

2017

Open to Justice: The Importance of Student Selection Decision in Law School Clinics

Deborah N. Archer

New York Law School, deborah.archer@nyls.edu

Follow this and additional works at: https://digitalcommons.nyls.edu/fac_articles_chapters

 Part of the [Legal Education Commons](#)

Recommended Citation

Archer, Deborah N., "Open to Justice: The Importance of Student Selection Decision in Law School Clinics" (2017). *Articles & Chapters*. 967.

https://digitalcommons.nyls.edu/fac_articles_chapters/967

This Article is brought to you for free and open access by the Faculty Scholarship at DigitalCommons@NYLS. It has been accepted for inclusion in Articles & Chapters by an authorized administrator of DigitalCommons@NYLS.

OPEN TO JUSTICE: THE IMPORTANCE OF STUDENT SELECTION DECISIONS IN LAW SCHOOL CLINICS

DEBORAH N. ARCHER*

How should clinical law professors assess the application of a student whose fundamental values diverge from those of that particular clinic? A successful clinical experience is not just about what and how we are teaching. Important issues arise when we think about who we are teaching and the context in which we are teaching them. Student selection decisions impact the ability to meet the myriad goals of a clinical program, including the educational experience of the other students participating in the program and the quality of representation afforded to clients of that clinic. Our decisions about which students we admit or exclude from a particular clinic raise issues about clinical law professors' educational obligations to our students and our representational obligations to our clients.

As clinical legal education plays an increasing role in legal education, clinical law professors must give greater consideration to the methods and criteria we use to admit students into clinical programs and attend to the risks that divergence of student, clinic, and client values can create. This essay explores some of the challenges in making student selection determinations that balance the multiple goals of clinical education.

I. INTRODUCTION

I teach a year-long course called the Civil Rights Clinic. My students and I represent individual victims of race, gender, ethnic, religious, and disability discrimination. We also engage in a substantial amount of systemic reform litigation on issues of racial and economic justice. We have worked on cases involving criminal justice reform, voting rights, educational equity, and school desegregation. In addition to my clinical course, I teach antidiscrimination law courses, Civil Procedure, and a colloquium that explores the role of lawyers in social justice movements and what it means to be a lawyer fighting for social

* Visiting Clinical Professor of Law, New York University School of Law; Professor of Law and Director of the Racial Justice Project, New York Law School. I am deeply grateful to Tamara Belinfanti, Carol Buckler, David Chang, Richard Buery, and Michael Pinard for reviewing drafts of this Essay. I am also grateful to Christopher DeLong and Elizabeth Friedrich for their excellent research assistance.

justice. Every student who enrolls in one of my upper-level courses, either clinical or doctrinal, should have a fair understanding of what he or she is getting into before the first day of class. The goals of the courses are conveyed through the course titles and course descriptions, and my approach to the issues addressed is evident through my professional background as a civil rights litigator. So it is no surprise that most of the students who enroll in my courses have some commitment to social justice.¹ Yet every year a handful of students who do not embrace traditional notions of social or racial justice,² and even some who can be fairly described as hostile to these concepts, enroll in my seminars. Some of these students are on the fence about their opinions on particular questions and are looking for more effective tools to help them analyze their points of view. Some of these students could be defined as politically conservative and want to ensure that their perspective is considered as part of the discussion. And others are trying to do what any good lawyer does: gain a better understanding of the opposition. Although their enrollment presents certain challenges for me as a professor, including ensuring that all classroom discussions are productive and respectful, these students usually enhance the classroom discussion and educational experience for everyone, including me, by helping me to sharpen my analysis and gain new insights. Their participation also helps give me the opportunity to expose other students to a different perspective.

One semester, a very bright and engaged student who I will call Lisa enrolled in my social justice colloquium. She was deeply politically conservative and unsupportive of traditional notions of social justice. In a room surrounded by students with very contrary ideas, she was never shy about voicing her opinions. When issues of racial discrimination were raised in class, Lisa, who is White, said that it was in fact Black and Latino people who were promoting racism by focusing on the times they thought they were treated differently than someone of another race. To her, it was not an issue of racism, but personal responsibility—Blacks and Latinos who claimed to be the victims of discrimination should take personal responsibility for their actions in-

¹ While there is no generally accepted definition of social justice, it is fundamentally the recognition of marginalized groups in society and the empowerment of those groups to decrease power disparities. See, e.g., Claire P. Donohue, *Client, Self, Systems: A Framework for Integrated Skills-Justice Education*, 29 *GEO J. LEGAL ETHICS* 439, 447 (2016) (“At its most basic level, social justice promotes the interests of people otherwise marginalized by society.”); Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 *HASTINGS RACE & POVERTY L. J.* 219, 223 (2013) (“[Social justice] focuses on giving voice to the voiceless, providing power to the powerless, and aiding in overcoming subordination.”).

² Racial justice is social justice through the lens of race, focusing on the ways in which racial groups are marginalized.

stead of blaming others. In her view, racism against people of color was largely a thing of the past. Moreover, she believed that continuing to raise claims of racial discrimination was itself promoting racism against White people. When we discussed economic inequality and the rights of poor people, she said that poor people should be afforded no additional protections because most chose their position in life. Lisa often discussed her friend who immigrated to the United States from Russia “with nothing” and went on to find success as proof that it was a lack of will that kept families in poverty generation after generation. As for the overall issue of social justice, she frequently said that too much of the focus of social justice lawyering is on poor people and minorities. She believed that “regular” White people have social justice problems too and more attention should be paid to those problems.³

In many ways, Lisa was representative of the numerous conservative students I have had in my seminars over the years: she welcomed the opportunity to have conversations about justice, but remained deeply committed to her beliefs and perspectives. She and I had many conversations about the statements she made in class, both in the classroom and privately. She listened to my perspective, but she often appeared to be listening to respond, not to understand. Her classmates repeatedly engaged her on her positions. It was evident that she was not just repeating “the party line,” but had thought seriously and deeply about her positions. Her thought and care in constructing her opinions required the same of the others in the class who sought to challenge her and elevated the quality of the discussion. The other students that semester, all committed to social, economic, and racial justice, were forced to sharpen their own analysis. It was also clear that Lisa was not going to adjust her perspective. Lisa did not budge from the first day of class to the last; she never wavered from her firmly held beliefs: discrimination against people of color and the poor were not “real” social justice issues.

Given Lisa’s beliefs—expressed and debated over the course of the semester—I was surprised when she applied to participate in the

³ On this point, Lisa may have been ahead of her time. An increasing amount of attention is being paid to the particular problems facing White people as a community. See, e.g., Travis Linnemann & Tyler Wall, *This Is Your Face on Meth: The Punitive Spectacle of ‘White Trash’ in the Rural War on Drugs*, 17 THEORETICAL CRIMINOLOGY 315 (2013) (Examines the relationship between the Faces of Meth anti-meth campaign and “how the photographs are largely structured by and embedded within already existing cultural anxieties about the figure of ‘white trash’, reflecting both the dominance and precariousness of white social position.”); Colin Webster, *Marginalized White Ethnicity, Race and Crime*, 12 THEORETICAL CRIMINOLOGY 293 (2008) (“[R]acism and classism towards marginalized white working-class ethnicities have criminalized these groups in ways not too dissimilar from the criminalization of visible working-class minorities.”).

Civil Rights Clinic for the following academic year. As I did with all students who applied, I met with her to learn more about why she was interested in participating in the clinic. She did not profess to have changed her beliefs about race or discrimination, but stated that she enjoyed engaging liberals on these issues and thought we could continue the discussions we began in the seminar in the context of the cases the clinic took on. She also said her primary motivation was to gain practical litigation experience, a goal shared by most students who enroll in litigation-based clinics.

During the rest of our meeting, I tried to give Lisa a better sense of what participating in the clinic would mean and how the clinic experience would differ from the seminar I taught. I discussed the spectrum of goals I had for the clinic and my expectations for students who enrolled. I explained to her that my clinic starts from a place of accepting that the continued existence of discrimination against people of color and the poor is a significant public policy and legal concern. Our advocacy moves forward from that premise. Students in the clinic must respect the perspectives and wishes of the client, not just in the outcome the client seeks but in the means through which we achieve that outcome. To be an effective advocate, students must be able to see the world from the clients' perspective, and that includes clients who believe they are the victims of racial discrimination. I explained that although she may feel uncomfortable with highlighting racial issues, her post-racial approach to society's problems could not shape her approach to our client's legal issues. At the end of the meeting, Lisa thanked me for my time and sharing my perspective, and said that she had a lot to think about.

After she left, I considered whether I should accept Lisa into the clinic. Having spent a semester with her, I felt that I knew Lisa well and it was evident to me that her expressed values significantly diverged from the core values of the clinic. In our past conversations, Lisa expressed not only a strong resistance to acknowledging the validity of race, ethnic, or economic discrimination claims, but hostility toward the types of people the clinic represents. Her beliefs caused me to question her ability to represent the clinic's clients zealously and to be a part of a collective effort aimed at getting justice. During the time I knew her, Lisa showed no evidence of being able to put aside her personal beliefs to effectively fulfill her professional obligations. Can someone who is hostile to the individuals and issues central to the Clinic ever provide effective representation? Would accepting her undermine the goals of the Civil Rights Clinic? Would I be able to accept Lisa into the clinic while balancing my obligations to my other students and to our clients?

Clinical law professors have engaged in a significant amount of reflection and evaluation of the importance of clinic design,⁴ pedagogy,⁵ supervision styles,⁶ client selection,⁷ and case selection,⁸ but very little has been written about the significant impact student selection decisions have on the clinical experience and how clinical law professors should assess the applications of students whose fundamental values diverge from those of the clinic.⁹ A successful clinical experience is not just about what we are teaching or how we are teaching. Important issues arise when we think about who we are teaching and the context in which we are teaching them. The experiences, perspectives, and attitudes of the students are critical components of any clinical program. Student selection decisions impact the ability to meet the myriad goals of a clinical program, including the educational experience of the other students participating in the program and the quality of representation afforded to clients of that clinic. Our decisions about which students we admit or exclude from a particular clinic raise issues about clinical law professors' educational obligation to our students and our representational obligations to the clients of the clinic.¹⁰

For many law students who participate in clinical programs, the singular focus of a clinical experience is the acquisition of foundational lawyering skills such as interviewing, counseling, and trial skills. But most clinics have a dual mission. They also afford an opportunity to impart a passion for social justice and the broader skills necessary to achieve social justice.¹¹ The fundamental goals of the clinic I

⁴ See, e.g., Stephen Wizner & Dennis Curtis, "Here's What We Do": Some Notes About Clinical Legal Education, 29 CLEV. ST. L. REV. 673, 681 (1980).

⁵ See, e.g., Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984).

⁶ See, e.g., Jennifer P. Lyman, *Getting Personal in Supervision: Looking for That Fine Line*, 2 CLIN. L. REV. 211 (1995).

⁷ See, e.g., Nina W. Tarr, *Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers*, 35 WM. MITCHELL L. REV. 1011, 1026–31 (2009) (examining client selection processes and limitations).

⁸ See, e.g., David F. Chavkin, *Symposium, Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLIN. L. REV. 245, 262–66 (2003) (arguing smaller cases provide greater benefit to students, allowing them to take responsibility from beginning to end).

⁹ See Robert L. Jones, Jr., Gerard F. Glynn, & John J. Francis, *When Things Go Wrong in the Clinic: How to Prevent and Respond to Serious Student Misconduct*, 41 U. BALT. L. REV. 441, 442 (2012) (examining student misconduct, prevention methods and constructive responses); Chavkin, *supra*, note 8.

¹⁰ Student selection decisions also raise issues related to a law school's obligation to the legal profession and general public. However, that discussion is beyond the scope of this Essay.

¹¹ Antoinette S. Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLIN. L. REV. 307, 309–10 (2001)

teach necessarily include instilling a deeper, more accurate understanding of the nature, forms, and impact of discrimination on people of color and other marginalized and victimized communities; an appreciation for the way discrimination and marginalization have impacted and continue to impact the lives of our clients; and providing client representation that validates the experiences of our clients and empowers them in light of those experiences. I want my students to see the ways our institutions and structures perpetuate and thrive off of economic and racial inequality, and partner with our clients to challenge that system. And, I want my students to understand the ways in which race, gender, and poverty impact access to justice and to understand their obligations as members of the legal profession to respond to that lack of access. My approach to teaching legal advocacy skills is infused with this purpose. Legal advocacy skills are not neutral: they are always shaped and influenced by context. Teaching goals inform the way we teach and the types of cases the clinic accepts. Should they also inform the students who are selected to participate?

This question goes to the heart of the clinical method. Those of us who have toiled in the vineyards of academia for many years know all too well that every class is a unique organism. Whether we work in a doctrinal setting or a clinical environment, to be an effective teacher is to recognize that no two classes are alike. Even when we teach the same subject year in and year out, each class is different because the teaching and learning environment is profoundly shaped by the interpersonal dynamics between teacher and students and among students. What is true of teaching in general is particularly so for clinical teaching because the interpersonal dynamics of a small clinical group mean that any one individual student has the potential to exert a powerful influence on the workings of the group.

Admittedly, student selection decisions should not be employed to exclude a student from a particular clinic because she does not yet hold a passion for racial justice or rejects a traditional understanding of social justice. Nor do I believe that a student's political views should automatically determine admissions decisions. My concerns about Lisa were not grounded in her conservative beliefs and may be somewhat clarified when contrasted with my experience working with another socially and politically conservative student. Rich was a leader of the law school's conservative student organization. He and I worked together on an advocacy project related to race-conscious ad-

(examining the limitations of specialized clinics in achieving the dual mission of skills training and social justice); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997, 997-99 (2004) (recounting the modern development of law school clinics).

missions programs. While our views on most social justice issues differed, I never questioned Rich's underlying respect for individuals who were victims of discrimination or who suffered the impact of economic inequality, nor did he ever give me any reason to question his sincerity in wanting to work to address the social justice issues presented by our project. Depending on the pedagogical and service goals of the clinic, a student should have an openness and willingness to engage in that type of lawyering and to embrace the core mission of the clinic. Rich did. But, not all students can approach a clinical experience with the openness necessary to effectively participate in a clinic. In fact, some may approach their clinical experience with a demonstrated resistance to serving the types of clients the clinic serves or to the broad goals of the clinical program. When resistance becomes hostility, clients may be placed at risk.

As clinical legal education plays an increasing role in legal education, with a broader range of clinical offerings and intensified student interest, we must give greater consideration to the criteria we use to admit students into clinical programs and attend to the risks that divergence of student, clinic, and client values can create. Certainly, some clinical law professors do not believe that law schools should engage in any individualized student selection decisions, and instead encourage open enrollment in clinical programs.¹² However, where student selection models are employed, it should be done with all of a clinic's goals in mind, rather than isolating the singular goal of providing an opportunity for experiential learning. This essay endeavors to identify some of the challenges clinical law professors face in making student selection determinations that balance the multiple goals of clinical education. This essay is not a blueprint. Nor does it attempt to prescribe a method for clinical professors to use when making student selection determinations. Instead, the essay explores a framework to inform selection decisions that enhance the clinical experience for the many constituents a clinic serves.

II. INHERENT TENSIONS IN STUDENT SELECTION DECISIONS

Clinical law professors are often working in the shadow of potential conflicts between their primary role as a teacher and their role as an advocate.¹³ That conflict can become more pronounced when

¹² See Jan Stiglitz, Justin Brooks & Tara Shulman, *The Hurricane Meets the Paper Chase: Innocence Projects New Emerging Role in Clinical Legal Education*, 38 CAL. W.L. REV. 413, 428 (noting the need for student commitment and ability in the clinical context and noting selection methods at law schools around the country).

¹³ See Jones, Glynn & Francis, *supra* note 9, at 443. *But see also* David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 S.M.U. L. REV. 1507

making student selection decisions as those decisions challenge us to strike the right balance between the interests of the student applying to the clinic, the other students in the clinic, and the clients served by the clinic. It may also be difficult to achieve the right balance between teaching the students and doing by the students, between social justice teaching and skills teaching, and between being client-centered and student-focused.¹⁴ Indeed, successful clinical design requires balancing educational, social justice, and community service goals.¹⁵ The balance we strike in clinical design must also reflect a law school's institutional needs and priorities.¹⁶ Striking a balance between these considerations in student selection decisions is an important piece of the puzzle. Clinical law professors should think critically about how the admission of a student will impact the educational experience of students in the clinics and the clients and communities that the clinic serves.

A. *The Fundamental Utility of Student Selection*

Some clinical law professors fear that clinic selection methods may be used to identify and select students the faculty member most wants to teach—because those students are the most political or the most talented—rather than those students who can most benefit from clinical legal education.¹⁷ Clinical law professors should not design student selection processes in order to exclude students with poor skills or who lack a long-term professional commitment to serving low-income clients. I have taken students from both categories before and they have successfully represented the clinic's clients and contributed to the learning experience of the other students in the clinic. I have always had students who believed in social and racial justice, but whose primary professional interests were in corporate law. I have had excellent students in the clinic who have gone on to work at large firms doing both litigation and transactional work, or as prosecutors. I take pride in receiving emails and calls from these students assuring me that they are integrating all of the lessons they learned in the clinic into their current work. Wherever they are, they believe that they are

(1998) (arguing for the maximization of student autonomy).

¹⁴ I do not concede that my concerns about accepting Lisa into the clinic represent a lack of student-focus, but rather was an acknowledgment that she may not have been ready for the educational experience provided in my clinic and that her participation posed the potential to significantly undermine the educational experience of the other students in the clinic.

¹⁵ Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1483 (1998); see also Aikin & Wizner, *supra* note 11, at 1006.

¹⁶ *Id.*

¹⁷ See Chavkin, *supra* note 8, at 267.

working in ways large or small to advance justice. What I think these other students brought to the clinical experience—and what I was not convinced Lisa would bring—was respect for our clients, an appreciation for the work of the clinic, an open mind, and a desire to learn about our clients and the systems that oppress them. These are not only the characteristics I look for in students who apply to the clinic, but also characteristics I believe are necessary for a meaningful and successful clinical experience for all involved.

Employing student selection measures does not diminish the importance of supporting students as they seek to achieve their individual educational goals. But a student's individual educational goals must be balanced against other factors and considerations. First, while it is important to provide students with educational opportunities that help students meet their individual plans and goals, a student does not have a right to participate in the clinic of his or her choice. Yes, many law school classes are open enrollment and allow any student who is interested to enroll. But generally clinics are not open enrollment courses. Like other limited enrollment classes in the law school curriculum, clinical courses should employ a variety of criteria in order to select students for participation based on student interest and the goals of the particular course. All law schools should be encouraged to guarantee their students the ability to participate in a clinical course, but not in the clinical course of their choice. Where a law school guarantees or requires a clinical experience, additional concerns certainly come into play to make sure there are clinics that are appropriate for all types of students. However, neither a law school's guarantee nor the American Bar Association's requirement that law students participate in experiential learning prior to graduation¹⁸ override a clinic's obligation to its clients or erases considerations about how the class composition will impact the learning environment for all students in the clinic.

B. Capacity to Satisfy Professional Responsibilities

The reality is that not all students can get into the clinic of their choice—or indeed into any clinic—before graduating from law school.¹⁹ The clinic that I teach consistently has more applications

¹⁸ A.B.A., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 303(a)(3) (2016).

¹⁹ An increasing number of American law schools are moving to mandatory participation in clinical programs or guaranteeing a clinical experience to every student who wants one. See e.g., Erwin Chemerinsky, *Why Not Clinical Education?*, 16 CLIN. L. REV. 35, 37 (2009); Daniel M. Schaffzin, *So Why Not an Experiential Law School. . . Starting with Reflection in the First Year?*, 7 ELON L. REV. 383, 384–90 (2015) (reviewing the recent rise of clinical legal education).

than available slots, therefore I must employ some method to narrow the pool. Recognizing the need for guidance, the American Association of Law Schools (“AALS”) has provided guidelines to assist clinical law professors in making student selection decisions.²⁰ The AALS guidelines suggest that clinical law professors engaging in student selection decisions consider the requirements of student practice rules, the student’s completion of prerequisites, student seniority, a student’s career goals, whether the student has already taken a comparable clinical course, and the capacity of the student to satisfy their professional responsibility to the clients.²¹ Although most of these guidelines do not speak to personal assessments about a student’s individual character, beliefs, and experiences, a determination of whether a student possesses the capacity to satisfy professional responsibility obligations to the clients necessarily invites an assessment that must contrast the student’s expression of deeply held beliefs against the nature of the representation provided in the clinic and the types of clients the clinic serves.²² Given Lisa’s strongly held beliefs about race and class, it was legitimate to consider whether she could give her clients the respect, deference, and power our ethical rules demand.

C. *Individual and Collective Learning Goals*

In putting together a clinic, the educational goals of an individual student must be balanced against the educational experience of all of the other students in that course. As discussed earlier, students who hold views contrary to the majority of the other students in a doctrinal class can enrich the classroom discussion. But, having a student like Lisa in the clinic seminar may not necessarily provide a similar educational benefit. Her positions could push the other students to sharpen their arguments and analysis. For example, many students believe that we as a society are post-racial. They embrace the color-blind narrative and resist highlighting racial issues for fear of being seen as racists themselves.²³ Many believe that racism only exists on the

²⁰ CLINICAL LEGAL EDUCATION: REPORT OF THE AALS-ABA COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION (1980) [hereinafter CLINICAL LEGAL EDUCATION GUIDELINES].

²¹ *Id.*

²² Law schools that are part of a public university system may need to attend to the ways student selection procedures interact with constitutional protections. *See cf. Wishnatsky v. Rovner*, 433 F.3d 608 (8th Cir. 2006) (law school clinic’s alleged denial of representation based on prospective client’s viewpoint could support a claim for violation of the First Amendment). Whether a decision to not accept a student into a clinical program based on his expression of core values linked to the substance of that clinic or the clinic’s clients raises First Amendment issues is beyond the scope of this essay.

²³ Deborah N. Archer, *There is No Santa Claus: The Challenge of Teaching the Next*

margins.²⁴ Lisa could stand as an example that we have not moved completely beyond our racist past and we still have work to do. Indeed, Lisa wanted to continue in the clinic the debates around the existence of racism she had in the doctrinal seminar. However, a clinical course may not be the best place to continue these important discussions or debates. The clients and their issues drive the work. The focus of the class is to teach the skills and doctrine necessary for students to give their clients the representation they deserve and for students to have the space to reflect on their practice experiences. Clinical professors regularly lament the limited amount of time they have to teach all of the critical components needed to prepare their students for client representation.²⁵

Students such as Lisa pose a risk that they may hijack the clinical seminar and class discussion, leaving little time to prepare the other students to engage in live-client representation. Clinical law professors cannot afford to turn over their seminar to students whose agendas and approaches to issues diverge from the legal needs of their real clients. Discussions about the impact of the substantive law, the meaning of justice for a client, and the most effective means to achieve justice are useful discussions in a clinical course, but those conversations should be linked to the needs of the clients. Students admitted to the clinic need to be open to learning and willing to break through their preexisting assumptions and beliefs. They cannot not be limited by how they have experienced the world up to this point. Therefore, a critical question for clinical law professors is whether to detract from the learning experience of other students in the course by committing a disproportionate amount of scarce classroom time and supervision sessions to trying to move a student toward an understanding of social and racial justice rather than focus on more advanced skills of representation in that context.

Finally, clinical law professors should pay attention to whether the participation of a particular student in the clinic will inhibit the ability of other students to adequately prepare to represent their clients. If a student with Lisa's perspectives is enrolled in a clinical program that works on social justice and racial justice cases, the supervising clinician may be required to spend an inordinate amount of instructional time teaching about fundamental social justice princi-

Generation of Civil Rights Lawyers in a "Post-Racial" Society, 4.1 COLUM. J. RACE & L. 55, 57 (2013).

²⁴ *Id.* at 59.

²⁵ See, e.g., Natalie Gomez-Velez, *Structured Discrete Task Representation to Bridge the Justice Gap: CUNY Law School's Launchpad for Justice in Partnership with Courts and Communities*, 16 CUNY L. REV. 21, 31 (2012) (observing the natural limits on resources and time).

ples rather than “teaching through doing” in order to ensure that the rights and interests of the client are protected.²⁶ The student’s inclusion would necessitate tradeoffs that could undermine the effectiveness of the clinical experience for that particular student and the other students in the class.

III. BALANCING THE GOALS OF CLINICAL LEGAL EDUCATION

When I first reviewed Lisa’s application to the Civil Rights Clinic, the advocate in me immediately thought she should not be accepted. If I were still an attorney at the NAACP Legal Defense and Educational Fund, Inc. and Lisa applied for a position, I would not support hiring her. She does not share the organization’s values, and there are too many other talented, thoughtful lawyers out there who are also deeply committed to the organization’s mission.²⁷ There are other organizations whose purpose is in line with her beliefs and she could certainly seek to work in one of those places.²⁸ When hiring in the private sector, employers are free to seek employees that believe in the organization’s mission.

To a certain extent, this is true about my clinic and the role of clinical legal education more broadly. My clinic is about social justice and racial justice. I am trying to create a sense of shared commitment. I want students to understand that the clinic is a part of the movement for equality. I want everyone who participates in the clinic to believe in that mission and to support each other collectively in furtherance of the mission. But my clinic is not a stand-alone civil rights law firm. It exists as part of a larger educational program and the goals and mission of that program must be factored into any determination of which students should be allowed to participate. As a clinical legal educator, my role and responsibilities are different from that of a lawyer who is solely a social justice advocate. So student selection decisions must move beyond the advocacy framework to consider the unique role of clinical legal education.

A. *Embracing a Social Justice Mission*

My views and perspectives about Lisa’s ability to support the mission of the clinic and further the clinic’s work are steeped in the fact

²⁶ See Stephen Wizner, *Walking the Clinical Tightrope: Between Teaching and Doing*, 4 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 259, 262 (2004).

²⁷ See, e.g., Richardson R. Lynn, *Mission Possible: Hiring for Mission in a Vague World*, 33 U. TOL. L. REV. 107, 108 (2001) (discussing the importance of faculty hiring consistent with a law school’s “well-defined” mission).

²⁸ In fact, after graduation she did end up working for an organization where her beliefs were not in conflict with the goals of the organization.

that my clinic has a clear social justice mission. The legal academy is currently engaged in a debate about the social justice mission of clinical legal education and whether the pursuit of social justice should continue to be a central goal of clinical education.²⁹ Those who do not subscribe to a social justice mission often frame their concerns in terms of wanting the latitude to provide a broader range of skills development opportunities to students.³⁰ Others counter that clinical law professors can provide a broad set of skills development opportunities while still seeking to provide legal services to underserved communities and instilling in students a sense of social responsibility.³¹ They do not believe it is an either/or proposition; law students can, for example, learn transactional skills or legislative advocacy skills while still serving marginalized or underserved communities.³²

While the larger debate rages on, fighting for social and racial justice are central goals of my clinic.³³ Understanding the role of so-

²⁹ See e.g., Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 331, 335 (2012); Meredith J. Ross, *A "Systems" Approach to Clinical Legal Education*, 13 CLIN. L. REV. 779, 779 (2007).

³⁰ E.g., Kosuri, *supra* note 29, at 337–38 (“The notion that clinics are only for ‘public interest’ students or special factions of students must be abandoned”).

³¹ There are many clinic offerings across the country providing transactional work to small businesses, non-profits, artists and entrepreneurs who are otherwise unable to afford such services. See *Ludwig Center for Community & Economic Development*, YALE LAW SCHOOL, <https://www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/ludwig-center-community-economic-development> (last visited Oct. 5, 2016); *Small Business and Community Economic Development Clinic*, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, <https://www.law.gwu.edu/small-business-community-economic-development-clinic> (last visited Oct. 5, 2016); *Community and Economic Development Law Clinic*, AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, <https://www.wcl.american.edu/clinical/community.cfm> (last visited Oct. 5, 2016); *Community Economic Development Clinic*, UC HASTINGS COLLEGE OF LAW, <http://uchastings.edu/academics/clinical-programs/clinics/community-economic-development/index.php> (last visited Oct. 5, 2016); *Housing & Community Development Legal Clinic*, DEPAUL UNIVERSITY COLLEGE OF LAW, <http://law.depaul.edu/academics/experiential-learning/legal-clinics/housing-community-development/Pages/default.aspx> (last visited Oct. 5, 2016); *Community Enterprise Clinic*, BOSTON COLLEGE LAW, http://www.bc.edu/schools/law/center-experiential-learning/clinical-programs/community_enterpriseclinic.html (last visited Oct. 5, 2016); *Entrepreneurship and Community Development Clinic*, UT AUSTIN, TEXAS LAW, <https://law.utexas.edu/clinics/ecdc/> (last visited Oct. 5, 2016).

³² There is a distinction between the argument that clinics are only for public interest students and the argument that clinics should pursue the public interest, although the current debate often conflates them. While the primary focus of law school is educating students—not fighting poverty or opposing discrimination—there is nothing incompatible about a social justice mission and the education of law students, even those law students interested in corporate or transactional work. There are many clinical programs where, although the primary focus is on the development of transactional skills, the program nonetheless professes a commitment to serving the public interest. These clinics may strike a different balance between the many legitimate goals of clinical legal education than clinics traditionally make, but they all embrace social justice education as part of their mission.

³³ It is arguable whether all clinics should be social justice driven, but it is entirely

cial justice in my clinic, and how achieving that goal is influenced by the students selected to participate, requires stepping back and thinking about how social justice may be defined and achieved. The goals of my clinic are ambitious. In line with the philosophy of Frank Askin, my clinic seeks to immerse students in a “practical vision of law as an instrument of social justice.”³⁴ I seek to provide access to justice and representation for victims of discrimination, to challenge systemic discrimination and bring more justice to our social and economic systems, and to inspire students to work for social justice when they leave law school. I want to ensure that those committed to social justice advocacy have the skills to engage with their clients and the community in a productive and respectful manner. Ultimately, I am teaching students to use the law on behalf of their clients to achieve justice—in the many ways that the client or community may define justice. In order to effectively advance the ambitious goals of my clinic, I believe the goals must be woven into every aspect of the clinic design and shared by all participants—students, faculty, and clients.

Each professor must determine how to strike a balance between these missions in his or her clinic. Some clinical programs may choose to focus more on core lawyering skills and less on the more complex skills and broader values inherent in legal practice for social change. Decisions about which students may enroll will either enable or inhibit the ability of the clinic to respect that balance and achieve its goals. To move closer to their ideal balance, clinical law professors may prioritize acceptance of students who understand the fundamental tenets of clinical education and embrace the mission of the specific clinic to which she is applying. Students should demonstrate an openness to the social justice goals of a justice-based clinic, whether they intend to pursue careers in the “public interest” or not, and whether they seek to represent individual victims of discrimination or large corporations.

B. Passion and Compassion

One critically important skill in this path to promoting justice and fairness is compassion.³⁵ “In the social justice context, the skill of

appropriate for clinicians to design clinics that are even if that means that particular clinic is not providing an educational experience for all types of students. It is not the responsibility of each clinic to provide a learning experience for every type of student, but the responsibility of the law school to provide an array of clinical opportunities to meet the needs of all of its students.

³⁴ Frank Askin, *A Law School Where Students Don't Just Learn the Law: They Help Make the Law*, 51 RUTGERS L. REV. 855, 856 (1999).

³⁵ Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLIN. L. REV. 1, 11 (1997).

compassion is the ability to appreciate that we operate with only a partial perspective and to recognize that many of us, law students and practicing attorneys, have privileges—most of them not earned through any personal effort on our part—which color our perceptions both of the client and the legal claim.”³⁶ If a student demonstrates an inability to show compassion to the clients of the clinic, perhaps that student should not be invited to participate.

I should not have been entirely surprised when Lisa applied for my clinic. Our philosophical differences were clear, but it was equally obvious that she was fiercely serious about becoming a good lawyer and intellectually ambitious about her education. So she approached the clinical experience first as an opportunity to acquire “skills” and second as a forum to engage in important conversations about questions of race and discrimination. But, like many other students who participate in clinical programs, Lisa did not necessarily ponder the moral purpose of involvement in clinical programs broadly, or my clinic specifically. She did not seek the opportunity to participate in the fight for racial and social justice.³⁷ When I thought of Lisa’s application to the clinic, I realized—without bitterness or reproach—that she probably saw the clinic as a sort of neutral (not to say safe) laboratory where she would rehearse lawyering skills, explore political debates, and engage in cerebral battles against peers, whose expressed commitment to social justice Lisa believed lacked the intellectual rigor of her own worldview. But the work of my clinic is not neutral, and my insistence that social justice lawyering must grapple with the reality of race, gender and class discrimination is not academic.³⁸ I recognize that students come to the clinic with different levels of awareness of social justice issues and differing commitments to using their legal skills to pursue social justice over the long term. While they may exhibit varying levels of passion or even interest, each should be supportive of the goals and mission of the clinic. A student who has demonstrated himself to be insensitive, indifferent, or even hostile to social justice is not an appropriate member of the team.³⁹

³⁶ *Id.*

³⁷ Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327, 330 (2001).

³⁸ See Jeffrey Ward, *One Student’s Thoughts on Law School Clinics*, 16 CLIN. L. REV. 489, 514 (2009) (“We must recognize that the phenomenon of complete neutrality cannot exist and would not be desirable in clinical legal education even if it were possible.”); see also Duncan Kennedy, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (2004) (“Law schools are intensely political places”); Erwin N. Griswold, *Intellect and Spirit*, 81 HARV. L. REV. 292, 299 (1967).

³⁹ Although personal political views should not ordinarily disqualify a student from participating in a particular clinic, there are some views that could be disqualifying depending on the nature of the clinic. For example, a person who holds racist views should not work in a racial justice clinic. A student who is fundamentally opposed to abortion rights

IV. OPEN TO JUSTICE

In recent years, doctrinal and clinical professors have placed increasing emphasis on the importance of teaching law students that “thinking like a lawyer” does not mean being morally neutral. Still, “all too often we graduate lawyers who are convinced that they are merely people who facilitate the even-handed application of process, who behave as if they will play on a level playing field. They believe they have little or no power or responsibility for ensuring substantive justice.”⁴⁰ For those of us who readily embrace social justice as a critical component of our teaching a related debate has emerged: what is the right balance between “traditional” skills teaching and justice teaching in our clinical programs?⁴¹ Saying that clinics are about skills teaching is too simple a formulation of what many justice-focused clinics seek to accomplish. While the method of clinical legal education is closely supervised provision of legal services to clients, which also provides skills training to law students, “the educational goal is far more ambitious.”⁴² Many law students believe that thinking like a lawyer requires that they adopt a morally neutral approach to issues of social justice and injustice, and unfortunately often extend this moral neutrality to their work with clients.⁴³ They do not see how every aspect of their representation can either help advance or inhibit justice for their client. The overarching goal of clinical education should be to provide lawyering skills and professional training in the public interest, not lawyering skills divorced from the realities of the world in which lawyers advocate.⁴⁴

Skills and values are interdependent, so the skills taught in clinical programs are both broadly applicable and intensely personal.⁴⁵ A lawyer cannot, for example, be a skillful lawyer without embracing the value of client-centeredness or collaborate effectively without embracing the value of collaboration.⁴⁶ While clinics teach lawyering

should not work in a reproductive freedom clinic. Not only will it be difficult or impossible for the student to suppress his beliefs and values during the course of the representation given direct conflict between the student’s beliefs and the core issues in the representation, but the clients deserve more from their advocates. It can be difficult to screen for these qualities, as most clinical faculty will not have the personal history that I did with Lisa.

⁴⁰ Jane Harris Aiken, *Clients as Teachers*, 16 WASH. U. J.L. & POL’Y 81, 84 (2004).

⁴¹ Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231, 233 (2012).

⁴² Stephen Wizner, *The Way to Carnegie: Practice, Practice, Practice – Pedagogy, Social Justice, and Cost in Experiential Legal Education*, 32 B.C. J.L. & SOC. JUST. 345, 351 (2012).

⁴³ Aiken, *supra* note 41, at 236.

⁴⁴ Wizner, *supra* note 37, at 339.

⁴⁵ Wizner, *supra* note 42, at 345.

⁴⁶ Chavkin, *supra* note 8, at 254.

skills such as interviewing, counseling and negotiation, and expose students to legal ethics issues in context, clinics also guide students to their own personal understanding of the social responsibilities of lawyers and issues of social justice and equality.⁴⁷

On a micro and macro level, my lawyering and advocacy teaching is infused with the purpose of the clinic. Many of the specific skills my students will develop and utilize cannot be divorced from the context in which these skills will be employed. They experience work as social justice and racial justice lawyers, not just as a lawyers. I am teaching them to think about what justice means in a specific context and for a specific client and what it means to work to achieve justice. While, my clinic is designed to promote justice in society, I am not trying to impose one way of thinking about justice issues. My goal is not to define justice for my students. But I do want them to ground their representation in our clients' reality. One aspect of that reality is that racism, discrimination, and economic inequality are persistent problems in our society and in the lives of our clients. The student's mind has to be open to that reality.

Lisa's interest in participating in my clinic was based on a limited understanding of the broader goals of my clinic.⁴⁸ She sought technical proficiency without focusing attention on the demands of representing clients who believe they have been the victims of discrimination. Legal practice is about more than acquiring a set of technical skills. "Analytical rigor, logical reasoning, the ability to see and draw distinctions, a facility at written and oral expression, all are indispensable skills for lawyers. But equally important are an openness and sensitivity to the raw data of human experience, and a capacity for moral indignation at injustices in the world."⁴⁹

To graduate lawyers who better understand their role and the role of law in advancing justice, Dean Jane Aiken believes clinics should move beyond providing opportunities for students to have a social justice experience to promoting a desire to do justice.⁵⁰ She believes we should strive to make our students "justice ready," defined as "priming students to be sensitive to issues of justice as they develop

⁴⁷ Wizner, *supra* note 42, at 345.

⁴⁸ This fact raises a separate but related question: what are legitimate student expectations in applying for clinics. Are law students entitled to participate in the clinic of their choice, even if it is not a good match? Clinics are a collaborative educational experience and there must be a balance between what the students want to get out of their clinical experience and what the clinical professor wants his or her students to get out of it.

⁴⁹ Stephen Wizner, *Repairing the World Through Law: A Reflection on Robert Cover's Social Activism*, 8 CARDOZO STUD. L. & LITERATURE 1, 12 (1996).

⁵⁰ Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287, 298 (2001).

into lawyers.”⁵¹

The primary tool Dean Aiken promotes to help students achieve justice readiness is “disorienting moments” where students have experiences that surprise them because the experience challenges the student’s established way of viewing the world.⁵² To find these disorienting moments, clinical professors must engage students in a moral and ethical discourse about the choices they make during that representation, and help them become more able to identify injustice.⁵³ Professor Aiken acknowledges that students come to the clinical experience at different stages in the development of their critical thinking skills. As a result, students require different levels of intervention to move towards justice readiness.⁵⁴ According to Dean Aiken, “our job is to become effective diagnosticians of our students’ ‘justice readiness’ and to employ a wide range of interventions that will enhance the likelihood that they will appreciate the role they play in promoting or inhibiting justice as they act as lawyers.”⁵⁵ To a certain extent, this perspective assumes that students come into the clinic with values that align with the goals of the clinic. For example, in one stage of the process towards justice readiness, Dean Aiken suggests creating a disorienting moment by selecting cases where students have no outside authority on which to draw, requiring that they draw from their own knowledge base and values to develop a legal theory.⁵⁶

This is a powerful and empowering approach to teaching and engaging most students in a clinical program. I work to make sure that students in my clinic have disorienting moments, particularly in light of the various differences between my students and their clients. I anticipate these disorienting moments in my student selection process, hoping to select students who will use these moments to learn and enrich who they are as lawyers and people. But, a student who comes to the clinic with fundamental values in conflict with those of the clinic or client is unlikely to be able to successfully transform a disorienting moment into either a learning experience for himself or successful representation for the client.

Like Dean Aiken, I aspire to be a “provocateur for justice,” a professor who “imbues her students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solu-

⁵¹ Aiken, *supra* note 40, at 85.

⁵² *Id.*

⁵³ Aiken, *supra* note 50, at 287–88.

⁵⁴ *Id.* at 290.

⁵⁵ *Id.* at 289.

⁵⁶ *Id.* at 294.

tion to that injustice.”⁵⁷ It is a gift to be able to provide students with these disorienting moments that challenge them to view the world in a new and uncomfortable way—to help them grow as advocates. But they have to be open to this learning experience. Clinical students need to not only be ready for justice, but open to justice. Achieving justice readiness requires students to be open to challenging their assumptions, leading to personal reflection and change.⁵⁸

“An effective educational experience influences the student’s ideas, habits, attitudes, interests, ways of thinking, modifying his values and behavior patterns.”⁵⁹ This includes increasing a law student’s understanding of his or her capacity as a lawyer to promote social justice and access to justice.⁶⁰ Using clinical education to teach students about social justice and the skills needed for social justice advocacy requires us to open their eyes to inequities and discrimination in society.⁶¹ Getting them to this point requires a gentle balance: we do not demand that they see the world exactly as we see it, but their mind needs to be open to the possibility. To fulfill their role as problem solvers, lawyers must be open to seeing the true nature of the problems their clients face. Similarly, law students interested in participating in social justice-driven clinics need to be open to expanding their understanding of the legal needs of poor people and victims of discrimination, the complexity of the lives of their clients, and the nature of discrimination against marginalized people.

V. OUR OBLIGATIONS TO OUR CLIENTS

In clinical legal education, clients are often the best teachers.⁶² But a client is not just another teaching tool. Clinical programs should be committed to serving the clients; we should not approach representation with the belief that the clients exist primarily to serve the educational needs of the students.⁶³ In a clinic, students are not simply learning advocacy skills. They are learning to advocate for specific clients and to help those clients solve their problems as the client defines them.⁶⁴ Putting a student who has demonstrated a lack of com-

⁵⁷ *Id.* at 288.

⁵⁸ *Id.* at 290.

⁵⁹ Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U. J.L. & POL’Y 63, 78 (2003).

⁶⁰ *Id.* at 78.

⁶¹ See Lopez, *supra* note 11, at 317–18.

⁶² Aiken, *supra* note 40, at 82.

⁶³ See Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 510-511 (2012) (asserting that “clients and student needs are equally important in a clinical program and that neither need to be sacrificed for the other”).

⁶⁴ See Wizner, *supra* note 37, at 328.

passion or respect for poor people or people of color in a situation where she is called upon to represent poor people or victims of racial discrimination may only serve to reinforce the student's prejudices and misconceptions and harm the client and the community.

I approach teaching from a student-centered perspective. I try to make my student's learning a central concern in everything I do. I am concerned about their development as people and professionals. I believe that it is important to provide clinical students the opportunity and autonomy to achieve their learning goals, and to learn by failing at other goals. But, like the dual goals of clinical legal education, clinical professors have a dual responsibility as both teachers and advocates.⁶⁵ It is our responsibility to think about how the students selected to participate in a clinical program will impact the client in the instant representation and beyond. By centering the educational experience not only in a student-professor relationship, but in a lawyer-client relationship, we can attend to the goals and interests of the real people behind our cases and projects.

Supervising students in a clinic requires that clinical law professors balance two sometimes conflicting goals: maximizing the educational benefit our students receive through their clinical experience and providing clinic clients with effective representation.⁶⁶ Indeed, most of the responsibilities of clinical professors are framed in terms of our obligations to our students, rather than what clinical professors owe to the clients.⁶⁷ Some clinical professors may try to balance their pedagogical goals and their responsibility to the clinic's clients by working with the students to provide "quality representation" and modeling "best practices." At the opposite end of the spectrum, other clinical law professors will only intervene in student representation where the student is at risk of seriously and irreparably harming the client.⁶⁸ Where a professor falls on this spectrum will largely depend

⁶⁵ Wizner, *supra* note 42, at 351.

⁶⁶ Chavkin, *supra* note 13, at 1527–28.

⁶⁷ See, e.g., Wizner, *supra* note 42, at 351–52 (listing the responsibilities of clinical professors to include: "(1) offering students practice experience through the supervised representation of clients; (2) teaching the professional skills students need to provide competent legal representation; (3) teaching students substantive legal doctrine, procedural rules and practices, and legal theory as they relate to the representation of their client; (4) assuring that students actually provide competent legal services to their client; (5) teaching legal ethics and professional responsibility; (6) instilling in students good professional values and guiding them in their development of socially responsible professional identities; (7) exposing students to social injustices and inequalities in society and the role that lawyers can play in addressing them; (8) teaching students about the potential (and limits) of law and legal process in achieving social change; (9) discussing with students the relationship between social policy and advocacy, and between theory and practice; and (10) raising basic jurisprudential questions about the functions of law and the role of lawyers.").

⁶⁸ See Chavkin, *supra* note 13, at 1510–11.

on what he or she views as their independent obligation to the clinic's clients. There is little definitive guidance on this matter.

In his article, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*,⁶⁹ Professor David Chavkin explores the possible obligations of clinical supervisors to clients of the clinic.⁷⁰ Utilizing the American Bar Association's Model Student Practice Rule, and the variations of the rule adopted by various states, Professor Chavkin concludes that the applicable rules of professional conduct impose a duty on clinical professors to adequately supervise students participating in a clinical program. But he argues that this duty to supervise does not transform into a personal duty to provide competent representation.⁷¹ This formulation allows clinical professors to give students maximum autonomy in providing legal representation to clients with limited direct interference from the clinical professor. Specifically, clinical faculty are generally prohibited from engaging in "negligent supervision" of students in the clinic.⁷² Tied to this obligation to provide appropriate supervision is a related obligation to provide appropriate training and preparation.⁷³ "In effect, the clinical supervisor is committing to take reasonable steps to ensure that the student attorney will provide competent representation—s/he is not committing to provide competent representation her/himself."⁷⁴

Still, so much turns on how we define competent representation and where we set the floor. Competency should be defined in the context of the types of cases accepted and the clients served. Although the exact legal or professional obligation owed to clients in this context may not be clear, the ambiguity does not negate the moral obligations owed to the clients of the clinic. We should seek to provide more than minimally sufficient representation to clients of our clinical programs. If we aim for the floor, we are teaching students a lesson—about the quality of representation that marginalized people deserve—whether we intend to or not. Moreover, however competency is defined by the clinical professor, he or she must be comfortable that any student admitted to the clinic can ultimately achieve that

⁶⁹ *Id.*

⁷⁰ *Id.* at 1509–10. An analogy to medical school training is often invoked to explain the importance of clinical education in training law students for practice. That analogy should not end when discussing a clinical professor's responsibilities to clinic clients in this context compared to a medical school professor's obligations to a patient.

⁷¹ See Chavkin, *supra* note 13, at 1527.

⁷² See *id.* at 1515–21.

⁷³ See *id.* at 1521–22. See also Local Rules U.S. Dist. Ct. Dist. Mass. 83.5.4(i) ("failure of a supervising attorney to provide proper training or supervision may be grounds for sanctions, disciplinary action, or revocation or restriction of the attorney's authority to supervise students")

⁷⁴ See Chavkin, *supra* note 13, at 1537.

floor during the course of the clinic. We must have confidence that a selected student can obtain a certain level of preparation in order to be able to allow her to conduct the representation autonomously.

When balancing our obligations to our students and our clients, clinical law professors must remember that “[a]t the heart of the education provided by . . . clinical faculty stand individual clients and the interests of disadvantaged people.”⁷⁵ When law schools commit to providing clinical education, we commit to finding the appropriate balance between our responsibilities to our students, our clients, and the communities we serve. We cannot interpret our obligations to our students and the clients in a way that creates an irreconcilable conflict between the education of our students and the social justice and representational missions of our clinics. I am not arguing that the good of the client should be elevated above the educational goals we must set for our students. After all, we are educators. But, in using their lives and misfortunes as “teaching tools,” our clients are owed something in return: effective and respectful representation. One method to bring a clinic closer to being able to provide effective representation is not to admit students into the clinic we believe will be unable to provide the client with competent representation even after our teaching interventions.

This brings me back to Lisa. Despite her firm resistance to social and racial justice in the earlier seminar, there is a possibility that she would be moved by working closely with clients who have personally lived with the pain of difference. Maybe she would learn from her clients and be transformed. By not accepting her into the clinic, she would be denied the opportunity to engage in a potentially transformative educational experience. Or perhaps she would not be transformed, but would nonetheless work as hard as she can on behalf of her clients because of her desire to learn litigation skills. But, Lisa’s is not the only life that should be improved through the clinical experience.

Given all I knew about Lisa, I could not discount the real possibility that her negative feelings about her clients might creep into her representation. Being insensitive or unsophisticated does not necessarily translate into deficient advocacy. But there is a distinction between a student’s discrete views on particular issues and more sweeping views that indict the clinic’s clients. To a certain extent, Lisa’s situation highlights the tension between how we define and address personal values versus professional values.⁷⁶ In practice, the line

⁷⁵ Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. J.L. & Soc. JUST. 345, 354 (2012).

⁷⁶ Mlyniec, *supra* note 63, at 545.

between personal values and professional values is not always clear. An advocate's personal values that differ from a client's personal values or goals can impact the quality of representation provided. An advocate does not need to adopt the client's interests and beliefs as her own, but that advocate must be able to subordinate her feelings in favor of the client's goals and interests.⁷⁷ Moreover, heightened concerns are raised when the personal values relate to people as opposed to issues. Although Lisa's initial belief that we were in a post-racial society raised a conflict with *the issues* we take on as a clinic, those views were certainly not disqualifying. In contrast, her direct and derogatory feelings towards *the people* the clinic represents elevates those concerns.

I believe that Lisa had deeply held beliefs and values that were indifferent and even hostile to our clients. Our clients are often poor or struggling against economic inequality, but Lisa did not believe that external factors contributed to their plight. Instead, she asserted that it is all a matter of personal choice and will. Her statements made clear to me that she had little to no respect for people who were, in her opinion, not able to look past race and embrace the opportunities presented to them. I questioned her ability to subordinate her personal views to a rigorously professional representation, as my clinic defines professional representation. The risk that the depth of her bias might create an unbreachable barrier to effective representation, at least in the time constraints of a clinical course, was substantial. To build trusting relationships with our clients in the brief window allowed during the course of a clinic, an advocate must recognize the complexities in their lives, understand the larger social environment and context in which they live, and appreciate—not judge—the choices they make.⁷⁸ In order to provide competent, effective representation, the students must be open to understanding the client's life as the client experiences it.⁷⁹ Effective representation of victims of discrimination requires a certain amount of emotional engagement with the clients, the community, and the issues they are facing.⁸⁰

Although an initial belief that we are living in a post-racial society is not disqualifying, Lisa's firm commitment—after a semester of debate and discussion—to a post-racial approach to the world and her advocacy could also block her ability to provide effective representation to her clinic clients. An unrelenting commitment to race-neutrality will inhibit the ability to establish rapport with the client and

⁷⁷ *Id.*

⁷⁸ Aiken, *supra* note 40, at 81.

⁷⁹ See Lopez, *supra* note 11, at 318.

⁸⁰ Aiken, *supra* note 40, at 81.

develop a trusting and effective relationship.⁸¹ Moreover, a fixation on a color-blind approach to lawyering on behalf of victims of discrimination erects a barrier to effective representation by limiting students' thoughts about potential legal options and courses of action.⁸² The skills needed to advocate for social, economic, and racial justice are not race or value neutral. Ignoring the role race and class play in lawyering will inevitably harm rather than empower a client.⁸³

In assessing Lisa's application, perhaps my focus should have been on identifying methods to support her inclusion in the clinic. Should I have focused on strategies to engage, manage, and monitor her client representation? For example, I could have accepted Lisa and paired her with a student who had a stronger grounding in the work or client community, something that is often done with students of differing ability. But I question whether it would be fair to put that type of additional responsibility on another student in the clinic; it is fundamentally different than pairing an academically strong student with a student who is struggling. While law students may be familiar with strategies for successfully partnering with a student with different academic strengths, asking a fellow student to work to counter her partner's fundamental beliefs about the clients we serve is above and beyond the call of duty.

Finally, my clinic embraces the goals and principles of working collaboratively with victims of discrimination and those struggling to live in poverty. We hope to empower our clients through our advocacy and employ client-centered lawyering to help the lawyer and client generate a wide range of options based on the client's goals and needs. A core principle of client-centered lawyering is advising and guiding clients based on the client's own values and experiences, requiring that the lawyer embrace the client's understanding of his or her own lived experience.⁸⁴ Working with victims of discrimination increases the complexity of client-centered lawyering. Our clients live in a world that repeatedly denies their value and questions the reality of the very discrimination from which they are suffering. They often feel dismissed and disempowered. We do not further victimize our clients by replicating that in the clinic. Instead, our client-centered lawyering acknowledges the way the lawyer-client relationship, and how both the student and client experience the relationship, may be

⁸¹ Archer, *supra* note 23, at 67.

⁸² See Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE L. REV. 345, 373 (1997); Archer, *supra* note 23, at 67.

⁸³ Jacobs, *supra* note 82, at 409–12.

⁸⁴ David A. Binder, et al., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* at 9–11 (1991).

shaped by race, class, gender and other differences.⁸⁵ Hallmarks of client-centered lawyering are the centrality of client decision-making and the importance of a lawyer understanding her client's perspectives, emotions, and values.⁸⁶ The lawyer must engage in advocacy that reflects those values and perceptions.⁸⁷ The inability to see beyond our own lived experiences, denying the relevance of race or class or gender, and allowing white privilege to persist unchallenged, ultimately does a disservice to the client and the community.⁸⁸

VI. CONCLUSION

A short time after my initial meeting with Lisa to discuss her application, she notified me that she would not pursue a spot in the Civil Rights Clinic, relieving me of the obligation to make an admissions decision. Still, as more students who hold beliefs similar to Lisa's find their way into my courses, I continue to puzzle over the significance of value divergence and how it should factor into my determinations about who I accept into the clinic. It is difficult to generalize from my experience with Lisa: there is no simple test or checklist one can use to determine whether or not a particular student should be admitted to a clinic.

A clinic student's views do not need to be completely aligned with the clients' or the professor's. However, a fundamental conflict between a student's views and the core issues raised by the representation cannot be dismissed lightly. Students can proclaim a commitment to social justice and equality, yet have a different understanding than me of the implications of that commitment and still be valuable members of the clinic. But hostility to the victims of discrimination or those who struggle against poverty is a different matter. Those views should be disqualifying for admission into the clinic. A student's desire to gain valuable litigation skills or advocacy experience or the requirement that all students participate in a clinical experience do not outweigh the negative implications of admitting students who are hostile towards the people and communities served by the clinic.

Further, a student's resistance to change, or inability to keep an open mind, are also deeply problematic. As I said earlier, I teach my clinic from a place of assuming that racial discrimination and economic inequality are deeply problematic issues worthy of our time and attention. Lisa, on the other hand, did not share that view and

⁸⁵ Jacobs, *supra* note 82, at 346.

⁸⁶ See generally Binder, *supra* note 84. See Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369, 377 (2006).

⁸⁷ *Id.* at 378.

⁸⁸ Archer, *supra* note 23, at 67.

showed a clear resistance to ever altering her position. A commitment to challenging discrimination was certainly not what motivated her to apply to the clinic. She believed that the clinic seminar would be a fun and intellectually challenging place to continue her debates about the existence of racial discrimination. But that is not the purpose of clinical legal education, and clinical professors need not validate a student's misunderstanding of that purpose. I could not turn over my clinic seminar to Lisa as a forum to debate her classmates. Doing so would undermine my ability to adequately prepare the other students in the clinic to represent their clients, thereby putting the clients at risk.

In the end, no decision is black or white. Rather, the decision requires a deeply individual assessment based on the particular goals and values of the clinic, the professor's knowledge both of the student's values and goals, and the student's willingness to keep an open mind.