

American University Washington College of Law

## Digital Commons @ American University Washington College of Law

---

Articles in Law Reviews & Other Academic Journals

Scholarship & Research

---

2011

### An Essay on the Stages of the Clinical Year in Law school: Group Process with Existentialist Roots

Richard J. Wilson

Follow this and additional works at: [https://digitalcommons.wcl.american.edu/facsch\\_lawrev](https://digitalcommons.wcl.american.edu/facsch_lawrev)



Part of the [Disability Law Commons](#), and the [Legal Education Commons](#)

---

# An essay on the stages of the clinical year in law school:

## Group process with existentialist roots

*Richard J. Wilson\**

### **Abstract**

*This short essay focuses on “units,” or stages of group process, part of my shared experience in law teaching and in adult education at St. Mark’s Church, Capitol Hill, Washington, DC. The article explores the context of the functional education program of church teaching and its common elements with clinical law teaching. In my own experience, the unit structure from church teaching translates well into the structure of clinical legal education.*

### **Introduction**

I have been a law teacher for 25 years this year, most of them in in-house, live-client clinics. The experience has generally been a happy one, rewarding and fulfilling for me, as I hope has also been true for my students. Because of my background as a public defender prior to teaching, I try to motivate my students to consider work in the public interest field, if not directly in human rights. My own clinic, the International Human Rights Law Clinic at American University, has done human rights work for the past twenty years. As I complete a fulfilling sabbatical year, I find myself looking back as much as forward and reflecting on what has been useful in my own teaching that might also be useful to others.

I am repeatedly drawn to the synergy between my experiences in clinical teaching in law and my long-time work as a teacher in the adult education program of my church, St. Mark’s Episcopal Church on Capitol Hill. Let me clarify from the outset that my reflections are not intended to proselytize or otherwise sell any particular brand of religion. There are a couple of good reasons why this is so. First, I haven’t done this kind of church work for a number of years; my primary church teaching with adults was during the 1980s and 90s. More recently, I have taken to

---

\*\* Richard J. Wilson is Professor of Law and founding director of the International Human Rights Law Clinic at American University’s Washington College

of Law. I appreciate the insights and help of Zachary Ista, my research assistant, in reviewing and preparing this article.

protecting my Sunday mornings for “down time” – long, slow swigs from the New York Times, and an occasional Tai Chi course. Second, St. Mark’s, then and now, was and is unlike many other churches. It explicitly advertises to draw in religious skeptics and doubters. Its parishioners include a solid core of Christian believers but it also draws agnostics, atheists, fallen-away Catholics, Jews and other religious refugees and dissenters, all of them seekers after faith. It serves communion to any and all who step up during the service. “Whatever you believe, whatever you do not believe, you are welcome at this table,” says the introduction on the St. Mark’s website, which also poses this premise for the church’s work: “We follow the paradoxical path: by looking squarely into the dimness of uncertainty, we can discover truth.”<sup>1</sup> St. Mark’s still offers an extensive education program similar to that with which I was involved for many years, including my two-year stint as a co-director of Christian Education. That makes me an official Elder in the church – a category not defined by age, I might note.

My purpose here, however, is to describe and briefly analyze one central and totally secular application of our church’s pedagogical structure to legal education, and particularly to the trajectory of work with cases and clients in clinical legal education. I have directed the International Human Rights Law Clinic at American since its founding in 1990. That in-house clinic, part of a nationally recognized clinical program, takes from 16 to 32 students for the entire academic year. Students work on real human rights cases, both domestic and international, while taking a parallel seminar called “The Lawyering Process.” The course and case-work is year-long, and graded credits are given to students for their participation. There are generally two to four supervisor/teachers in the clinic, with each supervisor overseeing the work of four student pairs on case-work throughout the year.<sup>2</sup>

The work on cases is ever-changing, challenging and generally rewarding for me and students, but it can produce teeth-gnashing frustration with slow, bad decisions by courts or with general bureaucratic truculence and obstinacy. Each year I have taught in clinic, I have been struck by the parallels between the group dynamics of the clinical class, rounds and case-work and the model provided in my church work. That model comes from a structure known as functional education, set out more fully below. Both clinic and the adult church classes share a common commitment to learning life lessons through experience, and in both contexts we make extensive use of role-plays, simulation and other experiential devices to put us into situations in which tough choices are made, followed by reflection and learning from that experience.

In this short reflection, I will briefly set out some background on adult education at St. Mark’s Church. I will focus on two particular aspects, functional education and the “units,” or context in which adult courses are taught. I will follow that with an examination of my own extrapolations to the literature on functional education in broader historical, philosophical and pedagogical context, and how closely they relate to the theories of adult learning in clinical legal education. The heart of my reflection lies in an exposition of the relationship between the functional unit and my experience of the stages of the clinical year. Units have been called “descriptive stages of deepening human encounter and experience,”<sup>3</sup> and they are my focus here. Units relate to both the stages

---

<sup>1</sup>These references come from <http://www.stmarks.net/about/introduction.html> (last visited on April 7, 2010).

<sup>2</sup>A useful document on the concrete operation of the Human Rights clinic can be found on-line at [https://www.wcl.american.edu/clinical/annual\\_2002.pdf?rd=1](https://www.wcl.american.edu/clinical/annual_2002.pdf?rd=1)

(last visited on April 8, 2010).

<sup>3</sup>Paul R. Abernathy, A Word About Kierkegaard, Buber, and Tillich, [http://www.stmarks.net/christian\\_ed/functional\\_education/kierkegaard.html](http://www.stmarks.net/christian_ed/functional_education/kierkegaard.html) (last visited on April 8, 2010).

of group development and the universal seasons of religious worship, both ancient and modern. I follow with a brief conclusion.

It was the parallel between the church classes' passage through the units and my observation that my clinic classes often pass through the same stages that led me to this writing. Before developing that parallel more fully, however, let me indulge my academic curiosity by a brief exploration of the roots of functional education, both at St. Mark's and more widely. The functional model seems to have universal application, and the unit structure seems to repeat itself again and again, much as the church calendars of all faiths (and school semesters) provide an endless cycle of renewal.

### **A. Functional education at st. mark's church**

The core written sources for my knowledge of functional education and the units are sparse indeed. They come from a literature used at St. Mark's to plan and carry out adult classes, collectively gathered under the rubric of functional education. Functional education's theories and structures provide the basic framework, both theological and practical, for our religious teaching, with strong echoes in clinical legal education. The core ideas of functional education were put into writing by Dr. Charles Penniman, who served as an educational consultant to the parish in the 1950s during a time when church attendance was falling off generally.<sup>4</sup> Penniman's terse writings, completed in 1954 and later annotated by a former rector, the Rev. James Adams, still guide functional education at a thriving St. Mark's today.<sup>5</sup>

All of the adult courses at St. Mark's, as I said above, are experiential. There is an eloquent explication by Penniman of his own meaning of functional education that bears brief repetition here because it echoes so powerfully in my own clinical teaching. "People learn functionally and in problem situations," Penniman begins his *Categories*. "Therefore, we start with life . . . We specifically do not start with the straightjacket of goals where life is only hinted at. We start with life and only hint at goals."<sup>6</sup> Later, Penniman sets out what he calls the "laws of learning: (a) People learn what they are ready to learn; (b) People learn where there is a positive effect . . .; (c) People learn what they can use, and use now . . ." The commentary notes that "these are the principles of what has been called 'progressive' or 'experiential' education."<sup>7</sup>

Progressive education is the early twentieth-century movement most identified with the writings of John Dewey, the great American educational theorist.<sup>8</sup> Penniman further explicates functional learning when he suggests that any issue can be approached at three levels: the ideological, the organizational and the functional. "It will be seen that the first two will never get us into the issue – that it is only on the third level that we get into the issue." By this, the commentary suggests, he means that it is not enough to think intellectually about an issue (ideological), or to feel the emotional connection of loyal and enthusiastic group membership (organizational), but that true knowledge occurs only when people learn "how they function under pressure and where they find the resources they need. They are engaged at a personal level, what the Bible calls the level of spirit."<sup>9</sup>

---

<sup>4</sup>Id.

<sup>5</sup>His theological work, organized as *Categories and General Notes*, and annotated by the Rev. James Adams, former rector at St. Mark's, can be found at [http://www.stmarks.net/christian\\_ed/functional\\_education/penniman.pdf](http://www.stmarks.net/christian_ed/functional_education/penniman.pdf) (last visited on April 8, 2010).

<sup>6</sup>*Categories*, Id. at 2.

<sup>7</sup>Id. at 12.

<sup>8</sup>John dewey, *democracy and education: an introduction to the philosophy of education* (1916); john dewey, *experience and education* (1938); the *essential dewey: volume 1, pragmatism, education, democracy* (Larry A. Hickman & Thomas A. Alexander eds. 1998).

<sup>9</sup>*Categories*, supra n. 6, at 11.

So, a typical class at St. Mark's is designed to explore religious issues in a real-life context. Each class session during my time there was carefully planned around day-to-day issues that put the class into the moral and religious dilemmas of the day - what Penniman called "the issue." A typical early class session in an adult confirmation class might begin, for example, with a scenario asking paired class members to identify the types of credentials by which people identify each other, or with small groups preparing skits on a topic such as depiction of an occasion in which people who did not know each other are gathering before a formal meeting. "The Issue" in the first scenario might be as follows: "I want to be known to the world by my credentials, and I want to be accepted for who I am." The Issue in the second might be, "I want to make new friends, and I want to maintain my autonomy and privacy." These issues are what are often referred to in clinical scholarship as the "inherent tension" between two competing dynamics, as for example, the alleged tension between theory and practice in legal education generally<sup>10</sup> or between teaching and scholarship<sup>11</sup> for clinical teachers. These are not choices between good and evil but between competing goods. Yet we will, indeed we must, choose a course of action.

Another typical example has been the use of role-plays. Leaders request, for example, that class participants divide into two groups, one to prepare the husband and the other to prepare the wife, to role-play a household discussion. In one such typical scenario, the wife has obtained an attractive job offer in another city, one that would require the husband to give up his well-paying job without the certainty of getting similar employment in the new location. The groups are given about a half-hour to prepare one of their members to be the role-player, after which the two role-players play out the scene for the class, in role, hopefully moving toward solution. The role-play goes on for 15 to 20 minutes, after which the role players and groups are de-briefed, followed by guided discussion, ending with some lesson on how one might approach this issue from a religious or faith perspective. As the course evolves, the issues become more central to life's ultimate questions and thus more poignant. A typical role-play toward the end of the course involves two role-players, prepared by their groups, one playing a dying grandmother, covered in blankets and unable to speak, who is visited by a grand-son or daughter who must do all the talking in their brief meeting. These powerful role-plays open the class to discussion of their values, what matters, and how they might use a framework of religious faith to resolve the issues.

There was, during my own classes and teaching, no overt suggestion that life problems would be resolved by "coming to Jesus" or any other such proselytizing solution. Participants were left to decide their path of their own faith journeys. Many chose to take this journey within the St. Mark's community, a generally activist parish with extensive community outreach programs and a vibrant parish life. While the program allowed personal experience to drive the decision for involvement, as time went on, the courses offer a deeper meaning, "found in probing that relation between belief and behavior, that intersection of life at which issues of faith often freely arise and confront us."<sup>12</sup>

---

<sup>10</sup>Frank S. Bloch, *The Case for Clinical Scholarship*, 6 *Int'l J. Clinical Educ.* 7 (2004) ("There is an inherent tension in legal education between its academic and professional missions, sometimes characterized as a conflict between theory and practice.").

<sup>11</sup>Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 *Clinical L. Rev.* 385, 394 (1996) ("... [T]here is an inherent tension between [teaching and

scholarship], especially for clinical teachers.").

<sup>12</sup>Rev. Paul R. Abernathy, rector of St. Mark's, sets out the basic tenets in *Introduction to Functional Education: Theological Underpinnings of St. Mark's Christian Education Program*, [http://www.stmarks.net/christian\\_ed/functional\\_education/intro.html](http://www.stmarks.net/christian_ed/functional_education/intro.html) (last visited on April 7, 2010).

## B. Functional education in history and theology

The Rev. Paul Abernathy, current rector at St. Mark's, suggests that Charles Penniman's work was solidly in the tradition of theological existentialism, particularly in the writings of Søren Kierkegaard, Martin Buber and Paul Tillich. As such, it reflects a concern with the core themes of existentialism: the absurdity of life and the inevitability of death; existence and non-existence; and the intentionality of human behavior reflected in the power to choose as part of the human condition.<sup>13</sup> Kierkegaard (1813-1855) himself posited three "modes of existence": the aesthetic, the ethical and the religious. As paradigmatic examples of each of these modes, Kierkegaard chose Don Juan for the aesthetic, Immanuel Kant for the ethical, and the biblical Abraham of the Old Testament for the religious. One can freely choose, Kierkegaard argued, any of these courses of action to guide one's life. Consistent with the other existentialists, however, he posited that there was no legitimate rationale for choosing one over the other. One is thus left with the option of "taking hold" of life by passionately engaging in what one chooses.<sup>14</sup> While these core ideas of existentialism may have been eclipsed in some ways by post-modern thought, the ongoing vitality of the St. Mark's congregation's intellectual engagement is testimony to the currency of these theories in people's lives.

One can find additional support for functional approaches in the writings on existential psychotherapy as practiced in the 1970s.<sup>15</sup> During the same period of time, the term "functional education" was used as a term of art, probably not coincidentally, to describe work in the fields of educational and development theory. In education, the term was used in 1961 to mean "education everywhere and at all times," in "natural schools" emerging from the student's needs, "spontaneously from the influence of the environment," rather than from "deliberate, goal-oriented" traditional education. The basis in psychology for the term comes from William James in the United States, and Eduard Claparède in Europe.<sup>16</sup> Another, similar meaning was given the term for an early computer program designed to meet individual learning needs of grade school students in pilot public schools, thus allowing the student to assume responsibility for her own learning.<sup>17</sup> In a more overtly political context, functional education described a body of educational principles responsive to colonial oppression, designed to raise consciousness and promote deep social change, originally promoted by followers of M.K. Gandhi in India in the 1950s and early 60s,<sup>18</sup> and later by the Brazilian educator, Paulo Freire,<sup>19</sup>

---

<sup>13</sup>Abernathy, *supra* n. 4.

<sup>14</sup>ROBERT C. SOLOMON, *EXISTENTIALISM* 2-28 (2D ED. 2004).

<sup>15</sup>See, e.g., Maurice R. Green, *Anticipation, Hope, and Despair*, 5 *J. Am. Acad. Psychoanalysis* 215 (1977); Julius E. Heuscher, *Inauthenticity, Flight from Freedom, Despair*, 36 *Am. J. Psychoanalysis* 4 (1976) (using the language from the units, and quoting extensively from the existentialists). The former rector of St. Mark's, Rev. James Adams, vividly demonstrates the unorthodox theology of St. Mark's by pointing to LSD research that demonstrates another paradigm of the class experience, found in the work of Dr. Stanislav Grof, *Theoretical and Empirical Basis of Transpersonal Psychology and Psychotherapy: Observations from LSD Research*, 5 *J. Trans-Personal Psych.* 15 (1973), cited in JAMES R. ADAMS & CELIA ALLISON

HAHN, *A WAY TO BELONG* (1980), at 55, n. 4 (using the "trauma of birth" to demonstrate four stages of development: "primal union with the mother, antagonism, synergism, and finally repartition from the mother.").

<sup>16</sup>See generally, Yehudah Zeilberger, *Functional Education*, (translated from Hebrew, originally an entry in the *Educational Encyclopedia* (Jerusalem, Israel 1961)), <http://www.math.rutgers.edu/~zeilberg/family/EncKhi1.html> (last visited on April 8, 2010).

<sup>17</sup>John C. Flanagan, *Functional Education for the Seventies*, 49 *The Phi Delta Kappan* 27 (Sept. 1967).

<sup>18</sup>P. Udagama, *Basic Functional Education: Concepts and Approaches* (UNESCO, May 1976), at 13.

<sup>19</sup>Mohammed Rafi, *Freire and Experiments in Conscientisation in a Bangladesh Village*, 38 *Econ.*

a personal favorite of mine.<sup>20</sup>

Thus, while the holistic discipline of functional education, at least as that term is used at St. Mark's church, includes biblical and spiritual dimensions, my focus here will be on the experiential – and wholly secular – uses of the theory, much as the term has been used in other theoretical contexts. I offer this extended preface to discussion of the units for three reasons. First, the theories of functional education find great resonance within clinical legal education, particularly in the teachings of such theorists as John Dewey and Paulo Freire. Their theories resonate in the methodology of clinical teaching today, not only in the United States but throughout the world. Second, the methods themselves are remarkably similar in their application. Our work in clinical teaching in law is grounded in the same experiential learning context as functional education, and we make extensive use of role-playing and simulation, in and out of class, as effective devices for adult learning. Third, and most important, the units were developed in a religious context, as part of religious instruction. This provides important contextualization for their application to the field of law, as I hope the subsequent section will demonstrate.

### **C. The units: repeating, seasonal stages in the life of a clinic**

For our purposes, Penniman's theory of the "units," or stages of group development, is of greatest interest. Unit theory, so far as I can tell, is not covered in Penniman's surviving writings; units are identified but not explicated. The most thorough exposition on the units is found in two sources. First, there is a booklet describing the evolution of an adult confirmation class, co-authored by the former rector, James Adams, who annotated Penniman's work, together with a St. Mark's parishioner.<sup>21</sup> Additional material has been gathered by the current rector and posted to the church's website, as noted above.

The five units are curiosity, anxiety, hope, despair and anticipation. The terminology alone has a wholly existential ring. All planning of adult courses was done with the knowledge – now borne out by decades of experiential teaching – that the class will pass, as a group, through these units in fairly predictable steps, with predictable amounts of time spent in each unit. As Paul Abernathy, the current rector at St. Mark's, notes, "the units do not describe a linear movement, but, rather, provide a framework or context within which a very dynamic, indeed, ever repeatable process takes shape."<sup>22</sup>

From a theological point of view, Penniman's units are said to follow the group dynamic of Christ and his apostles as their relationships evolved and deepened. Units "are drawn from a study of the disciples' growing relationship with Jesus as portrayed in the gospel accounts."<sup>23</sup> Again, however,

---

& *Political Weekly* 3908, 3909-10 (Sept. 13-19, 2003). "Conscientisation" is the practice of raising consciousness of groups through education, in this case accomplished through the work of a large human rights NGO using a functional education program.

<sup>20</sup>I have recognized and promoted the influence of Freire repeatedly in my writing on educational macro-theory using active and engaged teaching and learning methods, particularly in Latin America, but wherever oppressed people gather to learn. Richard J. Wilson, *The New Legal Education in North and South America*, 25 *Stan. J. Int'l L.* 375, 424-427 (1988-1989); RICHARD J.

WILSON, *ACCESS TO JUSTICE: AN ISSUE PAPER FOR USAID AND LEGAL SERVICES PROVIDERS* 3 (USAID, 1995); Richard J. Wilson, *Beyond Legal Imperialism: U.S. Clinical Legal Education and the New Law and Development*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* (Frank Bloch ed., 2010).

<sup>21</sup>JAMES R. ADAMS & CELIA ALLISON HAHN, *A WAY TO BELONG* (1980).

<sup>22</sup>Abernathy, *supra* n. 4.

<sup>23</sup>Abernathy, *supra* n. 4.

I am more interested in the socio-political dimensions, as well as the deeply cyclical nature of the movement through the units. In this sense, I am drawn more to the imagery of the mandala, the concentric circle so important to both Buddhism and Hinduism, or the yin and yang of Taoism, as sources for symbolic reference.

As noted above, there is, at some primordial level, an endless cycle of renewal linked to the seasons. In Sir James Frazer's classic, *The Golden Bough*, he captures the ritualistic and mythical dimensions of those changes, and argues quite persuasively that religious traditions, particularly Christian festivals, evolved from these early practices and beliefs:

The spectacle of the great changes which annually pass over the face of the earth has powerfully impressed the minds of men in all ages, and stirred them to meditate on the causes of transformations so vast and wonderful. . . . In course of time the slow advance of knowledge, which has dispelled so many cherished illusions, convinced at least the more thoughtful portion of mankind that the alternations of summer and winter, of spring and autumn, were not merely the result of their own magical rites, but that some deeper cause, some mightier power, was at work behind the shifting scenes of nature. . . . Thus the old magical theory of the seasons was displaced, or rather supplemented, by a religious theory.

\*\*\*

Taken together, the coincidence of the Christian with the heathen festivals are too close and too numerous to be accidental.<sup>24</sup>

Joseph Campbell, too, captures the cyclical nature of the seasons in his book on the hero's mythical journey, *The Hero with a Thousand Faces*. "The wonderful cycle of the year, with its hardships and periods of joy, is celebrated, and delineated, and represented as continued in the life-round of the human group."<sup>25</sup> "We're captive on the carousel of time," says Joni Mitchell. "We can't return, we can only look behind from where we came, and go round and round and round in the circle game."

For anyone who has taught for some time, this invocation of the inevitable rhythm of the seasons (particularly in the northern states), and of life itself, resonates deeply and powerfully in the predictable repetitions of semesters.

My own clinic is a full academic year in length, so my experience of the clinic cycle is spread across the full nine-month academic calendar. Because it follows the seasons from fall through spring, and Washington, D.C. experiences the full range of seasonal variation (albeit sometimes milder than more deeply northern climes), the template is particularly appropriate in the full-year context. I do experience something of the same cycles in the more compressed schedule of the single-semester courses I teach outside of clinic, particularly those moving from winter into spring. What follows is my effort to apply the template of functional education units to the academic calendar in clinic. The parenthetical information shows my best estimate of the amount of time each unit, or phase, will take, followed by the church season symbolically invoked in the cycle of the Christian calendar.<sup>26</sup>

---

<sup>24</sup>SIR JAMES GEORGE FRAZIER, *THE GOLDEN BOUGH* 376-377, 419 (1922).

<sup>25</sup>JOSEPH CAMPBELL, *THE HERO WITH A THOUSAND FACES* 384 (1968).

<sup>26</sup>One might note a similar set of cycles with other

religious calendars, particularly those of the Abrahamic tradition (Christianity, Judaism and Islam), but the complexity and variation of religious calendars, combined with my scant knowledge of comparative religions, militate against such speculation.



## UNIT 1: CURIOSITY

(Full year, weeks 1-6; one semester, weeks 1-3)

(Church season: the Sundays after Pentecost)

It is the fall of the year, and at once, a time of beginnings and endings: the end of the growing season and the beginning of the school year. "In the northern countries of Europe this has always been the primary harvest time."<sup>27</sup> People bring in food and store it, preparing themselves and their homes for the winter ahead. In psychological terms,<sup>28</sup> this can be a period of time in which group members are either dependent on leaders or might flee from the awesome responsibilities facing them. In biblical terms, this was the time the disciples dropped everything and spontaneously followed Jesus, feeling "their enthralment with the authority and the depth of insight in his teaching."<sup>29</sup> The Sundays after Pentecost (the holiday commemorating the descent of the Holy Spirit to visit the disciples, are sometimes called Whitsunday, so named for the white garments worn by those to be baptized during this time). This was a time of teaching the behaviors expected of Christians and "a preparation for possible trouble ahead."<sup>30</sup>

In my experience, students are highly trusting and dependent on their clinic supervisors at this stage, and tend to react to us as sources for "answers," as their teachers have been throughout their educational lives. The new modes of work, in both seminar and case-work, are both exhilarating and terrifying, as students face the first real responsibilities in their own cases. One device we use regularly in clinic orientation is a session in which students speak to their hopes and fears of what the clinic year will bring. The opportunity to articulate their fears out loud serves, at the same time, as a way for them to hear that their fears and hopes are shared with everyone else – they are not alone – and as a mode of breaking patterns of deep socialization in law school in which speaking of one's emotions are explicitly or implicitly repressed as part of the ethos of "thinking like a lawyer."

Student teams generally immerse themselves in their cases enthusiastically. They are often slow to reach out to clients for the first time, feeling a sense of dread and awe in establishing contact with a real person as part of a course of study; no course has ever involved a third party in the learning process. Moreover, where culture and language are involved in the encounter, as is often the case in immigration or human rights cases, students often lack the most basic abilities to communicate, or they misread cultural signals in their enthusiasm to gather information. During the first simulation exercises on interviewing, including sessions on partnership collaboration and interpretation (linguistic and cultural), the students are like sponges soaking up knowledge in great experiential gulps.

Students' learning curves are high and fast, but I find my supervision sessions include a lot of admonitions that they must find legal or factual answers for themselves and not through their teacher. As Freire notes, this is no longer the "banking" system of education, in which the teacher "makes deposits which the students receive, memorize, and repeat," but a deeply significant resolution of the "teacher-student contradiction," where students come to realize that "both are

---

<sup>27</sup>A WAY TO BELONG, *supra* n. 22, at 54.

<sup>28</sup>A WAY TO BELONG, *supra* n. 22, (includes a chart, at 56, comparing the units on theological and

psychological bases).

<sup>29</sup>Abernathy, *supra* n. 4.

<sup>30</sup>A WAY TO BELONG, *supra* n. 22, at 54.

simultaneously teachers and students.”<sup>31</sup> My role is focused on facilitating models for problem solving, noting potential alternative visions and ranges of action with regard to their actions, and pointing to research tools for law and facts, particularly for factual exploration with which they have had little or no experience after two years (for most) of law school. I value apprenticeship over discipleship.

## UNIT 2 – ANXIETY

(Full year, weeks 7-13; one semester, 4-6 weeks)

(Church season: Advent)

Winter is approaching. As the days grow noticeably shorter, primitive people “undoubtedly feared that the sun was gradually disappearing and that the world would be left in cold and darkness. . . Their anxiety was compounded by their memory of other winters. Even if the sun returned, would their food last until spring? Would they have enough fuel to keep themselves warm?”<sup>32</sup> Put more colloquially, this stage “characterizes the growing awareness that all ain’t what one perceived it to be.” This is the period in which the disciples experience “rising opposition to Jesus by the religious and secular rulers and their own confusion about Jesus’ intentions.”<sup>33</sup> Their beliefs, “when tested in the crucible of the human experience of suffering, prove insufficient to help one continue to make meaning or sense out of human existence.”<sup>34</sup> Theologically, the paradigm is the disciples’ statement, “Teacher, do you not care if we perish?” Psychologically, this is a period of counter-independence and flight.<sup>35</sup>

The Advent season is the four Sundays before Christmas, but this unit or stage usually begins well before December, which is the end of the semester for us. By the first days of December, most students have turned their attentions away from clinic and toward other courses that require their attention. I associate the Anxiety stage with the time from later October though semester-end.

This is an ambiguous and uncomfortable period, but it can also be enormously productive and rewarding. Students are growing in confidence and becoming more accustomed to the rhythms of clinic class, rounds and supervision. They feel comfortable coming into my office. At the same time, students are beginning to be annoyed by their supervisor’s constant response of “I don’t know. What do you think we should do?” Students yearn for the comfort of answers (“Teacher, do you not care if we perish?”), and the pressures of time and case schedules may constitute a siren call to the teacher to abandon the classic non-directive supervision model.

This is also a time when the first signals of friction or fraying of the partnership relationship appear, and students are often anxious about raising the issue directly and openly. If court appearances loom, the anxiety level can be through the roof, with students grasping for a thorough “script” for what seems to them the unstructured, unpredictable and indeterminate event of a courtroom hearing. Many have never seen a courtroom save for the mock courtrooms at school.

More than anything, students often have begun to see a more human and unreliable side to their individual clients. Clients often do not put their legal cases at the center of their universe, and may skip or be late for meetings. They may tell different and inconsistent versions of the facts of their

---

<sup>31</sup>PAOLO FREIRE, PEDAGOGY OF THE OPPRESSED 58-59 (1970).

<sup>32</sup>A WAY TO BELONG, supra n. 22, at 54

<sup>33</sup>Abernathy, supra n. 4.

<sup>34</sup>Id.

<sup>35</sup>A WAY TO BELONG, supra n.22, at 56.

story, often leading students to conclude that clients are lying, rather than that memories are weak or that stories are often uncomfortable or impossible to recount due to trauma. Legal issues that seemed simple when posed suddenly become immensely complex when the student teams struggle to make sense of the chaos of law and facts together. Frustration and impatience rises, though often masked behind the traditional student-teacher encounter of formality and distance. Another version of this phenomenon is the issue of the client as friend with students becoming confused about boundaries and limits, both moral and ethical. Do they (or the clinic) pay for their client's cab fare to clinic? How about a meal? Donated clothing for the client's new baby? Bail for release from immigration detention? In the non-monetary realm, one paradigmatic issue is giving out a personal cell or home phone number, thus permitting the client to call at any hour of any day. If the client is a group or organization, how does the student team prevent itself from being seen as research help and not a full partner in the lawyering project? Ethically, how much of the client's story is available for public consumption? What if the client really is lying? What are our duties of candor to the tribunal? These and other questions may be exciting at first, but after a few weeks, they can become tedious or annoying.

Experienced faculty often feel the pressures of additional responsibilities outside of clinic, whether they be with regard to writing (a constant, gnawing anxiety), faculty committee work, or outside speaking in the fall "conference season." And despite repeated admonitions to students to submit drafts early, student teams often – indeed inevitably – fail to plan enough lead time, leading everyone into a last-minute frenzy of producing that first court filing, brief or legal memorandum that may or may not have an unalterable and definitive due date. Students learn the meaning of the term *nunc pro tunc* filing.<sup>36</sup>

### UNIT 3 – HOPE

(Full year, weeks 14-15; one semester, week 7)

(Church seasons: Christmas and Epiphany)

The sun is rising earlier each day and light is gradually, incrementally returning. It is no coincidence, as Frazier suggests in the passage quoted above from *The Golden Bough*, that the date attributed to Jesus' birth is commensurate with the winter solstice. "Since the dawn of history the day has been set aside for the celebration of hope. The return of the light is represented by the burning of the Yule log and the promise of another spring by decorations made from branches of trees which remain green throughout the year."<sup>37</sup> One of the most basic symbols of hope is the birth of a baby. "In the birth of a child the moment is charged with potentiality. A new life has begun."<sup>38</sup> Theologically, another symbol is the Epiphany, the date in early January celebrated as the revelation of God in human form. It commemorates the transfiguration, the miracle in which Jesus, atop a mountain and before the disciples' eyes, is transformed into radiance, speaks with Moses and Elijah, and is called "Son" by God. For the disciples, it is a defining moment that confirms their commitment.

---

<sup>36</sup>A fancy Latin term meaning "now for then," *nunc pro tunc* filings are the lawyer's way of saying to courts, sorry, I'm late, but it's just a day or two!

<sup>37</sup>A WAY TO BELONG, *supra* n.22, at 54.

<sup>38</sup>*Id.*

Psychologically, this is a moment of resolution or catharsis.<sup>39</sup> This stage “captures one’s sense of having come through a moment of suffering or a time of trial intact. Feelings of relief or gratitude can pervade one’s being. Hope may also manifest itself in one’s renewed conviction about one’s life and its purpose and a deepened relationship with God.”<sup>40</sup>

Hope is a short but intense stage: I give it a week or two (not counting the Christmas break) before we pass on, sometimes by degrees, into despair. In the clinical context, it is most readily recognizable in the first court appearance, hearing or other formal, public presentation, which is often timed to fall at this point in the calendar, but not always. These events are usually short episodes, often preliminary skirmishes in a long process, but they are the first such experiences for many students, and they are usually intense in their preparation. As a portion of overall time spent in clinic, these public events are by far the least amount of total time, but perhaps the greatest in psychic energy and lost sleep.

The relief after such events, for both the students and me, is palpable. All of these feelings occur regardless of the outcome of the event, but a courtroom win produces the greatest sense of accomplishment and relief. Even a loss tends to produce some catharsis or resolution, the feeling of having suffered and survived intact. Usually student performance is excellent, but even if it is not, they have come through the fire and survived. For clients, this can also be a defining moment. Outcomes of court hearings seldom, in my view, are driven solely by lawyer performance but much more by the power of a client’s story. The raw narrative power of a compelling story can transfigure a courtroom from a routine event into a personal epiphany for the client, and sometimes for the judge, because the students are able to let the client’s voice out through the story, to fill the room with pathos and compassion.

A lesser and more timely version of the hope stage occurs simply because of the end of the semester. Students usually feel some sense of accomplishment after a semester, and generally begin the second semester revived and excited. In a one-semester course or clinic, hope appears as the course passes “over the hump,” or middle of the course, and starts to head toward the end. It may not be a time of particular catharsis and group bonding, but it is a notable passage in any event.

## UNIT 4 – DESPAIR

(Full year, weeks 16-23; one semester, weeks 8-12)

(Church season: Lent)

It’s January, and February and March . . . and spring never seems to come. Although Lent itself is, as a formal matter, the 40 days between Ash Wednesday and Palm Sunday, it feels so very much longer. The cold, grey, dreary winter seems never to end. The 40 days of Lent are a symbolically powerful number, as reflected in other meaningful Biblical events, such as the 40 days of Noah’s flood, the 40 years of wandering of the Hebrew people, and the 40 days of fasting by Christ in the wilderness. There is no particular magic to that number in the clinic calendar; despair is the much longer period of time from just after the beginning of the semester up to spring break, which for us is usually the second week of March.

---

<sup>39</sup>A WAY TO BELONG, *supra* n.22, at 56.

<sup>40</sup>Abernathy, *supra* n. 4.

Liturgically, Ash Wednesday, which starts Lent, reminds us of our mortality. The ashes are imposed as the priest tells us to remember that we are dust and to dust we shall return. No reminder is more sobering and humbling in the church calendar. “Primitive people suffered further agonies as they saw the last of their winter stores being consumed while the frozen earth, still covered with snow, gave no promise of returning to life.”<sup>41</sup> This is a season of turning inward, of “self-examination and reflection.”<sup>42</sup> “In some sense, [despair] is a deeper degree of anxiety, pointing to one’s awareness that mountaintop moments don’t last forever. The return to the valley ever waits.”<sup>43</sup> If we see the Bible story of the disciples as a metaphor for our own lives, we know that when faced with the really important moments, we often react as they did in Jesus’ final days – “betrayal, denial, abandonment and subsequently, grief and repentance.”<sup>44</sup> Psychologically, this is fight or flight at its deepest and most powerful; disenchantment, counter-dependence and independence all can take hold.<sup>45</sup>

This can be an important period of reflection and ongoing learning for the students, but may also be a time when they are most frayed and brittle. If their partners or clients are uncooperative or life outside of clinic is not going well, this is often the time of students’ tear-filled private meetings with me. At its deepest point, the Penniman materials suggest, despair occurs when “my life is out of control, or I feel condemned for my stupid decisions. In such moments I feel like I am filled with tears, so many tears that if I cried them all they would make a pool so large and deep that I might drown in them.” This “pool of tears” is an image reminiscent of the powerful allegory of Alice in Wonderland, falling into the pool of her own tears when in despair.<sup>46</sup>

Graduating students often begin to feel the approaching end of their time in law school, and they know they are about to step off the cliff from the security of school into the real world of work life, into a deeper relationship with a partner (or not), or profound anxiety about high debts from law school costs and no immediate job prospects. In that long period where the end is not easily discerned, I am also more likely to be short and temperamental or to flee the scene of my students’ angst. I’m more impatient with the late work-product and increasingly reluctant to spend all-nighters finishing and filing a brief or other court document. We all feel exhausted, and the week of spring break is only a tantalizing reminder of rest, not a real respite from the pace and demands of the uncontrollable schedule of law firm practice within a law school.

## UNIT 5 – ANTICIPATION

(Full year, weeks 24-28; one semester, weeks 13-14)

(Church seasons: Easter, Ascension, Pentecost)

Spring and new life are finally here, the season of new beginnings . . . and school endings. The first flowers bloom, the cherry blossoms adorn the Tidal Basin near the Capitol Mall, and warm, gentle breezes return. The spring equinox brings the world back into balance, but then tips toward longer, sunnier days. “Primitive people must have felt this same energizing effect of enthusiasm

---

<sup>41</sup>A WAY TO BELONG, *supra* n. 22, at 55.

<sup>42</sup>*Id.*

<sup>43</sup>Abernathy, *supra* n. 4.

<sup>44</sup>*Id.*

<sup>45</sup>A WAY TO BELONG, *supra* n.22, at 56.

<sup>46</sup>Categories, *supra* n. 6, at Confirmation Class, Unit IV, Despair, 9.

for life. . . It is no wonder that their celebration of joy and thanks for the renewal of the earth centered around Easter, the goddess of fertility, and that they used the most obvious symbols of fertility, the egg and the rabbit.”<sup>47</sup> As despair is to anxiety, anticipation is “a deeper degree of hope.” In this stage, “one can step out on faith into the unknown of new experience or deeper relationship with others, with God, and with one’s self.”<sup>48</sup> In psychological terms, this is the stage of interdependence and consensual validation.<sup>49</sup>

The school year is about to end, as is the student’s work in clinic. Sometimes, with luck, the student team’s case-work ends with some culminating event that corresponds to the end of the school year – a trial or major filing in court, a presentation or other major work-product in the project-based cases. As often as not, however, the case simply goes on, passing from one student team to another by means of a transfer memo. Some files have up to ten transfer memos as the case lingers and lingers and lingers in judicial limbo, a giant circle game. Graduation, too, is a great ritual festival of celebration and passage, always a favored event for me. I feel proud to have contributed to the developing sense of ownership of a new career by those precious few who have shared the journey of the clinic year with me. Hopefully, in the best of cases, we have evolved from student and teacher to true colleagues.

Year-end is also a time of deeper reflection about what clinic students really want from their careers, from their professional and personal life. There is that sense of the great cycles of school and work life, from one student team to another, a time of endings that anticipates all the possibilities of new beginnings.

## CONCLUSION

Let me note again that this is a template and a prediction tool; it has been mostly true for me in most years. The units do not always fall into perfect symmetry, but remarkably, they often do. I often take comfort in the knowledge that I am somewhere on the great wheel of the clinic seasons, deeply situated and moving at the same time. I can modify my behaviors in recognition of my place in the stages, or make accommodations for otherwise puzzling or perplexing student (or my own) actions. I’ve used the stages more than once to explain an interaction or event to fellow faculty or to the students themselves. Perhaps you’ll find them as useful as I have.

At the center of this annual journey lies the relationship between me and my students, and between my student and their client. The primordial principle defining those relationships shares the central lesson of Karen Armstrong’s *The Great Transformation*, which focused on the “axial age,” the period between 900 and 200 B.C. when the major pre-Christian traditions – Confucianism and Daoism in China, Buddhism and Hinduism in India, Judaism in Israel, and philosophical rationalism in Greece – took shape.<sup>50</sup> During that period, what mattered “was not what you believed but how you behaved. Religion was about doing things that changed you at a profound level. . . Each tradition developed its own formulation of the Golden Rule: do not do to others what you would not have done to you. As far as the Axial sages were concerned, respect

---

<sup>47</sup>A WAY TO BELONG, *supra* n.22, at 55.

<sup>48</sup>Abernathy, *supra* n. 4.

<sup>49</sup>A WAY TO BELONG, *supra* n.22, at 56.

<sup>50</sup>KAREN ARMSTRONG, *THE GREAT TRANSFORMATION: THE BEGINNING OF OUR RELIGIOUS TRADITIONS* (2006).

for the sacred rights of all beings – not orthodox belief – was religious.”<sup>51</sup> As Best Practices for Legal Education puts it: first, do no harm to students.<sup>52</sup>

---

<sup>51</sup>Id. at xviii-xix.

<sup>52</sup>ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 111 (CLEA 2007).