their professional education, traditional legal education, other than in some law school clinics, usually does not focus on trauma-informed practice.”); see also Katz & Haldar, supra note 13, at 361 (“Although there is a body of clinical legal education literature devoted to the value of teaching and developing law students’ empathy toward their clients, less attention has been devoted to the importance of teaching trauma-informed practice, the pedagogy of teaching law students to recognize and understand trauma, and the effect of vicarious trauma on law students (and attorneys) who work with clients who have experienced serious trauma.”). Unfortunately, as a result, the vast majority of currently practicing lawyers and judges likely did not receive education in law school on trauma and must take this learning on themselves. See GABOR MATÉ & DANIEL MATÉ, THE MYTH OF NORMAL: TRAUMA, ILLNESS, AND HEALING IN A TOXIC CULTURE 489 (Avery 2022) ("[L]egal training leaves the average lawyer or judge even more woefully trauma-ignorant than their medical counterparts.").

17. See, e.g., Norman B. Schmidt et. al., Exploring Human Freeze Responses to a Threat Stressor, 39 J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIATRY 292, 292 (2008) (“The phrase ‘fight or flight’ was coined . . . in the 1920s to describe key behaviors that occur in the context of perceived threat.”).


19. See, e.g., MARK WOLYNN, IT DIDN’T START WITH YOU: HOW INHERITED FAMILY TRAUMA SHAPES WHO WE ARE AND HOW TO END THE CYCLE 1 (2017) (exploring how trauma is passed from one generation to the next); McCallum, supra note 14 (hosting conversations related to trauma-informed lawyering).
A. Trauma-Informed Defined

“Trauma-informed” is a term that is widely used and often not clearly defined. For the purposes of this Article, a trauma-informed approach is one that seeks to ameliorate the conditions that trauma creates by intentionally creating the safe, stable, predictable conditions that were not present when the trauma occurred. A trauma-informed approach recognizes that trauma responses are maladaptive behaviors and thus, a trauma-informed law professor strives to help law students who may suffer from adverse effects of trauma to have a less reactive stress response system. At their core, trauma-informed professors make every effort to “first, do no harm” and then minimize risk for inadvertent re-traumatization in their courses.

In recent years, “trauma-informed” has become an aspirational principle that, at times, is nothing more than a hollow buzzword. To be trauma-informed is certainly more than merely being nice and respectful to people, although that is a part of it. And, while being informed about trauma, its origins, and its effects, is a part of being trauma-informed, a trauma-informed approach is about more than merely being informed about trauma. Because a trauma-informed person has an understanding of trauma and how it manifests, when confronted with the potential manifestation of trauma, they move away from guilt, shame, and blame and asks the quintessential trauma-informed question, “what happened to you?” in place

20. See Perry & Winfrey, supra note 18, at 28.

21. Janise Carello & Lisa D. Butler, Practicing What We Teach: Trauma-Informed Educational Practice, 35 J. Teaching Soc. Work 262, 265–66 (2015) (discussing how professors should accommodate traumatized students). Even when individual professionals aim to help, they can “unintentionally retraumatize survivors through negative statements, behaviors, and attitudes.” Negar Katirai, Retraumatized in Court, 62 ARIZ. L. REV. 81, 88–89 (2020) (explaining re-traumatization, also known as secondary victimization, as “the experience of survivors who encounter ‘victim-blaming attitudes, behaviors, and practices’ from service providers and institutions ‘which result in additional trauma.’”).

22. See Jessica D. Cless & Briana S. Nelson Goff, Teaching Trauma: A Model for Introducing Traumatic Materials in the Classroom, 18 ADVANCES SOC. WORK 25, 25 (2017) (noting that “trauma” has become a cultural buzzword); see also Christopher Menschner & Alexandra Maul, Brief: Key Ingredients For Successful Trauma-Informed Care Implementation, 2016 CTR. FOR HEALTH CARE STRATEGIES, 1, 11 (“There is [a] disagreement about the need for a standard definition of trauma and trauma-informed care terminology.”).

23. See Cless & Goff, supra note 22, at 25, 26 (detailing components of trauma-informed care); see also Katz & Haldar, supra note 13, at 363 (framing the “four hallmarks of trauma-informed legal practice [as]: (1) identifying trauma; (2) adjusting the lawyer-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma.”).
of “what is wrong with you?”

The term “trauma-informed” has been most commonly used in medical and mental health settings and in prevention and intervention programs. However, its use has expanded to various disciplines, settings, and systems, including education, child welfare, first responders, health care, juvenile justice, and social work. This Article draws on scholarship from multiple fields, including law, as a foundation for the discussion on trauma-informed pedagogy. Given the complexities of trauma, perfecting a trauma-informed approach to teaching doctrinal courses is much easier said than done. At the same time, intentionally applying simple trauma-informed principles to one’s teaching is not complicated. Perfect should not be the enemy of good in the embodiment of a trauma-informed approach. This Article aims to help professors identify the measures they already take that are consistent with a trauma-informed approach, and, once identified, to empower professors to strengthen those skills and identify new tools to become even better.

Specifically, the final section of this Article explores the application of the SAMHSA’s tenets (“the tenets”) of trauma-informed care to doctrinal law school courses. The tenets are safety; trustworthiness and transparency; peer support; collaboration and mutuality; empowerment, voice, and choice; and recognizing cultural, historical, and gender issues. Similar to Katz and Haldar’s first hallmark of a trauma-informed legal practice, the successful implementation of these tenets requires a foundational understanding of trauma.

B. Trauma Defined

To implement a trauma-informed approach in any setting, one must begin by becoming informed about trauma. On its most basic level, trauma occurs

24. See Menschner & Maul, supra note 22, at 2 (discussing benefits of trauma-informed approaches); see also Perry & Winfrey, supra note 18, at 29.

25. See Cless & Goff, supra note 22, at 26 (discussing history of the term “trauma-informed”).


27. To this extent, the paragraph is modeling a trauma-informed approach. It (rightfully) presumes the reader already has strengths and capacities to build on as a trauma-informed lawyer or professor. It then empowers the reader to embrace these strengths and become even more trauma-informed with the knowledge gained or the ideas that resonate with the reader in the remainder of this Article.

28. See SAMHSA’s CONCEPT OF TRAUMA, supra note 8, at 23–24, 96, 123.

29. Cless & Goff, supra note 22, at 25–26; see also Katz & Haldar, supra note 13, at 363.
when an event happens to an individual or group, over which they have no control and little power to change their circumstances, which overwhelms their ability to cope.\(^{30}\) While bad things a person experiences have the potential to turn into trauma, not all bad things result in trauma. It is important that law professors recognize that there is a difference between events that are potentially traumatic experiences and experiences that lead to actual trauma. This is because people experience different outcomes, for a variety of reasons (some understood, some still unknown) and “bracket creep” is a concern as conversations about trauma become more and more mainstream.\(^{31}\)

I. Potentially Traumatic Events

While many events are potentially traumatic, not all potentially traumatic events experienced by individuals lead to ongoing trauma responses. This Article uses the phrase “potentially traumatic event” (“PTE”) to recognize that people may exhibit drastically different responses to the same or similar experiences.\(^{32}\) An event that is a traumatic stress event for one person may be just an acute stress event for another person.\(^{33}\) The difference between an acutely stressful event and trauma is how the person experiences the event and how it affects their ability to cope.\(^{34}\) PTEs are common. Most people will be exposed to at least one PTE in their lifetime severe enough to meet the criteria from the *Diagnostic and Statistical Manual of Mental Disorders* for a psychological trauma.\(^{35}\) Further, fight, flight, freeze, or fawn reactions

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30. Bessel van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* 21 (2014); SAMHSA’s *Concept of Trauma*, supra note 8, at 7.

31. Richard J. McNally, *The Expanding Empire of Posttraumatic Stress Disorder*, 8 MEDSCAPE GEN. MED. 9, 9 (2006). Bracket creep refers to a conceptual framework of trauma whereby ordinary stressors are now deemed capable of producing post-traumatic stress disorder. *Id.* Risks associated with bracket creep include less credibility for PTSD diagnosis and over-medicalization of normal emotional responses to stress. *Id.*

32. George A. Bonanno et al., *Resilience to Loss and Potential Trauma*, 7 ANN. REV. CLINICAL PSYCH. 511, 512 (2011). Prospective and longitudinal research supports the phenomenon that individuals’ reactions to PTEs differ, for instance, “[s]ome people feel overwhelmed. Others struggle for months and then gradually recover, while still others manage to continue functioning at normal levels even soon after the event and appear resilient. Indeed, the marked variability in adaptation to such events suggests that the commonly used term “traumatic” is a misnomer. Rather, such events are more appropriately referred to as “potentially traumatic events” or PTEs.” *Id.*

33. SAMHSA’s *Concept of Trauma*, supra note 8, at 61; Perry & Winfrey, supra note 18, at 102.

34. Perry & Winfrey, supra note 18, at 102.

35. Bonanno et al., supra note 32, at 512.
in direct response to direct harm are normal and adaptive. Problems arise when individuals experience maladaptive trauma responses triggered when no direct harm is present.

It then follows that many people experience events over which they have no control, with little power to change their circumstances, but remain able to effectively cope. The SLSWB results reflect this concept. Whereas over eighty percent of students have experienced PTEs, only about a quarter of those students meet the criteria to be evaluated for PTSD.

2. Trauma

Modern research about traumatic stress and the effects of trauma has existed since the early 1970s. Over the past fifty years, trauma has been widely researched. From this research, we know that when PTEs happen without the buffer of supportive connections or the availability of healing practices, brain chemistry changes in fundamental ways. Understood through this lens, trauma is more than just a past event. Instead, it is the imprint that such an experience leaves on the mind, brain, and body. Trauma can evoke feelings of fear, terror, helplessness, hopelessness, and despair. These intense feelings are often subjectively experienced as a threat to one’s own survival. Put another way, trauma is an individual’s psychopathological reaction to a PTE.

The most common diagnosable traumatic stress responses are PTSD, major depressive disorder, and complicated grief. These traumatic stress reactions account for the subset of people who experience PTEs and suffer lasting psychological difficulties as a result. Greater exposure to PTEs,

36. See id. at 515–16 (noting that while PTEs are common, PTSD is typically observed in only five to ten percent of people who experience PTEs and only ten to fifteen percent of bereaved people will experience chronically elevated grief).
37. See Jaffe et al., supra note 1, at 468.
38. See id.
39. Van der Kolk, supra note 30, at 21 (explaining the field initially studied the effects of trauma in war veterans).
40. Perry & Winfrey, supra note 18, at 102.
42. Van der Kolk, supra note 30, at 21.
43. Hostinar & Gunnar, supra note 41, at 35.
44. Bonanno et al., supra note 32, at 513, 529.
45. Id. at 513.
46. See id. at 520 (citing various risk factors are associated with trauma as a result
being in immediate physical danger, and/or witnessing death or serious injury to others, loss of social and economic resources, and past and current life stress are also associated with poorer psychological adjustment. Trauma is exacerbated by situations and circumstances that cause fear, stress, and anxiety.

3. Pair of ACEs Model

Experiencing PTEs is associated with an increased risk of adverse outcomes. Groundbreaking research in the mid-1990s into Adverse Childhood Experiences (“ACEs”) showed a causal connection between experiencing specific adverse events in childhood and resulting adverse health and social outcomes.49 The original ACEs research demonstrates a connection between a greater number of ACEs and “high-risk” behaviors (such as substance use and alcoholism).50 These high-risk behaviors are correlated with a greater number of ACEs which predispose individuals to have more interaction with legal systems.51 More recent research also shows a connection between increased ACE scores and criminal behavior.52

ACEs is a useful tool for understanding the types of events that can lead to poor outcomes in several areas. At the same time, it focuses primarily on discrete events that happen in an individual’s life. To truly understand the effects of trauma, it is helpful to also consider the role of environment and systems as we think about trauma. The “Pair of ACEs” model recognizes that both adverse childhood experiences and adverse community experiences contribute to trauma.53 Things like mass incarceration through the criminal

of experiencing a PTE). Personality traits, including negative affectivity and ruminative response style, are associated with increased risk. Id.

47. Id.

48. SAMHSA’S CONCEPT OF TRAUMA, supra note 8, at, 86.


51. Wyrick & Atkinson, supra note 3, at 1 (noting risk factors include risk for further victimization, delinquency and adult criminality, substance abuse, poor school performance, depression, and chronic disease).


53. HOWARD PINDERHUGHES ET AL., PREVENTION INST., ADVERSE COMMUNITY EXPERIENCES AND RESILIENCE: A FRAMEWORK FOR ADDRESSING AND PREVENTING
justice system and family separation through child welfare and immigration systems also weaken communities and diminish their strength. This Pair of ACEs model acknowledges that trauma is not caused purely by individual experiences and is a helpful framework for understanding how the experience of PTEs and adverse experiences can compound and increase the likelihood that one will experience trauma as a result.54

C. Trauma Caused by Legal Systems

In addition to being full of people who have extensive trauma histories, our legal systems contribute to adverse individual and community experiences.55 As such, for many people who interact with the legal system, their interaction with the legal system itself represents an event that overwhelms their ability to cope, and over which they have little, if any, control, and may be traumatic in and of itself.56 Our legal systems frequently traumatize and retraumatize people who interact with them.57 For example, victims are retraumatized by their participation in court proceedings.58 Perpetrators of criminal behavior are also traumatized by their interactions with legal systems, despite how our systems are loathe to acknowledge the

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54. See SAMHSA’S CONCEPT OF TRAUMA, supra note 8, at 85 (noting that “[w]hen individuals experience multiple traumas, prolonged and repeated trauma during childhood, or repetitive trauma in the context of significant interpersonal relationships, their reactions to trauma have unique characteristics.” (citation omitted)).

55. See Catherine D.P. Duarte et al., Policy Determinants of Inequitable Exposure to the Criminal Legal System and Their Health Consequences Among Young People, 110 AM. J. PUB. HEALTH S1, S45 (2020); see also MATÉ & MATÉ, supra note 16, at 489 (“In North America, and in many parts of the world, the current model [of criminal justice systems] should more accurately be called a ‘trauma-punishing-and-inducing system.’”).

56. See Katirai, supra note 21, at 88–89. For example, the legal system’s destruction of families through our criminal legal system, family regulation system, and immigration system oppresses communities and diminish their strength. Wrongful conviction, mass incarceration, and police brutality in our criminal legal systems all are PTEs.

57. See id. at 89–90, 102, 106.

58. See id. at 102 (noting that abusive partners use our court systems as a means to inflict additional abuse); see, e.g., WASH. REV. CODE § 26.51.010 (2022) (“Court proceedings can provide a means for an abuser to exert and reestablish power and control over a domestic violence survivor long after a relationship has ended. The legal system unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and financial devastation.”); Evans & Graves, supra note 3, at 5 (finding that our juvenile justice system harshly and more frequently punishes children who are also subjects of dependency proceedings that woefully fail to help them).
trauma of offending.\textsuperscript{59} Our criminal justice and child protection systems disproportionately harm people of color, and this systemic racism is often experienced as an adverse community experience.\textsuperscript{60} Arguably, at times lawyers may even experience their work as a trauma given the adversarial and high stakes nature of their interactions coupled with the level of power and control courts have over attorneys’ lives.

\textit{D. Vicarious Trauma}

Trauma does not just impact those directly exposed to PTEs. It is well documented that traumatic stress also impacts those who have indirect exposure. Professionals who work with individuals with trauma histories often experience traumatic responses as if they themselves were experiencing the trauma.\textsuperscript{61} This Article uses the term “vicarious trauma” to explain this phenomenon. Vicarious means “experienced or realized through imaginative or sympathetic participation in the experience of another;”\textsuperscript{62} when paired with the word trauma, the term “vicarious trauma” highlights the reality that the mere imagining of and sympathizing with another person’s trauma can evoke traumatic stress responses. Thus, vicarious trauma refers to the “harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to their clients’ graphic and/or traumatic material.”\textsuperscript{63} This Article relies on the term vicarious trauma as a matter of preference over other similar terms because,

\begin{itemize}
\item \textsuperscript{59} See McCallum, \textit{supra} note 14. The concept of the trauma of offending refers to the recognition that people who cause harm to others may experience the causing of harm a PTE too. See \textit{The Trauma-Informed Lawyer: Community is Key to Healing}, SIMPLECAST (Sept. 7, 2022), https://thetraumainformedlawyer.simplecast.com/episodes/community-is-key-to-healing [https://perma.cc/A7TT-HWA7] (discussing the relationship between alcohol and offending and noting that many people who suffer from substance use disorders cause harms when they are using that they would never cause when they are sober). I have also observed this phenomenon in mothers in the child protection system who have harmed their children (who they love very much), and as a response feel immense guilt, shame, and sadness that can result in ongoing trauma responses.
\item \textsuperscript{60} See Paul Lanier, \textit{Racism is an Adverse Childhood Experience (ACE)}, UNC: THE JORDAN INST. FOR FAMS. (July 2, 2020), https://jordaninstituteforfamilies.org/2020/racism-is-an-adverse-childhood-experience-ace/.
\item \textsuperscript{61} Andrew P. Levin et al., \textit{Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients}, 199 J. NERVOUS & MENTAL DISEASE 946, 946 (2011).
\end{itemize}

https://digitalcommons.wcl.american.edu/jgspl/vol31/iss3/1
on its face, it most broadly represents the multitude of risks law students and lawyers encounter in their legal education and practice.64

An ability to recognize and address vicarious trauma, in oneself and others, is central to a trauma-informed approach. Signs and symptoms of adverse effects of vicarious trauma include: feeling helpless and hopeless; a sense that one can never do enough; hyper-vigilance; diminished creativity; inability to embrace complexity; minimizing; chronic exhaustion or physical ailments; inability to listen or deliberate avoidance; dissociative moments; a sense of persecution; guilt; fear; anger and cynicism; inability to empathize/numbness; addictions; and grandiosity (an inflated sense of importance related to one’s work).65 Vicarious trauma is a normal and foreseeable experience for helping professionals, including lawyers.66 Like trauma, vicarious trauma can be healed. As a part of the healing process, the experience needs to be acknowledged and normalized such that people who experience these signs and symptoms don’t feel guilt or shame for being impacted.67

A law professor who aims to be trauma-informed must also understand the significance of vicarious trauma. Because law professors are likely to interact with students and clients that experience trauma and systems that induce trauma, they too are at risk for experiencing vicarious trauma themselves. Additionally, law professors, often by necessity, teach traumatic material that may inadvertently, elicit vicarious trauma responses in

64. Vicarious trauma is often used interchangeably with other related terms, including “secondary traumatic stress,” “compassion fatigue,” and “burnout.” For an excellent and comprehensive explanation on the differences overlaps and imprecise boundaries between these terms, see Harris & Mellinger, supra note 13, at 744–47. Understanding the precise overlap, similarities, and differences of these terms is not necessary for purpose of this Article, although, personally, I wish the term “compassion fatigue” would be used less often. On its face, it implies fatigue results from compassion, and I fear it discourages the act of fostering compassion. Practitioners of mindfulness might say that practicing compassion (for self and others) is an extremely powerful antidote to protecting against the negative effects of vicarious trauma. John Engel, Compassion Meditation, Antidote for Compassion Fatigue, Traumatic Stress Inst. (Apr. 12, 2021), https://blog.traumaticstressinstitute.com/blog/rc-monthly-mindfulness-blog-come-fill-your-cup [https://perma.cc/RN8Z-YMV2]. Based on my own personal experience, I would encourage people to lean into, and not fear or shy away from, strengthening compassion towards others.

65. See Lipsky & Burk, supra note 6, at 47–113. This book has been paradigm shifting in my own work and understanding of trauma stewardship. I frequently assign it to law students.

66. Netzel, supra note 10, at 23.

67. Id.
themselves and students. Understanding the risks of vicarious trauma can help professors take preventative measures to guard against it, and respond appropriately when it presents itself.

E. Resilience and Recovery

Discussions about trauma are not complete unless they include a discussion on resilience. Experiencing resilience after a PTE is normal and the most common outcome. Another outcome of PTEs is recovery. Researchers have identified various risk and resilience factors related to personality traits, demographics, amount of trauma exposure, available resources, past and current life stress, worldview, and emotions associated with responses to PTEs.

While resilience and recovery are distinct outcomes of PTEs, both reflect that exposure to PTEs does not leave a person doomed to a life of suffering. Thus, because people have a great capacity for resilience in the face of trauma, a trauma-informed approach should not make assumptions about any

69. Bonanno et al., supra note 32, at 513. For the purpose of this Article, resilience is “an outcome pattern following a PTE characterized by a stable trajectory of healthy psychological and physical functioning.” Id.
70. Id. at 511–12.
71. Id. at 515. For the purpose of this Article, recovery is “an outcome pattern characterized by elevated symptoms and functional impairment after the PTE, followed by a gradual return to baseline functioning.” Id. Recovery usually occurs within one to two years of experiencing the PTE.
72. Id. at 519–22. Resilience is not associated with specific dominant factors, but instead, “various risk and resilience factors coalesce in a cumulative or additive manner, each contributing or subtracting from the overall likelihood of a resilient outcome.” Id. at 519. For example, emotional support, instrumental support (“assistance with the tasks of daily living”), having a positive worldview, and arriving at a meaning from the PTE are all associated with resilient outcomes. Id. at 521.
73. Id. at 515 (“An increasing number of studies have demonstrated that resilience and recovery can be mapped as discrete and empirically separable outcome trajectories in response to widely varying acute stressors . . . ”).
74. This explanation on resilience and recovery as common outcomes to PTEs is in line with the results in the SLSWB which reveal that while eighty percent of survey respondents experienced a PTE, only twenty-six percent met criteria to be screened for PTSD. Jaffe et al., supra note 1, at 468. It follows that many survey respondents experienced either resilience or recovery as an outcome to their PTE. See Bonanno et al., supra note 32, at 515 (“The capacity for resilience is part and parcel of ordinary human capabilities, as witnessed by the substantial proportion of people who endure PTEs with relatively small effects on their everyday lives.” (citations omitted)).
person who has experienced a PTE. Further, recovery is a hopeful outcome in response to PTEs because it recognizes that people can suffer from trauma and still heal from trauma. A trauma-informed approach seeks to help in the healing process or, at a minimum, not interfere in the healing process.

F. Post-Traumatic Growth

Another encouraging concept that is a necessary part of any complete conversation on trauma-informed practices is post-traumatic growth. Post-traumatic growth refers to the possibility of growth and wisdom that emerge from the struggle with trauma. The phenomenon is not unique to any particular kind of person or exposure to a specific PTE. Instead, it represents a transformational response to trauma—above and beyond mere resilience as a trauma outcome—and refers to changes in people that go beyond an ability to avoid being harmed by highly stressful circumstances; it involves a movement beyond pre-trauma levels of adaptation.

An awareness of post-traumatic growth is an essential element to a trauma-informed approach. Although those with trauma histories are more likely to experience problems stemming from those histories, this by no means suggests that they will experience inhibited normative functioning. To the contrary, this is to suggest that some of those with the unfortunate experience of struggling in the aftermath of a PTE will possess unique and valuable wisdom born from their struggle. A trauma-informed approach recognizes the potential growth and wisdom born from trauma as a unique strength some trauma survivors may possess. It goes beyond stigmas often associated with those who have been victimized and takes a strengths-based approach to


76. Tedeschi & Calhoun, supra note 75, at 3.

77. Id. at 5. (“The affective quality of the learning and change in posttraumatic growth may distinguish it from other normative developmental processes that lead people to report that they have been improving or maturing over time. Because of the affect involved, and the restructuring of the fundamental components of the assumptive world, growth seems to have a qualitative and quantitative difference in trauma survivors. Their attributions that growth was accomplished because of, and in the aftermath of, the struggle with trauma may be acknowledgments that much cognitive processing and affective engagement went into the changes they report. Research indicates that when persons who have experienced severe trauma have been compared with those who do not report trauma, positive personal changes are reported at a reliably higher level among trauma survivors.”).

78. See, e.g., Reavis et al., supra note 52, at 48.
working with people who have experienced PTEs.\textsuperscript{79}

\textbf{G. Vicarious Resilience}

Yet another encouraging concept is vicarious resilience. In the same way that vicarious trauma is a normal and foreseeable risk for professionals who work closely with those who experience trauma, vicarious resilience is also a recognized phenomenon for people who work closely with those who experience trauma.\textsuperscript{80} Qualitative research has shown that “helpful professionals who are empathetic towards trauma survivors and their harrowing accounts experience a vicarious [post-traumatic growth] which causes changes in their philosophy of life, goals, and perspectives.”\textsuperscript{81} Vicarious resilience brings hope to the conversation because it highlights the benefits, in addition to the risks, of working with those who have experienced trauma. While the conversation on vicarious trauma is necessary to normalize the experience,\textsuperscript{82} it is only one part of the conversation because there is also a significant personal benefit derived when one can vicariously connect with the post-traumatic wisdom of the people they seek to serve.\textsuperscript{83}

\textbf{H. Trigger and Trauma Response}

Another term that is used often and often misunderstood is “trigger.” For purposes of this Article, a trigger is an evocative cue that reminds the brain

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\textsuperscript{79} But see Tedeschi & Calhoun, \textit{supra} note 75, at 6–7 (“[T]he presence of growth does not necessarily signal an end to pain or distress, and usually it is not accompanied by a perspective that views the crisis, loss, or trauma itself as desirable. Many persons facing devastating tragedies do experience growth arising from their struggles. The events themselves, however, are not viewed as desirable-only the good that has come out of having to face them.”).

\textsuperscript{80} Pilar Hernandez-Wolfe, \textit{Vicarious Resilience: A Comprehensive Review}, 66 REV. DE ESTUDIOS SOCIALES 9, 10 (2018). While research on vicarious resilience has been limited, it is a documented phenomenon in psychotherapists, educators, and community leaders who work closely with people who have been victims of torture.

\textsuperscript{81} Id. at 13.

\textsuperscript{82} Megan Zwisohn et al., \textit{Vicarious Trauma in Public Service Lawyering: How Chronic Exposure to Trauma Affects the Brain and Body}, 22 RICH. PUB. INT. L. REV. 269, 288 (2019) (providing the article on vicarious trauma in public service lawyering is “not meant to scare anyone away from a legal career of public service. The message is that those who have similar experiences are not alone or crazy; these experiences are simply a product of the valiant work they have chosen to do. This type of career literally changes the brain. It affects one’s personality, relationships, and world outlook. The only way to have a very long career in public service is to understand how and from where those changes are coming.”).

\textsuperscript{83} See Hernandez-Wolfe, \textit{supra} note 80, at 15.
or body of a traumatic experience.\textsuperscript{84} A “trauma response” is a reflexive coping mechanism to real or perceived trauma.\textsuperscript{85} A person in the midst of a trauma response is unable to emotionally regulate. Emotional regulation refers to a brain’s ability to control thoughts, feelings, and actions in service of one’s longer-term goals; the ability to think before acting or speaking; or to act consistent with ones values and goals.\textsuperscript{86} A person who has experienced trauma can become dysregulated when they are exposed to a trigger.\textsuperscript{87} When a person is triggered and they experience a loss of control because their brain shifts into survival mode, they are having a trauma response.\textsuperscript{88} Trauma responses can occur when there is no real or present threat and, as a result, trauma survivors often feel unsafe in their bodies, minds, and relationship with others.\textsuperscript{89}

Trauma responses are often categorized as fight, flight, freeze, or fawn.\textsuperscript{90} These responses, when they occur during a threatening situation, are reflexive adaptive coping mechanisms; however, when a trauma response occurs in response to a non-threatening situation, it is a maladaptive coping mechanism.\textsuperscript{91} A helpful psychological tool for understanding regulation and dysregulation is the “window of tolerance.”\textsuperscript{92} When a person is emotionally

\begin{itemize}
\item \textsuperscript{84} SAMHSA’s Concept of Trauma, supra note 8, at 68 (“A trigger is a stimulus that sets off a memory of a trauma or a specific portion of a traumatic experience.”).
\item \textsuperscript{85} Julie Nguyen, Fight, Flight, Freeze, Fawn: Examining the 4 Trauma Responses, MINDBODYGREEN (Sept. 11, 2021), https://www.mindbodygreen.com/articles/fight-flight-freeze-fawn-trauma-responses.
\item \textsuperscript{87} SAMHSA’s Concept of Trauma, supra note 8, at 66 (“[I]ntrusive thoughts and memories can easily trigger strong emotional and behavioral reactions, as if the trauma was recurring in the present.”).
\item \textsuperscript{88} Nguyen, supra note 85.
\item \textsuperscript{89} SUDIE E. BACK ET AL., CONCURRENT TREATMENT OF PTSD AND SUBSTANCE USE DISORDERS USING PROLONGED EXPOSURE (COPE): PATIENT WORKBOOK app. at 138–40 (2014). Triggers eliciting trauma responses may include places, times of day, certain smells or noises, or any other situation that evokes the circumstances under which the initial trauma occurred. Id. Some people reexperience traumatic events through flashbacks and nightmares. Id. Others are in a state of continuous vigilance and may feel on guard, jumpy, jittery, shaky, nervous, on edge, be easily startled, and have trouble concentrating or sleeping. Id. Anger, guilt, shame, grief, depression, anxiety, and negative self-imagine and world view are all normal responses to trauma. Id.
\item \textsuperscript{90} See Nguyen, supra note 85.
\item \textsuperscript{91} Id.
\item \textsuperscript{92} Frank Corrigan et al., Autonomic Dysregulation and the Window of Tolerance
regulated, they are within their window of tolerance. When a person is outside their window of tolerance they are dysregulated. People experiencing dysregulation may be emotionally flooded, reactive, impulsive, hypervigilant, fearful, or angry. They may experience intrusive imagery and affects, racing thoughts, flashbacks, and nightmares. They may exhibit high-risk behavior, be cognitively dissociated, or otherwise have an inability to think. Or they may appear collapsed with disabled defensive responses, and/or feel helpless and hopeless. In sum, triggers can cause a person to emotionally dysregulate such that they are well outside of optimal functioning.

IV. WHY LAW PROFESSORS NEED TO ADOPT TRAUMA-INFORMED PRACTICES

Trauma and vicarious trauma, as well as their counterparts resilience and vicarious resilience, are prevalent in legal systems and law school. This section explores the concepts highlighted above as they exist in law schools. It aims to deepen understanding about trauma in law school and argues that it is imperative for law professors to adopt trauma-informed practices.

A. Reflections on the SLSWB Data

At first glance, the SLSWB data on law students and trauma is staggering and, as the authors describe it, “surprising.” Yet, there is room for hope buried in these results. First, while those without foundational knowledge about trauma might be shocked to learn that eighty percent of responding law students have experienced a PTE, this number is not dissimilar from the prevalence of PTE exposure in the general population. If anything, the statistics demonstrate that law students are not exceptional in avoiding PTEs in their lifetime. Thus, the SLSWB data finally illuminates a problem that

Model of the Effects of Complex Emotional Trauma, 25 J. PSYCHOPHARMACOLOGY 17, 17 (2011) (“One model for understanding and explaining the fluctuations in clinical features that can occur unpredictably and rapidly in the disorders that arise from the effects of severe trauma is the ‘Window of Tolerance’ model of autonomic arousal. [Psychiatrist and neurobiologist] Siegel proposes that between the extremes of sympathetic hyperarousal and parasympathetic hypoarousal is a ‘window’ or range of optimal arousal states in which emotions can be experienced as tolerable and experience can be integrated.” (citations omitted)).

93. Id. at 18 (discussing the effects of trauma on student cognition and behavior).
94. Jaffe et al., supra note 1, at 468.
95. Id. at 468 (addressing implications of trauma data among law student survey respondents); Bonanno et al., supra note 32, at 512 (discussing population-based studies related to trauma and resilient outcomes).
has always existed.

Second, while it is alarming to learn that over a quarter of respondents who have experienced PTEs suffer such that they should be screened for PTSD, the prevalence of students who suffer while in law school is not new. Indeed, it has been known since the late 1980s that law students have an increased risk of mental health issues over similarly situated people in other professional programs. These mental health issues in law students and lawyers have persisted and are well-documented. The legal field has been aware of general mental health issues for at least 35 years, so the fact that PTSD is one of these issues for law students in 2021 is only cause for new alarm to the extent that the legal profession (despite significant efforts) has been slow to make meaningful progress to address the issue. An additional hopeful reframe on this statistic: three quarters of responding students who have experienced PTEs do not meet the criteria to necessitate screening for PTSD. While it cannot be assumed that the failure to meet the criteria to necessitate screening for PTSD means these students are thriving, it is, at a minimum, in line with research that resilience and recovery are the most common outcomes of exposure to PTEs.

Finally, given that fifty percent of respondents were motivated to attend law school, in part, because they experienced a trauma or injustice, there is reason to believe some students have unique wisdom gained from the

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97. Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 48 (2016) (revealing alarming data on attorney mental health including as many as thirty-six percent of responding attorneys having problematic drinking behavior, struggling with depression and nineteen percent struggling with severe anxiety); Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 116 (2016) (revealing that in the 2016 SLSWB survey forty-three percent of responding students reported binge drinking, seventeen percent experienced depression, fourteen percent experienced severe anxiety, and twenty-three percent had mild or moderate anxiety); see also Jaffe et al., supra note 1, at 495–96 (revealing that double the number of students surveyed in 2021 reported a diagnosis of depression or anxiety compared to students surveyed in 2014, but fewer students engaged in binge drinking).

98. See Jaffe et al., supra note 1, at 445 (discussing the inflexibility of law schools in responding to student needs).

99. Bonanno et al., supra note 32, at 515.

100. Jaffe et al., supra note 1, at 496
hopeful phenomenon of post-traumatic growth. Thus, if law professors can learn to teach in a trauma-informed way and minimize retraumatization of these students, the legal profession, the clients it serves, and the systems it upholds can capitalize on the benefit of lawyers who embody post-traumatic wisdom. Anecdotally, I have observed students go on to excell in their career perhaps because of the wisdom gained and resilience developed in experiencing PTEs which helped them develop a special skillset for working in challenging situations in a challenging profession.

B. Teaching Traumatized Students

As observed by Katz, a leading scholar in the area of trauma-informed lawyering, “[a]s law professors in the midst of the pandemic, we no longer have to wonder whether our law students have been exposed to trauma, but rather how our students have been and will continue to be impacted by trauma.” Many law students arrive at the door of law school having experienced PTEs, ACEs, and adverse community experiences, some of whom with resulting trauma. Law school is known to cause fear, stress, and

101. Tedeschi & Calhoun, supra note 75, at 3
102. I have been deeply inspired by a number of students in this regard who have been courageous enough to share their stories publicly and are all changing the world for the better. See generally Kirsty Liedman, A Life in the Law: Fostering A Career Helping Families, MITCHELL HAMLIN SCH. L. (Apr. 5, 2022), https://mitchellhamline.edu/news/2022/04/05/a-life-in-the-law-fostering-a-career-helping-families/ (trauma-informed family law attorney Kirsty Liedman experienced foster care in her youth); Nancy Crotti, Family’s Experience with Legal Aid Attorney Inspires Student’s Work in Child Protection Clinic, MITCHELL HAMLIN SCH. L. (Jan. 1, 2019), https://mitchellhamline.edu/news/2019/01/01/familyys-experience-with-legal-aid-attorney-inspires-students-work-in-child-protection-clinic/ (family defense attorney Scotty DuCharme had significant interactions with courts as a child subject to court jurisdiction); Amber Goodwin, ‘I Was Expected to Be Married and Have Kids at 41. I Chose a Different Road and Couldn’t Be Happier,’ NEWSWEEK (June 23, 2021), https://www.newsweek.com/41-expected-kids-different-path-happy-1602887; SBA President Amber Goodwin Attends White House Event on Gun Violence Prevention, MITCHELL HAMLIN SCH. L. (Apr. 8, 2021), https://mitchellhamline.edu/news/2021/04/08/sba-president-amber-goodwin-attends-white-house-event-on-gun-violence-prevention/ (gun reform advocate Amber Goodwin was arrested at a protest in her twenties); Samantha Hoanglong, A Voice for Change: Alum Seeks to Destigmatize Criminality, MITCHELL HAMLIN SCH. L. (Sept. 14, 2021), https://mitchellhamline.edu/news/2021/09/14/a-voice-for-change-alum-seeks-to-destigmatize-criminality/ (criminal justice reform advocate and podcast host Nadine Graves was involved in the juvenile justice system as a teenager).

103. Katz, supra note 13, at 18 (characterizing the onset of COVID-19 as a collective trauma experienced globally).
Given that trauma is exacerbated by situations and circumstances that cause fear, stress, and anxiety, trauma is likely to be exacerbated by the current state of legal education. Thus, if law professors do not wish to cause further harm to already traumatized students, it is critical that law professors develop pedagogy consistent with trauma-informed practices.

In light of the SLSWB data on the prevalence of law students who have experienced trauma, this Article furthers the idea that legal educators must consider the way students’ documented trauma histories are impacted in the law school classroom. This is not to say that law professors have intentionally sought to cause harm to students. Instead, it is an acknowledgement that impact is different than intent. Nor is it to shame law professors for having utilized pedagogical practices that have unintentionally triggered trauma responses from students. Rather, this Article seeks to encourage law professors to “do the best you can until you know better. Then when you know better, do better.”

Law professors have a responsibility to both understand trauma and aim to be trauma-informed to adequately serve their students who are known to have experienced trauma before coming to law school. Based on the SLSWB data, one would be hard pressed to find a law professor who will not encounter students at risk for experiencing adverse effects associated with experiencing a PTE. Some professors are fortunate enough to have earned student trust such that students share their need for help. Yet, in many instances, all professors know is that they are guaranteed to have students with trauma histories, without confirmation of who the students are, their

104. Jeannie Suk Gersen, The Socratic Method in the Age of Trauma, 130 HARV. L. REV. 2320, 2331–32 (2017) (suggesting that law school instructors have the power to trigger traumatic life experiences for students through the use of Socratic cold-calls).
106. Jaffe et al., supra note 1, at 467 (discussing additional survey questions included in the SLSWB to promote greater understanding of students’ experiences and challenges in dealing with trauma).
107. See Garson O’Toole, You Did What You Knew How to Do, and When You Knew Better, You Did Better, QUOTE INVESTIGATOR (Nov. 30, 2022), https://quoteinvestigator.com/2022/11/30/did-better/#more-442285 (exploring the origins of the quote which is often attributed to Maya Angelou).
108. Jaffe et al., supra note 1, at 484 (explaining that recent changes to the ABA standards have created a window of opportunity in which to better support law student well-being).
109. See id. at 468 (noting that over eighty percent of student respondents indicated that they have experienced some form of trauma).
specific triggers, or their resulting needs. As such, law professors must adopt
a trauma-informed approach as a matter of universal precaution by
implementing principles of universal design.110

1. Fight, Flight, Freeze, and Fawn Responses: Recognizing Trauma
Responses in Law Students

While this Article advocates adopting a trauma-informed approach as a
matter of universal precaution, it is also fundamental to understand the nature
of trauma responses and the broad spectrum of ways in which they
manifest.111 When a professor can identify potential trauma responses in
students, they may be more likely to ask the ultimate trauma-informed
question “what happened to you?” and, in turn, be more empathetic towards
their students’ behavior and performance issues in their classroom.112 This
section explores the trauma responses fight, flight, freeze, fawn, and the
adverse effects of vicarious trauma; specifically, how they manifest in law
students.

Regulation is a precursor to reasoning.113 An ability to reason is necessary
for law students. A student who is outside of their window of tolerance and
in the midst of any kind of trauma response is not in a position for optimal
learning.114 To do well as a law student, one must be able to effectively
access foundational cognitive tools like the ability to reason and problem

110. Universal Design for Learning (UDL) is a framework that “empowers educators
to proactively design curriculum and instruction so that all learners can increase their
brain power and accelerate their learning.” MIRKO CHARDIN & KATIE NOVAK, EQUIT.
BY DESIGN: DELIVERING ON THE POWER AND PROMISE OF UDL 2 (Corwin Press, Inc.
2020). UDL aims to ensure that “all students have equal access to teaching and learning.”
Id. at 9.

111. Larry Bohannon et al., Responding to College Students Who Exhibit Adverse
Manifestations of Stress and Trauma in the College Classroom, 5 FIRE: F. FOR INT’L
RSCH. IN EDUC. 66, 68–69 (2019) (highlighting policies centered on trauma-informed
pedagogy and noting ongoing impacts of trauma in classroom setting).

112. As world renowned neuroscientist and trauma expert Bruce Perry noted, “[o]ver
the years, I’ve found that seemingly senseless behavior makes sense once you look at
what is behind it.” PERRY & WINFREY, supra note 18, at 23; see also Katz, supra note
13, at 36 (discussing law student behaviors that may be due to traumatic stress).

113. PERRY & WINFREY, supra note 18, at 142 (discussing the sequence of
engagement, whereby an individual’s perceptions are sorted and processed through a
neural network that begins in the lower brain and rises to the cortex, the part responsible
for complex thinking); see also id. (explaining the series begins with the regulation of
sensory perceptions, proceeds to networking and relations, and culminates in reasoning).

114. Bohannon et al., supra note 111, at 69 (describing physical manifestations of
trauma and stress that inhibit optimal student performance in higher education).
solve, and the ability to access and retrieve memory. Trauma responses, which cause a person to dysregulate, can significantly interfere with success in law school. In even more simple terms, a student cannot access the smartest part of their brain when they are dysregulated. A regulated student can learn, a dysregulated student cannot. It follows that professors who are able to recognize dysregulation in their students, make efforts to keep students regulated in their classes, and correct course to help students regulate, will create circumstances for more optimal learning.

A general understanding of trauma responses is helpful for a professor adopting a trauma-informed stance. Much has been written about fight, flight, and freeze responses. Fight-or-flight responses are often discussed together because both are involuntary, hyperaroused states which cause a person to act before they think, resulting in an overwhelming tendency to act in response to an alarm. Fight responses are associated with anger. Flight responses are when an individual who has experienced trauma “may shift into episodes of overwhelming rage [in response to] situations or contexts that trigger cognitive or somatic reminders of past trauma.” Kasia Kozlowska et al., Fear and the Defense Cascade: Clinical Implications and Management, 23 HARV. REV. PSYCHIATRY 263, 269 (2015). Flight responses are when an individual who has experienced trauma seeks to “escape from situations or contexts that trigger cognitive or somatic reminders of past trauma.” Id. In the face of a threat or danger flighting and fighting are adaptive behaviors. They become maladaptive when they occur as a response to a trigger and not the original trauma. Bessel van der Kolk, Posttraumatic Stress Disorder and the Nature of Trauma, 2 DIALOGUES CLINICAL NEUROSCIENCE 7, 9, 11 (2000).

Freeze responses are mute, terrified, frozen defense states of hypoarousal. In the

115. See Perry & Winfrey, supra note 18, at 146 (discussing necessary tools for optimal learning).

116. See id. at 143 (explaining that the cognitive and somatic process of dysregulation prevents information relayed to an individual from getting to their cortex, which is the part of the brain that needs to activate for reasoning and rational communication).

117. Id. (reiterating that regulation precedes positive relations, which in turn is processed through reasoning).

118. Fight responses are when an individual who has experienced trauma “may shift into episodes of overwhelming rage [in response to] situations or contexts that trigger cognitive or somatic reminders of past trauma.” Kasia Kozlowska et al., Fear and the Defense Cascade: Clinical Implications and Management, 23 HARV. REV. PSYCHIATRY 263, 269 (2015). Flight responses are when an individual who has experienced trauma seeks to “escape from situations or contexts that trigger cognitive or somatic reminders of past trauma.” Id. In the face of a threat or danger flighting and fighting are adaptive behaviors. They become maladaptive when they occur as a response to a trigger and not the original trauma. Bessel van der Kolk, Posttraumatic Stress Disorder and the Nature of Trauma, 2 DIALOGUES CLINICAL NEUROSCIENCE 7, 9, 11 (2000).


120. Kozlowska et al., supra note 118, at 269 (explaining traumatized individuals often respond to various triggers by seeking to escape or by projecting their rage externally).

121. See Kozlowska et al., supra note 118, at 270 (characterizing the freeze response as a short-lived and transient state of hypoarousal in response to various stimuli); Trever R. Biles et. al., Should Catatonia Be Conceptualized as a Pathological Response to Trauma?, 209 J. NERVOUS & MENTAL DISEASE 320, 320-21 (2021) (linking
face of a threat or danger, these are adaptive behaviors. When the threat or danger is no longer present, they are maladaptive behaviors.

A more recent addition to the language around trauma responses is the “fawn” response. Fawning is a maladaptive “instinctual response associated with a need to avoid conflict and trauma via appeasing behaviors.” When a person exhibits a fawn response, they “seek safety by merging with the wishes, needs and demands of others.” They may behave “as if they unconsciously believe that the price of admission to any relationship is the forfeiture of all their needs, rights, preferences and psychological trauma and clinical signs of catatonia with rigidity and tonic immobility); Schmidt et al., supra note 17, at 293 (stating that individuals who experience the freeze response often feel a sense of paralysis, which is characterized by powerlessness, despite awareness or consciousness); see also Corrigan et al., supra note 92, at 18–19 (discussing approaches to trauma-informed treatment that support posttraumatic growth by targeting various symptoms and states of hyperarousal).

122. See Eve B. Carlson & Constance Dalenberg, A Conceptual Framework for the Impact of Traumatic Events, 1 TRAUMA, VIOLENCE, & ABUSE 4, 13 (2000) (noting that avoidance of situations that remind the person of the trauma, such as the place where it happened, are common in a person exhibiting a flight response); see also BACK ET AL., supra note 89, at 126 (explaining confrontations with scary situations sometimes trigger avoidant behaviors, which impedes regulation of sensory perceptions).


124. See Mandeville, supra note 123 (suggesting that the fawn response can manifest in children as a way of coping with an abusive parent or non-nurturing relationship).

125. See Pete Walker, The 4Fs: A Trauma Typology in Complex PTSD, http://petewalker.com/fourFs_TraumaTypologyComplexPTSD.htm (last visited Feb. 4, 2023) (describing the overwhelming tendency of fawn types to seek out codependent relationships); see also Schmidt et al., supra note 17, at 292–93 (observing that the flight and fight responses, and freeze response were coined in the mid-1920s and 1970s, respectively). There is significantly less empirical research on the fawn response compared to the fight, flight, and freeze responses, due to its novelty; none-the-less, it warrants conversation in this Article for purposes of better understanding how students might present to law professors, in light of the power dynamics involved, when they are impacted by trauma.
Fawning is a “maladaptive way of creating safety . . . by essentially mirroring the imagined expectations and desires of other people.”  

People who experience fawn responses may be harder to identify because of their appeasing nature. The fawn response often stems from a recognition that appeasing an abuser is one way to prevent abuse. It may be triggered in response to being involved in relationships with power differentials.

### Recognizing Fight Responses in Law Students

Law students in the midst of a fight response may present as combative. For example, a student who has an outburst of anger in a class discussion, especially around traumatic material, may be in the midst of a fight response. Further, a student who directs excessive anger at a professor or appears unwilling to accept constructive feedback and in turn, blames a professor instead of taking accountability for their own learning, may also be in the midst of a fight response. Fight responses can diminish physical and psychological safety in the classroom for the target of the response and observers of the interaction. When recognized through a trauma-informed lens, a professor can be careful not to get caught up in the emotion of being on the receiving end of a fight response. A calm and measured approach, which deescalates fight responses, can benefit the student having the trauma response and everyone else in the interaction, and, thus, clear the way to get all students the help they need. Aggressive behaviors in the classroom

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126. Schmidt et al., *supra* note 17, at 292–93 (noting a tendency of fawn types to forfeit or suppress their own socio-emotional needs for the sake of appeasing others).  
127. Sam Dylan Finch, *7 Subtle Signs Your Trauma Response is People Pleasing*, HEALTHLINE (Dec. 12, 2022), https://www.healthline.com/health/mental-health/7-subtle-signs-your-trauma-response-is-people-pleasing (suggesting the maladaptive behaviors of fawn types are often rooted in childhood upbringing).  
128. Mandeville, *supra* note 123 (describing typical ‘fawners’ as individuals who were conditioned by their primary caregivers to suppress self-expression).  
129. See Biles, *supra* note 121, at 322 (explaining fawn response is a defense mechanism that kicks in when the fight or flight response is rendered useless under the circumstances).  
130. Hunter, *supra* note 119, at 30 (recognizing manifestations of trauma responses in college students who appear combative or confrontational with instructors); *see also* National Child Traumatic Stress Network, Justice Consortium Attorney Workgroup Subcommittee, *The Impact of Trauma on the Attorney-Client Relationship*, 36 AM. BAR ASS’N CHILD LAW PRACTICE TODAY 1, 3 (2017) (“A client who suddenly becomes loud or combative may be going into ‘fight mode’ in order to keep herself safe by pushing others away.”).  
131. Katz, *supra* note 13, at 18 (suggesting that law professors have the transformative power to meaningfully support student well-being through trauma-informed practices).
should not be tolerated, but trauma-informed professors seek to stop aggressive behaviors with an eye to helping students all involved, without shaming and blaming what could be a trauma response.

**ii. Recognizing Flight Responses in Law Students**

Law students in the midst of a flight response may present as avoidant. For example, if a student is triggered by material, they may distance themselves from the triggering material intentionally or unintentionally. Poor attendance, low participation, and failing to complete assignments are all potential indicators that a student is having a flight response.132

When understood through a trauma-informed lens, avoidant behaviors are less likely to be misunderstood as lazy or complacent. This is especially true in law school where students spend a lot of time, money, and energy to obtain this degree after a record of academic success sufficient to get them through the admissions process.133 In acknowledging the possibility that avoidance of course work may be a trauma response and may be an “instance of self-protection rather than of resistance, or evidence of lack of preparation,” the professor may also feel benefit.134 Understanding avoidance through a trauma-informed lens makes it less about the professor and more about the past and outside circumstances of the student. In a classroom setting the flight response is easily masked by students, and often misunderstood by professors. Students rely so heavily on technology in the classroom that it can be hard for a professor to distill general distraction from trauma-response based disengagement. Depersonalizing the potential trauma response might help professors adjust their teaching style to fit the needs of their students.

132. *See Cless & Goff, supra* note 22, at 32 (observing that instructors can strategically implement check-ins with students who appear to be withdrawn or disengaged); *see also* Bohannon et al., *supra* note 111, at 69 (providing responses to trauma in higher education might include work avoidance, learned helplessness, and lack of self-efficacy).

133. The law school where I teach conducted an anonymous wellness survey where we asked our students “What would be most helpful to promoting your well-being?” One sobering student answer stood out to me: “If my professors were required to be cognizant of the fact that every single student in front of them has their future on the line. No one goes to law school for fun. No one who makes it through 1L is there because they can’t decide what they want to do. This is our lives. Our entire lives are riding on this degree. Don’t threaten us with those comments that solidify our deepest fears that we may let our families down and we may not make it.” (Survey on file with author).

134. Carello & Butler, *supra* note 21, at 270 (suggesting educators can incorporate trauma-informed practices in the classroom by previewing or disclosing any difficult content that may trigger mental or physical reminders of previous trauma).
iii. Recognizing Freeze Responses in Law Students

Law students in the midst of a freeze response may present as disengaged. For example, a student exhibiting a freeze response may be physically present but dissociated; unable to process or remember information.135 Students may give the all too familiar deer-in-the-headlights look, unable to answer when a professor poses a question.136 When recognized through a trauma-informed lens, a professor can be careful not to assume a student is unintelligent or unprepared just because a student is unable to engage in the classroom. In turn, a professor can recognize that not all pedagogical practices work for all students.137

iv. Recognizing Fawn Responses in Law Students

At first glance, a law student who aims to “please and appease” in response to a traumatic stress, may seem like the ideal law student. To a certain degree, most law students likely aim to please and appease professors. This is not an inherently bad thing. Aiming to meet a professor’s expectations and do well is a healthy goal in law school. Doing well in a class can open doors to a variety of positive outcomes such as becoming a research assistant, obtaining a letter of recommendation, or receiving help networking with other legal professionals. However, because fawning is such a desirable trauma response for a professor to be on the flip side of, law professors may unintentionally encourage and reward fawning to the detriment of students.

Fawning as a trauma response becomes problematic for a law student when they set aside their own “needs, rights, preferences, and boundaries” for the sake of appeasing their professor, or because the student feels the “price of admission” to success in law school “is the forfeiture” of their own

135. See Nat’l Child Traumatic Stress Network, supra note 130, at 5 (acknowledging that clients in a ‘freeze’ response may sometimes dissociate or appear withdrawn or disengaged).

136. Hunter, supra note 119, at 30 (noting freeze responses present as no affect, unresponsive, and/or inattentiveness).

137. For example, the Socratic method may not be well suited for students who struggle with trauma. This Article does not take the position that the Socratic method has no place in a law school classroom; however, a student’s ability to benefit from that tool may be limited if they exhibit certain trauma responses. This Article suggests that if a tool doesn’t work well, a professor should be slow to reach the conclusion that the issue is one of the student’s overall competence. The professor may just be using the wrong tool for the specific student. See, e.g., Sean Darling-Hammond & Kristen Holmquist, Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors, 25 BERKELEY LA RAZA L. J. 1, 18 (2015) (noting that transformative professors “[u]se the Socratic method to teach, not intimidate. [A]nd to] [c]reate an environment where compassionate cold calling is the norm.”).
needs.\textsuperscript{138} A major concern is that, given the inherent power dynamic between a law professor and law student, professors may evoke the fawn response from students. I have observed (and personally experienced both as a professor and when I was a law student) that professors have a blind spot for the amount of power they unintentionally wield over students. Law students may have a more challenging time saying “no” to professors than professors realize.

When viewed through a trauma-informed lens, and in light of the decades long mental health crisis in law students, is important for professors to be aware of the inherent power imbalance that exacerbates fawning. Not all appeasing behaviors towards professors from law students are bad, but a trauma-informed professor recognizes they must intentionally create circumstances where law students know they do not need to forfeit their own needs (especially their mental health needs) to be successful in law school. Law professors are well situated to empower students to recognize their needs and set boundaries as a means of meeting their own definition of professional success.

\textbf{C. Teaching Traumatic Material}

A challenge law professors face, considering the prevalence of PTEs in law students, is the abundance of potentially traumatic material inherent in the law school curriculum. Our legal system is both full of people with significant trauma histories and it causes additional trauma to individuals and communities.\textsuperscript{139} Some of the core law school subjects tested on the bar exam rely heavily on caselaw with significantly traumatic content. Arguing for the inclusion of trauma stewardship in law school curriculum, I wrote:

As a professor of criminal law, every week I assign my students a copious amount of reading that, at its core, is about traumas. Murders, physical and sexual assaults, burglaries—I bombard students and desensitize them. While some students recognize this during the semester, many others, perhaps, read appellate court opinions like just another episode of Law & Order: SVU, detached and removed from the traumatic content. The desensitization sets them up for failure when they begin practicing law and encounter real people experiencing trauma.\textsuperscript{140}

This is only one of the many ways potentially traumatic material arises in law school courses, such that students may be traumatized, retraumatized, or

\begin{itemize}
\item \textsuperscript{138} See supra notes 123–26 and accompanying text.
\item \textsuperscript{139} See supra notes 54–58 and accompanying text.
\item \textsuperscript{140} Netzel, supra note 10, at 23.
\end{itemize}
vicariously traumatized in their legal education. A trauma-informed professor will reflect on the potentially traumatic course material to consider how they might mitigate harm without sacrificing educational benefit when teaching traumatic course content.

V. HOW LAW PROFESSORS CAN CREATE A TRAUMA-INFORMED DOCTRINAL COURSE

A law professor who recognizes the prevalence of trauma and has a basic understanding of what it is and how it manifests, may find themselves asking, “What can I do about it?” This section seeks to answer that question through a strengths-based, practical, and concrete approach. It explores the application of the SAMHSA tenets of trauma-informed care to doctrinal law school classrooms that can be implemented as a matter of universal design. While this Article might be particularly useful for professors who teach courses with inherently traumatic material, it is also likely to be of use to any professor interested in creating a safer space in their classroom.

Trauma-informed pedagogy is “focused on approaching the teaching and learning process with an informed understanding of the impact trauma can have on learners.” It recognizes that trauma is a barrier, based on its psychological and physiological impact, to some students’ ability to be present in the classroom. Relying on principles of universal design, a

141. Id. In addition to criminal law, a non-exhaustive list of bar-tested law school course subjects that contain potentially traumatic content includes tort law, evidence, criminal procedure, property law, constitutional law, and family law. Further, some material taught in law school is highly traumatic for people from marginalized communities, and students without lived experience may not understand the depth of that trauma. For example, in an increasingly polarized world, some students without significant exposure or awareness to the harms of systemic racism may become defensive and double down on racist beliefs upon learning how racism has defined our legal system. If not managed well by a professor, this defensive behavior can result in an actively traumatizing classroom environment.

142. See Cless & Goff, supra note 22, at 34; see also Safer Space Guidelines, ACADIA UNIV., https://www2.acadiau.ca/files/files/Files%20-%20Student%20Life/Equity%20and%20Judicial/Safer%20Space%20Guidelines%20-%20Equity%20Handout%2020201.pdf (last visited Feb. 4, 2023) (“A safer space is a supportive, non-threatening environment where all participants can feel comfortable to express themselves and share experiences without fear of discrimination or reprisal. We use the word safer to acknowledge that safety is relative: not everyone feels safe under the same conditions. By acknowledging the experiences of each person in the room, we hope to create as safe an environment as possible.”).

143. CHARDIN & NOVACK, supra note 110, at 30 (citing Brian Cavanaugh, Trauma-Informed Classrooms and Schools, 25 Beyond Behav. 41, 41–46 (2016)).

144. Id. at 31.
trauma-informed professor seeks to ensure that their actions are not unintentionally triggering, they remove harmful practices and increase helpful practices, and otherwise minimize barriers for students who experience trauma and stress.145

It is a reasonable assumption, based on data about law student mental health since the late 1980s, that many pedagogical practices in law schools create barriers for students who experience trauma.146 This is not to say law professors intentionally seek to cause harm.147 Instead it is, most likely, an issue of disconnect between impact and intentions.148 In speaking with other professors as I worked on this Article, a critique I received is that it might be challenging for professors to read that they have (potentially) caused harm to students through pedagogical practices. To this point, adopting a trauma-informed approach to doctrinal law school courses is about being “morally courageous enough to acknowledge publicly that what we are both currently doing and expected to do isn’t working for all students.”149

A. Safety

The first tenet of trauma-informed care is safety, which encompasses both physical and psychological safety.150 A trauma-informed professor ensures that both the physical setting is safe and that interpersonal interactions promote a sense of safety.151 Safety is a precondition to learning.152 Because all professors are (or should be) invested in their students’ learning, all professors should be invested in ensuring the psychological and physical safety of students in their classrooms.153

145. Id.

146. See supra notes 92–97 and accompanying text.

147. To the contrary, based on my own experiences as a law student and my observations of and conversations with other law professors, law professors want what is best for their law students. But see CHARDIN & NOVACK, supra note 110, at 57 (“Good intentions are not good enough, and educators must regularly reflect upon and evaluate their impact in and on the lives of their students.”).

148. See id. at 14. “A socially just education is not solely about what we say or what we aspire to; it’s about what we do. It’s about how we measure impact.” Id. at 57.

149. Id. at 15.

150. SAMHSA’S CONCEPT OF TRAUMA, supra note 8, at 11.

151. Id. (“Understanding safety as defined by those served is a high priority”).

152. Carello & Butler, supra note 21, at 264.

153. This Article does not conflate safety with comfort. Safe is defined as “secure from threat of danger, harm, or loss.” Safe, MERRIAM WEBSTER, https://www.merriam-webster.com/dictionary/safe (last visited Feb. 5, 2023). In contrast, comfort is defined as “a satisfying or enjoyable experience.” Comfort, MERRIAM WEBSTER,
1. Psychological Safety

Psychological safety refers to a shared belief that it is safe to take interpersonal risks within a group of people. In a law school classroom, psychological safety includes students feeling comfortable asking questions and sharing opinions without fear of humiliation from their professor or peers. Establishing psychological safety allows for challenging conversations where students are able to learn and “explore differences without fear and work toward positive outcomes with courage.”

Psychological safety can be fostered both structurally and through a professor’s “use of self” in a classroom setting. Creating a course structure with trust and transparency at the forefront enhances safety. To foster safety in a classroom, a professor must be aware of their own behavior and identity. Professors should not minimize or dismiss student concerns. They should never use or permit the use of threats, ridicule, or displays of
power, and should be cautious not to demonstrate impatience or disappointment. Professors should use strengths-based language in the classroom and take a strengths-based approach to feedback and grading. Professors who seek to foster psychological safety understand and validate student concerns, create a learning community grounded in mutual respect, demonstrate patience, and express reassurance and approval.

Because trauma responses vary, at times they may be at odds with one another or introduce additional conflict into a classroom setting. Assuming that most students who act out in a classroom have some underlying emotional need that is not being met, a trauma-informed professor might come back to the core question of “what happened to you?” and, for example, aim to feel empathy in response to a student exhibiting behavior consistent with a “fight” trauma response. At the same time, this kind of behavior is likely to be triggering for other students. Aggressive or disrespectful behavior towards students or professors in the classroom requires intervention by the professor.

2. Physical Safety

A trauma-informed professor also works to ensure physical safety in their classrooms. There is not a one-size-fits-all approach to physical safety. Conditions that allow students to feel physically safe in a classroom may differ. For example, some students may need their back to wall, some may need to be in close proximity to an exit, some may need to sit near (or away from) windows. Some students may need to sit close to other students who are emotionally supportive and/or far away from students who are in some...
way triggering to them. Further, changes in physical characteristics of a classroom (including lighting and sound) may startle students who are in a state of hyperarousal.

Applying principles of universal design, professors could consider policies that allow for all students to make decisions about their physical space without needing to make an affirmative request or disclose a reason for such request. For example, allowing students to choose their own seats and switch seats throughout the semester as needed is one such principle. Professors can also identify student’s needs by soliciting feedback for improving safety and physical comfort in a classroom. Professors can also encourage students to let them know when an issue arises and assure students that reasonable accommodations will be made to enhance physical safety when a student makes a request. Further, professors should let students know they do not need to over explain reasons for requests because the professor operates from a place of trusting students, where students are empowered to exercise their voice.

A growing trend in some law school classrooms is to begin class with a brief mindfulness activity. One reason to do this is because mindfulness improves cognitive performance, which is helpful for almost any law student. Additionally, it provides students a brief opportunity, to check in with their thoughts, feelings, and emotions. It can also contribute to physical safety by helping students feel grounded in their own bodies. A trauma-

165. Id. In suggesting that a student might be “triggered” by another student, I am not suggesting if a student feels unsafe for a specific interpersonal reason that the right response is to merely separate students without further intervention. Instead, a student might be triggered by another student due to no fault of either student, if for example one student physically resembles a student’s abuser (or even has a similar scent because they wear a similar cologne to a person who has caused trauma in the student’s life). See Perry & Winfrey, supra note 18, at 143–44.

166. Carello & Butler, supra note 21, at 272.

167. Id.

168. Id.


171. See Scott & Verhaeghen, supra note 170, at 304.

172. See, e.g., Rachel Casper, Mindfulness Essential for Lawyers + Law Students,
informed professor should also be aware that—for people who have experienced significant trauma—meditation may be harmful. With that in mind, if a professor elects to offer mindful moments, they should invite, but not require, students to participate. Offering a choice to engage encourages student self-care and autonomy.

In courses with particularly intense material, professors should find ways not only to assess students learning, but also to assess and monitor students’ reactivity to the material. To do so, a professor might create anonymous survey questions to ask students how they are doing at managing the material and if additional support is needed in a general sense. This provides another opportunity to acknowledge the intensity and accept feedback. Professors might also have the utility of trauma-informed practices reinforced if they ask what is working for students in relationship to learning intense material.

**B. Trustworthiness and Transparency**

The next tenet is trustworthiness and transparency. The embodiment of this tenet ensures “operations and decisions are conducted with transparency

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174. In this regard, I have experienced success in my own classroom. While I incorporate mindful moments, I also try not to take them too seriously. I allow students freedom to judge the concept and respect that some students have zero interest in mindfulness. To bring levity and choice into class, I share that I abhorred mindfulness for the longest time, and only recently came to see a benefit. I go on to say that for anyone who is “like me five years ago” please just “do the rest of us a solid” by doing their best not to distract anyone who wants to take advantage of the moment. To date, no student has complained about mindfulness in my classroom when I take this approach and many students have expressed immense gratitude for the moments. As one student wrote, “As someone managing depression and anxiety who has undergone years of outpatient treatment, it was so uplifting to see a law school professor integrate meditation/breathing practices into her course. Normalizing these practices means so much to me. I will remember to weave self-care into my academic career and not leave it at the door as something to be done only in my ‘personal’ life.” (Teaching evaluation on file with author).

175. My teaching evaluations have reflected that merely acknowledging the traumatic nature of criminal law and the potential of vicarious trauma has been helpful to students in working through the material and experience.

with the goal of building and maintaining trust . . .”177 Trauma-informed professors foster trustworthiness and transparency in their courses and interactions with students. Trustworthiness and transparency are especially important when teaching potentially traumatic material and when a student discloses trauma to a professor. Each will be discussed in turn. It is my hope that, in this section, many professors will identify that they already teach in a transparent manner, will see how trustworthiness and transparency are integral to trauma-informed pedagogy, and, as a result, will be able to build on strengths they already possess.

1. General

Trustworthiness and transparency are hallmarks of good pedagogical practices in legal education.178 A transparent educator is “explicit about the process, purpose, and rationale of instructional activities.”179 Transparency in a law school course includes providing students with all relevant information necessary for success in their class. This may include more information than a professor thinks they should provide, because there is a significant amount of “hidden curriculum” in law school courses.180 For example, in addition to providing clear learning objectives, a professor could explicitly explain their timing and method of grading, the nature of the curve, the purpose and aim of all assessments, and the professor’s reasons for selecting specific pedagogical practices.181 Transparency in all of those arenas can reduce unnecessary stress that law students experience. Law school needs to be challenging, and at the same time professors should not

177. Id.
178. Darling-Hammond & Holmquist, supra note 137, at 31 (discussing the importance of clarity and transparency in legal education).
179. Shuzhan Li, Critical Transparent Pedagogy in Teacher Education, 10 TESOL J., 1, 1 (2018) (providing “[h]ere’s what we are going to do, here’s how we are going to do it, and here’s why we are doing this” as a simple example of transparency in action).
180. Austin, supra note 105, at 654 (“hidden legal curriculum permeates the culture of both classroom and school, and it socializes law students to the values of law practice”); CHARDIN & NOVACK, supra note 110, at 12 (“Hidden curriculum” is a term that explains “the phenomenon where teachers share their expectations of students through their instruction” including “how they define student success”).
181. As a further example, I attempt to uncover hidden curriculum by recording and embedding short videos into my 1L criminal law course. For example, in a video I titled What the Heck Do I Mean When I Say “The Curve,” I explain that by the law school requiring an average grade of 3.0 for the course my hands are tied in that I cannot give too many “A’s,” I rarely fail people, and I give a lot of “B’s.” I further encourage my students to press me on my “why” for any aspect of the course that does not make sense to them. My students have consistently shared how much they appreciate it because they trust that I am doing my best to not “hide the ball” from them.
confuse necessary challenge with unnecessary stress and should attempt to mitigate the latter. Further, when professors are transparent about critical aspects of their course and follow through in a reliable, predictable, and consistent manner, it fosters trust in the professor-student relationship. Trust is a critical element to psychological safety.182

2. Teaching Potentially Traumatic Material

One way to establish trust and teach transparently is to let students know, in advance and in general, what material will be covered.183 Professors should also specifically acknowledge the intensity of potentially traumatic course materials.184 A professor operating through a trauma-informed lens acknowledges to students that they cannot predict triggering material with any certainty and takes an approach grounded in universal design. For example, a professor could include a one sentence description of the nature of each case on the syllabus paired with a statement and verbal reminder that if a student has concerns about specific material, the student can talk to the professor. Professors can also reinforce this by sending emails to students that acknowledge the intensity of material in advance of difficult readings and discussions.185 These gestures may seem insignificant, but when strategically implemented, they reinforce the professor’s commitment to student well-being and trauma-informed practice.186

Professors can also normalize and discuss the intensity of feelings that may arise when students encounter difficult material.187 One way to normalize these feelings is to assign books and articles on the well-documented phenomenon of vicarious trauma.188 Further, being able to

182. See Part V.A, supra.
183. Cless & Goff, supra note 22, at 28.
184. Id. at 30; see also Katz, supra note 13, at 34 (encouraging law professors to develop strategies for handling challenging material).
185. Cless & Goff, supra note 22, at 32.
186. Id.
187. Carello & Butler, supra note 21, at 270. A professor who is open to teaching from a place of vulnerability could share with a class about a time that they experienced intense emotions related to course material and then share how they learned to manage their emotional responses. See id. In my own experience, when I share with students about the emotional impact lawyering has on me, they have reflected back sincere appreciation and gratitude.
188. See generally Lipsky & Burk, supra note 6; Harris & Mellinger, supra note 13, at 746–47; Myrna McCallum, The Trauma-Informed Lawyer: Vulnerability and Vicarious Trauma: A Personal Story, SIMPLECAST (Aug. 8, 2020), https://thetraumainformedlawyer.simplecast.com/episodes/vulnerability-and-vicarious-
identify and access emotions like helplessness, hopelessness, overwhelm, anger, shame, and guilt (among others) can help students better understand the experience of clients who struggle with trauma. To the extent professors can aid students in identifying and processing their very normal responses to traumatic material, it can help students develop the skill of empathy and better understand the need for trauma-informed lawyering. Professors can help shape students to productively utilize the emotions that traumatic material often elicits. In turn, professors can reframe the experience of vicarious trauma from one of weakness to one of strength. Helping students process trauma in law school—in a controlled setting on a smaller scale—works to build resilience and helps students tap into the wisdom available to them in post-traumatic growth. Of course, these feelings may in fact overwhelm some students, especially those with trauma histories who find the material particularly triggering, and professors must be mindful not to push students too far or too fast in viewing intense reactions through a positive lens.

3. Handling Disclosures with Care

When a professor teaches traumatic material in a trauma-informed manner and has earned students’ trust, it is possible that students will disclose trauma or trauma histories to the professor. When this inevitably happens, a trauma-informed professor handles student disclosures with care and maintains appropriate boundaries. It is not required or ethical for a trauma-informed professor to provide direct mental health support to students.

Embodying the tenet of trustworthiness and transparency, a professor should provide all students with information about their boundaries and likely response if trauma is disclosed by a student. For example, a professor

trauma-a-personal-story; Libby Coreno, Trauma, Mental Health and the Lawyer, N.Y. STATE BAR ASS’N (Dec. 14, 2022), https://nysba.org/trauma-mental-health-and-the-lawyer. In addition to providing resources, professors can discuss the importance of law student wellness, trauma-informed lawyering, and how the skills will be developed in the course. Katz, supra note 13, at 34.

189. Carello & Butler, supra note 21, at 270.

190. See, e.g., Talia Kraemer & Eliza Patten, Establishing a Trauma-Informed Lawyer-Client Relationship (Part One), 33 AM. BAR ASS’N CHILD L. PRAC. TODAY 197, 197 (2014); Nat’l Child Traumatic Stress Network, supra note 130.


193. Cless & Goff, supra note 22, at 28, 30.

194. Hunter, supra note 119, at 27.
might share with the whole class that their primary role is to educate students and, as such, students are free to—but not required to—privately disclose issues that might interfere with their learning. A professor might share at the outset that while they are not able to provide therapeutic support, they can help connect the student with resources in the institution to help address issues that are outside of the scope of the professor’s role. Professors should be clear about what they are able to offer and are not able to offer in general terms (e.g., information about the extension policy, or whether assignments could be modified to account for uniquely triggering material), how the professor views their role, and when a student should disclose.

Course syllabi and online course management systems are two places a professor could include information on disclosures and resources. Professors should include specific information about resources available to students to receive support (without needing to make any disclosure to the professor) including student services, disability services, counseling services, and academic support within the school, as well as support available outside of the school like local lawyer assistance programs and other non-profits supporting mental health and well-being in the area. Professors may also consider links to relevant episodes, podcasts, websites, apps, books, and articles that support well-being. The specifics of the information are, perhaps, less important than the act of including the information in the course. The act of inclusion signifies that student well-being is an important aspect of their law school career and that the professor recognizes the importance of fostering wellbeing. This is one more way a professor can earn student trust.

When a student discloses information directly to a professor, it may feel

196. Katz, supra note 13, at 35.
197. For example, I tell my students I am open to knowing when there is something major in their life or their past (that they are comfortable sharing with me) that is interfering with their learning. I further share my reasoning is because I want to make sure I am doing what I can to make the course content accessible to them and support their educational success.
198. Carello & Butler, supra note 21, at 271 (highlighting the importance of specific information for referrals including contact information). At MHSL, we recently created a wellness module that professors can opt-in to having as a part of their online course management system. This is in addition to having the resources on our website and frequent reminder emails about our resources from our Dean of Student Services. This wellness module appears at the top of the page when students log on. Among other things, students can schedule appointments with counseling services directing through a link in the module. The idea behind this approach was that we wanted to put the information in the virtual place the students access most often.
uncomfortable (even if the student feels it necessary) for both the student and the professor. It helps if a professor has thought through how they will respond in advance. For example, a professor can thank the student for sharing, empathize with the underlying feelings expressed, and normalize the experience. Professors should avoid commenting on what is “right” or “wrong” in relationship to the disclosure, but can help a student frame the experience in relationship to their law school experience. It may be helpful to share with the student that many people with trauma histories (or students who have strong vicarious trauma responses regardless of trauma histories) have meaningful and successful legal careers, and that the important thing is how the student manages their trauma. Next, a professor can ask what support systems the student already has in place, and whether the student feels sufficiently supported. It is important that the professor clarifies the limits of their role and the potential limits of confidentiality; however, professors can and should help students identify their support systems and connect students with resources available to them.

C. Peer Support

The next tenet is peer support which acknowledges that “[p]eer support and mutual self-help are key vehicles for establishing safety and hope, building trust, enhancing collaboration, and utilizing . . . stories and lived

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199. Cless & Goff, supra note 22, at 30.

200. Many students have expressed the fear that their history will serve as a barrier to success. Anecdotally, I have observed many lawyers and students who have excelled in their career, perhaps because the wisdom gained through, and the resilience developed in working through their trauma has helped them develop a unique and special skillset for working in a challenging profession in challenging situations. See supra note 102, and accompanying text.

201. For example, does the student have a supportive network outside of law school and of peers in law school? Does the student have professional support they need? If not, do they have an understanding of resources available to them?

202. Cless & Goff, supra note 22, at 31. I view my role as discussing issues in students’ lives enough to be able to effectively teach them, supervise their client work, and contribute to their professional growth. I am cautious to avoid any interaction that looks or feels like therapy, and I avoid creating an overdependence on me in their personal growth and development.

203. At Mitchell Hamline School of Law, where I teach, we heard from students that they wanted increased access to mental health resources. In response, we hired additional counseling staff with diverse identities. These services are available to students for free and students work with their counselors to determine how many sessions are necessary. Counseling Services, MITCHELL HAMLINE SCHOOL OF LAW, https://mitchellhamline.edu/counseling-services/ (last visited Feb. 5, 2023). In making services easily accessible we have significantly reduced stigma associated with student’s getting help.
experience to promote recovery and healing.”

In the context of the tenets of trauma-informed care “peers” refers to “individuals with lived experiences of trauma.”

Thanks to the SLSWB data, professors definitively know that the majority of law students have experienced a PTE, and many students struggle with trauma while in law school. However, connection with peers in law school is beneficial to all. Consistent with universal design principles, professors should aim to create opportunities for law students to work with their peers in meaningful, productive, and collaborative ways. This section will address how professors can encourage peer support in general by elevating the importance of mutual care and how professors can pave a path to help peers who have experienced trauma support each other.

1. Mutual Care

Professors can embody the tenet of peer support by encouraging all students to create communities of “mutual care.” The concept of mutual care embraces reciprocal and supportive relationships, values authentic connection with others, and understands that giving what one can and receiving what one needs in terms of support, resources, time, and energy is central to be able to counter power structures (like those in legal education and law) that are larger than any one individual. In a law school setting, mutual care could include study groups that are intentional about reflecting on the highs and lows of law school where students are vulnerable with one another. Vulnerability begets vulnerability, and communities of mutual care amongst students support each other not just academically, but socially and emotionally as well.

204. SAMHSA’s Concept of Trauma, supra note 8, at 11.
205. Id.
206. Jaffee et al., supra note 1, at 468 (over eighty percent of respondents in survey on law student mental health reported having experienced trauma).
207. See Bohannon et al., supra note 111, at 74 (discussing the benefit of peer support in higher education).
208. Id.
209. See supra note 11, and accompanying text.
210. Hannah Burton, Grace Hoffman & Amanda Shepard, Presentation at Mitchell Hamline School of Law Clinic Kick Off: Mutual Care (Aug. 12, 2022) (on file with author). After conversations with these students about mutual care in the clinic I teach, they furthered my understanding of mutual care such that I asked them to present on the topic for other students. Citing their presentation here is an effort to honor the teacher and scholar that is ever present in law students.
211. Often, privately in my office, students share with me that they feel as if they are
The process of building a community of mutual care serves not only the tenet of peer support, but also the tenets of empowerment, voice, and choice, and collaboration and mutuality. A classroom full of communities of mutual care also can contribute to psychological safety.

2. *Paving the Path*

Building on the communities of mutual care in general, professors can also create pathways to connect students who struggle with trauma histories while in law school. To start, professors can openly acknowledge the prevalence of students with trauma histories. In my experience, analytical law students like data. The SLSWB survey data can be used as a tool to show that students with trauma histories are not the exception, and they are not alone. Other statistical measures can be used as well. Sharing data with law students helps to normalize their experience without putting any person on the spot to discuss trauma and without a need to discuss traumatic content.

In my experience, sharing data has led to students publicly and privately revealing they have had past struggles. At first, I feared this; however, in most instances where I have observed students disclose a past struggle, they have been met with support from other students. I then use it as an opportunity to further normalize the experience and remind students of all of the resources our school has to offer for additional support—including each other.

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the *only* person struggling in law school. In an effort to make this common and unseen phenomenon visible to students, I share this with my class as a whole and challenge any student who feels that way to check in with at least one other student in the class to see if my comments resonated with them. This is one way to prod the development of communities of mutual care.

212. Cless & Goff, *supra* note 22, at 28.

213. For example, in my criminal law syllabus, I attempt to normalize traumatic experiences by highlighting things like the percentage of the population who have an incarcerated relative and the percentage of the population who are victims of abuse. Further, because I have taught numerous formerly incarcerated students, I highlight the incredible work of Emily Baxter which explores the reality that, we are all criminals. See *WE ARE CRIMINALS*, https://www.weareallcriminals.org/ (last visited Feb. 5, 2023). I encourage students to reflect on the fact that they do not know the histories of other students in their learning community and to consider this when they are speaking from a place of judgment in class. While this is likely important at all law schools, it is especially important at Mitchell Hamline School of Law where we are the first ABA accredited law school to teach currently incarcerated students. *Mitchell Hamline Accepts Incarcerated Person to Law Program*, CBS MINN. (June 13, 2022), https://www.cbsnews.com/minnesota/news/mitchell-hamline-accepts-incarcerated-person-for-law-program-a-first-in-the-us/.
In addition to sharing data and fostering connections, professors may consider providing students with opportunities to hear anecdotal experiences. Some lawyers with trauma histories are happy to share their experiences. Lawyers who have meaningful law careers despite their past or current struggles can make excellent speakers to model pathways to success for law students with trauma histories.

D. Collaboration and Mutuality

The next tenet is collaboration and mutuality and includes an “importance . . . placed on partnering and the leveling of power differences . . . .” It also acknowledges “that healing happens in relationships and in the meaningful sharing of power and decision-making[, and] recognizes that everyone has a role to play in a trauma-informed approach.”

1. Recognizing Power Dynamics

A trauma-informed professor recognizes the need for collaboration and mutuality in the learning experience and recognizes the power of creating symbiotic professor-student relationships. Professors who take a collaborative approach to teaching view their classroom as an opportunity to work jointly with their students as partners in their learning. Professors who create a space with the intention of mutuality aim to level power differentials, to the extent possible, in their classrooms.

Professors who embody the tenet of collaboration and mutuality begin by acknowledging the immense power dynamic that exists in the law professor/law student relationship. Trauma responses are often triggered in response to power dynamics. Core to a trauma-informed approach to teaching is that we take students seriously and trust that they know what is best for their own safety in learning. Thus, professors must recognize the value of moving away from methods of teaching that reinforce the inherent power dynamic.

For example, a professor might intentionally embody humility in their
pedagogical approach and acknowledge to students that they recognize that students are also teachers. This can be achieved by letting students know they are free to provide feedback throughout the semester, coupled with being responsive to student feedback.

Professors can share how they use teaching evaluations and provide examples to students of changes they have made to the course based on past feedback. The information that can be gained is invaluable, and students will be more willing to share feedback if they know a professor is open to making changes in response. It also allows law professors an opportunity to acknowledge that mistakes are inevitable and model how to handle them.

2. Maintaining Flexibility

Another way law professors can share power is to add elements of flexibility to their courses, acknowledging that reactions to trauma are variant and that some students may have different needs based on different course material. Flexibility could include alternate assignments, an option to attend a lecture remotely or watch a recording, or providing alternatives for students to demonstrate their learning in a different way. The curve and issues of fairness related to grading on a curve, of course, limits options or gives rise to a need for creativity. Flexibility is not intended to advantage one student over another and should instead aim to level the playing field for people who might be triggered by intense material.

A professor may also consider allowing students to opt out of being cold-
called or being “on-call” without requiring an explanation, providing a caveat that students should only take this option when they really need it. This serves the values of mutuality and recognizes that the value of trustworthiness is a two-way street as well. Just like professors aim to foster trusting relationships with students, professors can demonstrate that they trust students by implementing this type of policy. By expressly sharing the underlying reasoning for the trust, it also models the value of transparency.

E. Empowerment, Voice, and Choice

The next tenet is empowerment, voice, and choice, in which “individuals’ strengths and experiences are recognized and built upon.” As applied to a law school classroom, a professor “fosters a belief in the primacy of the people served, in resilience, and in the ability of individuals, organizations, and communities to heal and promote recovery from trauma.” A professor embodying this tenet “understand[s] the importance of power differentials” and ways in which law students, historically, have “been diminished in voice and choice.” Students are “supported in shared decision-making, choice, and goal setting” and “in cultivating self-advocacy skills.” Professors identify as “facilitators” of learning rather than “controllers” of learning. Professor and students “are empowered to do their work as well as possible by adequate organizational support.” It is a “parallel process” in that professors need to feel safe, as much as students. Through a lens of universal design, professors optimize student voice and choice because, when professors see and hear their students, they give them power.

1. Self-Care

Empowering law students begins with utilizing instructional strategies that “elevate and celebrate” student voices. Professors can encourage students to use their voices as vehicles to identify their own barriers to success and help to eliminate them.

225. SAMHSA’s Concept of Trauma, supra note 8, at 11.
226. Id.
227. Id.
228. Id.
229. Id.
230. Id.
231. Id.
232. CHARDIN & NOVACK, supra note 110, at 76.
233. Id.
234. Id.
One way professors can empower students is to educate them about, emphasize the importance of, and allow space to engage in, self-care. This is especially true in courses that deal with potentially traumatic content. A professor can begin by including conversations about self-care, defined by the National Institute of Mental Health as “taking the time to do things that help you live well and improve both your physical health and mental health,” in the law school classroom. Next, a professor can emphasize the importance of self-care by framing it as a matter of professional responsibility which may help students set aside thoughts that self-care is selfish. Additionally, professors can model their own self-care practices (and, as a prerequisite, professors should actually have self-care practices) which encourages students to value self-care. In these conversations, it is critical to recognize that touting self-care as the primary solution to coping with negative effects of trauma and vicarious trauma may be harmful to law students who have limited time, high stress, and may view neglecting self-care as another personal failure. Professors can acknowledge this as a systemic failure of legal education. Ultimately, a professor will need to strike a balance between touting self-care and recognizing limitations due to the current state of legal education. Due to the tension, I often provide self-
care ideas for my students that can be done in ten minutes or less.242

2. **Boundaries**

Another critical aspect to empowerment is encouraging students to define and enforce healthy boundaries.243 Boundaries can include the following categories: emotional, time/energy, mental, physical, and material.244 Healthy boundaries are those that are not too rigid or too porous.245 Boundaries give a person control to determine their own stopping point.246 Current law school culture seemingly rewards having porous boundaries in regard to time, yet rigid boundaries in regard to emotional and mental needs.247 A lack of boundaries can lead to burnout and other mental health issues.248 Boundaries are important for everyone in a law school classroom (students and professors alike), but are especially important for people with trauma histories.249

242. For example, I suggest students incorporate movement into studying, engage in deliberate rest, practice positive self-talk, self-compassion, and gratitude, and write their own personal mission, vision, and purpose statements for law school.

243. See Brooks et al., *supra* note 235, at 405 (“Law students need to learn to appreciate appropriate boundaries in order to maintain their own well-being. Only by taking care of themselves are they able to take care of their clients”).


247. This begins on day one when students are introduced to the curve. They need to work harder and harder than everyone else in the room, and, in an effort to seem competent, they do not express their need for emotional and mental support. When students fail to express their need for support, other struggling students around them do not receive the benefit of knowing that they are not alone in their experience that law school is mentally and emotionally challenging. As such, the cycle perpetuates itself and, unless broken, continues throughout one’s legal career. Add to this that new professors navigating climbing the ranks of academia often repeat this same cycle and continue to perpetuate it once they reach the security of tenure.


249. See *Why Consistent Boundaries are so Important for People Recovering from Trauma*, KHIRON CLINICS BLOG (July 4, 2019), https://khironclinics.com/blog/why-consistent-boundaries-are-so-important-for-people-recovering-from-trauma/.
3. **Teaching Post-Traumatic Growth and Wisdom**

A professor embodying the tenet of empowerment, voice, and choice may consider explicitly instructing on post-traumatic growth. As a person heals from trauma, they reach the “reconnection” phase where they are able to “create and define a new future self” in light of their trauma history. Law school is a time of change, and transformation might occur in the law school classroom. While aspirational, a trauma-informed professor might recognize this as a possible outcome of embodying trauma-informed pedagogy in their classroom.

Instruction on post-traumatic growth goes beyond normalizing trauma in law school for the purpose of facilitating peer support. Done well, it helps students who have experienced trauma view themselves as uniquely situated to contribute to the legal profession. In that vein, trauma-informed pedagogy is more than just an approach that seeks to ameliorate harm. At their best, a trauma-informed professor aims to empower students to make the most of their post-traumatic wisdom and resilience and share that knowledge and power by becoming a trauma-informed lawyer.

4. **Assessing Student Experience**

There is an inherent power differential between professors and law students. Professors must view all interactions with law students through this lens and periodically reflect on how the power differential affects their teaching. Power differentials cause people to need to engage in relational calculus. When people are on top of the power differential, they often fail to see the impact their presence has on other people and situations. To counteract this, student voice can be amplified by a professor checking in to assess whether they have an authentic sense of how students perceive their

250. See Cless & Goff, supra note 22, at 30.
251. See Orla T. Muldoon et al., The Social Psychology of Responses to Trauma: Social Identity Pathways Associated with Divergent Traumatic Responses, 30 EUR. REV. SOC. PSYCH. 311, 338 (2019) (explaining that trauma has a capacity to restructure a person’s self-concept ranging from destruction to enhanced sense of self and that enhanced meaning often occurs where “trauma provides both a stimulus and platform for people to advocate for positive forms of social change”).
252. See Part V.C, supra.
253. Part V.D, supra.
254. Perry & Winfrey, supra note 18, at 148.
255. Id. at 145.
256. Id. at 148.
When teaching traumatic material, professors fostering empowerment, voice, and choice check in with students to determine how they are doing emotionally, follow up with students when issues arise, and seek student feedback to inform how they present course material in the future.

For example, explicitly inviting students to share their thoughts on what is and is not working for them as learners during the semester, as opposed to just engaging in the end of semester course evaluation process, can provide meaningful opportunities for the professor to meet the needs of the students through honoring their voices. This can be done anonymously through surveys or real-time feedback tools or by encouraging students to reach out as individuals or groups to share feedback. It is critical that if a professor offers an opportunity for students to exercise voice that the professor completes the feedback loop.

5. Choice in Engagement

Offering choice empowers students in the classroom. Choice is especially important for students with trauma histories learning about potentially traumatic material. A trauma-informed professor provides students with enough information about course content to make meaningful choices about how they engage in potentially traumatic content and, to the extent it is equitable, professors should honor those choices.

While law students and lawyers will not be able to avoid all traumatic content, trauma-informed professors recognize that a student who can identify and articulate that they are not able to engage in a discreet topic within a course, is a student who needs additional support.

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257. CHARDIN & NOVACK, supra note 110, at 62. For example, a professor could conduct an anonymous survey of their students to see how students perceive their course. Before a professor reads the answers, the professor should write down how the professor thinks students will respond to the questions. This can help a professor assess if they have an accurate view of their student’s actual experience. Id. Sample prompts a professor might use include, “In my class, my teacher is interested in my well-being beyond my coursework.”; “My teacher helps me identify my strengths and shows me how to use my strengths to learn.”; or “My teacher encourages us to accept different points of view when they are expressed in class.” Id. at 63.

258. See Carello & Butler, supra note 21, at 270.

259. For example, in the instance of anonymous feedback, a professor can share with the whole class what the professor learned and what changes the professor intends to make in response. In the instance of non-anonymous feedback, the professors can follow up with the individuals involved, thank them for taking the time to share, and after time to reflect on the feedback, share how the professor intends to incorporate their learning.

260. CHARDIN & NOVACK, supra note 110, at 76.

261. See Parts IV.C, V.B.2, supra.
who has the strength of recognizing a boundary they need to assert to protect themselves from being triggered. In this instance, a trauma-informed professor will offer the student a choice in how to engage—or not—with specific course content. As a matter of universal design, professors can also consider offering choice in general. As a matter of universal precaution, professors can inform students that they are able to ask for modification around specific topics that may cause them harm.

F. Recognizing Cultural, Gender, & Historic Issues

The sixth tenet is recognition of cultural, historical, and gender issues. A law professor that embodies this tenet “actively moves past cultural stereotypes and biases.” Further, the professor “incorporates policies, protocols, and processes that are responsive to the racial, ethnic and cultural needs of individuals served; and recognizes and addresses historical trauma.” Opening the door to humanity, practicing cultural humility, and teaching through an anti-racist lens are three strategies to embody this tenet. Each will be addressed in turn.

1. Opening the Door to Humanity

A good starting point to embody the sixth tenet of trauma-informed care in a doctrinal law school classroom is to remember that no human being is a blank slate. Law students show up to law school with complex, multifaceted identities that provide a lens through which they view the world and impact

262. See Part V.E.2, supra.
263. For example, a professor could offer four assignments during a semester and only rely on the top three scores for purposes of grading. Students then have the option to skip an assignment, if that suits them, or at least not feel pressure to do well on every single thing assigned. Professors can also offer the opportunity for students to turn in a draft of an assignment and accept the first grade they receive or do multiple drafts of an assignment to earn a higher score. This allows students to balance what is “good enough” for them in law school against other time constraints and obligations. Another option is to allow student an opportunity to self-schedule exams or assignments within a set period of time, so they have autonomy in controlling at least some of their deadlines.
264. A modification could include, recording a class (or allowing remote participation) for the student so they could take in the information in a safer space than a room of their peers, creating an alternative assignment, or allowing a student to skip a lecture without attendance penalty.
265. SAMHSA’S CONCEPT OF TRAUMA, supra note 8, at 11.
266. Id. (providing cultural stereotypes and biases include those based on race, ethnicity, sexual orientation, age, religion, and gender).
267. Id.
how they experience the world and how others experience them. The same is true, of course, for law professors. When working with students who have experienced trauma it is also important to recognize that trauma among the marginalized is pervasive, generational, and oftentimes, complex in nature.268

A professor who recognizes cultural, gender, and historical issues in their classroom begins with taking measures to ensure that the humanity of all students is recognized in their classroom, especially those students who are historically underrepresented in the legal profession and those students who are from marginalized communities. “If a student sees themselves as valued and visible in classrooms and curriculum and feel like they are being welcomed, they can and will be successful.”269 Recognizing the humanity of all students includes an awareness of the social construction of identities and what identities represent within a broader social context.270

This Article discussed, as a matter of universal design, ways professors can create pathways to connect students who struggle with trauma histories.271 Those same strategies which can be used to normalize experiences of students, can also be used to help students understand privileges they have that other students do not. Professors can establish and co-create shared norms around what it means to be a learning community with the shared goal of obtaining a legal education and remind students of their common humanity when engaging in conversations on topics that are potentially triggering, traumatizing, or retraumatizing for members of the learning community.

One strategy professors can employ is that of “mirrors and windows.”272 A professor implementing this strategy starts from a place of their own self-reflection and recognizes that “[l]ooking in the mirror of [their] own identity is not enough[ ]” and that they “must look outside [themselves], through

268. Hunter, supra note 119, at 28.
269. CHARDIN & NOVACK, supra note 110, at 57.
270. Id. at 35. All teachers have “power and privilege and we must use it as a tool to confront and dismantle inequities, so all students have equal opportunity to learn.” Id. at 7. This is especially important when the person who holds the most power in the room, the professor, holds additional power and privilege based on their whiteness. Id. at 35. It is also important when the professor identifies as male, cis-gender, heterosexual, middle-to-upper class, able-bodied, neurotypical, or a combination of those identities.
271. See Part V.C.2, supra.
272. CHARDIN & NOVACK, supra note 110, at 85. Mirrors and windows are consistent with universal design principles that provide a framework for anti-bias education through social justice standards. Id. (“If we are to create a world that is socially just, we must first embrace our own identity and recognize privilege and how it has contributed to the world in which we live.”).
windows, to embrace the lived experience of others so [they] can analyze the harmful impact of bias and injustice.”

Once a professor engages in their own self inquiry, they should ask their students to do the same. This exercise can help a learning community become inclusive across identities, allowing “students with diverse experiences and identities to feel both validated by being included and to have the opportunity to humanize others whose background may differ from them . . . .” Further, it allows all members of the learning community to feel seen and represented.

2. Practicing Cultural Humility

A trauma-informed professor operates through a lens of cultural humility. Cultural humility is consistent with a trauma-informed approach. Cultural humility is “a lifelong commitment to understanding and respecting different points of view, while engaging with others humbly, authentically, and from a place of learning.” Principles of cultural humility readily implemented by law professors include “a lifelong commitment to self-evaluation and self-critique” and a “desire to fix power

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273. Id. at 85–86.
274. Id. This inquiry is not a one-and-done, and students should be reminded to engage in this exploration throughout the course.
275. Id. at 86.
276. Id.
278. See MYRNA MCCALLUM & HALEY HRYMAK, RISE WOMEN’S LEGAL CENTRE, DECOLONIZING FAMILY LAW THROUGH TRAUMA-INFORMED PRACTICES 1, 4 (2022) (adopting the cultural humility framework created by Dr. Melanie Tervalon and Dr. Jann Murray-Garcia because the framework “focuses on partnerships, a commitment to self-reflection, lifelong learning, achieving equality, and self-critique” and is “consistent with the principles that underpin trauma-informed lawyering.”).
279. Id.
imbalances.”\textsuperscript{280} A professor operating through the lens of cultural humility takes an interpersonal stance that is “other-oriented” in relation to cultural identity and treats each student as the expert on their own cultural experiences.\textsuperscript{281} Cultural humility goes beyond cultural competence in that it “contends that one can never really [be an expert in] another’s culture, but that we ought to remain respectful and reflective in our approach.”\textsuperscript{282}

Professors engaged in the practice of cultural humility can begin by critically examining common unconscious biases which feed myths and stereotypes, question their sources of knowledge, and open their minds to new perspectives.\textsuperscript{283} Next, they should make efforts to inquire and inform themselves about students’ individual and collective lived experiences in regard to cultural backgrounds.\textsuperscript{284} This acknowledges students as experts and the professor as the learner.\textsuperscript{285}

3. Teaching Through an Antiracist Lens

A trauma-informed professor adopts anti-racist pedagogical tools. In an
essay on cultural humility as a means of changing the approach of how professors teach criminal law Tariq El-Gabalawy writes:

[The] objective treatment of the traditional doctrine fails to address how our criminal legal system perpetuates racial violence through mass incarceration. Additionally, it works to alienate students in the classroom who have lived through the consequences of the state’s racist criminal legal system by placing their experience on equal footing with the opinions and policies that have created the crisis of mass incarceration. Because we learn criminal statutes encapsulate society’s collective moral condemnation of specified conduct, those same students are often left with the impression that the law has judged their communities as immoral and has accepted their trauma as a collateral consequence of safety.286

Thus, a trauma-informed professor must actively address systemic racism and the racialized trauma our legal systems continue to perpetuate as a critical part of teaching doctrinal law. The absence of instruction on systemic racism has the potential to cause significant trauma.

Teaching about systemic racism and racialized trauma must not just be done; it must be done well. In an instructive article on an antiracist approach to clinical pedagogy, Professor Norrinda Brown Hayat provides a map to merge critical race theory with other pedagogical tools to illuminate the impact race has on clinic cases to deepen students’ understanding of how to analyze and treat race in their case.287 This framework is also helpful, through a trauma-informed lens, to address cultural and historical issues in the law in doctrinal courses. For example, she encourages professors to teach the “ordinariness”288 of racism, “interest convergence,”289 “[s]ocial construction,”290 “[r]evisionist

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288. Id. at 158–59 (noting racism is “normal and not aberrational”).
289. Id. (noting “[r]acism only gives way when it is in the interest of White people[,]” and “we might teach our students to look for other better positioned groups (particularly Whites) to align with to achieve a freedom goal.”).
290. Id. (providing “[r]ace is a product of social thought”).
The tools she provides are relevant to a wide range of content. For example, she suggests teaching students to examine the impact of race “on the facts and law without exception.” Further, professors should have “students examine what they consider racialized behavior and their own biases when formulating case theories and narratives[,]” ask students to “challenge the traditionally offered causes” of societal issues, and teach “students to pressure test ideas that center class instead of or in addition to race.” Ultimately, the specific application of these anti-racist pedagogical tools may vary depending on the doctrinal subject. Therefore, a trauma-informed professor engages in reflection on how these concepts apply to their course and adjust their presentation and inclusion of material accordingly.

VI. CONCLUSION

The new SLSWB data on the prevalence of trauma in law students is likely to have many caring and compassionate law professors curious about how they can better serve their students who suffer adverse consequences from trauma. Ultimately, being trauma-informed is about the lens through which we look. At its core, this Article seeks to help law professors strengthen that lens by recognizing and improving upon the skills they already have that support people who have experienced trauma. Specifically, it seeks to provide knowledge about trauma and related concepts and then offer a framework with concrete and manageable actions professors can take to build trauma-informed classes as a matter of course utilizing principles of universal design.

The aim of this Article is small in that it focuses on what professors can realistically do within their individual capacities. Yet, the aspirations of this Article are large in that there is great power in each and every individual law

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291. Id. at 159 (providing “America’s historical record is a collection of myths based on majoritarian interpretations”).

292. Id. (providing “[c]olorblindness and rights-based analysis cannot resolve structural race problems”).

293. Id. (noting “our system is ill-equipped to redress certain racial harms,” and emphasizing the need for “recognition that Black clients may not be able to be made whole by the legal system because it is designed in a way that does not recognize their full personhood under the law”).

294. Id.

295. This reflection is also consistent with adopting a stance of cultural humility which includes self-evaluation and self-critique and a desire to fix power imbalances. See Wilson et al., supra note 277, at 200.

296. Hunter, supra note 119, at 27.
professor to make significant and positive contributions to the experience of the students entrusted in their care.
UNSETTLING HUMAN RIGHTS
CLINICAL PEDAGOGY AND PRACTICE
IN SETTLER COLONIAL CONTEXTS

JOCELYN GETGEN KESTENBAUM* & CAROLINE BISHOP LAPORTE**

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ABSTRACT

In settler colonial contexts, law and educational institutions operate as structures of oppression, extraction, erasure, disempowerment, and continuing violence against colonized peoples. Consequently, clinical legal advocacy often can reinforce coloniality—the logic that perpetuates structural violence against individuals and groups resisting colonization and struggling for survival as peoples. Critical legal theory, including Third World Approaches to International Law (“TWAIL”), has long exposed colonial laws and practices that entrench discriminatory, racialized power structures and prevent transformative international human rights advocacy. Understanding and responding to these critiques can assist in decolonizing international human rights clinical law teaching and practice but is insufficient in safeguarding against human rights clinical pedagogy and practice that contributes to settler colonial violence.

This Article proposes not only decolonizing human rights clinical advocacy but also incorporating Indigenous values in human rights clinical practice and pedagogy in settler colonial contexts. In particular, the authors offer a method of human rights law teaching and advocacy that moves beyond client-centered or community-based lawyering that acknowledges oppressive power dynamics toward a collaborative model of co-creative strategic legal advocacy. At the same time, incorporating Indigenous values in human rights clinical pedagogy and practice transforms human rights practice to counter Eurocentric epistemologies by decentering human beings themselves toward a practice that rejects anthropocentrism and strives for balance with all living things. This method—rooted in epistemic pluralism and in adopting Indigenous worldview concepts of kinship, relationship, and reciprocity—requires a relinquishment of control over the process and a shift away from the dominant worldviews of knowledge production, power, and coloniality.

Incorporating Indigenous values in human rights practice means acknowledging and redressing past and present collective harms, reorienting clinical pedagogy and practice to adopt new methods based on Indigenous epistemologies of familial relationship and reciprocity with one another, and all living relatives, deep listening, authentic trust-building, practicing gratitude and transforming allyship to kinship. With this methodology comes a process of unlearning and relearning (through different modes of learning) and of giving and receiving in a collective, reciprocal struggle in which all are invested and equal co-collaborators toward not only stopping or preventing human rights violations, but also in building community to transform the legal, educational, and other structures at the root of settler colonial violence.
“Decolonization offers a different perspective to human and civil rights-based approaches to justice, an unsettling one, rather than a complementary one. Decolonization is not an ‘and.’ It is an elsewhere.”

I. INTRODUCTION

Our world is multicultural with varied experiences and worldviews. Defined as a collection of attitudes, values, stories, assumptions, and expectations about the world around us, a “worldview” informs individual and collective thoughts and actions. While Indigenous worldviews are numerous and varied, many Indigenous communities share commonalities in worldviews that differ from Western worldviews. Indigenous worldviews offer alternative epistemologies, or ways of being and knowing, from Western worldviews that dominate and shape our current world order, including our legal systems and practices. Though Indigenous worldviews


2. See generally James W. Sire, Naming the Elephant: Worldview as a Concept 2 (2d ed., 2004). The concept of worldviews has been described as mental lenses that are entrenched ways of perceiving the world. Marvin E. Olsen, Dora G. Lodwick, & Riley E. Dunlap, Viewing the World Ecologically (1992). Worldviews also have been defined as “cognitive, perceptual, and affective maps that people continuously use to make sense of the social landscape and to find their ways to whatever goals they seek.” Michael Anthony Hart, Indigenous Worldviews, Knowledge, and Research: The Development of and Indigenous Research Paradigm, 1 J. Indigenous Voices in Soc. Work 1, 2 (2010). It is also true that not every individual or community internalizes societal worldviews.

3. See Tuma Young, L’nuwita’simk: A Foundational Worldview for a L’nuwey Justice System, 13 Indigenous L.J. 75, 78 (2016). The authors are speaking in very general terms in the description of these differences and are in no way indicating that individual Indigenous cultures share the same worldviews, and ditto for generalizations of Western worldviews. By endeavoring to describe an “Indigenous worldview,” the authors are essentializing the experiences and diversity of Indigenous cultures and collectives. While conscious of this problem, the authors’ purpose is not to erase any one Indigenous worldview, but, rather, to juxtapose some of the common threads of Indigenous worldviews against the threads from the dominant Western worldviews imposed presently in settler colonial contexts in the Americas. Also, when thinking about Indigenous worldviews, consider the Antkowiak assertion that tying Indigenous communities to their lands, territories and natural resources forces a “‘cultural script’ with numerous parts: strict observer of customary practices, guardian of nature, and even steward of non-capitalist economies” which is an extremely “unrealistic” and “unsustainable” relationship with their lands, at least in today’s context of settler colonialism and extractive capitalism. See generally Thomas M. Antkowiak, Rights, Resources and Rhetoric: Indigenous Peoples and the Inter-American Court, 35 U. Pa. J. Int’l L. 113, 161–62 (2014) (explaining the ways in which international law is limited, failing to incorporate Indigenous rights into Western conceptions of property rights of
cannot and do not conform to a pan-Indigenous lens, they differ from Western worldviews in critical ways. Colonial and occupying forces have disrupted and violently usurped Indigenous worldviews since contact and conquest in settler colonial states.

Acknowledging and appreciating differences while recognizing equal validity among both Western and Indigenous worldviews is a necessary first step to begin shifting and transforming clinical pedagogy in settler colonial contexts. It is not enough to work with Indigenous communities, nor is it enough to advocate for Indigenous causes. Human rights educators and practitioners must turn their gaze inward to address their roles in—and continued benefits from—the displacements, dispossessions, and genocides of Indigenous peoples. This reflexive work is particularly important in the United States, where many international human rights law clinics operate within settler colonial spaces. In examining clinical law pedagogy, the best intentions, even in the practice of human rights legal advocacy, still amounts to violence when those intentions and their manifestations perpetuate settler colonial institutions and structures that erase Indigenous communities and devalue their collective ways of being and knowing.

Understanding and incorporating alternative worldviews into human rights clinical pedagogy and lawyering in settler colonial contexts is critical to successfully practicet human rights. Incorporating other worldviews opens up the possibility for reciprocal relationships necessary to succeed both in client representation and in shared social justice goals. Moreover, recovering and maintaining Indigenous worldviews is a liberation strategy for all peoples to be free from oppressive subjugation of colonizing state

the American Convention on Human Rights and forcing Indigenous peoples into a “cultural script”); see also Adam Kuper, The Return of the Native, 44 CURRENT ANTHROPOLOGY 389, 395 (2003) (making the case that Indigenous peoples’ demands for “recognition for alternative ways of understanding the world” ironically are made in the idiom of Western culture theories).

4. In the United States alone, there are 574 federally recognized Tribes, over 60 state recognized tribes and dozens of unrecognized tribes. Each of these tribes has its own language, customs, traditions, ways of being and knowing, and relationship to place. With regard to place, notably not all Tribes or other Indigenous peoples occupy their ancestral homelands. One need only look to the Tribes in the United States forcibly removed westward to reservations as a result of violent colonial forces and an insatiable appetite to exploit Native lands. For in-depth analysis on these issues as they relate to traditional ecological knowledge, see Caroline Bishop LaPorte, Truth-Telling: Understanding Historical and Ongoing Impacts to Traditional Ecological Knowledge (TEK), OCEANS & SOCY (Ana K. Spaulding & Daniel O. Suman eds., forthcoming 2023).

5. See id.
governments. To achieve the structural change necessary for such liberation, human rights clinicians must grapple with the ways human rights law and pedagogy further entrench systems of oppression while normalizing certain forms of state violence, including those against Indigenous peoples.

Some Indigenous worldviews have been described as “relational,” which prioritize people and entities coming together to help and support one another in relationship. As one perspective, Canadian Nishnaabeg scholar Leanne Simpson has outlined seven principles of Indigenous relational worldviews:

1. Knowledge is holistic, cyclic, and dependent upon relationships and connections to living and non-living beings and entities.
2. There are many truths, and these truths are dependent upon individual experiences.
3. Everything is alive.
4. All things are equal.
5. The land is sacred.
6. The relationship between people and the spiritual world is important.
7. Human beings are least important in (and are not at the center of) the world.

Relational worldviews also often focus on “communitism,” the sense of community tied together by familial relations and the families’ commitment to these kinship relations. They also focus on “respectful individualism,” the enjoyment of self-expression because of a community understanding that

7. For a discussion of the ways in which white supremacy culture is furthered in and through the practice of international justice advocacy, see Alexandra Lily Kather et al., Reimagining Justice Beyond the Punitive: White Supremacy Culture and Non-Governmental Organisations in the International Justice Space, 20 J. Int’l Crim. L. 24 (forthcoming, 2023) (on file with authors).
10. Id. This offering of one perspective does not mean to limit, essentialize, or discount other perspectives on Indigenous worldviews.
individuals act on community needs as well as in one’s own self-interest.\textsuperscript{12} Tribal worldviews often give high import to the relationships that serve to form the unity of nature and the way in which human beings act in harmony with all other living and non-living beings.\textsuperscript{13}

Reciprocity is another key element of many relational Indigenous worldviews. The concepts of relationship and reciprocity are deeply interconnected, arising from the fundamental view that land generates and empowers life, including non-material aspects of life, such as language, culture, and dreams.\textsuperscript{14} Because all things are both from and of the Earth, which is living, they are related to one another in a profound and reciprocal, familial way.\textsuperscript{15} A hierarchy of relationship seldom exists; instead, the roles each being plays are equally important to the health of every human and nonhuman being in the system.\textsuperscript{16} Recognition that human beings hold an important place in creation is tempered by the idea that they are dependent on everything in creation for their existence.\textsuperscript{17} “People of many Indigenous cultures have certain specific ways they reciprocate, giving back to the plants, water, soil, and animals with which they are in relationships of mutual support, balance, and harmony. These specific means of reciprocation are usually culture-specific and often sacred or at least very private.”\textsuperscript{18} Therefore, non-Indigenous people cannot engage in these practices or ways of being as a means to distance themselves from their role in or their benefit from settler-colonialism. Attempting to adopt culturally specific practices

\textsuperscript{12}Hart, supra note 2, at 3; Lawrence William Gross, Cultural Sovereignty and Native American Hermeneutics in the Interpretation of The Sacred Stories of the Anishinaabe, 18 WICAZO SA REV. 127, 129 (2003); see also VINE DELORIA JR., GOD IS RED 87 (2003).

\textsuperscript{13}DELORIA JR., GOD IS RED, supra note 12, at 87.

\textsuperscript{14}See id. at 87; Nicole Redvers et al., Indigenous Natural and First Law in Planetary Health, 11 CHALLENGES 29, 30 (2020).

\textsuperscript{15}See, e.g., DELORIA JR., GOD IS RED, supra note 12, at 88; Haunani-Kay Trask, Coalition-Building Between Natives and Non-Natives, 43 STAN. L. REV. 1197, 1197 (1991).

\textsuperscript{16}Nicole Redvers et al., The Determinants of Planetary Health: An Indigenous Consensus Perspective, 6 LANCET PLANET HEALTH 156, 156 (2022); see also Young, supra note 3, at 79.

\textsuperscript{17}DELORIA JR., GOD IS RED, supra note 12, at 86.

\textsuperscript{18}Relationship and Reciprocity, TAPESTRY INST., https://tapestryinstitute.org/ways-of-knowing/key-concepts/relationship-reciprocity/ (last visited Feb. 9, 2023). Sumac kawsay, for example, means a quality of life for Quechua peoples that promotes harmony within the community and the environment that surrounds an individual. See Catherine Walsh, Afro and Indigenous Life - Visions in/and Politics. (De)colonial Perspectives in Bolivia and Ecuador, 18 BOLIVIAN STUD. J. 50, 56–57 (2011).
into non-Indigenous spaces is at worst cultural appropriation, but is also performative and extractive without addressing root causes of settler colonial violence.

Colonization is a violent process of domination and subordination of peoples and lands that occurs largely for capitalist economic exploitation, resource extraction, and wealth accumulation. Colonization actively has suppressed Indigenous relational worldviews to perpetuate Western worldviews based on property ownership, resource extraction, labor exploitation, Christian-autocracy, patriarchy, and imperialism. Western worldviews reflect and further Locke’s theory of property: that natural resources are sentient property that individuals can own, consume, or derive benefits at the exclusion of others under the “sole and despotic dominion of humankind.” In the United States, similar theories have been used to dispossess Indigenous peoples of their ancestral lands. The “doctrine of discovery,” as memorialized in Johnson v. M’Intosh, and the concepts


22. William Blackstone Commentaries on the Laws of England 707 (William Carey Jones ed., 1916). As stated previously, this worldview is antithetical to many Indigenous worldviews that find all living beings sentient and in a web of interconnectedness and interdependence. See also DELORIA JR., GOD IS RED, supra note 12, at 88 (“Behind the apparent kinship between animals, reptiles, birds, and human beings in the Indian way stands a great conception shared by a great majority of the tribes. Other living things are not regarded as insensitve species. Rather they are ‘people’ in the same manner as the various tribes of human beings are people.”).

23. “The right of discovery . . . is confined to countries ‘then unknown to all Christian people;’ . . . to take possession of all in the name of the king of England . . . notwithstanding the occupancy of the natives, who were heathens . . . .” Johnson v. M’Intosh, 21 U.S. 543, 576–77 (1823); see also Indian Removal Act, Pub. L. No. 21-148, 4 Stat. 411 (1830); Cherokee Nation v. Georgia, 30 U.S. 1, 48 (1831); Worcester v. Georgia, 31 U.S. 515, 534–44 (1832); ROXANNE DUNBAR-ORTIZ, AN INDIGENOUS PEOPLES’ HISTORY OF THE UNITED STATES 197–217 (2015).
of manifest destiny and *terra nullius* serve as foundational bases for property law in the United States. These legal concepts echo colonialist sentiments: Indigenous peoples did not use the land for its best possible productive use, a legal justification then and now for forced removals and genocides, but rarely the case in international law to discuss state sovereignty’s historical origins.

In the Americas, colonialism began as an overtly violent conquest that included genocide, land dispossession, and the widespread and systematic rape and murder of Native peoples. Today, these practices continue more subtly through the legal system and state or private action, often in the name of progress, modernity, and development. Indigenous individuals and communities experience violence directly through *inter alia* government failures to allow Indigenous sovereignty to protect Indigenous women, girls, two-spirit, and other gender diverse people from murder and other forms of violence, and indirectly through the dehumanizing use of Native images as mascots, and discourse that Native people and their communities are of the

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24. Manifest destiny was a nineteenth century doctrine or belief that settlers were destined to expand across North America. See generally ROBERT J. MILLER, NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS & CLARK, AND MANIFEST DESTINY (2006) (discussing the influence of the doctrine of discovery during the nineteenth century); see also WILLIAM EARL WEEKS, JOHN QUINCY ADAMS AND AMERICAN GLOBAL EMPIRE 183–84 (2002).

25. *Terra nullius* refers to a “territory without a master” and is a public international law term used as a legal fiction to describe a space that, even if inhabited, does not belong to a state, meaning the land is not “owned” by anyone. In fact, the term has oftentimes been used in order to legitimize state occupation and colonization of lands occupied by non-Western peoples. See generally ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2004).


27. See Aníbal Quijano, Coloniality of Power and Social Classification, XI J. WORLD SYS. RSCH. 342, 372–73 (2000). For an excellent analysis as to the continuum of violence and the law’s facilitation of such violence from conquest of Native peoples to sexual violence against Native women in the United States today, see generally SARAH DEER, THE BEGINNING AND THE END OF RAPE: CONFRONTING SEXUAL VIOLENCE IN NATIVE AMERICA (3d ed., 2013). This is not to say that Indigenous peoples do not support progress. Often, the idea of modernity or progress is pitted against indigeneity, and, by implication, Native peoples are pitted against modernity and progress.

As Vine Deloria Jr. notes: “To be an Indian in modern American society is in a very real sense to be unreal and ahistorical.”

Settler colonialism is “an inclusive, land-centered project that coordinates a comprehensive range of agencies, from the metropolitan center to the frontier encampment, with a view to eliminating Indigenous societies.” In contrast to colonialism, which relies on Indigenous populations for extractive labor to benefit the colonists, settler colonialism strives for the genocidal dissolution and destruction of Native communities and cultures, including Indigenous worldviews incompatible with dominant Western worldviews. The pre-colonial universe is attacked, dismantled, and rejected through employing images of uncivilized barbarism and savagery.

In their place, settler colonial structures erect a new colonial society on the expropriated land base; settler colonizers come to stay and replace Indigenous communities and institutions. Invasion is a structure, not an event, and elimination becomes an organizing principal of settler-colonial societies rather than a one-off occurrence. Elimination as a tool results in frontier homicides and mass killings; forced removals and expropriation or theft of lands; the breaking-down of native titles into alienable individual freeholds; family separation; child abduction; forced religious conversion; genocidal programs in institutions, such as missions or boarding schools, that...
stripped Indigenous children of their identities as Indigenous children; forced sterilization of Native women by the Indian Health Service; and a range of other assimilationist policies and practices.\textsuperscript{37} Today, the atrocities perpetrated against Indigenous groups fall along a continuum of violence.

Laws, policies, and educational institutions generally operate as structures of oppression, extraction, erasure, disempowerment, and continuing violence against colonized peoples. As part of the colonial legal framework, international human rights laws and institutions perpetuate settler colonial violence as systems of colonial discourse at the international and domestic levels, especially given the sovereignty of the nation-state.\textsuperscript{38} Human rights practitioners must squarely confront the deficiencies in the international human rights legal system in Indigenous rights protection and promotion. Questions of state legitimacy, sovereignty rights of Indigenous nations, exclusion, and continued processes of genocide, in addition to other atrocities, challenge the human rights framework as being inadequate while perpetuating and entrenching structural and physical violence against Indigenous peoples.\textsuperscript{39}

Clinical legal education and advocacy can often reinforce coloniality—defined as the logic that perpetuates structural violence against individuals and groups resisting colonization and struggling for their survival as


\textsuperscript{38} See generally ANGHEIE, IMPERIALISM, SOVEREIGNTY, supra note 25.

\textsuperscript{39} See U.S. DEP’T OF STATE, ANNOUNCEMENT OF U.S. SUPPORT FOR THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2011). Significantly, Australia, Canada, New Zealand, and the United States initially abstained from the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) because these countries are settler colonial states that have and continue to commit structural and physical violence, including persecution and genocide, against their Indigenous populations. Even after the United States endorsed the UNDRIP in 2011, there were problematic interpretations of the declaration that call into question whether the state will fully implement laws and policies in a way that is compatible with the object and purpose of the provisions of the instrument. In many contexts, Indigenous peoples have always assumed their place as subjects of international law and pursued their rights under international law within their own normative worldviews. See also Kristen A. Carpenter & Angela R. Riley, \textit{Indigenous Peoples and the Jurisgenerative Moment in Human Rights}, 102 CALIF. L. REV. 173, 200 (2014); Ravi de Costa, \textit{Identity, Authority, and the Moral Worlds of Indigenous Petitions}, 48 COMP. STUD. SOC’Y & HIST. 669, 675–85 (2006) (examining petitions brought by Indigenous peoples to the British Empire, the Commonwealth, and the international community in the nineteenth and twentieth centuries).
peoples. Therefore, human rights clinicians and lawyers must come to the practice of law in settler colonial contexts with the assumption that ongoing discrimination and state violence against Native people is by design in, and throughout, legal and other societal institutions. Additionally, human rights educators and practitioners must confront and dismantle structures of racism, misogyny, homophobia, classism, xenophobia, and settler colonialism through active relinquishment of land, power, and privilege. Individuals in law schools must be acutely aware of how legal education often is inherently violent for Indigenous students and educators, as law schools are spaces in which Indigenous people constantly confront colonial justifications couched as legitimate in Western legal frameworks, including international human rights law.

Thinking through a settler colonial frame is not to blame or accuse settlers; rather, the purpose is to generate thinking toward a plurality of possibilities that move beyond the constraints imposed by the settler state. The late Professor Haunani-Kay Trask finds “that particular variant of racism . . . [that] vociferous[ly] den[i]es the presence, unique histories and right to self-determination of America’s conquered Natives . . .” as a “cherished ignorance” of American individualism. As social justice advocates and educators, clinicians must actively reject these forms of violence against Indigenous peoples. Otherwise, critical enlightenment and awareness through teaching and practicing human rights is nothing more than a way to distract non-Native settlers from feelings of guilt or responsibility for the present-day subjugation and oppression of Native individuals and communities in settler colonial states.

But how does one actually integrate decolonization practices while incorporating Indigenous values into human rights law practice in settler colonial contexts? At a minimum, it requires a critical examination of human rights law frameworks and advocacy tools to understand whether and how

41. See Tuck & Yang, supra note 1, at 21.
42. See Dean Itsuji Saranillio, Haunani-Kay Trask and Settler Colonial and Relational Critique: Alternatives to Binary Analyses of Power, 4 STUD. IN GLOB. ASIAS 36, 36 (2018).
44. Tuck & Yang, supra note 1.
such frameworks and tools reinforce and entrench colonial structures of violence through a Western worldview of extraction and transactional interactions rather than in Indigenous worldviews that center all living and nonliving beings in relationship, reciprocity, and balance. Such an examination may lead to pursuing or foregoing particular human rights law advocacy strategies with regard to securing Indigenous rights and redress for violations.

At most, it is a complete unlearning and relearning, drawing upon traditions and knowledge of Indigenous peoples to advance transformative practices of reciprocal, relational lawyering that is co-creative and prioritizes processes that promote Indigenous relational worldviews. Importantly, this must be accomplished without co-opting Indigeniety or engaging in performative acts of “Indianness” as it has come to be defined by—or as is has become beneficial to—whiteness. It requires Native people leading these processes. It requires non-Native people to relinquish power and trust that non-settlers will not perform empire when that power shifts. It requires envisioning an Indigenous future where Indigenous peoples govern.

45. See Madina V. Tlostanova & Walter D. Mignolo, Learning to Unlearn: Decolonial Reflections from Eurasia and the Americas 7, 7 (2012) (“learning to unlearn”—[is] to forget what we have been taught, to break free from the thinking programs imposed on us by education, culture, and social environment, always marked by the Western imperial reason”).

46. See LaPorte, supra note 4, for an in-depth discussion of traditional knowledge. The problem with talking about Indigenous relational worldviews as a solution, however, is the assumption that it remains wholly intact despite ongoing efforts to eradicate Indigenous people from their lands and to strip systematically, intentionally, and violently Indigenous people of what it means to be Indigenous. The erasure of Indigenous worldviews and knowledge is extremely profound. Thinking of traditional knowledge as whole or safe ignores the fact that it is under constant threat. Traditional knowledge of Indigenous communities is often rooted in language, story, and ceremony. See Robin Wall Kimmerer, Braiding Sweetgrass 56–57 (2002). In the United States, however, Indigeneity has been deeply disrupted by ongoing colonization and genocide.

47. See Philip J. Deloria, Playing Indian 187 (1998) (noting that since the arrival of colonists in America, “Indian-white relations and Indian play itself have modeled a characteristically American kind of domination in which the exercise of power was hidden, denied, qualified, or mourned,” and that there exists a “mostly imagined Indianness spoken in compelling ways to issues of class, gender, and nationalism within white America”).

48. See George J. Sefa Dei, Revisiting the Question of the “Indigenous,” 491 Counterpoints 291, 305 (2016) (“[Decolonization] calls for engaging discomfort and de-stabilizing knowing. It is about going where we have not been before and asking new questions. Decolonization is also about contesting futures, and there are no guarantees with a decolonization project.”).

49. See G.A. Res. 61/295 United Nations Declaration on the Rights of Indigenous
just where the idea of (Indigenous) self-determination is respected or advanced as a distant, future goal. In terms of immediate steps for human rights practice, it requires foregrounding struggles for self-determination, cultural survival, land rights, and decolonization, even when other rights seem to be foregrounded in present struggles for social justice.\(^5\)

This Article offers critical insight into the ways in which international human rights law clinical pedagogy and practice perpetuate coloniality while offering practical ways to begin unsettling clinical law education and advocacy toward a lawyering that incorporates Indigenous values and relational worldviews. Part II reviews existing critiques of human rights law and human rights lawyering while offering additional insight into the circumstances in which these critiques manifest in particularly problematic ways when working with Indigenous client-partners in settler colonial contexts. Part II also examines decolonial lenses as necessary, yet insufficient methods for changing harmful practices in these contexts. Part III offers insight into ways human rights clinicians can incorporate Indigenous values in human rights law pedagogy and practice toward transformative advocacy that prioritizes relational worldviews and skills that emphasize anti-colonial, trauma-informed, co-creative lawyering to “unsettle” colonial structures—even well-meaning structures—that perpetuate harm. Part IV examines challenges and possible paths forward, stressing the importance of process and reinforcing the imperative to improve clinical practices as achieving true inclusive human rights advocacy in and through practice.

II. CRITIQUES OF INTERNATIONAL HUMAN RIGHTS LAW, PEDAGOGY & PRACTICE

Critical legal theory, including Third World Approaches to International Law (“TWAIL”), has long exposed colonial laws and practices that reinforce and entrench discriminatory, racialized power structures and prevent transformative international human rights advocacy.\(^5\) Further, human rights

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50. See Dei, supra note 48, at 305.

51. See generally KRIZNA GOMEZ & THOMAS COOMBES, BE THE NARRATIVE: HOW CHANGING THE NARRATIVE COULD REVOLUTIONIZE WHAT IT MEANS TO DO HUMAN RIGHTS (2019); ELORA HALIM CHOWDHURY, TRANSNATIONALISM REVERSED: WOMEN ORGANIZING AGAINST GENDERED VIOLENCE IN BANGLADESH (2011); SARAH DE JONG,
practitioners, including human rights clinicians, have advanced critiques of human rights practice toward reforming our pedagogy and clinical practice.\textsuperscript{52} This Article builds on these important critiques, offering additional insights into the ways clinical pedagogy and human rights advocacy perpetuates harm toward Indigenous students and client-partners in settler colonial contexts.

\textbf{A. International Human Rights Law}

In the past few decades, scholars have increasingly revealed some of the cracks in the foundation of international human rights law, including those that expose its design and selective implementation as furthering

imperialism. In Human Rights: A Political and Cultural Critique, Professor Makau Mutua argues that human rights law’s normative universe is a largely liberal and Eurocentric continuum of the colonial project that privileges certain actors and subordinates others. In his critique, Mutua argues that human rights movements are built on an imperial metaphor of “savages, victims, and saviors” in which “other” cultures that fall outside the liberal democratic political ideology—often deviant states or subnational groups—are “savages” in need of redemption and “civilization” by “saviors.” These savage cultures perpetuate human rights abuses against “victims” also in need of rescue by saviors. In Mutua’s metaphor, the

53. But see, e.g., Carpenter & Riley, supra note 39, at 173 (finding that Indigenous peoples’ participation in international human rights law has began to move international law away from being deployed as a tool of imperial power and conquest). While the authors agree that bringing Indigenous norms and values in human rights advocacy is potentially transformative, this Article posits that the settler colonial violence in and through law, including international law, is still very much present and ongoing. Thus, this period is not a “post-colonial” one. See Mishuana Goeman, Mark My Words: Native Women Mapping Our Nations 32–39 (2013) (describing colonization today as a process that is “ongoing”). The authors do, however, hope to contribute to a “jurisgenerative moment” in human rights law and practice. See Carpenter & Riley, supra note 39, at 173 (drawing upon Robert Cover’s work with regard to the jurisgenerative nature of certain lawmaking communities, and Bruce Ackerman’s work coining the term “constitutional moment”).

54. Mutua, supra note 34, at 11–12; see also Int’l Law Ass’n, Hague Conference, Rights of Indigenous Peoples 1 (2010) (“Traditional international law, Eurocentric in origin, has worked to largely ratify the attempts at the cultural, if not physical, eclipse of indigenous peoples.”). See generally Anghie, Imperialism, Sovereignty, supra note 25.


savior is the human rights corpus—which includes Western governments, international governmental organizations, and non-governmental organizations—that furthers norms based in Western liberal and Christian values while subjugating and rendering inferior non-Western worldviews.57

What can be overlooked is how the imperial “savage-victim-savior” metaphor continues to play out within settler colonial states against colonized peoples resisting dominant Eurocentric worldviews imposed upon their communities through laws, policies, and institutions. In the same way that international human rights advocacy can shame non-Western states as departing from “civilized” liberal values, human rights advocacy within a Western settler-colonial state context can stigmatize Indigenous practices and responses in the form of resistance to colonization and its lasting consequences.58

International human rights law also upholds unilateral assertions of sovereignty of nation-states as the primary subjects of international law and Western notions of sovereignty that reinforce the supremacy of the nation-state to the detriment of Indigenous peoples’ collective rights.59 International
law regards Indigenous peoples as subjects of the exclusive domestic jurisdiction of the settler state regimes that invaded their territories and established hegemony through conquest and colonization. Human rights forums have begun to include Indigenous people as individuals, yet they continue to systematically exclude Tribal Nations and Indigenous governments. These exclusions render their inclusion of Indigenous peoples within these forums to be largely performative, focusing on individual rights and collective access to such individual rights. Power-sharing in nation-to-nation relationships with Tribal Nations is not possible and has been actively suppressed and rejected in the current international legal order.


61. An example of this is the exclusion of Indigenous peoples in the creation of the International Labour Organization’s Indigenous and Tribal Peoples’ Convention, 1989 (ILO Convention No. 169), an international convention for Indigenous populations. This exclusion further entrenched assimilationist views of treaties with Indigenous peoples. See ALEXANDRA XANTHAKI, INDIGENOUS RIGHTS AND UNITED NATIONS STANDARDS: SELF-DETERMINATION, CULTURE AND LAND 49 (2007) (discussing state responses and objections to ILO Convention 107, which established for the first time on the international level specific state obligations towards Indigenous peoples); see also G.A. Res. 71/321, U.N. GAOR, 71st Sess., Supp. No. 65, U.N. Doc. A/Res/71/321 (2017) (framing Indigenous participation within the UN as below that of non-governmental organizations); HAUNANI-KAY TRASK, FROM A NATIVE DAUGHTER 26–40 (1993) (critiquing America’s cultural and political hegemony of Indigenous interests through the lens of international human rights and pointing to the fact that while the UN has ‘condemned’ colonizing ideologies as unacceptable, the United States continues to undermine Hawaiian self-determination and control of a Native land base).

62. See UNDRIP, supra note 49, art. 46 (discussing the UNDRIP and a modification
Furthermore, because victims must be constructed as sympathetic and innocent, while savages must be viewed as evil perpetrators, Indigenous communities in settler contexts are often rendered invisible and erased in the human rights dominant narratives. If Indigenous communities are visible, they are often forced into roles of “uncivilized savages” that threaten the “progressive development” of the nation-state or modern ways of life for the settler society. Moreover, the savior-missionary-colonizer in Mutua’s human rights narrative reflects the deeply problematic ideas of Eurocentric superiority and manifest destiny that characterize settler colonialism’s ongoing violence—the “othering” project that degrades and dehumanizes as it purports to save—vis a vis Native individuals and communities.

Further, Mutua encourages a shift toward addressing racial hierarchies and power differences in human rights advocacy that is “multicultural, inclusive, and deeply political.” Here, the starting point is not centering Western worldviews as “universal” and rendering all other worldviews to the periphery; rather, the place of departure must begin with all cultures and worldviews as equally valid, respected, and nurtured.

Calling for epistemic of self-determination rights of Indigenous peoples); see also JAMES (SA’KE’J) YOUNGBLOOD HENDERSON, INDIGENOUS DIPLOMACY AND THE RIGHTS OF PEOPLES: ACHIEVING UN RECOGNITION 27–28 (2008) (acknowledging Indigenous peoples’ disappointment with the decolonization movement of the 1950s and 1960s, which focused too heavily on the separation and independence of colonized peoples rather than their liberation within colonial governments); S. JAMES ANAYA, INTERNATIONAL HUMAN RIGHTS AND INDIGENOUS PEOPLES 4–7 (2009) (discussing a case in which the Iroquois Confederacy submitted a petition to the League of Nations, but Canada blocked them from being heard).

63. See MUTUA, supra note 34, at 29 (explaining that public moral outrage against the perpetrator is easier to mobilize with an innocent victim than one who is violent or aggressive); James Gathii, International Law and Eurocentricity, 9 EUR. J. INT’L L. 184 (1998) (noting how international law was formed through European and non-European encounters).

64. See, e.g., Lily Grisafi, Prosecuting International Environmental Crime Committed Against Indigenous Peoples in Brazil, 5 COLUM. HUM. RTS. L. REV. 26, 31–32 (2020) (collecting incriminating statements from former President Jair Bolsonaro regarding the need to bring development to the Indigenous peoples of the Amazon).

65. See MUTUA, supra note 34, at 33 (juxtaposing eurocentric norms perpetuated by colonialism and the human rights movement).

66. Id. (explaining the white savior’s need to justify his superiority through positivist language and denigration of non-European peoples).

67. See id. at 13–14. (reiterating that power imbalances must be addressed within the human rights movement to move past Eurocentrism); see also Knuckey et al., supra note 51, at 1–4 (critiquing power imbalances in human rights advocacy relationships).

68. See MUTUA, supra note 34, at 13, 32 (acknowledging the role of the sword and the cross in conquering non-Europeans and remaking them in the white man’s image);
pluralism is a start to begin valuing Indigenous worldviews and breaking down colonial racial hierarchies of power toward true inclusive advocacy. Universal claims to shared pasts or to collective knowledge are often Eurocentric in nature. Thus, the international human rights framework must be deconstructed through an anti-colonial lens toward epistemic pluralism and away from a notion of universality that devalues and erases “othered” ways of being and knowing. Indeed, the best way to challenge “Eurocentricity masquerading as universal” is to offer multiple forms of knowledge production and include multiple experiences and voices as valid and equal. Such a critique of the human rights framework is necessary to ensure that Indigenous worldviews are not simply incorporated into Western liberal legal prisms. Human rights advocacy has achieved short-term gains but potentially has pushed long-term transformation further out of reach.

Another important critique of the human rights framework is the emphasis on individual rights, sometimes to the detriment of important collective or group rights. Even minority or group rights such as the right to religion or

\[ \text{see also Anthony Anghie, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, 40 Harv. Int’L L. J. 1, 59, 70 (1999) (discussing ethnocentric perspectives of international law).} \]

\[ \text{69. Redvers et al., The Determinants of Planetary Health, supra note 16, at 156 (discussing a multidimensional approach to sustainability and livelihood rooted in Indigenous-specific forms of knowledge).} \]

\[ \text{70. Dei, supra note 48, at 306 (suggesting that “multicentric ways of knowing” is the solution to Eurocentric legal and political frameworks underlying the human rights movement).} \]

\[ \text{71. Id. (acknowledging that Indigenuity is intertwined with a sense of being dispossessed and tied to historical narratives of the past).} \]

\[ \text{72. A recent example of this attempt to retrofit Indigenous worldviews into the liberal human rights model is the push for the “rights of nature” in order to protect the environment. To personify rivers and other non-human beings continues the anthropocentric worldview that requires nature to be preserved for human sustainability and consumption, as well as reinforces individuality, rather than seeing the interconnectedness between and among all living things. See Paola Villavicencio Calzadilla & Louis J. Kotzé, Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia, 7 Transnat’l Env’t L. 397, 424 (2018) (critiquing “rights of nature” from an Indigenous perspective).} \]

\[ \text{73. For instance, advocating for an Indigenous customary law conception of property rights in the Inter-American system for the protection of human rights may indeed further entrench the Western legal conceptions of property rights as the only legitimate conception of peoples in relationship to land, which is still based in ownership, productive use, and exclusion of others enforced by the police state. See Miller, supra note 58, at 847, 887–88.} \]

\[ \text{74. Will Kymlicka has long engaged the tensions at these intersections toward reconciling individual and collective rights. See, e.g., WILL KYM LiCKA, MULTICULTURAL} \]
belief or the right to vote—rights that have very little meaning without the collective—are couched as individual rights. The collective right to self-determination, affirmed in the UN Charter and enumerated in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), is fundamental to the notion of sovereignty. Indigenous self-determination rights, however, diverge from the self-determination rights of peoples more generally under international law, providing a poignant example of the ways in which the rights of Indigenous peoples are subordinated structurally within the international human rights system.

For Indigenous peoples, the right to self-determination is key to collective survival and resistance given their ongoing struggles against genocide and erasure in settler colonial nation-states. In examining the United Nations

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75. See G.A. Res. 2200 (XXI), International Covenant on Civil and Political Rights, 21 U.N. GAOR, Supp. (No. 16) at 52, arts. 18, 25, U.N. Doc. A/6316 (1966) [hereinafter ICCPR] (declaring that all individuals should have the right to freedom of religion, and providing for “universal and equal suffrage”). Minority rights are another example of rights that have collective aspects but are framed as individual rights. See G.A. Res. 47/135, annex, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Language Minorities (Dec. 18, 1992) (framing concept of minority rights in international law as individual rights); see also S. James Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims, in The Rights of Minority Cultures* 321 (Will Kymlicka ed., 1995) (noting that the minority rights framework under international law does not address many of the collective rights concerns of Indigenous groups).

76. See ICCPR, supra note 75, art. 1 (stating that “[a]ll peoples have the right of self-determination”); G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights, art. 1 (Dec. 16, 1966) [hereinafter ICESCR] (same). The Human Rights Committee, in its interpretation of self-determination rights under the ICCPR, has recognized that this collective right of all peoples may have no remedy in law; rather, the remedy is contemplated as a political one. See generally U.N. Office of the High Commissioner for Human Rights, General Comment No. 27, U.N. Doc CCPR/C/21/Rev.1/Add.9 (1999).
Declaration on the Rights of Indigenous Peoples (“UNDRIP”), an international consensus document in which representatives of Indigenous communities participated in the drafting and negotiation process, the primacy of self-determination rights is woven throughout the document’s provisions. For instance, articles enumerate inter alia rights to access ancestral lands, rights to “self-governance” (Article 4), “rights” to a nationality, the “right” to not be subjected to forced assimilation or destruction of culture (Article 8), the “right” to belong to an Indigenous community or nation (Article 9), the prohibition of forced removed from lands or territories (Article 10), or the right to maintain and develop political, economic and social systems or institutions (Article 20). 

In the same breath, however, Article 46 of the UNDRIP effectively limits sovereignty rights of Indigenous peoples, stating that nothing in the Declaration may be interpreted as “authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.” The United States government emphasizes these limitations in its interpretation of the UNDRIP.

In this way, the self-determination rights of Indigenous peoples expose the founding dilemma of settler colonial states. Many settler-colonial nation-states recognize the legality of treaties with Tribal Nations to demonstrate lawful acquisition of territory while denying Indigenous communities their lawful status as “peoples” under international law to exercise rights to self-determination. States resist Indigenous peoples’ self-determination because governments fear political destabilization and movements triggering secession. Thus, the UNDRIP, the instrument to protect Indigenous rights,
limits the self-determination rights of Indigenous peoples to a detrimental and discriminatory effect. 83

B. Law School Pedagogy & Practice

Teaching human rights lawyering that incorporates Indigenous values requires reforming clinical pedagogy and rethinking the way we teach the law more generally, with a specific emphasis on human rights law and practice. Clinicians must examine pedagogical methods and teach from a place of factual truths about historical and present harms perpetrated against Native peoples in all contexts, especially in settler colonial contexts.

In examining law school education in the United States, Professor Christine Zuni Cruz critically reflects on the way that U.S. law schools, mostly predominantly white institutions (PWIs), perpetuate structural oppressions and reinforce societal inequalities in the educational institution’s structures and curriculum choices. 84 She explains the conflicts between Native and Anglo-American legal principles, as well as the focus on teaching Federal Indian Law—what she names “outsider law which affects Indians”—to the exclusion of Tribal law, or “insider law” of Indigenous peoples in the United States. 85 Furthermore, most law schools teach various legal doctrines through cases—such as the “doctrine of discovery” through \textit{Johnson v. M’Intosh}\textsuperscript{86}—in first-year property classes, that justify colonial conquest, the expropriation of Native lands, and the extinguishing of Native title, often without critical reflection. 86 If property law class discussions

\textit{Where Do Indigenous Peoples Fit Within Civil Society?}, 5 U. PA. J. CONST. L. 357, 376 (2003) (explaining that the affirmation of cultural and political rights by larger nation-states is a primary goal of tribalism).

83. Duane Champagne, 	extit{UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples): Human, Civil, and Indigenous Rights}, 28 WICAZO SA REV. 9, 20 (2013) (explaining that UNDRIP does not incentivize nation-states to recognize Indigenous peoples’ rights under international law); see also Schulte-Tenckoff, supra note 74 (suggesting that the key difference between international and internal agreements turns on the legal domestication of Indigenous peoples by larger nation-states).

84. See generally Christine Zuni Cruz, 	extit{[On the] Road Back In: Community Lawyering in Indigenous Communities}, 5 CLINICAL L. REV. 557, 563–64 (1999) (explaining the tendency of law schools to focus too much on “outsider” law which affects Indigenous communities, while losing out on the benefits that flow from covering “insider” law which covers internal community affairs).


86. \textit{See DUKEMINIER ET AL., PROPERTY} 3–13 (10th ed. 2022) (discussing acquisition
critique the case or the doctrine of discovery as anti-Indigenous and rooted in white supremacy, students still walk away with the understanding that the case is good law and the racist doctrine that provides legal cover for land disposessions and genocides stands today, upheld and enforced as the law of the land.

If students are taught that Johnson v. M’Intosh was not an actual case in controversy, that the plaintiff paid for the defendant’s legal representation, that the Chief Justice had a serious financial conflict of interest, that documents were forged, or even just tested the case against the legal doctrine of “standing” or the importance of necessary parties, students might build a sharper critique of our reliance on these colonial legal systems. However, many law schools do not teach case law this way. These, and other glaring omissions of historical truth, render law schools, whether intentionally or unintentionally, as institutions that promote the settler colonial project that devalues Indigenous ways of being and knowing and perpetuates the erasure of Indigenous peoples. This erasure continues due to many law schools failing to recruit and retain Native students and faculty. So, individuals who would and do provide valid experiences and counter-narratives are missing from law school colonial discourses.

Even in teaching human rights law, professors spend little, if any, time questioning the Western liberal legal model on which international law is based. While human rights law courses generally engage in the debated question as to whether human rights law is universal or culturally relative, human rights law practice certainly stresses the universal application of human rights in contexts globally. In working with Indigenous peoples in settler colonial contexts, human rights law practice must be acutely aware of cultural differences, both in understanding client-partners’ needs and in co-

of lands through discovery and conquest). But see Matthew L.M. Fletcher, Federal Indian Law 33–44 (2016) (including critical commentary on Johnson v. M’Intosh). In fact, the Johnson v. M’Intosh case is not taught at all in context. This was a case that was wrought with fraud, lacked a true case in controversy, and hosted numerous conflicts of interest.


88. See generally Dinah L. Shelton, Advanced Introduction to International Human Rights Law 108–10 (2020); Fletcher, supra note 52, at 7 (critiquing the ways in which human rights fact-finding and report-writing advocacy practices emphasize the universal and often are colonizing forms of violence against local advocates).
creating a narrative based in mutual understanding, especially because the assumption is that the settler-advocates and Native rightsholders share cultural understanding, an assumption that can further processes of assimilation and erasure. Oppressed peoples must understand and navigate dominant cultures for survival and resistance. Imperialist privilege—what one Indigenous scholar calls “an outright insensibility to the vastness of the human world”—does not require the occupation of two cultural worlds because non-Native advocates often are beneficiaries of colonialism. As a result, advocates must intentionally understand historical and present realities of settler colonialism to become more aware of the double consciousness in which Indigenous rightsholders and communities navigate context. Such understanding must come from learning about the continuum of settler colonial violence and the accompanying human rights violations perpetrated against Indigenous communities from the time of contact and conquest that have been largely left unredressed and continue today.

Another problem that reflects Anglo-American imperialism in international human rights law is the priority that is placed on advocating for individual rights and freedoms. Emphasis on individual rights presupposes a Western anthropocentric worldview that deemphasizes the interrelationships between individual rightsholders, between individual rightsholders and their communities, and between individual rightsholders and their non-human and non-living relatives that characterize many non-Western, Indigenous worldviews. The individualistic approach, for


92. Zuni Cruz, suppl note 84, at 568.

93. The Rights of Nature movement differs from the traditional Western legal perspective on the environment in that it is ecocentric, which centers the rights of the
example, is embedded in the client-centered approach to lawyering that many human rights clinicians have adopted as the best practice in clinical pedagogy without considering implications for collective human rights. Such emphasis on individual rights also disguises structural causes—including colonialism, racism, and empire—as the roots of oppression and consequent individualized harms, such as low levels of healthcare and education, and high levels of poverty and incarceration. While the international human rights legal framework does include collective and group rights, advocacy and norm development tend to prioritize individual rights frames hierarchically over collective rights.

Moreover, human rights advocacy tends to focus on engaging with national and supranational state-centric systems in which human rights norms become actionable. Such advocacy further entrenches the legitimacy of the settler colonial state as sovereign to the detriment of colonized peoples. The Western gaze has also turned attention to non-Western states as states that violate human rights, while overlooking human rights violations in Western state contexts. To respond to this phenomenon, international human rights law clinics can intentionally recognize and commit advocacy efforts to address human rights violations through a decolonial lens in Western settler colonial contexts.

Recent scholarship examining critically responsive human rights lawyering has touched upon advocate-rightsholder relationships even within “subnational advocacy where the dominance of national narratives may fail to appreciate localized realities.” Often, advocates have privileged their environment itself, rather than humans. The Rights of Nature, however, is not necessarily furthering Indigenous values and worldviews.

94. Zuni Cruz, supra note 84, at 568.
95. Trask, Feminism and Indigenous Hawaiian Nationalism, supra note 89, at 911; see also Kather et al., supra note 7, at 7–8 (noting the problem of a lack of systemic critiques in international justice practice).
96. MUTUA, supra note 34, at 109, 154.
97. See Glen Coulthard, Place Against Empire: The Dene Nation, Land Claims, and the Politics of Recognition in the North, in RECOGNITION VERSUS SELF-DETERMINATION: DILEMMAS OF EMANCIPATORY POLITICS 147, 169 (Avigail Eisenberg et al. eds., 2014) (criticizing the state-driven, rights-based recognition process as entrenching the colonial status quo, as opposed to adopting an approach that is founded on Indigenous worldviews and values); see also Joel Wainwright & Joe Bryan, Cartography, Territory, Property: Postcolonial Reflections on Indigenous Counter-Mapping in Nicaragua and Belize, 16 CULTURAL GEOGRAPHIES 153, 153–54 (2009) (recognizing human rights advocacy to secure rights to territory and property as nothing more than legitimizing state-centric legal systems and reworking colonial relationships).
98. Knuckey et al., supra note 52, at 11.
own identification of human rights problems and have incorporated methods that subjugate rightsholders as powerless victims while entrenching structures that sustain existing power imbalances. 99 Sarah Knuckey et al. discuss rightsholder participation in diagnosing human rights problems and building strategies for solutions as imperative to do no harm and to avoid further entrenching abuses or undermining rightsholders’ agency and rights. 100 The authors point to resulting harms that include “trust deficits” in advocate-rightsholder relationships when human rights lawyering is top-down and devoid of meaningful participation. 101

III. INCORPORATING INDIGENOUS VALUES IN HUMAN RIGHTS CLINICAL PEDAGOGY & PRACTICE

A. Prioritize Process as Successful Human Rights Practice

In settler colonial contexts, critically responsive human rights lawyering may be subnational in the dominant state-centric model on which the human rights framework is based. In any event, for Indigenous peoples, the dominant narratives intentionally devalue and erase local realities. Not only must advocates and rightsholders use participatory models in all aspects of the collaboration, but they must also prioritize the relationship and co-creative processes above all else in the advocacy strategy and implementation. Honoring and respecting the process becomes the critical human rights work and Indigenous rightsholders in relationship with one another thriving as agents of social change is the resistance to the erasure of Native people and communities in settler colonial contexts. The successful process of relational lawyering consequently becomes successful human rights advocacy.

This resistance as successful human rights advocacy is especially true if

99. Barbora Bukovská, Perpetrating Good: Unintended Consequences of International Human Rights Advocacy, 5 SUR INT’L J. ON HUM. RTS., 7, 8, 10, 13 (2008) (explaining that the methods of human rights advocates can harm victims by suppressing “their independence, competence, and solidarity,” presenting victims as “powerless,” and relying on and sustaining existing power imbalances); Gay J. McDougall, Decade of NGO Struggle, 11 HUM. RTS. BRIEF 12, 15 (2004) (noting that elite human rights organizations often ignore “the priorities and aspirations of the great mass of sick, impoverished, or marginalized groups in that country”); Meena Jagannath et al., A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti, 10 NW J. INT’L HUM. RTS. 7, 8 (2011) (critiquing “a top-down approach, making decisions about people’s need without obtaining meaningful input from the communities receiving the aid.”).

100. Knuckey et al., supra note 52, at 15.

101. Id.
the Indigenous rightsholders in relationships are holding the power, have the space to exercise agency fully, and lead the outcomes in co-creative, collaborative spaces. Our experience in human rights practice is that, oftentimes, Indigenous peoples are negotiated on behalf of, even by well-meaning actors in so-called progressive spaces, which results not only in a reduction of agency, but has often resulted in the perpetuation of private and state-perpetrated violence with impunity. Successful human rights advocacy must avoid paternalism and requires non-Indigenous people to stop claiming expertise on Indigenous people.  

B. Reject Extractivism & Promote Relational Lawyering

Clinicians must intentionally interrogate and reject extractive, transactional lawyering skills taught in human rights law practice when incorporating Indigenous values and relational lawyering practices. The assumption in human rights practice amongst Indigenous rightsholders and advocates that incorporates Indigenous values is that the relationship begins with trust deficits which must be overcome through relationships and reciprocal trust building. In addition to the internal work of interrogating one’s own colonial practices as perpetuating harm, one of the largest barriers that clinicians will face in human rights practice is building and maintaining trust in authentic partnership relationships. Mass intergenerational collective trauma, the entire arc of colonial history, continued perpetration of genocide against Native peoples, colonization, and occupation have all resulted in a severe fracturing of relationships between Indigenous and non-Indigenous communities. State and non-state institutional violence perpetrated against Indigenous peoples in the name of “development” and “progress” has resulted in a justifiable distrust of those institutions on the part of Indigenous people.

102. Deloria Jr., Custer Died for Your Sins, supra note 30, at 10 (discussing how whites have historically postured themselves as “Indian experts,” as people who claimed to have devoted their lives to helping Indians).


Consequently, Indigenous students and clients-partners in settler colonial settings may experience the human rights law clinic as an extension of educational and legal institutions that dehumanize and devalue Indigenous peoples while erasing Indigenous experiences and worldviews. Incorporating Indigenous values in clinical pedagogy and practice should include actively working to transform the larger educational institutions within which clinics operate. Law schools continue to perpetuate, and benefit from, structures of colonialism while fostering environments that degrade Indigenous experiences and knowledge.

Indications that law schools require foundational institutional transformation include but are not limited to: the existence of historical or ongoing anti-Indigenous clubs or groups on campus; the lack of Indigenous faculty and students (or their exploitative treatment); the lack of Indigenous studies programs or courses; the investment in anti-Indigenous forms of commerce or capitalism (i.e., fossil fuel or other extractive industries); the continued use of dehumanizing and degrading mascots or seals; the lack of engagement with Tribal governments or organizations; the lack of truth-telling or redress for historical university land theft, theft of Indigenous cultural items, patrimony, or remains; and the existence of performative actions (i.e., land acknowledgments) without ongoing relationships with local Tribal governments and meaningful commitments to the stated needs of Indigenous people. These examples show that, as educational institutions, law schools can and do perpetuate structural violence against Indigenous faculty, students, staff, and communities; thus, part of the human


106. See generally DELORIA, PLAYING INDIAN, supra note 47, at 10–37 (discussing the ways in which playing Indian is a harmful and intentional act by settlers in early U.S. formation years); Preston Taylor Stone, Playing Indian: What Superbowl LIV and Iron Arrow can Teach us About American Colonialism, MIAMI HURRICANE (Feb. 3, 2020), https://www.themiamihurricane.com/2020/02/03/playing-indian-what-superbowl-liv-and-iron-arrow-can-teach-us-about-american-colonialism/ (comparing two examples of mascot imagery at institutional levels and connecting both to American colonialism past and present).

107. See Logan Jaffe et al., America’s Biggest Museums Fail to Return Native American Human Remains, PROPUBLICA (Jan. 11, 2023, 5:00 AM), https://www.propublica.org/article/repatriation-nagpra-museums-human-remains (stating that the remains of hundreds of thousands of Native American, Native Hawaiian and Alaska Natives’ ancestors are still held by museums, universities, and federal agencies in the United States).

108. For examples of land acknowledgment practices, see NATIONAL LEAGUE OF CITIES, supra note 103.
rights work becomes active institutional transformation for accountability, redress, and healing.

As law school clinics are part of legal educational institutions, clinicians must approach rethinking clinic structure and clinic design with the presumption that clinics, too, may be constructed as institutions in furtherance of settler colonial harms against Native clinic students and Native rights holder clients-partners. The ethics of non-exploitation and non-extraction\(^ {109} \) must reimagine the clinic and relationships to clinic students and clients-partners, as well as the relationships between and among all participants, including clinicians themselves.

Clinicians must reject the practice of solely incorporating Indigenous methodologies within the settler colonial institution’s governance structures, as such incorporation may amount to no more than a creative adaptation of colonial power sustaining colonial subjugation.\(^ {110} \) For example, clinicians might question and reconsider the methods and means by which clinicians set their dockets, choose their clients-partners, select their students, and assign students to cases and projects. An anti-colonial, non-extractive, relational lens might consider these design decisions as sites for structural transformation, relinquishing power and control over decision-making processes and permitting clients-partners to exercise power and control over such procedural matters that determine advocate-rights-holder relationships.

Relatedly, lawyer-advocate and client-partner relationships that revolve around funding streams or grants enabling initial advocacy projects to begin or to continue can be sites for transformation from extractive to relational advocacy spaces. If a clinician is partnering with Indigenous peoples and Indigenous-led organizations, the clinician might consider ensuring that both parties agree ex-ante on funding sources and allocations of grants. Clinicians and their institutions should avoid applying for funding intended to benefit Indigenous populations. While there are instances in which a non-Indigenous organization or clinic applies for this funding already with meaningful relationships with Indigenous populations, Tribes, or

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109. Zuni Cruz, supra note 84, at 561–62.

110. Scott Lauria Morgensen, Destabilizing the Settler Academy: The Decolonial Effects of Indigenous Methodologies, 64 Am. Q. 805, 807 (2012); see also Nopera Isaac Dennis-McCarthy, Reconciliation and Self-Determination: Incorporating Indigenous Worldviews on the Environment into Non-Indigenous Legal Systems, 6 PUB. INT. L. J. N.Z. 163, 164 (2019) (“First, that the incorporation of Indigenous perspectives into a non-Indigenous legal system may foster reconciliation between a people and a system who have often been at odds, but that this potential will only be realized if the process is conciliatory and mutually respectful. Secondly, that while effective incorporation may allow for reconciliation, it does not necessarily provide Indigenous peoples the right of legal self-determination to fully realize and enforce their worldview.”).
organizations, applying for funding and subsequently finding an Indigenous person or organization to sign onto a letter of support or a memorandum of understanding, or to provide training or other assistance is extractive and reduces the capacity of already strained Indigenous individuals and Indigenous-led organizations.

C. Embrace Epistemic Pluralism

Another method for incorporating Indigenous values toward relational lawyering is to recognize that Indigenous communities hold important knowledge and are superior epistemic sources on the nature of their oppressions in settler colonial contexts, their lived experiences, their traditions, culture, and practices, their frameworks for addressing disputes and conflict (which may or may not resemble Western approaches), the historical narratives of our shared space, and the solutions to entrenched, complex human rights problems.111 Centering Indigenous knowledge, as well as truly valuing lived experiences, will lead to relational practice to name and frame human rights violations and on what the priorities ought to be in the approach and execution of the strategies to fight oppression toward liberation (i.e., co-creating solutions that do not legitimize or entrench settler colonial violence and being very intentional about this anti-colonial methodological lens).

Clinicians must acknowledge, understand, and fully support through action that Indigenous peoples hold the necessary knowledge and abilities to address issues and create solutions to these issues in their communities. Practicing critically in this way requires a further acknowledgment that Indigenous peoples’ solutions have been intentionally oppressed via sustained settler colonial state violence. Clinicians are not going to solve this problem (nor is that necessarily their role or entirely within their control) through uncritical use of Western, colonial systems that intentionally and actively subjugate and erase Native epistemologies and communities.

Furthermore, clinicians might question the role of the lawyer-advocate in the advocate-rights-holder relationship itself. Clinicians should ask critical

111. See Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. REV. 323, 324 (1987) (arguing that the notion of “[I]looking to the bottom — adopting the perspective of those who have seen and felt the falsity of the liberal promise” is vital to knowledge production seeking to define and achieve justice); E. Tendayi Achiume, Putting Racial Equality onto the Global Human Rights Agenda, 28 SUR INT’L J. ON HUM. RTS. 1, 6 (2018) (“The work of achieving racial equality is work that must be done by all, but must be led and guided in close participation with representatives of communities who suffer on the frontlines of racial discrimination, subordination and exclusion.”).
questions such as “Why am I advocating in this space?”, “Who is already leading advocacy in this space?”, and “How can I support these advocacy efforts rather than supplant them?” In general, lawyer-advocates and client-partner rights holders tend to prioritize outcomes of particular advocacy strategies and the tactics employed to reach those outcomes rather than prioritizing the relationship between and among lawyer-advocates and client-partner rights holders. To counter transactional models of lawyering and incorporate relational models of lawyering, rethinking processes of practice becomes as critically important as the subject matter of the collective, strategic human rights advocacy. Through the process, clinicians can begin to co-create, rather than reform, spaces to diminish hierarchies in the classroom as well as in human rights practice.

D. Prioritize Self-Determination Rights

One practice strategy that will lead clinicians closer to anti-colonial, relational lawyering is to ensure that human rights advocacy prioritizes Indigenous self-determination rights. As mentioned previously, self-determination rights are grounded in the idea that all peoples are entitled to control their own destinies and is foundational to working with Indigenous rights holders in settler colonial contexts.112 Unless self-determination rights and principles are understood and incorporated into all aspects of human rights advocacy with Native peoples, advocates risk quickly deteriorating work and relationships without free consent and full participation.113 For instance, when working to secure land rights with Indigenous populations, focusing on the obligations of states and private actors, including corporations, to engage in meaningful consultation in good faith to obtain Indigenous peoples’ consent when any proposed project affects their rights is fundamental toward securing self-determination rights.114 However, as

112. S. James Anaya, Self-Determination as a Collective Human Right Under Contemporary International Law, in OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF-DETERMINATION 1, 7–8 (Pekka Aikio & Martin Scheinin eds., 2000); Zuni Cruz, supra note 84, at 563.
113. Anaya, supra note 112.; Zuni Cruz, supra note 84, at 563.
114. See S. James Anaya (Special Rapporteur on the Rights of Indigenous Peoples) Extractive Industries and Indigenous Peoples, ¶ 28–29, U.N. Doc. A/HRC/24/41 (July 1, 2013) (stating that the obligation of Free, Prior, Informed Consent (FPIC) requires that any entity seeking to engage in any activity that will impact indigenous peoples’ lands, resources or other fundamental rights must first obtain the peoples’ free, prior, and informed consent); see also JENNIFER FRANCO, TRANSNAT’L INST., RECLAIMING FREE PRIOR AND INFORMED CONSENT (FPIC) IN THE CONTEXT OF GLOBAL LAND GRABS 13, 16 (2014); Philippe Hanna & Frank Vanclay, Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent, 31 IMPACT ASSESS. & PROJ. APPRAISAL.
Part II *supra* examines, Western liberal legal frameworks of human rights law and advocacy provides a limited, imperfect short-term solution to full realization of self-determination for Indigenous peoples.

Within the human rights clinic space, the processes by which participation and co-creation occur must be co-created and incorporated—even prioritized—to reflect Indigenous values and cultural practices.115 Processes become equally or even more important than outcomes. The final decision as to whether and how the co-creative relational lawyering process with non-Native human rights clinics moves forward rests squarely with Native rights holders-partners.116 This means that Native people must not simply serve to inform human rights clinical advocacy. After all, co-creative processes *are* the practice of adhering to the principles of self-determination and, thus, uphold the self-determination rights of Indigenous peoples in and through human rights pedagogy and practice.117 Human rights clinical practice, therefore, must move forward at what Indigenous partners have called the “speed of trust.”118

As part of incorporating Indigenous values into human rights advocacy, human rights clinicians should also consider shifting clinical pedagogy and advocacy to models based on community-centered lawyering to challenge the individualistic approach embedded in client-centered lawyering, especially when seeking remedies for collective rights violations.119 Indeed, community-centered lawyering is essential to the anti-colonial representation of Native communities in human rights pedagogy and


117. *See* Zuni Cruz, *supra* note 84, at 563 (adhering to the principle of self-determination, where communities and clients determine and prioritize legal needs). *See generally* Phyllis E. Bernard, *Community and Conscience: The Dynamic Challenge of Lawyers’ Ethics in Tribal Peacemaking*, 27 U. TOL. L. REV. 821, 823–24 (1996) (discussing how communal values can be used in dispute resolution and when addressing the ethical obligations of a lawyer and how the apparent gap between the individualistic values of lawyers’ ethics and communal values evidenced by tribal peacemaking can be bridged).

118. Many partners have expressed this sentiment over the years, but I can point specifically to my work in the United States with non-governmental organizations working on the Missing and Murdered Indigenous Persons (MMIP) Crisis.

119. Zuni Cruz, *supra* note 84, at 575–76.
practice.\textsuperscript{120}

Further, clinicians should develop norms of engagement around kinship rather than allyship. Allyship denotes an “us v. them” relationship and implies a transaction to clients with whom these authors have worked. Clients-partners in settler colonial settings have asked us as collaborative partners to see each other as kin—relatives with commonalities and a shared future. In this way, kinship relationships adopt the idea that partners are collectively working toward a shared future in which Indigenous worldviews and ways of life are respected—and centered as beneficial to all.

\textbf{E. Reject White Supremacy Culture}

International human rights law practice, rooted in coloniality, has been dominated by white supremacy.\textsuperscript{121} Thus, lawyering practices and skills that are valued, taught, desired, or even required in human rights professional spaces must be questioned, potentially abandoned, and rethought through a critical lens.\textsuperscript{122} Clinicians might consider interrogating how clinical education and lawyering entrench white supremacy culture in clinical teaching and advocacy spaces. Examples that the authors have encountered include but are not limited to: unilaterally setting meeting agendas and hierarchically conducting meetings; separately developing legal strategies and tactics; lack of trauma-informed lawyering knowledge and skills, not only when clinicians and students interact with clients and partners, but also

\begin{itemize}
  \item \textsuperscript{120} Id. at 564 (“[C]ommunity lawyering approach is superior to the client centered lawyering approach and, indeed, is essential to the competent and non-colonial representation of native communities.”).
  \item \textsuperscript{121} See Tema Okun, \textit{White Supremacy Culture}, DRWORKS, www.dismantlingracism.org/uploads/4/3/5/7/43579015/okun_-_white_sup_culture.pdf. White supremacy culture “is the widespread ideology subsumed into the beliefs, values, norms, and standards... teaching us both overtly and covertly that whiteness holds value, whiteness is value.” According to Kather et al., white supremacy culture “disconnects and divides us, and undermines and erases the knowledge, wisdom and communal solidarity of our ancestors, including Indigenous and other (non-white) traditions.” Kather et al., \textit{supra} note 7, at 5.
  \item \textsuperscript{122} Kather et al., \textit{supra} note 7, at 5. There are certainly instances in which white supremacy appears overtly throughout legal education and Western law traditions in general, but there are also seemingly innocuous ways in which white supremacy and oppression present in our daily thought and action. Overt examples include how the law is taught (as addressed earlier with regard to the Marshall Trilogy), how legal education is inaccessible for many systemic and endemic reasons, the ways in which our colleagues and peers are treated, tokenism, and the organizations, ideologies, and foundations that our respective institutions find themselves deeply entrenched within. These issues are clearer to the eye, but incredibly difficult to address (though that does not abrogate responsibility and duty to do so).
\end{itemize}
when clinicians interact with students and students with one another; unilaterally setting project goals and expectations; encouraging students and lawyer advocates to detach emotions from their lawyering practices; placing a sense of urgency on the work through deadlines or defining the problem through crisis frames that demand immediate responses; de-emphasizing the importance of learning relevant history and context without extracting emotional labor from Indigenous clients and partners; lack of transparency and gatekeeping in relationships or processes; co-opting or not sharing credit for collaborative work product; communication styles and feedback that presuppose one singular method for engaging in the work; the expectation or sense of entitlement to clients’ time and energy; and separately applying for and receiving funding intended to support the project work when Indigenous partners should co-manage or manage the funds.

Clinicians might consider open, honest communication reflexively with Indigenous clients and partners to understand and rethink together alternative practices toward transforming pedagogy and practice, decolonizing clinical spaces while incorporating Indigenous values into the relational lawyering work. For instance, setting the expectations around conducting meetings should be a shared exercise, and the relational lawyering model would value the process toward sharing control over the agenda as well as developing prescriptions for the legal strategy. Another practice to incorporate is to allow clients-partners, students, and clinicians to bring their whole selves into case and project work, especially permitting students to feel and process emotional responses to their work. Clinicians might consider flipping the script on soft skills (i.e., interpersonal communication, deep listening, problem-solving, empathy, and cultural humility) as the practice skills to prioritize. Clinicians and student advocates might also consider embracing a willingness to engage in practice or project work that does not require law degrees or legal expertise to prioritize client-partner needs. Allowing students and ourselves as clinicians to feel vulnerable, to make mistakes and own imperfections might also be considered a more intentional,

123. Rodríguez-Garavito, The Future of Human Rights, supra note 52.

124. For example, critical human rights practice requires an awareness of one’s outsider status in relation to the community. No amount of information you learn, or time you spend living or working in a community will change that outsider status. Therefore, cultural humility should be the practice skill to achieve over any false notion of cultural competency. This might go without saying, but non-Indigenous people can never become Indigenous. Thus, clinicians preparing themselves and their students to advocate in Indigenous community spaces must impart “humility, politeness, persistence, and awareness of the need to actively involve the client and others supportive of the client (including family and service providers) in both obtaining information and suggesting the approach and the sources of information.” Zuni Cruz, supra note 84, at 578.
reflective part of the lawyer-advocate and client-partner relationship as well as clinical pedagogy. Finally, self-care must be complemented with community (collective) care for reciprocal, relational processes to flourish.\(^{125}\)

In practicing relational lawyering, clinicians might consider taking many of the skills and practice of trauma-informed lawyering\(^ {126}\) and teaching. Engaging with Indigenous clients and partners requires that clinicians and educators implement trauma-informed practices. In part, trauma-informed teaching and practice acknowledge that trauma is widespread. For Indigenous populations, in addition to experiencing trauma from individual experiences, trauma is also historical,\(^ {127}\) intergenerational, and collective. Practitioners should seek to resist re-traumatization, which can trigger trauma responses and can result in emotional and or biological stress. These triggers can come in the form of microaggressions (the use of pejorative phrases or words), ignorance of or failing to acknowledge historical events, negotiating on behalf of clients or partners without their express consent, failing to be transparent, cultural appropriation, sensationalizing experiences, extractive practices, white supremacy culture, and so on. Additionally, lawyering and advocacy strategies must focus on transforming structures and institutions that perpetuate and entrench settler colonialism. Trauma-informed lawyering means thinking critically about what must be transformed about structures and institutions so that clinicians and practitioners are not perpetuating the ongoing, present-day, structural harms of settler-colonialism in their teaching and practice. If clinicians are engaging with Indigenous people only for fact-finding interviews or shadow reports, for teaching classes, for syllabus development, or otherwise having

\(^{125}\) Lisa Chamberlain, From Self-Care to Collective Care, 17 SUR-INT’L J. HUM. RTS. 215, 218 (2020).


\(^{127}\) Historical trauma is defined as the cumulative and generational emotional, physical, and psychological harm stemming from mass trauma exposure. See Maria Yellow Horse Brave Heart & Lemyra M. DeBruyn, The American Indian Holocaust: Healing Historical Unresolved Grief, 8 AM. INDIAN & ALASKAN NATIVE MENTAL HEALTH RTSCH. 60, 68 (1998). Examples of historical trauma events include internment camps for Japanese Americans during WWII, United States and Canadian Boarding/Residential schools for Indigenous populations, the separation of parents and children at the United States border, experiences of trauma by survivors and their descendants of the Holocaust, and descendants of slavery.
Indigenous representation in name only, then the advocacy is engaging in extractive rather than relational lawyering \textit{vis a vis} Indigenous client-partners.

\textbf{F. Redefine Success}

Clinicians also might begin to redefine what “success” in legal advocacy means, where Native partners and key stakeholders lead the process and outcome. In this way, clinics and client-partners can co-imagine the process of advocacy without non-Natives directing strategy or leading outcomes. Again, the process of co-creation must be prioritized over the outcomes of human rights strategic advocacy. Here, a first step is to reconsider practices that stem from the legal systems and processes that perpetuate violence against Indigenous peoples through declaring “winners” and “losers,” while moving toward healing spaces that are restorative and reinforcing of the humanity and dignity of clients-partners in the advocacy-rightsholder relationships.

Finally, incorporating Indigenous values into human rights clinical practice requires that clinicians prioritize the focus on local Indigenous peoples’ human rights concerns, while uplifting and centering local Indigenous voices in human rights advocacy. Clinicians should start with the assumption that Indigenous peoples are present and experiencing human rights violations in local spaces. However, clinicians should be mindful that Indigenous people’s experiences may not map on to other forms of oppression and discriminations. Native experiences of state violence and other harm is not homogenous. There is a significance of place and connection to place that should be centered. While Native people also are minority groups and have racialized experiences, historical and contemporary experiences of genocide and dispossession add layers of complexity that often are overlooked and must be confronted in settler colonial contexts. Engaging in intersectional analyses assists advocates in understanding toward combating erasure of Indigenous experiences of discrimination.

Additionally, in working with Indigenous communities in settler colonial contexts, human rights clinicians may consider focusing on building power with and among communities in and across geographies, communities with similar structural oppressions at play at the root of the human rights violations they face. Moreover, clinics may begin to engage in relationship-building with the original peoples of the lands on which the human rights clinic stands to practice connecting people to place as well as to avoid
Western exceptionalism in human rights advocacy. Engaging in ongoing relationships to local Native peoples is imperative for human rights clinical practice in settler colonial contexts because the urge to globalize Indigenous peoples, particularly within academic institutions situated on ancestral lands, contributes heavily to Indigenous peoples’ experiences of erasure. Forgetting the significance of place allows non-Indigenous peoples to distance themselves from the historical and contemporary harms against Indigenous peoples from which non-Indigenous peoples individually and collectively benefit as recipients of imperialist traditions.

Shifting pedagogical focus from national and global spaces to local contexts and identifying Indigenous-led organizations and subject matter experts and advocates (both of whom should be Indigenous) to ensure the centering and uplifting of Indigenous expertise to address Indigenous issues. The Cardozo human rights clinic, for instance, has begun to develop a collaborative relationship with the Lenape (the original peoples of Manhattan), partially as a vertical history exercise to connect people—students, faculty, and community—to place toward anti-colonial, relational lawyering, partially as a “living land acknowledgment” toward building trust and healing relationships, and partially to incorporate different, non-extractive relationships with client-partners, building a future imagined together in partnership.

IV. CHALLENGES & WAYS FORWARD

Despite the vital need and the myriad benefits of decolonizing while incorporating Indigenous values into clinical human rights pedagogy and practice, many challenges remain.

First, one challenge obvious to the authors in writing this Article lies in the enormity of the tasks at hand. Human rights clinics are situated within larger institutions and structures that perpetuate settler colonial violence

128. The pull of imperialism is strong within American institutions, with universities acting as “living symbols of colonization” and “bastions of white power.” TRASK, FROM A NATIVE DAUGHTER, supra note 61, at 151–52.


130. According to the practices of Cardozo’s Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic partner the Lenape Center, a “living land acknowledgment” is much more than a plaque on a wall; it is an ongoing, collaborative relationship with Indigenous peoples of the land on which one stands. Programs on Creating a Living Land Acknowledgment Held with the Lenape Center, BROOK. L. SCH. (Apr. 27, 2022), https://www.brooklaw.edu/News-and-Events/News/2022/04/Programs-on-Creating-a-Living-Land-Acknowledgment-Held-with-the-Lenape-Center.
against Indigenous students, faculty, and communities, and human rights clinicians are not always perched in positions of authority to effectuate larger, structural changes at the law school institutional levels. As stated, Indigenous peoples’ advocacy toward transformative change challenges Westphalian notions of sovereignty, nation-states, and governance toward anti-colonialism and the incorporation of Indigenous values and worldviews. The challenge of addressing colonialism through a colonial system, including a human rights system, is inherently difficult and daunting.\textsuperscript{131}

Understanding and acknowledging that addressing anti-Indigeneity, racism, and oppression is a lifelong commitment that requires deliberate daily self-work is a solid first step forward. This Article has already provided some guidance for evaluating institutions; however, individuals must resolve to address these markers both internally and externally. Learning about Indigenous solutions from Indigenous people, creating relationships without succumbing to the urge to extract from those relationships academically or otherwise, is a necessary but heavy lift.\textsuperscript{132}

Second, limitations of the international human rights legal framework provide additional challenges to engaging in transformative human rights

\textsuperscript{131} The authors are not sure that “daunting” is strong enough of a term here and feel that this challenge while working within Western systems might be impossible. It was Audre Lourde who questioned relying on the system of oppression as a limited tool for liberation: “What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow parameters of change are possible and allowable . . . . For the master’s tools will never dismantle the master’s house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. And this fact is only threatening to those women who still define the master’s house as their only source of support.” Audre Lorde, The Master’s Tools Will Never Dismantle the Master’s House, in SISTER OUTSIDER: ESSAYS AND SPEECHES 110–12 (2007).

\textsuperscript{132} For example, the authors of this Article have a relationship that is rooted in being their genuine and authentic selves: one is an Indigenous person (Bishop LaPorte) and the other is non-Indigenous (Getgen Kestenbaum). This relationship began prior to their professional partnership. The human rights clinic directed by the non-Indigenous person provides direct support to the Indigenous person’s project, and does so at the direction of the Indigenous person. The non-Indigenous person does this absent monetary or other gain, which is not necessarily required. The work exists because the work is needed, requested, and reflected upon toward co-creative next steps. That reflection and co-creation has built even more trust. The professional partnership is constantly reassessed and remains strong for that reason. There is not only reciprocity built into the work of the authors; there is a deep commitment to learning, supporting, and growing in mutual and shared responsibility to the goals defined by the clinic’s Indigenous partners. It is not paternalistic. It is not Eurocentric. Most importantly, it is a relationship where mistakes can be made and vulnerabilities can be expressed without fear of judgment or detriment to the relationship.
advocacy in settler colonial spaces. Understanding and generating a practical approach to realizing self-determination and sovereignty rights is limited by a Western legal perspective and framing of each of these doctrines. These legal concepts themselves are Western in nature; thus, advocates continue to understand and frame these issues in a context that centers the relationship between the nation-state and its citizenry or between the nation-state and other nation-states. If human rights clinical approaches and practice continue to emphasize the role of individual rights, which originate from foundational legal writings (i.e., constitutional texts or charters), we place entirely too much trust in inherently flawed premises and philosophical theories of governance.

What role can individual rights or the even legal recognition of governmental sovereignty and self-determination have in non-colonized or decolonized spaces? How can clinicians, practitioners, and even the legal education system resolve to address the needs of Indigenous communities, especially when occupation and dispossession is active—even required—for Western states to exist in the current global order? What abilities do clinicians have to critique legal language and frameworks as limiting our vision for an anti-colonial future that incorporates Indigenous worldviews? Currently, Indigenous rights advocacy tends to focus on sovereignty and self-determination to the exclusion of collective responsibility and duty.

133. Indigenous rights movements consider self-determination in several theoretical camps, with certain advocates pushing for territorial integrity and the right to separate from states. Patrick Thornberry, Self-Determination and Indigenous Peoples: Objections and Responses, in OPERATIONALIZING THE RIGHT OF INDIGENOUS PEOPLES TO SELF-DETERMINATION 39, 52, 54 (Pekka Aikio & Martin Scheinin eds., 2000). Other camps push for self-determination rights as self-governance within the settler colonial state. ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW, supra note 49, at 84–85 (“[s]ecession . . . may be an appropriate remedial option in limited contexts . . . where substantive self-determination for a particular group cannot otherwise be assured or where there is a net gain in the overall welfare of all concerned”); see also Anaya, supra note 112, at 7–8. All of these views, however, remain within the imagination of the liberal legal state model.

134. This is seen clearly within dispossessed American Indian and Alaska Native Tribes and within occupied territories of the United States. The annexation of Hawai‘i in 1898 required the overthrow and usurpation of its government, as well as its admission as a state in 1951, is active occupation and colonization. Trask argues that because Hawaiians never surrendered their political rights through treaties or through a vote on annexation, that they should fall under the United Nations category of a non-self-governing people and that “dependent status has been maintained through state (rather than native) control of Hawaiian trust lands.” Trask further states that “Hawaiians had their nationality forcibly changed in their own homeland.” TRASK, FROM A NATIVE DAUGHTER, supra note 61, at 29–30.
Often, advocates and their rights-holder clients or partners root their understanding of reciprocity in what is exchanged rather than focusing on what can be offered or given. Instead, they should consider ways to focus on collective responsibility and duty toward reciprocal relationships with clients-partners in human rights clinical teaching and advocacy models.

A third challenge is to realistically assess the investment of time and resources required for meaningful advocacy and whether capacity exists for all parties to meet those requirements. Moving at the speed of trust is painstaking and difficult at the beginning stages of building a collaborative, reciprocal relationship. Often, non-Indigenous individuals engage in work with Indigenous movements in highly temperamental and impermanent ways. This “touchdown, tornado approach” to short-term human rights advocacy can result in additional labor for Indigenous advocates, burden Indigenous rights movements, erode trust, and ultimately impede successful advocacy. Though defining the scope of the advocacy and establishing an adequate understanding of issues prior to engaging in the work is a best practice, it requires a lot of process and co-creation upfront.135

A “long arc of the moral universe”136 approach to advocacy is a way forward, requiring an understanding of the ways in which all forms of settler-colonialism, including the colonial logics embedded within the human rights framework itself, are antithetical to indigeneity and the continued existence of Native peoples. The necessary unlearning and relearning to focus on decolonization is a monumental task, one that requires individuals to consider how the law’s foundations are entangled in colonial thought as well as their roles in radical political advocacy.137 Human rights clinicians must

135. Additionally, while clinician-advocates and client-partners should define the scope and parameters of the partnership, the relationship should be reassessed consistently as needed. Being intentional in the relationship means that the longevity of the project is considered, student training and turn-over is addressed, it is clear who will speak on National and local platforms, and that institutional limitations are acknowledged, addressed, and mitigated. For example, prior to the authors of this Article engaging on a key project of the Indigenous author’s organization, the Indigenous author committed to helping train clinical students on the historical and legal context of the issue to be addressed. The clinical director, in turn, had these same interns engage in the work as defined by the scope of the authors’ MOU. There was a clear understanding of what was required prior to embarking on the work and the scope of work was clearly defined for completion.

136. The oft cited quote in human rights advocacy is from Dr. Martin Luther King, Jr.: “The arc of the moral universe is long, but it bends toward justice.” Dr. Martin Luther King Jr., Remaining Awake Through a Great Revolution (Mar. 31, 1968).

137. See, e.g., FOLUJE ADEBISI, DECOLONISATION AND LEGAL KNOWLEDGE: REFLECTIONS ON POWER AND POSSIBILITY (2023).
be willing to deconstruct their own understandings of power and learn to shift agency with humility in a form of self-transformation. These are larger and more difficult conversations to be had with oneself, and from there with students and then the institutional actors and systems within which human rights clinicians operate for transformational human rights advocacy.

Even national reconciliation processes require recognition of an oppressive, colonizing state’s authority while simultaneously accepting redress as defined by the same oppressor state. Failing to recognize and address Indigenous perspectives and truths of imperialism, the continuation of which is fatal for Indigenous peoples and their governance structures, will likely render any effort as performative, and will result in largely transactional relationships. Recognizing the atrocities perpetrated against Indigenous groups along a continuum of violence assists in understanding the connections to human rights violations happening today, and the need to connect the historical to the present to truly understand the nature and consequences of the harm to Native individuals and communities.

A fourth challenge is knowing with whom the clinic is partnering and their place in the larger Indigenous rights movement in which the clinic is operating. Often, non-Indigenous organizations purport to work on Indigenous rights advocacy and center themselves within Indigenous rights movements. These organizations endeavor to speak for Indigenous peoples absent meaningful consent, erasing and displacing Indigenous voices within their own work and movements. Clinicians might consider taking time to vet potential clinic partners and causes before engaging in any meaningful advocacy efforts.

Another challenge is to avoid making Indigenous peoples novel academic subjects of study while ignoring immediate needs and epistemic value of lived experiences. Indigenous client-partners frequently express this frustration, especially given historical harms and their oft overlooked lived experiences as survivors of genocide and other forms of state violence, with solutions to address human rights concerns. Vine Deloria Jr. critiques this trap excessively in his book, *Custer Died for Your Sins*, illustrating the phenomenon with examples of task forces and the tens of millions of dollars spent on “studying” Indigenous peoples as specimens afflicted with the “Indian plight” versus utilizing that funding to actually assist Indigenous people experiencing historical and active colonization and genocide. Professor Zuni Cruz has found that outsider scholars and academics have subjected Native peoples to unethical study and inappropriate information

disclosure. At the very least, as a way forward, academics must address structural violence and systems gaps and should uphold Indigenous data sovereignty as an essential part of human rights fact-finding efforts.

V. CONCLUSION

Process matters to get us—all of us—to that “elsewhere” decolonization requires. This relational lawyering process requires us to evaluate our willingness to be equal co-creators and disruptors of logic. It requires us to deconstruct and relearn. It requires a total shift in mindset and a willingness to dismantle structures that uphold previous iterations of ourselves and the societies from which we need to detach and divest. It requires us to leap forward—together—to a future unseen and unknown.

Clinical educators and practitioners should, where appropriate, incorporate Indigenous values into their human rights advocacy toward co-creating spaces that do not perpetuate harm, while avoiding engaging in base performative acts that appropriate culture and displace Indigenous people and voices. Rather than re-inscribing Western notions of rights and pitting individuals against one another or against the collective, is it possible to strive for human rights clinical pedagogy and practice to be a means to support reciprocal relationship-building and collective healing? What restorative practices can we implement? How can non-Indigenous people consider implementing the worldviews and practices of Indigenous peoples without co-opting Indigenous values or further entrenching settler colonial structures as legitimate forms of state violence? If Indigenous is a birthright word, what role can non-Indigenous peoples have in healing our shared spaces, including our shared human rights spaces? Robin Wall Kimmerer, a Potawatomi scholar, discusses a way forward in her work, *Braiding Sweetgrass*: “be useful, fit into small spaces, [learn to] coexist with others . . . [and do your part to] heal wounds.”

139. Zuni Cruz, *supra* note 84, at 561.
140. DELORIA JR., CUSTER DIED FOR YOUR SINS, *supra* note 30, at 93.
141. Indigenous data sovereignty is the ability for Indigenous peoples, communities, and Nations to participate, steward and control data that is created with or about themselves. For an in-depth look at the reasons for the movements to ensure data sovereignty and the ways in which research must be transformed, see LINDA TUIHWAI SMITH, DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES 3–4 (2008).
142. KIMMERER, *supra* note 46, at 213.
143. Id. at 221.
Sweetgrass: “be useful, fit into small spaces, [learn to] coexist with others . . . [and do your part to] heal wounds.”

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144. Id. at 221.
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