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## The Divorce Case: Supervisory Teaching and Learning in Clinical Legal Education

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**THE DIVORCE CASE: SUPERVISORY TEACHING AND LEARNING  
IN CLINICAL LEGAL EDUCATION**

PAULETTE J. WILLIAMS\*

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## I. INTRODUCTION

This article explores what and how law students learn in clinical legal education. More specifically, it examines the experiences of students handling divorce cases in the clinic and how those experiences contribute to the learning process. The article is based in part on the author's experience of teaching and learning during 1998 at Cornell University's Legal Aid Clinic. It is intended to be both a reflection on a first year of clinical teaching and a careful look at the goals and processes of clinical legal education.<sup>1</sup>

The article began as a description of clinical supervision and other clinical teaching processes; it was intended to help newer clinicians and clinical programs in thinking through their educational goals and methods. It has become a broader reflection on law teaching and how clinical methods can contribute to more effective teaching generally.

Clinical education offers teaching approaches that can work well throughout the law school curriculum. Using clinical processes (in which I include any non-lecture, non-Socratic methods) law teachers can encourage students to examine their roles as lawyers, to wrestle with issues of professional responsibility that they will face in practice, and to become reflective lawyers.

I argue that clinical teaching methods provide law students with a rich learning experience, and that this fact should be considered as law teachers design their courses.<sup>2</sup>

Since clinical training is not required in most law schools, many, if not most, law students complete their legal education without the kind of supervised practice experience that the clinic provides. Students who do not take a clinic course also miss out on the opportunity to work closely with a faculty mentor and to reflect upon the role that attorneys play in the legal

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1. The article is informed as well by three semesters of teaching in the Legal Clinic at the University of Tennessee College of Law where I have been practicing and reflecting upon clinical teaching.

2. I do not argue that clinical methods are superior to other teaching methods, or that divorce cases represent a superior choice in clinic design over the selection of any other type of case. Nor have I reviewed or critiqued the body of literature on the design of legal clinics, such as Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L. J. 31 (1993), Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175 (1996); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998). Rather, I point out the valuable lawyering skills students can learn from working on divorce cases in the clinic and focus generally on the benefits of clinical teaching methods. By researching and reflecting on the material for this article, I learned far more about teaching than I did about how to create the ideal clinic.

process. This article challenges us as law teachers to think about clinical methods and to find ways to incorporate them into our teaching.<sup>3</sup>

Part II gives an overview of clinics in legal education. Part III is a case study describing the activities of an individual student handling a specific case, including in Section A a discussion of the law of Divorce in New York, and in Section B.3 What Did the Student Learn? I address the following questions: What do students learn in handling divorce cases? What skills do they exercise? What do they learn about their role as lawyers? What can we say about the process by which they learn? What conclusions or suggestions for law teaching can be drawn from the clinic experience? Part IV is a discussion of clinical supervision, its goals, methods, and processes.

## II. CLINICS IN LEGAL EDUCATION

Clinical legal education refers to that part of the law school curriculum which provides students with experiential training where students learn by doing.<sup>4</sup> Clinic courses are designed using a variety of educational models,

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3. Another interesting issue that is beyond the scope of this article is the relationship between emphasis on legal theory and legal practice in the modern law school curriculum and in legal scholarship. An excellent discussion of this issue can be found in Paul D. Reingold, *Harry Edwards' Nostalgia*, 91 MICH. L. REV. 1998 (1993).

4. A good brief description of clinical programs in U.S. law schools is contained in Gregory S. Crespi, *Comparing United States and New Zealand Legal Education: Are U.S. Law Schools Too Good?*, 30 VAND. J. TRANSNAT'L L. 31, 42-46 (1997). See Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939 (1997) (providing a history of the earliest clinical programs); Dubin, *supra* note 2, at 1463-74 (discussing the evolution of clinical legal education and the social justice motivations for the creation of clinical programs in law school curricula dominated by the casebook method of legal instruction); Laura G. Holland, *Invading the Ivory Tower: The History of Clinical Education at Yale Law School*, 49 J. LEGAL EDUC. 504 (1999) (experiential learning was part of lawyer training under the apprenticeship system, where students learned the law in a law office, a system that prevailed prior to the development of the Langdellian case method and the widespread acceptance of training lawyers in law schools and universities); Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547 (1997) (discussing the history of the development of the casebook and case method in legal education). After law schools experimented widely with clinical programs in the 1960's and 1970's, those programs have had a major resurgence during the 1990's since the publication of the MacCrate Report, the common name for SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992); See *Clinical Education: An Annotated Bibliography*, Revised Edition: The Czapanskiy Bibliography, at <http://www.law.umaryland.edu/facpages/Kczapanskiy/Czapanskiy-bibliog.pdf> (last visited Apr. 19, 2002) (indicating the growing body of clinical scholarship in which many issues of clinic design have been addressed).

including externships,<sup>5</sup> where students observe and experience the practice of law by working in offices of legal services programs, prosecutors, judges, or other legal services providers; simulations, where students practice client interviewing, counseling, negotiation, trial advocacy, and other lawyering skills using structured problems in a supervised setting;<sup>6</sup> and the “live-client” or “in-house” clinic,<sup>7</sup> where students function as attorneys representing real clients. Many clinic models include a classroom component taught by full-time law school faculty or adjuncts.

#### A. *The “Live-Client” Clinic Model*

In the live-client clinic students are supervised by law school faculty who are generally, but not always, full-time members of the law school faculty.<sup>8</sup> The Cornell clinic is in many respects typical of the “live-client” clinic model that exists at many schools.<sup>9</sup>

The Legal Aid Clinic at Cornell University<sup>10</sup> is a one semester, four- to six-credit course in which second and third year students are assigned to work on the cases of clients who have been accepted for representation by the Clinic. All students do intake during the semester and thus become part of the case

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5. For an introduction to externships and an extensive list of citations to the literature on externships, see J. P. Ogilvy, *Introduction to the Symposium on Developments in Legal Externship Pedagogy*, 5 CLIN. L. REV. 337 (1999); see also REBECCA A. COCHRAN, *JUDICIAL EXTERNSHIPS: THE CLINIC INSIDE THE COURTHOUSE* (1995).

6. See M. MELTSNER & P. SCHRAG, *TOWARD SIMULATION IN LEGAL EDUCATION* (1975).

7. Ann Juergens, *Using the MacCrate Report to Strengthen Live-Client Clinics*, 1 CLIN. L. REV. 411 (1994).

8. For an interesting discussion of the relative advantages and disadvantages, as well as the interrelationships of various clinical methodologies, see Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 CLIN. L. REV. 123 (2000).

9. The clinic requires a tremendous amount of work. Most of the students put in a disproportionate amount of time compared to the credits that they earn. I am afraid that this factor may adversely affect student enrollment in the clinic. I think the clinic should get more recognition within the law school and an increased number of credit-hours. This suggestion raises budgetary concerns for law schools because, as Gregory Crespi says, “A law school clinic is very resource-intensive per student credit-hour when compared to most classroom lecture instruction (although perhaps not when compared with smaller seminar classes) . . .” Crespi, *supra* note 4, at 44. The issue of the appropriate number of credit-hours as well as the appropriate level of law school resources that should be devoted to clinics is complex and needs further study.

10. My first clinical teaching position was in the Cornell University Legal Aid Clinic. I was hired in January, 1998, as a visitor to replace Robert Seibel who was considering, and eventually accepted a position teaching at the City University of New York Law School. I mention Bob Seibel specifically because, although he was not teaching in the Clinic while I was there, he was one of the colleagues who mentored me through my first year of clinical teaching. The others were JoAnne Miner, Glenn Galbreath, Barry Strom, William Kell, and Nancy Cook, to all of whom I owe a debt of thanks.

acceptance process, but there is always a significant carry-over of cases from one semester to the next. Thus, the students are first assigned to “old” cases that have been handled by students in prior semester(s).

A maximum of forty students are enrolled in the clinic each semester with a 1:8 faculty to student ratio. Students may take a second semester of Clinic. In each of my semesters at Cornell there were between three and eight Legal Aid II students who were helpful in introducing the new students to clinic practice and who were given a role in supervision of the Legal Aid I students.

In addition to handling cases, students take a classroom component of the clinic which is a legal aid skills course in interviewing, counseling, and advocacy using simulation exercises, readings, videotaped materials, and class discussion. These students earn four credits. In addition to the Legal Aid Course students can earn an additional two credits by taking a course in Government Benefits Law or Women & the Law which are seminar courses taught by clinic faculty focusing on specific substantive areas.

In my first semester in the Clinic I co-taught Women & the Law with JoAnne Miner. The Legal Aid classes were co-taught by the five active clinic faculty members. Teaching and administrative supervision of the Clinic were collaborative processes in which all clinic faculty participated.

In its case handling, the clinic operated much the same as a legal services office or a law firm representing low-income clients. Administrative procedures were in place to accept and screen calls from prospective clients, to limit access to the clinic and client files to clinic students and staff, to track cases and maintain docket and deadline information. Clinic students were required to maintain client files and were exposed to many of the practical administrative aspects of case handling.

### B. *Goals of the Clinic Experience*

The place that clinical education holds in the curricula of modern law schools has been justified based on important substantive training that it offers to law students, such as training in lawyering skills.<sup>11</sup> In addition, and probably more importantly, clinical education as a method of teaching may be even more valuable than the substantive material taught.<sup>12</sup>

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11. The MacCrate Report *supra* note 4 identified ten fundamental lawyering skills: problem-solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication, counseling, negotiation, understanding of the procedures of litigation and alternative dispute resolution, organization and management of legal work, and recognizing and resolving ethical dilemmas. See Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648, 669 (1996) (discussing curricular reforms that would make the teaching of problem-solving skills the core objective of law school education).

12. Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).

The clinic experience is intended to expose students to the practice of law.<sup>13</sup> The clinic gives students experiences in three broad areas: 1) students learn and practice a set of lawyering skills; 2) they learn the basics of working with clients and being advocates; and 3) they are exposed to a variety of professional ethics issues and issues relating to their role as lawyers.<sup>14</sup>

An even more basic goal of the clinic is to provide students with an experience of legal education that is in some ways fundamentally different from the “traditional”<sup>15</sup> legal education they have had up to this point in law school. In the clinic students are encouraged to reflect upon their experience, and to learn as much about the processes by which the legal system works and by which the various participants act in that system, as they do about the substantive rules of law. It is in looking at this goal of developing reflective lawyers, where the goals of clinical legal education become entangled with the concept of clinical education as methodology.

### 1. Lawyering Skills

Lawyering skills are taught on two levels in the clinic. First, in the classroom and through simulation exercises students are introduced to the skills that a lawyer needs to be a competent litigator. These include client interviewing, fact gathering and investigation, legal research and problem analysis, client counseling, negotiation, oral advocacy, and written advocacy. Using assigned readings, videotaped materials and written handouts students engage in classroom discussions of these issues. In addition, some of the classes involve a series of exercises where the students practice client interviewing, counseling, and advocacy at a simulated administrative hearing. Students’ performances in those exercises are critiqued by clinic faculty and other students.

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13. David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 76 (1979) (including an extensive list of the goals of clinical legal education).

14. See Robert MacCrate, *Introduction: Teaching Lawyering Skills*, 75 NEB. L. REV. 643 (1996) and the other articles in that Symposium Issue on Teaching Lawyering Skills.

15. There is an issue about what to call the distinction between clinical educational methods on the one hand and the case oriented, lecture, and Socratic teaching methods used in other law school courses. Is it clinical vs. traditional; is it clinical vs. non-clinical; is it experiential vs. classroom- or lecture-based? I am concerned with setting up a dichotomy between clinical educational methodologies and the other ways of teaching law, because I do not see the methods in opposition to each other. The methods complement each other and each provides valuable (and I daresay essential) material in the process of educating lawyers. See Holland, *supra* note 4, at 506, for a discussion of the division within law schools between academic lawyers and practicing attorneys, where she says that the divide “is not absolute, but relations between the two camps have remained strained.”



Second, students learn lawyering skills through supervised representation of individual clients in a variety of subject areas. All of my students were primarily assigned family law cases. In the course of representing their clients students interview and counsel clients and perform a variety of other lawyering tasks. The expectation is that they will begin to acquire skills by actually performing them, reflecting upon their experience, and receiving feedback and supervision from clinic faculty.

## 2. Working with Clients

A second major goal in the clinic is to have students meet and get to know their clients, learn the client's problems, and gain some insight into the client's experience. Service to clients is an important part of the clinic's mission. For many students it is the first time they have ever talked to a client. For many it is the first time they have ever interacted with a poor person. For most of them it is the first time that anyone, particularly someone older than they, has relied on them for help.

Students learn to sort out the relevant facts from all the material the client gives them. They learn that the clients have concerns that do not fit within the boundaries of the legal problem initially presented, and that these concerns also must be addressed. For example, a client receiving representation on her divorce case faced a decision whether to take a job that would require her to move to a different city. The student-advocate had to decide what, if any, effect this decision would have on the representation and counsel her about it. Even if the issue was not relevant to the case, the student had to get involved because the decision was so important to the client.

The need to hear and process clients' stories presents a wonderful opportunity for students to interact with their clients and to learn about differences.<sup>16</sup> Listening to the client's story helps the student to recognize how the client's perspective differs from that of the other parties in the case and sometimes how it differs from that of the student.<sup>17</sup> Students experience first

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16. A lot of interesting writing has been done on the importance of facts, narrative, and the client's voice in legal practice. See, e.g., Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 CLIN. L. REV. 41 (1994); Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992); David Simon Sokolow, *From Kurosawa to (Duncan) Kennedy: The Lessons of Rashomon for Current Legal Education*, 1991 WIS. L. REV. 969 (1991) (discussing the lack of emphasis on facts in law school teaching and examining the pedagogical implications of teaching about a factually uncertain situation); see also Abraham P. Ordovery, *Teaching Sensitivity to Facts*, 66 NOTRE DAME L. REV. 813 (1991).

17. See Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 NW. U. L. REV. 695 (1994) (discussing the use of students' discomfort with the differences between themselves and their clients as teaching opportunities).

hand the challenges of interpreting and translating the information presented by their clients and incorporating that information into a theory of the case.

At times conflicts arise between the way the student sees the facts and the way the client sees the same set of facts. That conflict can cause the student to question her role as the advocate for the client and raise questions about the student's ability to act professionally.

### 3. Professional Role and Becoming Reflective Lawyers

Handling cases in the clinic helps students focus on professional responsibility and ethics.<sup>18</sup> Professional responsibility issues are raised when the party opposing our client is not represented. One issue is how to deal with the unrepresented party without giving legal advice or overreaching. When there is an attorney on the other side, the student may have to establish his or her legitimacy before a more experienced opposing attorney will take her seriously.

Clinic students learn the role of an advocate and they discover how different it is to be an advocate than it is to be the decision maker (which is the example of the lawyer modeled in many other law school courses.) For example, in family law courses students learn that the standard for determination of custody disputes is the best interests of the child.<sup>19</sup> Students read the arguments of each party as to why the court should rule in the party's favor. They weigh the arguments, determine which party will best serve the child's interests, and decide how the court should rule. Often the student's own values and beliefs (consciously or not) play a major part in the decision making process, much as they do when judges make their decisions.

As an advocate, the clinic student's role is very different. When the client tells the student that she wants custody of her child, the student's job is to counsel the client about the best interests standard and help the client understand the strengths and weaknesses of her case. If the client decides that she wants to ask for custody, the advocate's job is to negotiate with the opposing party and use all of her persuasive skills to achieve the result the client wants, even if the advocate thinks that result would not be in the best interest of the child. It is a truly eye-opening experience for a student to realize that she and the client hold different views on a critical issue in the case, and to work through questions such as whose view should predominate? and how far should the student go to try to persuade the client to choose another course?

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18. See Carol B. Liebman, *The Profession of Law: Columbia Law School's Use of Experiential Learning Techniques to Teach Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 73 (1995) (discussing the role of clinics in teaching professional responsibility).

19. The "best interests of the child" is the statutory standard applied in every jurisdiction to determine child custody issues.

Much of the learning that takes place in the clinic comes when students and teacher reflect on the experiences encountered in cases. We constantly encourage students to examine the professional role they are playing in cases. Who controls the case—the client or the attorney? Where is the line between fundamental case decisions (which we try to empower clients to make) and strategic legal decisions (which are generally seen as within the attorney’s realm)? What is the attorney’s role in relation to other professionals who may be involved, such as a social worker or a psychologist? What difference does it make that the client is a low-income person? Does the fact that the client is not paying for the representation play any part in the strategic choices made during the representation? Does the student’s role as an advocate for a poor person provide the student with any insights or information about how the justice system impacts the lives of the poor? Does the student see any public policy implications or areas of the legal system which are in need of improvement?

#### 4. The Clinic as a Legal Education Methodology

The substance of clinical education is sometimes referred to as skills training, as distinguished from theoretical or doctrinal training.<sup>20</sup> Clinical methods refer to the experience of case handling, and what students learn about the lawyering process by performing tasks and then reflecting on their experience.

In the Clinic students have an opportunity to apply the principles they have learned in their other law school courses to real cases where there are real consequences for clients. Clinic teachers make a conscious effort to expose students to a range of exercises and teaching methods beyond those they have experienced in law school previously. Those methods include drafting various kinds of documents, interviewing parties and witnesses, counseling clients, negotiating with other parties, and courtroom advocacy. Such exercises are performed under close supervision and with an opportunity for prompt reflection and feedback.

In their recent article, Busharis and Rowe point out the false dichotomy between “skills” and “substance” and between the “theoretical” and the “practical” in law schools.<sup>21</sup> They discuss how a series of practice-oriented exercises can be used in the teaching of non-clinical law school courses to give

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20. See, e.g., Gary S. Laser, *Legal Education I: Educating for Professional Competence in the Twenty-first Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 244 (1992).

21. Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. MARSHALL L. REV. 303 (2000).

students a realistic experience simulating those they will face in practice. For example, David Chavkin teaches a clinical seminar which incorporates the teaching of theory and practice by having seminar students represent real clients. He uses the cases to determine the issues to be analyzed in the seminar.<sup>22</sup> His article describes clinical practice and is an excellent resource on how clinical pedagogy and clinical teaching methods can be used to teach a variety of substantive courses.

Busharis and Rowe state that legal employers expect young attorneys to come out of law school with more practical skills than students had in the past because firms have less time to provide the hands-on mentoring than they once did.<sup>23</sup> Clinical education gives students this kind of mentored practice experience.

In law school, generally there is an emphasis on understanding legal rules, and a corresponding lack of emphasis on the facts. Students never have to discover the facts. In courses taught using the Socratic method<sup>24</sup> facts are given to students in hypotheticals. The casebook versions of the opinions they read sometimes leave out the facts altogether.

The required first-year courses and most other courses in law school have a goal of teaching students a set of doctrinal principles and a process of legal analysis by which students learn to “think like lawyers.”<sup>25</sup> Law professors have students read and extract legal rules from a series of appellate court decisions, with the goal of having students figure out how a court would decide a case based on a particular set of facts. As they do the analysis, students assume the role of the judge applying the law. Even more than thinking like lawyers, law students learn to think like judges.

In clinical courses students must do extensive fact investigation and must examine the facts from a variety of perspectives. A much greater emphasis is placed on discovering, understanding, and interpreting the facts than anywhere else in law school.<sup>26</sup> And since the client is the primary source of the facts,

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22. Chavkin teaches a clinic in the health law area in which each student represents a client with a disability. See David F. Chavkin, *Training the Ed Sparrers of Tomorrow: Integrating Health Law Theory and Practice*, 60 BROOK. L. REV. 303, 322-23 (1994) (providing an example of how issues of professional responsibility and client counseling were raised in a case involving a paranoid schizophrenic client who felt that one of the students was “evil” because that student had dark brown hair).

23. Busharis & Rowe, *supra* note 21, at 304-05.

24. June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1012-14 (1989) (describing the Socratic method). See also Sokolow, *supra* note 16, at 969 (discussing the importance of teaching about facts).

25. See Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F. L. REV. 121 (1994).

26. See Paula Lustbader, *Construction Sites, Building Types, and Bridging Groups: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315

and advocacy for the client's perspective is the primary *modus operandi*, clinic students have to learn how to hear and appreciate their clients' stories in ways that are not otherwise taught in law school.

Through the case supervision process and discussion with clients, faculty and student colleagues, clinic students learn to be advocates. One of the most important things students learn in the Clinic is that there are a variety of perspectives from which any situation can be viewed. It is not until they engage with the client, the opposing party, opposing counsel, and the court and then reflect upon the variations in perspective, that clinic students begin to appreciate what it means to be an advocate.

Given this focus on the facts and the primacy of advocacy, it is not surprising that clinical educators often include principles and methods from feminist legal theory,<sup>27</sup> critical legal theory,<sup>28</sup> critical race theory,<sup>29</sup> narrative,<sup>30</sup> professional coaching,<sup>31</sup> problem solving,<sup>32</sup> and other innovative teaching

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(1997). Although Paula Lustbader's excellent article on The Learning Progression focuses primarily on strategies and processes by which law students learn to do analysis for law school exam questions, her strategies are helpful to teaching in the clinical context where our goal is to have students operate at sophisticated levels requiring abstract policy analysis, fully integrate facts, and exercise high levels of judgment. Recognition of the different levels of legal analysis expected of the students will contribute to more effective teaching in the clinic.

27. See Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991); Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 FORDHAM L. REV. 249 (1998); Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 ME. L. REV. 19 (1993).

28. See Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717 (1992); Minna J. Kotkin, *Creating True Believers: Putting Macro Theory into Practice*, 5 CLIN. L. REV. 95 (1998) (discussing the role of theory in clinical teaching and an exploration of the relationship between critical legal theory and clinical legal education).

29. Goldfarb, *supra* note 28, at 744.

30. See, e.g., Carolyn Grose, *A Field Trip to Benetton...and Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic*, 4 CLIN. L. REV. 109 (1997); Goldfarb, *supra* note 28; Kotkin, *supra* note 28; Margulies, *supra* note 17. For an interesting analysis of client storytelling and interpretation of client storytelling by poverty lawyers, see Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991).

31. Robert E. Suggs, *Symposium: Economic Justice in America's Cities: Visions and Revisions of a Movement: Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487, 505 (1995). Little has been written on the relationship between clinical education and the field of professional coaching; however, there are strong connections between the two in theory and methodology. Suggs recognizes this fact with this statement in his article on economic development: "Clinical education – at least as structured with full-time faculty in law schools – is expensive; with its emphasis on individual coaching, it is more labor-intensive than the traditional large classroom lecture."

models and methodologies in their teaching. Clinical teachers examine how teaching and learning happen, thereby adding to the understanding of how tomorrow's lawyers should be trained.

Finally, clinical education reaches students who may not learn most effectively in traditional law school classes. Much has been written about the importance of differing learning styles among law students.<sup>33</sup> One drawback of the traditional law school classroom method is that it reaches the students who are auditory learners through lecture and the students who are visual learners through reading, but it may miss the students who are primarily tactual or kinesthetic learners.<sup>34</sup> By using "hands-on" and "learning by doing" methods, clinical teaching may reach students who are more comfortable with these learning styles.<sup>35</sup>

### III. A CASE STUDY: A LAW STUDENT HANDLES A DIVORCE CASE

#### A. *Divorce Under New York Law: The Legal Requirements and What Lawyers Do*

This section contains a description of the process of obtaining a divorce in the state of New York. The purpose of including such a detailed description is to suggest the level of detail that a student needs to master before she can competently handle a case. As students begin a semester in the clinic, they often do not appreciate the relationship between the legal doctrine they have

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32. Michal R. Belknap, *Essays on Creative Problem Solving: Constitutional Law as Creative Problem Solving: Could the Warren Court Have Ended the Vietnam War?* 36 CAL. W. L. REV. 99, 100-01 (1999) (containing an extensive list of articles on problem solving and legal education, including Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994); Stephen Nathanson, *Designing Problems to Teach Legal Problem Solving*, 34 CAL. W. L. REV. 325 (1998); and Kimberly E. O'Leary, *Using "Difference Analysis" to Teach Problem Solving*, 4 CLIN. L. REV. 65 (1997)).

33. See Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213 (1998).

34. See Busharis & Rowe, *supra* note 21, at 317. "Students' perceptual learning styles for absorbing and processing information may include auditory, visual, tactual, or kinesthetic preferences. [fn omitted] Students with a high preference for auditory learning remember much of what they hear in lectures, while students with a high preference for visual learning will remember much of what they read or see. [fn omitted] By contrast, tactual learners need to manipulate material in order to remember. They may learn by writing or by using charts and graphs. [fn omitted] Kinesthetic students learn by doing. [fn omitted] Role-playing and solving "real" client problems are effective techniques for teaching these students. [fn omitted]"

35. See Lustbader, *supra* note 26, at 315, for a useful teaching method that uses cognitive, learning, and instructional theory.

studied in the classroom and what happens in practice. The material in this section emphasizes that mastery of the doctrine is closely connected with excellent practice.

### 1. Overview of the Process

One of the things that law students and new lawyers learn when they start to handle divorces is how complicated the process is, despite recent efforts to simplify the process and make it more accessible to *pro se* litigants.<sup>36</sup> The process is complex because the Domestic Relations Law,<sup>37</sup> the statute which governs divorce in New York, is complicated. The no-fault divorce process that is available in New York is seldom used by low-income clients, with the result that more difficult fault grounds are used in clinic cases.<sup>38</sup>

The law student who handles a divorce case in the clinic usually begins the case by explaining to the client that a divorce is a very complicated process requiring the client not only to have legal grounds for a divorce,<sup>39</sup> but also to meet New York's jurisdictional requirements,<sup>40</sup> obtain personal jurisdiction over the defendant,<sup>41</sup> negotiate a settlement with the other party if the party appears, and file a series of documents to place the case on the court's calendar. The process can easily take up to one year to complete.

Many clients have trouble understanding why it is necessary to file a lawsuit to get a divorce, because the process of getting married was so easy. Having this conversation with clients is part of the process that students do not anticipate.

Some clients have experienced proceedings in the Family Court, which handles matters of child custody, child and spousal support, and orders of

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36. NEW YORK STATE UNIFIED COURT SYSTEM PRESS RELEASE, DIVORCE NEW YORK STYLE: NOW FASTER, CHEAPER AND LESS DAMAGING TO CHILDREN (December 9, 1998), available at <http://www.courts.state.ny.us/pr98-22c/pr98-22c.html> (announcing new matrimonial forms and procedures designed to reduce litigation costs and eliminate delays in matrimonial cases); UNIFORM UNCONTESTED DIVORCE PACKET (revised June 10, 1999), available at <http://www.courts.state.ny.us/toc-ud.htm> (a packet of the 25 forms, with instructions for each, needed to obtain a divorce in New York, accessible in two formats on the New York State Unified Court System's website).

37. N.Y. DOM. REL. LAW (Consol. 2002).

38. N.Y. DOM. REL. LAW § 170(5) or (6) (Consol. 2002) (providing that either party can obtain a divorce on the grounds of living apart pursuant to a written separation agreement or a decree of separation for at least one year, eliminating the necessity of suing on one of the four fault grounds (N.Y. DOM. REL. LAW § 170(1)-(4) (Consol. 2002)). However, it is not common for low-income people to go through the process of getting a legal separation before filing for a divorce.

39. N.Y. DOM. REL. LAW § 170(1)-(4) (Consol. 2002).

40. N.Y. DOM. REL. LAW § 230 (Consol. 2002).

41. N.Y.C.P.L.R. § 308 (Consol. 2002).

protection, in all of which the parties can and generally do appear *pro se*. However, Family Court has no jurisdiction to grant a divorce. The Supreme Court has exclusive jurisdiction over divorce cases<sup>42</sup> and although parties are not *required* to have lawyers in Supreme Court, the papers and technicalities are such that they will be much better off with legal representation.

A student needs a sufficient understanding of the whole process to convey to the client that s/he is competent to assist the client through all the steps, answer the client's questions, and understand and accomplish the client's goals. This overall understanding of the process is quite a challenge to the student who is used to learning things step by step and who expects to learn the first step and then learn the next step after completing the first. This presents the first counseling challenge.

## 2. Initial Client Interview

At the students first meeting with the client, several important things should happen:

1) the client's eligibility for representation should be established, 2) important factual information (usually in the form of a lengthy questionnaire) must be obtained from the client, 3) the basics of the process should be explained to the client, 4) the student should begin to establish a relationship of trust with the client, and 5) the student needs to listen to the client's story, a story that often involves emotionally charged content that may or may not be relevant to the issue of a divorce.

This is a lot to ask of a student who is talking to a client for the first time, may never have taken a course in interviewing or counseling, and almost certainly has not yet experienced an interviewing exercise in the Clinic. We expect the student to be able to conduct this interview after reading the Clinic Handbook<sup>43</sup> sections on Clinic Administration and Divorce and to use common sense skills to get the client's story. It is very much like tossing the student into the water with very little in the way of a life preserver.

The analysis of the story, the recognition that lots of additional information is needed, and giving real thought to what it will take to develop trust with this client are all things that happen after that first session is over. Students often find that after meeting with the client for over an hour they have not completed all the questions in the intake questionnaire. Sometimes attention is diverted

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42. N.Y. CONST. art. VI, § 7(a) (providing that the Supreme Court is the court of original general jurisdiction for law and equity in New York, and is the only court with jurisdiction to hear matrimonial actions); N.Y. FAM. CT. ACT § 115(b) (providing that the Family Court may hear applications for support, maintenance, property distribution, or custody in matrimonial actions upon referral by the Supreme Court).

43. In the Cornell Legal Aid Clinic there is an unpublished Clinic Handbook, which is revised and updated periodically for use by students.



away from the issue of a divorce to something that appears more urgent, such as how to make sure the client suffering from domestic abuse is safe. It is not at all unusual to need a follow-up meeting to complete the initial intake information.

### 3. Grounds for Divorce

The four fault-based<sup>44</sup> grounds for divorce in New York are cruel and inhuman treatment,<sup>45</sup> abandonment for at least one year,<sup>46</sup> imprisonment of the defendant for 3 or more consecutive years after the marriage,<sup>47</sup> and adultery.<sup>48</sup> In Clinic cases the most common grounds we saw were cruelty and abandonment. Once you get past the client's hope that she<sup>49</sup> can get a divorce on grounds that the husband and wife do not get along or do not love each other any more, it is surprising how frequently the facts showed abandonment or some type of physical or mental cruelty.

Cruelty grounds require that several acts or a pattern<sup>50</sup> of cruelty must be specifically alleged<sup>51</sup> with details like the dates and places where the acts occurred. All of the acts of cruelty should have taken place within 5 years of the date the divorce action is commenced. To establish an abandonment for at least one year we need to allege the date of the abandonment and facts to show an actual abandonment (where the defendant physically left the plaintiff), a constructive abandonment (where the defendant refused to have sexual relations with the plaintiff) or a lock out (where the defendant refused to allow the plaintiff into the marital home.)

A few cases in the Clinic involved the imprisonment ground,<sup>52</sup> which requires that the defendant be imprisoned for 3 consecutive years, that the imprisonment began after the date of the marriage, and that the defendant still be in prison when the divorce action is commenced. In many more cases the client wants to use the grounds of adultery,<sup>53</sup> but we discourage her from using this ground because of the difficulties of proof. The plaintiff's testimony about

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44. *See supra* note 38 and the text accompanying notes 57 and 58 *infra* (discussing the no fault grounds).

45. N.Y. DOM. REL. LAW § 170(1) (Consol. 2002).

46. N.Y. DOM. REL. LAW § 170(2) (Consol. 2002).

47. N.Y. DOM. REL. LAW § 170(3) (Consol. 2002).

48. N.Y. DOM. REL. LAW § 170(4) (Consol. 2002).

49. The feminine pronoun is used when referring to the client throughout this article, because all the examples used involved women clients. All of the references to clients in the article apply equally to situations where the clients are male.

50. *See, e.g.*, *Miller v. Miller*, 480 N.Y.S.2d 947, 948 (N.Y. App. Div. 1984).

51. *See, e.g.*, *Stemmer v. Stemmer*, 583 N.Y.S.2d 706, 707 (N.Y. App. Div. 1992).

52. *See supra* note 47.

53. *See supra* note 48.

the adultery is inadmissible,<sup>54</sup> and even the defendant's admission of the adultery is not sufficient to prove it.<sup>55</sup>

Some cases required skillful interviewing to sort out the "facts" given by the client so that they fit neatly into one or more of these grounds. Getting the facts and then deciding upon an appropriate strategy required the student to exercise good interviewing and counseling techniques, as well as good analytical skills. It was difficult or painful for some clients to recall enough information to make out a case. Some students felt it was intrusive (and maybe unnecessary) to probe for the details of the cruelty. Sometimes it was difficult to determine whether the defendant's conduct constituted mere arguments or whether it met the statutory requirement of acts that "endangered the physical or mental well being of the plaintiff as to render it unsafe or improper for the Plaintiff to cohabit with the Defendant."<sup>56</sup>

The no-fault grounds, the so-called "conversion" divorce grounds, are rarely used in cases involving low-income people. A husband and wife who have lived apart pursuant to a Judgment of Separation<sup>57</sup> or a written Separation Agreement<sup>58</sup> for at least one year can convert their legal separation into a divorce. The term "conversion" makes this type of divorce sound like an easy administrative process. In fact, one of the parties must file an action for divorce using the legal separation as the grounds. All the other steps including commencement of the action, drafting and filing of documents are required just as if the case were based on fault grounds.

Few couples at any income level use the Separation Judgment grounds, because it requires one of the parties to have grounds for a separation under DRL Section 200, and to sue and obtain a Judgment of Separation in the same manner as suing for a divorce.<sup>59</sup> If you can establish grounds for a separation, you probably also have grounds for a divorce. However, conversion divorces based on a written separation agreement are becoming more and more common, and are used where the couple have reached an agreement regarding child custody, division of property and other financial issues. People with no resources generally do not make separation agreements, except when they do

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54. N.Y. C.P.L.R. 4502(a) (Consol. 2002); *Hendery v. Hendery*, 474 N.Y.S.2d 991, 992 (N.Y. App. Div. 1984).

55. N.Y. DOM. REL. LAW § 211 (Consol. 2002); *Schlachet v. Schlachet*, 378 N.Y.S.2d 308, 311 (N.Y. App. Div. 1976).

56. *See supra* notes 45-46 and accompanying text.

57. N.Y. DOM. REL. LAW § 170(5) (Consol. 2002).

58. N.Y. DOM. REL. LAW § 170(6) (Consol. 2002).

59. The grounds for a judicial separation under N.Y. DOM. REL. § 200 vary somewhat from the grounds for divorce; for example, abandonment is grounds for both, but there is no one-year requirement to obtain a judicial separation.

so to create grounds for a divorce, because of the additional time and legal expenses involved.

#### 4. Commencing the Action

After determining that the client has grounds to file for a divorce, and that residency requirements have been met,<sup>60</sup> the attorney or the party commences the divorce action by preparing and filing a Summons with Notice<sup>61</sup> in the Supreme Court. Within 120 days of filing, a copy of the Summons with Notice must be personally served on the defendant.

Effectuating these steps is a great lesson for students in how the basic concepts covered in first-year civil procedure get played out in real life. The Summons with Notice notifies the defendant that he is being sued for divorce, what the legal basis for the action is, and what relief the plaintiff is seeking. It also notifies him that, if he fails to serve a notice of appearance on the plaintiff's attorney within 20 days,<sup>62</sup> a default judgment will be taken against him.

The Summons with Notice is a simple one-page document, but virtually every word in it has legal and practical significance. For example, there is a space to put the plaintiff's address, which normally establishes the basis of the court's venue. However, if the client is a battered woman who needs to keep her address confidential, the student has to decide how to handle this issue so that the client's safety and confidence are maintained.<sup>63</sup>

Service of the Summons with Notice on the defendant presents a serious problem in cases where the defendant's whereabouts are unknown, or where he is avoiding service. The statute<sup>64</sup> requires that in a matrimonial action the summons must be *personally* served on the defendant. Service by some alternative method<sup>65</sup> can be made only by obtaining a court order, which will

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60. N.Y. DOM. REL. LAW § 230 (Consol. 2002).

61. The action is commenced by either filing the Summons with Notice under N.Y. DOM. REL. § 232(a)(2)(a), or a Summons and Verified Complaint under N.Y. DOM. REL. § 211. The practice in the Clinic was to file the Summons with Notice.

62. N.Y. C.P.L.R. 3012(a) (Consol. 2002). The time to appear is 30 days after service is complete if the defendant is not personally served within New York State. N.Y. C.P.L.R. 3012(c) (Consol. 2002).

63. There are two ways that we were able to keep the client's address confidential. One was to simply indicate the county where the plaintiff resides, without a street address. The other was to give the plaintiff's address in care of the attorney's office. Since this information is required to establish that venue is proper, these methods were acceptable to the court clerks.

64. N.Y. C.P.L.R. 308 (Consol. 2002).

65. N.Y. C.P.L.R. 314 (Consol. 2002) (authorizing service by publication; however, it is used infrequently because it is expensive and ineffective); N.Y. C.P.L.R. 308(5) (Consol. 2002) (authorizing service by any other means that the court will allow, such as regular or certified mail or substituted service on a friend or relative of the defendant).

be granted only upon a showing that personal service is impossible. Alternative service motions or motions for permission to serve a defendant by publication give students an early opportunity for motion practice. The student learns that service of the Summons is the way the court obtains personal jurisdiction over the defendant. The student must explain the detailed rules of personal service to the client and/or the process server and make sure that this step is handled properly. Failure to serve the summons properly will give the defendant grounds to dismiss the divorce action, if he chooses to challenge jurisdiction.

After the Summons with Notice is served, the student prepares an Affidavit of Service, has the process server sign it, and files it with the court within 120 days from the date the Summons with Notice was filed. Carefully preparing that affidavit and complying with the deadline are also critically important steps in the process.<sup>66</sup>

Successful handling of an uncontested divorce action requires the student to do legal research, document drafting, fact investigation, client counseling, filing papers with the court and sometimes motion practice. If the defendant appears, the student takes all these steps and also represents the client at the preliminary hearing, pre-trial conference, and trial.

##### 5. Appearance by the Defendant

In response to the Summons with Notice, the defendant either appears or defaults. In those cases where the defendant does not appear or appears and negotiates an agreement about the terms of the divorce, the case will proceed as an uncontested case.

As noted in the previous section the Summons with Notice states that the defendant must appear within 20 (or 30) days to avoid a judgment by default. Defendants who are *pro se* often think this means they *must* appear, and that they must appear physically at the plaintiff's lawyer's office. Students representing the plaintiff have to prepare for what to tell the defendant if he calls or shows up. Many defendants also desire a divorce, and the student needs to find a way to tell the defendant that he is not required to appear and that the plaintiff will go ahead and obtain a divorce on default if he does not appear. However, if he has any questions about the meaning or legal effect of the divorce papers, then he needs to consult his own lawyer. Students need to

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66. Failure to comply with the deadline will result in dismissal of the action, and although lack of personal jurisdiction is a defense which will be waived if not raised by the defendant, court clerks in New York review Affidavits of Service very carefully, and if a defect appears (such as, service of the Summons with notice on a Sunday) they will not permit them to be filed.

beware of the ethical and conflict of interest issues raised when the defendant starts to ask questions.<sup>67</sup>

The defendant normally appears by having his lawyer serve a Notice of Appearance containing a demand for a Complaint. In response, the student is required to prepare and serve a Verified Complaint on the defendant within 20 days from the date of service of the Notice of Appearance. When the defendant appears, the student should not assume that there will be a trial, because in most cases all the issues can be negotiated, and a settlement can be reached. Very few defendants who appear are challenging the divorce itself. They are usually seeking a different custody arrangement, visitation, or financial settlement from that demanded in the Summons.

In those cases where the defendant does not appear, no court appearances or negotiations are necessary. The next step is to prepare the documents discussed in Section III. A. 8. below for submission to the court.

#### 6. Court Appearances: Motions; Preliminary Conference; Pre-Trial

When the defendant appears in the action, technically, the case becomes a contested matrimonial action, which requires the court to follow the procedures necessary to prepare for trial. The parties exchange pleadings: the Complaint, an Answer (with or without Counterclaims), and a Reply to any Counterclaims.<sup>68</sup>

Motion practice and discovery are available in matrimonial actions under the New York Civil Practice Law and Rules to the full extent that they are available in any civil action. Thus, after both sides have appeared, either party can demand a change of venue, serve discovery demands, or move for temporary support, summary judgment, or other relief. The only required discovery device in a contested matrimonial action is the Statement of Net Worth, in which each party discloses assets and financial resources to the other.<sup>69</sup>

Practice varies from county to county, but generally a preliminary conference is scheduled within 45 days after the action is commenced.<sup>70</sup> The

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67. A claim of conflict of interest or overreaching can arise when the lawyer provides information to an opposing party and that party, without fully understanding the limits of the attorney's relationship with him, relies on the information to his detriment.

68. N.Y. C.P.L.R. 3011 (Consol. 2002).

69. N.Y. C.P.L.R. 3130(2) (Consol. 2002).

70. Except in New York City, the plaintiff files a request for judicial intervention, which triggers the scheduling of the preliminary conference, no later than 45 days from the date of service of the summons and complaint or summons and notice upon the defendant, unless both parties file a notice of no necessity with the court. When such a notice is filed, the request for judicial intervention may be filed no later than 120 days from the date of service of the summons

preliminary conference is a meeting of counsel for both sides with the judge for the purpose of clarifying the issues, setting a schedule for the completion of discovery, and encouraging the parties to settle. A date is usually set for the filing of the Note of Issue (the document placing the case on the court's trial calendar) at which time the case should be scheduled for trial. The conference is held in the judge's chambers, and is attended by both the judge and the judge's law secretary.<sup>71</sup> In some counties the law secretary plays the major role in scheduling and conducting the preliminary conference. Cases are often set for a further preliminary conference with the understanding that the parties will attempt to reach a settlement of the issues before the next conference date. When the parties have been unable to reach a settlement, either side or the court on its own initiative will schedule a pre-trial conference or a trial date. At every new stage the pressures to settle escalate.

Theoretically, when a settlement cannot be reached, a non-jury trial<sup>72</sup> is held, a decision and judgment are rendered, prepared and entered in the same manner as is described in Section III. A.8. below.

#### 7. Negotiations and Settlement

In every contested case there is a discussion with the client about the pros and cons of making a settlement.<sup>73</sup> What the attorney does is spend time getting ready for trial, all the time recognizing that all the case preparation and the information you are gathering will be used in a settlement.<sup>74</sup>

The attorney who receives a Notice of Appearance explores the issues to determine what the defendant's primary concerns are, engages in discovery to make sure that she has all the information needed to counsel the client about her options, and attempts to negotiate a settlement with the defendant's

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and complaint, or summons and notice upon the defendant. N.Y. Ct. R. § 202.16(d) (Consol. 2002).

71. The law secretary, sometimes called the law clerk or law assistant, is an attorney who works for the court and manages the judge's caseload.

72. N.Y. DOM. REL. LAW § 173 (Consol. 2002).

73. I have *never* seen a case where it was in our client's interest to go to trial, because the financial stakes were so small that the risk of losing at trial does not seem worth it. There have been some cases where we could not reach a settlement, particularly when the other side is not represented by counsel. But, even in those cases, the pressures from the court to settle are so great that I have almost always ended up with an agreement.

74. The fact that virtually all divorce cases result in settlement has significance in the teaching and learning process. Teachers must recognize that the litigation skills being taught are limited to the pre-trial litigation skills of pleading, motion practice, and discovery. They need to be very clear with students from the outset that there will not be a trial in this case to avoid frustration on the student's part.

attorney. The negotiation is conducted in a series of telephone calls and/or meetings with the other attorney and counseling sessions with the client.<sup>75</sup>

In contested cases the attorney must ask herself: What is our client's goal, and what can I get the other side to agree to? The issues to be negotiated generally include the following: to divorce or not to divorce; child custody and visitation; and the money issues: child support, property division and spousal support. With few exceptions, it makes no difference which party is granted the divorce or on what grounds. The hotly contested areas tend to be the financial issues. Once an agreement is reached, the terms are set out in a written stipulation which details everything the parties have settled on.

#### 8. Document Preparation, Filing, and Obtaining a Judgment

After a defendant defaults, or after a settlement of all issues is reached, the student prepares, assembles, and files with the court a series of documents to obtain a Final Judgment.<sup>76</sup>

Once the court finds all the documents to be in order, the Judge signs the Proposed Decision and Judgment,<sup>77</sup> the Judgment is entered by the clerk, and the divorce is final. The final step for the attorney is to mail a copy of the Judgment to the defendant, prepare an affidavit of service and file that affidavit with the Clerk of the Supreme Court. The time to appeal starts to run when a copy of the Judgment with Notice of Entry is served on the opposing party.<sup>78</sup>

#### B. *The Case of Sylvia M.*

This section contains a description of the facts of an individual case handled by a specific student in the Cornell Legal Aid Clinic. An examination

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75. Family mediation is another process that may be used to reach agreements in domestic cases, and although mediation clauses are often included in separation agreements and are used to settle custody and financial matters, it is not widely used in New York divorce cases. It has not been used in the author's practice experience.

76. The documents to be filed are the following: In All Cases: 1. Summons with Notice, 2. Verified Complaint, 3. Affidavit of Service, 4. Sworn Statement of Removal of Barriers to Remarriage, 5. Affirmation of Regularity, 6. Affidavit of Plaintiff, 7. Note of Issue, 8. Proposed Findings of Fact and Conclusions of Law (Decision), 9. Proposed Judgment of Divorce, 10. Part 130 Certification, 11. Certificate of Dissolution, 12. Poor Person Order or Affirmation, 13. Self-addressed postcard, 14. NYS Case Registry Filing Form, 15. UCS 113 Divorce and Child Support Summary Form. In Cases Involving Minor Children: 16. Child Support Worksheet, 17. Support Collection Unit Information Sheet, 18. Affidavit of Child's Residence, 19. Qualified Medical Child Support Order. In cases where the defendant appears, some or all of the following are required: 20. Affidavit of Defendant or Notice of Appearance, 21. Request for Judicial Intervention, 22. Notice of Settlement, 23. Stipulation of Settlement, 24. Qualified Domestic Relations Order, 25. Income Deduction Order.

77. See *supra* note 76, items 8 and 9.

78. N.Y. C.P.L.R. 5513(a) (Consol. 2002).

the facts and issues raised during this clinic experience illustrates many of the points of learning in clinical legal education.

Sylvia M. was nearing the end of a 20-year marriage. She had two teenaged daughters. Mrs. M. had been living separately from her husband for over two years, following an incident of domestic violence during which the husband kicked Mrs. M., injuring her back and forcing her to leave the marital home. After the separation, the 17-year-old daughter chose to remain living in the marital home with her father so that she could continue attending the same school, and the 14-year-old daughter, who had been home schooled by her mother, went to live temporarily in Nevada with a relative.

The husband had a good job in a printing plant where he had vested pension benefits and made about \$30,000 per year. The husband lived in the single-family home that was jointly owned by the parties. Mrs. M. had been a stay-at-home mother during most of the marriage, responsible for home schooling the two children during part of that time. She had done some substitute teaching periodically, but had no steady employment. During the time that the clinic represented her, she sometimes lived with her mother, and during part of the summer she stayed in an unheated cabin on lake property she and her sister had inherited from their grandparents.

When I first picked up this case in January, the Clinic had commenced an action for divorce on Mrs. M's behalf, on grounds of cruel and inhuman treatment, seeking custody of the children, child support, maintenance (spousal support), and equitable distribution of the marital property. The husband had retained an attorney, had appeared in the action, and was contesting everything. A preliminary hearing and pre-trial conference had been held, and a further pre-trial conference was set for late in the semester. A pre-trial order had been made requiring the husband to pay our client \$100 per month in temporary alimony. The husband was substantially in arrears on those payments.

As a result of the preliminary hearing and the pre-trial conference there had been some settlement discussions. We had adopted a strategy that, although there were more issues presented than in the usual Clinic case, both parties were agreeable to the divorce, and we should be able to work out an agreement, put it in writing, and incorporate it into the judgment of divorce.

#### 1. A New Student, Jennifer S., Takes the Case

When Jennifer and I took this case, the file was a mess. The case had been pending in the Clinic for over a year, during which time at least three students had worked on it. The prior students had described the background of the case and all the work they did during the semester, and they told the new student the current status and what steps need to be taken. The Clinic faculty strongly emphasized having students write detailed end of semester memos on cases as



they pass them on to the next student. We ask the students to keep meticulous records of everything that goes on in the cases, but that works better in some cases than in others.

In this case it was clear that a lot had happened. The prior students had done a lot of research and drafting of documents, but the papers in the file were all in a jumble. It took Jennifer a couple of weeks to sort through everything in the file, do a bit of reading on divorces, and get some sense of what was going on. In the meantime, Jennifer had a couple of meetings with the client and a couple of telephone conversations with her, all of which ended with the client in tears. Several things disturbed the client: 1) the fact that she was not getting the temporary alimony payments that the husband was supposed to be making, 2) she wasn't working and didn't have a suitable place to live, and 3) her older daughter had decided she wanted to live with her father in the marital home. In addition, the client kept expressing to us that she seemed to be getting nothing out of this divorce, while the husband was getting everything: the children, the house, and his job with all its benefits. As to the divorce itself, the client clearly had a lot of ambivalence.

## 2. The Legal Issues

Jennifer identified the following legal issues in the case: 1) Alimony - Can we get the husband to pay the temporary alimony he had been ordered to pay, and would our client be entitled to permanent alimony or maintenance in the final judgment? 2) Child custody and Child Support - What should we do about the older daughter's wish to live with her father, and what to do about the custody of a child who is living temporarily out of state? 3) Property - Should the husband keep the house, and, if so, how should he compensate the wife for her share of its value? Does the husband have a right to a share of the lakefront property inherited by our client and her sister from their grandparents? Does the husband's claim to have made improvements to that property have any validity? What rights does the wife have to share in the husband's pension benefits, and how should those rights be secured? 4) Opposing Counsel - A further problem was that the private attorney the husband had retained to represent him was nearly impossible to reach, and would not return telephone calls or respond to letters.

Jennifer learned early on that she needed to function on two separate tracks in handling this case. She had to counsel (and console) her client on the daily crises in her life, most of which were only tangentially related to the pending lawsuit. At the same time she could function effectively as a lawyer only by getting some clear direction from her client about going forward with the divorce, and then by collecting the facts and doing the necessary research to address the legal issues and move the case through the court system.

By the end of the semester Jennifer had succeeded in establishing a strong relationship with the client, helped her through a decision whether to take a job that would require her to move to Connecticut, and saw the younger daughter return to New York from Nevada and decide that she would rather live with her father and older sister than with our client. Jennifer figured out our client's pension rights under ERISA<sup>79</sup> and stood firm in negotiating an agreement that the husband had no rights to the lakefront property, and that the husband would have to pay our client one-half the market value of the house even if he had to take out a loan to do so. The husband got custody of the children, but our client did not have to pay child support because of all the arrears the husband owed her. Jennifer drafted a Stipulation of Settlement just before the end of the semester and got the husband and his attorney to sign it.<sup>80</sup>

### 3. What Did the Student Learn?

By handling this case Jennifer learned the substantive rules and procedure for obtaining a divorce in New York. She performed all the steps in the Initial Client Interview discussed in Section III. A. 2. above. She identified the set of legal issues that are relevant in this case, and applied appropriate legal analysis to develop arguments on her client's behalf. During the time she worked on this case Jennifer moved the case forward significantly toward a resolution. Clearly, learning substantive law and procedure is important, and the experience of handling a divorce case will contribute to the student's facility with handling cases of this type in the future. However, the goal of the Clinic is to provide the student with experiences beyond that of "learning the law."<sup>81</sup> The experience of handling this case provided the student with lessons that demonstrate the strength of clinical legal education methods. In the remainder of this section I discuss those areas of learning.

#### a. Learning a New Area of Law

Sylvia M's case was the first case assigned to Jennifer when she got into the Clinic. She had never handled a divorce before. She had to figure out

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79. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 832 (codified as amended at 29 U.S.C. §§ 1001 *et seq.*).

80. It was left to the next students to deal with a new attorney retained by the husband, require a security interest and an income deduction order to ensure payment of the husband's obligations under the agreement, draft two Qualified Domestic Relations Orders covering the husband's pension benefits and funds in a retirement annuity, and draft the final divorce documents. The case nearly went to trial, because the final agreement dividing all the personal property in the house was not signed until the eleventh hour.

81. See Frank S. Bloch, *Framing the Clinical Experience: Lessons on Turning Points and the Dynamics of Lawyering*, 64 TENN. L. REV. 989 (1997) (examples of lessons learned in the clinic, and some of the intangible aspects of those lessons).

“What do I need to know and how am I going to get the information I need to solve this problem?”

Jennifer had taken a law school course in Family Law, but she quickly discovered that a law school Family Law Course did not actually prepare her to obtain a divorce for a client. In a Family Law course students learn important legal doctrines, such as that the state has a strong interest in the institutions of family and marriage, and each state has its own requirements for the creation and dissolution of marriages. They read judicial opinions and other materials discussing the application of legal doctrine to issues such as custody of children, division of property, adoption, domestic violence, abortion, and same sex family relationships. Family Law courses generally do not get into the details of the law of any particular state, and, because the range of issues covered in the course is so broad, the students do not learn the specific procedural requirements to get a divorce in New York. Jennifer needed to learn the basics of New York divorce law and procedure before she could feel comfortable meeting with the client.

It is not unusual that attorneys are expected to handle cases in unfamiliar areas of the law. For the young attorney, fresh out of law school, everything is new. In the large law firm setting attorneys may be exposed to a new area by rotating through various departments where they learn Banking or Corporate Securities practice, for example, in a rather concentrated format. Attorneys in smaller practices take on or are assigned work as it comes in the door. The process by which they learn is highly unstructured. The client presents a problem, and the attorney makes a quick decision whether (s)he can get up to speed in the time available, and then learns what (s)he needs to know by finding good practice materials and asking questions of the right people.

In Cornell's Clinic, there is a practice manual on divorce in the Clinic Handbook, and each student who takes a divorce case reads those materials. The practice manual contains citations to the statutes and some relevant cases, so the student can use it as a starting point for research. The student learns not only that practice manuals can give her an overview of an area, but also that there are form books containing samples of virtually any document that she will need to draft. It is also important in a new area to find out who the experts in the office are and who would be receptive to a new attorney's questions. Experienced attorneys are generally very willing to help new attorneys get started in practice, and that is a role that faculty supervisors play in the clinic.

Also, since she was picking this case up from prior Clinic students, Jennifer needed to review the file and learn what the prior students had identified as the issues in the case. Learning how to make use of another attorney's work on a case is another important lesson. It is very different from the reading and studying Jennifer had done in preparation for her other courses. The cases and materials assigned to law students in traditional law school

classes are presented to students as the words of wisdom on this subject, and it is the student's job to divine from those materials the rules and principles of law that the professor considers important. The materials in the client's file are not the carefully edited items chosen by the professor. They come from the client and other information sources via the filter of the prior student who handled this case. It is always appropriate to view file materials with some degree of skepticism.

After reading the Clinic Handbook sections on Divorce, Jennifer reviewed the case file. From reading the case file, Jennifer got the impression that all of the important issues had been resolved, and got no information about the non-legal issues that were bothering the client, such as the problems the client was having with her two daughters. It quickly became apparent that a review of the file needed to be accompanied by a thorough client interview to ascertain the client's current perspective on the issues. Also, the student attorney had to keep an open mind about new issues that the prior attorney failed to note.

#### b. Counseling a Client

Interacting with and counseling clients is probably the aspect of handling divorce cases that is most challenging to students; it may also be the most beneficial. A lot of lawyers find the emotional issues in divorce cases too much for them to cope with. And it certainly is true that if a student is looking for clear, logical, rational behavior, this is not the area of practice to choose. However, divorce work can provide important lessons in how to be an advocate; it raises issues of diversity and empathy—how to work with a client whose values and life experiences are different from the lawyer's. The lawyer definitely gets to give her counseling muscles a work-out in handling a divorce case.

Students view very seriously the responsibility of having a real client for the first time. Jennifer was very aware in the beginning of their relationship of the difference in age between herself and her client. She wondered what assistance she could offer to a client who was far more mature and experienced at life than she was. She had some feelings that she would not be able to deal with the break-up of a marriage and the problems of teenaged daughters, never having gone through anything like it herself.

Jennifer also found it difficult to handle a client who was so emotional. She quickly learned that each telephone conversation with the client would become a lengthy listening session unless Jennifer took some steps to limit them. Jennifer (and other students as well) expressed consternation about what to do when the client cries. A crying client makes a lawyer very uncomfortable. We feel helpless—almost as helpless as the client does—because it is so clear that our legal remedies do not address the issues causing the most distress. All of my students developed an approach that helped them

work with a client who was upset. They listened, they offered Kleenex, they were sympathetic, they maintained calm, and after listening they brought the subject back to something they could do something about.

Being an advocate in this situation required Jennifer to be a counselor; she had to help her client formulate goals and then take the necessary steps to achieve those goals. Good counseling requires 1) listening to the client's story; 2) understanding the client's priorities; 3) presenting the full range of available options to the client; and 4) assisting the client in making decisions.<sup>82</sup> The counseling process almost inevitably raises issues of who is really making the decisions, the lawyer or the client, and how directive the lawyer needs to be.<sup>83</sup>

Although at the time we got involved in the case a divorce action had already been commenced on our client's behalf, it was not entirely clear that it was our client's goal to be divorced. In this case, as in most divorces, the client's life as she had known it was falling apart. She expressed the somewhat contradictory views that her husband was a good father, but he neglected important aspects of the children's education; life with the husband was unbearable, but life without him was also difficult financially and emotionally; and throughout the long marriage the couple had acquired and used jointly several items of real and personal property, but much of the personal property had far more sentimental value to the wife than it did to the husband. I heard these contradictory statements as expressions of ambivalence about the divorce, and some of Jennifer's early talks with the client were focused on clarifying (for us and for the client) whether a divorce was what the client really wanted.

Having determined that the client wanted a divorce, Jennifer then worked with the client on the terms she was willing to accept. She had to make sure her client knew what she was legally entitled to. The client wanted the divorce, a suitable custody arrangement, and her fair share of the property of the marriage (making sure that she retained her separate property); she also wanted an acknowledgment from the husband that he had been wrong.

First, counseling the client raised the question of what grounds to allege and pursue. The circumstances of the parties' separation suggested possible grounds of cruel and inhuman treatment<sup>84</sup> (because the husband had struck and kicked our client) or abandonment<sup>85</sup> (because he had ejected her from the marital home and the "abandonment" had continued for over one year.) In this

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82. DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 272-4 (1991).

83. See Michelle S. Jacobs, *People From the Footnotes: The Missing Element in Client-Centered Counseling*, 27 *GOLDEN GATE U.L. REV.* 345 (1997) (discussing this point). Jacobs also focuses on the effects of race and class in the lawyer-client counseling dynamic.

84. N.Y. DOM. REL. LAW § 170(1) (Consol. 2002).

85. N.Y. DOM. REL. LAW § 170(2) (Consol. 2002).

case the grounds which had been alleged in the Summons with Notice were abandonment. Neither our client nor her husband had expressed any concern or preference about the grounds.

Counseling the client about grounds is generally a process of educating the client on what the available statutory grounds are. In most cases it is not difficult to settle on the appropriate grounds to allege. The counseling on this issue becomes difficult when one party feels especially wronged and feels strongly about pursuing a ground such as adultery, which is very difficult to prove. In Sylvia M.'s case we decided to proceed on grounds of abandonment and on the assumption that the husband would have no objection to the wife's obtaining the divorce on this ground.

Next, the issue of custody was potentially a problem. Our client said she wanted custody of her two teenaged daughters. The older daughter was living with her father. She finished high school during the year that we worked on the case. The younger daughter was living with a relative in Nevada and going to school there when we started working on the case in January. She would be returning to live in New York at the end of the school year, and there was a question as to where she would live when she returned.

The counseling Jennifer did around the issue of custody was difficult. Our client's initial position was that she should have custody of the two daughters because she was the mother. She also felt that she had been much more involved in the education of the children than had her husband, and that he was not doing a very good job of supervising their education. By talking through the issue with the client, Jennifer helped the client to consider several other important factors, including the expressed preference of the older daughter to live with her father, the consideration that the two children should be together (a preference expressed by both the children and our client), the fact that the father was living in the marital residence, which had been the children's home for their entire lives, and the fact that the mother had not yet established a stable residence for herself.

Counseling the client on the issue of custody involved lengthy conversations where the immediate question for us as lawyers was what legal strategy the client wanted to pursue, and where the client faced important decisions, including what were the client's goals for herself and her children. The client decided to seek joint custody with both children residing physically with the father.

The final counseling challenge was the division of the marital property. The three major items of property owned by the couple were the marital residence and its contents, a small lakefront lot which our client and her sister had inherited from their grandparents, and the husband's vested pension benefits. Our client insisted that the husband was not entitled to any share in the lakefront property, and she wanted half the value of the marital home.

After doing some legal research and talking the issues through with our client, we agreed to negotiate with the husband's attorney for half the value of the marital home based on a recent appraisal, and to take a strong position that the lakefront property should go entirely to our client and should not be considered part of the marital estate. The client was willing to accept a share of the husband's pension based on the *Majauskas*<sup>86</sup> formula.

One of the things the student learned is that, although counseling is theoretically a process for assisting the client to make decisions, clients often want our advice. They want to know what our judgment is on what they will get through negotiation or trial. If we give them that information, it weighs heavily in the decisions the client makes. When we disagree with the client's expressed wishes, the manner in which we counsel her has an enormous impact on the decision the client finally makes and therefore the strategy we ultimately pursue. The process raises serious questions about how client-centered<sup>87</sup> and non-directive<sup>88</sup> we should be in counseling.

### c. Litigation Skills

In a divorce case the student must develop and use litigation skills. Since most divorce cases are settled before trial, it is the pre-trial litigation skills of negotiating and document drafting (and, to a lesser extent, motion practice) that the student gets to exercise in handling divorces.

*Negotiation.* In Sylvia M.'s case, the divorce action had been commenced by a prior student on the case, an attorney had appeared on behalf of the husband, and there had already been at least one court appearance before Jennifer started working on the case. An early task Jennifer faced was to contact the husband's attorney and commence the process of negotiation. It was the expectation of both sides and the court that this case would be settled and not tried. Our plan was to figure out the points of agreement and disagreement between the parties and to work out an agreement on all the issues, so that we could go in to the pre-trial conference and advise the court of the agreement we had reached.

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86. *Majauskas v. Majauskas*, 463 N.E.2d 15 (N.Y. 1984) (a leading case which established that the portion of a spouse's pension which was accumulated during a marriage is marital property, and, as such, is subject to equitable distribution).

87. See, e.g., BINDER ET AL., *supra* note 82, at ch. 2.

88. The term "nondirective" is used in the fields of medicine and education to refer to a manner of questioning or conversing, which does not suggest to the respondent the desired response. See Ann Shalleck, *Clinical Contexts Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 179 (1993-1994). By analogy, the term can be applied to the process of counseling clients to describe a manner of communicating that elicits information without manipulating or suggesting the appropriate response.

Working with opposing counsel proved to be a challenge, but as so often happens, a source of valuable learning as the student was exposed to unexpected levels of professionalism working with the opposing attorney. After the first week or so of efforts to reach the attorney, Jennifer made contact with him by telephone, identified herself as the new student on the case, and raised the issue of the husband's failure to comply with the judge's temporary alimony order. The attorney agreed to talk to his client and get back to the student.

At this point no court appearance was scheduled, and both sides were supposed to be engaged in pre-trial discovery. Our client was not pushing hard for the temporary alimony payments because she said she understood her husband's strapped financial situation. She seemed confident that he would pay her eventually. We were focusing most of our effort on the counseling process with our client. Thus, we were not overly concerned when we did not hear from the attorney.

The student expressed surprise that the attorney did not return telephone calls, and that his inattention to the case seemed rather unprofessional. We began to wonder whether the husband was not paying his legal fees, and the student and I had some conversations about how that aspect of legal representation affects case strategy. One lesson the student derived from this experience was that getting the attorney to return our calls and focus on this case more than a week (and in some cases more than a day) before a scheduled court appearance seemed to be virtually impossible. Because we could not get the attorney to talk to us, we ended up violating one of the basic principles of negotiation strategy<sup>89</sup> that it is best to let the other party make the first offer and to negotiate from a position of responding to that offer.

We made a strategic decision to offer an initial settlement proposal. Jennifer drafted a letter to the husband's attorney in which we proposed terms on which to settle the case. We had some indications from our client's communications with the husband that the terms would be agreeable to the husband, but it was extremely difficult to finalize anything, because the husband was having trouble communicating with his lawyer also.

It took the attorney about 2 weeks to reply to us about the proposal, and then the response was a telephone call in which the attorney said that he needed more time to discuss the matter with his client. Another week or two went by, and we got another telephone call in which the husband's attorney said that the husband objected to our claim that the lakefront property was separate property, because the husband had made contributions to the value of the property and felt he was entitled to a share of it. We asked for details and

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89. See, e.g., DAVID V. LEWIS, *POWER NEGOTIATING TACTICS & TECHNIQUES* 203 (1981); CORNELIUS J. PECK, *CASES AND MATERIALS ON NEGOTIATION* 254-55 (2d ed. 1980).



documentation of the contributions. The attorney said the husband had mowed the lawn on weekends, and had helped the wife's father "fix up the place." The attorney also indicated that we seemed reasonably close to an agreement and he thought we could work things out.

We had expected to work out the difficult custody, pension, and property issues by negotiating with a private attorney who had experience in matrimonial matters (certainly more than the student had) and who might have his own strategy for how the issues ought to be resolved. Instead we were getting little response from the attorney, and no help in reaching an agreement.

Also, Jennifer felt as if she was doing more than her share of the work on this case, since she had to figure out what the husband's pension benefits were and what our client's rights to the pension were. We made a demand for production of financial documents, expecting that the attorney would get information from the husband's company, calculate the amounts he felt were due to our client, and turn over the information to us. When we did not get the documents we requested, Jennifer found out that the husband's employer was willing to turn them over to us directly. By collecting information on the pension and researching the client's rights to the lakefront property, Jennifer was able to determine what our client was entitled to without input from the other side.

Finally, as the semester was drawing to a close, and having received no written counter-proposal from the husband's attorney, we decided to file a Note of Issue and Statement of Readiness for Trial, and to schedule a Pre-Trial Conference. Our Pre-Trial Conference memorandum included a proposed Stipulation of Settlement which included all the terms we had set out in our original settlement proposal. Our strategy in scheduling the pre-trial conference was to move the negotiations from a rather unsuccessful attorney-to-attorney exchange and to bring it before the court. We advised the court that we had agreement on the basic issues, and that as to the others we had made a proposal to which the other side had not responded. Our hope was that the pressure of the court appearance would move the other side to respond to our proposal.

Shortly after we filed the Note of Issue and scheduled the pre-trial conference, we learned that the attorney was no longer representing the husband and the husband would be retaining other counsel.

It happens surprisingly often that when there are two attorneys on a divorce case, one side quietly disappears. It happened frequently in my practice as a Legal Aid Society attorney when a client came to us who had been sued for divorce. We would file an appearance representing the defendant, with a plan to negotiate terms of the divorce, and the plaintiff's attorney would simply not proceed. My theory is that in cases involving low-income people, many private attorneys take on a case that is expected to be a

simple uncontested divorce; they expect to file a series of documents and get their client a divorce. They expect no court appearances, no negotiating, no research, and no problems, and their fee to the client is accordingly low. If they find the case will require more work, and realistically they cannot charge more to the client, many attorneys will simply drop the case.<sup>90</sup>

The negotiating lessons Jennifer derived from this case were about what to do when the other side won't negotiate with you. What you do is to do all the research and preparation, make a proposal, and keep pushing to get that proposal accepted. Jennifer also learned the interrelationship between counseling the client (helping her to make decisions about what she wanted) and negotiating (attempting to accomplish the client's goals through an agreement). The husband's need to change attorneys in mid-stream added another challenge and also helped the student learn how to respond when unexpected events arise.

*Document drafting.* A significant aspect of most divorce litigation is drafting the court documents. As was discussed earlier, the student must draft and serve on the defendant the documents to commence the divorce action (the Summons with Notice or Summons and Complaint.) This step is taken early in the case, as soon as the initial case plan is developed and it is clear that the client wants to go forward with the divorce.

Drafting the Summons and Complaint and effecting proper service on the defendant are excellent ways for the student to formulate a case plan which reflects the client's objectives, and to incorporate the plan into legal documents. In this case, the action had already been commenced at the time we took it on. If the divorce is not contested, the student drafts the balance of the court documents<sup>91</sup> and files them. If the case is contested, the student first negotiates the terms of the divorce, and then memorializes them in a Stipulation of Settlement. The Stipulation is served on opposing counsel and filed with the court, together with the other required documents.

A major lesson in document drafting for litigation is how to use forms. Lawyers very seldom draft documents from scratch; generally they work from a set of commercially produced forms or from a set of documents produced in a previous case. Treatises, form books, practice manuals, and even some statutes contain forms to guide the practitioner. So, one way to approach the task of document drafting is to find a good form<sup>92</sup> and fill in the blanks. While

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90. The special provisions which went into effect in 1993 regarding retainer agreements, fee arrangements and termination by the attorney of the attorney-client in domestic relations cases (22 N.Y. COMP. CODES R. & REGS. §§ 1400.1-1400.7) did not address or resolve this problem.

91. See discussion and list of documents *supra* text accompanying note 76.

92. The forms set out in statutes, regulations, or court rules are sometimes designated as "official forms." If forms are not "official," the practitioner runs the risk that the forms will not

this saves time, and often it will suffice to simply fill out a set of forms, it is far better for the attorney to understand the statutory basis for each item on the form and to prepare the form using judgment informed by that knowledge.<sup>93</sup> Finding the right forms and making judicious use of them in document preparation are important lessons for students to learn in handling their first litigation.

In Sylvia M's case the major document preparation challenge involved handling the distribution of property rights under the husband's vested pension. The leading case on the topic of pensions<sup>94</sup> sets out a formula which has become the standard for allocating pension benefits between divorcing parties. The primary document to be drafted is a Qualified Domestic Relations Order ("QDRO"), a proposed court order which directs the pension administrator to turn over a share of the husband's pension benefits to the former wife when the husband retires. Some companies and pension plans have their own form of QDRO which they require. In this case there was no required form, so we needed to find a form to use that would be acceptable to the plan administrator. Happily we located a form, prepared the QDRO and a Stipulation of Settlement into which it was incorporated, and filed them all with the court.

To get the case on the court's calendar Jennifer prepared a Note of Issue and Statement of Readiness, a relatively straightforward court form. The strategic question in preparing this document was one of timing—at what point have we exhausted our efforts to reach an agreement and when did we need to enlist the assistance of the court? Even though we were not expecting to try this case, we still needed to get the other side to pay attention long enough to sign an agreement, and so far our efforts had not succeeded.

*Preparation for Court Appearances (But No Actual Court Appearances).* We could have (and maybe should have) gotten into court during Jennifer's semester on this case, but we did not, largely because of delays by the opposing attorney. In any event, Jennifer learned that, although working on a litigated matter doesn't always get you into court, the specter of the court constantly hangs over you. You are always aware that there is a court date

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comply in every detail with a rule or local practice. Even commercially produced forms are not guaranteed foolproof.

93. E.g., as mentioned *supra* text accompanying note 63, the standard form for a Summons with Notice in an Action for a Divorce contains a place in the caption for the Plaintiff's address. If the Plaintiff is a victim of domestic violence whose safety depends on keeping her address confidential from her husband, placing her address on this document, which is served to the husband could be very dangerous indeed. The attorney preparing the document needs to appreciate that the purpose of placing the Plaintiff's address on the Summons with Notice is to satisfy the venue requirements of the statute. Then the attorney can devise a statement that both complies with the venue rule and at the same time protects the client's need for confidentiality.

94. *Majauskas*, *supra* note 86, at 18.

scheduled, or a deadline approaching, or that the judge's law clerk has a deadline by which (s)he needs to dispose of this case, so you could get a call any day asking that we schedule the case.

Somewhere in the strategic decision making, the attorney is always preparing an argument to the court about how far along we are and when we can expect to wind it up. The judges and their law clerks operate under docket control procedures that require them to dispose of the cases assigned to them within approximately 18 months from the date the action was commenced. Another important lesson for the Clinic student is how to plan and engineer the intervention of the court as well as to manage the pressure of court deadlines.

#### d. Lawyer Identity

When Jennifer started her work in the Clinic she did not have a clear idea of what kind of law she wanted to practice or what her style of practice would be. She had a sense that through the legal profession she would help people in some way. A major goal of every clinic experience is to give students an opportunity to consider their role as lawyers. They get to see themselves as litigator, counselor, advocate, and commentator on the justice system. They get to consider their individual lawyering styles. They get to consider how the law can be used to effect change in individuals' lives and in society in general, and what role they might want to play in that process.

There is a view that law school clinics have a mission to train public interest lawyers and to pursue a social justice agenda. In his excellent article<sup>95</sup> describing the clinic design of St. Mary's Center for Legal and Social Justice, Jon Dubin says that in the clinic students are exposed to an ethos of public and *pro bono* service, which leads them to be more involved in these areas as graduates. Clinic gives students a feeling of personal connection and professional fulfillment that they do not get in private practice. Doing *pro bono* work helps them recapture that feeling.<sup>96</sup>

In the Cornell Legal Aid Clinic, the clinic faculty is under no illusion that they are training students who will become public interest lawyers. Most Cornell students will graduate from law school and practice in large private law firms where their primary professional activities will be in service of corporate and business interests. The Clinic provides students an exposure to public interest practice, and gives them a chance to think about it as a possible professional choice and about making *pro bono* service part of their professional lives.

As a result of working in the Clinic and on this case in particular, Jennifer gained a lot of confidence in her own ability, came away with a sense that

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95. Dubin, *supra* note 2.

96. *Id.* at 1476.

working with clients is not as overwhelming as she initially thought, and saw herself making a major difference in a client's life. She also confronted the "lawyer's role" issues of "Is there a point when my counseling becomes no longer legal work but psychological counseling or social work?" and "Is my role as a female attorney any different because I am representing a woman?" and "Do the problems I have in getting the opposing counsel to return my calls and deal with me have anything to do with the fact that I am a woman?"

As in all of law practice, the student does not get clear and definitive answers to these questions, but the Clinic gives her a setting where such issues are raised and she has an opportunity to think about them and discuss them with student and faculty colleagues. She thus comes closer to developing her own sense of her lawyer identity.

#### IV. SUPERVISION AS A CLINICAL LEGAL EDUCATION METHODOLOGY

"Supervision" is the term used to encapsulate the primary method we employ to teach in the Clinic. It is not supervision in the same sense that a partner or managing attorney supervises the work of junior attorneys, although it certainly includes some of the task assignment and project management functions included in that concept. Supervision in the Clinic is a key teaching and learning opportunity.<sup>97</sup>

Case supervision is the core of the experiential learning that goes on in the clinic. In the Clinic we give the student as much case responsibility as she can handle, facilitate the student's learning from the experience of doing the work, and at the same time make sure that the client is well-served. Case supervision involves vetting and analyzing and rehearsing and de-briefing and second-guessing and *talking* about every aspect of what goes on in the Clinic.

During my first two years as a clinical teacher I practiced clinical supervision as a dynamic process, learning it by trial and error. In this section I provide details of what I learned about supervision by describing the model as I am currently practicing it. The model of supervision presented here may be more directive than the ideal that clinicians generally espouse.<sup>98</sup>

##### A. *Supervision in the Clinic*

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97. "Case supervision meetings provide probably the most important setting for the discussion of lawyering skills and values issues. These meetings permit clinicians and student attorneys to identify strategic decisions that must be made, identify issues for research, and develop approaches for making these decisions with the client." Chavkin, *supra* note 22, at 331.

98. *See id.* ("Most clinicians utilize a non-directive model of case supervision in which students actually function as the client's attorney. The role of the clinician is limited to ensuring that representation is provided within the range of appropriate ethical practice.").

Regular supervision meetings are scheduled with each student (or team of students when students work in pairs) generally once a week. When a major case event—such as a client interview or counseling session, a negotiation session, or a court appearance—is coming up, a special supervision meeting may be scheduled to prepare for that event.

The structure of case supervision meetings varies depending on the experience level of the student,<sup>99</sup> exigencies of the case,<sup>100</sup> and working styles.<sup>101</sup> To prepare for case supervision meetings, I ask students to prepare and submit to me one day prior to our meeting a one page Case Report Form<sup>102</sup> for each case to be discussed at the meeting. In addition to the Client's name, Case Number, and the names of the student(s) assigned to the case, the form asks for Major Activities Since Last Report, Changes in Legal Theory/Theme, Things the Student Wants to Discuss at the Next Meeting, the General Plan for the Future, Special Problems, and Docket Control Dates.

The purpose of having the student complete the Case Report Form is to compel the student to think about the supervision meeting and focus on how best to use the meeting time. Meetings are generally scheduled as half-hour meetings, and since there is so much that could be talked about, some priorities need to be set. The meeting often starts with a question generated from a review of the Case Report Form or the open-ended, "What do we need to talk about at this meeting?"

After student and teacher clarify the agenda for the meeting, the conversation proceeds with the student either raising questions that have occurred to her about how to proceed with the case or reporting on actions taken since the last meeting. Remarkably, the conversation resembles a Socratic dialogue, where the supervisor prompts information from the student with a series of questions.

When the student has completed an activity such as a client or witness interview, a meeting, or a court appearance, the supervisor might ask, "What

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99. Is this the student's first client interview ever, the first meeting with a new client, or is it late in the semester when the student has pretty well developed relationships with her clients? Is the student preparing for her first court appearance? Does the student have any experience with the kinds of tasks she is undertaking from previous jobs or internships?

100. Do we have to be ready for court the next day? Has a crisis come up that requires immediate action?

101. Should the supervisor require meetings scheduled well in advance with few exceptions? Does advance planning come easily to this student? Is the student one who spends a lot of time working in the clinic so that there are lots of opportunities for informal talks about the case and the supervisor has a pretty good sense of what is happening in the case on an ongoing basis, or is the student one that you never see and one that you need to talk to whenever you can catch her.

102. The form referred to here is the "Follow-up" Case Report Form. A slightly different form is used for the initial supervision meeting on a case. Samples of both Case Report Forms are available from the writer.

was that experience like for you?" "What was it like for your client?" "What were the results of the activity?" "Are you satisfied with the result?" "How does your client feel about the result?" "How do you know how your client feels about it?" "Now that it is over and you have had a chance to think about it, is there anything that you would do differently, or anything else you would do to prepare for this event next time?"

If the student has prepared for an interview or a court appearance, you could use the supervision meeting to rehearse the presentation or series of questions and then ask, "What is the most important idea you want the judge to hear?" and "How can we shape the presentation or the questions so that your idea comes through strongly and clearly?"

If the student is engaging in a planning process or doing fact investigation, the questions could be "What do you see as your next step?" "Why do you want to take that step?" "What are you trying to accomplish by taking that step?" "What other ways might you achieve that result?" "What possible outcomes do you foresee if you take the step you are contemplating?" "Let's think through the possible consequences of the steps we could take here."

When the student is engaged in legal research or is developing the legal theory in the case,<sup>103</sup> questions might be "Have you looked at the relevant statute or regulations?" "What are the sources of law that apply to this situation?" "What issues are you concerned with?" "How do those issues relate to your case theory?" "What is your client trying to accomplish here?" "What goals are most important to the client?" "Why is the issue of [rights to the lake property] important to your legal theory?"

Through this question-and-answer technique the student processes the events of the case, clarifies her thinking, and supervisor and student reach some conclusions about tasks that should be undertaken and a time frame for completion of the tasks. The student should leave the supervision session with a clear understanding of the things she needs to do prior to the next meeting.

#### *B. What Students Learn through Supervision*

Through the clinic experience and the supervisory process students learn a range of lawyering skills. Handling cases always involves meeting, interviewing, and developing a relationship with clients. Generally some level of legal research and analysis is required as well. Depending on the requirements of the cases they are handling, students may have an opportunity to draft pleadings, do discovery and negotiation, represent the client at a hearing or a trial, or argue a motion or appeal. Students learn from these tasks

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103. See Shalleck, *supra* note 88, at 117-136. Shalleck presents transcripts of two supervision sessions and a trial handled by students where the focus of supervision is on case theory.

by preparing for them, performing them, and reflecting in the supervisory process on what they have learned.

The supervision process lends itself particularly well to helping students learn about case planning, fact development, development of a case theory, and the attorney's role. This section discusses how the supervision process works in each of these areas.

### 1. Case Planning

The need to plan is not always intuitively obvious to students. The law student's life typically consists of 12 - 15 hours per week attending four classes. They prepare for classes by doing the assigned reading the night before each class. In addition, many law students work part time and have family responsibilities, and the pressure on them can be intense, particularly around exam time. But students generally find a rhythm into which they fit all their various commitments so that everything gets done.

As Ann Shalleck says, "One of the major components of lawyering that we teach is planning. [Fn omitted] We teach that planning is constant and that the students should, to the extent possible, plan all activities in a case. Even a first interview requires a self-conscious planning process."<sup>104</sup> Planning requires thinking about the intended goal of each activity, thinking through the options, and selecting strategies most likely to achieve the desired result.

Working in the Clinic is like taking on a full-time job, and, although they have only 4 - 6 hours of additional classes, students have to make major shifts in their schedules and how they use their time. At the beginning they take a lot of time getting up to speed in their cases and learning what law applies. Then the tasks begin, and they find out that the communication process (starting with leaving messages and waiting for return calls) and every task takes a lot longer than they thought it would. Some students are already adept at managing To Do lists, but most are not. So learning to manage their time and set priorities becomes a major task for Clinic students to master.

The student learns about case planning from supervision in at least two ways: One way is direct—the supervisor asks the student what her plan is for a particular event or task. The supervisor can talk with the student about the range of tasks that need to be completed and the student's feeling of being overwhelmed and the need to manage time effectively. The supervisor helps the student develop a time line for completion of tasks on each case. Tasks can be divided up between students working as a team and between student and supervisor. Getting the student to take responsibility for the planning process and for managing multiple tasks is an effective way for students to learn case planning.

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104. *Id.* at 137.



The other way students learn about case planning is more indirect. The student observes the supervisor's approach to the case and sees that the supervisor goes through a careful process of thinking about what tasks need to be done and why. The modeling of case planning by the supervisor can be a highly effective teaching method, particularly for the visual learners and particularly if it is done consciously and commented upon by the supervisor. It can be very helpful for students to share the thinking process that the supervisor, even with all of her practice experience, must go through on each case.

## 2. Fact Development

Discovery and development of the facts is such an important part of law practice that it is surprising to remember how little attention it gets in the non-clinical law school experience. Most law school courses concentrate on students learning the law. Students learn an analytical process whereby they determine what the legal rules are that apply to a given fact situation.

In the Clinic, instead of reading a sanitized set of facts and searching for legal principles in appellate opinions, the students hear a jumble of "facts" from the client, and they have to figure out which of them are relevant. They often have to develop the facts, or determine what they are by finding and interviewing witnesses, doing field research to look at physical evidence, collecting statistical, demographic, or other documentary information, as well as talking with the client.

It is very interesting to observe students' ideas about "facts" and "truth." Clients often get the facts mixed up, and students experience this when the client's story changes from one conversation to the next, sometimes in what seem to be major ways, or when the client's statements differ from the statements of an authority figure, such as opposing counsel, or a social worker, or a police officer. It is a very disconcerting experience for a student to suspect that a client, whom the student is trying to help, is lying to her.

A student's belief that a client is lying to her can lead to some very rich discussions about the development of trust with clients, the level of priority that the events in question play in the client's life, differing perspectives and ways of seeing the same circumstances, how the client's misstatements affect the representation, how to determine what the "truth" is, confronting the client about the issue, and really being able to see the situation from the client's perspective.

It also raises some issues of diversity. Particularly in representing people who differ from ourselves racially or in social class, it is easier to accept the word of persons in authority or persons who are more like ourselves than it is

to accept the word of our client.<sup>105</sup> A discussion about the differences between the way our client sees the world and the way others see it can be an excellent lesson in advocacy.

### 3. Development of Case Theory

Ann Shalleck's article describing the supervisory process<sup>106</sup> focuses on teaching case theory, which she says "is the phrase used to identify the key elements of a story that provide an interpretation of the events and relationships of a case framed to achieve a particular result. The case theory draws upon, integrates, and shapes the facts and the law in light of what the client wants to achieve in the legal action."<sup>107</sup>

The construction of a case theory is where the student moves from analysis into action. It is where facts, legal issues, policy, and reasoning all come together and the student chooses a path and identifies tasks to achieve the client's goal. It requires the student to think about the client's goals and decide, among a range of options, which of the goals it is most important to emphasize. In case supervision the student and teacher can fully explore the student's beliefs, understandings, misgivings, and questions insofar as they affect the development of theory.

Shalleck finds the supervision process particularly appropriate for teaching case theory.<sup>108</sup> The discussion about theory leads the student to take action on the individual case and at the same time engage in a critique of the legal system and the role the lawyer plays within that system.

### 4. Supervisor's Role: Attorney, Teacher, Provocateur

Clinic practice always lends itself to a consideration of the student's role as an attorney. The student is inevitably confronted with choices about tactics, legal theory, what style of practice to adopt, and who should make various decisions in the case (the attorney or the client, the student or the supervisor).

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105. See O'Leary, *supra* note 32; see Sokolow, *supra* note 16.

106. Shalleck, *supra* note 88.

107. *Id.* at 139, n.22.

108. "If a student believes that the legal system is or should be engaged in the search for one objective 'truth,' she may find the interpretive aspect of case theory construction at odds with that search. Another student may feel a tension between creative, yet legitimate, interpretation and misrepresentation. Finally, when using critical insights about the law and the legal system in taking strategic action on behalf of a client, a student may believe that other clients or certain broader objectives are betrayed. Although many of these perceptions, beliefs, and feelings provide wonderful material for the group case analysis meetings, in supervision students can confront those issues that are most important to them. Identifying a student's particular conflicts is often key to encouraging that student's intellectual growth and enabling her to find a way to address those conflicts when acting." *Id.* at 147.

Dealing with these choices gives the student an opportunity to think consciously about how effective we are as lawyers and how effective the legal system is in addressing the problem she is trying to solve.

On one level, the question of effectiveness has to do with the student's proficiency at performing certain lawyering skills. Since the Clinic's primary goal is to train students to practice law, there will no doubt be varying levels of proficiency among students and for each student over the course of the semester. At what point is it appropriate for the supervisor to intervene to ensure that the client is being adequately represented? It is through the supervisory process that the teacher gauges the level of skill and preparation that the student has. It is also through that process that the supervisor-student team can come together and make sure that the case is handled with a high degree of professionalism. This is another way in which Clinic courses differ from other law school courses. The teacher cannot permit the student to do a poor job, if the representation of the client will suffer as a result.

Major issues arise with respect to many of the clinic supervisor's functions:

- 1) As a role model, when should the supervisor perform the lawyering task and have the student learn by observing?
- 2) As task master, how involved should the supervisor be in identifying the tasks to be performed, and the priority for performing them?
- 3) As co-counsel, what is the proper balance between having the student take the risks associated with being primarily responsible to the client and having the security of knowing that the supervisor is there to back the student up?
- 4) As a law school teacher, how does the supervisor best communicate to the student what is expected, and how to translate the skills in legal analysis she has learned as a student into the legal skills and judgment she needs as a practicing attorney?

In clinicians' parlance, many of these issues of supervision come down to how directive or non-directive<sup>109</sup> the teacher should be. It is partly a question

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109. Ann Shalleck's article on supervision presents an excellent model of non-directive clinical case supervision. *Id.* Others suggest that clinical supervisors should function more as role models. See Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 187 (1989) (arguing that non-directive supervision is not the most efficient learning experience for every student); see Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided*

of what supervision style the supervisor feels comfortable with. In addition, the supervisor needs to be flexible enough and sufficiently observant of each student to recognize how well the supervision style is working with the student's learning style.

Another level of consideration of the attorney role has to do with whether the legal system as an institution is capable of adequately resolving the problems that Clinic clients face. Students can readily see the problems of access to the justice system for many of the clients we represent. They see differences in the styles of practice of their opposing counsel. In Family Law, students get exposed to the problem of court overload—they see how much of our judicial resources are taken up with family law problems, and they may start to think that there must be better ways to deal with those problems. Particularly in an area like domestic relations there is the question of whether the adversarial process of litigation is the most productive way to address the break-up of relationships and whether it serves the needs of all the parties. Case supervision sessions present great opportunities to think about and discuss such issues.

### C. *Lessons for Law Teachers*

In the Clinic, case supervision is our stock in trade, and there are lots of opportunities to teach using the method. The value of supervision is so clear that we should find opportunities to explore this and other clinical teaching methods throughout law school. There are ways to inject clinical teaching methods into non-clinical courses, and here I would include anything that engages students in a conversation that provokes the student to reflect on her experience.

A lesson from clinical teaching that I found surprising is how valuable it is and how difficult it is to be non-directive. Both learning theory<sup>110</sup> and good clinical practice say that learning is more effective if students learn from their experience rather than being lectured at. Through supervision I can encourage students to reflect on their experience and to think about complexities of the situation that might otherwise not occur to them.

In addition, we can embrace the teaching opportunities that come out of realizations about differences between students and their clients.<sup>111</sup> Another

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*Participation in the Interpersonal Ecology of Practice*, 6 CLINICAL L. REV. 1 (1999) (an interesting critique of the non-directive model of supervision).

110. See Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37 (1995) (discussing the principles of adult learning theory as applied to clinical courses); see Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F.L. REV. 941 (1997).

111. "[N]othing provokes greater frustration for the law school clinical teacher than the encounter with the student who asks, 'I really don't believe in this client. Why do I have to work

thing that cannot be taught by lecture is the distance from (and the connections) that we lawyers have with our clients. These subtle realizations may be best fostered through questions.

For example, I find myself asking the students things like “Why do you think this client has started the divorce process three times and never followed through?” or, when the student becomes distressed because she has caught the client in a “lie,” I need to say, “What do you think is going on with your client which led her to tell you that ‘lie’?” We can look for these moments in all our teaching and not let them pass by without comment.

Sometimes it seems it would be easier and more straightforward to give students direct answers. Students are often very insistent on having definite answers for things. I find this surprising, because the biggest lesson I learned from the first year of law school is that the questions are so much more important than the answers. Much of the time I feel that the message I am trying to convey is that there is no single right answer or that there are many answers to their questions. Some students seem to have a hard time dealing with such complexities. I think my challenge as I continue to teach will be to help the students experience the discomfort of complexities in law practice.

#### *D. Using Clinical Methods in a Seminar*

I thought about how to inject clinical teaching methods into the Family Law Seminar I taught in the Spring of 2001, and, although it was not a clinical course, my students got many clinical benefits from the experience. The use of clinical methods created greater engagement of the students with the material. Their comments and questions showed that they thought about the concepts as they applied in their own lives or in the lives of people they knew.

For four of the first five weeks at the beginning of the semester I had each student turn in a 1 - 2 page Reflection Paper on a subject of the student's choice. Individual students chose to write about some aspect of the assigned reading, a comment someone made in class, or a personal experience (and some of those experiences were quite personal indeed.)

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on her case?’ The reflexive response, at least in my own mind, is, ‘You’re a lawyer and your role is to represent your client-so you’ll do the case, and like it!’ This reflex intensifies when the student’s query seems to stem from differences in ethnicity, gender, sexual orientation, disability, or class. Here the student is not only displaying inadequate professional socialization; she is perpetuating stereotypes to boot. Somehow lost in my impatience are three questions: First, why am I so certain about the nature of the lawyer’s role? Second, why am I so certain that the student’s observation cannot become a first step toward enhanced understanding of difference? Third, why am I so certain that I understand difference? Instead of answering these questions, clinicians may all too often apply categorical assumptions about professional role and difference, which obscure the issues at stake. Ironically, in doing this we make the same mistake which lawyers often make with citizens seeking legal services. Margulies, *supra* note 17, at 695.

There are several wonderful things about the reflection paper exercise. It gave me an interesting glimpse into what the students were concerned about and how they thought. The best thing about the exercise (and the most work for me) was that I wrote my own short reflection responding to each student's paper. It gave me a chance to carry on a conversation with each student in which I raised additional questions for them to think about, challenged their ideas, and suggested routes to more complex analysis.

I also used some interactive exercises in this class, including an active listening exercise, an interviewing exercise, a mediation exercise presented by a colleague who teaches a mediation clinic, and a policy making exercise where we transformed the class into a legislative committee working on divorce reform. These and other exercises can be used in seminars and larger classes and can give students some of the benefits of clinical teaching methods even if they are not taking the Clinic.<sup>112</sup>

#### V. CONCLUSION

This article began as a description of clinical supervision and other clinical methods, and it was intended to assist newer clinicians clarify their teaching goals. As the article has evolved, I have examined clinical education broadly, focusing less on the substantive area of divorce and more on experiential learning and clinical teaching processes. I explored the valuable lessons that legal clinics provide both to students and teachers, and I argue that clinical teaching methods can be fruitfully employed in the teaching of classes outside the clinic.

Case supervision, the primary teaching method used in the Clinic, has much to offer in the quest to understand how law students learn and as we think about what it is that we want them to learn. In this article I have described a model of clinical supervision that demonstrates the valuable lessons students derive from the use of this method. Teachers who adopt clinicians' teaching methods, including particularly the use of thought provoking questions, may find more effective ways of reaching students.

Clinical teaching methods offer significant value throughout the law school curriculum, where students could benefit from more interactive, collaborative,

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112. Paula Lustbader (Seattle University School of Law), Laurie Zimet (University of California Hastings College of the Law), and Vernellia Randall (University of Dayton School of Law) have written and done presentations at conferences on using collaborative and other innovative teaching techniques in the law school classroom. One such conference was the Society of American Law Teachers (SALT) Teaching Conference held October 20-21, 2000, at the New York University School of Law. *See also* Teach to the Whole Class: Barriers and Pathways to Learning: Faculty Colloquium, Materials and Videotape, published by Gonzaga University School of Law, Institute for Law School Teaching, 1997.

reflective learning experiences. I encourage law teachers to consider incorporating such methods in their courses.

