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What We Are Learning

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What We Are Learning

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WHAT WE ARE LEARNING

The papers you are about to read in this issue of the *New York Law School Law Review* are part of a birthday celebration. All of these papers—and many more—were presented at a conference in the fall of 2010 that celebrated the twenty-fifth anniversary of the Clinical Theory Workshops.¹

How should one celebrate the birthday of a workshop series? The natural answer: with workshops. To do that meant asking a lot of many people. Authors were asked to draft their papers not by the eve of the workshop, but months in advance. Members of a planning committee generously gave their time to thinking about how the conference should run, and many of them also read and commented on the authors' drafts.² Last but not least, conference registrants were asked to pick the workshops they planned to attend, and to read the papers for those workshops in advance, and around 200 people attended in all.

The conference had a theme: "Twenty-Five Years of Clinical Scholarship: What Have We Learned, and What Should We Work On Next?" That's a very broad theme, and rightly so. The concerns of clinical scholarship *are* broad, ranging from understanding effective lawyering and learning how to teach lawyering skills well, to shaping the role of clinical and skills teaching—and teachers—in law schools, to studying the character of the legal system as illuminated by clinical practice and addressing the role of law schools in contributing to the pursuit of justice outside school walls.

We have been meeting since 1985 to discuss these questions, first at Columbia Law School and, since 1992, at New York Law School. The deans at both schools were always supportive. Bruce Ackerman,³ who is not a clinician but is always a friend of thoughtful inquiry, joined me in sending out the invitation⁴ to the first session, and Tony Amsterdam was the first presenter.⁵ So we started well. But why did we last? I think the answer is partly that clinical scholarship was growing, and clinical scholars needed opportunities to present their work and engage with their peers' comments and critiques. We provided one such opportunity (and, happily, there have always been others, too). But there is a more personal answer as well: the group of teachers and scholars who became the regular participants in the workshop evolved our own culture of supportive and constructive—and critical—engagement that made the workshops a forum for "serious fun." Usually meeting six times each

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1. For the conference schedule, see *Clinical Theory Workshop 25th Anniversary Conference*, NEW YORK LAW SCHOOL LAW REVIEW, <http://www.nylslawreview.com/clinical-theory-workshop-papers/> (last visited Oct. 30, 2011).
 2. The members of the planning committee were Claudia Angelos, Sameer Ashar, Susan Bryant, Stacy Caplow, Elizabeth Cooper, Lawrence Grosberg, Randy Hertz, Minna Kotkin, Richard Marsico, Vanessa Merton, David Reiss, Jonathan Romberg, Barbara Schatz, Jane Spinak, Ian Weinstein, and me.
 3. Bruce Ackerman, then on the Columbia Law School faculty, is now Sterling Professor of Law and Political Science at Yale Law School.
 4. Author's personal recollection.
 5. Anthony Amsterdam, University Professor at New York University School of Law, has (among many other accomplishments) for many years been one of the leading scholars and teachers in the field of lawyering.

academic year, we have had approximately 150 workshops and the chance to read work of many of the outstanding clinical scholars of the nation.⁶ I have had the pleasure of chairing the workshops through these years (with help from colleagues who took over when I was absent, or when I was presenting my own work). It has been a true privilege, really a delight.

Now you have before you twelve of the papers from this conference. They provide twelve—at least twelve—answers to the conference questions of what we have learned, and what we should study next. The sheer range of the issues these papers address and the bodies of scholarship they engage attest to how far clinical scholarship has come. If there were ever simple and uncontested assumptions about what the work of clinical and skills teaching in law schools consisted of, they have long since ceased to be assumptions; they have become, instead, the starting points for critical examination, elaboration, and reconceptualization.

Nevertheless, these insightful papers continue our pursuit of the issues that clinical scholarship has long explored. In particular, they explore the elements of good lawyering; the ways to help students learn about those elements; and the duties, pedagogical and otherwise, of law schools. In the following pages I will try to reflect part of what makes these papers so interesting—but I will not try to capture all of the insights that they offer: for that, I urge you to read the papers themselves!

I. THE ELEMENTS OF GOOD LAWYERING

What is “good lawyering”? Even the meaning of this question is debatable—and so are the answers. These papers help us to understand what the question is really about, and point towards some of the answers.

As to the question: it might be taken to ask what the elements of effective lawyering are. So, for instance, if one method of cross-examination is more likely to cast legitimate doubt on a witness’s testimony than another, then it is more effective. It is difficult to conceive of skills teaching that does not seek to teach, or at least lay the groundwork for, effective lawyering techniques; but it is far from clear that effectiveness is all we should teach. The natural question, after all, is “effective for what”? “Good lawyering” might also be understood as “lawyering for good,” and then the question might be understood to ask what kind of lawyering best promotes justice, in individual cases or in society as a whole.

Still, preparing students for effective practice is surely one goal of clinical teaching—but attaining it is not so simple. In one way or another, almost all of the papers here are concerned with how to reach this goal. At the risk of painful oversimplification, however, I want to highlight several papers that focus on relatively traditional skills of lawyering—trial practice, document drafting, and negotiation—and separately discuss several that address less familiar conceptions of what lawyers do.

6. For a list of the workshops from the beginning in 1985, see *The Clinical Theory Workshops*, NEW YORK LAW SCHOOL, http://www.nyls.edu/faculty/faculty_sponsored_projects/the_clinical_theory_workshops (last visited Oct. 29, 2011).

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A. (Seemingly) Traditional Skills

Three of the papers published here, by Peter Hoffman, Robert Statchen, and Robert Condlin, look directly at traditional lawyering skills—and in doing so demonstrate the complexity of seeking to identify and teach effective traditional lawyering.

Peter Toll Hoffman, in his article *Law Schools and the Changing Face of Practice*, “argues that legal education today is readying students for a legal practice that is fading away or no longer exists, thus failing to prepare students for the type of practice they will confront upon graduation.”⁷ This is a startling finding. After all, as Professor Hoffman carefully recounts, clinical and skills education has spread throughout America’s law schools.⁸ As Hoffman writes, “clinical and skills classes . . . were in their infancy in 1970, and today they have become a vibrant and important part of a law school education.”⁹ It is no exaggeration to say that all the articles in this issue are the result of that profound change in legal education, and that the range and nuance of the ideas these articles develop is equally the result of this development.

But the landscape of law practice has altered too. It seems that law schools have repeatedly found themselves a long step behind the practice world for which they seek to prepare their students. Hoffman observes that beginning in the 1970s, while “[t]he focus of [litigation] practice had shifted to the pretrial stage, . . . the law schools were producing graduates who were now able to try cases, but few of whom had learned anything about discovery or motion practice.”¹⁰ Then, as the 1980s and 1990s “witnessed a rise in the use of alternative dispute resolution (ADR) mechanisms, particularly mediation and arbitration, . . . the law schools were busily introducing pre-trial litigation courses.”¹¹ Even today, he writes, “only a few schools offer courses on mediation advocacy or how to represent clients in mediation.”¹²

Part of the reason, surely, is that practice has changed a lot, and it is simply hard for law schools to keep up. Hoffman cites many changes in the world of practice, including the “vanishing trial”¹³ and the rise in alternative dispute resolution already noted, the growing centrality of depositions, and a host of “new technologies” from case management software to focus groups, all compounded by developments in popular culture.¹⁴ In all, he says, “[i]n my opinion, there has not been a comparable

7. Peter Toll Hoffman, *Law Schools and the Changing Face of Practice*, 56 N.Y.L. SCH. L. REV. 203, 205 (2011–12).

8. *Id.* at 208–15.

9. *Id.* at 209.

10. *Id.* at 207.

11. *Id.*

12. *Id.* at 208.

13. *Id.* at 216.

14. *Id.* at 215–19.

time in the modern history of the legal profession when so many changes of such magnitude have affected the practice of law.”¹⁵

Can law schools catch up? Hoffman outlines a set of substantial “barriers to improvement,” involving faculty experience and preferences, costs and other factors.¹⁶ At the same time, he finds some reason for encouragement in law schools’ desire to attract students with curricular innovations, particularly those that might increase students’ chance of employment after law school, and he also emphasizes the pressure that external bodies such as the American Bar Association (the accreditor of law schools) can generate.¹⁷ Moreover, he observes, “[t]he speed at which clinical and skills courses have received acceptance within legal education has roughly equaled the rapidity with which the case method became the accepted mode of law school instruction . . . support[ing] [the view] that clinical and skills courses are increasingly being viewed as fundamental.”¹⁸

In the end, he writes that “[i]t should not be difficult for us, as legal educators, to remedy this problem, but it requires us to be aware of the existence of the problem and to take the necessary steps to bring our courses into the present to reflect how law is actually being practiced.”¹⁹ But it is striking that he also comments that “the authors of some (but hardly all) clinical and skills texts incorporate these changes [in legal practice] into their materials.”²⁰ Now, it is possible that a comprehensive survey would show that many more clinicians have addressed these issues in their day-to-day teaching and in the practice norms they adopt in their clinics. But if even clinical and skills teachers are not entirely keeping up with developments in practice, why might that be? One possibility is that we ourselves have become somewhat academic, in the sense of being no longer completely engaged in the world outside academia. Another possibility, however, is that many clinicians do not see their principal teaching task as addressing the most current trends in practice. We will see, in other papers, alternative conceptions of what the central responsibilities of clinicians might be.

If many traditional lawyering skills are evolving, however, some may be quite stable—and yet more complex than might meet the eye. No one doubts, for example, that effective document drafting is an important skill for many lawyers, perhaps above all in transactional practices. But what exactly is the skill of effective document drafting? This is one of the questions that Professor Robert Statchen takes up in his article *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small*

15. *Id.* at 219.

16. *Id.* at 221–25 (capitalization omitted).

17. *Id.* at 225–30.

18. *Id.* at 229.

19. *Id.* at 231.

20. *Id.* at 230.

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Business Clinic.²¹ It is tempting to answer that the skill is the ability to take an issue and write up the appropriate document to handle it, from scratch. But this is not so.

As Statchen writes, “[i]f students hope to become effective and efficient practitioners, they must get comfortable using forms.”²² Forms? Yes, certainly. The forms in books, and even more so the forms collected in a law office’s or a clinic’s files, represent accumulated wisdom in handling the various types of client matters they deal with. To reinvent that knowledge each time would likely be impossible, and would surely be perverse, because such a way of operating would give up on the possibility of learning from experience. At the same time, of course, the slavish copying of forms is bound to miss some aspect, or many aspects, of the present client’s situation and needs. The solution, however, is not to operate without forms. Statchen explains that “[s]tudents need to quickly learn that transactional practice is not a fill-in-the-blanks exercise. Students need to understand that a significant part of the transactional lawyer’s craft is using forms efficiently. The craft involves tailoring the form to the specific needs of the client.”²³

So the drafting skill we need to teach is not, after all, simply the ability to start from scratch and produce the necessary document. In fact, occasions for that sort of drafting may be quite rare in practice—though of course the ability to write what needs writing is always important. The skill students will use more, however, is not writing on a blank slate but something else. Statchen continues:

Ultimately, this [tailoring work] can mean that for a certain document, a student may need to review five or six or more different forms, and then choose the best drafted. Furthermore, the student may need to take certain aspects of one form and combine that with certain aspects of another. In many ways, this drafting process is the nuts and bolts of transactional practice and likely one of the aspects critics say is missing from legal education.²⁴

The skill to be taught, then, is a composite: diligence in researching available resources; judgment in selecting from them; and care, and careful writing, to adapt them to the client’s needs. The use of forms is not the second-class short-cut that replaces real writing in busy law firms; on the contrary, the wise use of forms is the first-class skill that practitioners need. (And in all of this, considerations of plagiarism—so much a concern in many law school teaching contexts—are irrelevant; the forms are meant to be copied, and copied without attribution.²⁵)

Teaching, moreover, must focus not on discouraging the use of forms but on helping students learn to use forms well; for that purpose, as Statchen discusses, teaching that is more directive than some models of clinical teaching prescribe may

21. Robert R. Statchen, *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 N.Y.L. SCH. L. REV. 233 (2011–12).

22. *Id.* at 263–64.

23. *Id.* at 264.

24. *Id.* at 264–65 (footnotes omitted).

25. *Id.* at 264 & n.154.

well be needed.²⁶ Professor Statchen goes on to discuss and illustrate the “small business clinic drafting process” he has developed.²⁷ This process rests on a fundamental constraint: “[q]uite simply, the less time and resources students have to devote to preparing client work, the more defined structure and pre-prepared forms are necessary.”²⁸ He recommends that “the professor and student collaboratively review and select an appropriate drafting method,”²⁹ and emphasizes that “[e]fficiently and effectively selecting the appropriate form is part of the craft of being a transactional attorney. The clinical professor can guide the student through the process of finding the appropriate form to use as a starting point.”³⁰ The sheer range of issues that may be relevant to a small business, moreover, counsels in favor of allocating the students’ time and creativity primarily to those matters of most concrete importance to the clients; other issues accordingly may best be handled by more reliance on pre-prepared forms or memoranda.³¹ Statchen presents these pedagogical approaches specifically as responses to the question of how to teach drafting, but the logic underlying them may point to reasons for us to carefully consider as well just how directive or nondirective the teaching of *other* clinical skills should be.

It is striking how many familiar skills of lawyering we do not yet fully understand. Even when we know very well that some activity is integral to legal practice, it may not be easy to say what the most effective way to carry out that activity actually is. Robert Condlin addresses an aspect of this problem in his essay, *Bargaining Without Law*.³² He asks, essentially, what the core tasks of effective negotiation are. Professor Condlin maintains that argument about the application of law to the facts of the case is actually a critical element in effective dispute resolution negotiation, and that efforts to reconceptualize negotiation as less fundamentally conflictual are mistaken. From this premise he moves to a detailed delineation of the ways that lawyers can effectively argue about law, including such elements as “detail, multi-dimensionality, balance, subtlety, and emphasis”³³ and, most fundamentally, “the ability to persist in the face of rejection, to push through an adversary’s dismissals, and continue to press one’s points until they have had their full effect.”³⁴

Condlin’s arguments are cogent, but there is of course an other side, and since that other side is not represented in this symposium, I do not want to suggest that the issue is concluded. I do want to emphasize two problems that Condlin himself

26. *Id.* at 246–51.

27. *Id.* at 259–78.

28. *Id.* at 259.

29. *Id.* at 262 (capitalization omitted).

30. *Id.* at 265.

31. *Id.* at 269–71 (discussing reasons for using an internal office memorandum on “choice-of-entity” questions).

32. Robert J. Condlin, *Bargaining Without Law*, 56 N.Y.L. SCH. L. REV. 281 (2011–12).

33. *Id.* at 313.

34. *Id.* at 317.

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highlights. First, he tells us that his description of how to argue effectively about law is meant to be descriptive, but that the kind of argument he believes is taking place in the world of practice is

not flashy, theatrical, or even noteworthy. [Such argument] works its effects silently, without fanfare, and below the radar screen of people searching for advocacy techniques in dispute bargaining practice. Being invisible is one of its goals and one of the principal reasons it works as well as it does. But the consequence of invisibility is that there is no clear, quantifiable empirical data to support it. The best data comes from observation studies of actual bargaining practice, but they are in short supply, and the few that exist do not examine the issue directly.³⁵

The point Condlin makes is not unique to negotiation. The truth is that there is a great deal we just do not know about how lawyers practice law, whether effectively or ineffectively. Much of what lawyers do—especially with the vanishing of the trial—takes place outside of public view, often under strict rules of professional confidentiality. Perhaps because of that, perhaps because of the characteristic interests of legal scholars, perhaps because of the unavailability of the funding needed for scientific study, the interpersonal techniques of law practice have rarely been examined systematically. There are a great way scientific studies of medical interviewing—but far fewer of the interviewing work of lawyers.³⁶ In short, we have a lot of work still to do.

There is, however, a second problem, which Condlin also highlights. How can we argue about law, if law itself has no definite meaning? Yet some lawyers and law professors believe that the meaning of law is fundamentally indeterminate. Even lawyers not quite that skeptical no doubt believe that there is always something to be said on both sides of a dispute, and so the idea of arguing the law as a way to resolve a dispute seems paradoxical.³⁷ Condlin is careful not to wade too far into these issues of jurisprudence, but he suggests two answers to this challenge. One is that lawyers *do* argue about law, that it is possible to argue more or less successfully, and that success will help win concessions in bargaining.³⁸ Those are empirical claims, though as we have just seen they are not easy claims to test.

Condlin's other response is that arguing about legal entitlements is integral to the legitimacy of the legal system.³⁹ If we do not argue law in resolving legal disputes, one might say, then we must admit that in the law, as Gertrude Stein said of Oakland,

35. *Id.* at 311 n.85.

36. See STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE & ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 352, 377 n.20 (2009) (citing Linda F. Smith, *Client-Lawyer Talk: Lessons from Other Disciplines*, 13 *CLINICAL L. REV.* 505, 514 (2005–06) (“over 7000 titles considering the doctor-patient consultation”)). Professors Mansfield and Trubek make a similar, but broader point—that lawyers need to become evaluators and assessors of their work. See *infra* text accompanying notes 66–68.

37. Condlin, *supra* note 32, at 298–301.

38. *Id.* at 303–04, 322–23.

39. *Id.* at 304–06.

“there is no there there.”⁴⁰ But not everyone agrees that law is something distinctive, and some people—including some clinicians—would likely say that if law has an essence it is, in part, a deeply oppressive one. And for anyone holding these views, the question of whether there is a duty to “argue the law” seems to raise the most profound political objections. Those objections may or may not be well-founded—but it seems unlikely we will ever fully resolve the issue of their validity, and so the question of whether we should argue the law as an integral part of dispute negotiation seems, inevitably, to be a matter for continued debate.

B. New Conceptions of the Lawyer's Role

While it is both important and challenging to understand the elements of familiar lawyering skills—since they turn out to be less familiar when they are closely examined—clinicians have also paid close attention to defining new lawyering roles and the skills needed to perform them. Again, many of the papers in this issue address aspects of this concern, but I will focus here on three that particularly highlight these issues: the papers by Professors Brooks and Madden, Professors Mansfield and Trubek, and Professor Golden. These papers reflect the ferment in clinical thought and practice, as clinicians look for better ways to lawyer and offer their students the opportunity to take part in these new forms of practice.

Let us begin with an area of competency that is by now so widely affirmed among clinicians that it might as justly be termed traditional as new: the principles of client-centered practice. Most famously developed by David Binder, Susan Price, and their later co-authors, client-centeredness teaches that lawyers' role is not to make fundamental decisions for their clients, or to push their clients into making the decisions the lawyers prefer.⁴¹ Instead, the task of the client-centered lawyer is to assist the client to make her own decision in the best way she can (and the lawyer's job then is to help carry out that decision, of course within the limits of the law).⁴² To do so requires empathetic and careful interviewing, as well as counseling that thoroughly explores the options available to the client—but does not compel, or manipulate, the client's ultimate choice among these options.

It would be hard to find a clinician who did not agree with much of what client-centeredness has to teach. But it is also clear that the ideal of client-centeredness, like most broad principles, can be understood in many different ways.⁴³ It is equally clear that while clinicians generally affirm the importance of respect for clients, many have sought to understand the lawyer's role and responsibilities as more affirmative

40. GERTRUDE STEIN, *EVERYBODY'S AUTOBIOGRAPHY* 289 (Cooper Square 1971) (1937).

41. See DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 8–11 (2d ed. 2004).

42. See *id.*; see also *id.* at 391 n.62 (discussing withdrawal from representation because of strong “moral disagreement”).

43. Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 *CLINICAL L. REV.* 369 (2005–06).

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and engaged than the most deferential accounts of the client-centered lawyer's role with clients might suggest.

This is the terrain that Susan Brooks and Robert Madden explore in their article *Epistemology and Ethics in Relationship-Centered Legal Education and Practice*.⁴⁴ Explicitly embracing, and seeking to build on, client-centered thinking, they describe their "Relationship-Centered Lawyering" (RCL) approach, which

builds upon and enhances the client-centered approach, as well as the Comprehensive Law movement approaches, by adopting a normative framework drawn principally from the mental health fields that focuses on understanding and relating to the client "in context." RCL thus contemplates a narrative that goes beyond the legal controversy and includes the many people and systems with which the client interacts.⁴⁵

A relationship-centered lawyer, as Brooks and Madden explain, is deeply concerned with her client's situation, but is quite ready to intervene with a client to call to the client's attention aspects of his personal context—the needs of his family, for instance, in a divorce—that he might otherwise be inclined to disregard.⁴⁶

Whether Brooks and Madden have found the right modulation between client choice and client context will no doubt be part of the ongoing debate among clinical scholars about such issues. What I want to focus on now, however, is the set of competencies they believe lawyers need in order to practice in this manner. Brooks and Madden summarize these competencies as falling in "three important and distinct areas: (1) substantive theory related to a contextualized understanding of human development; (2) principles of just and effective legal process; and (3) perspectives on affective and interpersonal competence, including cultural competence and emotional intelligence."⁴⁷ Each of these is a complex field, and only the second seems to intersect with traditional areas of lawyers' expertise. But lawyers need such knowledge, the authors suggest, because without a "theoretical model from which to operate" they are ill-equipped to actually understand, as they should, the contexts of their clients' lives.⁴⁸

Let us consider just the first of these three areas. What does it take to understand human development in context? The authors look to "[t]hree theoretical perspectives [that] provide the most up-to-date and useful research-based knowledge . . . : family systems theory, developmental theory, and attachment theory."⁴⁹ The value of this knowledge, as the authors explain, is not only that it supports intellectual understanding but that it shapes and supports appropriate ethical principles of lawyer-

44. Susan L. Brooks & Robert G. Madden, *Epistemology and Ethics in Relationship-Centered Legal Education and Practice*, 56 N.Y.L. SCH. L. REV. 331 (2011–12).

45. *Id.* at 342.

46. *Id.* at 351–52.

47. *Id.* at 342.

48. *Id.* at 343.

49. *Id.*

client interaction. “The content of these theories directs lawyers to appreciate the importance of context, directs them to be non-judgmental, and to recognize and give voice to client strengths, autonomy, and dignity.”⁵⁰ I do not take Brooks and Madden to suggest that lawyers must become experts in each of these areas. But for lawyers to become competent relationship-centered practitioners, as Brooks and Madden envision them, it seems clear that they must come to understand and be able to use these perspectives. Simply to achieve more fully the kind of respect for and fidelity to clients that clinicians have sought to help students achieve for many decades is, plainly, a demanding task.

Brooks and Madden are well aware that their proposals are far-reaching, and they also speak to the educational approaches needed to implement them. Drawing on insights from neurobiology, they emphasize that “[r]ecognizing and integrating the data from feelings and emotions is a critical process in effective legal practice.”⁵¹ Moreover, they point out that education embodies “professional acculturation,” and so the nature of that professional culture will affect—and has often blunted—students’ ability to respond in this holistic way.⁵² In response, they endorse a number of strategies for “teaching ethical and professional conduct,”⁵³ with a particular emphasis on the importance of fostering empathy and compassion as sources of “interpersonal responsibility and ethical behavior.”⁵⁴ Ultimately, they recommend not only changes in the courses law schools offer but also changes in the culture of our schools: “we must endeavor in as many ways as possible to instill a culture of mutual support, collaboration, and community-building within our institutions that might be considered an implicit curriculum.”⁵⁵

But students, and lawyers, may need to change not only their orientation but also their concrete techniques for serving clients. Marsha Mansfield and Louise Trubek explicitly address issues of changing lawyer roles in their article, *New Roles to Solve Old Problems: Lawyering for Ordinary People in Today’s Context*.⁵⁶ While they emphasize the “justice gap” between the legal services that middle-class and poor people can afford and those they need, they also suggest that “available technology and new collaborations create opportunities for new roles and tools” that can narrow this gap.⁵⁷ Like Peter Hoffman, Professors Mansfield and Trubek observe that “[l]aw school clinics, now the primary teachers of practice skills, are often embedded in

50. *Id.* at 344.

51. *Id.* at 336.

52. *Id.* at 338–40.

53. *Id.* at 356–60.

54. *Id.* at 361.

55. *Id.* at 364.

56. Marsha M. Mansfield & Louise G. Trubek, *New Roles to Solve Old Problems: Lawyering for Ordinary People in Today’s Context*, 56 N.Y.L. SCH. L. REV. 367 (2011–12).

57. *Id.* at 368.

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routines that reflect earlier contexts.”⁵⁸ They suggest that lawyers can respond to the terrible shortage of legal assistance for many people in this country by taking on three new roles: as collaborators, evaluators, and facilitators.

Lawyers as “collaborators” can work with other professionals to provide a wide-ranging response to client problems that generally are not just “legal,” but “typically occur in a broader context often involving a financial, medical, family or housing crisis.”⁵⁹ There is obvious force to the idea that a multi-faceted problem needs a multi-faceted solution. Indeed, even in settings where clients face no shortage of resources, there is growing recognition that the solutions they need (and will pay for) may require the expertise of a team rather than the virtuoso work of a single individual or a single profession.⁶⁰

What are the skills the lawyer-collaborator must master? It is not Mansfield & Trubek’s aim to provide a comprehensive listing of these skills, but their article offers important illustrations of what will be needed. One aspect, reflected in the authors’ description of the work of the University of Wisconsin’s Center for Patient Partnerships, is a change in focus: “[t]he lawyer becomes a part of the support system for the client in a manner very different from the traditional role of intervening when the client comes to the lawyer’s office for redress of a singular problem. The lawyer is part of the public health endeavor’s ongoing mission.”⁶¹ Lawyers performing this mission will need to learn to understand clients’ concerns comprehensively, and to assess strategies for their contribution to the overall well-being of their client. In one sense, these skills are not novel—theories of client-centered law practice already call for such efforts. But now, it would seem, the lawyer’s job will not be only to comprehensively understand the factors bearing on the client’s legal options and choices, but to focus directly on the full range of the client’s concerns, among which legal considerations may be quite subordinate.

That is no small task. For lawyers to accomplish it, clearly a recognition of “the interdependent roles” of team members is important, and no doubt not just a theoretical recognition but an actual embodiment of an attitude of mutual respect. To collaborate is not the same as to command or to exploit. The lawyer is a “partner rather than [an] autonomous savior.”⁶² Though partnering is admirable, it is not always simple, and its component skills will be an important issue for law teachers and law students as collaborative work grows in prominence. As partners, moreover, lawyers and their colleagues must learn to “share information across institutional divides” so as to shape strategic approaches.⁶³ And, although Mansfield and Trubek

58. *Id.* at 384.

59. *Id.* at 372.

60. See William D. Henderson, *Are We Selling Results or Résumés: The Underexplored Linkage Between Human Resource Strategies and Firm-Specific Capital* 15–24 (Ind. Univ. Sch. of Law-Bloomington Legal Studies Research Paper Series, Paper No. 105, 2008), available at <http://ssrn.com/abstract=1121238>.

61. Mansfield & Trubek, *supra* note 56, at 376.

62. *Id.*

63. *Id.*

believe that the result of such collaboration is actually to enhance “[t]he lawyer’s autonomy and independence,”⁶⁴ it seems fair to say that the nature of autonomy within a team must be somewhat different than the same quality in a solo situation—and that therefore lawyers will need to work through important personal and perhaps ethical questions of independence as they enter into such teams.⁶⁵

Mansfield and Trubek suggest that lawyers can also play important roles as evaluators. As they write: “[t]he legal profession has historically paid scant attention to evaluating the effectiveness of its work. In this regard, lawyers lag behind other professions, particularly the health professions.”⁶⁶ Again, there is obvious force to the idea that when legal services (and other needed assistance) are in short supply, we must be able to ask and answer the question of whether particular ways of deploying our available resources really work.⁶⁷ But this too is not easy. “Assessments must be done with expertise, care, and ultimately, empirical validation . . . in order to justify need, value, and effectiveness.”⁶⁸ Lawyers will need to acquire the necessary expertise in the methodology of assessment—or partner, in this respect as well, with other professionals who have that knowledge. Perhaps more important, they will need to adopt the habit of assessment. That habit likely involves an openness to the observations and opinions of others; a disposition to believe one’s own work can and should always be improved; and, fueling both of these, a humility about the extent of their own expertise that may not have always been typical of lawyers (or other professionals).

The third of the new roles Mansfield and Trubek identify is the role of facilitator. They write that “[l]awyers can assume the role of strategic facilitators, bringing stakeholders together to seek solutions and also ensuring that all voices are heard.”⁶⁹ Here Mansfield and Trubek’s thinking intersects with the work of Robin Golden, and I will focus now on Golden’s article, *Collaborative as Client: Lawyering for Effective Change*, which explicates in detail a particular form of strategic facilitation.⁷⁰

Professor Golden sets her essay in the context of a wave of scholarly exploration of the possibility that lawyers can best contribute to social change by representing communities.⁷¹ Community representation can be a form of adversarial lawyering—though undertaken on behalf of a community rather than an individual litigant. But Golden’s vision is different. Drawing on the experience of the Yale “Community and

64. *Id.*

65. They will, for example, need to work through the complications that differing professional rules about confidentiality may pose for the information sharing that enables the team members to work together.

66. Mansfield & Trubek, *supra* note 56, at 377 (footnotes omitted).

67. *Id.* at 378–79.

68. *Id.* at 379 (internal quotations omitted).

69. *Id.* at 381.

70. Robin S. Golden, *Collaborative as Client: Lawyering for Effective Change*, 56 N.Y.L. SCH. L. REV. 393 (2011–12).

71. *Id.* at 394–95, 403–04.

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Economic Development” clinic to articulate “a new model of lawyering in support of collaborative effort,”⁷² she calls for lawyers to work on behalf of collaborative groups structured to include a wide range of stakeholders in a problem, not just “direct representatives of the affected community.”⁷³ These members surely will have potentially conflicting interests, and they might not “naturally” come together. Golden emphasizes that “generally, the lawyer will be helping to *develop* the client by first encouraging the engagement of the participants in a collaborative process and, second, by managing the collaborative process to ensure that the ‘client’s’ interests are clear and being served.”⁷⁴ Golden emphasizes that for parties to join the collaborative is largely to give up the possibility of resorting to litigation to resolve differences between them.⁷⁵ Instead, the members come together to find a way to jointly address a problem, and the lawyer’s job is to sustain that process. Golden writes that “a lawyer’s obligation can be owed to the shared understanding of the problem itself. For this kind of advocacy, then, the members of the collaborative effort, as a group, are the client.”⁷⁶

Golden’s model suggests that what lawyers need is both a true change of direction, and a careful practice of the kinds of skills they have long been developing. The change in direction is from adversariness to a recognition “that solving complex problems requires compromise and mutual understanding that cannot be achieved through an emphasis on the advancement of individual interests.”⁷⁷ The skills that lawyers need for this work, Golden suggests, call for lawyers to understand “group and intergroup theory from the field of organizational behavior, . . . concepts of group formation, intergroup dynamics, and theories of representational groups[.]”⁷⁸ Expertise of this sort, then, must become a criterion of effectiveness—one quite distant from the elements of effectiveness in more traditional practices.

At the same time, Golden urges lawyers to attend very carefully to a quite traditional concern: the precise definition of the client—here, the client group—and of the lawyer’s responsibilities to that group. Her sample “Memorandum of Understanding” between the clinic and the collaborative “Consortium” addresses the duties of the consortium members as part of the group; the voting rules to govern consortium decisionmaking; the limits on attorney-client confidentiality that the group structure entails; the members’ consent to the clinic withdrawing in the event of an irresolvable conflict of interest; and the specific objectives “to be undertaken during the period of engagement.”⁷⁹ Golden makes clear that she believes that the

72. *Id.* at 400.

73. *Id.* at 433.

74. *Id.* at 408–09.

75. *Id.* at 407 n.73.

76. *Id.* at 396 (footnotes omitted).

77. *Id.* at 401.

78. *Id.* at 404.

79. *Id.* at app.

process of formulating and memorializing this careful delineation of roles is itself an integral part of the representational project, “essential to both keep the potential domination of the lawyer in check, and also to ensure that the focus on the problem-solving agenda is preserved.”⁸⁰ Here, the lawyer to the collaborative is, like her more traditional counterparts, addressing familiar issues—of lawyer power, client consent, confidentiality, and conflicts of interest—though the resolution of these issues is shaped by the new context of the work.

We are only beginning to understand the field that Golden explores, and Golden is well aware of the range of issues her work implicates. Should the lawyer’s objective be the support of collaboration among people with quite varying interests, or the empowerment of disadvantaged communities against their opponents?⁸¹ Should the collaborative be focused on a specific issue, or aim to be an ongoing presence in the community?⁸² Can lawyers officially, or unofficially, be the leaders of the collaboratives they have helped create?⁸³ And if the point of the work is to assist in an ongoing process of collaboration, is it actually necessary for the lawyer to represent anyone as a “client?”⁸⁴ The turn to new roles, in short, does not escape the complexities of the old ones—instead, it adds to them.

II. THE WAYS TO HELP STUDENTS LEARN

The more demanding the range of competencies that lawyers must acquire, the more acute becomes the question of how to help them do so. Accomplishing this teaching goal has been a central concern of clinicians (co-existing, certainly, with a widely shared desire to further a mission of social justice as well). Not surprisingly, many of the articles in this issue address aspects of teaching strategy. As the earlier part of this Introduction reflects, for example, Peter Hoffman’s central focus is on bringing our pedagogy in line with the realities of practice.⁸⁵ Robert Condlin, though not explicitly focusing on pedagogy here, similarly hopes that legal academics seeking to describe dispute bargaining will “join[] practical wisdom with social science research to the benefit of both.”⁸⁶ I have already discussed Robert Statchen’s pedagogical approach to the skill of drafting, and the pedagogical recommendations Susan Brooks and Robert Madden urge for teaching “relationship-centered lawyering.”⁸⁷ Professors Trubek and Mansfield also recommend “two major curricular reforms” to help students learn the new lawyering roles they envision: “holistic clinics

80. *Id.* at 407.

81. *See id.* at 404–05.

82. *See id.* at 373 n.24, 417.

83. *See id.* at 413 & n.93.

84. *See id.* at 407, 404 n.52, 409 n.81.

85. *See supra* text accompanying notes 7–20 (discussing Professor Hoffman’s article).

86. Condlin, *supra* note 32, at 327.

87. *See supra* text accompanying notes 26–31 (discussing Professor Statchen’s pedagogy); *supra* text accompanying notes 51–55 (discussing the teaching recommendations of Professors Brooks and Madden).

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exploring new lawyering models,” and new courses and degrees that focus, particularly in partnership with other disciplines, on issues of social policy, research methodology and problem-solving roles.⁸⁸ Similarly, Professor Golden, though focusing primarily on describing and making the case for the “collaborative problem-solving model” she advocates, notes that the reason she calls for this approach “in the clinic setting is to train practitioners to be nimble advocates[,]” a process that requires the students to “have both a grounding in theories of organizational dynamics and debriefing sessions in which the supervising attorney models the self-reflective stance that is required for this work to be successful.”⁸⁹

Five other articles in this issue share a concentration on teaching issues, and it is this aspect of these articles on which I will focus in the pages to come. These are the essays by Kathleen Kelly Janus and Dee Smythe; Peggy Cooper Davis, Ebony Coletu, Bonita London, and Wentao Yuan; Deborah Maranville, Mary Lynch, Susan Kay, Phyllis Goldfarb, and Russell Engler; Laurie Morin and Susan Waysdorf; and Brook Baker. Clinical pedagogy is an immense field, and these articles (and the others in this volume) naturally do not cover every aspect of it; however, as we will see, they illuminate many central elements of the work of preparing students for practice.

A. Cultural Competency and the Role of Client-Service Work

Kathleen Kelly Janus and Dee Smythe focus on the crucial skill of cultural competency in their article *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, which focuses on the work that Stanford clinic students are doing with the Law, Race and Gender Research Unit (LRG) at the University of Cape Town in South Africa.⁹⁰ “Since the development of the first international human rights clinic thirty years ago,” Janus and Smythe write, “clinicians have looked to human rights clinics, and particularly international fieldwork, as a way to advance clinical pedagogy and cross-cultural training.”⁹¹ The importance of “cross-cultural competency” has certainly been recognized across the clinical community over the past decades,⁹² though it seems likely that this competency remains a less familiar lawyering skill than, say, trial advocacy. Janus and Smythe see “the ability to effectively navigate culture [as] at the core of effective human rights advocacy,” and observe that “[i]nternational human rights clinics have been hailed as providing invaluable learning opportunities for students, not least because students are able to experience first hand the role that culture plays in our work as lawyers.”⁹³

88. Mansfield & Trubek, *supra* note 56, at 386–90 (capitalization omitted).

89. Golden, *supra* note 70, at 429.

90. Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the International Human Rights Clinic*, 56 N.Y.L. SCH. L. REV. 445 (2011–12).

91. *Id.* at 446 (footnote omitted).

92. See *id.* at 447–48; see, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

93. Janus & Smythe, *supra* note 90, at 452.

Certainly this makes sense. Travel is broadening, and travel to a very different society surely offers students the opportunity to encounter and come to understand a culture quite unlike their own. But it is not inevitable that students, or teachers, will respond this way. As Janus and Smythe make clear, a recurrent issue in international human rights work is the “risk that human rights lawyers will be perceived as ‘Western Imperialists’”⁹⁴—displaying what we might understand broadly as the tendency of well-intentioned outsiders from rich and privileged societies to assume that they already know what the new people they are meeting need and should want. Closely linked to this danger is another, as Janus and Smythe remind us: the danger that advocates will essentialize those they seek to help as victims wholly unlike themselves—as, for instance, the “Exotic Other Female.”⁹⁵ The question for clinical teachers, therefore, is how to forestall such thinkings since it not only blunts students’ learning but also risks impairing the actual human rights work being done.

Perhaps the paradigmatic response of clinical teachers to such challenges over the years has been to create courses in which students undertake the representation of individual clients. The desire to faithfully serve a client for whom one is responsible is a powerful one, and students who come to see that they are doing a weaker job of representation because of their difficulties in understanding their clients’ cultural backgrounds have strong reason to reach for cultural competency.

But international human rights clinical work, Janus and Smythe show, can build cultural competency by quite different paths. “[M]uch of our fieldwork did not involve individual client representation, but working with NGOs on larger-scale advocacy and the development of complex multi-layered cases for long-term impact litigation.”⁹⁶ The authors’ description of the work of the University of Cape Town LRG, in which the clinic students are placed, reflects how much besides litigation this body undertakes:

LRG seeks to support the rights claims of women and other vulnerable people . . . by way of a number of participatory processes, including documenting actual and changing social practices to use as evidence of “living law” in litigation and policy debates about customary law and women’s rights, holding regular workshops, and supporting rural communities to bring their concerns to the attention of decision makers.⁹⁷

The result was that “the students’ project work was primarily research-oriented.”⁹⁸ This did not mean, however, that students had no occasion to stretch their own cultural understandings beyond a library’s walls:

94. *Id.* at 449.

95. *Id.* (citing Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 *NEW ENG. L. REV.* 1509 (1992)).

96. *Id.* at 474.

97. *Id.* at 460.

98. *Id.* at 461.

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[M]ost students who worked on the project also had opportunities to obtain field experience. Such opportunities included visiting field sites in other provinces, observing strategy sessions relating to litigation of customary law matters, engaging with experts, preparing discussion documents for and briefing project partners, and seeking difficult to obtain information on pressing legal issues from government institutions.⁹⁹

The clinic worked in many ways to help students grasp the cultural issues this work presented. Janus and Smythe describe the reading and simulation training students undertake before going to South Africa¹⁰⁰—and part of the value of this paper, and others in this issue, is precisely this fine-grained reporting of exactly how the clinic works, and moreover how its work has evolved as the faculty learned from their own experience over time.¹⁰¹ Janus and Smythe also point to the value of a program in which students are placed “in one of two deeply rural communities . . . for a week shortly after they arrive in South Africa. In both villages we partnered with local women’s groups, who host the students,” all of whom have “described this experience as very important in contextualizing their work at LRG.”¹⁰² Even so, students may find the lack of more client contact frustrating—but this very frustration, as Janus and Smythe say, can become the subject of cultural competency training focused on the differences between the expectations and needs of the students and those of the partner organizations in South Africa.¹⁰³

Over time, no doubt, Janus and Smythe will continue to modify these approaches—and that flexibility is a central part of effective teaching. But the general point of their account is that even so personal a task as achieving cultural competency may be taught not only through client representation but also in quite different ways. If that is true for clinic students working in South Africa, it may be equally true, as Janus and Smythe suggest, for clinics here in the United States.¹⁰⁴

B. Skills Education and Student Well-Being

Peggy Cooper Davis, Ebony Coletu, Bonita London, and Wenato Yuan address a teaching challenge that goes beyond imparting any particular skill. In their article, *Making Law Students Healthy, Skillful, and Wise*,¹⁰⁵ they “suggest that the experience and well-structured critical analysis of real or simulated lawyers’ work is not only

99. *Id.*

100. *Id.* at 456–59, 465–68.

101. *See id.* at 464–66 (describing the restructuring of the roles of U.S. and South Africa faculty in response to students’ reflection on their experiences).

102. *Id.* at 461–62.

103. *Id.* at 476–77.

104. *Id.* at 478–79.

105. Peggy Cooper Davis, Ebony Coletu, Bonita London & Wentao Yuan, *Making Law Students Healthy, Skillful, and Wise*, 56 N.Y.L. SCH. L. REV. 487 (2011–12).

necessary to professional excellence, but also important to the learning capacity and emotional health of developing lawyers.”¹⁰⁶

In principle, it seems unlikely that students whose emotional well-being is under siege are in the best position to learn. It also seems unlikely that students who emerge from law school with a sense of having lost their ideals, or their way, will flourish in the practice of law. But, as Davis, Coletu, London, and Yuan remind us, “[t]he journey through law school is both stressful and correlated with increases in depression, anxiety, and substance abuse.”¹⁰⁷ They attribute “[t]he notorious levels of stress and other kinds of psychological distress among law students” partly to the inescapable competition engendered by law school grading systems.¹⁰⁸ They also suggest that law school generates a subtle devaluation of practical skills—in contrast to the academic skills measured by first-year classroom grades.¹⁰⁹ In addition, they see challenges to students’ spirit and resulting achievement in “students’ and professors’ theories of mind,” that is, in the disabling effects of the idea that achievement is the result of a fixed intelligence rather than of “practice and effort.”¹¹⁰ They emphasize as well the impact of “social identity threat”—the “fear of confirming a negative stereotype about a group with which one is identified.”¹¹¹

What can be done about these complex and powerful pulls on our students? The authors analyze the New York University School of Law’s first-year course on lawyering as a “laboratory in which to unpack the causes of dysfunction and stress and a testing ground for new teaching strategies.”¹¹² Describing the year-long, pass-fail “sequence of practice experiences and structured reflection on those experiences” in the course, the authors write that “[t]he immediate goal is structured, carefully sequenced learning. The larger goal is building career-long habits of self-reflection for professional growth.”¹¹³ The course does not seek to abolish competition in law school, but to mitigate it, “by encouraging collaboration, emphasizing the malleability of lawyering skills, and highlighting relationships between theory and practice.”¹¹⁴ In a variety of ways, as the authors illustrate, the course seeks to introduce students to the tasks of lawyers and to fuel the students’ learning by both challenging and sustaining them as they progress.¹¹⁵

But does it work? Mansfield and Trubek, as we have seen, point to the importance of lawyers’ role as evaluators, and Davis, Coletu, London, and Yuan embrace the

106. *Id.* at 488.

107. *Id.* at 490.

108. *Id.* at 491.

109. *Id.* at 492–93.

110. *Id.* at 493–94.

111. *Id.* at 494.

112. *Id.* at 495.

113. *Id.*

114. *Id.*

115. *Id.* at 495–500.

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challenge of evaluating, or assessing, the actual impact of this thoughtfully designed course. The authors emphasize that their results are “preliminary,”¹¹⁶ but let us briefly consider certain striking—and also somewhat puzzling—findings.

First, students who were asked over a six-week period, “[h]ow respected did you feel by your peers and professors in this course [this week]?” almost always reported feeling more respected in lawyering than in their other first-year courses (civil procedure, contracts, criminal law, and torts). But the differences were sometimes “only marginally significant” statistically, and the effect was not huge: in one week, for example, the respect score, on a 10-point scale, was 7.81 in lawyering, compared to a low of 6.83 in civil procedure.¹¹⁷

Second, students usually felt that lawyering was more useful to them than any of their other courses.¹¹⁸ Here, however, “the differences between lawyering and the other courses were not always significant” statistically, while the absolute differences again appear to be clear but not huge.¹¹⁹

These findings are valuable, and tantalizing. They suggest that the lawyering course speaks to students in some ways that other courses do not. At the same time, they suggest that the differences in students’ responses to lawyering and to their other classes are not as great as the substantial differences in course structure might have led us to predict. Do the results attest to the degree to which the atmosphere of the rest of law school permeates even a course designed as this one is? Or could they indicate that some part of the lessons of lawyering has made its way into the experience of students elsewhere in the curriculum? We do not yet know, and the authors “welcome opportunities to share [their] methodology and to test new versions at other schools.”¹²⁰ Here, as elsewhere, there is much to be learned.

C. Shaping a Curriculum for Experiential Learning, In and Out of School

Three other papers in this issue also take up aspects of the overall question of how experiential learning should be offered to students. As we will see, these papers collectively identify a wide array of experiential course options—and suggest that possibly other options, outside of courses and even outside law school altogether, are valuable as well.

Deborah Maranville, Mary Lynch, Susan Kay, Phyllis Goldfarb, and Russell Engler, in their essay *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*,¹²¹ begin from the proposition that the world of

116. *Id.* at 503.

117. *Id.* at 509–10, 510 n.51.

118. *Id.* at 510–11.

119. *Id.* at 510.

120. *Id.* at 511.

121. Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb & Russell Engler, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011–12).

such courses has grown beyond its two most familiar categories: “externship placements and in-house clinics.”¹²² They trace the broad course of the evolution of clinical teaching in this country, and observe that such issues as the tensions between public service and student education, and between in-house and externship teaching, have shaped “today’s varied landscape in which competing interests and realities have generated an array of different clinical models and forms.”¹²³ And they conclude, after looking to the important critiques of legal education in the recent Carnegie Report,¹²⁴ the *Best Practices* volume,¹²⁵ and the MacCrate Report,¹²⁶ that:

This literature suggests a pedagogy in which students assume the role of the lawyer, and while in role, face the sort of problems that lawyers encounter in practice. The students’ performance in these roles becomes the subject of study and, consequently, students are asked to make their thinking, planning, and choosing systematic and explicit, in oral and written form, at every step along the way. Students are asked to consider the significant events occurring in their casework, process them internally, seek to understand their meaning, and evaluate them in light of their own performance. Simply stated, we believe this is the reflective, context-based education that best realizes the aims of the Carnegie Report and *Best Practices* and most responds to the public service needs of the times.¹²⁷

The question, then, is how to deliver this sort of education. This is a crucial question for law schools taking seriously the need to offer students opportunities of this sort, and the authors respond to this need by creating “a thoroughgoing list of the structural components for real lawyering experiences.”¹²⁸ It is worth pausing here, however, to consider the meaning of the phrase “real lawyering experiences.” The authors’ focus on “*real* lawyering experiences” distinguishes their subject from pure simulation courses, though, as they observe, “the dividing line between simulation-based courses and courses involving real experiences has also blurred over time.”¹²⁹

But what are “real *lawyering* experiences?” The authors’ definition “incorporates a wide range of roles that lawyers play, including some, such as mediation and legislative work, which can also be performed by non-lawyers.”¹³⁰ This definition is both appropriately flexible and somewhat ambiguous, and it seems fair to say that

122. *Id.* at 518.

123. *Id.* at 524.

124. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS (2007) [hereinafter “CARNEGIE REPORT”].

125. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) [hereinafter “BEST PRACTICES”].

126. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION (1992) [hereinafter “MACCRATE REPORT”].

127. Maranville et al., *supra* note 121, at 525.

128. *Id.* at 526.

129. *Id.* at 518 n.4.

130. *Id.* at n.5.

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the term “real lawyering experiences” is indeed ambiguous in roughly the same way that the boundaries of the “unauthorized practice of law” are ambiguous: what lawyers do overlaps substantially with what other people in our society do. Some clinics may reflect this ambiguity quite strikingly. For example, an international human rights clinic that concentrates on fact-finding missions leading to published reports is doing work that non-lawyers clearly might, and do, undertake. Students may also get experience that is both real and law-related in courses where they work on projects with real-world, legal significance—for example the creation of a website focused on a developing area of law—even though this work is a considerable distance from the work of a lawyer representing a client. Courses of this sort—which New York Law School, among others, has developed¹³¹—may mark a further extension of the authors’ typology.

In any event, the authors themselves were surprised by how many possibilities their typology identified.¹³² Not all options are created equal, as the authors’ analysis makes clear, but they write that “[b]y displaying a broad menu of structural options, the typology holds the potential to expand our vision and help us make explicit the choices that are currently available to legal educators for creating or revamping programs that engage students in real legal work.”¹³³ With this goal in mind, the authors carefully explore the possible variations among structures in terms of “a ‘why, what, who, where, when, and how’ framework.”¹³⁴ This careful categorization is indeed illuminating, but the authors do not intend to offer just an abstract analysis. They present their typology in multiple formats, no doubt meant to make their framework usable by actual law school faculties making actual curricular decisions.¹³⁵ They also discuss the “contexts and constraints” that will affect actual choices among these options,¹³⁶ and illustrate how such decisionmaking can proceed by offering a series of carefully elaborated examples.¹³⁷

What choices will such decisionmaking lead us to? The authors are well aware that law schools are under pressure “to find approaches [to experiential education] that can be scaled up to serve an entire student body at a cost that is not prohibitive.”¹³⁸ They do not question this goal, and their typology plainly includes both high-supervision, high-cost approaches and others that are cheaper and involve less input from law school faculty. They themselves maintain, however, that “[t]he approach set out in this article does not support the argument” for skills teaching essentially

131. See *Project Based Learning Courses 2011–2012*, NEW YORK LAW SCHOOL, http://www.nyls.edu/academics/project_based_learning_courses/2011-2012_course_list (last visited Oct. 30, 2011).

132. Maranville et al., *supra* note 121, at 526.

133. *Id.*

134. *Id.* at 527.

135. *Id.* at 526–36.

136. *Id.* at 536–46.

137. *Id.* at 546–58.

138. *Id.* at 556.

divorced from the main work of the law school.¹³⁹ Their own view is that while “even lightly supervised experiences can be valuable for targeted purposes,” for more fundamental experiential education to take place “a more systematic and intentional approach is required.”¹⁴⁰ Ultimately, they call for building on, rather than departing from, the strengths of today’s clinical faculties:

Though we favor dispensing with orthodoxies and taking a broad view of the options for clinic design, we do so in the context of the extensive, deliberately developed programs taught by secure staff at each of our schools. We believe that thoughtfully designed “hybrid” opportunities are more likely to emerge at law schools with full-time, secure status, real case experiential faculty.¹⁴¹

Laurie Morin and Susan Waysdorf offer an example of exactly this: a “hybrid” opportunity taking shape at a school with a particularly strong and established in-house clinical program, the University of the District of Columbia David A. Clarke School of Law, where they teach. Their essay, *The Service-Learning Model in the Law School Curriculum: Expanding Opportunities for the Ethical-Social Apprenticeship*,¹⁴² demonstrates that the “service-learning model” they identify is much more than an add-on, for it opens up pedagogical possibilities that other law school courses, including live-client clinics, may not be able to offer. It may indeed offer an especially powerful approach to the “third apprenticeship” identified in the Carnegie Report, the “ethical-social apprenticeship.”¹⁴³

Their course, *Katrina and Beyond: Disaster Prevention and Recovery, Social Justice and Government Accountability*, is “a doctrinal course with a service-learning component.”¹⁴⁴ “Service-learning,” as the authors explain, is “a form of experiential education in which students engage in activities that address human and community needs together with structured opportunities intentionally designed to promote student learning and development. Reflection and reciprocity are key concepts of service-learning.”¹⁴⁵ While most clinics likely could fit within the terms of this definition, Morin and Waysdorf show us that service learning can be something new.

139. *Id.*

140. *Id.*

141. *Id.* at 557–58.

142. Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum: Expanding Opportunities for the Ethical-Social Apprenticeship*, 56 N.Y.L. SCH. L. REV. 561 (2011–12). The authors describe their school’s extensive clinical program. *Id.* at 573–74 n.58.

143. *Id.* at 567; CARNEGIE REPORT, *supra* note 124, at 29. In what is already a widely followed formulation, the Carnegie Report frames the tasks of law school as involving three apprenticeships: the “intellectual or cognitive” apprenticeship (in legal reasoning); the “expert practice” or skills apprenticeship (naturally, a central focus of much “skills” education); and “the apprenticeship of identity and purpose,” which “introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.” CARNEGIE REPORT, *supra* note 124.

144. Morin & Waysdorf, *supra* note 142, at 563.

145. *Id.* at 564 n.9 (quoting BARBARA JACOBY & ASSOC., SERVICE LEARNING IN HIGHER EDUCATION: CONCEPTS AND PRACTICES 5 (1996)).

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Morin and Waysdorf did not quite set out to create a service-learning course. In a passage characteristic of clinical scholarship's thoughtful self-reflection, they write that "[d]uring the process of four years of planning, evaluating, and revising the course, we have come to realize that our model is a 'service-learning' paradigm—an approach to apprenticeship that is widely accepted in other academic disciplines."¹⁴⁶ Their initial reasons for choosing to develop the program they did, in which the experiential component is a one-credit practicum linked to a doctrinal course, were partly practical. A one-credit practicum would entail relatively limited time demands for faculty, and it would be correspondingly easier to offer the course to larger numbers of students than would be possible with a clinic. In addition, the authors "wanted to expand the focus of our legal service mission to encompass a national (or even global) community."¹⁴⁷ The authors also wanted to work on issues that might capture their students' imaginations; a striking feature of Morin and Waysdorf's piece is their attention to the different priorities that members of the current, "millennial" generation and their "baby boom" professors may have.¹⁴⁸

As part of the course, Morin and Waysdorf provided for a one-credit "service week" in the New Orleans area.

Soon it became apparent that rather than being a practicum add-on, the service week was the central focus of the course. . . . [W]e struggled to catch up, to understand why the service week had played such a transformative role, not only for the students but for the faculty as well.¹⁴⁹

Part of what they found in the first year was that a completely non-legal part of the service week, participation in "rebuild[ing] a family's home that had been destroyed by Hurricane Katrina," was for the students who engaged in it "the highlight of their week." This recognition, "more than any other single factor, led us to understand that humanitarian-based service should become a more central component of the course over the next three years."¹⁵⁰ Over time, the authors came to structure the rest of the course to make the service-learning experience as profound as possible.¹⁵¹ As they observe earlier in the article, "[t]ypically, service-learning combines education with hands-on social action, and merges volunteering with a learning component."¹⁵²

What they concluded is that "service-learning provides the most effective vehicle for the 'third apprenticeship.'"¹⁵³ "Optimally," Morin and Waysdorf write, "service-

146. *Id.* at 565.

147. *Id.* at 574.

148. *See id.* at 575–89.

149. *Id.* at 597.

150. *Id.* at 598.

151. *Id.* at 599–600. Morin and Waysdorf discuss a number of the steps they developed in a section titled "Lessons Learned: Structuring a Service-Learning Experience for Millennial Law Students." *Id.* at 608–15.

152. *Id.* at 590.

153. *Id.*

learning can be seen as a capstone experience for law students who have had the benefit of clinical courses, as well as doctrinal and externship courses.”¹⁵⁴ What does service-learning add to the impact of the other courses?

Students described a deeper manner and type of learning than what they experienced in the doctrinal lecture classes and even in the close supervision of the often tightly managed clinical programs and case work. While students had often achieved positive results for their clients in traditional clinics, students reported that the client impact in the service-learning context felt more immediate and powerful.¹⁵⁵

The role of the teacher also shifted. “We began,” say Morin and Waysdorf, “to intentionally view ourselves more as facilitators and senior collaborators, than as clinical supervisors, externship advisors, or, certainly, classroom lecturers.”¹⁵⁶ So, correspondingly, the learning process shifted as well. The authors quote a student’s reflections, from which they draw the conclusion that “role-modeling and the importance of normative and iconic values such as comradeship, collegiality, leadership, collaboration, and sacrifice for the greater good are tangible fruits of service-learning.”¹⁵⁷ Put more generally, “the dual principles of reflection and reciprocity between the server and the person or group being served are the touchstones of the service-learning paradigm.”¹⁵⁸ And while service-learning “can include client work,” it “does not have to be client-based.”¹⁵⁹ For law schools, in short, service-learning may be something new under the sun.

Professor Brook Baker offers a more radical, though also somewhat hesitant, challenge to conventional law school skills education in his essay, *Practice-Based Learning: Emphasizing Practice and Offering Critical Perspectives on the Dangers of “Co-Op”tation*.¹⁶⁰ The “co-ops” in the word “co-op’tation” are the four full-time work experiences that Northeastern University School of Law, where Baker teaches, requires from all students as an integral part of their law school years. As we will see, Baker firmly maintains that students can learn a great deal from these work experiences, without the need for intervention by law school faculty, but he is concerned that what they learn may not always be what they should.

Baker lays out the case for the value of work—work unmediated by faculty supervision or commentary—in plain terms: “My purpose in this article is to present a strong thesis—that practice is the primary site of legal learning and that it should be

154. *Id.* at 604.

155. *Id.* at 602.

156. *Id.* at 601.

157. *Id.* at 606.

158. *Id.* at 591.

159. *Id.* at 593.

160. Brook K. Baker, *Practice-Based Learning: Emphasizing Practice and Offering Critical Perspectives on the Dangers of “Co-Op”tation*, 56 N.Y.L. SCH. L. REV. 619 (2011–12).

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recognized and valued as such.”¹⁶¹ This proposition may startle many clinical readers. Few of them, however, will quarrel with Baker for his critique of “classroom pedagogy.” Baker argues, in part, that classroom pedagogy is “ploddingly textual and logical, emphasizing the primacy of conscious thought and abstract legal doctrine,” while cognition properly understood “springs forth from multiple subconscious wells; it is certainly more spontaneous than planned.”¹⁶² He embraces, instead, “[c]ontextualist cognition,” which “recognizes the synergies of functional engagement, of being deeply involved in a real or virtually real activity.”¹⁶³ Baker contends that classroom pedagogy also misses the mark by exaggerating the role of the teacher and missing the educational significance of the student’s placement in “a field of practice,”¹⁶⁴ and by presuming that “learning is lonely” and individual rather than a process that takes place within “the elaborate web of interpersonal relationships that compose the workplace.”¹⁶⁵

So far so good. Clinicians will also have no trouble agreeing with Baker’s argument that practice is an essential teacher—after all, that proposition is integral to clinical course design. Nor is it actually startling that Baker maintains that students can and do learn from practice without the presence of faculty instructors. Put as I just did, this proposition is one that ultimately cannot be denied; otherwise, we would be saying that law students’ learning about their profession ends when they leave their last law school clinic.

But what is startling is the extent to which Baker questions whether skills teachers add greatly to what students learn from practice itself. To be sure, Baker never questions that clinics are valuable sites of practice learning. He maintains that “it is nonetheless crucial to examine the evolution of practice-based competence since so many university students work with practitioners who are not educational specialists on co-ops, in internships, in community service-learning, and in clinical placements.”¹⁶⁶ How do students learn from these settings, which include but are clearly not limited to those that entail direct faculty engagement? Baker answers:

In exploring the cognitive and performative foundations of competence, what might be called ecological skills, four points are worth emphasizing: (1) learning disciplinary skills is more a matter of enculturation than of cognitive development; thus contextualizing learning in the workplace permits both a cognitive apprenticeship and a life-long perspective on work as a learning opportunity; (2) recognizing skills to be relational, interactive and contingent permits us to focus more on the entire social network than on any single strand of relationships; (3) learning in the workplace helps develop situation-assessment skills as well as performance and transfer skills; and (4) learning

161. *Id.* at 620.

162. *Id.* at 622.

163. *Id.*

164. *Id.* at 623.

165. *Id.* at 624.

166. *Id.* at 628.

in the workplace promotes confrontation of ineffective heuristics and their replacement with genuine understandings.¹⁶⁷

All of these considerations support learning in clinics, but Baker's point is that they support learning outside of clinics, on the job, as well. In some respects, moreover, these factors may suggest that more can be learned on the job than in the clinic, because jobs are even more real than clinics. If, for instance, what is to be learned is "enculturation,"¹⁶⁸ the culture of lawyering is primarily outside the walls of law schools.

But it might be that practice teaches all too well. Baker doubts the force of critiques of learning-from-work that assert that students in legal jobs will not receive meaningful assignments or adequate supervision.¹⁶⁹ He also argues that "the fear that students will be seduced by bad [that is, substandard] practice seems somewhat exaggerated."¹⁷⁰ He is concerned, however, by the possibility that "students are routinely exposed to unethical or immoral practice," and that the result may be "a lessening of students' moral standards—a socialization to degraded norms of practice—and a profound sense of disillusionment."¹⁷¹

What is to be done about this? One important answer that clinical teachers have given is that students need to learn to reflect on their experiences. Precisely because law school skills teaching is done by professional teachers, and often in situations where practice is deliberately slowed down to allow time for analysis, law school is the place where the practice of reflection is inculcated. Baker raises questions about the centrality of conscious reflection—in part because so much of cognition, as he has already argued, is not a matter of consciously formulated propositions and reasons.¹⁷² But he ultimately agrees that it is a happy fact that "people are capable of criticizing their culture."¹⁷³ "[I]n order to reduce the dangers of 'co-op'tation,'" he writes, "we should encourage our students to maintain a critical perspective on their process of acculturation, *before, during, and after* their practice-based experiences."¹⁷⁴ What is the role of law schools in this encouraging? Baker raises a series of questions about how law schools might best promote critique, and observes that "[t]his range of questions does not cause me to question the desirability of critique, social action, and

167. *Id.* at 628. Baker develops each of these points in detail. *Id.* at 628–39.

168. *Id.* at 639. Brooks and Madden also emphasize the understanding of professional education as socialization or acculturation. Brooks & Madden, *supra* note 44, at 338.

169. Baker, *supra* note 160, at 642–46 (discussing work assignments and quality of supervision, respectively).

170. *Id.* at 643.

171. *Id.* at 644 (discussing Lawrence K. Hellman, *The Effect of Law Office Work on the Formation of Law Students' Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991)).

172. *Id.* at 650–51.

173. *Id.* at 651.

174. *Id.* at 657.

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reform, but merely reminds me that we have only tentative theory or data that reliably predicts where critique can most meaningfully occur.”¹⁷⁵

In the end, therefore, Baker both widens the range of sources of practice education and highlights how complicated the analysis and improvement of these multiple domains may be. As he writes, “[t]he relation between the legal classroom and law practice is not simply hierarchical, one being more important than the other; the relationship might partly be one of two worlds apart and in other respects it might be collaborative, interactive, synergistic, or mutually constitutive.”¹⁷⁶ Only further work will tell.

III. THE ROLE OF RESEARCH

All of the articles in this issue reflect both how much we have learned, and how much is still to be discovered. Several emphasize the need for research—to assess the value of particular forms of law practice, for example, or to understand better how students learn and how we as law teachers can assist that process. Professor Katherine Kruse’s article, *Getting Real About Legal Realism, New Legal Realism, and Clinical Legal Education*, focuses particularly closely on the role that law clinics might play in better understanding the legal system and so knowing better what to teach our students.¹⁷⁷

Professor Kruse reminds us that “[o]ne of the earliest calls for clinical legal education came from the American Legal Realist movement of the 1920s and 1930s, in Jerome Frank’s plea for the creation of *clinical lawyer-schools*.”¹⁷⁸ Legal realism, as she also reminds us, was deeply concerned with the “distinction between the *law in books* and the *law in action*.”¹⁷⁹ Aren’t clinics necessarily concerned with this same distinction? In one sense, the answer is surely yes: as I commented earlier in this Introduction, every skills teacher aims, at least in part, to help law students become effective lawyers, and effectiveness is impossible without a full sense of how the *law in action* functions. And yet, Kruse argues, “there has been relatively little analysis of how clinics might be consciously designed around exposing students to gaps between the law in books and the law in action.” Moreover, “empirical scholarship in the legal

175. *Id.* at 655. Brooks & Madden discuss Baker’s “ecological learning” theory, and suggest that what is missing “is a normative theoretical grounding that can inform and guide students in connection with their work experiences.” Brooks & Madden, *supra* note 44, at 356. They suggest that the concepts of relationship-centered lawyering provide this grounding. *Id.* More generally, we might say that one way to encourage such critical thinking is to make sure students have the perspective with which to really understand the dilemmas of practice.

176. Baker, *supra* note 160, at 656.

177. Katherine R. Kruse, *Getting Real About Legal Realism, New Legal Realism, and Clinical Legal Education*, 56 N.Y.L. SCH. L. REV. 659 (2011–12). Full disclosure: I am pleased to say that Professor Kruse and I were two of the five authors of a book on legal interviewing and counseling. See ELLMANN, DINERSTEIN, GUNNING, KRUSE & SHALLECK, *supra* note 36.

178. Kruse, *supra* note 177, at 660 (emphasis added).

179. *Id.* (emphasis added).

realist tradition,” which does explore these gaps, “often fails to connect its behavioral insights to the tasks of legal representation.”¹⁸⁰

Kruse thoughtfully traces the roots of this separation of two strands of law school effort that seem to share a common focus. Jerome Frank himself was so profoundly convinced of the idiosyncratic character of trial courts’ work, she urges, that it would have been hard to find in his approach “a structure for helping students generalize from and transfer the knowledge gained from exposure to practice in his clinical lawyer-school to their experience as lawyers in the future.”¹⁸¹ Meanwhile, other legal realists remained too subject to “the dominance of appellate case law” as a focus of attention,¹⁸² or embraced a form of social science explanation so Olympian that it “fail[ed] to capture the way that judges and lawyers look at law in making legal arguments and decisions.”¹⁸³ The practical energy of the movement, it seems, was largely channeled into curricular reforms such as the creation of courses built around a social problem (for instance, “family law”) rather than a doctrinal area—not a trivial development, but well short of the establishment of a skills curriculum.¹⁸⁴

Kruse believes, however, that today these two strands of attention to the actual life of the law can converge, because each has now developed beyond its earlier roots. On the one hand, Kruse emphasizes the rise of the “new legal realism.” This movement, she writes,

remains committed to the basic premise that a full study of the law must occur from the “bottom up,” defined as a focus on “the impact of law on ordinary people’s lives” as well as a sensitivity to the fact that “less powerful persons in society are often more invisible and silenced.”¹⁸⁵

Moreover, she says, “[t]he New Legal Realists’ proposed ‘path between idealism and skepticism’ is paved by pragmatist methods of engaged, embedded or experimental research with its genesis in real-world problem-solving.”¹⁸⁶

On the other hand, as Kruse observes, these “tenets of the New Legal Realism . . . fit closely with the goals and methods of clinical legal education.”¹⁸⁷ “An increasingly professionalized corps of clinicians has developed a more sophisticated pedagogy of clinical instruction that integrates theory and practice and helps students generalize from their clinic casework to larger issues of law, lawyering, and social justice,”¹⁸⁸ and what the new legal realist research discovers, today’s clinicians are likely to want to

180. *Id.* at 661.

181. *Id.* at 665, 667–68.

182. *Id.* at 669–70.

183. *Id.* at 671.

184. *Id.* at 672–76.

185. *Id.* at 680 (quoting Howard Erlanger, et al., *Forward: Is It Time for a New Legal Realism?*, 2005 *Wis. L. Rev.* 335, 339–41 (2005)).

186. *Id.* at 681.

187. *Id.*

188. *Id.* at 676.

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teach. Clinics, after all, simply *are* concerned with the actual workings of the law.¹⁸⁹ Moreover, clinics aspire to teach both about how to handle individual cases and about how the system of which those cases are a part functions. New legal realist research “can help [clinicians] focus questions, introduce readings, and structure analysis that will assist students in making the connections between individual advocacy and systemic or social justice reform”¹⁹⁰

Moreover, what the new legal realists want to discover, clinicians are poised to illuminate. “[C]linicians,” as Kruse writes, “regularly engage the elusive ‘bottom-up’ perspective of those with less power in society that the new legal realist scholars hope to capture in their redefined ‘law and society’ research.”¹⁹¹ Pursuing such insights may come more readily to clinicians today, in addition, if Kruse is right that “[w]ith an increasing number of clinical faculty members in tenure-track positions under the same or substantially similar expectations for scholarship as their non-clinical colleagues, clinician-scholars have increasingly turned their attention” to scholarship that goes beyond their longstanding work in “clinic teaching, clinic design, and lawyering.”¹⁹² This observation captures a critical development in the world of skills teaching, a development reflected in this volume as a whole and also in the Clinical Theory Workshop over the years—the rise, and diversification, of scholarship as part of the role of many skills professors.

And yet it seems fair to say that not much of this research has yet been done by clinicians. Why not? Undoubtedly part of the reason is that good social science research is as difficult as any other task to perform well—and requires its own special expertise. It is no small matter to find time and acquire expertise, and at some institutions the sheer unconventionality of this work may give clinicians further reason to hesitate.¹⁹³ But Kruse also suspects that “institutional and psychological boundaries . . . separate” clinicians and new legal realist researchers from each other, and she urges both sides to overcome these difficulties and develop “collaboration, mutual exploration and experimentation.”¹⁹⁴

Perhaps it is not out of place to add another reason why this convergence would be so welcome: it is necessary. We cannot actually know what to teach our students unless we understand how the legal system works. Equally, we cannot know what methods of teaching do help our students learn without studying that question.¹⁹⁵ And we cannot satisfy our students, our accreditors, or ourselves that we are actually

189. *Id.* at 681–82.

190. *Id.* at 682.

191. *Id.* at 683.

192. *Id.* at 676.

193. *Id.* at 683.

194. *Id.* at 684.

195. *Cf.* Mansfield & Trubek, *supra* note 56, at 386 (calling for clinics to be “‘laboratories,’ in which new models of lawyers can be explored and analyzed”).

providing the education we should unless we can acquire this knowledge. There is, as I have already said, a great deal to be done.

IV. CLOSING THOUGHTS

If we have a lot to learn, however, it is because we have already learned a great deal. Clinical scholarship, exemplified by the twelve pieces in this issue, is serious, insightful, critical work. It is anything but abstract, or a diversion from the work of cases and teaching; instead, it is, again and again, a part of clinicians' and skills teachers' ongoing, collective effort to improve our contribution to preparing the lawyers of the country and the world.

Brook Baker reminds us that cognition is a social practice, and certainly that is true of scholarship as well. If we want to read, and write, clinical scholarship, we need a community of clinical scholars. That community has come together in many different venues—in the pages of the *Clinical Law Review* and other journals (including this one); in the many scholarship meetings held at annual clinical conferences; in the pathbreaking conferences held by UCLA and their British co-sponsors; and in several regional workshops of clinical scholars. All of these have been important—and I hope it is not immodest to say that the Clinical Theory Workshops have been important too.

The Twenty-Fifth Anniversary Conference included a dinner session, at which I endured both gentle teasing and generous praise. I am very grateful to everyone who was part of that dinner or of any aspect of the conference.¹⁹⁶ But I cannot end without speaking of the song that Bob Dinerstein wrote, and he and others performed.¹⁹⁷ Anyone who has heard Bob's songs of course dreams of being the subject of one, and in that respect my life is now complete. But I take the central lyric of his song, slightly rephrased, as really being about the work and fun that all of us who've been part of the Clinical Theory Workshop have had over the years. Or, in other words:

Don't say nothin' bad about our workshop!

196. A range of New York Law School administration and staff members contributed to the tasks of organizing this conference, including Harry Althaus, Jessica Aviles, Marvin Bustamante, Regina Chung, Steven Cunningham, Adam Cohen, Mike DeMeo, Charles Engelberg, Ray Grant, Nancy Guida, George Hayes, Ted Hicks, Amelia Jonakait, Usheevii King, Karen Kolyer, Odilka Santiago, Tyler Sidell, John Southard, Lillian Valle-Santiago, Kathy Wong, and especially Claire Voulgarelis. Many thanks to all of them, and to the members of the *New York Law School Law Review*.

197. ROBERT D. DINERSTEIN, *Don't Say Nothin' Bad About My Workshop* (2010), adapted from THE COOKIES, *Don't Say Nothin' Bad (About My Baby)* (1963) (performing an original work by Gerry Goffin and Carole King), and premiered by Bob Dinerstein with Jenny Lyman, Jean Koh Peters and Ann Shallick on Oct. 1, 2010.