

## **Clinical Legal Education: An Annotated Bibliography (Revised 2004)**

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This version of the bibliography of materials relating to clinical legal education is a compilation of entries from the version published by the *Clinical Law Review*, 7 CLIN. L. REV. Special Issue (2001) and entries collected since the publication of that volume, including new materials published through 2002 and previously published materials that we had missed in the earlier versions.

This version includes, for the first time, abstracts of twenty-two articles written by John S. Bradway between 1928 and 1965. Professor Bradway is a seminal figure in clinical legal education. He started an experimental, six-week, faculty-supervised clinic at the University of Southern California in 1928. In 1931, he established at Duke University the first full-fledged, faculty-supervised clinic. His work is an inspiration to all clinical faculty who have followed him. Not only was he an active clinical supervisor, but he was a productive scholar and a leading figure in the growth of legal aid programs throughout the nation. Clinicians still grapple with many of the issues about which Bradway thought and wrote.

I have indicated whether the article is available in full text version in either LEXIS™ or WESTLAW™ or both. Availability in LEXIS™ is shown by the symbol \* after the citation; availability in WESTLAW™ is shown by the symbol †. This version also identifies full-text availability of abstracted articles not currently available through either LEXIS™ or WESTLAW™ databases. Where the symbol ‡ appears at the end of the citation, the abstracted article may be found in full text on HeinOnline <http://www.heinonline.org/>, available to faculty and students at most ABA-accredited law schools through a subscription maintained by each school's law library. The HeinOnline version is a graphic image of the original print version.

Users wishing to know more about the history and methodology used in creation of the bibliography should review the introduction to the original bibliography, made available in 1996 by Professor Karen Czapanskiy of the University of Maryland School of Law, and a revised edition, updated and posted by me in 2002, both contained in the file marked **History and Methodology of Bibliography**.

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Ewart, Doug, *Parkdale Community Legal Services: A Dream That Died*.

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Zemans, Frederick H., *The Dream is Still Alive: Twenty-Five Years of Parkdale Services and the Osgoode Hall Law School Intensive Program in Poverty Law*.

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- Aiken, Jane H., *Provocateurs for Justice*.
- Aiken, Jane H. & David A. Koplow, Lisa G. Lerman, J. P. Ogilvy, Philip G. Schrag, *The Learning Contract in Legal Education*.
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- Barry, Margaret Martin, Jon C. Dubin & Peter A. Joy, *Clinical Education For This Millennium: The Third Wave*.
- Befort, Stephen F., *Musings on a Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990s*.
- Bellow, Gary, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as a Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT.
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Boldt, Richard & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric and Social Context*.

Bond, Johanna, *The Global Classroom: International Human Rights Fact-Finding as Clinical Method*.

Boyle, Robin A. & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*.

Bradway, John S., *The Beginning of the Legal Clinic of the University of Southern California*.

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Aiken, Jane H. & David A. Koplow, Lisa G. Lerman, J. P. Ogilvy, Philip G. Schrag, *The Learning Contract in Legal Education*.  
Barry, Margaret Martin, Jon C. Dubin & Peter A. Joy, *Clinical Education For This Millennium: The Third Wave*.  
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## VIII. Poverty Law/Political Context of Clinical Legal Education

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- Calmore, John O., *A Call To Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*.
- Cruz, Christine Zuni, *[On the] Road Back In: Community Lawyering in Indigenous Communities*.
- Diamond, Michael, *Community Lawyering: Revisiting The Old Neighborhood*.
- Diller, Matthew, *Lawyering for Poor Communities in the Twenty-First Century*.

- Dominguez, David, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for All Students.*
- Dominguez, David, *Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice.*
- Ellmann, Stephen, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups.*
- Ewart, Doug, *Parkdale Community Legal Services: Community Law Office, or Law Office in a Community?*
- Ewart, Doug, *Parkdale Community Legal Services: A Dream That Died.*
- Glick, Brian & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience.*
- Hing, Bill Ong, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses.*
- Imai, Shin, *A Counter-Pedagogy for Social Justice: Core Skills for Community-based Lawyering.*
- Jones, Susan R., *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice.*
- Leong, Andrew L. S., *A Practical Guide to Establishing an Asian Law Clinic: Reflections on The Chinatown Clinical Program at Boston College Law School.*
- LÓPEZ, GERALD P., *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE.*
- Marshall, Shauna I., *Mission Impossible?: Ethical Community Lawyering.*
- Marsico, Richard D., *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*
- Piomelli, Ascanio, *Appreciating Collaborative Lawyering.*
- Rivkin, Dean Hill, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*
- Salsich, Jr., Peter W., *Interdisciplinary Study in a Clinical Setting.*
- Seielstad, Andrea M., *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education.*
- Shah, Daniel S., *Lawyering for Empowerment: Community Development and Social Change.*
- Sisak, Janine, *If the Shoe Doesn't Fit...Reformulating Rebellious Lawyering to Encompass Community Group Representation.*
- Southworth, Ann, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice.*
- Southworth, Ann, *Taking the Lawyer out of Progressive Lawyering.*
- Tremblay, Paul R., *Acting "A Very Moral Type of God": Triage Among Poor Clients.*
- Tremblay, Paul R., *Toward a Community-Based Ethic for Legal Services Practice.*
- Tulman, Joseph B., *The Best Defense is a Good Offense: Incorporating Special Education Law into Delinquency Representation in the Juvenile Law Clinic.*

## **G. Community Education**

Barry, Margaret Martin, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Services and Should Law School Clinics Conduct Them?*  
Eagly, Ingrid V., *Community Education: Creating a New Vision of Legal Services Practice.*  
Pinder, Kamina A., *Street Law: Twenty-Five Years and Counting.*

## **IX. Book Reviews**

Alfieri, Anthony V., *Practicing Community.*  
Ancheta, Angelo N., *Community Lawyering.*  
Dinerstein, Robert D., *Client Centered Counseling: Reappraisal and Refinement.*  
Dinerstein, Robert D., *Clinical Texts and Contexts.*  
López, Gerald P., *A Declaration of War by Other Means.*  
Southworth, Ann, *Taking the Lawyer out of Progressive Lawyering.*

## **X. In Memoriam**

Bennett, Paul D., *A Smile That You Could Not Say No To.*  
The Brooklyn Law School Clinical Faculty, *When a Clinician Grew In Brooklyn: A Tribute to Kathleen Sullivan.*  
Cimini, Christine N., Bridget McCormack & Michael Pinard, *Kathleen A. Sullivan: A True Teacher's Teacher.*  
Cunningham, Clark D., *Hearing Voices: Why the Academy Needs Clinical Scholarship* [Herbert A. Eastman].  
Frug, Gerald E. & John D. Hamilton, Jr., Bea Moulton, *In Memoriam: Gary Bellow.*  
Gaber, Paula, *Everyday Learning.*  
Goldner, Jesse, *Herbert A. Eastman: A Memorial Tribute.*  
Kramer, John R., *By the Time of His Death, Bill Greenhalgh Had Triumphed.*  
Kronman, Anthony T., *Remarks by Anthony T. Kronman: Funeral Mass for Kathleen Sullivan.*  
Mlyniec, Wallace J., *Remembering Bill Greenhalgh.*  
Ogletree, Jr., Charles J., *In Memoriam: A Tribute to W. Haywood Burns and M. Shanara Gilbert: Revolutionaries in the Struggle for Justice.*  
Ogletree, Jr., Charles J., *A Tribute to Gary Bellow: The Visionary Clinical Scholar.*  
Van Susteren, Greta C., *Tribute to a Great Guy* [William W. Greenhalgh].

### **Part Three: Synopses of Articles, Essays, Books, and Book Chapters (arranged alphabetically by author's surname)**

AALS, *Submission of the Association of American Law Schools to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLIN. L. REV. 539 (1998).\* † This is a condensed version of a submission to the Louisiana Supreme Court by the Association of American Law Schools (AALS) in opposition to proposed amendments to the Louisiana Supreme Court's student practice rules. The submission opens with an overview of the mission of the AALS and a description of the factual background leading to the proposed amendments to the student practice rule. The submission argues that the suggested amendments should not be adopted by the Court because they "would undermine the ability of Louisiana's law schools to provide a first-rate legal education, as well as interfere with values protected by the First Amendment." The submission was written by Jorge deNeve, Peter A. Joy and Charles D. Weisselberg and its filing on behalf of the AALS was authorized by John E. Sexton, then President of the AALS.

Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLIN. L. REV. 1 (2002).\* † In a modest reframing of what it is that we should be teaching to prepare students for the practice of law, this essay identifies and discusses the importance of four overlapping domains of good lawyering: role conceptualization; problem solving; decision making; and practical judgment. While there is considerable diversity in the courses offered at most law schools, the overwhelming learning experience for a large majority of law students is set by the case method as introduced during the first year and a fairly standard diet of doctrinal courses. Most students venture into nontraditional course areas only a few times during their law school years. As a result, scant direct attention is given to encouraging students to think comprehensively in role as a lawyer, which is what heightened consideration of the four domains of good lawyering is intended to encourage. The domains, though intricately related in practice, are discussed separately to highlight their distinctive characteristics as aspects of thoughtful, responsive, and responsible lawyering and their significance as instructional themes in any course. The concluding section emphasizes that law schools for the 21st century are best thought of as schools of lawyering, a term which encompasses learning about law and the practice of law. Course catalogues now contain a mix of traditional doctrinal courses, liberal arts courses, and simulated and live-client practice and skills courses. These three strains in contemporary legal education are equally important if students are to gain critical and comprehensive, foundational knowledge regarding both what they should think about in role as a lawyer and how they might go about doing such thinking.

Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 CLIN. L. REV. 247 (1998).\* † This article explores what is involved in exercising good judgment in the legal domain. Drawing on literature in jurisprudence, legal ethics, philosophy, and the social sciences, the author offers a set of ideas about good judgment including the "special features, contours, and key conditions that mark its exercise." He examines the ways in which the concept

overlaps with or differs from expert knowledge, systematic thinking, intuition, and common sense. The second part of the article examines various assumptions about judgment as a pedagogical paradigm. In this section, the author examines various assumptions about how learning in a profession takes place. He then describes some of the approaches and techniques used at the Hastings Civil Justice Clinic to encourage the development of good lawyering judgment.

Melanie Abbott, *Seeking Shelter Under a Deconstructed Roof: Homelessness and Critical Lawyering*, 64 TENN. L. REV. 269 (1997).\* † The article examines the efforts of young lawyers to eliminate homelessness and poverty and contends that young lawyers who identify with progressive causes and want to work toward a more just society are often discouraged by modern critical scholarship. This article argues that there exists in current progressive scholarship “a philosophical basis for the work of activist lawyers seeking to eradicate homelessness.” This article begins with a summary of current knowledge about the causes and extent of homelessness. Next, it traces the origins of four pivotal schools of thought, Legal Realism, Critical Legal Studies (“CLS”), the post-CLS critical lawyering movement, and Therapeutic Jurisprudence, paying close attention to the relationship between jurisprudence and social action. After addressing the challenges presented by the current political climate to progressive action on behalf of society’s disenfranchised, the article offers strategies for progressive action to combat the problem of homelessness. Strategies proposed by the author include litigation intended both for its own effects and to create public discussion, efforts to change legislation, utilization of current administrative procedures, consciousness-raising, media campaigns, the creation of new institutions such as multifaceted shelter facilities, and outreach activities encouraging progressive lawyers to reach out to potential clients. The author concludes that “the problem of homelessness presents a complex setting for the application of critical lawyering principles, without unnecessarily intensifying a biased system.”

Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. (2001).\* † Clinical legal education offers unique opportunities to inspire law students to commit to justice. Merely providing a justice experience is not enough. Clinicians must provoke a desire to do justice in their students. As provocateurs, clinicians determine where their students are in the developmental process toward “justice readiness.” This article outlines those developmental stages and suggests interventions to assist students in their transition from stage to stage. Being “justice ready” requires sensitivity to the ways in which assumptions color all aspects of the clinic’s caseload. The article closes with suggestions and examples of how to critically reflect on assumptions that hinder social justice.

Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLIN. L. REV.1 (1997).\* † This article explores the need for teachers to be more outspoken about justice in legal education. It examines the MacCrate Report, which admonishes teachers to raise questions of justice, fairness, and morality that often accompany practical legal issues. The article points to the MacCrate Report’s identification of four fundamental values of the profession: provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development. The article argues that methods of promoting the second value – striving to promote justice, fairness, and morality – are less obvious and more difficult than they are for the other three values. The article criticizes the MacCrate Report for its brief discussion of this value and responds to it by presenting ways in which professors can teach future lawyers about how

to promote justice in their daily practice. First, the article discusses the ways in which legal education is presently failing in this endeavor. Second, the article outlines a learning theory that offers a model for teaching about justice through the systematic study of incidents of injustice. The author then describes a clinical experience in which the students encountered injustice in the course of representing clients and analyzes how and why that experience affected the students' sense of justice. Finally, the article examines the ways in which the learning theory and the insights gained from this clinical experience can be applied in other clinical courses as well as in traditional law school courses. It concludes with examples of methods that may make the MacCrate Report's aspiration operational.

Jane H. Aiken, David A. Koplow, Lisa G. Lerman, J. P. Ogilvy & Philip G. Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985).\* † The article defines a learning contract as a "document drawn up by the student in consultation with an instructor specifying what and how the student will learn in a given period of time." Contracts tailor the educational experience, allow students to understand their goals and have a voice in selecting these goals, explain methodology to students, and in the format used, force students to work together more closely. These elements, according to the authors, increase student motivation. A law school clinic is a natural place to use such a contract. Small classes, multiple goals, close supervision, and the working relationship with instructors, combined with the students' heightened drive from clinic work, make the law school clinic an ideal setting to use a learning contract. The learning contract's disclosure of goals and methodology results in students who are better equipped to learn. The contract should cover the parties, duration and renegotiation, goals, role relationships (agenda control, pre-meeting decision making, quorum requirements, non-intervention, etc.), evaluation of meetings, assignments, meetings, case handling requirements, confidentiality, other terms that may be necessary, and an enforcement clause. The authors also propose that there is some limited use for learning contracts in traditional classes.

Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987).† The author addresses the inadequacies of traditional lawyering techniques in the pursuit of the political objectives of poverty law. He criticizes direct service representation and law reform litigation strategies for maintaining oppressive power relationships between lawyers and poor clients. In the alternative, he advocates for class consciousness-raising, political organization, and mobilization of client collectives to combat the historical disempowerment of the poor. Alfieri's vision of effective poverty lawyering centers on three main concepts: cultivating critical consciousness, challenging tradition and hegemony, and encouraging attorney/client, client/client, and community/client dialogues. Critical consciousness involves awareness of economic, political, and social contradictions in poverty culture. Lawyers who study this culture find that traditional lawyering practices on behalf of individual clients offer little relief for class-wide problems. He urges them to develop counter-hegemonic alternatives to direct service and law reform, two practices which marginalize poor communities. To illustrate the ineffectiveness of traditional practices, Alfieri describes the efforts of a group of poverty lawyers who negotiated damages for an impoverished child who was denied WIC benefits. He emphasizes that the damage settlement had no effect on the class or power situation of the child or his family, and explains that community organization efforts might improved conditions for a broader group of

people with the same legal claim. Finally, he elaborates on the idea of “dialogic empowerment,” the process by which poor clients can empower themselves by direct interchange with attorneys, other individual clients, and their communities. He argues that cultivation of dialogue raises clients from subordination by increasing their understanding of rights and shared experience.

Anthony V. Alfieri, *The Politics of Clinical Knowledge*, 35 N.Y.L. SCH. L. REV. 7 (1990).‡ This introduction to the *New York Law School Law Review*’s symposium on clinical education describes the contributions of the other six scholars around the unifying theme of the politics of knowledge. The author divides clinical knowledge into three main categories: client identity, lawyer technique, and right results, which he describes as the self-executing operation of lawyer technique. These divisions form the headings for his analysis of the other authors’ works, which focus on interviewing skills, problem-solving, client-centered counseling, and professional development, among other clinical scholarship topics.

Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994).\* † This straightforward, favorable review of Gerald López’s book, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice*, is framed by experiences from Alfieri’s poverty law career. Alfieri refers to his own attempts to cultivate “community,” defined as a shared commitment to particular legal rights and political entitlements, in his interactions with subordinated client groups. He admits the shortcomings of accepted forms of progressive lawyering, which seek to give clients rights through methods that strip them of their dignity. In addition, he admits his resemblance to López’s characterization of the “regnant” lawyer, one who sees himself as political and social problem-solver although he has little understanding of the cultures of subordination. He describes López’s analysis of this lawyering style as it compares with “rebellious” lawyering, a collaborative, culturally-grounded style of advocating for subordinated clients. Alfieri faithfully reports the book’s suggestions for empowering clients by employing such rebellious lawyering tactics as exploring non-legal solutions, encouraging self-help and lay-lawyering skills, engaging in community education, and experimenting with different cultural interpretations of client experiences. Finally, he affirms López’s challenge to progressive lawyers to question their cultural and social relationships to their lawyering communities.

Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991).\* † The author challenges the tendency of poverty lawyers to control the interpretation of client narrative in a way that manipulates poor clients into dependent, powerless, and silenced roles. He uses an example from his experience as a Legal Aid welfare lawyer to illustrate the methods traditional poverty lawyers employ to subtly effect this interpretive violence. According to Alfieri, client narratives are often characterized by expressions of dignity, caring, community, and rights, as devices to communicate individuality and power. Traditional lawyers damage clients’ stories in the process of retelling them in the legal context. Pre-understanding, or applying standard narrative readings to individual clients’ stories, paves the way for interpretive violence – the marginalization, subordination, and discipline of poor clients by lawyers who dominate and decontextualize their individual stories and struggles. To combat this problem, Alfieri suggests a set of alternative, or reconstructive, interpretive practices to elevate client narrative over lawyer context. He advocates for critical investigation of the client as dependent and subordinate

through experimental shifts in the lawyer-client hierarchy. He encourages poverty lawyers to cultivate the metaphors of dignity, caring, community and rights which signify normative references to legally significant elements of client narratives and collaboration among lawyers and clients to ensure completeness of interpretation. Finally, he suggests ultimate redescription of client stories so that they are consonant with unique, individual voices. He recognizes that such a revised interpretive scheme requires cultivation of new methods of interviewing, counseling, investigation, negotiation, and litigation consistent with client empowerment through lawyer storytelling.

Anthony V. Alfieri, *Speaking Out of Turn: The Story of Josephine V.*, 4 GEO. J. LEGAL ETHICS 619 (1991). The article's stated purpose is to "augment the expanding body of literature rededicated to the study of poverty law by exploring the tension internal to its distinctive practice." Based on prior efforts, "we have acquired a greater understanding of the poverty lawyer's habits of thinking, seeing, and speaking." What remains unknown, however, is the "form and substance of client interpretation." Section one of the article contrasts the current ethic of poverty lawyering, characterized as paternalistic, in which the lawyer dominates the client through use of certain forms of rationality and a discourse of suppression. "The end result [of this ethic] is a world contrived by the lawyer's imagination." The alternative is an ethic of resistance, in which clients exercise greater autonomy and are recognized as being a part of their communities. "The story of Josephine V. shows that a poverty lawyer's ethic of suppression may be challenged by the client's ethic of resistance." It is the lawyer's retelling of the client's story that presents the client with the opportunity to challenge the ethic of suppression. The author proposes a participatory poverty practice in which clients' stories and strategies of resistance are not trivialized. Such practice has two goals: to improve the ethical quality of lawyering and to enable clients to assert autonomy consonant with community.

Stephen R. Alton, *Mandatory Prelicensure Legal Internship: A Renewed Plea for Its Implementation in Light of the MacCrate Report*, 2 TEX. WESLEYAN L. REV. 115 (1995).\* † Written in response to the MacCrate Report's conclusion that law schools and the practicing bar have a joint responsibility to convey the skills and values identified by the Report as necessary to ensure a minimum level of competence in an attorney, the article advocates a prelicensure internship requirement, arguing that such a program, if properly administered, could successfully bridge the gap between law school and practice in a way that is consistent with the spirit of the MacCrate Report. In support of this conclusion, the article notes that the MacCrate Report recognizes the differing capacities that the law schools and the practicing bar have to impart specific skills and values to aspiring attorneys, and argues that a jointly run prelicensure internship program, in which students would be placed in not-for-profit, government, and legal aid practices, would provide a setting in which the skills and values conveyed to a student in law school could be augmented and expanded by being applied in a professional setting, under the supervision of the practicing bar and the law schools. The article views the joint nature of the internship program as the key to successfully bridging the gap between law school and practice, noting that without such collective oversight the program might succumb to various pitfalls, such as allowing interns to be exploited by being placed in low paying jobs with little educational value or in situations that fail to provide adequate training, supervision, and feedback.

Anthony G. Amsterdam, *Clinical Legal Education – A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984).‡ The author is writing from a hypothetical point of view, that is, a clinical law instructor looking back at 20th century legal instruction. In the 21st century, clinical instruction has become the dominant force in legal education. The author criticizes 20th century legal education as having been too narrow in that it mainly focused on case reading, analysis, doctrinal application, etc. Also, 20th century law schools did very little in the way of preparing their students to learn from their post-graduation experiences. Clinically oriented 21st century law schools overcome these shortcomings. Students are taught how to learn and how to be lawyers via such methods as ends-means thinking, hypothesis formulation and testing, information acquisition, and decision making in situations where options involve differing and often uncertain degrees of risks and promises of different sorts. The basic tenets of clinical education are 1) Students are confronted with practical problem situations that are concrete, complex and non-predigested; 2) students bear the responsibility for decision making and action to solve the problem; and 3) critical review. The critical review leads to the development of ends-means thinking, contingency planning, etc., which make “law school the beginning, not the end, of a lawyer’s legal education.”

Anthony G. Amsterdam, *Telling Stories and Stories About Them*, 1 CLIN. L. REV. 9 (1994).† This article examines the use of narrative in legal advocacy. The author proposes that all legal arguments tell a story, and supports this thesis with a study of the oral arguments made by Thurgood Marshall and John W. Davis before the Supreme Court of the United States in *Brown v. Board of Education*. The author deconstructs the arguments in terms of the basic elements of story: casting, plot, and setting. He contrasts the differing casts of characters in the tales spun by the two contending advocates, and points out how their stories use differing beginnings and differing middles to point to different endings – *i.e.*, differing judgments by the Court. He performs a structural analysis of the two arguments, beginning with their macrostructure and proceeding to their microstructure. The latter analysis includes a linguistic study that accounts for the distribution and uses of various parts of speech as well as specific words and phrases. Use and avoidance of particular vocabulary and sentence structures are shown to reveal theories about the way the world works, the respect due to authority, and the plights and entitlements of people. The author suggests that myths can be used to convey ideas that propositional statements are incapable of expressing. He invites clinical scholarship to explore the various subtle ways in which lawyers’ “stories” go beyond, but also serve to ground, their doctrinal reasoning.

Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Arguments to a Jury*, 37 N.Y.L. SCH. L. REV. 55 (1992).‡ This article uses narrative theory, linguistic microanalysis, and other techniques for analyzing discourse to examine the prosecutor’s and defense counsel’s closing arguments in an actual criminal trial. The “first take” focuses on forensic techniques and concludes that the structure, content, and style of the arguments conform to advice found in treatises on jury argument. The “second take” explores the rhetorical structure of the arguments and, drawing on the writings of classical rhetoricians, finds that the prosecutor’s argument perfectly tracks the Aristotelian structure for a speech but that the defense attorney’s argument does not follow any standard rhetorical sequence. The “third take,” which focuses on narrative construction, solves the riddle of the structure of the defense attorney’s argument, finding the key to that structure in storytelling rather than rhetorical argument. This section of the article analyzes the very different

stories that the opposing advocates chose to tell – the prosecutor recounting a historical tale about the defendant’s criminal acts, while defense counsel relates a quest narrative about the trial itself, with the jury as protagonist. The “fourth take,” which examines dialogic structure, shows the various ways in which the lawyers used narrative techniques, stock scripts, themes, grammar, metaphor, and rhetorical devices to create different worlds in which each lawyer’s chosen narrative would best resonate with the jurors. The article concludes by offering some general observations about the nature of persuasion in the context of courtroom advocacy.

Stephan Anagnost, *Promoting Refugee Law as a Means of Challenging the Status Quo at University Level Education in Europe: The Role of the Refugee Law Clinic* 2 INT’L J. CLIN. LEGAL EDUC. 38 (2002). This article examines the development of refugee law clinics in the Central European and Baltic States (CEBS), arguing that they present a cost-effective way to provide high quality legal aid to asylum seekers and refugees, to encourage humanitarian attitudes, and to strengthen lawyering skills in students. The first part describes the challenge faced by the majority of CEBS in providing legal aid to asylum seekers and refugees given the lack of funding available for asylum and refugee attorneys, and presents the use of refugee law clinics as a means of addressing the problem. It notes that such programs can provide immediate help by providing legal services and long term aid by training future refugee and asylum practitioners. For such programs to operate successfully, they should be associated with a university, provide a comprehensive course on the international aspects of refugee and asylum law for students prior to their placement, and secure an adequate source of funding through endowments or a partnership with an organization such as the UNHCR. The second part of the article examines the state of clinical legal education in Europe, noting reasons that clinical programs traditionally have encountered resistance (lack of funding, institutional resistance to abandoning the “straight lecture” style of teaching, and poor development plans) and arguments in favor of clinical education (need for lawyers with human rights and poverty oriented legal experience). The article concludes by presenting two case studies describing the initial steps taken towards the development of clinical programs in Budapest and Austria that proved successful.

Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363 (1993).\* † This is a review of Professor Gerald P. López’s book, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice*. The first part of the essay discusses López’s book and the concept of rebellious lawyering (as opposed to traditional or “regnant” lawyering). Rebellious lawyering is defined as a more open, democratic and community-oriented approach to lawyering for progressive attorneys. Recognizing that the basic goal of rebellious lawyering is empowerment, Ancheta then asks the question: How much more effective is rebellious lawyering in achieving social change? Ancheta attempts to answer this question by examining the impact that rebellious lawyering has had on one racially subordinated group, Asian Pacific Americans. Ancheta argues that López has focused only on the microdynamics (attorney-client) of lawyering, ignoring broader political and social goals. The author proceeds to offer an expansive view of rebellious lawyering, which he calls “community lawyering.” Ancheta concludes that rebellious lawyering can make a difference, but not to the degree that López and others expect. Ancheta praises López’s work for its insight into the world of progressive lawyering.

Terence J. Anderson & Robert S. Catz, *Towards a Comprehensive Approach to Clinical Education: A Response to the New Reality*, 59 WASH. U. L.Q. 727 (1981).‡ The article describes a model of

legal education that encompasses the need to better prepare graduates while maintaining the values and benefits of the current university system. The authors propose a legal education that has a continual clinical experience throughout the student's matriculation. The model requires that students stay in school a little longer and attend summer session. Basically, it establishes a teaching law firm attached to the university where students work in roles of increasing responsibility. The course work and clinical work should be mutually complementary and supportive. The article describes in detail the assumptions upon which the model is based, details of implementing such a program, and the course structure of the program (student and faculty workloads). Although the model presented is based upon a blueprint from the Cleveland-Marshall School of Law, a framework is presented that will allow the administration of other schools to discuss and understand the task.

Maureen N. Armour & Mary Spector, *Epilogue: Theory in the Basement*, 51 SMU L. REV. 1555 (1998).\* † This article examines the dichotomy between theory and practice, in the context of modern legal education. The article argues that "from a clinical perspective, no conflict exists between theory and practice." It traces the history of the modern law school, noting that legal training once was acquired through an apprenticeship. It explains how formal legal training evolved into the academy, from which divisions between theory and practice emerged. Teaching in the classroom focused on case method and doctrine and signaled the rejection of the practice-based approach to legal training. Since that time, debate over the merits of a clinical approach to legal education has continued. This article asserts that clinical education today embodies the best of the educational developments, that despite clinics' focus on "practice," clinical education is more than simply "practical." The authors argue that "clinicians embrace theoretical perspectives in their teaching and in their research and writing," thereby validating the belief that "any gap between theory and practice is illusory."

Frank Askin, *A Law School Where Students Don't Just Learn the Law; They Help Make the Law*, 51 Rutgers L. Rev. 855 (1999).\* † This article briefly describes the operation of the Constitutional Litigation Clinic at Rutgers School of Law-Newark. The author describes the mission and accomplishments of the clinic and reports on activities of the clinic during the 1997-98 academic year. The article concludes by urging law schools to consider replicating the model elsewhere.

Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994).\* † This article argues that the MacCrate Report devalues experience that is not controlled by educators. In particular, the article addresses a new branch of cognitive science that focuses on contextualism – a branch that emphasizes that humans are actively engaged with their social and physical environments and that their understandings and actions are responsive to and in fact generated by the opportunities and constraints of the situational contexts they encounter. According to the author, humans do not confront a particular place and time, a field of action, with a predetermined set of responses, with a theory that unproblematically tells them how to proceed. Although their responses are funded by the past, by expectancies drawn from prior experiences, by intuited patterns in experience, and by processes of script, analogy, and metaphor, situational responses also are constituted by the present, by the people, tools, and institutional arrangements that structure a context, that literally generate or call forth a response. The article argues that educators, including clinical educators, tend to overvalue the role of theory

before-the-fact and the role of reflection after-the-fact, both of which are ordinarily controlled by the educator. The author asserts they do so based on misunderstandings about both theory and reflection, listing four such misunderstandings. First, contrary to prevailing assumptions about the ease of remembering and applying theory, people can rarely recall, let alone articulate, an applicable theory in advance of contextual experience because the immediate context and the imminent experience both elicit and interactively reconfigure all cognitive resources, including theory. Second, reflection-after-the-fact is quite likely to be substantially inaccurate because of the relative transparency of conscious thought and the complete invisibility of preconscious and tacit processes.

Third, rather than rely on theory to problem-solve, there is a strong cognitive preference for reasoning by pattern and exemplar. Fourth, the most important location of cognition, including the pragmatic deployment of reflection and theory, is in-action, when the learner is fully engaged, when learners might use intuited patterns, exemplars of practice, and improvisational theory/themes as world-making resources to address destabilizing dilemmas.

Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1 (1999).\* † This article examines the theory of ecological learning, which the author asserts “emphasizes co-participation in communal tasks, mutual respect from supervisors and peers, and responsiveness from the entire social environment.” Part II explores supervisory sources of learning in traditional clinical terms, describing a full range of teaching/learning interdependencies with clinical supervisors including role-modeling, top-down collaboration, mentoring, case supervision, feedback, and mandatory reflection. Part III describes “participatory and lateral sources of learning that challenge and supplement the clinical model.” Part IV addresses the more traditional concern of clinicians and focuses on the expert/novice interactions and explores how students acquire competence through interaction with their more senior colleagues. Finally, the article concludes by proposing a model of guided participation in “apprentice-like opportunities” as the best means to assist the socialization of a novice and ensure the “rapid replication of expertise.”

Brook K. Baker, *Transcending Legacies of Literacy and Transforming the Traditional Repertoire: Critical Discourse Strategies for Practice*, 23 WM. MITCHELL L. REV. 491 (1997).\* † This article begins by tracing the legacies of a passive, text-driven literacy tradition that law students bring to law school. In doing so, the article draws on composition studies rarely addressed in legal literature that investigate the reading-to-write protocols and strategies used by novice writers in periods of transition from one discipline or educational setting to another. This discussion puts into context the deep structure of passive textualism that confines and desiccates students’ most conventional writing practices. The article then discusses the difficulties law students and lawyers face in developing a more critical, less conventional written advocacy. The author identifies two complementary constraints as particularly problematic: the ethic of zealous, client-centered advocacy and the conventionalized and ultimately conservative expectations of the community of legal readers and decision makers. Within this system of constraint, the article outlines unconventional resources for a more critical discourse – one that seeks the transformation of law towards the goal of social justice – such as outsider narrative; critical “rationality” using interdisciplinary, comparative, and non-legal authority; avoiding appeals to bias; and tempering excessive advocacy and entering a more authentic, more complex, more “feminist” dialogue. The

article focuses primarily on the first strategy, that of presenting a more subversive narrative – one that represents a responsible account of the lived experience of a particular life, but one that also is linked to the collective experience of a communal harm. After discussing the possibilities of utilizing a broader array of sources that “prove” the desirability of legal change, the article concludes by arguing against corrosive appeals to bias in favor of more nuanced, more contextual, less strident, and more dialogic advocacy – an advocacy that engages the complexity of legal disputes in a more open-ended, honest, “feminist” way.

Beverly Balos, *The Bounds of Professionalism: Challenging Our Students; Challenging Ourselves*, 4 CLIN. L. REV. 129 (1997).\* † This comment examines issues raised in an article in the same volume by Professor Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, by reflecting further on the structure of legal education and its deficiencies in training students in the legal profession. The author focuses on two aspects of legal training and the legal profession, lawyer/client relationships and professional values. The author asserts that “the prevailing norms within legal education are inconsistent with students learning that the limited nature of their perspectives constrains their ability to represent clients in a fully competent manner.” She believes that the entire law school, not just the clinical program, has responsibility for clients. This perspective, if adopted, would require revision of both curricular decisions and course content to “hold all persons in the law school community accountable for the delivery of high quality legal services to its clients.” The article also looks at how the law school teaches students the values of the profession. The author says that “law school education contributes to the making of professional identity and to the making of the boundaries that define that identity. The culture and values inculcated within the law school do not support a vision of lawyering that takes into account that lawyering involves responsibility to and relationships with others.” The author expresses support for Aiken’s call to maximize disorienting moments to destabilize the predominant norms and dichotomies of clinical/nonclinical and professional/nonprofessional in order to reconstruct lawyer identity and to “begin efforts to engage collaboratively in the pursuit of justice as constitutive of professional identity.”

John Barkai, *Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil*, 75 NEB. L. REV. 704 (1996).\* † This article identifies the integral role that negotiation plays in a lawyer’s career and recognizes attempts by law schools and universities over the last fifteen years to develop courses that teach negotiation and alternative dispute resolution skills. The article discusses some unique approaches utilized by the author as part of an experimental learning approach to teaching negotiation and ADR skills, with particular emphasis on communication skills. Optical illusions, cartoons, and read-a-long communication exercises are some of the teaching techniques and methods described in this article, which are used by the author in an attempt to both entertain his students and convey significant ideas about negotiation and conflict resolution in a memorable fashion.

David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87 (1990).‡ This article seeks to answer the question whether the clinical education movement undermines or advances the ideal of the university. The author discusses both traditional and modern conceptions of the university, which include an institution to increase knowledge, to pursue knowledge for its own sake, and to educate individual students. The article next sketches aspects

of the development of the university law school in America from its beginnings as a different way to prepare students for the practice of law, through the Langdellian revolution to the rise of the clinical movement in the decade between 1968 and 1978. Next the author seeks to draw some connections between the university ideal(s) and the work of clinical faculty. The author concludes that the fundamental themes of the modern clinical movement are more faithful to the mainstream conceptions of the university ideal than was much of the work done within the century-long paradigm generated by Langdellian legal science. However, the author criticizes clinical faculty for a growing focus on teaching technical legal skills as the justification for clinical legal education. The author chastises clinical faculty for their unwillingness, or inability, to do serious scholarly work and for their turn away from concern for the themes of practical justice and knowledge. The article argues that the primary mission of clinical faculty is to create visible models of justice in action that demonstrate a deep commitment to achieving justice and to challenging injustice. Clinical faculty can do this by committing themselves to studying areas of need where the application of scarce legal resources might make a difference in remedying or at least publicizing a problem and by designing clinical courses with sound, defensible visions of social justice in mind. The article ends with the author arguing that the primary intellectual contributions of clinical faculty should be to tell those in power things they have ignored or simply do not want to hear and to conduct research into humanistic themes, such as the personality and role of lawyers, the justice and injustice of real legal processes, and the basic dignity of humans caught within the machinery of law.

Joseph A. Barrette, *Self-Awareness: The Missing Piece of the Experiential Learning Puzzle*, 5 T. M. COOLEY J. PRAC. & CLINICAL L. 1 (2002). † This article discusses the process of experiential learning, focusing specifically on the impact that internal attitudes, beliefs, values, and emotions have on the learning process, and the subsequent importance of adopting teaching methods that facilitate student awareness of such factors. The article identifies three content categories that are components of a legal education, and notes that while Type I knowledge, which is described as the type of information that is necessary to be cognizant about any subject matter and which is associated with traditional legal doctrine, dominates educational curricula, Type II and III knowledge are rarely addressed under traditional curricula. Type II knowledge is described as the understanding that results from the application of theory and encompasses such skills as knowing whether an individual is a good witness or sensing whether a client is lying. Type III knowledge, which is the primary focus of the article, is described as an awareness of the internal factors that influence behavior. The article argues that legal education needs to place a greater emphasis on facilitating the development of Type III knowledge because an inability to recognize and deal with internal attitudes, beliefs, and emotions is detrimental to students' ability to learn and apply Type I and Type II knowledge.

Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Services and Should Law School Clinics Conduct Them?*, 67 FORDHAM L. REV. 1879 (1999).\* † This article explores the use of *pro se* clinics as a means of providing access to the justice system. It reviews various *pro se* legal clinics across the country to assess how different jurisdictions are perceiving and responding to the needs of low-income litigants. It discusses in relative detail the *pro se* projects in the District of Columbia as well as law school *pro se* clinics, including Catholic University Law School's Families and the Law Clinic. Finally, the article examines the teaching and

service goals that can be met by law school participation in *pro se* projects. The author appeals to the court system and lawyers to take responsibility to assure effective access to the judicial system for litigants. The author concludes that community education such as that provided in *pro se* projects has the potential to provide valuable assistance to litigants who have no access to legal representation.

Margaret Martin Barry, *Clinical Supervision: Walking That Fine Line*, 2 CLIN. L. REV. 137 (1995).\* † Barry tackles difficult interpersonal issues for clinical supervisors in the context of two hypothetical situations created for an AALS conference on supervisory issues. The vignettes depict two problematic supervisory relationships, complicated by complex personal dynamics of the students and clinicians involved. In Barry's hypothetical, a white, male domestic violence clinic student named "Lewis" approaches his black, female supervisor in a defensive posture, claiming persecution by his female classmates. In another professor's hypothetical, "Derrick," an African American, male student, is reluctant to share personal insights with his white, female supervisor during their discussion of tactical approaches at a crucial moment in client representation. Barry analyzes both vignettes in terms of factors affecting communication, responsibility sharing, role expectations, and mutual respect in supervisory relationships. Recognizing that neither clinician responded ideally to the challenges presented in the hypotheticals, she highlights potential pitfalls in their approaches to students' needs. She also offers suggestions for how they might have handled the problems more skillfully, so as to foster student responsibility and self-reliance. In her analysis, Barry highlights the role of racial and gender differences in supervisory dynamics. She concludes with critical reflections on her own supervision of a student whose intense commitment to clinic presented her with challenges similar to those identified in the hypothetical discussions.

Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 HOW. L.J. 135 (1994).\* † This article describes a program at Catholic University's Columbus School of Law that approaches lawyering for the poor from a systemic point of view, rather than focusing solely on individual representation. The author argues that traditional poverty law fails to meet poor clients' needs because it overemphasizes litigation as a method of solving problems. This not only thwarts the objectives of poverty law, but also impedes the service and teaching objectives of clinical law programs by inhibiting students' creativity and reinforcing traditional lawyer dominance and client objectification. Among other clinical reform efforts, Barry describes Catholic's FALC (Families and the Law Clinic), which emphasizes attention to social context and non-litigation remedies for clients from poor communities. Students engage in local politics, community organizing, outreach education, and legislative advocacy in addition to conventional litigation exercises to combat domestic violence in poor D.C. neighborhoods. Barry argues that this holistic approach to poverty law teaching better meets the service and education goals of the clinic by responding to realistic needs of poor communities and broadening the range of skills learned by students.

Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education For This Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000).\* † This article focuses on the continuing transformation of legal education and the role of clinical legal education in training competent, ethical practitioners. Part I examines the primary challenges that clinicians confronted in the past: to create a clinical legal

education teaching methodology and to establish viable, enduring clinical programs in law schools throughout the country. Part II discusses a variety of models for integrating clinical methodology either throughout the curriculum or as a core feature of the curriculum. Part III analyzes several challenges and opportunities for clinical legal education and the larger enterprise of legal education in the twenty-first century, including the coming of the digital age, the advance of the global age, the changes in demographics of law students, and the changes in the nature of law practice. Finally, Part IV describes a vision for clinical legal education in its “third wave”: the changes that can and, according to the authors, should take place and how this third wave of clinical legal education can contribute to improving the future of legal education, the competence of law graduates, and the quality of legal representation for clients.

Stephen F. Befort, *Musings on a Clinic Report: A Selective Agenda for Clinical Legal Education in the 1990s*, 75 MINN. L. REV. 619 (1991).<sup>\* †</sup> The author comments on the AALS Final Report on the Future of the In-House Clinic without undertaking a comprehensive critique or analysis of its provisions. Instead, he examines the five issues discussed in the report: the alleged decline of the in-house clinic (i.e., the demand for clinical education); the pedagogical goals of clinical education; financing of the clinic; the status of clinical faculty; and the “upstairs/downstairs” problem (i.e., the interrelationship between clinic and nonclinic faculty). The author recognizes the major accomplishment of the report in creating a broad review of the current state of clinical programs, but also acknowledges flaws. He points to the lack of empirical support for claims of declining popularity of in-house clinics and attacks the report’s failure to rank public service objectives among the goals of clinical education. Furthermore, he criticizes the report’s reliance on federal grant money to finance programs, suggesting instead that law schools internalize clinic costs in order to affirm the permanent status of clinical programs in legal education. He advocates caution and reform in the area of tenure standards and argues for greater cooperation between clinical faculty and traditional academics.

Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619 (1983).<sup>‡</sup> The author takes a critical look at the debate among clinicians and the debate between clinicians and traditional faculty members. Responding to Robert Condlin’s criticism of clinical instructors in “The Moral Failure of Clinical Legal Education,” Bellow says “[f]ew of us [clinical instructors] fail to recognize that, if we expect students to become self-learners, the importance of mutuality, honesty, tolerance for other ideas, and self-awareness – all of which are basic to successful self-learning – have to be demonstrated in our teaching.” Bellow admits that clinical instructors are much more like traditional faculty members than they would like to be and recommends that they work on these issues. Condlin’s critique, however, is not fatal to clinical education because, for one thing, clinical instruction is vital because it brings the real world into the classroom, the real world being something that law schools are unable to deal with effectively; because of the normative impulse of clinical education, a concern with substantive justice and substantive norms; and because it opens the question of the purposes of law school itself. As for the debate between clinicians and traditional faculty members, Bellow says that clinical instructors should be aware of how far-reaching and fundamental their criticisms of traditional faculty really are. “If we look hard at the way doctrine and policy are currently taught, I think we would all admit that the images of the world that we project simply bear no relation to reality.” Conflict between traditional faculty and clinicians

is inevitable if the clinical educators are to fulfill their goal of bringing the real world into the classroom.

Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as a Methodology*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* 374 (1973). As a methodology, clinical education is appropriate for a variety of educational ends. “To speak of clinical education as a method generates a much needed pressure for further and more precise articulation of its purpose and goals.” The central feature of clinical method is its use, conceptually and operationally, of the dynamics of role adjustments in social life. The three main components of clinical method are 1) the student’s assumption and performance of a recognized role in the legal system; 2) the teacher’s reliance on this experience as the focal point for intellectual inquiry and speculation; and 3) a number of identifiable tensions that arise out of ordering the teaching learning process in this way. The function of clinical teaching is to enlist the motivations, impressions, and relationships of role performance to increase self-reflection, self-consciousness, and to develop a fuller understanding of the legal order. The tensions and conflicts that arise from this method are critical to its purpose. The tensions arise out of the student’s position as student and as lawyer; the student/lawyer wants to know what to say when opening a negotiation, while the teacher wants the student to figure out what to say and comprehend the motivations and consequences of different choices the student may make. Further conflicts arise between the roles of the teacher as teacher and as partner in the legal team; the instructor as lawyer wants to ensure that the client gets adequate legal representation, while the teacher wants the students to be able to make and learn from their mistakes. The “tensions between autonomy and control, the general and the concrete, professional status and student status, while difficult to manage, are fundamental to its immediacy, its motivational directions, and its cognitive and emotional framework.” It is the struggle with an experience had by the student, the analysis, comparisons, evaluations, and generalizations, that infuse the experience with meaning.

Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 *HARV. C.R.-C.L.L. REV.* 297 (1996).\* † In this article, the author explores the concept of political lawyering and reflects on a few examples from his own experience of politics through law. He then explores the common themes of his experiences and concludes that all shared a social vision, an enduring alliance between the lawyers and clients involved, and persistent engagement with adversaries and decision makers. The author next explores dilemmas common to political lawyering – doubt and defeatism, lack of financial support, and a decrease in job opportunities, thereby creating a lack of continuity in the public interest community. The author concludes by expressing uncertainty about the future of political lawyering, but argues that the use of law and legal skills in the pursuit of social ends is “a critical component of a complex democracy.”

Gary Bellow & Randy Hertz, *Clinical Studies in Law*, in *LOOKING AT LAW SCHOOL: A GUIDE FROM THE SOCIETY OF AMERICAN LAW TEACHERS*, 340-359 (Stephen Gillers ed., 4th ed. 1997). This is a chapter on the subject of clinical legal studies in a book covering a wide range of aspects of law school, prepared under the auspices of the Society of American Law Teachers (SALT) for law students and those considering law school. The chapter provides a general introduction to the history, goals, and methodology of clinical legal education, and an overview of clinical scholarship. The article also presents the authors’ views of the challenges currently facing clinical teachers.

Gary Bellow & Earl Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664 (1971).‡ In the context of an inquiry about the pedagogical purposes of and potential for clinical education, the authors describe the clinical program at USC, the goals of the program and the choices involved in achieving those goals. The program at USC is a full-time clinical experience available to students in their 4th, 5th, or 6th semester. While enrolled in the clinic, the students do not take any other substantive courses. Instead, they take courses on Criminal Trial Advocacy and the Lawyering Process. The advocacy course begins with an intensive introduction to the elements of trial practice. The students are engaged in role playing interviews, oral argument, conduct of examinations, and the making of objections in the early part of the semester. The course evolves into an in-depth treatment of selected aspects of trial. The primary focus throughout the advocacy course, as in the Lawyering Process course, is on the relationship between theory and practice. The process course seeks to analyze and systematize the processes in which students are engaged each day – interviewing, counseling, negotiation, drafting, and oral advocacy – and the problems of role, personal interaction, purpose, perception and communication that they raise. The students spend most of their time practicing under supervision attorneys who are also the course instructors. The supervision presents the most complex and most promising pedagogical problem of the program. The structure of the program involves explicit choices: the focus is on education, not service; supervisors’ case loads are limited to the case being handled by students; and the number of students is limited. The full-time nature of the clinical semester similarly involves such choices and goals. The goal of the clinic, “knowledge and understanding,” is based on the idea that a broader, more comprehensive education will prove more useful in practice. A corollary goal of the clinic is to teach students who cannot be taught in lecture courses. In conclusion, the article states that the debate about the values, premises and direction of clinical education may be the most important contribution that clinical legal education can make to legal education and to the profession.

Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978).‡ The purpose of the article is to explore a number of the most persistent ethical dilemmas in the practice of public interest law, to compare them and the choices that public interest lawyers make to similar problems that face the entire profession. The article adopts a definition of public interest lawyers as those representing the underrepresented. The authors explore several examples of ethical problems that are exacerbated in the public interest field. Scarcity of representation results in two related problems. First, how is a public interest law firm to choose its clients? Second, how is a public interest law firm to adequately serve its clients if it does not screen them? The article presents these issues as the unrepresented client and the underrepresented client, respectively. The concept of fairness also results in divergent ethical dilemmas. Fairness to clients may often entail decisions on the part of the lawyer that are contrary to the intent of the Canons of Ethics. Fairness to the system or to disadvantaged adversaries may result in a breach of the Canons of Ethics. The article presents the dilemmas in examples, discusses the decisions lawyers make, and then discusses the implications of the behavior under the Code. In the third section of the article, the authors review some suggestions that have been made to address these issues. The first suggestion is that more lawyers be “assigned” to work in public interest law. The authors write that this fails to address either the scarcity or fairness problems for several reasons: practically, a tenfold increase in the number of

public interest lawyers would just barely begin to balance the scales of access; the justice system would have to be fundamentally restructured to accommodate the accompanying infusion of cases; and finally, the rich and powerful will always be better able to deal with litigation and enforcement. The second proposition, modifying the system itself, fails for similar reasons. The authors propose six modifications of the Code of Ethics in order to address the problems: 1) prohibit attorneys from taking unfair advantage; 2) impose greater obligations on attorneys proceeding against unrepresented opponents; 3) obligate lawyers to try to dissuade a client from seriously injuring another person; 4) increase the privilege of confidentiality in situations where the need outweighs the harm and is based upon moral considerations of the attorney; 5) impose expanded obligations for public safety on lawyers representing commercial entities; and 6) the bar should encourage lawyers who have violated a rule of conduct on principle to seek review and debate. The article concludes that this is the beginning of the debate, not the end.

Paul D. Bennett, *A Smile That You Could Not Say No To*, 8 CLIN. L. REV. 3 (2001).† The author, a former colleague from Professor Sullivan's time as a legal services lawyer, reminisces about her early days as a lawyer and her ability to bring people together to work on worthy yet challenging projects.

Susan D. Bennett, *Embracing the Ill-Structured Problem in a Community Economic Development Clinic*, 9 CLIN. L. REV. 45 (2002).\* † This article describes the form, or formlessness, of a typical community development project that a law school clinic might take on for a community group; how the project resembles that described in the literature on problem solving as the "ISP" – the "ill-structured" or "complex" problem; and how law students, the archetypal novice problem solvers, face particularly high hurdles in attempting to negotiate this particularly intimidating kind of case. With their fluidity of variables and indeterminacy of path and result, community development projects are quintessential "ISPs." The article asks whether the solving of complex problems can be taught as a learning strategy, or if learners can only expand this expertise through time and experience. Researchers of the psychology of problem solving observe that, for experts, the most important activities within the process of complex problem solving are those that occur at the very beginning: those involved in defining the problem or in "problem-finding." These are steps that novices often presume to be obvious, rush through, or simply overlook. The ability to maintain the permeability of the "problem space" – to entertain an expansive universe of changing information and to defer judgment as long as possible – is a mark of expertise in problem solving, as it is of wisdom. The article suggests that teachers focus on assisting their students (and on assisting their students to assist their clients) in taking great care with this first step.

Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771 (1998).\* † This article provides an account of the author's experiences in creating a law school-based community economic development law clinic to handle the legal issues of fledgling nonprofits, small businesses, tenant coops, and subsidized housing. The author provides insights into the challenges of such a clinic. She focuses on the concept of "long-haul lawyering," which she describes as "unbounded representation to the community." The author describes the client-lawyer relationships in a community development practice as "intense," the product of a mutual evolution over time. The author argues that such a practice is not orchestrated in a case-by-case manner, nor is it temporary

in nature. Rather, it is a practice that requires the lawyer to become a part of the community and to be willing to dedicate resources over time. Clients are not dismissed after resolution of a singular matter, but rather remain “clients for life.” Accordingly, the author argues, mental, physical, and political stamina are the most important qualities of a long-haul lawyer. The author then explains how teaching the concept of long-haul lawyering to law students is particularly challenging. She argues that the longevity required for engaging in a community law practice is at odds with the brevity of the law school clinical experience, which often only encompasses a semester and encourages “lawyering-by-the-case.” Lack of materials and curricula make teaching this concept of law practice difficult as well. The author suggests that encouraging students to focus on a community’s assessment of its strengths in order to attack legal problems, rather than a “deficiency-based” approach, may be one important mission of the community lawyering curriculum, which ultimately seeks to empower the community members.

Paul Bergman, *The Consumer Protection Clinical Course at UCLA School of Law*, 29 J. LEGAL EDUC. 352 (1978).‡ This article describes the consumer protection clinical course at UCLA, which places students at either the State Attorney General’s, L.A. City Attorney’s, or L.A. District Attorney’s Consumer Fraud Units, detailing the structure and objectives of both its fieldwork and seminar components. It argues that the fieldwork and seminar components of the course each advance interrelated but distinct objectives, with the fieldwork component providing exposure to what a practicing attorney does on a daily basis and a bridge from the highly structured environment of law school to the “deadline-riddled” practice of law, while also providing a context upon which students can draw in discussing and analyzing broader theories and problems regarding consumer law that are presented as part of the course’s seminar component. The article discusses how the seminar component of the course can be used to teach substantive law and the challenges that emerge in choosing seminar topics and involving agency supervisors and law school faculty in the seminars.

Mary Berkheiser, *Frasier Meets CLEA: Therapeutic Jurisprudence and Law School Clinics*, 5 PSYCHOL. PUB. POL’Y & L. 1147 (1999).\* † The article discusses how the concept of therapeutic jurisprudence, that is, the study of the role of law as a therapeutic agent, can be expanded beyond the theoretical to the practical by incorporating principles of therapeutic jurisprudence into clinical teaching and law clinic practice. The author first provides some background on therapeutic jurisprudence for clinicians and some background on clinical legal education for therapeutic jurisprudence adherents. Next, the author identifies ways in which therapeutic jurisprudence could enhance clinical teaching. Finally, the author addresses challenges that law school clinicians may face when applying therapeutic jurisprudence in their work with students and clients.

Morris D. Bernstein, *Mr. St. Clair’s Case*, 35 TULSA L.J. 295 (2000).\* † This article is a reflection by a clinical teacher on the lessons gained after the conclusion of a particularly challenging representation of a client who sought help from the University of Tulsa Legal Clinic to deal with home repair contractors whom he had hired to replace the roof and put siding on his house. The dispute was eventually settled nearly three years later, after the contractor filed a foreclosure action, with the client receiving \$750.00 from the contractor in return for a quitclaim deed. The author describes in detail the three years of litigation. This article is the author’s attempt to come to grips with what he regards as a failure of the legal system to respond adequately to the legitimate claims

of the low income client and the sense of powerlessness experienced by the clinical teacher and his students over the course of the representation.

Barbara Bezdek, *Reconstructing a Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159 (1992).\* † The article begins by discussing the dominant notions of lawyers' responsibilities. Three current methods of teaching responsibility are described as "lacking concern with the deepest question lawyers' work poses: Who should I be?, or who should I become?" In the Legal Theory and Practice (LTP) course at the University of Maryland the "question takes a more specific form: Who am I in relation to poor people?" The article describes the LTP course as a method of "equipping students to consider their own career-long responsibilities to those disadvantaged in the legal system by their poverty." Students are required to work with the disadvantaged and are encouraged to discuss the personal moral issues they face. Concluding, the article acknowledges the difficulties of personal moral inquiries, but describes the process as one which "initiates an interior conversation about the deep contours of the professional life the student contemplates, and can yet fashion, if she will."

Barbara Bezdek, *Silence in The Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992).\* † The focus of the article is the functional voicelessness of socially subordinated groups systematically excluded from the law's prescriptions by the operation of Baltimore's Rent Court. The silence is caused by dynamics occurring in and around the courtroom, including important differences in speech and interpretation. The first section of the article provides background information for familiarity. The second section offers comparative analyses of the operation of the Rent Court, one based on the model of the law's protection through legal process, and the second based on a model of inclusion and exclusion from the legal process. The third section identifies four strategies of silence and speech. The phenomenon of tenants who show up for court but fail to present a defense provide insights into the operation of the court as an extension of society. The fourth section ponders the relationship among notions of culture, identity, and legal rights for enhanced participation by subordinated people.

Jerry P. Black & Richard S. Wirtz, *Training Advocates for the Future: The Clinic as the Capstone*, 64 TENN. L. REV. 1011 (1997).\* † The authors argue that the need has never been greater in American society for competent, ethical, attorney-advocates, that is, "lawyers skilled in the full range of techniques for resolving disputes and schooled in the exercise of judgment in their use." While the authors concede that the training of lawyers as advocates in law schools has improved, they maintain that few law schools undertake this task in a serious, disciplined way. The article discusses the University of Tennessee College of Law's establishment of a Center for Advocacy in 1993, created in order to prepare its students early in legal education for the responsibility of representing clients. The curriculum and goals of the program are described in the article, with particular emphasis on the Advocacy Clinic. The clinical experience, the authors argue, allows the student the opportunity to merge the processes of the other components of the advocacy concentration. The authors conclude that the clinical experience provides a framework for the exercise of judgment in lawyering decisions, which will prove to be invaluable as the advocate makes the transition from student to lawyer.

Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995).<sup>†</sup> Blasi identifies the lack of any coherent system for structuring knowledge and scholarship about lawyering and suggests a paradigm constructed from the principles of cognitive science. He focuses on problem-solving as the core activity of lawyers but notes that legal education lacks mechanisms for teaching expertise and judgment in this area. In response to this lack, he offers cognitive science models that provide insight into organization of knowledge. These models suggest that experts learn to recognize conceptual patterns, called schemas and mental models, through personal experience and practice so they can apply the patterns to solve new problems. Blasi notes that clinical programs have employed this method of teaching judgment in the past, and encourages traditional legal educators to learn from the clinical example. He argues that incorporation of theory into the curriculum can provide similar training in the absence of close clinical supervision. In this context, Blasi uses the term “theory” to describe resources that guide the attention of students’ learning through experience.

Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939 (1997).<sup>\* †</sup> The author asserts that clinical legal education is at a crossroads. He attempts to shed light on some of the questions surrounding the use of clinical education by examining the history of clinical legal education. When tracing this history, the author posits that clinical legal education began much earlier than the early 1970 dates suggested by many academics. In fact, the author suggests, clinical legal education can be traced back to Professor Charles Henderson Miller’s University of Tennessee Legal Clinic in 1947. With the hope that this new starting point might yield greater insight into the direction that clinical legal education should take, the author describes three influences that created the need for clinical legal education. First, the author describes how clinics filled the void created by the disappearance of the apprentice experience. Second, the author credits the legal realists’ stress on the need to understand the social and psychological forces affecting all components of the legal system. Third, the author describes how the legal aid movement drew attention to the need to create better access to legal assistance. The author writes that these three developments created the impetus for the expansion of clinical legal education. In response to these developments, the author describes how clinical legal education focused on skills training, the provision of legal services, education about society, and the development of professional responsibility. The author concludes that an understanding of the history and original goals of clinical legal education is essential to its continued vitality and success.

Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982).<sup>†</sup> Andragogy, a specially-developed theoretical model for the teaching of adults, has four key elements, all of which support its use as a basis/theory of clinical legal education. The first concept, adults’ self-concept as self directing, ties in with a clinical program’s use of learning through client representation and mutual inquiry. Adults expect to learn on their own, to make their own decisions, to live with the consequences, and to learn from their experiences. They do not expect, like children, to be receiving sets for their teacher’s wisdom. The second aspect that andragogy attributes to adults is the central role that experience plays in their education. In fact, adults define who they are, based on their experiences. Under the andragogical model, therefore, the best way to teach an adult to be a lawyer is to let the adult experience being a lawyer. The third assumption andragogy makes relative to adult learning is the concept of “developmental tasks.” Developmental tasks are those

that are necessary to learn when moving from one phase of life to the next. As adults in law school are preparing to enter the phase of being a lawyer, they will have a heightened readiness to learn about being a lawyer. The fourth underlying assumption is that adults are oriented to learn in a problem-solving manner. They want to learn about issues that they are facing or will soon face. They do not want to learn about a subject for use at some unspecified time in the future. Clinical education utilizes all of these aspects to some extent and should be structured to reflect the aspects of andragogy more accurately. The author posits that a “coherent, methodology-based justification for clinical programs does not exist,” and that live-client based clinical programs are particularly well-supported by andragogical theory.

Frank S. Bloch, *Framing the Clinical Experience: Lessons on Turning Points and the Dynamics of Lawyering*, 64 TENN. L. REV. 989 (1997).<sup>\* †</sup> The author seeks to identify the primary value of clinical legal education. While recognizing a plethora of benefits that stem from clinical programs, the author pinpoints the experiential learning process as the source of all other benefits. With this in mind, the author looks at how the experiences of students in clinical programs can change the face of legal education and practice. Through the use of three examples, the author describes “turning points” as a common feature encountered by those in experiential learning programs. These so-called turning points are situations where the “various forces that affect a lawyer’s representation of his or her client” change. Unlike the fixed scenarios common to traditional law study, the experiential aspects of clinical education demand that students adapt to a dynamic of changing factors. Because of the immediacy of experiential learning, students are often profoundly affected by the cases they take and the changes they witness, and, as a result, many become more driven to press for legal reform. The author argues that this social consciousness cannot likewise be captured through traditional non-experiential instruction or simulation exercises. The author concludes that actual experience based learning is crucial to developing students who are motivated to improve the law and the role of lawyers.

Kate E. Bloch, *Subjunctive Lawyering and Other Clinical Extern Paradigms*, 3 CLIN. L. REV. 259 (1997).<sup>\* †</sup> The author seeks to determine what roles the clinician plays in responding to real-case ethical dilemmas that arise for students in their field placements and, specifically, how the clinical teacher should resolve tensions among potentially conflicting obligations, possible legal liability, and pedagogical commitments. To answer these questions, the article provides a hypothetical that presents an ethical dilemma. The article identifies three responsive paradigms or models of teacher engagement, progressing along a continuum of intervention from pedagogical inquiry and suggestion to direct lawyering intervention in the real case, and then applies all three paradigms to the hypothetical. The article explores the goals, potential benefits and risks, student impact, clinician impact, and real case impact of the various paradigms. It then explores two additional criteria relevant to the selection among the paradigms – limitations on communications and system failure. Through visualizing available responses, the article seeks to supply “a principled means of analyzing the role of clinical faculty in responding to professional responsibility issues arising in field placements.”

Richard Boldt & Marc Feldman, *The Faces of Law in Theory and Practice: Doctrine, Rhetoric and Social Context*, 43 HASTINGS L.J. 1111 (1992).<sup>\* †</sup> Law school socializes students to believe that

they have limited power to affect the distribution of societal resources and power. This “learned amorality” contrasts with the authors’ view that “all cases, indeed all matters, in which lawyers are involved turn upon competing values, upon questions of distributive justice.” The experience of schools that tried to inculcate an awareness of the maldistribution of legal services led the authors to concentrate on theory in their Law in Theory and Practice program. They explore materials at three intellectual levels: doctrinal elaboration, rhetorical conflict, and expression of social vision. It is essential to consider the effects of race, class, and gender in influencing any particular outcome. The authors’ goal is to develop a fuller and more integrated vision of the law in their students and to convince students of the relevance of their beliefs. The authors test their vision by using teaching assistants who have taken the course and evaluating the teaching assistants’ skills and judgment making.

Johanna Bond, *The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 WM. MITCHELL L. REV. 317 (2001).\* † This article describes the Georgetown International Women’s Human Rights Clinic’s spring 2001 project in which students conducted a ten-day, human rights fact-finding mission in Poland investigating and documenting domestic violence and employment discrimination as human rights abuses. The article also surveys a sampling of law school programs that conduct human rights fieldwork in foreign countries and discusses the benefits and constraints of this type of clinical experience.

Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187 (1992).\* † The author expresses concern over the trend in clinical education toward greater resemblance to the rest of the law school academy. He urges clinical scholars to focus their work on forming a bridge between academia and the larger world of lawyers in practice. By resisting the temptation to emulate traditional legal scholars and thereby secure a place in the educational hierarchy, clinicians stand to narrow the gap between the classroom and the world of practice. Boswell advocates creative scholarship to inform the profession about issues clinicians discuss and experience on a daily basis in their interactions with clients, students, lawyers, judges, social workers, legislators, and others in the legal environment, such that their unique placement at the intersection of theory and practice fulfills its potential to inform both constituencies.

Cynthia Grant Bowman & MaryBeth Lipp, *Legal Limbo of the Student Intern: The Responsibility of Colleges and Universities to Protect Student Interns Against Sexual Harassment*, 23 HARV. WOMEN’S L. J. 95 (2000).\* † This article examines the legal liability of colleges and universities for sexual harassment experienced by students in off-site internship placements. The article begins with a narrative of sexual harassment experienced by one of the authors. Part II of the article discusses sexual harassment in higher education and explores the effect on its victims. In Part III, the authors describe three internship models used at Northwestern University, using the models to discuss application of the law regarding sexual harassment. Part IV explores the potential legal remedies available to student interns against their schools, with special consideration of remedies available under Title IX and general contract law. Finally, in Part V, the authors make specific recommendations of steps that universities should take to protect their student interns from harassment and themselves from liability.

Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 *FORDHAM L. REV.* 249 (1998).\* † This article addresses the interrelationship among feminist legal theory, feminist lawmaking, and the legal profession. The authors describe a complex interaction between theory and practice that has two main “arenas”: (1) the interaction between feminist legal theory and the development of feminist lawmaking and substantive law, and (2) the impact of feminist legal theory upon the way law is practiced. The article begins with a brief introduction to the variety of feminist legal theories and their relationship to substantive legal struggles in which feminist practitioners have been engaged. Then, the article addresses the impact of feminist legal theory on legal practice and the legal profession. The authors argue that examination of theory and practice in both arenas “reveals a spiral relationship in which feminist practice has generated feminist legal theory, theory has then reshaped practice, and practice has in turn reshaped theory.” The authors maintain that whether the issue is feminist law reform or the gendered structure of the legal profession, feminist legal theory cannot be understood apart from practice. The authors conclude that the interrelationship between legal theory and practice has generated and enriched feminist legal theory, resulted in innovative feminist lawmaking efforts, and produced important critiques of the legal profession.

Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 *ALB. L. REV.* 213 (1998).\* † This article maintains that academic instruction is most effective when teachers provide instruction that responds to the individual learning styles of their students, and argues that law professors should incorporate methods and materials that complement their students’ learning styles. Part I of the article surveys the literature criticizing the traditional methods of law school teaching and explores the growing movement advocating that law schools should experiment with research on learning styles. Part II shows the results of testing performed on St. John’s law students and recommends instructional strategies that are complementary to the learning styles identified by the assessment used by the authors. Part III explains the usefulness of “homework prescriptions,” which explain each student’s learning style preferences and includes a narrative on those preferences that are particularly high or low, with suggestions for ways that the student can adjust the way she studies to become more effective. Appendix 1 describes the diagnostic test used in the authors’ study. Appendices 2 and 3 provide statistical results of the testing. Appendix 4 provides an example of a homework prescription.

John S. Bradway, *Administrative Problems of the Legal Aid Clinic*, 4 *S. CAL. L. REV.* 103 (1930).‡ Drawing upon his background as the Director of the Legal Clinic at the University of Southern California, the author discusses the administrative problems that result from operating an institution that functions both as a legal office and a hands-on classroom. Problems of administration are grouped into three primary headings: problems regarding office organization; problems regarding clients; and problems regarding student education. The primary focus of the first is “machinery by which checks against error are made” including safeguards through which mistakes commonly made by students can be recognized and corrected. USC’s practice of requiring written reports of all steps taken on active cases is an example of such a safeguard. The article discusses problems regarding clients, focusing on four types that students must be prepared to encounter. Finally, problems regarding student education are addressed through listing detailed characteristics that a proficient lawyer should possess and evaluating how students’ aptitude for each of these may be evaluated in

a clinical setting.

John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929).‡ This article discusses the establishment of a legal clinic at the University of Southern California in 1928. The article describes the organization of the clinic, which was limited by the course's six week term and experimental nature. It discusses and gives examples of student reactions to the clinical experience, grouping responses into five major headings, with student comments generally focused on the "routine details" of legal practice to which the clinical experience exposed them. The article discusses grading methodology (which placed an emphasis on the speed, accuracy, and relative efficiency of students' handling of clients' cases) and types of cases handled by the clinic (their source, nature, and disposition). The article concludes by examining the possibilities of the legal clinic and discussing the strengths and weaknesses that emerged during the initial clinical course.

John S. Bradway, "Case Presentation" and the Legal Aid Clinic, 1 J. LEGAL EDUC. 280 (1948).‡ This article briefly addresses a note entitled "Case Presentation," by Messrs. Addison Mueller and Fleming James, Jr., which suggested that legal aid clinics are pedagogically inadequate because they draw clients from only one economic class, thereby failing to provide a sufficient variety of cases. The article notes that the primary educational goal of legal aid clinics is not to provide instruction on substantive or procedural rules of law, but rather to provide a comprehensive instruction in basic method, which the article identifies as vital for young lawyers to possess if they are to function effectively upon entering the bar. Variety in cases is therefore largely immaterial. The article also addresses criticism that clinics ought to "teach the sort of law which would enable the student to earn fees from upper- and middle-class clients," by noting that Duke's legal aid clinic course provides students the opportunity to work with fee generating cases handled by members of the bar and requires each student to produce an appellate brief for this type of case.

John S. Bradway, *The Classroom Aspects of Legal Aid Clinic Work*, 8 BROOK. L. REV. 373 (1939).‡ To illustrate the function and importance of the classroom component of legal aid clinic work, the article details four interactive exercises from Duke's clinical program that are designed to prepare students for their eventual encounters with real clients. The article describes the specific objectives of each exercise, provides suggestions regarding how the exercise may be structured, and gives an example of a specific problem set administered at Duke. The article concludes by noting that the classroom component of legal aid clinic work, while comparable in some ways to exercises engaged in as part of moot court and office practice courses, is specifically designed to prepare students to interact with clients, to provide a "transition from the case book courses to the flesh and blood client."

John S. Bradway, *The Legal Aid Clinic: A Means of Building Tough Mental Fiber*, 5 S. CAL. L. REV. 36 (1931).‡ This article identifies the mental characteristics that an individual must possess to function as a dependable attorney and argues that law schools must supplement their use of case method instruction to develop these characteristics in their students. The article classifies the requisite characteristics needed to function as a competent attorney as "mental fiber" and presents a brief survey of legal professionals to support its assertion that current educational techniques

inadequately train students to be well-rounded lawyers. The article notes that current educational approaches focus on the development of the “analytical strand” of students’ mental fiber, but fail to develop or test students’ ability to translate their analytical knowledge of the law into an ability to solve their clients’ problems. Specifically, the article notes that students’ ability to place a client’s story into a legal analytical framework or formulate and execute a plan to solve a client’s individual problem are not developed or evaluated under a curriculum based on the case method. It presents legal clinics as a means through which such strands may be developed and tested. The article illustrates the importance of testing such attributes by supplying descriptions of several borderline students’ clinical experiences.

John S. Bradway, *The Legal Aid Clinic – A Means of Coordinating the Legal Profession*, 79 U. PA. L. REV. 549 (1931).‡ To illustrate how a legal aid clinic can satisfy the practicing bar’s desire that law schools graduate students better equipped to handle specific work and possessed of high professional standards and ethics and the law schools’ desire for a practical course in which students may learn about the human aspects of lawyering, the article presents data from the Southern California Legal Aid Clinic, 1929-1930. It describes the types of legal problems that the clinic students face and the types of practical experiences they receive. The article also presents quotations from students responding to questions about what they have learned in clinic.

John S. Bradway, *The Legal Aid Clinic and Admission to the Bar*, 23 KY. L.J. 600 (1935).‡ This article addresses what the author identifies as a “gap in legal education” and argues that a more comprehensive view of legal training is required to ensure the integrity and reputation of the bar. Part I identifies four distinct periods in a lawyer’s training and calls for a greater level of continuity among them. Specifically, it focuses on the need to bridge the gap between the analytical skills taught in law school and the practical skills demanded of new practitioners upon graduation. It argues that legal aid clinics, in which students can be exposed to many of the demands of legal practice while still receiving individual instruction and supervision, is a solution. Part II provides a brief review of the history of the legal aid clinic movement. Part III examines the opportunities presented by the nature of the training in a clinic course, noting five aspects of a lawyer’s practice that students are able to experience in a clinical setting. The article concludes by advocating the use of clinic records as an element in decisions regarding admission to the bar, arguing that by taking clinic grades into account, bar examiners can more accurately appraise a student’s qualifications for admission.

John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. CAL. L. REV. 320 (1930).‡ This article details the author’s observations and reactions to a course he directed in legal aid clinic work at the University of Southern California in 1929-1930. The article focuses on the course objectives (exposing participating students to real clients and the “geography” of the legal system and providing students with an opportunity to synthesize and apply rules of law learned in previous course work) and methods (inclusion of a class work component in the course and the forming of an informal faculty advisory board that provided students the opportunity to discuss particular problems with faculty members with expertise in the field of study implicated by a problem). The article concludes with a selection of student responses to a question from their written examination, which asked them what the course had taught them.

John S. Bradway, *The Legal Aid Clinic Commodity*, 6 HASTINGS L.J. 16 (1954).‡ This article focuses on the “commodity” of the legal aid clinical experience, which is defined as the substantive benefit that passes from the clinical instructor to a participating student through the course of the clinical process. The article notes that the title “legal aid clinic” is silent regarding what students are expected to learn from being exposed to the clinical process. It examines the standards for evaluating the quality of legal aid clinics, identifying legal clinics focused on balancing the needs of both students and clients as the preferred model, and asserts that such clinics should be prepared to conform to the highest standards of practice as agreed upon by the practicing arm of the profession and the highest standards of instruction as accepted by law teachers. Finally, the author focuses on the concept of “functional teaching” and outlines some of the differences between a clinical and topical approaches to legal education.

John S. Bradway, *Legal Aid Clinics and the Bar*, 3 S. CAL. L. REV. 384 (1930).‡ This article reviews the development by the organized bar of the legal aid movement and focuses on the need for legal aid organizations to maintain good relations with the organized bar, principally by setting and observing limits on clients and cases accepted by the legal aid organization so as to avoid any competition for clients with an ability to pay for legal services. It also describes the creation of a mechanism by which clients ineligible for service by the legal aid organization can be referred to members of the local bar while avoiding criticisms of favoritism in the referral process. A referral system developed in Los Angeles by which the bar association supplied the legal aid clinic at USC with the names of junior members of the bar who would be willing to accept referrals from the clinic was described. The second part of the article considers the attitude of students in the law school legal aid clinic toward legal aid work. The thesis is that students who have a professional attitude toward legal aid work will be all the better prepared to participate in the professional aspects of the work of the Bar. The article quotes extensively from students’ reflections on their clinical experiences. The article concludes by examining three specific questions of professional attitude with which students in the legal aid clinic have grappled: if the client and student disagree on a question of policy in the conduct of a case, which one should control; what should the student do if the client offers a gift in appreciation of services rendered; and what should the student do when the client brings in a matter of complaint against a member of the bar.

John S. Bradway, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH. L. REV. 905 (1932).‡ To illustrate the challenges presented by operating a legal aid clinic outside of urban areas, the article examines the opening of the legal aid clinic at Duke University in 1931, approximately three miles west of Durham, North Carolina, which had a population of a little over fifty thousand. The article groups the difficulties encountered in opening the clinic into three areas: those arising because of the geographical situation, those arising because of the social condition of the community, and those arising because of the problems of the legal profession. Specifically noted was the need to build an intake mechanism to be able to provide services to clients from a broad geographic radius, the importance of alerting the community to the services offered by a clinic, especially where individuals are not accustomed to consulting legal professionals, and the need to exercise unusual care in cooperating with the local bar because the entrance of a legal aid clinic into a smaller legal market potentially could have a shocking effect. It discusses the educational goals of the clinic, highlighting the different approach to legal training that clinical instruction takes, as compared to

traditional case-based methods. The article presents four cases dealt with by the clinic during its first year of existence to illustrate the educational possibilities presented by the clinic.

John S. Bradway, *The Legally Underprivileged*, 10 CAL. W. L. REV. 228 (1974).‡ This article describes some of the formative experiences that led the author to take an active role in the legal aid movement and discusses some of the challenges that the movement has faced. The author's exposure to clients in lower income brackets led him to conclude that he had "a personal responsibility to do something about bringing together justice and the poor." The article chronicles author's entry into legal aid work at the local level through a legal aid society and then at the national level through his affiliation with the National Association of Legal Aid Societies. The second part examines some of the challenges the author experienced while working to promote the legal aid movement, including contentions that there was no need for such work to be organized and accusations that the movement was clandestinely advocating socialized law. It also describes the clinics that serve the humanitarian function of bringing legal services to the economically disadvantaged while also serving educational functions. The student participants acquire practical skills not developed through the traditional law school curriculum and emerge from their experience as proponents of legal aid work.

John S. Bradway, *Making Ethical Lawyers – Some Practical Proposals for Achieving the Goal*, 24 GEO. L. J. 345 (1936).‡ The article examines the machinery currently in place to ensure the admission of ethical lawyers to the bar and to supervise their conduct after admission, including courses in legal ethics, the character component of the bar exam, and mechanisms for handling lawyer misconduct after admission to the bar. It presents a proposal to ameliorate the system's inadequacies. Criticisms of the existing machinery are grouped into four primary headings: a lack of continuity between agencies, insufficient focus on acquiring data regarding the character of applicants to the bar, the negative rather than positive burden placed upon individuals to prove their character qualifications, and the failure of the agencies to shoulder their share of the burden in making ethical lawyers. The article's proposed remedy focuses primarily on tasks that the law school should perform, including the use of clinical methods, which the author argues will provide a greater opportunity to evaluate the character of students prior to their admission to the bar, and the utilization of concepts borrowed from other professions, such as social case histories and probationary mechanisms. The information collected by the law school through the implementation of such procedures would then be utilized by bar examiners, thereby helping to prevent the admittance of individuals to the bar who do not possess the requisite ethical qualifications.

John S. Bradway, *Mark Hopkins – His Log*, 13 BROOK. L. REV. 112 (1947).‡ This article identifies inadequacies in the traditional legal education framework and outlines a proposal for a new curriculum, a curriculum based on the notion that Mark Hopkins and his student should arise from the log and stroll the woods together. It evaluates the current educational framework by examining the needs of the reasonable student and the reasonable client, identifying the areas in which a traditional approach has failed to meet them due to the impossibility of meeting all of the students' or clients' needs under the time limitations imposed under the traditional educational framework. The article recognizes the need for legal education to become a lifelong process organized around the law school. It outlines a proposal for a new curriculum that would focus the three years of law

school on creating a base of legal knowledge for students that would then be supplemented by post-graduate instruction. The proposal focuses on the importance of dividing instruction in legal method and substantive law during the early stages of the curriculum, so as not to confuse students, and the need to present substantive topics so that students may explore the breadth of a subject before examining its depth. The article offers a tentative curriculum that details the specific objectives that would be implemented during each of the three years of law school during the continuing educational process.

John S. Bradway, *The Nature of a Legal Aid Clinic*, 3 S. CAL. L. REV. 173 (1930).‡ This article reviews developments in the field of legal aid work, examining the extent of the legal aid movement and providing an index of literature on the subject. It illustrates three primary types of clinics by examining the organizational structures implemented at Harvard, Minnesota and Northwestern, and Southern California, noting the different approaches taken by each regarding the level of faculty supervision employed, whether the clinical course is compulsory, and whether the clinic is self-contained or organized in conjunction with a local legal aid society. The article concludes by briefly discussing problems of financing encountered by each institution.

John S. Bradway, *New Developments in the Legal Clinic Field*, 13 ST. LOUIS L. REV. 122 (1928).‡ The article identifies a need for legal training in practice to build habits of efficiency and strength of character and discusses how the operation of a clinic, by a law school working in conjunction with a legal aid society, can meet that need. It enumerates five elements as necessary to promote efficiency and strength of character: adequate supervision of students by qualified instructors, exposure to cases of sufficient number and diversity, means for protecting the interests of clients, a method of insuring the attendance of the student at the legal clinic, and the opportunity for the student to share the responsibility of conducting the cases. It then evaluates the ability of legal aid clinics to provide each. The article then briefly reviews the history and work of legal clinics, examining programs at Northwestern, Minnesota, and Harvard to illustrate how connections between law school and legal aid societies can be structured in establishing legal aid clinics.

John S. Bradway, *The Objectives of Legal Aid Clinic Work*, 24 WASH. U. L. Q. 173 (1939).‡ The article examines the objectives of legal aid clinics and, drawing upon the author's experience as the director of the Duke Legal Aid Clinic, evaluates the effectiveness of the materials and methods employed to meet them. The article discusses the primary factors contributing to the growth of legal aid clinics: an increased acknowledgment by individuals, legal aid societies, and the bar that there is an obligation to provide legal services to the poor and the realization by law schools that there is a need to include a minimum degree of practical training in their curricula. The article identifies three primary objectives of Duke's clinic: giving students an accurate picture of legal practice through exposure to real cases; providing experience in skills, techniques, and mental habits needed in practice; and developing a point of view that recognizes lawyers as public servants. Each hour of the course at the Duke Legal Aid Clinic is detailed and then evaluated against its objectives.

John S. Bradway, *The Role of the Duke Legal Aid Clinic*, 9 J. LEGAL EDUC. 104 (1956).‡ This article describes the Duke Legal Aid Clinic course, as given in 1955-56, specifically focusing on its objectives and the methods utilized to achieve them. It briefly identifies four broadly defined

qualities that the clinic seeks to foster in students: professional self-confidence, responsibility toward the program of the organized bar, professional self-control, and responsibility toward the professional way of life. It also provides a detailed examination of methods used to accomplish these objectives. The article's discussion of methodology concludes with a description of the clinic's approach to grading.

John S. Bradway, *The Second Mile for Legal Aid Clinics*, 1952 WASH. U. L. Q. 165 .‡ This article responds to objections to legal aid clinics in law schools that were raised in a report by Professor Quintin Johnstone, as part of the 1951 Survey of the Legal Profession. It advocates a framework for legal education that is designed to aid the integration of legal aid clinic work into the law school curriculum and to address outside forces threatening the legal profession. Objections are divided into three primary groups: those that question the value of legal aid clinics relative to their expense; those that argue there is no room for such programs in the already crowded law school curriculum; and those that assert that clinical courses are of limited educational value because of the specialized nature of their clients and cases. In addressing each of these objections, the article asks two rhetorical questions: (1) is there an alternate body, other than the law school, that can adequately supply the type of instruction provided by clinical work and (2) if not, what changes need to be made in the framework of the law school curriculum so that legal aid clinic work may be readily integrated. The article offers a plan that would focus the three years of law school exclusively on preparing students to be competent general practitioners and that would make extensive use of clinical techniques. Practitioners would pursue more specialized training after graduation. This would facilitate the integration of legal aid clinic work in the law school curriculum, solve the problem of a "crowded curriculum," and combat outside forces that threaten the profession, such as socialized law and lay competition.

John S. Bradway, *Training Law Students for the Administration of Criminal Justice*, 24 AM. INST. CRIM. L. & CRIMINOLOGY 723 (1933) .‡ Decrying the declining commitment to the administration of criminal justice, the article presents a plan to arouse interest amongst law students and members of the bar. In law schools, the article calls for broadening materials presented in criminal law courses to include sociological materials from other fields and expanding hands-on training through the utilization of legal aid clinics. The inclusion of a broader spectrum of materials relating to criminal justice and the exposure of students to flesh and blood clients in clinical settings will serve to "encourage the student, in addition to learning his rules and developing his analytical technique, to see how those rules operate with respect to individual human cases," and will therefore foster greater interest in the field. In the second part of the article, the author advocates the establishment of legal aid societies, staffed with individuals dedicated to instructing young lawyers and focused on the disposition of criminal justice issues, as a means of arousing and maintaining a greater interest in criminal justice in those already admitted to the bar.

John S. Bradway, *The Unending Quest*, 1 CAL. W. L. REV. 46 (1965).‡ This article reviews the development of methods of legal education from a reliance on apprenticeships in law offices to the use of the case method in law schools, noting the manner in which each successive method sought to address the educational gaps left by the preceding approach. It then focuses on the trend to incorporate clinical methods of instruction – those primarily focused on solving clients' problems

through legal or extra-legal means. The article identifies this approach as superior to the case method approach in bridging the gap between the theoretical study of the law and its practice. The article presents a road map for solving clients' problems and discusses the challenges inherent in that process. The article concludes by examining several special problems related to the clinical method, including the process of obtaining and serving clients, the manner of instruction that is effective in clinic work, and the challenges of legal clinic students dealing with clients who submit legal problems outside the casebook formula.

John S. Bradway, Cleon H. Foust, Nellie MacNamara, David E. Snodgrass, & G. Kenneth Reiblich, Chairman, *Legal Clinics for Law Students – A Symposium*, 7 J. LEGAL EDUC. 204 (1954).‡ This article summarizes a series of papers that were presented in 1953 at the Legal Aid Clinic Round Table of the Association of American Law Schools as part of a symposium focused on law students in legal aid work. Each paper reports on the experiences of its author in structuring or implementing a clinical course of some type, details challenges encountered, and relates ways in which individual programs have been structured to meet the specific objectives and needs of particular institutions. Collectively, the papers present a diverse range of views regarding the specific objectives that should be pursued through clinical courses and the manner in which the courses should be structured. All are supportive of the proposition that there is a need for law students to attain greater practical experience as part of their legal education.

Melissa Breger, Suelyn Scarnecchia, Frank Vandervort, & Naomi Woloshin, *Building Pediatric Law Careers: The University of Michigan Experience*, 34 FAM. L.Q. 531 (2000).† This article describes the various components of the pediatric law career program at the University of Michigan Law School. The article describes the design and work of the Child Advocacy Law Clinic, the Interdisciplinary Seminar in Child Abuse and Neglect, the Bergstrom Summer Child Welfare Law Fellowship, and the Michigan Child Welfare Law Resource Center. These elements combine to provide students with the requisite specialized knowledge and skills for representing child clients as well as encouraging pediatric legal careers through identifying job opportunities and creating networking with public and private offices that represent children. The program also supports practicing pediatric lawyers through continuing legal education and other resources.

Raymond H. Brescia, Robin Golden & Robert A. Solomon, *Who's In Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831 (1998).\* † This article describes the impact of recent funding cuts and restrictions on legal services programs, and examines the traditional Legal Services Corporation (LSC) service model of representation in providing legal services to the poor. Part I of the article provides a history of legal services to the indigent. Part II presents a critique of the service model of representation, including a description of the model, its political and practical effects, and its political role. Part III sets forth a proposal for a community-based program to replace the service model, which the authors claim, is "ill equipped to combat the range of issues affecting poor communities." The authors argue that the service model is not the best use of a limited legal resource and they contend that legal services programs can improve the quality of service by establishing community-based programs that emphasize closer links with community groups and community institutions. The authors submit that by moving in this direction, legal services will be better situated to mobilize community resources and reflect community priorities.

They conclude that a community-based program will avoid the “top-down, lawyer-dominated priorities” that currently exist.

Lester Brickman, *Contributions of Clinical Programs to Training for Professionalism*, 4 CONN. L. REV. 437 (1972).<sup>‡</sup> This article comes from a presentation delivered at the 1967 Annual Meeting of the Association of American Law Schools. The author takes the position that clinics are a crucial part of legal education. They serve three main educational goals that cannot be adequately taught in a classroom: “skills training, production of competent legal counsel, and the inculcation of professional responsibility.” The author suggests some changes to clinics in order for them to perform these tasks more effectively. Skills training should begin in a simulated classroom component. The clinic should be the “graduate school” of skills training. As for production of competent legal counsel, clinics should take advantage of their unique position (freedom from market pressures) to present students with a model of minimum professional competence by which they can assess their future work. Intertwined with the goal of competence is professional responsibility. Presenting students with live cases allows them to confront the ethical dilemmas that they will have to face in practice. Further, having the student reflect on these confrontations will allow the students to address the “broader issues of their obligations to their clients” and “their obligations to the profession.”

Alvin J. Bronstein, *Representing the Powerless: Lawyers Can Make a Difference*, 49 ME. L. REV. 1 (1997).<sup>\* †</sup> Drawing on some of his personal experiences in public interest work, the author argues that lawyers today can make a difference and bring about social change. The author contends that, contrary to popular belief, there are currently many opportunities and new frontiers in human rights litigation. Moreover, the author stresses the need for young lawyers to commit themselves to moral reasoning and social responsibility as they enter the law profession. The article then describes two significant cases handled by the author during the late 1960s and mid 1970s, that culminated in important Supreme Court decisions of that era, in the context of civil rights. The first case involved the representation of a black plaintiff who had been convicted in Louisiana of the misdemeanor offense of battery. The client had been denied a jury trial but was facing up to two years imprisonment. When *Duncan v. Louisiana* reached the Supreme Court, the Court held that persons who are facing substantial punishment in a misdemeanor case are entitled to a jury trial. During the course of defending *Duncan*, one of the author’s staff lawyers was arrested and charged with unauthorized practice of law. The author brought an action to enjoin that prosecution. The author explains how the result in *Duncan* resulted in the exception to the “*Younger* doctrine,” articulated in *Younger v. Harris*, that bad-faith state prosecutions can be enjoined in a federal court. The second case was a challenge to the prison system in Alabama, which resulted in the exposure of the ills of the prison system and the eventual closing and destruction of certain prisons. The author uses these two experiences to demonstrate the significant role that a lawyer can play in social change. The author ultimately expresses concern about the current state of the legal profession and appeals to law students and young lawyers entering the profession to take personal and moral responsibility for the consequences of their personal acts and to aspire to make a difference.

The Brooklyn Law School Clinical Faculty, *When a Clinician Grew In Brooklyn: A Tribute to*

*Kathleen Sullivan*, 8 CLIN. L. REV. 3 (2001).† The authors reflect upon the eight years that Professor Sullivan spent at Brooklyn Law School and the contributions she made while there.

Stacy Brustin, *Expanding Our Vision of Legal Services Representation – The Hermanas Unidas Project*, 1 AM. U. J. GENDER & L. 39 (1993).† This article chronicles the development of Hermanas Unidas, an experimental community organization facilitated by Ayuda, a legal services center that focuses on the needs of the Latino population in Washington, D.C. Hermanas Unidas is a support group and leadership training vehicle through which women from Central and South American cultures can work together to find solutions to the social and economic problems unique to their marginalized identity. The group formed in response to the high incidence of domestic violence in the community, but has expanded to address many legal and non-legal problems that face its population. To preface her discussion of Hermanas Unidas, the author describes two Mexican organizations that served as models for the project and explores how their structures cultivated women’s political voices and leadership skills within their own communities by providing stability, traditional education, and problem-solving skills training in cooperative group settings. The author explains how her experience as a public interest attorney in Mexico City exposed her to the need for a grassroots community leadership project for the District of Columbia’s immigrant women because of the pressures that inhibit the immigrant woman’s ability and willingness to seek support and help from the traditional legal system in the United States.

Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLIN. L. REV. 299 (1997).\* † This article explores the grading practices for clinical participation among law schools across the United States. It focuses on the experiment undertaken by Catholic University in the spring of 1995, in determining whether to switch from pass/fail to graded work. The article describes the structure and findings of the Catholic University grading experiment. It reviews the advantages and disadvantages traditionally ascribed to graded courses, and analyzes the available research on this subject. The article concludes with the recommendations proposed by the school’s clinical faculty, which are designed to maximize the advantages and minimize the disadvantages of a graded system of evaluation.

Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001).\* † This article describes a process called “the Habits” that was developed by Professors Bryant and Peters that can be used by lawyers to increase their cross-cultural competence. By outlining and giving examples of the role that culture plays in decision making, communication, problem solving, and building rapport, the article demonstrates the importance of lawyers learning cross-cultural concepts and skills. The article shows how developing the Five Habits increases cross-cultural competence. By describing classroom discussions and exercises used to teach the Habits, the article illustrates methods that clinical teachers can use to have more inclusive classroom conversations while building cross-cultural skills. In an epilogue to the article, Professors Bryant and Peters describe the collaborative process they used to develop the Habits.

Susan Bryant & Maria Arias, *A Battered Women’s Rights Clinic: Designing a Clinical Program which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community*,

42 WASH. U. J. URB. & CONTEMP. L. 207 (1992).‡ This comprehensive description of CUNY's battered women's rights clinic highlights the opportunities for students to develop holistic lawyering insights through direct representation of indigent clients, supplemented by seminars and simulations. The goals of CUNY's clinical program include addressing the needs of the surrounding community, providing students with skills training, allowing students and faculty to contribute to developing areas of substantive law, preparing students for public interest practice, and encouraging students to pursue *pro bono* work or public interest careers after graduation. Students in the battered women's rights clinic meet these goals by providing victims of domestic violence with a variety of interdisciplinary services while maintaining a critical perspective towards the legal system and its treatment of poor women. The authors carefully describe the structure and methodology of the clinic and evaluate its goals and successes in its first two years of operation. They describe a collaborative effort by students and faculty to devise an intake policy during the first year of the clinic's existence that fostered a sense of community responsibility and teamwork and provided students with a better experience than in other clinics where students were not invited to share policy-making authority. The authors relate other examples of student experiences to illustrate the effectiveness of CUNY's approach to teaching interviewing skills, client-centered decision making, role definition, and other aspects of lawyering.

Ruth Buchanan & Louise G. Trubek, *Resistance and Possibilities: A Critical and Practical Look at Public Interest Lawyering*, 19 N.Y.U. REV. L. & SOC. CHANGE 687 (1992).‡ This analysis of the factors affecting lawyers who engage in "critical lawyering" techniques is centered around two fictional narratives. The authors define critical (also referred to as "rebellious") lawyering as an approach to law that rejects traditional models that have been unsuccessful in achieving the goals of poor clients and seeks new routes to legal problem-solving. The authors preface the narratives with a brief description of recent trends in public interest law with emphasis on resolving conflicts among ideals of professionalism and on rejecting and revising traditional legal problem-solving skills to reflect new roles for lawyers. The narratives describe "transformative moments" for young, female, public interest oriented attorneys who face personal and professional obstacles before changing their ideas of lawyering to accommodate the needs of clients and communities. One of the narratives describes a community-based, non-traditional, law school clinic project and the challenges presented by its development and implementation.

Sande L. Buhai, *Practice Makes Perfect: Reasonable Accommodation of Law Students with Disabilities in Clinical Placements*, 36 SAN DIEGO. L. REV. 137 (1999).\* † This article discusses the reasonable accommodation of law students with disabilities in a clinical law environment. It incorporates ideas from the experiences of practicing lawyers, other professional schools, and the development of reasonable accommodation approaches in the employment setting. The article first provides background on the issue and outlines the applicable law, specifically, the Americans with Disabilities Act of 1990 ("ADA") and the Rehabilitation Act of 1973. This article also discusses the variety of disabilities, particularly non-physical disabilities, of students protected by those statutes. The article then describes different types of clinical placements, including in-house poverty law clinics and externship placements in courts and government agencies. The article calls for an "innovative theoretical approach to the decision-making process about reasonable accommodation

of law students with disabilities in clinical law placements.” The article concludes by arguing that the appropriate approach to reasonable accommodation in clinical law placements must include an analysis modeled after the employment provisions of the ADA.

Elliot M. Burg, *Clinic in the Classroom: A Step Toward Cooperation*, 37 J. LEGAL EDUC. 232 (1987).‡ This article describes a University of Vermont experiment incorporating clinical teaching methods into a traditional classroom setting. The author and the instructor of a first-year Administrative Law course worked together to design an exercise that would leave students with an understanding of substantive legal principles in a practice setting. From the school’s in-house clinic files, Burg selected a Social Security appeal case that clearly illustrated fact investigation, trial planning, and other skills. He assigned readings and exercises to the students and scheduled four 75 minute class periods in which the students had the opportunity to interact with a real client, administrative law judge and federal magistrate. Students simulated the witness preparation, evidentiary hearing, and district court review of elements of the case and then discussed the experience with each other, supervisors and the invited speakers. The author evaluates the success of the experience by using his own reflections, student feedback and input from the traditional teacher. He offers suggestions for other ways to integrate clinical and Socratic teaching methods in cost-effective and creative ways, including development of clinic-informed independent writing projects and embedding simulations in substantive law courses.

John M. Burman, *The Role of Clinical Legal Education in Developing The Rule of Law in Russia*, 2 WYO. L.REV. 89 (2002).\* † Drawing upon the author’s experiences in Russia as both a Fulbright scholar and the Clinical Legal Education Specialist for the ABA’s Central and Eastern European Law Institute (CEELI), the article discusses the challenges Russia faces in developing a rule of law and argues that a transformation of the Russian legal education system, including the utilization of clinical programs, is necessary to achieve such a goal. The article identifies four interrelated conditions that are necessary for Russia to develop a rule of law: the creation of sound laws; the development of an independent judiciary that is allowed to interpret and enforce those laws; the training of lawyers as skilled professionals, rather than fighters for communism; and the formulation of a culture of law. The article underscores the difficulty Russia faces in creating a culture of law by comparing the Russian Culture of Lawlessness with the culture of law that is taken for granted in the United States. The traditional Soviet legal education system’s unitary reliance on lecture methods heavily influenced by ideology and the current Russian system’s lack of continuity and quality control among 300 law schools both have contributed to that culture of lawlessness. The article argues that by making changes in educational processes so that Russian law students are trained to be competent problem solvers and advocates both the composition of the Russian legal profession and the public’s perceptions regarding the law can be changed. The article focuses on how the introduction and expansion of clinical programs as part of Russia’s legal education system can accomplish this goal, noting that such programs allow students to acquire the type of practical skills that a lawyer needs to adequately represent clients, provide a positive experience with the law, and offer legal services for individuals who would otherwise be unable to obtain legal representation.

Edgar S. Cahn, *Remarks of Edgar S. Cahn Accepting the 1997 AALS Section on Clinical Legal Education Award for Outstanding Contributions to Clinical Legal Education*, 3 CLIN. L. REV. 253 (1997).\* † This essay publishes the remarks made by Professor Edgar Cahn upon receipt of the 1997 AALS Section on Clinical Legal Education Award for Outstanding Contributions to Clinical Legal Education. In his acceptance speech, Edgar Cahn makes three points about clinical legal education. First, he recognizes the challenges presented to poverty law and civil rights by current trends in government that have curtailed support for such programs, but stresses that nothing could diminish the accomplishments made over the years in the areas of human rights and poverty law. Second, he praises the efforts of clinicians in searching for real answers to real problems, at considerable personal and professional risk. Finally, he states that “clinicians have the power to function as a catalyst for major social change.” He then describes a recent innovation of law school clinics called “Time Dollars,” which promotes rendering service to clients in exchange for service, and provides examples of the program’s practical effects, praising the impact it has on society.

Naomi R. Cahn, *Defining Feminist Litigation*, 14 HARV. WOMEN’S L.J. 1 (1991).† In this essay, Cahn addresses the need for a contextual approach to litigation with emphasis on the power relationships between lawyer and client. She begins with a brief discussion of the roots of feminist litigation, a concept that evolved from women’s isolation from and dissatisfaction with the process and results of traditional litigation. She follows with a critique of other theories of feminist litigation. While she acknowledges that variety of perspective is integral to a feminist approach, Cahn suggests the importance of a client-centered, process-oriented approach to litigation. She argues for preservation of the individual client’s substantive goals within the context of larger-scale feminist values. The discussion of her feminist litigation theory focuses on three aspects: consciousness raising, integration of the lawyer’s own perspectives, and concentration on each client’s unique narrative. Cahn argues that through consciousness raising, women work toward redefining and expanding the social, economic, and political categories that limit the legal agenda and theories from which they select litigation strategies. Using anecdotal examples, she demonstrates how a lawyer’s ability to empathize with her female client’s sense of injustice or injury can “energize” the litigation and contribute to the integration of substantive and procedural goals. Finally, she addresses the need for lawyers to respect clients’ voices and adjust their interview approaches to suit different clients’ story-telling techniques. For each of these aspects, she identifies issues of power and ethical responsibility that complicate the effort to define feminist litigation.

Naomi R. Cahn, *Inconsistent Stories*, 81 GEO. L.J. 2475 (1993).\* † This article is an exploration of the potentially conflicting stories inherent in any case. Using a composite of different clinical cases, Cahn identifies various levels of inconsistent narrative embedded in any representation, such as the client’s account(s), the lawyer’s (re)counting, and the legal system’s version.

Naomi R. Cahn, *Styles of Lawyering*, 43 HASTINGS L.J. 1039 (1992).\* † The author rejects the notion that there is a distinctive female style of lawyering and argues that there are many styles of lawyering that may incorporate qualities traditionally ascribed to male or female stereotypes. She describes professional acculturation and socialization factors that cause women’s styles to develop differently from men’s and identifies how these differences are ascribed to gender and

correspondingly devalued. She argues that the lawyering style typically described as female is actually one characterized by an ethic of care that emphasizes cooperation, empathy, and connection between lawyers and clients, as well as among parties and other legal actors. While Cahn recognizes the positive aspects of this ethic of care style, she carefully distinguishes it from a female style that, if it existed, necessarily would embrace passivity, dependence, and other negative feminine stereotypes. To illustrate this point, she reinterprets the results of a study in which male and female lawyers responded to hypotheticals in predictable patterns. She advocates a contextual, critical approach to studying so-called male and female lawyering styles, with the goal of integrating feminist values with traditional rights-oriented legal methods to transform and enrich the range of lawyering styles available to all practitioners.

Naomi R. Cahn & Norman G. Schneider, *The Next Best Thing: Transferred Clients in a Legal Clinic*, 36 CATH. U. L. REV. 367 (1987).\* † In this article, the authors discuss the problem of cases that are transferred between clinical students. The authors use a case scenario to explore the problems of transferred cases. They identify substantive, institutional, and psycho-social factors that affect the transfer process. Ultimately, they suggest that clinic students write transfer memos to the case file, to the client, and to the supervisor, and they address other possible solutions.

H. Mitchell Caldwell, L. Timothy Perrin, Richard Gabriel & Sharon R. Gross, *Primacy, Recency, Ethos, and Pathos: Integrating Principles of Communication into the Direct Examination*, 76 NOTRE DAME L. REV. 423 (2001).\* † This article argues that the “centrality of direct examination at trial demands that it receive great attention by advocates and that it include a more complete understanding of the psychology of the jury and how people receive and process information.” Part II of the article begins with an overview of basic principles of effective communication, including the importance of the memory and motivation of the audience, the critical significance of developing a memorable theme for each case, and the influence of the advocate and his or her credibility before the jury. Part III describes the nature of complexities presented by the structure of the direct examination and the deficiency of the traditional approach in attempting to deal with the direct’s complexity. Part IV demonstrates the practical application of communication principles in direct examination by describing specific trial techniques to improve the clarity and persuasiveness of the direct, including the technique of headlining and blocking, whereby an advocate divides the direct examination into discrete blocks and then gives the jury a headline for each new subject area.

John O. Calmore, *A Call To Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927 (1999).\* † This article seeks to develop perspective, insight, and strategic concerns that will aid in representing the inner-city poor who are “trapped within the intersection of race, space, and poverty.” The author examines the nature of cause lawyering as it may be practiced on behalf of the inner-city poor. The author argues that effective representation must involve collaboration with these clients not only to represent them, but also to represent their place and communities as well. Part I conceptualizes a vision of cause lawyering that responds in a left-activist way to redress the conditions of racialized, inner-city poverty. Part II elaborates on the context and situation of the inner-city poor. Part III then suggests adopting Edward Soja’s “thirdspace” perspective to develop inner-city poor neighborhoods as sites

of resistance and places of possibility and openness.

Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75 NEB. L. REV. 872 (1996).\* † The author argues that student clerkship programs are “effective vehicles for teaching many of the lawyering skills and values inventoried in the MacCrate Report.” In support of this position, the author describes her own experience as an instructor of a Judicial Clerkship Internship Program. Offering interviews and surveys to buttress her thesis, the author provides examples of ways in which an instructor can design programs that complement a student’s judicial work experience. In particular, classes that offer readings, journals, and classroom discussions are portrayed as uniquely enhancing the value of a student’s judicial work experience. The article concludes that carefully constructed classes like these will help judicial externships to fulfill objectives stressed in the MacCrate Report.

Stacy Caplow, *A Year in Practice: The Journal of a Reflective Clinician*, 3 CLIN. L. REV. 1 (1996).\* † The article seeks to use the work of Donald Schön and Brook Baker as a framework for evaluating the author’s own experience of leaving her teaching position for a year-long position as an Assistant United States Attorney. The author declares that “the crux of Schön’s theory is that professionals eventually acquire intangible ‘artistry’ by which he means the ‘kinds of competence practitioners sometimes display in unique, uncertain and conflicted situations of practice.’” Because much of this artistry is acquired by hands-on experience and is facilitated by the assistance of a teacher, the author explains why Schön is heralded as an advocate of clinical education. Baker is described as advancing the “fairly straightforward proposition that practice-based experience may be the superior environment for law students to learn in even without the assistance of a teacher, provided that certain elements are present.” The difference between the two boils down to whether practical learning requires the guiding hand of an educator. By reflecting upon her own experience, the author concludes that both theories have a great deal of relevancy and importance, but neither one fits all learning experiences perfectly.

Joanne Carter, Essay, *Mixed Emotions: A Law Student’s Perceptions While Working at a Public Defender’s Office*, 2 T. M. COOLEY J. PRAC. & CLINICAL L. 329 (1998).† This article recounts some of the author’s experiences working as an intern at the Washtenaw County Public Defender’s office, describing both the practical skills acquired as well as the challenge faced in learning how to deal with the emotional pressures inherent in representing indigent defendants, some of whom were accused of horrific crimes.

Jill Chaifetz, *The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School*, 45 STAN. L. REV. 1695 (1993).\* † The author highlights the importance of imparting a sense of professional responsibility to law students while they are still in school. In particular, she discusses legal education’s role in fostering a public service ethic in new lawyers by encouraging or requiring volunteer work to supplement traditional studies. She criticizes the standard law school curriculum for presenting law as unrelated to justice and for devaluing public interest work by emphasizing corporate law subjects and skills. While she recognizes that clinical programs counteract these

forces, she argues that they do not reach a significant percentage of law students. As an alternative, she offers Pro Bono Students New York (PBS NY) as a model program that allows students to serve the poor, work with mentors or role models, identify with their own public interest communities, and maintain a strong sense of public interest values from the very beginning of their law school careers. The program is a statewide network of nonprofit organizations, federal and state courts, government and international agencies, private firms, and legislative groups that offers law students opportunities to engage in hands-on public interest lawyering while they are in school. The program is administered through a computer database that places students in work situations most compatible with their interests, abilities, and schedules. The author concludes the article with a brief summary of arguments for and against implementing a mandatory *pro bono* requirement in law schools. She suggests that *pro bono* networks like PBS NY would prove more cost effective and less disruptive of the traditional curriculum than other initiatives for incorporating public service values into legal education.

David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507 (1998).\* † This article considers whether an attorney-client relationship exists between a clinical supervisor and the legal clinic client. The article finds that in most jurisdictions, the prevailing law does not mandate that relationship. This means that legal clinics are often free to construct the sort of relationship between the clinic and the client that will best advance the clinic's educational objectives and the interests of the client. The article discusses the reasons clinics should take advantage of the freedom available under these rules to define the relationship in a way that works best for student and client. The article concludes by describing some ways in which that relationship can be clarified for students and clients in order to avoid "a constellation of inconsistent expectations."

David F. Chavkin, *Fuzzy Thinking: A Borrowed Paradigm for Crisper Lawyering*, 4 CLIN. L. REV. 163 (1997).\* † This article defines the "fuzzy thinking" paradigm and analyzes whether it has potential benefits for clinical teaching and for improved performance of lawyering tasks by teachers and students. It reviews the development of "fuzzy thinking" and considers both the philosophical tradition from which it springs and the tradition to which it is a reaction. The article then identifies a number of lawyering tasks in which "fuzzy thinking" can improve performance. The article concludes by urging that clinicians incorporate this paradigm in teaching to improve the lawyering skills of students.

David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199 (1994).† This article examines the pros and cons of encouraging collaboration among students in clinical settings and finds that collaboration can have substantial positive effects on students, clients, supervisors, and group dynamics. In support of his position, the author incorporates anecdotal data supplied by students and clinicians, and some broadly relevant empirical data from studies of school children and younger adults. Topics considered include quality of collaborative work product; student adjustment to working with partners of different race, gender, or sexual orientation; and the effects on professional responsibility, motivation, and decision-making skills. The author offers suggestions for fostering meaningful collaboration among students by explicitly

including this factor among grade criteria, carefully choosing matches, controlling work environment, and collaborating with other clinicians to set an example for students.

Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).<sup>†</sup> Chayes identifies a trend in American civil litigation away from traditional, bipolar, private-party adversarial suits in which judges decide questions of law advanced by the parties and serve as neutral arbiters of parties' interactions. The traditional model of civil litigation is defined by the retrospectivity of the legal controversy, the interdependence of the rights and remedies at issue in the dispute, and the closed set of involved and affected parties. The new trend described in this article contemplates vindication of broad statutory or constitutional policies rather than resolution of private disputes. This "public law litigation" model is more amorphous – affecting absentees' interests, transmuted rights and remedies, and involving judges more actively in fact-finding and in ensuring fairness in the outcomes of trials. Chayes critically analyzes how the role of judges in litigation has changed dramatically. He compares two contemporary Supreme Court cases to illustrate the judiciary's expanded function, offering both reservations and positive insights on the potential political impact of the trend.

Paul Chill, *On the Unique Value of Law School Clinics*, 32 CONN. L. REV. 299 (1999).<sup>\* †</sup> This is a published version of the remarks made by Professor Paul Chill upon receipt of the *University of Connecticut Law Review Award*. The speech summarizes the functions of the clinical education program at the University of Connecticut Law School. In particular, it examines the progress of the *Pamela B. v. Ment* case, and compares the importance of low-profile cases, as opposed to the rare high-profile cases that a law clinic encounters, concluding that the mainstay of clinical legal education is the more common low-profile case. The speech also examines the role of clinical education in producing reflective practitioners, and its importance in maintaining quality advocacy.

Christine N. Cimini, Bridget McCormack & Michael Pinard, *Kathleen A. Sullivan: A True Teacher's Teacher*, 8 CLIN. L. REV. 3 (2001).<sup>†</sup> The authors, fellows working in the Yale Law School Clinic as Robert M. Cover Teaching Fellows during Professor Sullivan's tenure, reflect on their experiences learning how to teach in the clinical setting.

CLEA, *Submission of the Clinical Legal Education Association to the Supreme Court of the State of Louisiana*, 4 CLIN. L. REV. 571 (1998).<sup>\* †</sup> This is the submission of the Clinical Legal Education Association (CLEA) in opposition to proposed amendments to the Louisiana Supreme Court's student practice rule. The submission is primarily the work of Professor Suzanne J. Levitt, with the assistance of Professors Kim O'Leary, Barbara Bucholtz, and Mark Heyrman. The submission argues that student practice rules are essential to legal education. It urges rejection of the proposed amendment, which limits the role of clinical teachers to "supervision only," because it would interfere with the ethical obligation of clinical programs to prepare students to practice law effectively. The submission objects to the proposed amendment to the extent that it requires "balanced representation of government, small business and environmental interests by student attorneys and law school clinics." The submission also argues that the proposed amendment interferes with the goal of providing legal services to the poor and violates the right of freedom of

association by prohibiting “client solicitation and/or the use of so-called outreach coordinators.” Finally, the submission argues that the proposed amendments are designed to eliminate one particular clinical program and to deny service to particular clients and, therefore, constitute impermissible interference with speech based on its content.

James A. Cohen, *The Attorney-Client Privilege, Ethical Rules, and the Impaired Criminal Defendant*, 52 U. MIAMI L. REV. 529 (1998).<sup>\* †</sup> This article argues that the importance of competence to the proper functioning of the adversary system requires that the criminal defense attorney be permitted to disclose client statements for the purpose of determining incompetence. Part II reviews *Medina v. California*, in which the Supreme Court suggested that a criminal defense attorney could testify about a client’s competency at competency hearings. Part III explores the legal standard of competency, its application to the criminal defendant, and the elusiveness of the concept of rationality. Part IV examines the attorney-client relationship. Part V discusses the attorney-client privilege and the ethical rules relative to competency proceedings. Finally, Part VI argues that an exception to the attorney-client privilege and the ethical rules is warranted to permit the criminal defense attorney to disclose client confidences that relate to the client’s competence and explores the implications of this exception. The article concludes that “only by permitting the defense attorney to testify about her client’s inability to rationally communicate and assist in his defense, can the constitutional rights of incompetent clients be adequately protected.”

Liz Ryan Cole, *Lessons from a Semester in Practice*, 1 CLIN. L. REV. 173 (1994).<sup>†</sup> This article presents an overview of Vermont Law School’s “Semester in Practice,” which matches approximately twenty students each semester with a mentor in an area of the legal community that interests the student. It illustrates the effect that the practicum-based course can have by describing the experiences of three composite students and how those experiences altered the students’ attitudes, ability to communicate with others, or career objectives.

Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989). This article describes Vermont Law School’s model for teaching the supervisors (called “mentors”) of the students in its “Semester in Practice” program. The law school’s training program consists of an intensive two-day session focused primarily on three themes: persuading mentors that adult learning theory suggests that individuals prefer to learn in different ways and therefore instructors are required to utilize multiple approaches to learning; teaching a structured technique for giving feedback; and illustrating the benefits of planning in teaching.

Ruth Colker, *The Practice/Theory Dilemma: Personal Reflections on the Louisiana Abortion Case*, 43 HASTINGS L.J. 1195 (1992).<sup>\* †</sup> A feminist scholar and practicing attorney writes about her experiences in planning and writing an *amicus* brief for an important Louisiana abortion case. She describes the difficulties she encountered in finding appropriate clients on whose behalf she could write from her desired theoretical and political perspective. The author summarizes her doctrinal approach to the issue and discusses her departures from the chief brief of the ACLU. She describes the internal conflict she overcame when faced with the decision to reinforce the chief argument or

advocate for her specific client groups. She concludes with comments about the limited tension between theory and practice involved in this particular project.

Robert J. Condlin, *Clinical Education in the Seventies: An Appraisal of the Decade*, 33 J. LEGAL EDUC. 604 (1983).‡ According to the author, the cost of establishing clinics in law schools has been the neglect of the intellectual dimension of clinicians' work. The author's main point is that clinical teachers teach students to dominate and manipulate others as a matter of habit by the way in which clinical teachers teach. While clinicians profess values of openness, honesty and mutuality, they do not practice what they preach. His criticisms rely heavily on the idea that one of clinicians' principal purposes is teaching ethics. He briefly describes practices in clinical instruction that he considers destructive of ethical dialogue. The lack of a sophisticated understanding of domination and manipulation, the fact that clinicians are not critically self-reflective, and the absence of research methodologies that would produce data on clinical instruction with sufficient detail and clarity to reveal patterns of manipulation all contribute to the lack of an ethical dialogue in clinical practice. "In teaching we have an obligation to do more than pass on received wisdom, even at levels of excellence. We must also criticize that wisdom for its ideological properties and the way it contributed to justice or lack of justice in particular cases." The author suggests that clinicians should report in a more detailed way on their day-to-day practices to get the look and feel of the legal process. This would allow clinicians to start developing a critical tradition.

Robert J. Condlin, *Learning From Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 CLIN. L. REV. 337 (1997).\* † This article addresses the merits of incorporating learning through work, termed "ecological learning," into legal education. In Part I, the author describes his views about lawyer communicative competence, including what he believes to be the characteristics of effective conversational learning. This section also provides the standard against which the data presented later in the article is evaluated. Part II describes the origins of the present study, the methods used to collect data on law office learning, and the reasons for undertaking the study. Part III sets forth eight case studies in learning from the author's colleagues that provide evidence for the article's central analytical claims. In Part IV, the author explores some of the causes of the communication patterns he finds, and discusses implications of his analysis for questions regarding the design and administration of clinical instructional programs. The author concludes that "clinical teaching is successful to the extent it helps students think about their practice experiences 'from the standpoint of somebody else.'" Any instructional format, whether live-client clinic, externship, or other, that enables students to step outside their "beliefs, expectations, hopes, and assumptions, and see their own behavior as data . . . and themselves as subjects," produces "reflective, critical practice," which is "the necessary and sufficient condition of ecological learning."

Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981). The article takes issue with the claim that clinical instruction is more personal, democratic, humane, and sensitive than traditional classroom instruction. According to the author, only the more stylized versions of domination and manipulation of the traditional classroom are absent from clinical instruction. The author writes that

the domination and manipulation in clinical instruction are more subtle but ultimately more damaging than the traditional classroom's because the clinical students will imitate their teachers' habits and become "superficial, authoritarian, closed-minded, and amoral." The problem is rooted in the way clinical teachers and students speak and listen combined with the imbalance of authority between teacher and student. The author describes two modes of communication that can be used: the learning mode, which is conducive to a truly critical and ethical dialogue, and the persuasion mode, which is concerned with asserting and developing the communicator's own notions of the subject being discussed. One of the crucial differences between these modes is how they deal with the ambiguities that are present in almost all spoken communication. A person using the learning mode will acknowledge an ambiguity and attempt to get the speaker to clarify his or her meaning. A person using the persuasion mode will assign meaning to an ambiguity. In the author's observations, clinical instructors often engage in the persuasion mode when professing to be using the learning mode. The author suggests several likely explanations for clinical teachers' use of the persuasion mode: clinical teachers may simply lack a sophisticated understanding of domination; clinical teachers may be compensating for a lack of new ideas, a consequence of a lack of clinical scholarship, to teach students by becoming increasingly authoritarian; clinical teachers may fear indoctrinating their students via in-depth discussions of values; clinical instructors may not think of themselves as teachers and may not feel the need to be self-critical; or clinical instructors may be implicitly carrying out the task of teaching students adversarial skills. The dangers of the use, whatever the cause, require that "the hypothesis that clinical practice instruction is persuasion mode in nature bears careful and scrupulous analysis."

Robert J. Condlin, "*Tastes Great, Less Filling*": *The Law School Clinic and Political Critique*, 35 J. LEGAL EDUC. 45 (1986).<sup>†</sup> The author writes that there are two obstacles preventing clinics from performing critical analysis and critique, which he identifies as the reasons for a university-based law school to exist. He then suggests alternatives to the traditional clinic that would allow critique. The first barrier to clinics effectively engaging in critique is the design of the clinic. A clinical instructor cannot be both a teacher and a lawyer, because the lawyer will want to "protect" the choices he or she has made in representation. Considering the imbalance in authority, knowledge and experience between the teacher and the student, critical analysis of the teacher's choices will not occur. The second barrier to effective critique is that clinical instructors lack the resources, skills and training to engage in effective critique. This barrier arises from several sources. The teachers are not motivated to engage in critique because they don't believe that it is their job; they are incapable of critique because they are not the elite practitioners that one finds in medical clinics; or the clinical instructors believe that they have implicitly fulfilled the obligation of critique by the choices they have made in representing the under-represented. The author argues that neither of the barriers is likely to go away, but they could be circumvented by utilizing an "outside cooperative office" instead of the in-house clinical configuration. Use of an outside office would allow the students to engage in practice and allow the supervising law school instructor to engage in critique, questioning not only the outside attorney's choices, but also the structure of the legal system that encourages those choices. Such an arrangement would allow the instructor to fulfill the university's obligation to make a critical analysis of the dominant legal paradigm and to test relationships between legal rules, behavior of legal actors, and the impact of rules and practices on society. According to the author,

the university's role is to question, not indoctrinate. The law school clinic must evolve, "not to survive . . . but because there is still work to be done."

Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars, and Boundless Stories*, 1 CLIN. L. REV. 41 (1994).† The author begins this creative exploration of clinical stories and storytelling with a fictional rape victim's narrative. The story describes how the first-person protagonist left a party with an acquaintance, considering the possibility of having sex with him, and was subsequently raped. The protagonist reveals her emotional struggle with her role in the resulting legal process and her grappling with family and personality issues. Next, the author, a clinic supervisor, describes the client's narrative that inspired the fiction. The client was a rape victim arrested for disorderly conduct because of her behavior towards police officers who responded to the crime scene. The author explains how her students' rational, socially-grounded case theories inadequately matched the client's perceptions of the facts and justice issues. She describes the student attorney's reaction to the client's gradual withdrawal from the representation, including the non-traditional steps the student took to change the police department's policies. Along with the student's story, she incorporates her own reflections on feelings of frustration and failure. She explores the therapeutic effect of writing the introductory fictional account, but acknowledges its inability to soothe her disappointment with the legal system. In conclusion, she suggests that similar comparisons of clients', students', clinicians', and other parties' stories can inform clinical scholarship by exposing perspectives and connections lawyers often ignore.

Leslie L. Cooney & Lynn A. Epstein, *Classroom Associates: Creating a Skills Incubation Process for Tomorrow's Lawyer*, 29 CAP. U.L. REV. 361 (2001).\* † This article describes the Lawyering Skills and Values (LSV) program at Nova Southeastern University School of Law. LSV is a two-year program, but the article focuses on the upper level lawyering skills program, which requires students to select either a transactional or a litigation track. In both tracks, sixteen students are assigned to each law office where they often work on assignments in teams or groups. Students in the transactional track focus on drafting and client interviewing and counseling in the fall semester and business practice, planning, and negotiation in the winter semester. Students selecting the litigation track focus on pretrial and trial advocacy in the fall and on trial advocacy, appellate advocacy, and mediation in the winter. Both tracks include an emphasis on ethical and professional values throughout the year. The article provides a detailed description of both tracks.

George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1990).† The author writes about the specific problem that arises when clinical supervisors believe they must intervene in student-client relationships by directly engaging clients, adversary parties, or adjudicative processes in a manner that substitutes the teacher's authority and judgment for that of the student attorney. He explains the distinction between this type of intervention and the collaborative dialogue between student and supervisor that is encouraged in most live-client clinical programs. After a brief discussion of model rules of professional conduct, Critchlow presents two views of clinical education that place higher value on clients' legal goals and students' educational goals respectively. Although the standards may differ between these two models, he advises that criteria must be defined for determining when clients'

interests are threatened by student actions. He suggests they examine client expectations, student competency, teacher competency, and the interest of the client and others in minimizing delay, cost, and emotional discomfort. He encourages teachers to draw on their experiences with the individual students' personalities and to examine such issues as the clients' informed consent to student representation, burdens that may be avoided by intervention, and the teachers' own familiarity with the case. He illustrates the process of deciding whether to intervene by relating an anecdote from his own experience as a clinic teacher.

Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLIN. L. REV. 557 (1999).\* † This article discusses lawyering for and within native communities and how clinical instructors and students can prepare to enter distinct communities and practice across cultures. Parts I-III provide the context and introduction for the discussion that follows. Part IV defines community and culture. Specifically, it considers the lawyer's responsibility to value and understand the importance of culture in representing clients. Part V examines the community lawyering concept. It provides a full definition of community lawyering and contrasts it with the traditional form of lawyering and the client-centered form of lawyering. This section analyzes and explains why the community lawyering approach is superior to the client-centered lawyering approach and is essential to the competent representation of native communities. Part VI concludes with a discussion of how the Southwest Indian Law Clinic (SILC) teaches this community lawyering approach to its students, and explores the lessons and challenges that have emerged through the use of this approach.

Robert C. Cumbow, *Educating the 21<sup>st</sup> Century Lawyer*, 32 IDAHO L. REV. 407 (1996).\* † This article argues that the 20<sup>th</sup> century lawyer is perceived in negative terms and contends that law school contributes to that perception. The author maintains that law school emphasizes isolationism, elitism, and limited contact with the non-law school world. The author argues that law schools are failing to prepare students for the practice of law, citing the lack of emphasis on personal skills as the most fatal flaw. The author's solution is to reform law school, and the article contains the author's proposals for a more effective legal education. Among his proposals are a longer course of study, more integration of ethics into courses, greater attention to the philosophical and moral foundations of law and justice, and increased opportunities for international learning experiences. Above all, the author identifies the need for law schools to provide all students with the opportunity to talk to clients, "learning to treat them as human beings, to know and be sensitive to their needs, and to give them the most valuable advice, even when that advice is contrary to what the client believes to be his own interest." The author concludes that "law school must become an institution not just for learning substance and technique, but for acquiring professional and social responsibility – at both the foundational and the practical end of the ladder."

Christopher T. Cunniffe, *The Case for the Alternative Third-Year Program*, 61 ALB. L. REV. 85 (1997).\* † This article confronts the "location requirement," which requires that a law student seeking admission to the bar must train in the law for three years under the supervision and guidance of a professional class of legal educators in a law school approved by the American Bar Association (ABA). The article's objective is to challenge the legitimacy of the location requirement as applied

to the third year of legal training. Part I of the article discusses the evolution of the location and duration requirements that currently prevail in most States and the justifications offered on their behalf. The article also discusses unsuccessful efforts that have been made in the past to reform these requirements. Part II offers several rationales for the repeal of the third-year location requirement and argues that the arguments advanced in favor of the requirement are unpersuasive. In Part III, the author offers a concrete proposal for a reform of the third-year location requirement, with discussion of issues related to implementing the reform. Part IV argues that the States, not the ABA, should have control over the required location and duration of legal training. Ultimately, the author concludes that States should retain the three-year requirement, but he argues that this can be accomplished through a traditional three-year academic program at an accredited law school, or alternatively, by attending two years of formal academic training, followed by an “alternative third-year program,” which would allow a student to engage in an externship instead of academic classes.

Clark D. Cunningham, *Evaluating Effective Lawyer-Client Communication: An International Project Moving from Research to Reform*, 67 *FORDHAM L. REV.* 1959 (1999).\* † This article addresses the need to develop a simple, standardized method of obtaining feedback from clients about their experiences of communicating with lawyers. It discusses the International Project, which is composed of legal educators and social scientists working to develop a standard method for evaluating the effectiveness of lawyer-client communications by combining sociolinguistic analysis of recorded interviews with client satisfaction surveys. The article concludes by affirming the importance of this proposal’s implementation, and the author welcomes readers to share with him any methods for determining client satisfaction.

Clark D. Cunningham, *Hearing Voices: Why the Academy Needs Clinical Scholarship*, 76 *WASH. U. L. Q.* 85 (1998).\* † This article examines clinical scholarship, and explores why clinicians often fail to meet their client’s needs. It begins by examining common features of clinical scholarship. The author contends that most clinical scholarship focuses on trial courts and activity surrounding the trial court (rather than appellate courts), is interdisciplinary, and is comprised of subject matter that “talks back to us.” The author elaborates on the latter point by describing a case on which he was working at the University of Michigan that involved a misdemeanor case that was dismissed. Although the case was a technical “win,” the defendant was furious with the attorneys about the case. The article then explains how, through a series of letters and correspondence with this defendant, the author began to identify his failure to recognize underlying issues of race while undertaking representation of the defendant. By failing to recognize the needs of his client, he rendered the client voiceless. The article next presents a tribute to a recently deceased clinical professor, Herb Eastman, whom the author greatly admires. The author provides insight into Eastman’s clinical background and success in his endeavors to promote clinical scholarship and to provide voice for clients. The author concludes by admitting the frustration he often feels in representing clients, particularly when the pleadings do not describe adequately the plight of the clients and provide voice for them.

Clark D. Cunningham, *How to Explain Confidentiality?*, 9 *CLIN. L. REV.* 579 (2003).\* † One of the most critical, yet inadequately explored, issues in lawyer-client communication is the problem of explaining adequately the circumstances that permit or require the lawyer to disclose confidential

information. Failure to disclose these circumstances can result in the client believing that “Everything is confidential,” yet an accurate and complete explanation of the exceptions may inhibit the very trust that the right of confidentiality is intended to create. This article reports on the use of simulated interviews in the classroom to model an empirical approach to analyzing this problem that can be applied to law school clinics.

Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992).\* † The essay revolves around the case of Dujon Johnson, and his representation by the University of Michigan Legal Clinic, with the author as supervising attorney. This case had a strong impact on the author’s understanding of the role of the lawyer in the attorney-client relationship. The author posits that it is critical that a lawyer be aware that he is a translator for the client in legal matters. The author observes that when a lawyer converts a client’s lay language into legal theories designed to produce legal remedies, the client’s story is often changed because of the lawyer’s interpretation. Becoming aware of this reality is the first step toward good translation – that is, a minimal distortion of the client’s voice as it travels through the attorney to the legal world. The author suggests that lawyers can learn from anthropologists and linguists methods for becoming more aware of how the client’s meaning is changing in the course of representation, and how to collaborate with the client in the process of effectively translating the client’s story.

Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 MICH. L. REV. 2459 (1989).\* † The author maps his own process of understanding the relationships among language, communication, and legal representation. In the context of two stories from his experiences representing clients in a law school clinic, Cunningham presents his model of “lawyer as translator.” In this role, he explains, the lawyer is responsible for conveying the meaning of a client’s story to the court, rather than merely restating the client’s own words or creating new meaning out of the client’s circumstances. In neither of his stories does the lawyer and client achieve this ideal of “speaking with one voice.” As background for this discussion, he describes linguistic studies that indicate that language shapes experience, which in turn affects knowledge. He presents a hypothetical to illustrate how this principle might factor into lawyer-client or business relations where the “translator” must reconcile the perceptions of parties from two different linguistic cultures.

Susan J. Curry, *Meeting the Need: Minnesota’s Collaborative Model to Deliver Law Student Public Service*, 28 WM. MITCHELL L. REV. 347 (2001).\* † This article traces the history of the creation of Minnesota’s Law School Public Service Program, a public service program for law students that is administered by the Minnesota Justice Foundation in collaboration with the Minnesota State Bar Association and scores of legal services providers in the state who have agreed to supervise law students. The Program allows all law student volunteers in the participating schools to be recruited, trained, placed, and tracked through one administrative entity. The article also sketches the achievements of the program since its inception at three law schools in the fall of 1999 and concludes by considering future challenges and suggestions for others who may wish to implement such a program.

Mary Ann Dantuono, *A Citizen Lawyer's Moral, Religious, and Professional Responsibility for the Administration of Justice for the Poor*, 66 *FORDHAM L. REV.* 1383 (1998).\* † In this essay, the author proposes that the integration of religion into the legal profession may yield favorable results. The author suggests that *pro bono* and service obligations will benefit from an examination of the roles of religion and citizenship. The author also queries the administration of justice in our society and how to achieve it. She identifies the problem of inadequate legal services for the poor, and argues that “lawyers need to become advocates for the rights of the poor, both as a class and as individuals.” The author asserts that religious traditions can help us see need and become the “vehicle for meeting that need.” She stresses the importance of participation in the political process in order to cure societal ills, and argues that law schools must prepare students to play a greater role in constituting the political and economic democracy. The author concludes that the future needs lawyers “shaped by the values of a strong religious tradition, educational process, and participation in community.”

Greg Dantzman, *My Externship Experience at the Public Defender's Office in Ann Arbor*, 2 *T.M. COOLEY J. PRAC. & CLINICAL L.* 337 (1998).† The author describes how his aspiration to gain trial experience and exposure to clients as a law student was satisfied by completing an externship at Washtenaw County Public Defender's Office in Ann Arbor, Michigan. The author explains how this experience provided immediate exposure to trial work, as he engaged in arguing before judges, sentencing, plea agreements, voir dire, and pre-trials. Moreover, through assisting clients, the author became aware of the different roles a lawyer must play throughout this process. The experience also changed the author's view of criminal defendants and taught him to have compassion for the defendants for whom he was working. It also exposed him to inequities in the criminal justice system. The author concludes that the externship afforded him the opportunity to gain insights and skills that could not have been learned in a traditional classroom setting.

Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 *WILLAMETTE L. REV.* 541 (1996).\* † According to the author, the primary purpose of this article “is to encourage others to raise” issues of race, gender, class, sexual orientation, and disability in classroom discussions “for the right and important reasons.” Part I of the article explores why the discussion of diversity issues is necessary and relevant in law school classroom. Part II identifies some potential challenges that a teacher may confront when raising these issues in the classroom and suggests some responses to address the potential problems. Part III provides some feedback from the author's students in an advanced torts class, which permits the reader to hear what the students say about their learning experience. Part IV describes the skills and attributes necessary to discuss these issues effectively, including the establishment of mutual respect and open relationships; relevancy to legal analysis or lawyering process, active listening techniques, diverse teaching methodologies, humor, ways of handling silence, and class preparation. Part V discusses the possibility of case studies and articles as starting points for discussion. Part VI concludes that incorporating diversity into the classroom is an important direction for law school education.

Peggy C. Davis, *Contextual Legal Criticism: A Demonstration Exploring Hierarchy and “Feminine” Style*, 66 N.Y.U.L. REV. 1635 (1991).\* † This article examines the effects of relational and hierarchical approaches to lawyering. The article begins with the premise that law is not simply a matter of deduction but a system shaped by people and, therefore, reflective of a people’s culture, perspectives, and sensibilities. Part I provides an historical perspective of the methodologies for contextual criticism of lawyering. Part II focuses on the presence and effect of hierarchical conversational patterns. The pattern of conversation is shown to have impact as significant as that of the content of conversation. Part III uses a case study designed to illustrate the manifestations of that hierarchy of conversation pattern within lawyer-client interviews. Finally, in Part IV, the author discusses the effects of hierarchical behavior on the part of lawyers as they impact legal representation and the possible outcomes of less hierarchical lawyering styles.

William Dean, *The Role of the Private Bar*, 25 FORDHAM URB. L.J. 865 (1998).\* † This article contends that lawyering for poor communities in the twenty-first century must include a greater involvement by the private bar than at present. The author submits that while the private bar currently does a significant amount of work, it is not nearly enough. The article then explores ways in which law firms can promote and benefit lawyering for poor communities. The article concludes that a law firm with the full participation by its lawyers in *pro bono* work, which makes a special effort to assist poverty law offices through sponsoring a rotation program and fellowship program, and offers to provide training and support services to poverty law offices, would make an outstanding contribution to the community.

Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581 (1999).\* † This article seeks to give a brief overview of the basic legal and ethical issues involved in the use of nonlawyers so as to inform discussion of possible reforms. The article recognizes that, despite the large number of lawyers practicing today, the legal needs of low and moderate-income persons remain unmet. The author argues that Unauthorized Practice of Law (UPL) restrictions appear to be the main barrier to the development of affordable legal services options for the public. Thus, the author concludes that UPL laws, rules, and rulings should be changed in order to make way for greater public access to legal services and greater access to justice for all.

Cynthia M. Dennis, *Expanding Students’ Views of the Dilemmas of Womanhood and Motherhood Through Individual Client Representation*, 46 HOW. L.J. 269 (2003).\* † This article draws upon the experiences of the author as the director of the Women and AIDS Clinic at Rutgers School of Law in Newark. It discusses the importance of and challenges in teaching clinical students to move past their cultural, political, and economic prejudices to see their clients in a “full context” and details the author’s attempts to further this process by incorporating into the clinic’s curriculum a book of essays on the complexities and difficulties of motherhood, *MOTHER TROUBLES: RETHINKING CONTEMPORARY MATERNAL DILEMMAS*. The first part gives an overview of both the clients and students at the clinic, chronicling their divergent economic and geographic backgrounds. It presents three examples of situations where students’ prejudices adversely affected their ability to meet clients’ needs. The second part of the article discusses how the author utilized the essays to enhance

the students' ability to understand their clients' needs.

Michael Diamond, *Community Lawyering: Revisiting The Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000).\* † The author argues that instead of relying on traditional rights-based lawyering, an attorney should seek to involve client groups in exercising political influence. The author contends that lawyers need to look outside the legal framework to help clients solve their problems. The article defines a community lawyer as one who works for the poor and the disempowered in the context of broader community goals. The author briefly describes the different models of a poverty lawyer. The first example is the collaborative model, which encourages lawyers to look at non-legal approaches to problems and emphasizes attorneys becoming members of the community, thus becoming advocates for themselves. The second model is client-centered lawyering where the client rather than the lawyer makes the decisions. Proponents of this approach, however, realize that it is important for the lawyer to make certain decisions when that is time and resource efficient. A third model is facilitative lawyering, which focuses on the goal of giving legal assistance without creating client dependency. The author then criticizes each of the models as not being comprehensive. He argues that it is important to distinguish between individual and community lawyering. The article contends that in order to be an effective community lawyer, an attorney must seek to create institutions that will be able to influence the clients' environments. The author proposes a new model, the activist model, in which the lawyer seeks to create the necessary institutions that empower the client in the long term. The author identifies the difficulties a community lawyer will face when confronted with competing community interests and when playing dual roles of organizer of the group's activities and its legal advocate. The author concludes that the activist model requires that a lawyer be more willing to take on multiple roles in the community.

Matthew Diller, *Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 673 (1998).\* † This essay addresses the challenges in poverty law due to the current state of budget cuts and the decreased number of lawyers serving poor communities. The author maintains that "by focusing on the goal of building community institutions and organizations, poverty lawyers can help poor communities in a number of vital ways." The essay describes ways in which poor communities can benefit from poverty lawyers and some issues raised by community lawyering. First, the author argues that a focus on local problems and solutions should not be permitted to "slip into isolationism." Rather, community lawyering should help poor communities attain power and gain a voice in society. Second, the author contends that community lawyering presents many difficult issues. The community lawyer must be willing to accept the reality that conflict and hard choices are inevitable, to deal with that conflict, and to make choices that are responsible and principled. Finally, the author suggests that community lawyering need not suggest a lack of appreciation for other types of poverty lawyering. The author concludes that despite challenges presented to community lawyering, poverty lawyers are responding by developing new strategies, forging new alliances, and exploring new methods of advocacy.

Robert D. Dinerstein, *Client Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990).† In this article, the author examines the course, impact, criticisms and praise of client-centered counseling since it was introduced by David Binder and Susan Price in their 1977

book, *Legal Interviewing and Counseling: A Client-Centered Approach*. The article is organized in five parts: Part I is an introduction to his analysis; Part II contains a description of the Binder and Price model contrasted with traditional counseling method. In Part III, Dinerstein assesses and re-examines the arguments in favor of client-centered counseling, beginning with broad, systemic arguments, which encompass philosophy, psychology, ethics and politics, and continuing with micro-arguments, which focus on the benefits of client-centered counseling for the individual lawyer, client and lawyer-client. He suggests that a limited, contextualized version of the model strengthens these arguments. Similarly, his discussion in Part IV of systemic and micro-arguments against client-centered counseling highlights the need for a modified model. In Part V, he offers his insight on how the Binder and Price model, if applied judiciously and with attention to the variety of contextual factors identified in this article, continues to be a useful approach to counseling. Dinerstein applies his refined variation of client-centered counseling to a simulation exercise to test its efficacy and concludes with an analysis of its strengths and weaknesses.

Robert D. Dinerstein, *Clinical Education In a Different Voice: A Reply to Robert Rader*, 1 CLIN. L. REV. 711 (1995).\* † This short essay is one of two responses to Robert Rader's *Confessions of Guilt: A Clinical Student's Reflections on Representing Indigent Criminal Defendants*. The author, Clinical Director at American University's Washington College of Law, analyzes the arguments Rader makes concerning the failure of his clinical professor to turn him into a public defender. Dinerstein points out that student voices are often ignored in assessing clinical programs. Input from students needs to be encouraged because their unique perspective, as participants, is so central to a clinical program. The author praises Rader's article for several contributions: exposing the gap that can exist between the clinician's and the student's goals, documenting the limitations of a clinical program's influence, and serving as a reminder that students' attitudes are widely varying. Dinerstein then goes on to argue, however, that Rader has failed to make the case that his clinical program failed him. Using multiple references from Rader's own journal, Dinerstein uncovers certain positive experiences in Rader's clinical program. The author believes that Rader's naive, elitist, and negative attitudes are largely responsible for his conclusion that the clinical program failed him.

Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469 (1992). The author argues for a stronger relationship between clinical scholarship and the search for justice. While it is obvious that law school clinics are an important part of the justice mission, it is not so obvious that clinical scholarship is or can be associated with the justice mission. As far as justice is concerned, there is a perception of unimportance attached to clinical scholarship that has several causes: lack of a significant body of literature that goes beyond description or pedagogy, lower academic status of clinicians, lack of necessity, clinician ambivalence, and the difficulty of communicating the information in a written format. The author expresses the view that clinical scholarship can make an important contribution to the justice mission. In order to accomplish this goal, clinicians need to broaden their understanding of justice within academia and society. Clinicians are in a unique position to conduct a critical examination of the lawyer-client relationship and analyze components of the operation and structure of the law practice. The scholarship that is produced by clinicians does not reflect the testing that occurs in law school clinics. It is necessary

for clinicians to do a better job of collecting, comparing, and disseminating empirical data from their work. Acknowledging the difficulties involved in his proposal, the author finds that the modes of dissemination currently in place for clinical scholarship (symposia, AALS meetings, etc.) place clinicians in a better position to reach a broader audience than traditional faculty who predominantly write for law reviews. Clinical scholarship offers the possibilities of redefining the idea of justice to a larger audience who may be better situated to influence real world results.

Robert D. Dinerstein, *Clinical Texts and Contexts*, 39 UCLA L. REV. 697 (1992).\* † The author reviews *Lawyers as Counselors: A Client-Centered Approach*, by Binder, Bergman and Price, and *Interviewing, Counseling and Negotiating: Skills for Effective Representation*, by Bastress and Harbaugh, – “books that tell us much about lawyering and skills, values and attitudes young lawyers must cultivate if they are to become competent and sensitive practitioners.” Both books reflect a fuller understanding of lawyering than previous works. Dinerstein focuses on how the books address client counseling. He examines the books’ treatment of allocating decision-making authority between lawyer and client. Dinerstein criticizes the decision-allocation standards set forth by Binder, Bergman and Price and advocates a “substantial understanding of material consequences” standard for determining when client consent is necessary. Bastress and Harbaugh offer a number of considerations that ought to inform the allocation analysis but may not give a lawyer enough guidance on how to make such decisions. As for justifying the client-centered approach, Binder, Bergman, and Price offer a rationale for its virtues, while Bastress and Harbaugh focus on an underlying theoretical framework. Dinerstein criticizes both approaches for relying too heavily upon the idea of client autonomy without dealing with that concept’s meaning and importance. Both books also fail to adequately address the effect of a number of different contexts affecting the lawyer-client relationship. According to the author, Bastress and Harbaugh do a much better job of integrating issues of professional responsibility than do Binder, Bergman, and Price. The books are best at “identifying the psychological underpinnings of client-centeredness and advancing the exploration of the effect of the lawyer’s legitimate interest in moral autonomy, while telling us little about the roles that lawyer power, client power, the legal context, and the intimacy of the lawyer-client relationship play in defining the contours of a client-centered approach.”

Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992).\* † The author criticizes scholarship published in the name of the “theoretics of practice movement” as being overly opaque, academic, and not grounded in the realities of practical lawyering. He voices his disillusion by describing a case handled by his clinic students at the American University, Washington College of Law. The students represented a West African woman who was accused of assaulting two other women with a tennis racquet. The client insisted on pursuing a jury trial so that she could “tell her story” about how cultural differences contributed to the justification of the attack. While the students were excited at the prospect of a client-centered, narrative-driven representation, they struggled with the practical difficulties of defending a client whose conviction was likely and demanding the court’s attention for a seemingly non-meritorious case. When the client became dissatisfied with the presentation of her defense, the student/client relationship and the legal action quickly degenerated into failure and disappointment for all involved. Dinerstein links this experience with the theoretics of practice literature by emphasizing the conspicuous disparity

between the client's expectations and the lawyers' ability to transform her story into legally relevant communication. He urges theoretic authors to forge links with empirical work to fully ground their concepts within the practical constraints of lawyering.

John M.A. DiPippa, *How Prospect Theory Can Improve Legal Counseling*, 24 U. ARK. LITTLE ROCK L. REV. 81 (2001).\* † This article outlines the basic findings of prospect theory and its implications for legal counseling. Prospect theory holds that people tend to weigh losses more heavily than gains. Accordingly, they will be more willing to assume risk when facing the loss of something they have than when potentially gaining something they do not have. Prospect theory suggests that whether decisions are framed in terms of gain or loss will affect the way decisions are made. The author argues that the findings of prospect theory suggest that lawyers must find a point between the two extremes of client-centered and lawyer-centered counseling, that client counseling should involve the joint work of the counselor and client in diagnosing and improving the client's decision making. The counselor is responsible for making clients aware of the decision-making procedures they are using and of alternative procedures they might try. The counselor may be somewhat directive in suggesting where to go for pertinent information, how to take account of knowledge about alternative courses of action, how to find out if deadlines need to be taken at face value or can be negotiated, and which risks might require preparing contingency plans.

Thomas Disare, *A Lawyer's Education*, 7 MD. J. CONTEMP. LEGAL ISSUES 359 (1996).\* † In this article, the author draws on his personal experiences as a transactional attorney to explore and debate whether the skills needed for this type of law are being taught in law schools. In Part I, the author describes his own law school experience, which was focused on litigation and case analysis, with little or no attention given to the non-analytical, more practical skills such as negotiation and counseling. The author concludes that the gaps between legal education and the abilities needed to practice law competently are "alarming." Part II describes the author's post-graduate work at a law firm, in which his legal education was supplemented. He attributes learning about practical and interpersonal skills to his mentor relationships with senior partners, as well as exposure to and increased contact with clients. The author then provides examples of settings where he learned the basic components of lawyering from mentors and clients. Part III summarizes what the author believes to be the essence of what competent business attorneys draw upon consistently in their practices. Five key areas are discussed, including analytical ability, legal issue spotting, non-legal issue spotting, client perspective, and interpersonal skills. The author concludes that what he learned in law school constitutes only a small fraction of his true legal education. In Part IV, the author offers suggestions for an improved law school curriculum to address the full range of legal skills necessary for practice. Finally, Part V discusses the merits of clinical education and addresses some misperceptions about clinical education. The article concludes by recognizing that the primary function of law schools is to educate lawyers, and therefore should consistently seek better methods for performing that function. The author asserts that access to mentors and clients is relatively scarce in today's law firms, thus diminishing an important alternative for teaching the new lawyer valuable skills. More than ever, therefore, law schools need to meet the needs of students to prepare them effectively for practice.

David Dominguez, *Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for All Students*, 44 J. LEGAL EDUC. 175 (1994).† The author summarizes the results of a five-year classroom experiment dealing with diversity at Brigham Young University. The author argues that negotiable learning is a teaching method that incorporates academic enrichment and professional development. Part I of the article discusses the professor's role in exploiting the diverse backgrounds of the students in constructive trouble making, which is defined as creating a conflict among students that obliges them to build a consensus among competing perspectives. The author gives examples of problems that he has used in his criminal law, labor law, public policy negotiations, and public interest law classes. In Part II the author describes the concept of affirmation before challenge (ABC). The author argues that ABC teaches students listening, negotiating, and interviewing skills. Students are asked to share personal stories before taking any position on a given topic. They also must realize they are not omniscient and the value of being a reflective listener. The author contends that ABC is much more effective when used between students rather than between student and professor. The second level of negotiable learning is a product of the students' teams bargaining efforts. In order for this level to be reached, the author argues that it is vital that the students share their reflective thoughts. A professor may require that each individual team make reports to the class about their negotiations. The article concludes that negotiable learning is an effective method of teaching multicultural lawyering.

David Dominguez, *Negotiating Demands for Justice: Public Interest Law as a Problem Solving Dialogue*, 15 BUFF. J. PUB. INTEREST L. 1 (1996).\* The author explains how an exercise in which students make a case against the first-year public interest law requirement places students in the role of disadvantaged persons, thereby helping the students to understand important concepts of public interest law. The article contains a series of dialogues between teacher and student and among students to illustrate the benefits of positive recognition and self-help participation in the context of public interest law.

David Dominguez, *Redemptive Lawyering: The First (and Missing) Half of Legal Education and Law Practice*, 37 CAL. W. L. REV. 27 (2000).\* † In this article, the author highlights the theory and content of his course in community lawyering. The article discusses how legal education can teach creative methods that lawyers can employ to satisfy the demand for legal services by becoming involved in the community to help its members construct inexpensive, user-friendly methods for consensus building. This approach to lawyering, the author argues, addresses the alienation that most Americans feel in relation to the legal system in general and lawyers in particular. Students in the Community Lawyering course begin by updating the personal statements they submitted as part of the admission process. This drafting process serves as a method of rediscovering the idealism and goals that brought them to law school. The students then work collaboratively to select field projects and to take the ideas for projects into the community. The article describes several community lawyering projects facilitated by students in the course.

Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMUL. REV. 1461 (1998).\* † This article examines the social justice dimensions of clinical design features in the communities of South Texas's poverty belt. It begins by tracing the history of legal education and the evolution and growth

of the social-justice orientation of clinical education. The author points to the resurrection of clinical legal education's focus on social justice dimensions to conclude that its alleged breakdown is premature. The article next identifies and describes the social justice mission of clinical education and the primary manifestations of that mission. The author maintains that the social justice mission is furthered by clinical legal education in three ways: through the provision of services and pursuit of legal reform on behalf of clients and community groups lacking access to legal resources; by exposing law students to an ethos of public service or *pro bono* responsibility in order to expand access to justice through law graduates' pursuit of *pro bono* activities or public service careers; facilitating transformative experiential opportunities for exploring the meaning of justice through exposure to the impact of the legal system on subordinated persons and groups. The article next discusses goal identification in social justice-influenced clinical design and explores the compatibility of client and community service imperatives with professional competency educational goals. Finally, the article examines some distinct characteristics of justice-oriented clinical design in underserved communities, utilizing as a model for discussion and analysis the clinical programs at St. Mary's University School of Law's Center for Legal and Social Justice in South Texas. The author praises the clinic's endeavors to foster social justice through holistic representation and service, community empowerment, advocacy across international boundaries, and through direct support, mentoring, and encouragement of alumni to create a self-perpetuating culture of lawyering in the public interest.

Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L.J. 445 (2000).\* † This article examines the issue of racial diversity in clinical faculty. Part I introduces statistical data describing the underrepresentation of women and minorities in clinical faculty. Part II presents arguments for greater diversity in clinical education. The author argues that there are two broad rationales for greater faculty diversity: to serve as a remedy for past exclusion of people of color from the profession and to increase the value of education to the students. The author posits four additional reasons for faculty diversity that pertain specifically to clinical education: "Multiperspective, Multicultural and Cross-Cultural Lawyering, Education and Scholarship" (suggesting that multiplicity in represented cultures generates multiplicity in ideas and views on law); "Non-Discrimination" (suggesting that diversity curbs non-discrimination in both academic and professional environments); "Mentoring and Role Modeling" (suggesting that minority faculty members are critical role models and mentors, particularly for minority students); and "Legal Services Operational Needs of Communities of Color" (suggesting that minority faculty members can greatly assist in securing trust and respect of the local communities that usually are of color.) Part III offers suggestions to promote diversity in clinical faculty such as open acknowledgment of the problem, fellowship opportunities, vigorous enforcement of existing AALS bylaws promoting diversity, and the adoption of similar policies by individual schools.

Justine A. Dunlap, *I Don't Want to Play God – A Response to Professor Tremblay*, 67 FORDHAM L. REV. 2601 (1999).\* † This article serves as a response to Professor Tremblay's article entitled *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999). The author disagrees with Tremblay that the only permissible goal of a poverty law practice is empowerment rather than access to the legal system. The article explores the author's discomfort

with the notion of triage while recognizing that it occurs. The author's greatest concern with Tremblay's triage construct centers around the factors that Tremblay would exclude, principally, constituent demand and meaningful community input into case selection choices.

Donald N. Duquette, *Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity*, 31 U. MICH. J.L. REFORM 1 (1997).\* † This article asserts that clinical legal education has become an accepted and integral complement to traditional law school curricula. The author argues that clinical legal education is uniquely able to integrate the teaching of practical skills and legal doctrine, elevating students' understanding of both. The author maintains that a child advocacy law clinic can teach a comprehensive range of practical skills, enrich the host law school by providing an opportunity for interdisciplinary education as well as public relations benefits, while further serving an important need in most communities for quality representation of all parties in child abuse and neglect cases. The author argues that "participation in a child advocacy clinic has a profound effect on students who must face significant ethical, emotional, and legal issues that require both quick learning and deep reflection." In an effort to aid other law schools interested in developing a child advocacy clinic, the author describes the University of Michigan's Child Advocacy Law Clinic, detailing the selection of cases for the representation of children, parents, and social service agencies, the supervision of students, the classroom component of the curriculum, and the staffing and budgeting choices.

Linda S. Durston & Linda G. Mills, *Toward a New Dynamic in Poverty Client Empowerment: The Rhetoric, Politics, and Therapeutics of Opening Statements in Social Security Disability Hearings*, 8 YALE J.L. & EDUC. 119 (1996). This article explores the failure of Administrative Law Judges (ALJs) and claimant representatives to make opening statements in Social Security disability hearings, as prescribed by the Social Security Administration's Hearing, Appeals, and Litigation Law Manual. The authors contend that the prevailing practice of either not making an opening statement or making an incomplete one presents grave injustices to claimants. The process, the authors argue, "bypasses an essential opportunity to promote the healing and empowerment of the disabled claimant." Part II of this article provides a background in classical rhetoric and the importance of the opening statement. Part III describes the complex discourse forum of a Social Security hearing. In Part IV, the authors explore the role of the ALJ in supplying an introduction and opening statement and question why this does not occur in actual practice. The authors argue that this is a critical aspect of the hearing for both the judge and the claimant. In Part V, the authors examine the role of the claimant representative in giving an opening statement and provide different approaches for giving such a statement, using traditional representation and therapeutic advocacy techniques. The authors submit that an effective opening statement raises interest and alerts the judge to important issues that frame the case, and perhaps to the larger policy issues that surround it. The authors conclude that this is an important tool for attorneys that should be utilized effectively in order to empower the claimant.

Ingrid V. Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 CLIN. L. REV. 433 (1998).\* † This article highlights the value of community education as an anti-poverty strategy and attempts to "bridge the gaps between theory about collaborative lawyering and the

reality of everyday Legal Services practice by exploring the potential of community education to address the problems of poor clients.” By using a case study of a community education program in Chicago, this article demonstrates how this underutilized lawyering technique can be employed as a component of Legal Services practice. Part I of the article examines the development of Legal Services, which has historically focused on individual and impact litigation as primary strategies for fighting poverty, with community education playing a very small role. The reality of Legal Services is contrasted with emerging theoretical models of poverty law, which feature community education as an important function for lawyers. Part II of the article provides a descriptive analysis of a community education program initiated at a Legal Services program in Chicago. The Chicago program focused on educating community members about workplace rights, placing emphasis on the concerns of immigrant women. The program comprised a variety of elements, including workshops, intensive courses, and educational video, and use of the media to publicize workplace laws. The article evaluates the Chicago program by providing examples of how the program affected its participants. The author argues that the results of the program indicate that community education reaches under-served populations, provides opportunities for clients to be heard, responds to concerns not adequately addressed by the legal system, encourages individuals to solve their own problems, and develops leadership skills in community members. The author concludes that because concrete examples from poverty practice are rarely seen in academic literature, and examples of community education programs are especially rare, this practice-based analysis should be useful as a pedagogical tool for practitioners and clinical programs that plan to incorporate community education into their practice.

Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 J. YALE L.J. 763 (1995).<sup>\* †</sup> The article proposes that civil rights attorneys start using literary devices in their pleadings. The author suggests the use of “dramedy,” client narrative, metaphor, irony, poetry, homilies, oxymorons, “The Free Word,” the lawyer’s own voice, and jazz to improve the persuasiveness of pleadings. The use of such literary and rhetorical devices will not only improve the persuasiveness of the pleadings, but also will help bridge the gap between “us” and “them” – the civil rights clients and civil rights attorneys and the courts. The author argues that the dangers involved in using creative drafting can be avoided by maintaining values, including integrity, fidelity, honesty, competence, professionalism, and civility. The article contains two versions of a complaint in a civil rights voting case: the one used in the lawsuit and one that is written employing the devices listed above to demonstrate their effectiveness.

Peter Edelman, *Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 685 (1998).<sup>\* †</sup> This article is a published version of the opening address of Peter Edelman at the Seventh Annual Stein Center Symposium on Contemporary Urban Challenges, which identifies the challenges in lawyering to the poor and proposes approaches for lawyers to reduce poverty. The speech challenges the private Bar to take on greater responsibility in helping to formulate policy that will work to eradicate the plight of the poor, calls for greater lawyer involvement in policy adaptation and implementation, identifies new roles that lawyers can and should play in helping to build and strengthen community institutions, and maintains that community building needs to become a major focus of lawyering for the poor. Specifically, the speaker notes the role that some law firms have

begun to play in their communities in the form of a neighborhood law clinic, and proposes that there are many more things a law firm can do to benefit the community. The speech argues that there should be, in every large city, a non-profit *pro bono* intake center, clearinghouse, and strategy coordination center on poverty law issues, modeled after the Lawyers' Committee for Civil Rights Under Law. The speech identifies the significant role that non-lawyers can play in the legal services community and recognizes the possibilities associated with this idea. Finally, the speech submits that legal services need to be accessible to everyone, not just those whose income falls below the poverty line. The speech asserts that there exists a very large group of people who cannot afford a lawyer and proposes that reform is needed in the area of legal representation to ensure fairness. The speech concludes by acknowledging the role that law schools and students can play in this process and concludes that lawyers today must meet the challenge of addressing and satisfying the need for "a revitalized broad-based movement for economic, social, and racial justice in America."

Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).\* † The author expresses dismay at the movement of law schools away from training ethical practitioners and producing scholarship that judges, legislators, and practitioners can use toward emphasizing abstract theory at the expense of practical scholarship and pedagogy and the movement of law firms away from ensuring that associates and partners practice law in an ethical manner toward pursuing profit above all else. With the schools moving toward pure theory and the firms moving toward pure commerce, the middle ground of ethical practice is in jeopardy. The article calls law professors to produce scholarship that attends to legal doctrine and to provide law students a doctrinal education and practitioners to sacrifice self-interest for the public interest.

Floralynn Einesman & Linda Morton, *Training a New Breed of Lawyer: California Western's Advanced Mediation Program in Juvenile Hall*, 39 CAL. W. L. REV. 53 (2002).\* † This article describes the evolution of California Western's Advanced Mediation Program in Juvenile Hall from a *pro bono* project in which students mediated disputes at a local public middle school to a three unit course in which students serve as mediators in both Juvenile Hall and Small Claims Court. It discusses the program's objectives and structure, notes how the objectives of the course – to teach advanced mediation techniques and improve participants' emotional intelligence – are furthered by its classroom component. The article concludes by presenting a series of student journal excerpts that discuss the effect of the program on the students' attitudes and viewpoints regarding conflict.

S. Ronald Ellis, *The Ellis Archives – 1972 to 1981: An Early View From the Parkdale Trenches*, 35 OSGOODE HALL L.J. 535 (1997).\* This article, written by a former director of the Parkdale Community Legal Services, consists of a selection of documents and document extracts framed by an elaboration of the context in which they originally appeared and their significance at the time. The article presents views from a 1972-1981 perspective on a number of legal-clinic, legal-aid, legal-services, and legal-education issues that are still pertinent in the current legal context. The author explains that he wrote this article in the belief that these views are still relevant and may be useful to today's law practitioners and clinicians.

Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992).\*

† Ellmann applies a model of client-centered lawyering to the increasingly common phenomenon of group representation by public interest lawyers. He begins by defining public interest lawyers as those who aim to achieve social reform on behalf of people who would otherwise lack adequate representation. He describes some of the conflicts between individual client autonomy and group solidarity encountered by these attorneys when they attempt to represent whole communities or collectives of disadvantaged people. He counsels against the devaluation of either factor, although he acknowledges that too much caution may sacrifice the goals of both the group as a whole and individual members. After discussing various models and professional rules by which lawyers evaluate their roles in representation of group clients, he concludes that all group representation should be characterized by the elements of individual client-centeredness – careful communication, empathetic understanding, and collaborative decision-making techniques – modified to meet the unique needs of group clients. Among other suggestions, Ellmann prescribes attention to the existing problem-solving mechanisms within the group, and carefully maintained impartial loyalty to its collective goals and survival. By adhering to client-centered standards, he argues, public interest lawyers can promote community mobilization without sacrificing individual client autonomy.

Stephen Ellmann, *Empathy and Approval*, 43 HASTINGS L. REV. 991 (1992).\* † Ellmann defines empathy as the nonjudgmental acceptance of client speech or action that is integral to the Binder, Bergman and Price active-listening approach to lawyer-client interaction. In contrast to this concept, he defines approval as the positive judgment and endorsement of part or all of a client's world view. He argues that some degree of approval is necessary to lawyers' communication of loyalty, respect, warmth, advice, and understanding toward clients, all of which are important psychosocial aspects of lawyer-client relationships. Ellmann describes the significance of each of these elements, especially as they relate to lawyers' interactions with disadvantaged client groups. He contrasts the effectiveness of approval with the extent to which empathy alone can convey these sentiments and analyzes the factors that govern when approval is an appropriate response to client behavior. In particular, he highlights the content approved, the manner of expressing approval, and the timing of expression as factors that deserve careful treatment by critical, client-centered lawyers. He describes the goal of the article as resurrecting approval as a legitimate element in lawyering technique and encourages practitioners and educators to examine its use empirically and experientially.

Stephen Ellmann, *The Ethic of Care as an Ethic for Lawyers*, 81 Geo. L.J. 2665 (1993).\* † This article advances the argument that the ethic of care, which focuses not on abstract rights and duties but rather on the connections between people, should “play a part in the moral understanding of every lawyer.” The author seeks to describe a vision of the obligations lawyers would live by if the ethic of care were the central source of their moral responsibility. The essay examines several questions. First the essay considers for whom should the caring lawyer care. The author concludes that the caring lawyer does not care equally for all persons involved in the situation. The caring lawyer can represent particular clients to whom the lawyer will acknowledge greater responsibilities than the lawyer owes to anyone else in a situation. Next the essay considers which clients a caring

lawyer should represent. The author argues that the ethic of care does not dictate an answer to this question but does provide guidelines that would alter substantially lawyers' deliberations about case selection. The author concludes that considering client needs, the lawyers' own feelings, and the caring or uncaring quality of the client and his cause in the process of case selection would result in a modest increase in the social responsibility of lawyers' case selection decisions. In Part IV, the essay examines the question how a caring lawyer should act towards her clients. The author maintains that the caring lawyer should recognize a particular responsibility – unless other considerations of care justify a different course of action – to understand the client's perspective, to see the client's situation as he himself sees it. The ethic of care also encourages lawyers to use their personal connection with the client to profoundly influence or even manipulate the decisions their clients make about their own lives. Finally, the essay considers how zealously a caring lawyer should represent her clients. The author argues that in most circumstances the ethic of care confirms the moral validity of the duties lawyers owe to their clients but that it also points to important exceptions in which care calls for an abridgement of zeal. The author suggests a procedural mechanism to aid the lawyer in making decisions about exceptions to her obligation of zeal that involves the lawyer to meeting with a group of her peers – both other lawyers and also non-lawyers committed to moral discourse – to discuss and attempt to resolve these questions of exceptions to zeal. In the conclusion the author asserts that the lawyer-client relationships that the ethic of care calls for are not vastly different from those permitted under existing rules.

Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987).\* † Ellmann criticizes client-centered practice as formulated by David Binder and Susan Price in *Legal Interviewing and Counseling: A Client-Centered Approach*. He argues that the interaction techniques described in that book, though designed to promote client autonomy and decision making, may lead to lawyers' abuses of power through coercion and manipulation of clients. He focuses on lawyers' capacity for manipulation, which he defines as interference with a client's capacity for fully competent or vigilant decision making, under conditions in which the client is aware of the choice to be made, informed of the available alternatives and their costs and benefits, and equipped with an understanding of his or her own values and emotional needs. He analyzes Binder and Price's concept of non-judgmental empathetic understanding as unrealistic and deceptive for clients who seek acceptance and approval from their lawyers. He acknowledges, however, that circumstances may justify the exercise of manipulation by lawyers – where clients consent to lawyer decision making, where limited resources require economy of legal services, where clients suffer from disabling emotional problems, and where clients lack political and moral insight into their own worlds. Ellmann describes the problematic aspects of these justifications, which value protection of client interests over development of client autonomy, and concludes with the observation that attempts to engage in client-centered practice inevitably will be internally inconsistent.

John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135 (1997).\* † The author argues that “there are no longer any good reasons to accept the status quo in legal education.” The author further maintains that significant reform in legal education only will take place if the leadership of the legal profession use its considerable authority to compel law schools to change.

The article examines developments within the political and legal community that have set the stage for potential reform and argues why major traditional defenses of the status quo can no longer withstand scrutiny. Next, the author attempts to provide reasons for the legal profession's need for systemic reform. Finally, the author concludes that the most important reform of the status quo includes effectively preparing students, in law school, to meet professional challenges. He calls upon leadership to conduct this effort and posits that clinical legal educators are uniquely situated to work with these leaders to achieve the needed reforms. Clinicians know how law schools operate and what is needed to improve curriculum, while also possessing knowledge about the practice of law and how to raise the consciousness of public-minded practitioners regarding the need to improve professional practice standards.

Russell Engler, *And Justice For All – Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 *FORDHAM L. REV.* 1987 (1999).\* † This article explores the role that judges, mediators, and clerks can and should play in meeting the needs of unrepresented litigants. Part I examines the traditional rules governing clerks, mediators and judges in their interactions with unrepresented litigants, which prohibit them from giving legal advice to such litigants. Part II revisits the roles of the actors in the system and presents a proposal for revised roles for these court actors. Part III examines three different fora that are struggling with large numbers of unrepresented litigants, family, bankruptcy, and housing courts. It also examines the different official responses to the problems in housing court in two settings, the Boston Housing Court and the New York City Housing Courts. Finally, the article argues that the way in which courts currently handle their caseload harms the unrepresented poor and concludes that assistance from clerks, mediators and judges is needed to achieve justice and fairness.

Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 *CLIN. L. REV.* 109 (2001).\* † This article is designed to initiate a discussion about the impact of the MacCrate Report ten years after its publication. The article begins with a summary of the Report, the activity within legal education in the Report's wake, and the accompanying scholarly debate. It then shifts from the national stage to that of an individual law school, using the New England School of Law in Boston as a case study. The article examines the curricular changes that occurred at that school over the past ten years, the process that led to the changes, and the impact of the changes, a discussion that necessarily includes an exploration of the process of assessment and a search for appropriate standards for analyzing the impact. The article next returns to the national scene, reaching preliminary conclusions about the Report's impact based on the limited information available, but also urging that the tenth anniversary of the MacCrate Report be used to engage in a more detailed assessment of the teaching of skills and values. The article then raises and explores a series of questions to guide this assessment. The article examines choices involving higher and lower credit programs, full-year and one-semester programs, programs that depend on careful sequencing versus programs that do not, and programs beginning in the first year versus programs focusing on the upper-level classes. The article then shifts to the debate regarding the relative merits of in-house clinics versus externship programs and the resulting implications for an overall skills and values program. The article ends with a discussion of strategies for filling gaps that we know exist in the teaching of values identified by the MacCrate Report that

relate to the goal of “Pursuing Equal Justice” in legal education.

V. Pualani Enos & Lois H. Kanter, *Who’s Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLIN. L. REV. 83 (2002).<sup>\*</sup> † This article describes the Boston Medical Center Domestic Violence Project, an interdisciplinary clinical experience for first year students. It discusses the teaching objectives and methods employed to improve students’ listening abilities to accomplish the larger educational goal of developing problem-solving skills that are client-centered, client-empowering, and incorporate multidisciplinary and community-based solutions and resources. The article discusses the specific problem-solving principles the authors believe are necessary to advocate effectively with battered women, as well as obstacles to practicing consistent with these principles. It details teaching methods and strategies designed to train novice students to interview women about intimate partner violence and to train the upper-level students who supervise them. The article concludes by discussing the several ways that developing students’ listening skills in order to enhance their interviewing skills addresses some of the obstacles to problem-solving principles, and prepares students for building client-centered and empowering advocacy skills as well as finding multidisciplinary solutions to complex issues.

Richard A. Epstein, *Legal Practice & Clinical Programs*, 1 GREEN BAG 2D 401 (1998).<sup>†</sup> The author offers reflections upon an essay by former University of Chicago Law School Dean James Parker Hall about practice courses in law school. The author describes how Hall posited the purpose of practice courses as helping future lawyers in routine litigation. Agreeing that this is a worthy end, the author considers how these courses should be taught. The author believes that there is no universal answer to this question since practice courses are best implemented when they are tailored to a particular community or the needs of a school. While the author recognizes the benefit of practice programs for students who seek certain careers, he also draws attention to the fact that options for legal careers are “increasing at a dizzying rate.” In light of these increased options, practice courses may not assist all students in advancing their career objectives. Thus, the author argues that students should have a wide degree of discretion in deciding whether practice programs are appropriate to their objectives. In light of this conclusion, the author views with skepticism those who argue that law schools should “assume a greater role in teaching professional skills.” The author argues that aside from the variety of career paths that would not benefit from practice courses, an emphasis on practice courses overlooks two realities. First, most academics are not practice-oriented. Second, even if they were, law practice has become so specialized that most practice skills are best learned within a specific profession. The author concludes that for these reasons, law schools should be wary of the supposed need to make all law students more practice-orientated through clinical programs.

Howard S. Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199 (1993).<sup>†</sup> The authors describe 13 innovative legal education projects at law schools participation in the Interuniversity Consortium on Poverty Law. Although each project is distinctive in its approach, all of the projects have the common goal of changing attitudes towards poverty in society as well as in law school culture through such means

as traditional classroom experience, legislative advocacy, community education, and service to individual and institutional clients. The authors identify three main emphases among the projects: Classroom Teaching, Transformative Practice, and Policy Formation. They group the projects according to these categories and briefly describe each program's practical and theoretical approach to teaching lawyering skills. The Classroom Teaching projects stress interdisciplinary materials, critical discussion, and integration of doctrine with practical experiences. The Transformative Practice projects combine classroom teaching, active participation in a clinic setting, and interaction with practicing lawyers from the community. The Policy Formation projects highlight opportunities for shared perspectives among representatives from politics, community groups, legal educators, and public and private legal entities. After each category, the authors evaluate the advantages each type of educational experience offers to students and the legal community.

Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901 (1997).\* † The author critiques the lawyering done by student lawyers and the author herself, their clinical supervisor, in a divorce case involving abuse of a minor child in a mixed-race marriage. The author challenges the standard "client-centered" model of interviewing and counseling, arguing that, at least in domestic violence cases, it operates to control the client's narrative by not allowing enough time for the complex story the client has lived to be told to the lawyer and for case representation goals to be set appropriately in light of the client constructed narrative. The author argues for a more contextualized approach to lawyer-client interaction that better facilitates the client's construction of her own narrative over time and that provides race-sensitive representation.

Doug Ewart, *Parkdale Community Legal Services: Community Law Office, or Law Office in a Community?*, 35 OSGOODE HALL L.J. 475 (1997).\* This article examines clinical education in law school, and uses Osgoode Hall Law School's Parkdale Clinic to assess the goals and benefits of such a program. The author maintains that clinical training has two purposes: to provide free legal services and to provide second- and third-year law students exposure and training in the practice of law. He then describes Parkdale Community Law Services, including the academic requirements, as well as internal structure and community reaction. The author argues that the function of Parkdale Community Law Services is to be a neighborhood law clinic. In contrast to a legal aid office, which the author asserts depends on client initiation and is not preventative, a neighborhood law office is easily accessible and serves to educate the community. In sum, the author argues that a neighborhood law office has the ability to dispense both representative and service functions, and is amenable to community control. He concludes that the decision by Osgoode Hall Law School to create and monitor such a service should be taken seriously in order to be successful.

Doug Ewart, *Parkdale Community Legal Services: A Dream That Died*, 35 OSGOODE HALL L.J. 485 (1997).\* In this article, the author argues that Parkdale Community Law Services, created by Osgoode Hall Law School, failed in its efforts to meet the needs of the poor in serving as a neighborhood law clinic. The author provides a thorough look at internal administrative difficulties of the Clinic, which he argues eventually led to the overall failure of the clinic to be proactive in involving community members in its administration and operations. Specifically, the author notes

that emphasis on individual problem solving contributed to the abandonment of the social and political goals of the office and the community. Ultimately, the author concludes that the Clinic failed to organize and educate its poor clients because it provided only short-term solutions for problems that demanded long-term solutions. The end result, the author concludes, was the creation of another unsuccessful social agency.

Mary Jo Eyster, *Clinical Teaching, Ethical Negotiation, and Moral Judgment*, 75 NEB. L. REV. 752 (1996).\* † The theme of this article is that legal education efforts must be focused on moral character as well as technical skills if the overall ethical conduct of the profession is to be improved. The article focuses on failed efforts to teach and practice negotiation effectively, particularly the negotiated settlement of lawsuits. The author suggests that “the reasons we have been unsuccessful in achieving a satisfactory negotiation go to the heart of our system of legal education and our related beliefs about professionalism.” The article discusses the importance and challenges of teaching law students the process of negotiation and how to conduct themselves in the process. The author describes the structural and ethical problems arising from teaching such a course. The author also describes the curriculum that she has developed to enable students to enter their professional careers with an effective and ethical approach to negotiation and explains why these efforts have not been entirely satisfactory. Next, the author explains why the identified difficulties “cannot be resolved merely through rewriting the rules” and describes the obstacles in the drafting of current ABA Model Rules that blocked the passage of rules of conduct that would have required lawyers to act honestly in their negotiations. Further, the author postulates that “it is the underlying ethos of the profession which inhibits us from requiring a higher standard of conduct of our profession.” Finally, the author attempts to make a case for a different approach to legal education and a different view of the profession, one that derives from the work of moral psychologists and from the writings of feminists and other legal scholars. The author relies on these writings to suggest new ways for viewing the roles of educators and professors and explores the application of these ideas to legal education generally and to the problems of negotiation in particular.

Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLIN. L. REV. 347 (1999).\* † This article focuses on the design and teaching of an externship clinic. The author first reviews some of the traditional conceptions and misconceptions about clinical programs, including both externship and other clinics. In Section I, the author considers the range of goals that might be adopted, and how this choice will “affect the overall design of the clinic, including choices of host offices and seminar design.” Section II discusses a number of teaching methods that might be used in the seminar. The author focuses on methods rather than content, because the author maintains that “content will be a function of the goal or goals of the clinic.” Finally, Section III discusses the field placement design and supervision issues that must be considered in the overall design of the clinic. These include selection of placements, selection and oversight of field supervisors, faculty intervention in fieldwork, and assuring effective student supervision.

Jay M. Feinman, *The Future History of Legal Education*, 29 RUTGERS L.J. 475 (1998).\* † The author writes that his “thesis is simple: Future historians will view our recent past (say, from the early 1980s to the middle 1990s) as a watershed in legal education.” The article starts by

characterizing every element of traditional law school as dominated by a unitary vision of the case method. The article charges that this focus has caused a disjunction between law school and law practice. The new law school, however, is diverse “in the sense that no single, discrete vision motivates the curriculum, pedagogy, or scholarship of the school.” Legal reasoning is cited as an example of how this new diversity has taken hold. Unlike “the traditionally analytical methods of the past,” new legal reasoning is taught as a skill that involves a set of techniques and a mode of discourse. With this broadening of legal reasoning, law schools are now beginning to hone not just analytical skills, but lawyering skills as well. The author states that clinical experiences are crucial for the development of lawyering skills and the synthesizing of “legal reasoning, different bodies of doctrine, theories about the law, and lawyer skills.” Lastly, the author notes that the new law school allows students the opportunity not only to analyze narrow and specific questions of law, but also to consider more general theoretical questions such as the relationship between law and economics. The author concludes that the new law school has made law a more interesting and useful area of study.

Marc Feldman, *On The Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607 (1985).<sup>‡</sup> This article begins with a historical overview of development of law school clinics. It then describes the current configuration of such clinics. The article concludes with a proposition and directions for integrating the law school clinic with traditional curriculum. Law school clinics have had a four-stage development beginning in the 1960s. The first phase was inspired by the call for law schools to produce more competent lawyers by improving skills training, and to provide legal services for the poor. These roots of clinics have constrained clinical education to the margins. The first phase had no intellectual theoretical educational purpose, and clinic teachers often came directly from practice and did not consider themselves as traditional theoretical law school teachers. The second phase of clinic development was marked by a shift from teaching skills to teaching learning. This was in response to criticism by traditional law school faculty that clinical teachers were not providing or producing the competency in lawyering skills that had been promised and that clinics served no intellectual purpose. Phase three was the integration of phases one and two: that is, limited client representation combined with high levels of supervision that allowed students to reflect critically on their choices and representational decisions. The fourth and current phase is marked by heightened criticism among clinicians. Clinicians are still dissatisfied with the level of competency of the graduates of traditional curricula, while the original purpose of the clinic, to provide service to the underrepresented, has been largely abandoned. Feldman next describes the current clinical methods as having three main components: role performance by students, pedagogical focus on the student’s experience, and the motivational tensions that arise from the first two elements. Feldman argues that clinical education can be integrated with the traditional curriculum to cure four problematic areas of traditional education and to move clinical education from the margin to the mainstream of legal education. The article includes a comprehensive plan for accomplishing this task. For students, such integration has the following goals: expose the student to law in operation; explore the impact of roles; provide skills instruction; increase students’ ability to cope with professional pressures and to learn from career experiences; and allow students to make more informed career choices. For clinical faculty, three general goals could be accomplished with integration: their continued development as teachers, lawyers and scholars.

Norman Fell, *Development of a Criminal Law Clinic: A Blended Approach*, 44 CLEV. ST. L. REV. 275 (1996).<sup>\* †</sup> With the purpose of showing that a complete legal education involves the use of

practical exercises and experiences rather than just scholarly examination of legal premises, the author describes the criminal law externship clinic that he started. The author details how legal clinics became part of law school curricula and how their introduction into law schools represents a change in the way we think of legal education. The author suggests that the change resulted from the need to make attorneys more professionally competent and socially responsible. With reference to the ABA MacCrate Report's "Statement of the Fundamental Professional Skills and Values," the article highlights the list of benefits and values that are promoted by a clinical education. The author goes on to state that the realization of these benefits and values comes from clinical programs that (1) explain the development of the values and skills being taught; (2) provide an opportunity for students to perform lawyering tasks with feedback; and (3) provide reflective evaluation of a student's performance by a qualified assessor. Included in the article are thorough and comprehensive examples of programs that have successfully incorporated these objectives. It is the author's opinion that programs that treat law as an art rather than a science are better equipped to provide a useful clinical education. The article concludes with the observation that, while there is not one system of clinical education that can work in every given context, there are common goals and experiences, many of which he touches upon, that can help law schools provide a balanced and productive clinical legal education.

William L. F. Felstiner & Austin Sarat, *Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Interactions*, 77 CORNELL L. REV. 1447 (1992).\* † The authors discuss conventional views of power in lawyer-client relationships and then present their own view of power as it operates in divorce representation. Under the traditional view of power, lawyers dominate their passive clients' goal-setting and decision-making processes; under the private practice model, corporate clients exercise more control over legal strategy. The authors explore the ways in which control is negotiated and allocated in every interaction between a lawyer and client. They separate their theory of dynamic and fluid power into two subgroups: "negotiations of reality" and "negotiations of responsibility." Negotiations of reality occur when divorce lawyers and clients arrive at working definitions of facts and limitations from which they can determine what strategies and goals are reasonable and attainable. Negotiations of responsibility result in divisions of tasks and accountability. By presenting and analyzing a detailed divorce case study, the authors illustrate how lawyers and clients subtly and implicitly engage in these negotiations at every step in representation.

William L. F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 L. & SOC'Y REV. 631 (1980). The purpose of the article is to draw attention to and provide a framework for describing the emergence and transformation of disputes. Typically, disputes are studied in reverse order, that is, from the final disposition of a dispute rather than perception of the injury itself. Traditional studies of disputes do not address the differences that will lead one person to view something as an injury and to pursue a remedy, that will lead another person not to view the same thing as an injury, and will lead a third person to view the same thing as an injury, pursue no remedy. According to the authors, it is necessary to examine social and cultural differences in order to evaluate differences in injury perception. The second stage of transformation is moving from injury perception to a grievance, a step the authors call "blaming." This occurs when a person who has perceived an injury attributes to someone else the cause of that injury. The third transformation occurs when the injured person seeks a remedy, which the authors call "claiming." Transformations are subjective, unstable,

reactive, complicated and incomplete. The authors suggest that a way to study transformations is to organize them into categories by what is being transformed and by whom the transformation is effected. The study of transformation of disputes is a necessary step in lowering barriers to the airing and resolution of grievances, which is one tenet of a healthy social order.

Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers*, 9 CLIN. L. REV. 417 (2002).\* † Simulations can be used to expand the way we teach students as well as what we teach them. Cognitive and Experiential Learning Theory can provide bases for designing simulations to achieve a wide variety of student learning goals. After using simulations in legal education for more than 20 years, the author suggests an approach to use in designing and implementing them in traditional classrooms.

Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 CLIN. L. REV. 135 (2002).\* † This article examines the opportunities and problems that arise when law students and lawyers interview clients. It suggests that empathic communication is a critical dimension of lawyering and that without empathy much valuable affective and cognitive knowledge about the client’s case may be lost. A critical first step in this process involves identification with the client. The article clarifies how identification differs from empathy and challenges the oft-cited concern of “over-identification.” In addition, it examines those situations in which identification with a client may have negative consequences for representation. These issues are explored in the context of how law students and lawyers manage the emotional content of their work. Addressing these concerns provides an opportunity for clinical legal educators to enhance the supervisory process by assisting law students to recognize, discuss, and interpret their emotional experiences of working with clients. The article proposes a model of clinical supervision that supports the development of skills that draw upon the empathic experience of interviewing. Finally, the article draws attention to the connection between these so-called “soft” skills and the impact of the lawyer’s career on professional satisfaction and well-being.

Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947).‡ The article begins with a criticism of the Langdellian method of legal education. “As a result of present teaching methods, law students are like future horticulturists who restrict their studies to cut flowers.” The article does not propose a return to the apprenticeship system, but makes four specific proposals for the reform of legal education. First, law school faculty should be drawn from the practicing bar, lawyers with a minimum of five to ten years experience in varied legal practice. Second, the current case system should be revised to resemble a real case. That is, complete records of a few cases should be the main focus of a course supplemented by reading textbooks and appellate opinions. Law students should spend some time in trial courts and in appellate courts. The fourth proposal, which the author considered “of first importance,” is the implementation of clinics in law schools. “The students would learn to observe the true relation between the contents of upper court opinions and the work of practicing lawyers and courts . . . [and] the students would be made to see, among other things, the human side of the administration of justice . . .” After listing some of the specific advantages of a clinic, the article defends the proposition against direct and indirect criticism. To the charge that law school is too short a time in which to also engage in clinical education, the author responds that the bulk of time in law school is wasted by spending the entire three years on “the relatively simple technique of analyzing upper court opinions . . . in a variety of fields.” Once the skill of analysis is learned, students are able on their own to apply it to a “variety of subject matters.” The author

refutes the anti-intellectualism charge, aimed at legal realists and their clinical proposal, by quoting one of his own earlier responses to similar criticism.” [Legal realists] insist that no program for change can be intelligent if it is uninformed.” The article next addresses some failings of the trial court system and ways that reform in legal education might ameliorate those failings. The final quarter of the article contains discussions of various phenomena in the legal world.

Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).‡ The author argues for the development of a clinic in law schools that parallels clinics in medical school. He uses many of the same justifications, such as the argument that nobody would want a doctor who has never operated on someone when they graduated from medical school. The author blames the current law school case method on Christopher Columbus Langdell, the person who instituted the case method at Harvard. While the author admits that there is something to be learned from reading appellate court opinions, he notes that Langdell thought there was nothing to be learned from practical experience. The article contains a short exposition of the weaknesses of the case method – mainly that lawyers and clients are interested in getting a specific judgment from a trial court. Appellate opinions are only partially helpful in getting the desired result. Lawyers must know how to investigate, how to persuade juries and judges that a given set of facts exists, how to draft pleadings, etc. The article concludes with a short description of a law school that incorporates a clinical element.

Gerald E. Frug, John D. Hamilton, Jr. & Bea Moulton, *In Memoriam: Gary Bellow*, 114 HARV. L. REV. 409 (2000).\* † These are reflections on the life and work of Professor Bellow by Gerald Frug, his successor as the Louis D. Brandeis Professor of Law at Harvard, John Hamilton, the Chairperson of Hale & Dorr LLP and a student of Professor Bellow’s in the Harvard Class of 1960, and Professor Bea Moulton, the co-author with Professor Bellow of the groundbreaking text, *The Lawyering Process* (1978). They describe Professor Bellow’s remarkable professional accomplishments, his fervent commitment to poverty law and clinical legal education, and the compassion he displayed to clients, students, colleagues and friends.

Paula Gaber, *Everyday Learning*, 8 CLIN. L. REV. 3 (2001).† A former student of Professor Sullivan, the author reflects that the most important lesson she learned from her was to be alert for learning opportunities in every moment.

Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123 (1999).\* † This article examines the value of collaboration between lawyers and social workers in order to effectively serve the client. Part I describes the value of collaboration between lawyers and social workers and the many important functions they fulfill, particularly in the legal services context. Part II examines reasons that such collaboration tends to be rare and why even the occasional collaboration sometimes proves to be ineffective. It also examines the attributes of the two professions that may inhibit or impair collaboration. Part III explores remedies that members of these professions can employ to rectify impediments to effective collaboration and to “lay the groundwork for true interprofessional cooperation.” The article presents a proposal for implementing collaboration during the period of professional education and in practice. Specifically, the author suggests that a clinic case on which law students work together with a social worker or a social work student would be a useful vehicle for promoting effective collaboration.

Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLIN. L. REV. 321 (1998).\* † This paper offers a model for lawyer-client interaction in the opening moments of an initial encounter. The model is derived from empirical data – videotaped and transcribed law student-client and attorney-client first interviews – which demonstrate that clients reveal critical information in their opening words. The author maintains that legal interviewers usually do not acknowledge this information, resulting in negative consequences to the relationship and case. Part I of the paper discusses the empirical data, which demonstrates a pattern in opening moments that had not been evident prior to applying linguistic analysis methodology to the tapes and transcripts of intake interviews. The database includes first interviews between law students and clients, as well as lawyers and paralegals and clients, and reveals a pattern of disclosure of key emotional-laden information concerning facts or context in the client’s first words. Part II describes research in the field of medical interviewing that provides empirical support for the value of client-centered attentiveness to story and the impact of linguistic practices, particularly in the opening moments of interviews. Part III proposes a model for conducting the opening moments of an interview, which modifies the “client-centered” model described in Binder, Bergman and Price in two ways. First, the model plans for and encourages the exchange of key data in opening moments. Second, in suggesting linguistic strategies to use and to avoid, the model draws on research from other disciplines that indicates some active-listening techniques should not be used in opening moments of an interview because they cut off the client’s story. Finally, Part IV offers an extended example from practice, contrasting interviews by different legal representatives with the same client over the course of two semesters, utilizing the model described in Part III. The author concludes that lawyers will learn more from their clients if they begin each encounter with an expectation that their clients’ first words are particularly important and worthy of transcription, and restrict themselves to linguistic strategies that encourage clients to express the full range of their concerns.

Philip M. Genty, *Clients Don’t Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 CLIN. L. REV. 273 (2000).\* † This article discusses the importance of teaching law students empathy in the context of a clinical education. Empathy has two key components: understanding the client’s social world and understanding the client’s legal world. The article argues that helping a marginalized person who has an inherent distrust of the legal system is one of the most formidable tasks a lawyer will encounter. Not only must the attorney guide the client through a world of brand new language and concepts, but the attorney also must insure that the client will be safe at the end of the process. The author argues that it is essential that the trait of empathy be taught during all three stages of the learning process: planning, doing, and reflecting. The author rejects simulations and externships as effective means of teaching empathy because simulations do not provide the raw material of a client whose world the student can enter and because externships do not provide the guidance of a teacher who is experiencing the interaction along with the student. The author regrets the move away from in-house clinics, because of the high degree of labor intensiveness, and urges clinic instructors to remain faithful to their call so that students can experience the legal system as clients experience it.

Jeff Giddings & Barbara Hook, *The Tyranny of Distance: Clinical Legal Education in “The Bush,”* 2 INT’L J. CLIN. LEGAL EDUC. 64 (2002). The article examines the challenges encountered by teachers, students, and clients in organizing and implementing the “Advanced Family-Law Clinic,”

offered at Griffith University Law School in collaboration with the Learning Network Queensland and Caxton Legal Centre, which was designed to deliver legal services to individuals in remote areas of the highly decentralized Southern Queensland area of Australia through the use of audio-graphics conferencing technology. The first part gives an overview of the clinic, in which students are rotated between placements at the Caxton Legal Centre, where they provide face-to-face legal advice, and the Learning Network Queensland, where, grouped in pairs, they provide legal assistance to individuals in rural communities through the use of audio-graphics technology. The second part of the article discusses how the political environment in Australia impacted the creation and organization of the clinic, noting that funding support for the project from the Federal and State governments was in part the result of voter backlash in rural communities over the cutting of legal aid funds in the mid-1990's. The article concludes by examining how the clinic approached challenges such as the diversity of legal needs in the rural areas it sought to reach, geographic isolation, and ethical concerns regarding confidentiality, while simultaneously balancing the educational needs of participating students.

Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861 (1992).\* † This article undertakes a “critical storytelling approach” to poverty law practice, drawing upon critical, narrative, and feminist theory. The author takes the perspective of the poverty lawyer in addressing three story types: (1) stories told by clients (and received by lawyers), (2) stories told by lawyers (and received by legal decisionmakers), and (3) “universalized legal narratives” in the law that assign characteristics and define people based on their social position or circumstances. Universalized legal narratives result in familiar stock storylines which invoke a conditioned response in the lawyers, judges, or jurors who hear them. The author uses the example of “welfare mother” to illustrate how negative stereotypes and behavior expectations attach to a client once her story is labeled and clothed with the characteristics associated with that universalized narrative. A discussion of receiving client stories explores how poor clients’ expressions are affected by the physical environment of the story-telling, the language they are encouraged to use, and the lawyers’ preconceptions and prejudices. The author then explores how poverty lawyers traditionally transform their clients’ stories by re-composing and re-presenting them in ways which ignore clients’ individual narratives in order to “fit” the client into a universalized narrative. As an alternative, he offers the model of “translating” client stories by recognizing the individuality of each client’s narrative and concentrating on preserving that individuality throughout the course of advocacy, despite the distortion of legal language. The author argues that the use of client narratives in advocacy holds the potential to make legal decision-makers aware of and acknowledge – in opportunities such as the exercise of discretion, balancing tests, and informal hearings – perspectives often excluded from legal principles, doctrines and precedent. The article closes with a case study in which a law school clinic represents homeless women in a suit against the state government when emergency housing assistance is canceled prematurely. The analysis illustrates how the students achieved greater success when they presented whole client stories than when they tried to extract technical legal arguments out of the context of individual narratives.

Daniel J. Givelber, Brook K. Baker, John McDevitt & Roby Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995).† This article summarizes the emerging theory of ecological learning and then reports the results of an empirical investigation of

students' learning on co-op (full-time, three-month placements in which Northeastern's students take part four times during their second and third years of law school). The data suggests that students believe that they learn well from legal work. Surprisingly, however, out of twenty-eight identified variables, only four variables were found to be of statistical significance: being kept busy, having supervisory promises kept, being able to receive clarification on assignments, and receiving work with the appropriate degree of difficulty. Analysis of the data did not support the theory that other factors, including amount of pay, demographic variables, type of practice, amount of feedback, and quality of supervision, affected learning assessment. The authors conclude that legal educators and legal regulators should do more to support the learning potential of externships, co-op, and part-time legal work during law school.

Kristin Booth Glen, *Pro Bono and Public Interest Opportunities in Legal Education*, N.Y. ST. B. J., June 1998, at 20.† In light of the unsuccessful attempts by the organized bar to make *pro bono* service mandatory for lawyers, this article argues that legal educators can do more to foster a commitment to public service among future practitioners. The author claims that by providing law students with service opportunities, several important objectives will be met. Ideally, the article maintains, service opportunities should “instill in prospective lawyers a sense of the public interest obligations which they will carry into their post-graduate practices, sensitize prospective lawyers to the lives and needs of persons less fortunate, and provide legal services to persons in need who would otherwise be without them.” Going further, the author argues that accessibility to service opportunities in law school may preserve the ideals of law students interested in such work who, without exposure to it, may have chosen another path. Moreover, exposure to service opportunities in law school will create a personal aspect and satisfaction to the legal profession, which, the author argues, will encourage future lawyers to insist that their employers' incorporate *pro bono* in their work experience. The article next outlines existing *pro bono* opportunities and requirements in law schools, with particular focus on clinical programs and fellowships utilized in New York law schools. The article also provides suggestions for law schools in promoting and increasing *pro bono* activity for students. Finally, the article notes that bar associations can also play an important role in facilitating *pro bono* and public interest work by law students. This can be achieved by honoring students for their contributions, as well as developing media campaigns to heighten awareness of *pro bono* opportunities and obligations both for the practicing bar and law students.

Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175 (1992).\* † A University of Maryland professor in the Legal Theory and Practice (LTP) Program describes her reconceived approach to professional ethics teaching. Her vision of lawyers' roles in social reality places an “ethic of care,” characterized by sensitivity towards and responsibility to others, at the core of lawyering. This approach contrasts with law's traditional focus on individual rights and adversary relationships. The author offers examples of teaching methods which cultivated feelings of connection and empathy among her students and in their relationships with clients. By encouraging collaborative learning and exposing them to *pro bono* practitioners with limited support systems, she sought to impress upon her students the importance of caring work relationships to motivation and effectiveness in the role of public interest attorney.

Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105 (1997).† This article explores community-based economic development by focusing on the significance of the Brooklyn Legal Services Corporation A's strategy of community-based economic development. The introduction provides an overview of the nature and importance of community-based economic development (CED), the types of community groups involved in this practice, the contributions that lawyers can make, and the significance of Brooklyn A's community development practice as a model of CED lawyering. Section I describes the context of the East Brooklyn experience through brief profiles of the East Brooklyn communities, Brooklyn A, its Community Development Unit, and the Unit's work. Section II describes Brooklyn A's house counsel approach and describes the rationale behind it. Section III examines the work of Brooklyn A's Community Development Unit through three detailed case studies. Section IV draws upon the case studies to assess the advantages and disadvantages of Brooklyn A's approach and the lessons its experience offers to other public interest lawyers and law offices. The article concludes that the case studies are illustrative of the difference that effective legal assistance can make in the ability of Community Development Corporations and grassroots ownership entities to protect and revive their neighborhoods under the difficult conditions of the 1990s.

Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717 (1992).\* † The article describes the contributions that the clinical education movement can make to the critical legal studies (CLS) movement. Considering that both movements grew out of the legal realist movement, "the examination of the relationship between the two promises to be a profitable one." The CLS movement, which grew out of the rule skepticism faction of the legal realist movement, focuses its inquiry on appellate opinions, while the clinical education movement, which grew out of the fact skepticism faction, concentrates on experiential aspects of lawyering. The author uses the article "Critical Legal Studies and Criminal Procedure," in which CLS scholars analyze a Supreme Court opinion, to highlight not only the shortcomings of the CLS movement, but also to show how those shortcomings can be addressed by using insights developed by clinical education. Clinical experience delivers the message of doctrinal indeterminacy in a much more vivid way: students and teachers see it in action every day. The problem of the vulnerability of a CLS analysis to a charge of nihilism is more easily sidestepped in a clinical setting where [the awareness of laws' indeterminacy] "cannot prevent clinical participants from standing for something as they must, because they are standing with someone who needs their legal assistance." The reliance of CLS writers on deductive reasoning, "which ties critical scholars too closely to a particular set of power relations," should contrast with the combination of inductive and deductive reasoning that is necessary in the clinical movement's study of law in operation. Also, clinical education has an advantage in challenging assumptions as one is often faced with a reality that is much different than the reality suggested by one's expectations and one is thereby forced to identify the source of those expectations. Another clinical contribution to be made to CLS is well-developed factual analysis. Clinical scholars should engage the CLS movement in attempting to expand and inform the CLS analysis, and *vice versa*.

Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991).\* † The article's main thesis is that, given the similarities between the development, positionality, methodology, and status of feminist and clinical theory, there are important gains to be made for each from drawing on the other's work. The major similarities are founded upon the fact that both movements are based in ethics. Their respective concerns with experience, positionality, roles, interpersonal dynamics, interdisciplinary inquiry, hierarchal structure, contextual reasoning, critical inquiry and moral judgment demonstrate the wisdom and forecast the success of having the two interact. The most important similarity is the use of experiences as the focal point for the development and testing of theories which produce a theory-practice spiral. That is, each movement looks at experience to develop theory, then uses the theory to forecast/guide future conduct, then in turn uses that experience to test and refine the theory. In short, both movements are concerned with the traditional and problematic separation of theory and practice in traditional education. Goldfarb further advances incorporation of the clinical and feminist theory into traditional legal education. This would result in heightened awareness of the ethical dimensions of everyday life. "Explicit recognition of the theory-practice relationship would shift the focus to the question of how legal education can more effectively illuminate the ethical dimensions of daily work and life, and how can it better inculcate in students a sense of moral responsibility for professional and personal choices. The pervasiveness of injustice and lawyers' power to aggravate or alleviate it make this an urgent inquiry."

Pearl Goldman & Leslie Larkin Cooney, *Beyond Core Skills and Values: Integrating Therapeutic Jurisprudence and Preventive Law Into the Law School Curriculum*, 5 PSYCHOL. PUB. POL'Y & L. 1123 (1999).\* † The authors discuss the lawyering skills program they developed and direct at Nova Southeastern University. Using examples from classroom simulations, they illustrate how the integration of therapeutic jurisprudence and preventive law into the skills curriculum can sensitize students to the psychological aspects of the attorney-client relationship and prepare them to practice law as a humane profession.

Jesse Goldner, *Herbert A. Eastman: A Memorial Tribute*, 40 ST. LOUIS U. L.J. 305 (1996).\* † This essay presents a brief biographical sketch of Herb Eastman, whose endeavors and accomplishments inspired the author. This essay highlights Herb Eastman's talent for scholarly writing, his remarkable ability to draw lessons from the individual cases he litigated, his commitment to ethics and to others, and the extraordinary patience he exhibited with students. The author praises the significant impact Herb Eastman had on the legal community and law students, and expresses regret over the void that his death has caused.

A.J. Goldsmith, *An Unruly Conjunction? Social Thought and Legal Action in Clinical Legal Education*, 43 J. LEGAL EDUC. 415 (1993).† Australian clinician and scholar A.J. Goldsmith describes the need for integration of social theory into practical skills training in the clinical setting. He describes different conceptions of theory advanced by writers about clinical education, clarifying that he advocates accessible, rationalized, disciplined social inquiry about the practice of law. He defines three categories of social thought with potential to augment clinical curricula and offers an example of each. To illustrate empirical analytical knowledge – described as predictions and

objective causal explanations of observed empirical data—he offers legal sociologist Donald Black’s book, *Sociological Justice*. To illustrate historical hermeneutical knowledge—described as pursuit of understanding of the consciousness of social actors—he offers Sally Engle Merry’s book, *Getting Justice and Getting Even*. Finally, he describes Social Theory as developed by Roberto Unger to illustrate what he means by critical knowledge, that is, the pursuit of emancipation from social oppression by means of critique of social structures. For each scholarly example, he analyzes the value it holds for clinical educators, both as a guide and a text. He concludes by urging clinicians to draw from diverse themes of theoretical scholarship in teaching students about lawyering so that they learn to appreciate the full complexity of the lawyer’s social role, including responsibility to clients, others, and oneself through empirical and conceptual understanding of what lawyering in society involves.

Victor M. Goode, *There Is a Method(ology) to This Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223 (2000).\* † Part I of the article provides a historical background for the concept of feedback and its use as a teaching technique in clinical education. Part II of the article examines three different models of the impact of feedback: feedback intervention theory; cognitive feedback theory; and social judgment theory. The author describes the three essential elements of feedback as the source, the message, and the recipient. Part III reviews the various characteristics of feedback; it is timely, specific, goal oriented, nonjudgmental, and steeped in praise. It then discusses each in the clinical context. Part III distinguishes between informational and instructive feedback. The article concludes that effective feedback is more process than product and is essential in today’s clinical education.

Keri K. Gould & Michael L. Perlin, “*Johnny’s In The Basement/Mixing Up His Medicine*”†: *Therapeutic Jurisprudence and Clinical Teaching*, 24 SEATTLE U. L. REV. 339 (2000).\* † This article arose out of the authors’ efforts to incorporate therapeutic jurisprudence into their teaching philosophies and methodologies, their practice of law, and their critique of other lawyering observed by their students. The first section provides some background about therapeutic jurisprudence and how it has been employed to critically examine other areas of law. Then, the article discusses some of the new theoretical developments in clinical legal education, principally from the “critical lawyering” perspective. In the last section, the article illustrates the use of therapeutic jurisprudence as a paradigm for teaching in the clinical law setting—“both to encourage, shape, and inform classroom discussions, and to teach specific lawyering skills.” The article concludes with some brief recommendations and suggestions.

Lorie M. Graham, *Aristotle’s Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education*, 20 J. LEGAL PROF. 5 (1996).\* † The author asserts that the public perception of lawyers indicates that some type of reform is needed. The author suggests that teaching lawyers to recognize the “human side” of their profession will lead to less animosity. This goal is analogized to Aristotle’s goal of “complete virtue.” With this broad goal in mind, the author seeks to answer how legal educators can instill moral responsibility in students. Drawing on the writings of Aristotle, the author states that this goal can be realized by teaching students to reflect critically on ethical dilemmas and by creating ways in which students can learn from experience.

The author argues that learning from experience instills a more profound and lasting knowledge than abstract study. From this premise, the author argues that law schools must provide experiences that challenge law students to think in terms of values and justice. This can be done, in part, by not leaving ethical and professional responsibility classes to the third year of law school. The author argues that ethics should be instilled by teaching skills that will make ethical living a life-long endeavor rather than a fixed idea. The author concludes that clinical legal education can provide an invaluable means of providing students with ethical experiences and skill development that goes beyond standardized rules.

Daniel L. Greenberg, *A Modest Offer to Clinicians from the Legal Aid Society*, 3 CLIN. L. REV. 249 (1996).\* † The author describes his current work experience with The Legal Aid Society in New York City, and explains how his background in clinical teaching has benefitted him in many ways in his new position. While conceding that the clinical movement has gained momentum in many ways, the author contends that some problems currently affect the clinical movement. First, the author identifies some weaknesses of the clinical teaching method. He then notes that clinical teachers and poverty lawyers share common values and goals, but that the two communities have drifted apart. In order to remedy this, the author offers to the clinical community The Legal Aid Society as a laboratory for clinical research. He describes the vast resources available and offers them to clinicians in return for shared insights about this type of practice in an effort to foster a closer relationship between poverty lawyers and clinicians.

Daniel Greenberg, *Reflections on the New Mexico Conference: What Would You Have Said Before You Came to Law School?*, 19 N.M. L. REV. 171 (1989). The article is a response to a “subtle theme” of the New Mexico Conference on Clinical Education. The author describes the theme as one of assimilation of clinics into the traditional law school curriculum. The price of such assimilation he predicts, will “be borne by the poor,” since it will inevitably homogenize the explicit themes of clinical education’s focus on poverty law issues. The author “suggests a different model, consistent with the analogy of clinical education as a minority group within the larger law school community.” Rather than abandoning the traditional focus of clinical legal education of seeking justice for the poor and disadvantaged, clinicians should be leaders and lead by example in developing student interest in public interest law. Greenberg makes four suggestions for accomplishing that goal. First, material about law and poverty should be integrated into traditional first-year legal methods courses. Second, students should be encouraged to go into public interest law with incentives such as loan forgiveness programs and summer employment grants. Third, clinicians should strive to “create a palpable public interest environment” in law schools. Finally, since so many clinicians began their careers as anti-poverty and criminal defense lawyers, Greenberg concludes, “we must remember who we are, and why we chose to be lawyers.”

Edwin H. Greenebaum, *On Teaching Mediation*, 1999 J. DISP. RESOL. 115 (1999).\* † This article describes the author’s approach to teaching mediation in the context of a law school course. To explain the choices made in curricular design, the article first delineates a taxonomy of variations in models of mediation and analyzes the choices and constraints in course design. In Part III, the article specifies the choices the author made in structuring the course in mediation, relating those

choices to the context of the specific law school, students' backgrounds and interests, and to the author's own competencies and goals. In the final section, under the heading "Paternalism and Consent in Education and Mediation," the article addresses the mediation teachers' professional responsibilities.

Lawrence M. Grosberg, *Clinical Education in Russia: "Da and Nyet,"* 7 CLIN. L. REV. 469 (2001).\*

† This essay, which grows out of the author's work with law professors in Russia under the auspices of the ABA's Central and East European Law Initiative (CEELI), examines the role that Western clinical legal educators can play in Russian legal education. The essay begins by describing the CEELI project and presenting a profile of the Russian law school. The essay then sets forth the author's experiences in Russia and offers suggestions for future Western involvement in Russian legal education.

Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client,* 51 J. Legal Educ. 212 (2001).†

This article describes a pilot project at New York Law School in the use of a Standardized Client (SC) to evaluate the device as a method of law school teaching. Drawn from the domain of medical training, the Standardized Client is an actor specially trained to play a role in simulated lawyering exercises and to provide structured written feedback to the student with whom the SC interacted. The article first describes how medical schools have used the standardized patient and then summarizes the empirical research that supports the use of the Standardized Patient. After describing the three stages of the pilot project at NYLS – a class on negotiating and counseling (43 students), a section of a first-year required lawyering course (110 students), and all sections of the first-year course (457 students), the article explores the potential value of the SC in legal education as well as the administrative and financial implications of the model. The article concludes with an examination of the possible use of the SC as a part of bar examination testing.

Lawrence M. Grosberg, *Should We Test for Interpersonal Lawyering Skills?,* 2 CLIN. L. REV. 349 (1996).\*

† This article attempts to explore whether there are other ways to evaluate lawyering skills taught in the classroom, beyond traditional forms of testing. Part I of the article examines how lawyering skills are evaluated in the live-client clinic. The author contends that although one-on-one evaluations are not perfect, they can be effective and fair, and play a much greater role in clinics than written tests. Part II then examines the non-clinic context, and describes the other settings in which lawyering skills may need to be evaluated. First, skills such as interviewing, counseling, and trial advocacy are taught in the classroom as well as the clinic. Second, after law school, such skills are increasingly being considered as potential subjects for the bar exam. In Part III, the author addresses whether there are more effective means of evaluating students' mastery of lawyering skills in non-clinical settings. Specifically, the author describes and assesses the performance test; the videotaped performance test; and interactive videotaped exams. The author concludes that these methods are capable of providing meaningful forms of evaluation of a substantial range of skills, and urges his colleagues to use and experiment with these evaluation methods and continue the effort to refine them.

Carolyn Grose, *A Field Trip and to Benetton . . . And Beyond: Some Thoughts on "Outsider Narrative" in a Law School Clinic*, 4 CLIN. L. REV. 109 (1997).<sup>\* †</sup> This essay explores "the process of teaching students to listen to and accept different versions of reality." The author argues that such exploration results in a proposition that is easy to state but difficult to accomplish: that in order to achieve this goal, teachers must challenge the students' common sense by offering examples of behaviors that differ from that knowledge. The first section of the essay presents a hypothetical initial interview with a client, and the student interviewer's reactions to her, which reflect the student's "common sense" understanding about the lives of people like his client. The second section compares the student's reactions to criticisms of the broader movement of "outsider narrative," and concludes that the two reactions emerge from the same failure to acknowledge and integrate the differences between the storyteller/client and the critic/student. The essay then explores the development of sexual harassment law to demonstrate how outsider narrative can change laws by challenging the ingrained common sense of the fact-finder. Finally, the essay returns to the clinic and argues that students should read relevant fiction along with other outsider narrative. Doing so, the author argues, is one way to enlarge the students' common sense understanding before it hinders their ability to hear their clients' stories.

Samuel R. Gross, *Clinical Realism: Simulated Hearings Based on Actual Events in Students' Lives*, 40 J. LEGAL EDUC. 321 (1990).<sup>‡</sup> The author describes his own experiences teaching a simulation-based evidence workshop which focuses on courtroom testimony. As a novel approach, he structures the simulations around actual events in the individual students' memories rather than assigning fictional roles. After interviewing each student at the beginning of the semester, the author identifies an event in his or her life which could have been of significance in a plausible lawsuit. The testimony must be presentable in one hour or less and there must be some basis for impeaching the witness. Each student plays the role of expert witness in one simulation while others act as direct examiner, cross examiner, judge and jurors. After the formally-conducted and taped hearing, the whole class reviews the exercise immediately and then later, upon viewing the video. In this article, the author analyzes the positive aspects of this teaching method, emphasizing the flexibility, realistic scope, and opportunity for students to learn about evidence from all perspectives of the litigation process. In contrast, he identifies the tendency of students in traditional, fictional simulations to manipulate facts in ways that trivialize the role of truth. He stresses that basing role-play on actual events encourages participants to take the exercise seriously and internalize the experience of testifying in a realistic courtroom setting.

Claudio Grossman, *Building the World Community: Challenges to Legal Education and the WCL Experience*, 17 AM. U. INT'L L. REV. 815 (2002).<sup>\* †</sup> This article argues that in light of dramatic global transformations resulting from the expansion of foreign investment, increase in global trade, and the presence of new international actors like non-governmental organizations and multinational corporations, the legal education system's reliance on the case method, which is inexorably linked to the idea of national sovereignty and unitarily focused on the domestic realm, is outmoded. It describes steps taken at American University Washington College of Law ("WCL") to illustrate one potential model for making qualitative, process-oriented changes, identifying five building blocks around which WCL has attempted to connect its legal training with the ever-expanding international

nature of law. These include establishing links between the study of domestic and international law through weaving international issues into the traditional first year curriculum and integrating international issues into moot court competitions; focusing on the different types of legal systems that exist around the world by offering courses focused on other country's legal culture and on resolving issues between parties from dissimilar legal systems in the academic arena; offering study abroad, externship opportunities, and participation in the school's International Human Rights Clinic; incorporating the perspectives of other academic disciplines in the education of attorneys through an assortment of dual-degree programs; and promoting social change and international awareness through purpose-oriented programs outside of the curriculum such as WCL's Center for Human Rights and Humanitarian Law and Women in International Law program.

George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974).<sup>‡</sup> The article describes the development of clinical education, analyzes the strengths and weaknesses of different clinic models, and concludes with a forecast of the future of clinical education. The drive for some form of clinical education began soon after the Langdellian reform of legal education. The Legal Realist movement in the 1920's and 30's advocated for practical elements in legal education as a method of enhancing theoretical understanding among law school students. That movement was ultimately unsuccessful in establishing clinics as a part of legal education, but it did plant the seeds for future reformers. The post-World War II Neo-Realists again advocated for legal education to better prepare students for practice, but they lacked the insights of the Realists that practice skills could and should supplement theory. The societal concern with poverty in the 1960's coincided with the drive to provide law students with practical experience. "Service model" clinics were based on the need for legal help for the poor. Educating the students was a secondary goal. In these service clinics, students were usually farmed out to agencies that provided legal aid for the poor. Dissatisfaction with this model led to the development of the "law reform" clinics in which students assisted faculty litigators working on major cases in any way the students could. Depending upon the course the litigation takes, the educational experience for the students is limited and sporadic. A third type of clinic discussed is the "participant-observer" model in which students are assigned to various public and private organizations in order to conduct empirical research on the day-to-day functioning of the law. In this type of clinic, while valuable knowledge may be gathered, the student's practical education suffers. A final model of clinics has developed: the "teaching model." The "teaching model" attempts, through close supervision of student handling of selected cases, to "develop models of problem-solving and decision-making in the performance of lawyer tasks." This type of clinic accomplishes the educational and service goals that have driven the establishment of clinical education. The author suggests that while such clinics may not be fully integrated into the law school curriculum, they are a valuable supplement to traditional legal education.

Andrew Halpin, *Law, Theory and Practice: Conflicting Perspectives?*, 7 INT'L J. LEGAL PROF. 205 (2000). This essay addresses the nature of practice, the nature of theory, and the relationship between the two. The author first critiques the views espoused by Stanley Fish that theory can more or less be subsumed within an enhanced idea of practice, that theory does not have a role distinct from practice, and that theory does nothing to shape practice. The author argues that there is something distinctive about theory as opposed to practice. The essay extends the criticisms of Fish

into a series of general reflections about the nature of theory and its relation to practice. In particular, the author examines some of the conflicting views that exist concerning the role of theory as between legal theorists and between legal theorists and legal practitioners. The author concludes that theory enables practitioners to confront areas of ignorance but that its value is dependent upon the willingness to explore the possibility of having a common experience. The essay also is published as Chapter 2 of the author's REASONING WITH LAW (Oxford: Hart Publishing, 2001).

Sandra A. Hansberger, *The Road to Tomorrow*, 57 OR. ST. B. BULL. 9 (1997).\* † In light of the MacCrate Report, the author examines whether the American Bar Association, law schools, or employers are best placed to do anything about the perceived gap between legal education and legal practice. Although the possibility of creating a competency exam for bar passage is briefly discussed, the majority of the short article is spent describing how clinical legal education has been pivotal in educating better practitioners. Included in this discussion are considerations about the different types of clinics and some of the benefits and concerns that surround each. The author concludes that the variety of clinical experiences offer promise, but also questions whether this promise will come to fruition without the implementation of a more practice-oriented bar exam.

JEFFREY H. HARTJE & MARK E. WILSON, *The Lawyer-Client Relationship*, in LAWYER'S WORK: COUNSELING, PROBLEM-SOLVING, ADVOCACY AND CONDUCT OF LITIGATION, 19-42 (1984). A chapter from a larger didactic work on law practice, this straightforward discussion of approaches to client interviewing and counseling offers a general overview aimed at a student audience. The authors describe the importance of lawyer-client rapport and collaboration in choosing a resolution to a client's legal problem. Among factors that contribute to meaningful lawyer-client relationships, the authors list non-intimidating interview settings, icebreakers, and non-directive, open-ended questions. The authors identify two forces that hinder the transfer of information at counseling sessions: lawyers' inability to hear, listen, and understand client stories; and lawyers' tendency to control the direction of the communication. To combat these, the authors prescribe a combination of "passive and active listening" through which lawyers can allow clients to tell their own story and can also participate in the discussion without interfering. Finally, the authors offer a set of suggested general interviewing steps, while acknowledging that the process cannot be reduced to a checklist that applies in every situation.

Steven Hartwell, *Classes and Collections: How Clinicians Feel Differently*, 9 CLIN. L. REV. 463 (2002).\* † Academic teaching typically organizes legal material into a type of category called a *class*. In contrast, clinical teaching tends to organize the same material into a different kind of category called a *collection*. The *classes* of academic teaching are based on criteria that call for the students' cognitive analysis through *thinking*. The *collections* of clinical teaching are based on relationships that call for the students' affective assessment through *feeling*. Academics teach *classes* through reasoned argument while clinicians teach *collections* through narratives. Traditionally, thinking and reasoned analysis, characteristic of academic teaching, have been associated with the masculine while feelings and a narrative approach, characteristic of clinical teaching, have been identified with the feminine. This article concludes that academic *classes* and clinical *collections* are not in opposition but form a complementary whole.

Steven Hartwell, *Legal Processes and Hierarchical Tangles*, 8 CLIN. L. REV. 315 (2002).\* † Litigation and negotiations are both systems for processing information. As with other informational systems, these two systems consist of a series of stages (or categories) within a hierarchical structure. In litigation, the hierarchy consists of stages such as discovery, evidence, facts, and law of the case. In negotiations, the hierarchy consists of alternating stages of competition and cooperation. At each stage, the higher stage serves as a defining context for the lower stage. Thus, the category (or stage) of facts defines the evidence and the law of the case defines the facts. Each stage alternates sequentially between feedback and calibration. Feedback permits the immediate use of information to self-correct. Evidence is a feedback stage because the attorneys receive immediate corrective information from the judge when offering testimony or exhibits. Calibration describes a change in stages without feedback. The finding of facts by the jury is a calibration stage because the attorneys receive no immediate feedback from the jury to correct errors. Hierarchical systems, such as litigation, may also be recursive. A system is recursive when a higher stage is included within a lower stage. Including a “fact” within the category of “evidence” is recursive. Hierarchical informational systems work most efficiently when the rule of alternating sequential stages and the rule of non-recursive are followed. Mechanical systems, such as computers and steam engines, crash when these rules are not followed. Human systems, such as families, governments and litigation may not crash, but they do suffer from design errors when these rules are not followed. This article explores some of the design errors in litigation. The last part treats negotiations from a system’s perspective. The treatment here differs from litigation because negotiations are not bound by formal rules; however, the treatment provides some provocative insights into such puzzles as the relationship between competition and cooperation.

Steven Hartwell, *Moral Development, Ethical Conduct, and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131 (1990).‡ The article is an introduction of a method of using Kohlberg’s theory of moral development in a clinical setting to more effectively teach ethics to law students. “Kohlberg’s theory attempts to explain how individuals develop their capacity to reason about moral problems.” The author describes how he came to use moral theory in the clinic and how he refined that use. Kohlberg’s theory has five stages: Stage 1 is egocentric and moral reasoning is confined to respect for power; Stage 2 is still egocentric but able to recognize needs and interests of others; Stage 3 morality is defined by socially acceptable behavior and maintenance of loyal, trusting relationships; Stage 4 morality “is characterized by reference to the impartial rules of a social system”; “Stage 5 moral individuals have a perspective as rational moral agents aware of universal values and rights.” The article discusses experiments and results in integrating Kohlberg’s theory with Condlin’s “learning mode” teaching communication, and concludes that it is possible to teach ethics more effectively.

Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLIN. L. REV. 505 (1995).\* † Using scales based on the moral reasoning theory developed by Kohlberg, the author measured statistically-significant positive change in the moral reasoning of law students who participated in an experientially-taught course in legal ethics. The experiential aspect of the course involved engaging the students in writing rules of legal ethics.

Kenney Hegland, *Condlin's Critique of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1986).‡ The article is written in response to Robert Condlin's "Tastes Great, Less Filling" article, which criticized in-house clinics as unable to perform critique effectively. The author agrees that there are limitations to an in-house clinic's ability to engage in critique, but argues that those limitations are different from those identified by Condlin and not as severe as he contends. Further, the author argues that outside placements are good for certain reasons, but conduciveness to critique is not one of them. The in-house clinic is better suited to critique in part because clinic instructors do not have to depend upon students to bring back experiences and behaviors to critique. The article contends that retrieval is a major problem facing critique when using an outside placement and also questions the wisdom of placing too great an emphasis on critique as a clinic's mission. Overemphasis may not only displace skills training, but also develop into a "ponderous exploration of the 'received wisdom' of other disciplines – sociology, anthropology, and moral and political philosophy." The author sums up his version of critique with seven questions that he would ask his students to consider: 1) Do lawyers adequately represent their clients? 2) Who are the most effective lawyers and why? (and what are the answers' implications for our system of justice?) 3) Is too much of society's limited pool of talent devoted to the law? 4) Do lawyers consider themselves hired guns or do they share their client's goals? (too adversarial or likely to succumb to societal pressure?) 5) How important is legal doctrine? Does it control behavior or is it indeterminate? 6) How important, in terms of judicial outcomes, are the social, racial and economic backgrounds of the client? Of the lawyer? 7) Are lawyers content? "As we encourage students to think of thinking for themselves, we must take care not to cow them with citations." For the author, the major limitation on clinics performing critique is that students do not experience the dynamics of a real law office.

Kenney Hegland, *Jim's Modest Proposal*, 38 WM. & MARY L. REV. 125 (1996).\* † This essay responds to Jim Moliterno's proposal for teaching issues of ethics and professional responsibility through simulations rather than through a separate ethics course. While the author praises many aspects of the proposal, notably its collaboration in law teaching and its creativity, he voices disagreement with some of its features. In Part I of the article, the author claims that it is possible to learn practical aspects of lawyering without simulations and asserts that two or three simulations would be effective over the course of legal education. In Part II, the author asserts that the ethics of today's lawyers are "not even that bad," hence diminishing support for a need for more professional responsibility courses. Part III examines legal ethics and distinguishes between "cathedral ethics," which includes topics such as advertising, statements to the media and conflicts, and "trench ethics," which includes such dilemmas as whether to put a perjurer on the stand. Part IV devotes discussion to trench ethics and concludes that there are very rarely "correct" answers to these type of situations, which makes it very difficult to teach to students effectively. The author suggests that students should be taught to examine their own conduct, and to look beyond the goal of winning when attempting to resolve ethical problems that may arise in legal practice. Finally, Part V offers a proposal for a mandatory unit of "other stuff," not limited to ethics or professional responsibility, to be incorporated into law school classes at the professor's discretion. Among other things, this could include fieldwork, field trips, or non-legal reading assignments to provide students with a broader perspective throughout the course of their legal education.

Lawrence K. Hellman, *The Effect of Law Office Work on the Formation of Law Student's Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991). This article discusses research that shows that observations of and advice from other attorneys in a work environment may have more influence than law school on the formulation of attorneys' ethical values and adherence to professional norms. The article argues that continuing efforts to understand the ethical socialization of lawyers should focus on individual's work experiences while in law school and presents data concerning such experiences gathered as part of an experimental course, "Professional Responsibility in the Legal Intern Experience," taught at Oklahoma City University from 1984-1987. The data was compiled from students' journal responses detailing their observations and reactions to the conduct of lawyers they encountered as legal interns at various placements. It is used to draw general conclusions regarding the practice world encountered by the participating students and its influence on their ethical values and adherence to professional norms. The article notes that less than half of the students who reported violations by their supervisors felt able to discuss them with the supervisor. The author concludes that although students' experiences as legal interns were mixed, the high volume of unethical behavior observed and the apparent inadequacy of training and regulation of supervisors shows that students' work experiences can serve to foster feelings of disillusionment with the profession and potentially erode their commitment to ethical practice. The article contains recommendations for optimizing the value-formation process that occurs while students engage in law office work during law school.

*In Memoriam: Stanley S. Herr*, 8 CLIN. L. REV. 287 (2002). This memorial tribute recalls the accomplishments of Professor Stanley S. Herr, a clinical teacher at the University of Maryland School of Law and champion of disability rights for three decades. Professor Herr advanced the cause of disability rights in numerous ways, serving as a Kennedy Public Policy Fellow at the White House from 1993 to 1995 and as President of the American Association on Mental Retardation in 1998-99, litigating several landmark cases, drafting and lobbying major legislation, and publishing numerous articles and books that eloquently set forth a legal framework for disability rights in the United States and abroad. The memorial tribute begins with a speech that Professor Herr presented, shortly before his death, upon receiving the American Bar Association's Paul G. Hearme Disability Rights Award. The tribute continues with essays by Dean Karen H. Rothenberg of the University of Maryland School of Law; Professor Herr's early collaborator and longtime friend, Eleanor "Susie" Nace; his University of Maryland School of Law colleagues and close friends, Douglas L. Colbert and Joan L. O'Sullivan; and former students, Colonel David B. Mitchell and Stephen M. Pincus.

David J. Herring, *Clinical Legal Education: Energy and Transformation*, 31 U. TOL. L. REV. 621 (2000).\* † The author's thesis is that the creation of clinical programs can transform a law school's curriculum and environment in many positive ways. The article argues that creation of clinical programs "unleashes entrepreneurial energy" because of the need for a critical mass of faculty and administrators to join together to design the clinic and secure the necessary resources. A new clinic also will bring new members to the law school community, members who can change the character and dynamics of faculty discussions, leading to the engagement of the entire faculty in important discussions of teaching methods and curricular design. Other benefits include development of a powerful sense of teamwork, including interdisciplinary teamwork and interactions with members

of the community at large. The author uses as an example of positive impacts on the law school the creation of the health law program at the University of Pittsburgh School of Law.

Frances Gall Hill, *Clinical Education and the “Best Interest” Representation of Children in Custody Disputes: Challenges and Opportunities in Lawyering and Pedagogy*, 73 IND. L.J. 605 (1998).\* † Based on the experience of the Child Advocacy Clinic at Indiana University School of Law, Bloomington, this article examines the practical, ethical, and pedagogical aspects of representing children in custody disputes through a “live client” in-house law school clinic. Parts I and II of the article describe the Child Advocacy Clinic at Indiana University and summarize the debate over clinical education, including benefits and potential pitfalls. Part III addresses the current debate over “best interest” versus traditional legal representation of children, exploring the ethical ramifications of the attorney-client and guardian ad litem (GAL) models of representing children. The author extends unequivocal support for the GAL model. Part IV identifies challenges and opportunities for law students in GAL representation.

Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 STAN. L. REV. 1807 (1993).\* † This is a detailed description of the author’s methods and experiences in encouraging awareness of personal identification issues through the Law and Social Change community lawyering curriculum at Stanford Law School. The author offers justifications for specifically addressing issues of class, race, gender, sexual orientation, culture, disability, and age in the context of legal education and relates his own approaches to training students to be conscious and sensitive to diversity in classroom and clinical practice settings. Suggestions for exercises include interactive video simulations, controversial readings and lectures, self-reflective journals, and small group discussions. The author relies on teaching experience and excerpts from student journals and discussions, emphasizing the importance of collaboration, communication, and tactful but critical analysis of personal attitudes.

Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 .‡ This article recommends a three-stage process for structuring a clinical law school course: 1) determine the course objectives; 2) select learning experiences to accomplish these objectives; 3) arrange those experiences to maximize the achievement of the course objectives. Individualized student supervision, the keystone of any clinical course, makes these three steps difficult to accomplish: “Supervision is a dynamic process that defies precise description.” Because various learning experiences are differentially effective in achieving the cognitive aspects of a particular educational objective, a particular learning experience should not be used unless it advances the learning objectives more effectively than other learning experiences. The article examines the relationship between learning objectives and various clinical teaching methods. The teaching methods addressed are role assumption, evaluation, demonstration, expository teaching, and dialectic teaching. Role assumption is best suited for teaching lawyering skills and the realities of legal practice. To be optimally successful, role assumption must be supervised. Evaluation of the student’s role work (that is, the critiquing of the student’s performance) teaches the student to improve performance of the skill being taught and to learn the ability to be self-critiquing. The article identifies four steps of evaluation: observation of the student’s performance, ascertainment

of the student's goals and strategies, evaluation of the performance, and suggestions for improvement on future performances. Demonstration is good for teaching lawyering skills, but not suited to intellectual concepts or cognitive material. Observation of a demonstration also does not help the students to learn how to apply the skill. Demonstration is most effective when students understand the significance of that which is being demonstrated. Expository teaching can take a variety of forms, but its defining characteristic is the teacher's direct conveyance of knowledge to the student. It is best suited for inculcating knowledge and cognitive aspects of lawyering. Expository teaching does not develop the ability to analyze and synthesize knowledge. Expository teaching is most effective if the material is presented in a theoretically organized way. Dialectic teaching – individual discussion between student and teacher – “is effective primarily in developing the higher cognitive functions of comprehension, application, analysis, synthesis, and evaluation.” Clinical teachers are well-placed to use the various teaching methods to their advantage.

Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93 (1994).<sup>†</sup> This article encourages clinicians to produce more scholarship that presents both the theoretical underpinnings and practical application of the fundamental lawyering skills. The article argues that clinical scholarship should be a reflection of clinical education, which the author argues is fundamentally skills training. Part II of the article analyzes the current status of clinical scholarship, which is largely not about lawyering skills. The article suggests that there is so little skills scholarship for a variety of reasons including confusion over what is meant by clinical legal education and over the objectives of clinical legal education; the absence of doctrine or theory concerning many lawyering skills; tenure pressures to produce traditional scholarship; the relative ease of producing traditional doctrinal scholarship; and the prevailing culture in legal academia that works against the creation of scholarship about the teaching of skills. Part III argues that clinical teachers should rediscover their focus on skills. Clinical legal training should be viewed as part of the larger subject of skills training and clinicians should undertake a closer examination of the models being taught. The author argues that clinical scholarship should not only be about lawyering skills, but it also should be practical in its orientation and design. It should help lawyers improve their representation of clients and help law students prepare to practice law. Further, clinical scholarship also should be grounded in experience, rather than deduced from pure theory untested by practice. Finally, clinical scholarship must be accessible to lawyers and law students – written in a way that lawyers and law students can read, understand, and apply. The article ends with an illustration of the type of scholarship the author urges. This part sketches an examination of the skill of case valuation.

Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986). While recognizing the impossibility of constructing a model of clinical supervision that defines every individual's experience, the author identifies three predictable stages of the clinical supervisory relationship. He begins by describing a variety of teaching methods employed by clinicians, including dialectic teaching, didactic teaching, evaluation, and demonstration. He then describes how supervisors alter their emphases on each of these tools as students progress in confidence and ability. The three stages identified by the author are a Beginning Stage, in which students need directive and didactic supervision; a Middle Stage, during which supervisors play the role of co-equal critic and assistant to allow students to take greater responsibility for representation; and

a Final Stage, in which students act primarily independently with supervisor guidance to safeguard against serious errors. The author suggests that clinicians make students aware of the expected progression at the beginning of the term to prepare them to accept increasing responsibility. He also advises clinicians to respond flexibly to individual students who require more or less encouragement to move along the relationship continuum.

Alan D. Hornstein & Jerome E. Deise, *Greater Than the Sum of Its Parts: Integrating Trial Evidence & Advocacy*, 7 CLIN. L. REV. 77 (2000).\* † This article reports on an experimental course that combines the basic Evidence course with a course in Trial Advocacy. In Part I, the authors articulate their reasons for undertaking the experiment. Part II provides an overview of the theory around which they designed the course, their goals, and the limitations of simulated advocacy courses. Part III outlines the design of the course and explains how the authors attempted to integrate theory and practice. Part IV includes the authors' reflections on their experiences teaching the course.

Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 FORDHAM L. REV. 2187 (1999).\* † This article considers whether attorneys in programs that receive restricted funds may comply with the restrictions while ethically practicing law. Part I discusses the restrictions imposed by legal service funders. It details Congress's restrictions on Legal Services Corporation-funded entities, prior LSC restrictions, state government restrictions on state-funded civil legal assistance, and restrictions on certain cases and matters. Part II analyzes the ethical issues relating to four categories of current restrictions: (1) funding restrictions on who may be represented and the cases that may be brought; (2) limitations on the type of services that may be provided to otherwise permissible clients and cases; (3) requirements that attorneys withdraw from cases or matters in which they are already providing representation; and (4) requirements that information protected from disclosure by ethical rules or the attorney-client privilege be released to parties outside the program, including government auditors and monitors. The article also discusses a 1996 opinion of the American Bar Association Committee on Ethics and Professional Responsibility regarding the ethical obligations of lawyers whose employers receive funds from LSC for their existing and future clients, when LSC funding is reduced, and when remaining funding is subject to restrictive conditions. The article concludes that, because future unjustified restrictions may force attorneys into ethical dilemmas that can be resolved only through resignation, current restrictions must be removed and no further restrictions should be imposed.

Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLIN. L. REV. 167 (1995).\* † This article describes the author's experience as a clinic Student. She relates the unhealthy pressure she put on herself before developing a balance between responsibility to clients and attention to personal well-being. Despite the difficulty she had in attaining this balance, she affirms her enthusiasm and high regard for clinical education. She contrasts traditional, competition-oriented Socratic learning with clinical learning to show how clinic affords students opportunities to interact with real clients and develop cooperative, teamwork skills. She goes on to describe how supervision affects students' relationships with clients, partners, tasks, and new professional identities. She uses examples from her own relationship with a clinic supervisor to illustrate different techniques of giving and accepting direction, advice, critique, and evaluation. She

summarizes Peter Toll Hoffman's theory of the stages of supervisory relationships, and applies it to her own experience as a clinic student. Finally, the author assesses the impact of clinic on her perceptions of lawyering, her ability to enjoy legal practice, and her ability to learn from experience, reflection and critique.

Alex J. Hurder, *Negotiating the Lawyer-Client Relationship: A Search for Equality and Collaboration*, 44 Buff. L. Rev. 71 (1996).\* † This article argues that negotiation of the terms of the lawyer-client relationship is an essential function, along with information gathering, informing and advising the client, and rapport building, of legal interviewing and counseling. The article criticizes both the traditional and client-centered approach for assuming that the lawyer and client operate autonomously, with some decisions belonging to the domain of the lawyer and some to the domain of the client. Conversely, an approach favoring equality and collaboration between lawyer and client requires that all decisions about the terms of the relationship be made jointly by the lawyer and client. The article argues that incorporating the Fisher and Ury strategy of principled negotiation into the process of legal interviewing and counseling would enable lawyers and clients to make joint decisions about mutual goals in a way that would preserve and strengthen the relationship. Part III contends that the organization of the legal interviewing and counseling process must take into account the progression of joint decision making from more general threshold issues to the more specialized decisions that must be made in the course of litigation or negotiations. Part IV uses the case of M. Dujon Johnson as related in Clark Cunningham's article, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992) to illustrate how an approach to legal interviewing and counseling that incorporates negotiation of the issues of the lawyer-client relationship would have changed the content and organization of the conferences between Johnson and his lawyers.

Alex J. Hurder, *Nonlawyer Legal Assistance and Access to Justice*, 67 FORDHAM L. REV. 2241 (1999).\* † This article weighs the state's interest in the orderly operation of the legal system against the need for accessibility and concludes that some law-related activities would benefit from nonlawyer participation and do not require proscribing or regulating nonlawyer participation. Part I examines the First and Fourteenth Amendment protection afforded to law-related activities of organizations with primarily political and social goals, and examines Supreme Court cases holding that some state unauthorized practice of law rules violate the First and Fourteenth Amendments. It argues that First and Fourteenth Amendment protections should be afforded organizations with primarily political and social purposes that encourage or assist litigation by providing nonlawyer legal assistance to litigants without lawyers. Part II reviews the governmental interests advanced in support of restrictions on the law-related activities of lawyers and nonlawyers. Part III examines the need of courts to limit the exercise of judicial power to the cases of litigants with standing and the corresponding need for courts to be accessible to individuals with cases of all types. Finally, in Part IV, the author recommends that courts and the bar should undertake an analysis of specific law-related activities to determine whether the regulation or prohibition of non-lawyer participation violates the First and Fourteenth Amendments. It concludes that, by expanding the role of nonlawyers in the legal system, "the realization of the goal of equal access to justice" will be advanced.

Alex J. Hurder, *The Pursuit of Justice: New Directions in Scholarship About the Practice of Law*, 52 J. LEGAL EDUC. 167 (2002).<sup>†</sup> This article analyzes recent clinical scholarship to provide insight into the lawyer's role in building a case. It focuses on the actions and choices made by a lawyer in practice instead of concentrating on identifying and describing the development of lawyering skills. Part I discusses transcending differences between the practitioner and client, which is the first element in building a case. In the absence of a strong attorney-client relationship, it becomes difficult for the lawyer and client to have a shared understanding of the facts of the case, to establish joint goals, and to develop legal strategies to achieve them. Part II deals with the process of framing the story of the case, defined as organizing the facts into a story with legal significance. Part III is devoted to developing how the story of the case is told, the essential task of advocacy. It explores the choices and dilemmas faced by lawyers as they decide how to tell the story of the case. The article concludes by assessing the implications for legal education and the legal profession in light of the widely held belief that legal education must produce students who are better equipped to do the work that awaits them upon entering practice. The author suggests that the evaluation of legal education spurred by the MacCrate Report has yielded a better understanding of the skills that are necessary to the practice of law.

Jonathan M. Hyman, *Slip-Sliding Into Mediation: Can Lawyers Mediate Their Clients' Problems?*, 5 CLIN. L. REV. 47 (1998).<sup>\* †</sup> In this article, the author explores the potential conflict that may arise when a lawyer becomes a mediator for his client. Part I describes why lawyers should not overlook mediation as an avenue to pursue in client representation. Part II explores the kinds of compromises and waivers that are necessary if lawyers are to serve as mediators for their clients. The author claims that lawyering and mediation share very similar obligations of loyalty to clients, neutrality towards client goals, and keeping confidences. In the proper circumstances, and with an appropriate balance of risks and benefits, the author argues, clients do not lose a great deal when their lawyers become their mediators. Finally, in Part III, the author submits that a special limitation should be imposed on lawyers who become mediators for their clients. A lawyer who has previously represented one of the parties in the dispute should be limited to a facilitative, non-evaluative approach to mediation. Ultimately, the author concludes that there are no ethical barriers that would prohibit a lawyer from serving as a mediator for his client, subject to certain limitations.

Jonathan M. Hyman & Lela P. Love, *If Portia Were a Mediator: An Inquiry into Justice in Mediation*, 9 CLIN. L. REV. 157 (2002).<sup>\* †</sup> The practice of mediation is deeply attuned to issues of justice. To one unfamiliar with mediation, it might seem that mediation marks a flight from justice, a move to crude compromise or the abandonment of rights for the sake of making peace or saving time or money. On the contrary, mediation brings to the fore the perennial questions of justice. Unlike a judge, jury, or arbitrator, a mediator does not have the responsibility to determine an appropriate remedy or a just distribution. That is for the parties themselves to do. The mediator must attend to the process, help the parties recognize the legitimacy of different perspectives on justice, and work towards a resolution that comports with the parties' considered views of a fair and acceptable outcome. The dispute between Shylock and Antonio in Shakespeare's *THE MERCHANT OF VENICE* provides a vehicle to compare justice in adjudication with justice in a hypothetical mediation of the same conflict. After exploring justice issues in a work of fiction, the article describes resolutions in four different mediations – a neighborhood dispute over noise, a commercial

dispute over damaged property, an employment discrimination case, and a matter concerning a claim that a town ordinance is unconstitutional – all of which result in outcomes that are in keeping with notions of justice, yet would not have been possible in adjudication. Finally, the importance and relevance of this analysis for law school education is explored. Justice is a central and critical inquiry for any student or practitioner in the legal arena. Service as a mediator, in the context of law school mediation clinics, provides a unique opportunity to reflect on justice issues, unencumbered by the responsibility to advocate for one side.

Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-based Lawyering*, 9 CLIN. L. REV. 195 (2002).\* † An important component of lawyering for social justice is working in communities. In addition to conventional skills, such as legal analysis and litigation, community-based lawyers need skills not taught in the mainstream curriculum. This article describes a counter-pedagogy for teaching students three core skills for community lawyering: how to collaborate with members of the community; how to acknowledge personal identity, race and emotion; and how to take a community perspective on legal problems. The article argues that these skills cannot be taught in isolation, but should be integrated into the teaching itself, including the teaching of substantive areas of the law. For example, students are more likely to learn how to collaborate if the entire clinical course is based on a collaborative approach, rather than having a special class dedicated to “collaboration.” The article includes descriptions of techniques and exercises used at Osgoode Hall Law School in the Intensive Programme on Poverty Law at Parkdale Community Legal Services and in the Intensive Programme in Aboriginal Lands, Resources and Governments.

Michelle S. Jacobs, *Full Legal Representation for the Poor: The Clash Between Lawyer Values and Client Worthiness*, 44 HOW. L.J. 257 (2001).\* † This article argues that in order for lawyers to begin providing first-class service to indigent clients, lawyers must first identify the beliefs and values that prevent them from seeing the indigent as worthy of full representation. The article first explores the literature on poverty and moral worthiness in which one prevalent theme is the belief that poor people are not morally worthy. In the next part of the article, the author examines social science research on values that defines values and details how values can affect behavior. The third part of the article describes the reactions of some of the author’s clinical students to a classroom exercise in which they were asked to describe the representation they would provide to hypothetical clients and describes the author’s initial attempts to experiment with the collection of statistical data to study (1) whether law students engage in value ranking and (2) whether a correlation could be shown between value rankings and a student’s perception of zealous representation of the poor. The final two sections of the article describe how the link between students’ values and broader societal beliefs affect the practices of the bar and the proposition that the legal community will continue to see the poor as unworthy of full legal representation until society can envision the poor as part of the larger moral community.

Michelle S. Jacobs, *Legal Professionalism: Do Ethical Rules Require Zealous Representation for Poor People?*, 8 ST. THOMAS L. REV. 97 (1995).\* † After observing clinic students struggle over the years with the question of just how much service they should provide to their indigent clients, the author concludes that the students do not truly understand the concept of zealous representation. The author notes that the Model Code of Professional Responsibility does not define zealousness and

does not provide a standard by which zealous representation may be measured. The author then looks to the notion of professionalism to provide guidance to the lawyer representing indigents with respect to the appropriate standard of service. The author discusses several definitions of professionalism, finding that defining professionalism “is just as difficult” as defining zealous advocacy. The author suggests that lawyers may establish a higher expectation of the quality of legal services to indigent clients by considering the definition of professionalism offered by Professor Jack Sammons: professionalism is “a way for people to participate in a meaningful fashion in the resolution of their social disputes or in prevention of social disputes or both.” The author asserts that in adopting this as a standard for zealous representation the lawyer undertakes the obligation to participate with the client in a holistic rendering of services, that is services needed by the client to participate in a meaningful fashion in the resolution of the dispute, which may include such things as transportation, counseling, or other social services.

Michelle S. Jacobs, *Legitimacy and the Power Game*, 1 CLIN. L. REV. 187 (1994).† The article confronts the belief of many clinical instructors that supervisory relationships should be characterized by cooperative, equal, non-hierarchical organization. The author suggests that clinicians of color may maintain greater control over students and others’ perceptions of their legitimacy within the legal system if some hierarchical structure is encouraged. She identifies the difficulties poverty lawyers of color have in functioning in a system in which they, as well as their clients, are marginalized. In a clinical setting, this is exaggerated by the additional marginalizing influence of the academy. Jacobs shares two illustrating stories from her experiences as a clinician to demonstrate the unique disadvantage of lawyers of color in supervisory roles. In each of the stories, her race affects the way actors in the legal system treat her in the presence of one or more students. She discusses the impact of these encounters on her power relationship with her students and on her students’ perceptions of professionals of color. She argues that students are more likely to feel the significance of such racist incidents when the targeted clinician of color is a powerful figure of authority. She observes that traditional conceptions of power as oppressive and manipulative must be reformed, but points to parental authority as a model of beneficial hierarchical relationships.

Michelle S. Jacobs, *People From the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997).\* † This article explores the traditional relationship between lawyers and clients, and examines the attempts of clinical programs to adopt models of lawyer-client relationship that employ prevailing client-centered models. However, the author argues, these models fail to address, in any significant way, the effects of race, class, and gender on the interaction between lawyer and client. The author explores ways in which race-neutral training of interviewing and counseling skills may actually lead to continued marginalization of clients of color. Part I examines the racially-neutral client-centered counseling models to highlight the difficulties the models engender by failing to incorporate the concept of race. Part II looks at the work of a fellow clinician and ethnographer by revisiting his case analysis to point out the ways in which a race-neutral application of client-centered counseling worked to the disadvantage of a black client. Part III explores the empirical data gathered by social scientists operating in a counseling capacity, which demonstrate that race plays a significant role in counselor-client interaction. The data reveal that race and behavior of the counselor can have an equally serious impact on relationship

as can the race and behavior of the client. Part IV identifies areas of counselor behavior that are amenable to remedial measures. Finally, Part V suggests combining client-centered counseling skills with a module the author calls Cross-Cultural Lawyer and Student Self Awareness Training to “enable us to take advantage of interdisciplinary work to broaden our ability to teach effective interviewing and counseling skills.”

Eric S. Janus, *Clinics and “Contextual Integration”*: *Helping Law Students Put the Pieces Back Together Again*, 16 WM. MITCHELL L. REV. 463 (1990). This discussion of the lawyer education curriculum at William Mitchell College of Law emphasizes the importance of integrating theory, practical skills, and professional values in legal education. It tracks the school’s educational goals from the time it was founded to the present, noting the shift from its former practical tradition towards broad theory-oriented teaching. The author argues for integration of the two perspectives through a carefully designed clinical program which emphasizes not only the instrumental relationships among different lawyering skills but also contextual integration of lawyering skills and doctrine into the real world circumstances of actual cases and clients. Through a series of reflective questions, the author illustrates the kind of critical examination of clinical experience and lawyering this approach requires. He offers two models for implementing a contextually integrated clinic. Through the direct method, clinicians select the images of lawyering that students observe, ensuring that the images are prescriptive and critical of the profession and aiming to teach students good lawyering by example. This method is achieved by means of in-house representation in which students are supervised closely by attorneys who are also scholars. Through the indirect method, educators do not control the images of lawyering to which students are exposed, but teach students to view lawyering critically and prescriptively as a subject of study. This method is exemplified by an externship program with a classroom component taught by an educator who does not supervise the students’ legal work. The author briefly discusses the pros and cons of each approach, concluding that students benefit from a varied curriculum that embraces both techniques.

Peter Jaszi, Ann Shalleck, Marlana Valdez & Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403 (1999).\* † This article analyzes the historical development of a supervised externship program at American University, Washington College of Law. The authors trace the origins of their own pedagogical goals and program design to the history and culture of their institution. The article describes the externship program, emphasizing the externship seminars, taught for full credit by a broad cross-section of permanent, full-time faculty, as the centerpiece of the program. The authors analyze how the pedagogical theory of the externship program differs from, yet overlaps with and complements, the theory of the in-house clinical program. Part I of the article outlines the institutional history that led to the development of the externship pedagogy. Part II offers a description of the program’s organization. In Part III, the authors present some of their thoughts on the directions for future development. Finally, the authors conclude with some reflections on their experience.

Grady Jessup, *Symbiotic Relations: Clinical Methodology – Fostering New Paradigms in African Legal Education*, 8 CLIN. L. REV. 377 (2002).\* † The purpose of this article is to explore an approach to Clinical Legal Education in the African context that is designed to preserve the general

benefits that Clinical Legal Education provides for students and clients, whether American or African, and also responds to the unique needs found by law students and lawyers in the African setting. It provides a historical perspective of African Legal Systems, discussing the Customary Law legal systems governing African nations before colonization and developmental dynamics in Africa. The focus shifts to fostering new paradigms in Clinical Legal Education in Africa by exploring evidence of the contemporary interests African legal educators and lawyers have in Clinical Legal Education and discussing parallels between the early Clinical Legal Education movement in America and these contemporary African legal visionaries given the unique history of law and legal education in African history. The lessons that can be drawn from this juxtaposition of these different legal historical moments suggest a dual approach to the clinic model for African law schools. For Clinical Legal Education to adapt itself to the general range of circumstances that present themselves in the contemporary African context, the article suggest that the law school clinic in Africa needs both a general clinic and a Development Law Clinic, which is animated by the Sankofa Principle – learning from, or looking to, the past to build for the future.

Kevin R. Johnson & Amagda Perez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423 (1998).<sup>\*</sup> † This article “examines clinical legal education and its implications for subordinated communities.” The authors use the U.C. Davis Immigration Law Clinic as a lens for considering the usefulness and effect of law school clinic programs. To evaluate the success of the U.C. Davis program and others like it, the authors first provide background into the program’s foundation, goals, and general working apparatus. Included in this background is a description of the work that is expected from students who work at the clinic. From this background, the authors then examine the variety of services that are offered to members of the surrounding community. The impact of the program is judged from the perspective of both client and student. By looking at the impact of the program, the authors make several assessments of what can be done to improve the effectiveness of the clinic offerings. While noting that the program is “limited by the conservative forces in the law,” the authors assert that “long range social change goals can be promoted, if not accomplished, by clinical legal education.” A prevalent consideration throughout the article is the relationship between the observations of the critical legal studies movement and the clinical experience described by the authors. The authors are sympathetic to members of critical legal studies who are frustrated by what they see as constraints upon the ability of clinics to produce change. Nonetheless, the authors conclude, the realization of these constraints should not blind us to the promise offered by the clinical legal education.

Philip Jones, *Theory and Practice in Professional Legal Education*, 7 INT’L J. LEGAL PROF. 239 (2000). This essay argues that professional legal education in the United Kingdom is dominated by the practical considerations of professional bodies, by the *ad hoc* theorizing of practitioners and ex-practitioners, and by practical considerations of costs, structures, institutions, and interests. The author sets out two competing sets of theoretical underpinnings for professional legal education: theories of competence and theories of reflective practice. The author argues that while competence-based approaches have found their way into the core of legal education, the reflective practitioner approach is mentioned everywhere but rarely put into practice.

Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLIN. L. REV. 195 (1997).\* † This article examines the currently developing relationship between small business and community economic development and clinical legal education. It analyzes the benefits to clinical legal education of transactional clinics as distinct from more traditional clinics, by exploring the former's contribution to the development of the skills and values sought to be taught through clinical legal education. Part I explains the importance of microbusinesses to community economic development. It also describes the evolution of the inclusion of small business and CED clinics in clinical legal education. Part II uses the George Washington University Small Business Clinic to analyze the unique benefits of transactional clinics in contrast to more traditional clinics to explore the impact of small business clinics in developing skills such as interviewing and counseling. It also analyzes small business clinics' impact in teaching students values related to lawyers' professional roles, most importantly, lawyering for social change. The article concludes that small business and CED clinics provide much-needed legal representation to low-income and under-represented communities, as well as valuable experiential learning opportunities and practical doctrinal knowledge to law students.

Michael Jordan, *Law Teachers and the Educational Continuum*, 5 S. CAL. INTERDISC. L.J. 41 (1996).\* † This article explores the challenges to legal education posed by the law school environment. It argues that students have confused the notion of "thinking like a lawyer" with determining the right answer with as little effort as possible, thereby placing the student in a passive role. In Part II, the article discusses how the mission of law schools – training students to think like lawyers – is a variable concept, and demonstrates that the manner in which a lawyer defines and solves problems may vary over time. Part III examines the effect of educational foundation on students' performances in law school, and argues that law schools must recognize the significant influence of other educational institutions on legal education. Part IV of the article explores the definition of a public profession and how the legal profession will meet the responsibilities imposed by this definition.

Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLIN. L. REV. 385 (1996).\* † This article explores the proposition that clinical scholarship must incorporate both skills and values in order to fulfill its purpose of benefitting clinicians and the legal profession. Part I briefly outlines the changing conceptions of law, legal scholarship, and claims of a dissonance between legal scholarship and the practice of law. It contends that "the debate over clinical scholarship is symptomatic of the debate over legal scholarship generally." Part II then examines the intended effects of the MacCrate Report on legal education and how the MacCrate Report can influence legal scholarship. Part III suggests a framework for evaluating clinical scholarship, broadly defined as focusing on lawyering skills and professional values and designed to improve the ability of lawyers to represent clients and to help law students prepare to represent clients. Part IV uses the evaluation framework to examine some examples of scholarship by clinicians.

Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLIN. L. REV. 401 (1994).† In this article, the author advocates a model of integrating skills and values throughout the law school curriculum by involving the entire faculty. The articles describe a project at Case Western Reserve University School of Law that seeks to integrate lawyering skills and values

into traditional courses. At Case Western, each first-year law professor consciously teaches at least one professional responsibility issue in each course, using the problem method. The problems are developed by professional responsibility teachers in collaboration with faculty teaching the first-year courses. The author describes two of the problems, one a contracts problem that revolves around an offer and acceptance case and raises the issue of the lawyer's proper role in witness preparation. The other problem is a criminal law case that focuses on the ethical responsibilities of defense counsel in representing a client the lawyer believes to be guilty. In the opinion of the author, these and the other first-year professional responsibility problems provide opportunities to discuss professional values throughout the first-year courses. The problems prompt students to raise questions about the appropriate role of lawyers later in the courses.

Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235 (1999).<sup>\* †</sup> This article discusses the Louisiana Supreme Court's amendments to the student practice rule and focuses on their impact on clinical legal education, access to justice, and judicial independence. Part I reviews the underlying controversy between the clients of the Tulane Environmental Law Clinic (TELC) and those opposing the TELC's efforts to provide legal counsel to individuals and community groups otherwise unable to afford access to the courts. Part II examines the rationales announced by the Louisiana Supreme Court in amending the student practice rule. Part III evaluates the practical implications of the amendments to the student practice rule for clinic clients, students, and faculty in Louisiana. Part IV analyzes access to the courts as a "precondition for access to justice and the role of law school clinical programs in helping to make access to justice possible for our society." Part V explores some of the extra-legal strategies employed by politically powerful groups aimed at influencing the Louisiana Supreme Court. Part VI analyzes political influence on the elected judiciary and its conflict with judicial ethics. Part VII concludes with a call for the legal profession to institute reforms "to inhibit future intrusions on student practice rules and clinical legal education in other states."

Peter A. Joy & Robert R. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLIN. L. REV. 493 (2002).<sup>\* †</sup> Although clinical legal education is an established part of American legal education, few commentators have considered how the ethical issues governing lawyers' conflicts of interest and competency apply in the law school clinic context. This article fills that gap by identifying and explaining the ethical obligations law clinic students and supervising clinical faculty encounter in case and client selection due to conflict of interest and competency considerations. It analyzes various conflicts of interest due to prior, current, or future employment of law clinic students and faculty and explores conflicts based on the status of clinical faculty as employees of the law school and university. The article also discusses the components of effective conflict-checking systems and suggests model conflict-checking procedures. Additionally, the article considers the duty of competence owed to law school clinic clients, clinical faculty's ethical duties to clients, and issues of adequate assistance of counsel in criminal cases handled by law school clinic students. The article concludes that in spite of the burdens that greater focus on conflicts of interest and competence issues might impose on law school clinic programs, clinic students, faculty, and clients will benefit from such efforts.

Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom and Political Interference: A Clinical Program Under Siege*, 4 CLIN. L. REV. 531 (1998).<sup>\* †</sup> The article serves as an introduction to published versions of the “Friends of the Court Submissions” filed with the Louisiana Supreme Court, urging the Court not to modify the student practice rule in Louisiana. The authors discuss the problem of ongoing interference by non-academic institutions in the work of law school clinics. They provide a historical perspective on political interference in clinical programs, citing several instances of law school clinics threatened with termination. The authors specifically describe the case of Tulane’s Environmental Law Clinic, which successfully withstood attacks from politicians for providing legal assistance to low-income local residents opposing the construction of a factory plant.

Ann Juergens, *Teach Your Students Well: Valuing Clients in the Law School Clinic*, 2 CORNELL J.L. & PUB. POL’Y 239 (1993).<sup>‡</sup> This article urges clinical teachers to take their clients’ interests and perspectives into account in the teachers’ pedagogy and case handling. After a brief overview of clinical teaching methods, the tension between student education and client service, and the impact of the law school setting on clinic work, the article describes some of the client interests that tend to compete with the interests of the students and the law school. These include the client’s interest in having the fewest number of mistakes made in the course of representation; in a timely resolution of the matter; in continuity of care; in privacy and confidentiality; in being understood; and in participation in their legal matters. The article then outlines concrete suggestions for balancing client and student interests and offers supervisory and institutional practices that can help keep clients’ interests central. For example, the author recommends that supervisors should attend the initial client meeting in order to convey the importance of clients in the meaning of a lawyer’s work.

Ann Juergens, *Using the MacCrate Report to Strengthen Live-Client Clinics*, 1 CLIN. L. REV. 411 (1994).<sup>†</sup> The article argues that clinicians must first develop counter-narratives to fight the prevailing views that clinical programs are prohibitively expensive and insubstantial. The article argues that clinicians need to take the long view and develop multi-year strategies for clinical programs while recognizing that not all goals are likely to be achieved. The article focuses on two areas, curriculum and hiring, where the MacCrate Report may be used strategically to strengthen clinics. The author suggests that clinical faculty initiate discussions with their deans and colleagues about what the MacCrate Report means for the curriculum at their schools. Clinicians also may distinguish the value of live-client clinics from that of simulation courses by pointing out that live-client clinics can integrate a foundation in all of the fundamental lawyering skills, that certain subparts of the ten fundamental lawyering skills are virtually impossible to teach through simulation (e.g., effective client communication or fact investigation that approximates the complexities of those arts in the real world), and that the most important distinction between live-client clinics and simulations lies in the moral depth that real situations present. Clinicians also are urged to build coalitions within the law schools. The article also discusses how clinicians can use the hiring process to strengthen clinics by requiring the law school to assess faculty candidates on more than just their ability to produce doctrinal scholarship and by working with new hires as collaborators. Finally, the article suggests strategies for gaining support for clinics from outside the law school from bar examiners, bar associations, and alumni/ae.

Lois H. Kanter, V. Pualani Enos & Clare Dalton, *Northeastern's Domestic Violence Institute: The Law School Clinic as an Integral Partner in a Coordinated Community Response to Domestic Violence*, 47 LOY. L. REV. 359 (2001).<sup>\*</sup> This article describes the creation, design, and operation of the Domestic Violence Institute (DVI) of Northeastern University School of Law, which provides educational offerings, including first year volunteer activities, upper level clinical and academic courses, and intern and fellowship programs; legal collaborations that link Institute faculty and students to family law and legal services networks in Boston; and three multi-disciplinary collaborations. The article opens with a description of the philosophical, pedagogical, institutional, and community contexts in which the DVI was created and operates. The article then describes the programs and activities of the DVI and concludes with a brief discussion of the challenges faced in realizing the program. The article provides suggestions to others who may wish to replicate some or all of the DVI model.

Nancy Kaser-Boyd & Forrest S. Mosten, *The Violent Family: Psychological Dynamics and Their Effect on the Lawyer-Client Relationship*, 31 FAM. & CONCILIATION CTS. REV. 425 (1993). This discussion of lawyer-client relationships in domestic violence actions was jointly written by a forensic psychologist and family law specialist. It presents predictable characteristics of victims and perpetrators of spouse abuse and explores how these characteristics affect lawyers in their interactions with both. Specifically, the authors identify low self-esteem, indecisiveness, and passivity as typical attributes of spouse abuse victims and describe how these qualities are manifested in specific passive-aggressive, disinterested, or uncooperative behaviors toward counsel. The authors identify batterers as aggressive, controlling, and egocentric, and assert that clients with these qualities are often as demanding, critical, and confrontational in relationships with attorneys as they are in relationships with victims.

Constantine N. Katsoris, *Securities Arbitration: A Clinical Experiment*, 25 FORDHAM URB. L.J. 193 (1998).<sup>\* †</sup> The author describes how the rise of alternative dispute resolution (ADR), the high rate of attorney fees, and changes in the securities industry have combined to result in non-attorney and *pro se* representation of investors with small claims. The author illustrates how this representation has caused a significant disparity favoring those investors who can afford to obtain legal representation. As a result of this disparity, clinical legal education is starting to be used to represent those investors who cannot afford legal services. This article draws attention to many of the considerations that must be taken into account prior to a clinic's opening its doors to securities disputes. The author uses the Fordham Clinic as an example of a program that has ventured into this area of practice. In conclusion, the author recognizes the potential benefits that clinics can offer to investors with small claims, but the author also stresses the need for clinics to carefully plan their involvement with this area of law.

Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 T.M. COOLEY J. PRAC. & CLINICAL L. 7 (1997).<sup>†</sup> This article explores the role of journal writing in promoting focused reflection on a law student's externship experiences. Part II examines the pedagogical basis for a journal assignment in a legal externship program and describes the use of journals in legal externships generally. Part III describes the journal assignment at Rutgers-Camden Law School and the method used to study a sample of journals. Part IV reports on and explores the

results of that study. It focuses on content themes, sources of ideas for journal entries, quality of student journals, and examples of journal writing exhibiting notable characteristics of better and worse student journals. Throughout the article, the characteristics of these journals are compared to the pedagogical goals set out by clinicians for journal assignments. Part V offers conclusions and recommendations drawn from this study. The author attempts to suggest modifications to improve the effectiveness of journals in student learning from fieldwork. Finally, Part VI is a 1997 postscript in which the author reports on the outcome of her recommendations in the journal assignment at Rutgers-Camden.

Harriet N. Katz, *Using Faculty Tutorials to Foster Externship Students' Critical Reflection*, 5 CLIN. L. REV. 437 (1999).\* † Drawing on her experience with the Rutgers-Camden Law School externship program, the author contributes to a discussion of the goals, opportunities, and methods of the role of faculty in externship pedagogy. The author begins by identifying the subjects of critical thinking in which externship students are likely to engage and then considers which of these “may be usefully addressed by faculty tutorial teaching.” After describing principal models of faculty tutorials, the author suggests facilitators and barriers to success. The author provides illustrative examples of faculty discussions with recent students to illustrate these points. In concluding, the author identifies several issues that should be addressed when considering the use of nonclinical faculty to expand teaching resources for externships.

Caroline Kearney, *Pedagogy in a Poor People's Court: The First Year of a Child Support Clinic*, 19 N.M. L. REV. 175 (1989). The author describes her experience in teaching the child support enforcement clinic at Brooklyn Law School. She describes the federal government actions that served as the impetus for the clinic's development, including the implementation of the 1984 Child Support Amendments and the contract between New York's Office of Child Support Enforcement and local law schools to provide clinical representation for non-welfare recipients in pursuit of child support. The author explores the structure and limitations of her clinic as well as the beneficial educational experiences it afforded students. Although the subject matter of the cases was confined to child support and paternity actions, students were exposed to a wide range of professional responsibility, attorney-client relationships, and lawyering issues. They practiced in Family Court, an often unpleasant and disillusioning setting, where they were able to engage in critical analysis of the American legal system. The author encouraged discussion of broad policy concerns and involved her students in law reform activities to ground their individual clinical experiences. She recognizes the potential pitfalls of a clinic that deals with such a narrow range of legal problems for a limited clientele, but concludes her article with a positive description of the skills and ideas her students were able to learn within this clinical framework.

Lynn M. Kelly, *Lawyering for Poor Communities on the Cusp of the Next Century*, 25 FORDHAM URB. L.J. 721 (1998).\* † This essay focuses on what the author believes are three critical objectives for the next generation of poverty lawyers: identifying strategies that work, increasing legal representation for poor communities, and maintaining a vibrant legal community engaged in poverty law. The essay explores these objectives and emphasizes the importance of building coalitions that increase the political clout of low-income clients. The essay concludes that it is important to keep a vibrant community of law students, new attorneys, *pro bono* volunteers, and poverty law experts

engaged in poverty law. Providing poverty lawyers the opportunity to reflect on their work in an annual, week-long session at a local law school would provide renewal and rejuvenation to these lawyers so that they might continue doing good work in the future.

Janeen Kerper, *Creative Problem-Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998).\* † This article begins with a brief history of the “case method” of instruction for law students and then argues that law schools need to rely on other methods of instruction in conjunction with the case method because, “as a methodology, it is antithetical to the effective resolution of most clients’ problems.” The article provides a critique of the case method, contrasting the analytical methods it employs with the techniques of creative problem solving. The article concludes by comparing two models: the “IRAC” model of case analysis described in numerous texts purporting to teach law students how to brief cases and a popular model of problem solving titled by the acronym “SOLVE” and described in *Winnie-the-Pooh on Problem Solving* by Roger and Stephen Allen. The article applies both models to a familiar first-year Torts fact pattern involving the injury of Mrs. Palsgraf at a Long Island Railway station in 1924. The article concludes that the case method should not be abandoned altogether, but explains that it does not prepare law students to think as creative problem solvers but rather like ultimate decision makers. Therefore, “educators must seek to provide contexts in which students can learn fundamental legal concepts, develop intellectual versatility, learn to use the range of their intellectual capacities across the range of lawyering tasks, and develop a critical consciousness about their professional role.”

Neil Kibble, *Reflection and Supervision in Clinical Legal Education: Do Work Placements Have a Role in Clinical Legal Education?*, 5 INT’L J. LEGAL PROF. 83 (1998). This article examines the work placement model of clinical legal education, from historical and functional perspectives. It argues that, despite the preference in both the U.K. and U.S. for in-house legal clinics, work placement programs deserve recognition as potentially rich educational experience and should be utilized in undergraduate legal education in the U.K. The first part presents a brief historical overview of work placement programs in both the U.S. and U.K. so as to provide a context for the article’s subsequent in-depth examination of the model’s educational value. Specifically, the article notes that the focus of work placement programs in both the U.S. and U.K. has shifted away from community service to skills training. The second part of the article evaluates the educational value of work placement programs, focusing on whether such programs facilitate sufficient student reflection and provide adequate supervision, identified by the article as integral parts of the learning cycle.

Minna J. Kotkin, *Creating True Believers: Putting Macro Theory into Practice*, 5 CLIN. L. REV. 95 (1998).\* † The author writes in response to an article by Robert Condlin that faults clinical education for failing to provide a political critique of lawyering. The author agrees with Condlin about the need for such a critical theory, but she asserts that critical theory is in place at most clinical programs. She argues that the question is not whether a clinical program should be premised upon a critical theory, but how to develop “a methodology for systematically articulating and teaching the theory.” The author shows how the development of legal clinics mirrored the development of critical legal studies. After concluding that the two are intertwined, she argues that the theory behind clinics

is obscured in the micro elements of clinics—interviewing, counseling, and other practical skills. While the micro component to clinic education is necessary, she argues that clinics also should teach the macro theory that gave birth to the clinical experience. Recognizing that teachers’ attempts to instill their own value systems in their students is controversial, the author concludes that adding instruction on critical lawyering to clinical teaching ultimately will change “the way law is practiced, and the way the legal system relates to our clients, as well as the way our clients relate to the law.”

Minna J. Kotkin, *My Summer Vacation: Reflections on Becoming a Critical Lawyer and Teacher*, 4 CLIN. L. REV. 235 (1997).\* † The author praises clinical legal education’s capacity for fostering growth for experiential learners but also describes ways in which clinical legal education can resemble a “laboratory-like” practice in which bad habits are formed by teachers and students alike. The author relates that a summer of reflection allowed her the room to examine ways in which her teaching style, methodology, and approach had developed. Through examples and personal history, the author reveals that she now views with guarded skepticism things that she once viewed as advantageous to the learning process. She concludes that the benefits of clinical legal education can be best achieved when students and teachers explore new ways of representing poor clients and advancing their political interests.

Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989). This article attempts to critically examine the proposition that clinical method necessarily requires role assumption by the students. “Current dialogue [relative to law school clinics] covers mostly scope and technique, definition and breadth of educational objectives in clinical programs, relative merits of various clinical formats: (live client, simulation, extern) integration into traditional classroom, pedagogic tools for better supervision of students.” The premise that role assumption is necessary may be “constraining the discussion of significant issues in clinical education.” Also, the article considers the idea that the concept that originally supported role assumption no longer exists. The article describes ways to identify alternatives for those students for whom role assumption “doesn’t work.” The first alternative discussed is for the teacher to act in role at the beginning of the semester with a gradual shift to the student’s taking the role. The second alternative would be that the student and teacher take on co-counsel roles, with each assuming different duties in different cases. Both alternatives would make substantial demands on the time of the instructor. A final method would be to use a complete record of a case the supervisor has handled as a means of exposing students to models of lawyering, skills training, and experiential learning.

Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Education in Lawyering*, 4 CLIN. L. REV. 359 (1998).\* † In this article, the author contends that the fields of law and education overlap, making “educator” an important part of the lawyer’s role. Thus, the author maintains, awareness of the lawyer’s educator role should begin in law school, where law schools should develop and emphasize the skills necessary for students to provide information and education about the law to others. This article explores how teaching and lawyering resemble one another, and specifically examines the role of the lawyer as one of educator. Part II examines in detail the lawyer’s work, concentrating on the abundant opportunities available for the lawyer to educate those around him or her. In this part, the author notes the similarities of the work of lawyers and teachers. Part III reflects upon the education of lawyers, particularly in law school, and the relationship between teaching a

matter and learning it. Part IV provides a description of the various methods by which professors can provide opportunities for law students to gain experience as teachers. Included are accounts of the author's own experiences with class activities, which allow law students to be teachers. In addition, some discussion is devoted to the notion of evaluating the law student as teacher. Finally, the article considers how the concept of lawyer as teacher may continue to evolve, as will the work and the role of lawyers. In conclusion, the author maintains that "opportunities for students to teach others should be included and provided in law schools through classes, clinics, and extracurricular activities."

Kimberlee K. Kovach, *Virtual Reality Testing: The Use of Video for Evaluation in Legal Education*, 46 J. LEGAL EDUC. 233 (1996).<sup>†</sup> This article recognizes the need for new methods of evaluation in legal education and explores the use of videotaping for testing. The author maintains that because teaching emphasizes performance, so should examination and evaluation procedures. Thus, the author argues that the final exam must be as realistic as possible. The author describes two specific ways to use video: first, to develop a more reflective practitioner through self-observation, and second, to provide a more realistic final exam problem. The article describes how the author uses video for student assessment in two distinct ways. First, a video of the student's own performance provides the student with direct feedback and an opportunity for discovery, growth, and improvement. The author argues that this use emphasizes self-evaluation and reflection, complemented by the instructor's assessment. Second, the author uses video to test all students at the end of the semester, using a traditional framework but presenting, on videotape, a more realistic problem. The article also addresses the impediments of video testing and offers some suggestions to overcome them. Recognizing that other methods of examination, more relevant to actual law practice, should supplement, if not replace, the standard exam, the author concludes that video can provide better linkage of exam, classroom, and practice.

John R. Kramer, *By the Time of His Death, Bill Greenhalgh Had Triumphed*, 31 AM. CRIM. L. REV. 1001 (1994).<sup>†</sup> This essay, in memory of Bill Greenhalgh, by a former colleague at Georgetown University Law Center, reflects on Professor Greenhalgh's "single-minded devotion to using the resources of legal education to further the objective" of providing students with the skills necessary to defend the least privileged in American society "against the prosecutorial forces of the federal, state, and local governments." Although his methods frequently were criticized as "old-fashioned" by his colleagues, his pedagogy worked. He "bullied" everyone, "students, colleagues, and friends – into being a lot better than we otherwise would have been."

Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981). Using the learning theories of Argyris and Schön, Kreiling discusses how to teach students to learn from experience. Students begin, with assistance from the supervisor, by articulating a theory of action, called the "espoused theory." That theory is followed by the action itself, which leads to a concrete behavior (cross-examination, interview, etc.). The behavior is observed, recorded and subjected to reflection, which leads to the revelation of the theory in use. The discontinuities between the espoused theory and the theory in use exposes learning dilemmas, which lead to the articulation of a new theory of action, or espoused theory, which can be tested the next time the

action is required. Kreiling traces how to use this multi-part methodology for professional self-education to work with clinical students to plan, execute and reflect upon their case work. He integrates insights from Rogerian psychology, viewing the clinical educator as a “helper” along the road to professional development. He also explores in detail a variety of teaching techniques that make use of the methodology in effective and efficient ways.

Stefan H. Krieger, *A Time to Keep Silent and a Time to Speak: The Functions of Silence in the Lawyering Process*, 80 OR. L. REV. 199 (2001).\* † This article explores the functions and use of silence in fundamental lawyering tasks such as interviewing, counseling, and negotiating. It describes the variety of functions that silence plays in human communication both as a means of structuring communication (pauses and hesitations; intervening silences) and as a means of communication (assent; promotion of reflection and discussion; deep silence; and marking of social distance). The author argues that effective lawyering requires knowledge not only of the grammar of language but also of the rules of silence: “[W]ithout a grasp of the forms and functions of silence, lawyers cannot communicate effectively with their clients, their adversaries, or decision-makers.”

Anthony T. Kronman, *Remarks by Anthony T. Kronman: Funeral Mass for Kathleen Sullivan*, 8 CLIN. L. REV. 3 (2001).† Dean Kronman reflects on the integrity of Professor Sullivan’s professional life and how she lived out her values even at the end of her life.

Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405 (2002).\* † Problem solving is most often taught in the context of representing individual clients in small manageable cases where students retain primary control and develop a sense of ownership of the case. Increasingly, law school clinical programs are involving students in broader projects designed to meet the needs of clients that go unaddressed by the legal system. Student involvement in these projects presents challenges for the traditional model of problem solving taught in individual case representation. This article explores the challenges of translating the problem-solving techniques employed in direct representation of individual clients into the larger context of problem solving for a client community by examining each step of the traditional problem-solving process. It demonstrates how the author has used the strategies of compartmentalization, connection, collaboration, and continuity to help overcome these challenges and explores some of the trade-offs and tensions that are involved in such an effort, using the author’s work with students developing an assisted *pro se* prison service project as an example. The article concludes that the challenges are real, but that the “justice education” that the students experience as a result of involvement in such projects makes it worth the effort.

Robert R. Kuehn, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL’Y 33 (2000).\* † This article analyzes the political attack on Tulane Law School’s environmental law clinic. It chronicles the efforts of a lower-income minority community in Louisiana to obtain free legal assistance from the Tulane Environmental Law Clinic and the backlash that ensued when the clinic’s representation included raising environmental justice claims. It recounts efforts by the governor, business interests, members of the legal profession, and the Louisiana Supreme Court to deny access to legal representation for individuals and community groups raising environmental claims, culminating in the adoption of

restrictions to the Louisiana law student practice rule. The author analyzes and rebuts the justifications given for this denial and for those of similar efforts to interfere with other law school clinics. He identifies and argues for specific measures to curtail such denials of legal assistance.

Robert R. Kuehn, *Shooting the Messenger: The Ethics of Attacks on Environmental Representation*, 26 HARV. ENVTL. L. REV. 417 (2002).\* † This article discusses coercive tactics intended to deny representation to parties involved in environmental litigation or to restrain the ability of lawyers representing such clients from bringing certain claims. Part II identifies some of these tactics and examines the reasons most often cited as justification for their use. The article provides as case studies the experience of an environmental lawyer who was pressured by his firm and one of that firm's clients to withdraw from *pro bono* representation of an environmental group previously approved by the firm and incidents where pressure was brought to bear on law school clinics from university administration and state governments on behalf of commercial interests the clinics opposed in litigation. Part III argues that such attacks may constitute a breach of the attorney's duty not to refuse unpopular or controversial clients or causes, the duty to act independently of third-party interests, an abdication of the legal profession's *pro bono publico* responsibilities, and a breach of the duty not to prejudice the administration of justice. Part IV proposes that explicit rules be adopted to prevent interference with the right of access to representation, including a prohibition against law firms discriminating in the hiring process based on a student's participation in a law clinic. The author concludes that by allowing attacks on environmental representation to persist the legal profession undermines its own commitment to equal access to justice.

Maureen E. Laflin, *Clinical Legal Education Gets High Marks*, ADVOC., Sept. 1997, at 9.† This article examines the plight facing law school clinics in light of recent cuts in federal funding. It uses the clinical program at the University of Idaho College of Law to illustrate the challenges associated with operating clinical programs and to describe how this law school clinic addressed such problems. First, the article provides a description of the components of Idaho's clinical offerings, including the General Civil and Criminal Clinic, the Native American Public Defender Clinic, the Appellate Clinic, and the Idaho Indian Justice Project. Next, the article describes Idaho's survey of clinic alumni to evaluate the clinic's past performance and to determine what future directions need to be taken. The article describes the survey that was mailed out to alumni, and includes some of the conclusions and recommendations that were included in a full report prepared by the University. The article concludes by expressing support for the evaluation process employed by Idaho, and argues that only such a process can enable the Legal Aid Clinic to make the changes necessary to continue offering an educationally sound clinical program to law students.

Maureen E. Laflin, *Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report*, 33 GONZ. L. REV. 1 (1998).\* † In light of the widespread distrust of lawyers and the perception that the legal field has lost its sense of direction, the author argues that implementing the skills and values articulated in the MacCrate Report will help improve the status of legal institutions. The author argues that the development of a clinical appellate program is one way that law schools can satisfy the professional objectives of the MacCrate Report. To illustrate this premise, the author uses the University of Idaho's Appellate program as a model of the ways in which clinical programs can successfully instill important professional

objectives. The author examines the program's case selection, student selection, student training, student responsibilities, faculty supervision, skills taught, and handling of ethical matters. She concludes that programs like the University of Idaho's are effective.

Arthur LaFrance, *Clinical Education: To Turn Ideals into Effective Vision*, 44 S. CAL. L. REV. 624 (1971).‡ This article provides a description of an early externship "farm out" model of clinical legal education at Arizona State University College of Law in the early 1970's. The article details the decisions made with respect to course design, including the decision to operate as an externship program rather than as an in-house program; the role of law school faculty; and the limitations on placements.

Homer C. LaRue, *Developing an Identity of Responsible Lawyering Through Experiential Learning*, 43 HASTINGS L.J. 1147 (1992).\* † The author, a professor at the University of Maryland Law School, argues that the experiential component of that school's Legal Theory and Practice (LTP) program is key to the education of a responsible lawyer. The LTP program is a hybrid of traditional classroom learning and clinical experience, in which students learn substantive law and practical lawyering skills simultaneously. LaRue contends that many students in the program benefit by understanding the day-to-day impact of law and the legal system on people living in poverty. By confronting their preconceptions about poor people and seeing the frustration and obstacles to legal justice on a first-hand basis, students are able to learn about professional values while assuming the role of the lawyer. Students learn to identify with the individual clients and to recognize the shortcomings of the stereotypical dominating lawyer who obscures, rather than translates, client narratives.

Gary S. Laser, *Educating for Professional Competence in The Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243 (1992).\* The article describes and justifies the development of the recently formed dispute resolution program at the Chicago-Kent Law School. The format is detailed in the appendix of the article. It is offered to 30 students each year and affects their entire curriculum. Advanced doctrine and specialty courses are sacrificed for more clinical skills and values training. A large clinical component is based on three tenets: sequence; an environment that more closely approximates a law office; and finally, the use of instructors who are master practitioners and master teachers. One of the driving ideas behind this format is Donald Schön's "art of practice" concept. That is, while skills and values can be taught in a classroom, "the art of practice cannot be taught, but it can be coached." It is necessary for students to confront "the authentic messiness and surprise" of the real world in which lawyers practice in a manner that approximates the way lawyers in practice would confront them, as junior associates or partners. The article explains that the fee generating arrangement at Chicago-Kent Law School Clinic accomplishes three goals: The clinical instructors are able to have higher salaries that are tied to their fee-generation; the cost of running the clinic is reduced; and some of the pressures of working in a fee-driven office are introduced to the students. The overall goal of the new format is to increase competence, professionalism, and instill a sense of the societal obligation of the practicing bar.

Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203 (1943).‡ The article describes the role and method

of a conception of legal education that provides for democratic ideals. The first section of the article describes current problems with the world as a move away from democratic ideals. (The article was written during World War II, and the rise of communism, racism, and despotism are all cited as evidencing the then current trend.) The article goes on to describe the elements of a democratic society. The sharing of power, knowledge and respect within a society are the hallmarks of democracy. The article illustrates variables for measuring a society's degree of adherence to the democratic ideal. These variables include balance of income, continuity, realism (relative to the information available to decision makers), and character – "the degree of integration achieved by individual personalities." The next section describes how these values should be used to restructure the law school's curriculum. The authors acknowledge that their definition of democratic values is subject to differences of opinion, but argue that, "unless some such values are chosen, carefully defined, explicitly made the foci of the law school curriculum, and kept so constantly at the student's focus of attention that he automatically applies them to every conceivable practical and theoretical situation, all talk of integrating law and social science, or of making law a more effective instrument of social control, is mere twaddling futility." The authors describe various principles around which legal education could be organized. Under the influence principle, the organization would be responsive to the needs of influential policymakers. A second organizational principle is the value principle: curricula should be organized in terms of specified social values. The third principle for organization is the skill principle and the authors argue for expanding the skills that law schools teach. Students should be taught that there are various ways of getting what they want without taking their disputes to court and even without defining their problems as disputes. The categories of organizational principles are not mutually exclusive and curricula may be organized using more than one of them. A more detailed description is provided for organization according to values. The article concludes with a note about legal education beyond the classroom. While no specific program is endorsed, the article is presented as a means of opening discussion for the reform of legal education.

Sam A. LeBlanc, III., *Debate over the Law Clinic Practice Rule: Redux*, 74 TUL. L. REV. 219 (1999).<sup>\* †</sup> This essay retrospectively examines the debate surrounding the recent amendments to Louisiana Supreme Court Rule XX, the student practice rule. The author describes the history and text of the rule, including its initial promulgation by the Louisiana Supreme Court, its implementation by various in-state law clinics, and several amendments subsequently adopted by the court. The author concludes that these amendments conform to the original intent of the Louisiana Supreme Court when it adopted the rule, as well as the original justification for the rule as articulated by the deans of the law schools in Louisiana.

Steven H. Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. LEGAL EDUC. 149 (1979).<sup>‡</sup> The article discusses the potential of clinical education to contribute to legal scholarship and to become an integral part of the process of legal scholarship. Traditional legal scholarship's restricted focus can benefit from clinical education's experience, empirical data, and use of information from other intellectual disciplines. Clinical education recognizes the role of other disciplines and the relationship between legal and other professions. Clinical education provides an empirical base of understanding legal principles as well as the opportunity to conduct empirical research on law in action. The article surveys several clinical programs at New York University School of Law and discusses how these programs are contributing to legal scholarship and the

benefits of interdisciplinary understanding and cooperation. The current status of clinical education is described as maturing. The conclusion of the article discusses how clinics are integral to legal education's successfully dealing with the challenges facing it.

Steven H. Leleiko, *Love, Professional Responsibility, the Rule of Law, and Clinical Legal Education*, 29 CLEV. ST. L. REV. 641 (1980). The author describes the struggle of law students who choose to pursue legal careers under the impression that law is a caring, humanistic profession but discover that law school cultivates cool, rational, analytical thinkers. He argues that professional responsibility requires a balancing of objective and affective values both in legal education and in all areas of practice. Leleiko characterizes law school as designed to imbue students with respect for rigid, ordered logic at the expense of their pre-law school, integrated values. This process robs people-oriented students of job satisfaction and personal fulfillment. He describes how the study of professional responsibility echoes this pattern by removing ethical dilemmas from real-world context and focusing on the rule of law. He offers clinical education as a more realistic means of teaching students to integrate personal ethics and professional conduct. He argues that clinicians should make professional responsibility education a conscious goal of the experience by encouraging students to examine their affective reactions to clients' situations and goals. According to Leleiko, this process should continue throughout lawyers' careers so that the lawyering ideal can adapt to reflect lawyers' and clients' personal needs as well as their professional objectives.

Andrew L. S. Leong, *A Practical Guide to Establishing an Asian Law Clinic: Reflections on The Chinatown Clinical Program at Boston College Law School*, 2 ASIAN PAC. AM. L.J. 83 (1994).† This article describes the creation, development, and demise of the Chinatown Clinical Program at Boston College Law School from 1982 to 1993. Throughout its existence, the clinic was operated through a cooperative agreement between Boston College Law School and Greater Boston Legal Services. Students were supervised by staff of GBLS. The final part of the article describes the elements that caused the clinic to cease existence, including financial constraints and changing student interests. The article concludes with several recommendations for others considering the introduction to their curriculum of a clinical experience to serve Asian Americans.

Lisa G. Lerman, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 FORDHAM L. REV. 2295 (1999).\* † This article was prepared for a conference sponsored by the Stein Institute on Ethics at Fordham Law School on "Improving Delivery of Legal Services to Low-Income Persons: Professional and Ethical Issues." The article explores whether and how law school clinical and externship programs contribute to the delivery of legal services to low-income persons, either directly by engaging students in providing services to indigents, or indirectly by fostering the professional growth of law students in a manner that encourages and supports their interest in pursuing careers in public service work. The article then explores a series of ethical dilemmas that arise in the context of fieldwork by law students at organizations external to the law school and illustrates how fieldwork can be used to teach ethics and professionalism.

Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals*, 39 WM. & MARY L. REV. 457 (1998).\* † This article grew out of a panel discussion at the 1997 W.M. Keck Foundation Forum on the Teaching of Legal Ethics. The article reviews recent literature describing innovations and experiments in the teaching of Professional

Responsibility and reports the views of the panelists. The author explores some of the many problems that arise in the teaching of this course and recommends that the integration of the course with clinical experiences and the offering of the course in seminar format greatly increases the engagement of students and deepens their understanding of ethical dilemmas and the guidance provided by the law. The author points out, however, that the recommended changes in the structure of the course require an investment of additional resources by the law school. Finally, she discusses methods of implementing change in a context of limited resources.

Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107 (1999).\*

† The author explores the possibility that teaching law students almost exclusively through the analysis of court opinions and the honing of “analytical skills, toughness, quickness and the like” interferes with the exercise of critical judgment and problem-solving skills. The author first establishes that critical judgment and problem solving are crucial components of competent lawyering. The author next shows how these skills are overshadowed by teaching methods that develop different skills. The author details his development of a course “whose goals and methodology would support students learning to think of their role as lawyers in terms broad enough to encompass not only the vigorous, tough-minded, persistent litigator/negotiator, but also the creative solver of complex problems.” The author describes how a variety of hypothetical models were used in his class to illustrate to students that a “gladiator” mentality is not always appropriate to the resolution of conflicts. As students struggled with these models, they learned that competent lawyering requires an array of non-adversarial skills.

Howard Lesnick, *Being a Teacher of Lawyers: Discerning the Theory of My Practice*, 43 HASTINGS L.J. 1095 (1992).\*

† The article articulates a theory of teaching practitioners in which teachers put “more of themselves into their engagement with the subject matter of their teaching.” This would draw out the latent talent and knowledge of lawyers, creating opportunities for self-transformation rather than filling them up with received knowledge. The goal is to “invite students to ask themselves what being a lawyer means, or can come to mean to them.” The author’s teaching method is to “share some of the aspirations for the teacher-student and attorney-client relations that have made them (at times) seem a fit context in which to live my life.” To apply the theory to the teaching of practicing lawyers rather than law students, some differing styles of delivery, engagement and thinking about teaching are required. The ideas are described as an invitation to explore how legal academics and the practicing bar can aid each other in their respective roles.

Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990).\*

† The author begins with the assertion that all legal education is clinical in that students extract implicit professional messages from every lecture, assignment, or exercise. To illustrate this phenomenon, he analyzes a published case note, a scholar’s address to a professional responsibility forum, and a homework exercise from a course in administrative law, all of which perpetuate the image of lawyers as detached, analytic, authoritative, and without morally or socially conscientious contexts. Among other culpable aspects of legal education, he criticizes the law school curriculum for compartmentalizing substantive areas of the law as if they are discrete, unrelated subjects, and for cultivating analytic reasoning as the core skill of lawyering. In addition, he identifies the misguided

tendency of law teachers to characterize litigation as the most significant means of dispute resolution, and to discourage students from viewing the law in the context of their prior experiences. Lesnick goes on to describe an experimental alternative legal education program implemented at CUNY Law School that sought to train lawyers to be holistic, reflective thinkers. The program eliminated traditional distinctions between substantive legal studies and centered learning around simulated lawyering exercises. As much emphasis was placed on planning and reflection as on the actual execution of the simulations, and evaluations were based on quality of simulation performance rather than final examinations. Although he admits that the program failed in execution, the author recommends the holistic approach it sought to integrate into the training of lawyers and encourages other teachers to incorporate its goals into their approaches to legal education.

Samuel J. Levine, *Legal Services Lawyers and the Influence of Third Parties on the Lawyer-Client Relationship: Some Thoughts from Scholars, Practitioners, and Courts*, 67 *FORDHAM L. REV.* 2319 (1999).\* † This article examines the ethical and professional issues relating to the influence of third parties on the lawyer-client relationship, specifically in the context of legal services for the poor. The article examines a number of areas in which bar association committees, scholars, and courts have addressed the issue of third-party influence on legal services lawyers. Part I discusses the challenges to the fundamental value of attorney-client confidentiality that may arise as a result of the influence of third parties on legal services lawyers. Part II describes the more direct influence of third parties on legal services lawyers, addressing problems relating to the Model Rules of Professional Conduct. Finally, Part III briefly discusses some of the broader issues of third party influence on resource allocation in legal services lawyering.

Lance Liebman, *Comment on Moliterno, Legal Education, Experiential Education, and Professional Responsibility*, 38 *WM. & MARY L. REV.* 137 (1996).\* † This essay provides a brief criticism of James Moliterno's vision of recent history of legal education and the future of legal education. The author believes that he has seen more change and more improvement in legal education than Moliterno observes. The author explores three directions in which he asserts that reform of legal education should and can progress. First, the author identifies the impact of technology on the process of teaching lawyering. Second, the author argues that the wall separating law schools from the profession must be removed; this is attainable if the profession and law faculties coordinate their mutual role of training new generations of lawyers. Third, the author maintains that more must be done to integrate the new higher learning about law into the law school curriculum. Next, the author argues that Moliterno's efforts to declare professional responsibility a better candidate for innovative educational methods than traditional law school courses are unpersuasive and that such methods should not be limited to professional responsibility. If such methods are done properly, the author argues, they may prove more that such methods, done properly, may be more expensive than predicted and may create tension over limited resources.

Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 *VA. L. REV.* 1421 (1995).\* † The author identifies a gap between current trends in legal education and the practical demands of the profession. He characterizes law schools as increasingly concerned with theoretical, conceptual, and interdisciplinary aspects of legal studies, while law firms continue to value analytical rigor and doctrinal examination of legal materials. Although the author claims to resist overgeneralizing and mischaracterizing American law schools, he asserts that modern law

faculties are biased toward theoretical scholarship and university-oriented, social science-related studies, and emphasize research and writing over traditional teaching methods. He argues that these educational ideals are in direct conflict with current demands of private law practice, generating lawyers who are ill-prepared for the legal marketplace. He predicts increased animosity between academics and practitioners as law schools shed responsibility for acculturating new lawyers in the ethics, history, and traditions of the profession. To reverse this trend, he suggests that law schools work towards maintenance of balance among clinicians, doctrinalists, and theoreticians to resist the subordination of any element of legal education. He also encourages closer cooperation between educators and practitioners so that development of professional and educational goals will coincide in the future.

Graham C. Lilly, *Skills, Values, and Education: The MacCrate Report Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753 (1997).\* † The article examines the changes in the legal profession over the last thirty-five years and their effects on the training and practice of lawyers. The article discusses the MacCrate Report and its effort to redefine legal education and restore professionalism to the practicing bar. The article focuses on the Wisconsin law schools' implementation of the recommendations of the Commission on Legal Education, which were based on the tenets of the MacCrate Report, and argues that there is little guidance provided to schools regarding implementation of the recommendations. The article argues that the transition to teaching skills in law school is difficult and problematic and criticizes the Commission for its failure to address the economic burden placed on law schools. The article concludes by expressing skepticism about the implementation of the MacCrate Report and suggests that imposition of skills-and-values instruction may diminish support of academic teaching and research, ultimately diluting the overall educational experience that produces superior lawyers.

Stephen Loffredo, *Poverty Law and Community Activism: Notes from a Law School Clinic*, 150 U. PA. L. REV. 173 (2001).\* † This article examines a collaboration between a grassroots welfare rights organization in New York City, the Welfare Rights Initiative (WRI), and a law school clinic at the City University of New York School of Law (CUNY). Parts I and II of the article provide the context for the collaboration by describing the efforts, generally, of poverty lawyers to devise new forms of poverty law practice and the specific context of the imposition of welfare reform rules that forced thousands of public assistance recipients in New York out of college and into workfare positions. Part III describes the collaboration between WRI and the clinic as a case study. The clinic serves as counsel to WRI and as its legal arm, providing legal training and support for WRI's lay advocates, staff, and counselors to facilitate the organization's outreach and advocacy efforts. The clinic placed its entire case-handling capacity at WRI's disposal and committee to represent any student referred by WRI. The primary goal of this arrangement is to enhance WRI's organizing efforts by giving it the ability to offer legal representation to the students it seeks to mobilize. As a result the clinic provides a high volume of targeted representation to individual students at administrative hearings challenging proposed workfare sanctions. Clinic students and faculty conduct joint community education and training sessions with WRI staff, lend technical and drafting skills to assist in the production of public education materials and position papers, and pursue a direct and explicit law reform strategy with WRI. The final section of the article seeks to situate the collaboration within each of three social movement theories: resource mobilization, new social movements, and cognitive praxis.

Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLIN. L. REV. (2001).\* † Arguing against the trend toward specialization in clinical legal education, this essay addresses potential limitations of specialized legal clinics in furthering the dual mission of clinical legal education: social justice and skills training. It points out that specialized clinics limit access to justice by leaving the myriad needs of clients partially unmet. They limit students' learning about the complex needs of clients and students' ability to discover broad inequities in the legal system. Specialization makes it more difficult to train students to be creative problem solvers, and affects their professional socialization. The essay concludes that the dual aspects of the clinical mission – social justice and skills training – are best served by a clinical experience designed to serve the needs of a community or specific client base. It describes the University of New Mexico Law School clinics and argues that clinics should discover the needs of the clients, then strive to serve those needs, using community education and other non-traditional ways of problem solving and serving the community, if appropriate. A clinic should not limit the subject matter of representation without considering the impact of that decision on a clinic's mission.

Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL PROF. 149 (2001/2002).\* † This article discusses how the author's clinical experiences have influenced her educational objectives in teaching a classroom course on professional responsibility. The course objectives include a focus on exploring professionalism issues, such as professional norms and attorney-client boundaries, and critically examining the profession, including issues such as attorney burnout and diversity, in addition to the traditional objective of teaching the law of lawyers. The article presents a series of specific encounters with students to illustrate how clinical experience led to the expanding of the professional responsibility course's objectives to assist students in embarking on a life-long path of reflecting on the rules and viewing themselves as professionals with the power to change the profession.

GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992). This book presents a study of progressive law practice. Based on his own experience with public interest law, the author offers a vivid portrayal of progressive law practice in which community, clients and lawyers work together to achieve social change. The initial chapter discusses the problem of "regnant lawyers" – activist lawyers who, being unable to abandon traditional legal and popular cultures, ultimately end up reinforcing the system rather than changing it. The author compares "regnant lawyers" with "rebellious lawyers" – activist lawyers who work in a cooperative partnership with the communities of their clients. Allowing direct participation of the community in problem solving, "rebellious lawyers" are found to be the most desirable for the progressive law practice setting. The remaining chapters present stories of fictional public interest lawyers. Each chapter illuminates the distinction between a rebellious and regnant lawyer, showing how rebellious lawyering is more suitable for progressive law practice. Rebellious lawyering that is predominantly concerned with the client and with community needs is shown to be the most effective mode for empowering the community.

Gerald P. López, *A Declaration of War by Other Means*, 98 HARV. L. REV. 1667 (1985).\* † In this review of Richard E. Morgan's book, *Disabling America: The "Rights Industry" in Our Time*, the author addresses the politically conservative, elitist opposition to rights activism in the United States.

According to the author, Morgan invokes the mantle of the “voice of the people,” but only speaks for a political faction which is primarily privileged, white, Christian, and male. Morgan describes how rights litigation has rendered many “American” institutions, such as law enforcement, public education, and organized religion, incapable of performing their primary functions. He complains that this “disabling” is due to rights activists’ failure to consider the social costs of securing civil liberties. López attacks this argument by pointing out the uncertainty of the proposition that rights litigation has the power to effect social change at all. He identifies two other groups who are skeptical about rights litigation in different ways: the elite academic left and streetwise Americans. It is the cautiously practical perspective of the streetwise group that López finds conspicuously absent from Morgan’s “voice of the people” analysis. From this angle, López illuminates Morgan’s unrealistic, homogenous vision of America and reflects despairingly on the ongoing political battle among genders, races, cultures, classes, and regions.

Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989).<sup>\* †</sup> The article attempts to show how current visions of lawyering constrain section 1983 civil rights litigation and how expanded views of lawyering can inform more comprehensive use of section 1983 litigation. The author makes this point by using a hypothetical case that deals with a young lawyer, a chicano restaurateur, and racial discrimination in a small town. The article includes transcripts of meetings between the attorney and client, inter-office memos between the attorney and other members of her firm, and memos and transcripts of meetings with an investigator. The attorney, although enlightened, falls easily into the “regnant model of lawyering,” exhibiting habits of autocracy and paternalism, and failing to recognize the new opportunities of lawyering available to civil rights litigators. “[The] account aims to evoke extended and close observation of progressive and radical practices, not just the practice of professional lawyers but the related practices of all those allied (or who should be allied) in the fight for fundamental social change.” The article demonstrates how traditional views of lawyering constrain collaboration between civil rights litigators, their clients and allies, and shows that collaboration would result in more effective civil rights advocacy.

Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989).<sup>‡</sup> The author presents the view that law schools generally teach their students to treat their clients as homogeneous, failing to take into account their lives, experiences, and culture. This “generic” legal education damages the politically subordinated clients more than it does business clients, because firms with business clients are more prepared and equipped to train associates than public interest legal employers. López advocates for a system of legal education that is multi-disciplinary and tailored to the type of practice a student plans to enter. The “Big Classroom” component of law schools should occupy a much smaller part of the law school curriculum than it currently enjoys. Rather than condemning student practices like the use of hornbooks, outlines, etc. law schools should take advantage of them. The “Bloodlessness” of law school should be eliminated as it creates a distance between professors and students and the real world. This distance will follow the students into their practice, and they will not be sensitive to contextual issues. These failings of law schools are especially damaging to those students who plan on working with the socially subordinated, because it is precisely these skills that they will most need. The article comprehensively describes a new curriculum designed to overcome these problems and to train students to be better lawyers. The first year should consist of a group of “core literacy

courses” along with traditional first-year subjects, which should be more contextually based. The second year should build on and inform the first-year course, including interdisciplinary reading and classes. “Anti-generic legal education presupposes the necessity for considerable interaction between those of us who most regularly work within the law school and those subordinated groups and their allies who most regularly work outside formal legal education.”

Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989).\* † In this published version of a speech to the Stanford University community, López describes in vivid detail the daily struggles of a typical immigrant mother. “Maria Elena” is a low-income woman of color whose efforts at gaining American citizenship are hindered by limited access to legal help and cultural obstacles to law and lawyering. He describes her reluctance to become involved with formal legal institutions because of confusing, conflicting images of authority and her perception of the socioeconomic power differential that divides her from her lawyers. López uses this description to expose legal education’s inadequacy at preparing lawyers to work for subordinated client groups. He identifies a need for more conscious allocation of resources and attention to educating lawyers for social change. He advocates greater emphasis on interdisciplinary studies in the law school curriculum and faculty appointments which reflect a commitment to taking poverty law seriously.

Louisiana Supreme Court, *Resolution of the Louisiana Supreme Court upon Amending Rule XX*, 74 TUL. L. REV. 285 (1999).\* † This is a published version of the resolution by the Supreme Court of Louisiana upon amending Rule XX, the Student Practice Rule, on March 22, 1999. Also included are the separate concurring and dissenting opinions issued by five of the Justices regarding the amended rule.

Lynn M. LoPucki and Walter O. Weyrauch, *A Theory of Legal Strategy*, 49 DUKE L. J. 1405 (2000).\* † By the conventional view, case outcomes are largely the product of courts’ application of law to facts. Even when courts do not generate outcomes in this manner, prevailing legal theory casts them as the arbiters of those outcomes. In a competing “strategic” view, lawyers and parties construct legal outcomes in what amounts to a contest of skill. Though the latter view better explains the process, no theory has yet been propounded as to how lawyers can replace judges as arbiters. This article propounds such a theory. It classifies legal strategies into three types: those that require willing acceptance by judges, those that constrain the actions of judges, and those that entirely deprive judges of control. The theory presented explains how superior lawyering can determine outcomes, why local legal cultures exist, how resources confer advantages in litigation, and one of the means by which law evolves.

Lela Porter Love, *Twenty-Five Years Later with Promises to Keep: Legal Education in Dispute Resolution and Training of Mediators*, 17 OHIO ST. J. ON DISP. RESOL. 597 (2002).\* † Reflecting on the evolution of legal education in dispute resolution and training of mediators over the last twenty-five years, the article reviews and comments on advances that have been made in the field, including a tremendous increase in the recognition and acceptance afforded ADR teaching by law schools, the increase in the number of schools that offer ADR courses from 43 to 182, and the creation of the ABA Section of Dispute Resolution Conference. It also notes that as ADR techniques continue to gain acceptance, proponents of ADR teaching have to guard against the injection of

adversarial values and adjudicatory-like processes in mediation training while continuing to improve training materials.

Steven Lubet, *Ethics and Theory Choice in Advocacy Education*, 44 J. LEGAL EDUC. 81 (1994).<sup>†</sup> This discussion of teaching ethics-driven case preparation responds to Edward D. Ohlbaum's article "Basic Instinct: Case Theory and Courtroom Performance." The author acknowledges that the article provides valuable tools for teaching effective, persuasive theory-building methods to students in trial advocacy courses. However, he criticizes Ohlbaum's lack of emphasis on professional responsibility issues that necessarily arise in advocacy training. While he believes Ohlbaum correctly encourages brainstorming and creativity, the author argues that students also must be invited to explore ethical issues formally so as to learn to recognize the subtle effects of their own biases on lawyering choices. He describes a persuasive appeal to jury preconceptions to illustrate a typical situation in which students may fail to identify the ethical implications of their case theories. He argues that professional ethics questions pervade all aspects of advocacy education and should be directly addressed as part of the educational process. Indeed, the rich factual context of advocacy exercises allows students to study professional responsibility in a more realistic setting than traditional, abstract legal ethics classes typically provide.

Steven Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. LEGAL EDUC. 123 (1987).<sup>‡</sup> This article critiques the teaching of trial advocacy in law schools. The author first describes the current teaching method that focuses on developing and improving students' practical trial skills. The author suggests that in addition to teaching the practical skills of trial work, other norms and values such as legal ethics and the concept of truth should be added to the curriculum. To demonstrate his criticism, the author closely examines the model of adversary justice used in a trial advocacy course, showing its inadequacy as a truth-seeking device. He also criticizes the absence of views of moral justice and fairness in the teaching. The author identifies the following problem areas in the teaching of trial advocacy: 1) "Interrelation and the lack of true instruction" (dealing with the inadequate emphasis on the interdependence of all trial skills); 2) "Theory divorced" (dealing with the underemphasis of employing various legal and factual theories); 3) "Parthenogenesis and the failure of creation, or, the eve of trial reconsidered" (dealing with the teaching of professional responsibility and legal ethics). The author concludes by recommending that law schools continue teaching practical skills via simulation but also to add to the advocacy curriculum other courses focusing on substance, doctrine, procedure and legal ethics.

Jennifer P. Lyman, *Getting Personal in Supervision: Looking for that Fine Line*, 2 CLIN. L. REV. 211 (1995).<sup>\*</sup> <sup>†</sup> This article uses a hypothetical situation the author created for an AALS conference on clinical supervision to explore the personal aspects of supervisory relationships. "Derrick," a constructed student, resists exchange of personal information and reflection at a crucial moment in supervision, thereby hindering the formation of an effective working unit with his professor, "Janine." Lyman identifies racial and gender differences that may have intensified the barrier to communication presented by Derrick's reluctance to share information about factors affecting his work style and performance. She departs from this hypothetical to describe the arguments for greater disclosure of personal information between students and clinicians, most notably to inform supervisors' decisions about when to intervene in student representation. She recognizes the danger of coercion inherent in unequal power relationships, but offers suggestions for how clinicians can

encourage disclosure without sacrificing respect for students. In particular, she advocates allowing students to choose what facts to disclose and she calls for connecting student revelations with valid teaching objectives by, for instance, requiring written narratives as part of the clinic application process, reality-based role-play as a classroom icebreaker, or reflection in the form of journals and grand rounds.

Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099 (1997).\* † This article traces the history of clinical legal education from its genesis in the demise of the apprenticeship system, continuing through the growth of an organized bar, and early programs for legal assistance to the poor. The author next sketches the early efforts of law schools to incorporate clinical legal education into the curriculum. The history continues with an examination of the law school-legal aid partnerships and the creation and role of CLEPR. The article concludes with the recognition that clinical legal education is now appropriately part of the educational continuum described and discussed in the MacCrate Report.

Robert MacCrate, *Teaching Lawyering Skills*, 75 NEB. L. REV. 643 (1996).\* † This article, which serves as an introduction to a symposium, provides a brief history of the evolution of the concept of lawyering skills. The article focuses on what law schools are and should be doing to improve the teaching of skills and values and to implement the Task Force on Law Schools' vision of building an educational continuum. The article provides an overview of the suggestions and insights of other contributors to the symposium.

Paul Maharg, *Rogers, Constructivism and Jurisprudence Educational Critique and the Legal Curriculum*, 7 INT'L J. LEGAL PROF. 189 (2000). This article argues for the relevance of the writings on education of Carl Rogers to those involved with legal skills education. The author begins by describing and analyzing the Rogerian vision of learning, which repudiated the behaviorist reduction of educational context to stimulus-response theory and consequently rejected explicit teaching in favor of a model of learning based on the facilitation of self-discovery and self-learning. The author claims that the insights Rogers into the learning experience are relevant to undergraduate (in the UK) legal learning and develops this argument by pointing up the similarities between his view of teaching and learning and aspects of contemporary educational theory, notably constructivism, which stresses that learning is an active process within which learners are constantly constructing thought that always springs from their own experience and structures of thought. The author outlines the strengths and limitations of Rogerian, constructivist, and allied theories of learning. It is argued that legal educators need to be aware of the epistemological and educational theories embedded in their practice if they are to improve student learning.

Stephen T. Maher, *Clinical Legal Education in the Age of Unreason*, 40 BUFF L. REV. 809 (1992).‡ The author looks at the general state of clinical legal education, and then presents a vision of how it should be improved. Maher explores the ramifications of the "labor politics" that exist in the field, involving clinicians, the law schools, the ABA, and state bar associations. The author points to a lack of both accessibility and innovation in clinical education programs as strong evidence that the field is in desperate need of change. Drawing heavily from Charles Handy's book *The Age of Unreason*, Maher describes the changing workplace and what it means for the future. Having laid this groundwork, the author proposes that Centers for Alternative Training (CATs) would thrive as

separate institutions dedicated to providing practical training for law students. According to Maher, setting up independent CATs in the nation's urban centers would be cost-effective for law schools and would eliminate labor problems.

Stephen T. Maher, *Interactive Video Opens New Litigation Training Opportunities*, 10:4 *INSIDE LITIG.* 7 (1996).<sup>†</sup> In this article, the author describes how an interactive CD-ROM program is now being used to train litigators in law firms nationwide, arguably the first step towards virtual reality skills training, whereby a lawyer can “step into” a simulated courtroom to test his skills in different situations. The author argues that technology offers a solution to the problem of limited opportunities to go to trial. The article describes the Interactive Courtroom, an interactive video training system developed at the Stanford Law School Interactive Video Project, which uses interactive video technology to simulate litigation situations and train the lawyer by involving the lawyer in the situation. The author describes how the system works as well as its potential for use by individuals or in a group setting. The author next discusses the benefits of interactive training and its advantages over traditional training and simulation. The author concludes by expressing hope that the use of interactive video will become a common medium, which will greatly assist lawyers in preparation for trial.

Stephen T. Maher, *No Easy Walk to Freedom*, 1 *D.C. L. REV.* 243 (1992).<sup>‡</sup> The author identifies features of in-house clinical programs that contribute to the scarcity of clinical opportunities for interested law students and he attributes these shortcomings to the stubborn orthodoxy created by clinicians seeking career stability. He argues that clinicians trap themselves in tedious jobs and political funding struggles because they are afraid to suggest alternative approaches to clinical education that might threaten their place in the law school structure. Maher suggests that clinicians take the initiative to construct a new institution that would provide clinical training to students for credit and/or pay based on the “practice supervised externship” model. Students would be required to work for at least one semester with practitioners in the field through Centers for Alternative Training (CATs) located in urban areas and serving several law schools in a region. Maher argues that this structure would foster greater interaction between academia and the practicing bar and would provide students with opportunities for developing professional independence and ethical judgment in context. The institution would be separate from the law school environment, but would be partially funded by tuition revenue and would eliminate the need for in-house clinics, thus ending the conflict of interest for clinicians who are unwilling to change the structure of clinical education at the risk of damaging their professional status.

Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 *NEB. L. REV.* 537 (1990).<sup>‡</sup> The author distinguishes between two models of clinical education: case supervision and practice supervision. In the first model, the faculty member takes substantial responsibility for the student's work on each case, whether the student is engaging in practice in an in-house clinic or in a law office outside the law school. In the second model, the student is directly responsible to an outside law office and its clients; the role of the law school is to provide preparation, and to assist the student in becoming an effective and reflective practitioner. Professor Maher argues that the practice supervision model is preferable for many reasons, among them that students will accept more responsibility when they experience greater autonomy, that faculty members will be more efficient in training students to become lawyers, that the

practice-supervised experience is more like the real practice of law, and that students will find greater satisfaction in their experiences. He defends his proposal against criticisms, including claims that outside supervisors will be poorer teachers than in-house clinical faculty, that students will have fewer opportunities to become self-critical and effective practitioners in the practice supervision model, and that outside legal experiences are not “credit-worthy.”

Randi Mandelbaum, *Rules of Confidentiality When Representing Children: The Need for a “Bright Line” Test*, 64 *FORDHAM L. REV.* 2053 (1996).\* † This article discusses the application of Rule 1.6 of the American Bar Association Model Rules for Professional Conduct, “Confidentiality of Information,” to unimpaired children and impaired children. Part I of the article discusses the application of 1.6 to the lawyer for the unimpaired child. In this section, the author argues that there should be no difference in the treatment of unimpaired child clients and adult clients. If anything, the author argues, “children are more deserving and in need of stricter and more encompassing confidentiality rules than are adults.” Part II of the article discusses the application of 1.6 to the lawyer for the impaired child. The author argues that “because compliance may be impossible, a rigorous application of the Rule may do more to harm the relationship between attorney and client and may be contrary to the effective representation of the child.” In conclusion, the author calls for the development of a “bright line” test to determine the issue of capacity and to determine when a child is able to make decisions and understand the nature of the attorney-client relationship.

Deborah Maranville, *Feminist Theory and Legal Practice: A Case Study on Unemployment Compensation Benefits and the Male Norm*, 43 *HASTINGS L.J.* 1081 (1992).\* † This case study concerning the relationship of legal theory to practice argues that theory is both critical to, and inevitably intertwined with, representation of clients. The article describes “only one of the many intersections between theory and practice: the way in which a legal practitioner can recognize the potential for new legal arguments through a familiarity with feminist theory’s insights concerning the gendered effects of our legal institutions.” At the most basic level, theory consists of any attempt to generalize from experience. A second, more sophisticated level of theory involves attempts to critique or challenge the initial generalizations. A third view is that theory consists of “detached and objective explanations for the world” from which correct answers can be deduced. “Concepts of legal practice are equally complex.” The case study involves a female client who was denied unemployment benefits because she wasn’t available for full time work because of her domestic responsibilities. The clinical practitioners challenged this “full time work rule” on the grounds that it discriminated against women and was based on an unstated “male norm.” The practitioners advanced arguments for a more comprehensive understanding of work patterns that would allow the unemployment compensation rules to be interpreted in a way that incorporates men’s and women’s experiences. “Attorneys often discount legal theory as abstract and irrelevant to the practice of law.” “Good theory, however, has intrinsic, inspirational, and instrumental value.”

Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 *J. LEGAL EDUC.* 51 (2001).† This article argues that traditional legal education is deficient in three significant ways: it fails to nourish the passions and values that directed students to law school, it fails to provide the context for doctrinal learning that both engages students and helps them to learn more effectively, and it fails to assess systematically what is actually happening in the classroom and to provide students with feedback about their progress. The author

argues that passion and context are central to effective legal education and that for many students experiential learning is a superior method for generating passion and providing context. The author argues that more experiential learning can and should be introduced into the traditional curriculum in a cost effective manner and provides a range of concrete suggestions of how the integration can take place both in the first-year curriculum and in upper level courses. Finally, the author suggests that experiential learning methods can provide useful opportunities for feedback to both teachers and students.

Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 CLIN. L. REV. 123 (2000).\* † In this article, the author argues that the common typology that divides clinical courses into simulation course, live-client clinics, and externships has become more misleading than helpful, “masking both differences within categories and similarities among them.” In order to take the next steps in transforming the law school curriculum, the author argues that we should abandon this typology and focus instead on three primary achievements of clinical methodologies: generating passion within students; providing context for their learning; and teaching lawyering skills. The article argues three points. First, relying solely on simulation-based experiences prior to the third year of law school neglects the passion dimension of legal education. Second, relatively unsupervised externships (or paid work experiences) can play a useful role in providing crucially important context for doctrinal learning, although they are not the most effective approach to teaching lawyering skills. Third, clinicians should aspire to integrate clinical experiences into the curriculum during the first and second years of law school in simplified forms. The article concludes with a proposed ideal curriculum.

Kenneth R. Margolis, *Responding to the Value Imperative: Learning to Create Value in the Attorney-Client Relationship*, 5 CLIN. L. REV. 117 (1998).\* † In this article, the author identifies the “value imperative” implicit in the attorney-client relationship and suggests that a perception by the client of high value in the relationship is necessary for its success. This article is an attempt to approach the teaching of value creation in a way that can be applied to any attorney-client relationship. In Section II, the author defines value in legal services. In Section III, the author presents a model for creating value in legal services. In Section IV, the author defines “value points” and suggests that legal representation proceeds from one “value point” to the next until the client arrives at a final assessment of the value received from the attorney-client relationship. Finally, in Section V, the author presents examples of the model’s application to three hypothetical disputes that could arise in a law school clinical practice.

Peter Margulies, *The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 NW. U. L. REV. 695 (1994).\* † The author begins by defining civic republicanism as a political theory based on popular participation in dialogue about the common good. Central to this theory is the idea that the risk of experiencing the unexpected allows the potential for discovering truth. When applied to clinical education, this translates into encouragement of sharing personal reflections and perspectives among teachers, students, and clients so that all can learn from the diversity of experience in a clinic setting. Margulies stresses the fundamental principle of clinical legal education that the student learns lawyering when he or she is empowered to tell his or her own story about his or her own experience of lawyering. This empowerment can only be achieved when students, faculty, and clients risk that

their narratives may be criticized or misunderstood. Margulies illustrates his theory of clinical education by describing the interaction of his students with two clients at the CUNY Law School clinic. Both stories describe how he and the students learned new perspectives on clients' motivations when client narratives revealed behavior-influencing factors they had not previously considered. Students learned to recognize that they had made mistakes by applying cultural stereotypes before assessing the racial, ethnic, social, and spiritual contexts of their clients' experiences. Margulies concludes the discussion with emphasis on the need for educators to actively incorporate civic republican principles in the clinical setting.

Peter Margulies, *Multiple Communities or Monolithic Clients: Positional Conflicts of Interest and the Mission of the Legal Services Lawyer*, 67 *FORDHAM L. REV.* 2339 (1999).\* † This article begins by outlining the values served by conflicts of interest doctrine, including loyalty, confidentiality, and access. It then examines in greater depth the common carrier, moralistic, and monolithic models of legal services practice and concludes with a discussion of the kinds of conflicts that are most challenging in legal services settings: mission conflicts; doctrinal conflicts; and resource conflicts. Part II discusses ways of dealing with these conflicts based on the extant models of legal services practice. Part III outlines a contextual approach, which seeks to address the flaws of each of the other approaches. Part IV applies this approach to mission conflicts, and Part V applies it to doctrinal conflicts of interest. In addressing these issues, the article maintains that the contextual approach preserves “the macro commitment to social access of the monolithic view, [addresses the] micro issues of social organization, and provide[s] legal assistance to clients, like tenants victimized by other tenants, for whom the monolithic approach lacks a ready category. The contextual approach’s treatment of positional conflicts reflects” the commitment to diversity as well as both “continuity and change in the landscape of legal services. It honors the notion of mission . . . by examining mission conflicts with the same care that the profession devotes to conflicting advocacy about legal doctrine.” The contextual approach considers a number of factors, including the acuteness of the conflict, asymmetrical financial incentives, the personal or imputed nature of the attorney’s conflict, and confidentiality issues.

Peter Margulies, *Political Lawyering, One Person at a Time: The Challenge of Legal Work Against Domestic Violence for the Impact Litigation/Client Service Debate*, 3 *MICH. J. GENDER & L.* 493 (1996).\* † This article employs the context of domestic violence lawyering to demonstrate that client service work has political content and argues that such political content is central to providing legal services to poor people. Part I examines how domestic violence lawyering liberates crucial interactions from the “private sphere.” Part II discusses how domestic violence lawyering, with its focus on the links between the ideology of patriarchy and affective issues in individual clients’ relationships, integrates the professional and the personal. Part III argues that the struggle against the pervasive ideology of patriarchy transcends distinctions between impact and service work. In challenging these dichotomies, the author concludes that domestic violence lawyering realizes a vision of more engaged, less bureaucratic, public interest law.

Peter Margulies, *Re-framing Empathy in Clinical Legal Education*, 5 *CLIN. L. REV.* 605 (1999).\* † This article explores the model of empathetic engagement in clinical legal education. To lay the groundwork for this approach, Part I sets out the notion of empathy as neutrality described by Binder, Bergman and Price, which focuses on micro-empathy and lawyer technique. Part II presents

critiques of this approach. These include the critique of psychology, the critique of formality, and the critique of normativity. Part III responds to these critiques with a model of empathetic engagement in clinical education, informed by the values of access, connection, and voice.

Meryl Markowitz, Essay, *My Experience at the Eaton County Prosecution Office*, 2 T. M. COOLEY J. PRAC. & CLINICAL L. 343 (1998).† This article is a recitation of a student's experiences as an extern, walking the reader through a typical week from the perspective of an extern in the prosecutor's office.

Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLIN. L. REV. 147 (2000).\* † Part I of this article describes the history, goals, and values of community lawyering and illustrates some concrete problems that confront community lawyers using scenarios drawn from work done by two staff lawyers at the East Palo Alto Community Law Project. Part II examines some ethical problems confronting the staff attorneys using the traditional ethical paradigm and describes the strengths and weaknesses of that approach. Part III looks at the connections between traditional ethical values and community lawyering values, examines other critiques of the traditional ethical rules, and concludes with a few suggestions for guiding community lawyers when they are confronted with the unique ethical dilemmas that arise from their work with communities.

Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 CLIN. L. REV. 639 (1995).\* † In this essay, the author contrasts the representation of two community anti-redlining groups. In the first situation, the clinic's representation followed the "collaborative" model and results were questionable in terms of preserving the client's autonomy. In the second, the clinic's representation followed more of a "facilitative" model, which the author describes as requiring a recognition that the client may want the lawyer to perform technical tasks without substantial involvement in the client's affairs, thereby preventing client dependency. The author posits that the facilitative model needs development as a model of social change lawyering that is not as involved as the collaborative model but that still has much to offer well-organized grassroots organizations.

George A. Martinez, *Foreword: Theory, Practice, and Clinical Legal Education*, 51 SMUL. REV. 1419 (1998).\* † This brief foreword to a symposium issue of the *Southern Methodist University Law Review* focuses on the dualism of theory and practice in legal education. The symposium discusses the role of clinical education in trying to close the gap between theory and practice. The author provides a brief description of the three articles contained in the symposium, authored by Kevin Johnson and Amagda Perez, Jon Dubin, and David Chavkin. The author concludes that this symposium issue is a timely reminder of the importance of theory to the practice of law.

Richard A. Matasar, *Skills and Values Education: Debate about the Continuum Continues*, 46 N.Y.L. SCH. L. REV. 395 (2002/2003).\* † This article examines the law schools' and the legal profession's responses to the MacCrate Report's call for the formation of an "educational continuum" to impart the skills and values identified by the Report as necessary for the practice of law and argues that law schools have made greater progress in implementing the Report's suggestions than has the legal profession. The article reviews the impact that the Report's statement of skills and values on law schools' curricular decisions, underscoring an extremely significant

change in theory by contrasting his own experiences as a young law professor, when new courses were often proposed to further a professor's research agenda, and generally approved readily, with the "Professional Development Project" instituted at New York University in which long term curricular initiatives are designed to improve students' skill levels through individual assessment and placement within one of three primary curricular plans. The article argues that law schools have showed marked improvement in promoting skill development but less progress in furthering the values identified in the Report. The article focuses on trends that have impeded the legal profession from furthering such objectives, including the naturally more diffuse nature of the profession in comparison to legal education institutions and the lack of mechanisms in place across the spectrum of the profession to ensure continual systematic training. The article concludes by presenting a proposal to improve the profession's involvement through initiation of a grassroots campaign designed to persuade law firms, government agencies, and other legal organizations to adopt a ten-point plan to integrate the skills and values of the MacCrate Report into their training and organizational structures.

Lynn Mather & Barbara Yngvesson, *Language, Audience, and the Transformation of Disputes*, 15 L. & SOC'Y REV. 775 (1981). The article surveys the transformation of disputes across several different cultures in order to develop an understanding of how people manage disputes and to show how law and other normative frameworks are articulated, imposed, circumvented, and created as people negotiate social order with one another. Cross-cultural concepts such as narrowing, expansion, and audience are studied with respect to the role of each in the transformation of disputes. Narrowing is the process through which established categories for classifying events and relationships are imposed on an event or series of events. Expansion challenges the existing categories by stretching or changing accepted frameworks. Audience participation is studied to determine the circumstances under which it will likely occur and be influential. Typically, transformation is by narrowing because the process is dominated by the powerful who have a vested interest in the existing social structure. Public struggles to define and transform the meaning of acts and persons become significant because these definitions not only inform and affect social practice but also provide the language for challenging that practice.

Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons from My Clinic Sabbatical*, 9 CLIN. L. REV. 879 (2003).\* † This essay explores some of the benefits as well as a few of the drawbacks of handling big cases in law school clinics. Big cases – those involving long-term lawyer/client relationships and litigation of complex legal issues – offer some of the best learning opportunities for both faculty and students. They teach about the complex nature of the law, client decision making, problem solving, and collaboration. They prepare students for practice. Big cases also take up a great deal of clinic faculty time, especially over summers and breaks, and sometimes during sabbaticals. Using two clinic cases as models for discussion, the article describes the educational benefits the author and successive teams of students gained from working on these cases over a period of several years. Proposals are offered for supporting clinic faculty and making efficient use of faculty and student time so that clinics can take on big cases.

Nancy M. Maurer & Linda Fitts Mischler, *Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals*, 44 J. LEGAL EDUC. 96 (1994).† This article describes an experimental course on lawyering skills and legal research and writing, offered to first-year students at Albany

Law School. The course, called “Introduction to Lawyering,” combines traditional skills education with professionalism and lawyer competence training by requiring students to engage in a year-long legal dispute simulation. Students are encouraged not only to learn basic writing and interviewing techniques but also to recognize the importance of research and preparation within the context of advocacy. In a controlled environment, first-year students practice skills such as hypothesis formulation, decision making, and creative thinking. Throughout the course, they are taught to exercise critical self-examination and to question professional choices in every phase of the simulated case. Hypotheticals are carefully designed to expose students to a broad range of research materials, and to provide opportunities for drafting correspondence, memoranda, and court documents. To demonstrate their competence and understanding, students engage in exercises such as simulated negotiations and appellate arguments, in which they integrate knowledge they have accumulated over the course of the year. Based on three successful years of the program’s operation, the authors recommend the goal of capitalizing on first-year students’ enthusiasm for learning creative lawyering skills and concepts, before they are indoctrinated in law school culture.

James C. May, *Creating Russia’s First Law School Legal Clinic*, VT. B. J. & L. DIG., Aug. 1997, at 43.† This article chronicles the development of Russia’s first law school civil legal clinic in Petrozavodsk, beginning in 1994 and becoming operational by 1996. The author, a clinic director at Vermont Law School, describes the unique role that he and his school played in assisting and offering guidance to the Russian law school in its endeavor to initiate a clinical program. The article describes the success of this project, despite many economic and institutional obstacles facing the Russian law school. The author concludes that the experience afforded him great professional satisfaction and enrichment, and he encourages other law schools to engage in similar work.

James C. May, *Hard Cases from Easy Cases Grow: In Defense of the Fact and Law Intensive Administrative Law Case*, 32 J. MARSHALL L. REV. 87 (1998).\* † The author writes in response to an article by Paul D. Reingold, the Director of Clinical Law at the University of Michigan, that suggests that the best clinical programs take on “hard cases” instead of routine “easy” ones. The author opposes this position and contends that although tough cases should be tackled, routine easy cases often provide excellent learning experiences and sometimes rise to the level of difficult cases. He supports this thesis by pointing out that difficult cases do not always allow students to get involved in all the elements of a case; that easy cases pose a “lower risk of serious error or malpractice”; that because easier cases tend to be less controversial and are handled in volume, they often are a better public relations option for law schools; and that easy cases allow students to wrap up their work within the academic year. In conclusion, May acknowledges that although hard cases often can be an asset to a clinic program, routine cases are well-suited to a student’s development of competent lawyering skills.

Angela McCaffrey, *Don’t Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLIN. L. REV. 347 (2000).\* † This article examines problems arising from the need for language interpretation in clinical programs providing legal services to non-English speaking clients. The author argues that because accurate translation is crucial in legal matters, a non-English speaking client should be interviewed with the assistance of a qualified interpreter who has knowledge of the particular dialect and idiomatic expressions and of the political and legal system

of the client's home country. The article also examines other issues that law students should confront when working with interpreters for non-English speaking clients.

Angela McCaffrey, *Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years*, 24 *HAMLIN J. PUB. L. & POL'Y* 1 (2002).\*

† This article places the Hamline clinical program in the context of the history of clinical legal education in America. About the same time that the MacCrate Report was published, a faculty task force on law careers at Hamline reached similar conclusions about the need for more law school training in the skills necessary to practicing law and conducting litigation. A strategic planning process to implement the recommendations of the MacCrate Report resulted in a faculty vote to increase clinical and practicum offerings with the goal of providing an opportunity to every student who wanted one. As of the writing of the article, Hamline offered nine clinics, each of which is described briefly. The externship program also is described. The article articulates a set of goals for clinical legal education, summarizes some adult learning principles, and describes how the model of clinical legal education at Hamline is designed to achieve the goals of clinical legal education while being responsive to the needs of adult learners. The clinics at Hamline teach students the process of self-evaluation and evaluation of others, provide opportunities for collaborative learning, and develop modes of planning and analysis for dealing with unstructured situations. The article concludes with a description of the ways in which the Hamline clinics strive to educate law students in the values of the profession, including the obligation to serve indigent clients, recognition of bias within the profession, and critique of the capacities and limitations of lawyers in the legal system.

Adrienne Thomas McCoy, *Law Student Advocates and Conflicts of Interest*, 73 *WASH. L. REV.* 731 (1998).\*

† This comment, which focuses on conflicts of interest rules, contends that ethical standards for student lawyers lack both clarity and uniformity, and argues that "alternative student conflict rules that would allow screening to cure imputed disqualification should govern law student advocates." The author argues that the rules protect clients, ensure the success of legal education through practice, and develop students' own ethical framework. This argument applies only to student advocates who represent clients under the supervision of an attorney in law-school sponsored clinical programs, non-profit legal services agencies, and *pro bono* representation by private practitioners. Part I of this comment discusses student practice and its underlying policies, particularly the encouragement of legal ethics education. Part II examines the existing ethical codes that may govern students who represent clients and explains why rules for private lawyers and nonlawyer assistants are inadequate for student advocates. Part III discusses alternative rules for students and concludes by proposing a Model Rule for Student Practice, modeled after the rules for government lawyers, with broad allowances for determining conflicts of interest.

Marjorie Anne McDiarmid, *What's Going on Down There in the Basement: In-house Clinics Expand Their Beachhead*, 35 *N.Y.L. SCH. L. REV.* 239 (1990).‡

The article provides an interpretation of data collected by the Clinical Section of the Association of American Law Schools. Items discussed include trends in student-faculty ratios, gaps in faculty compensation (between clinic and traditional faculty), numbers of law schools that are offering clinics (one or several), and ability of law schools to meet student demands for clinic work. The article concludes that clinics have become an integral part of legal education but that clinics still face some disadvantages as compared to traditional courses. The availability of appropriate space for a clinic is a major concern for many

of the clinics surveyed. A second concern is the attitude of the traditional faculty towards the clinic faculty. Clinicians tended to believe that they were excluded from full participation in their schools. The data collected were analyzed along several different lines: the size of the schools; the location of the schools; the number of clinics offered; and student-faculty ratios. In addition to the need to address the attitude of the traditional faculty and clinic space issues, the author suggests the need for a pre-clinic curriculum for students. The author makes it clear that although the article relied upon AALS data, the interpretations are the author's own.

Harold A. McDougall, *Lawyering and Public Policy*, 38 J. LEGAL EDUC. 369 (1988).‡ The article is an overview of the Law and Public Policy (LPP) program at the Catholic University of America in Washington, D.C. "Participants study the law and public-policy process in classrooms, seminars, tutorials, and field externships." One goal of the program is to teach students a model of public policy lawyer decision making, described as planning, reflecting and doing. The LPP program tries to teach its students how to learn from experience. Teaching professional responsibility is another goal of the program: The article points out that professional responsibility issues arising in public-policy lawyering are not well addressed in the Canons of Ethics nor the Code of Professional Responsibility with their emphasis on individual client representation. The focus of study for the program is the legislative process, from the tactical selection of a bill's language to policy implications of administration. "LPP's objective is to teach law and public-policy and to teach about public-policy lawyering, using practice as a laboratory to test personal values and work styles as well as substantive law."

Harold A. McDougall, *Lawyering and the Public Interest in the 1990s*, 60 FORDHAM L. REV. 1 (1991).\* † The author identifies the need for a reformed theoretical perspective for public interest lawyers seeking to practice in a post-modern legal system. He describes "post-modern" as characterizing extensive government intervention in, and regulation of, the economy since World War II, resulting in a disordered legal system. He describes other theorists' attempts to impose order by integrating policy, social science, economics, and self-critique into legal knowledge and asks how these insights can be fused with the practical insights of clinical legal educators to form a new post-modern public interest law approach. After extensive description of recent political and historical events and trends that contributed to the legal climate of the 1990s, he introduces a concept of public interest lawyering that seeks to protect the diffuse interests of the public in such values as civil rights, civil liberties, environmental protection, and pure food and drugs. His legal perspective requires clinical training in legislative, regulatory and litigation skills that focus on ends/means thinking, contingency planning, risk evaluation, hypothesis formulation, information acquisition, and cultivation of right brain community and interpersonal skills. McDougall argues that lawyers with this background can pursue public interest goals through legislative and regulatory advocacy in addition to litigation.

R. Roy McMurty, *Celebrating a Quarter Century of Community Legal Clinics in Ontario*, 35 OSGOODE HALL L.J. 425 (1997).\* This article reflects upon the success of the Parkdale Clinic over the past twenty-five years and highlights its impact on the Ontario legal community. The author emphasizes the crucial role of community support in this project and traces some of the history and evolution of the clinic, noting the obstacles and challenges along the way. The author concludes his essay by addressing some of the future challenges facing clinics.

Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 *FORDHAM L. REV.* 2617 (1999).\* † This essay applies the recommendations that emerged from the Working Group on Limited Legal Assistance, held at Fordham Law School in late 1998, to a variety of delivery models and evaluates the results of these suggestions. Part I of this essay outlines the Fordham recommendations regarding limited legal assistance. Part II applies the recommendations to various delivery models, including *pro se* clinics, hotlines, form pleadings, and ghostwriting. This application illustrates the strengths and weaknesses of the recommendations. Part III proposes a different conceptual model for evaluating the role of limited legal assistance in the delivery of legal services. Part IV outlines a research agenda. These reflections conclude with Part IV's argument for a "tentative application of the recommendations coupled with extensive assessment of their effects on clients' efforts to obtain justice."

Mary Helen McNeal, *Unbundling and Law School Clinics: Where is the Pedagogy?*, 7 *CLIN. L. REV.* (2001).\* † This article explores unbundling, also known as discrete task assistance and limited legal assistance, and the role it might play in a law school clinical program. After defining unbundled legal services, examples of which include *pro se* clinics, hotlines, and community education programs, the article outlines the advantages and disadvantages of such services offered on behalf of low- and moderate-income clients. The article then outlines the pedagogical disadvantages of providing unbundled legal services in law school clinics, which include limited skill development and the risk that law students will accept dual standards of representation for rich and poor clients. The article also outlines the pedagogical advantages of unbundled clinics, which include addressing the profession's resource allocation problem, experiencing ethical challenges, evaluating client results, exposure to alternative lawyer-client relationships, and the development of some lawyering skills. The article then utilizes a clinical and law student narrative to evaluate the merits of such clinics and their appropriateness for three hypothetical law students. Recognizing that some schools will incorporate unbundled clinics into their curriculum, the article concludes by describing a pedagogically sound unbundled clinic, with course components designed to overcome an unbundled clinic's limitations.

Joan S. Meier, *Notes From The Underground: Integrating Psychological and Legal Perspectives on Domestic Violence In Theory and Practice*, 21 *HOFSTRA L. REV.* 1295 (1993).\* † This article first surveys the growth of psychosocial and legal understandings about battering and the impact of domestic violence on children. The author describes how social resistance to gender issues causes society to co-opt and use against victims of domestic violence the psychological theories developed to assist them. The author then surveys three "current" theories: Post-traumatic Stress Disorder, Revised Battered Woman Syndrome, and Entrapment or Coercive Control, which she suggests are useful for lawyers and advocates. In Part III, the author examines interdisciplinary collaboration in a law school clinic. This part describes the contribution of training in psychology to the effectiveness of law students as lawyers for battered women. At the conclusion of Part III the author discusses some of the challenges and limitations of integrating psychology into legal training, concluding that none of these challenges negates the substantial benefits of such integration.

Stephen Meili, *A Voice Crying Out in the Wilderness: The Client in Clinical Education*, 2000 *WIS. L. REV.* 617 (2000).\* † This article addresses the lack of law school instruction in the area of

practical skills relating to the attorney-client relationship. Using the example of the Consumer Law Litigation Clinic at the University of Wisconsin Law School, the article demonstrates how clinical programs can fill in this gap, exposing the students to those situations in which they are the ultimate decision makers as well as those where client autonomy is paramount. Presenting a series of case studies, the author first examines attorney-client interactions in those instances where the Clinic agreed to represent the client. After the student-attorney accepted representation, multiple matters (e.g. type of a legal action, pros and cons of applicable legal strategies, settlement confidentiality provisions, etc.) must be resolved in cooperation with the client. While the student-attorney acts as a persuasive decision maker, he is nevertheless dependent on the choices of the client, obligated to protect the client's interests. The author then examines attorney-client interactions in those instances where either the Clinic (because the client did not have a good case) or the client (because he wanted to forget the whole thing or opted for an ADR mechanism) decided not to file a lawsuit.

William H. Mellor & Patricia H. Lee, *Institute for Justice Clinic on Entrepreneurship: A Real World Model in Stimulating Private Enterprise in the Inner City*, 5 J. SMALL & EMERGING BUS. L. 71 (2001).\* † This article sketches the creation and operation of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School. Topics discussed include the staff, mission statement, selection of students, community outreach activities, and criteria for client selection. Also mentioned is a companion course to the clinic, *Entrepreneurship and the Law*. A case study describing the activities undertaken for one client of the clinic concludes the article.

Michael Meltsner, *Writing, Reflecting, and Professionalism*, 5 CLIN. L. REV. 455 (1999).\* † The author presents an approach to stimulating reflective writing that "may interest law teachers looking to raise issues of professional values and clinicians seeking an alternative to the use of open-ended journal writing." The article describes the experiences of students enrolled in an experimental course on the legal profession. The author maintains that the method employed may work equally well in a variety of clinical settings, whether externship or in-house clinics, as well as other law school courses. The article discusses structured writing assignments as part of upper level electives and uses samples of actual students' writings. The author concludes that the use of this tool offers a writing experience that can be deeply supportive and nurturing in legal education.

Michael Meltsner & Phillip G. Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976).‡ This article surveys the development of clinical law programs, focusing on the authors' experience at Columbia. Successes and failures of various techniques are described. In-depth descriptions of the programs the authors taught are given along with pitfalls and advantages. Their first clinical method involved using students in "relatively major" test cases. While this generally provided excellent learning opportunities, there were always some students whose case fell through or whose case failed to provide an adequate learning experience for one reason or another. To make up for the "experiential gaps" and to reduce the unmanageable workload on the professors, a simulation component was added to the course. The article describes and analyzes relatively complex situations: a rather short "mini-simulation" and a comprehensive, semester-long case simulation. (The mini-simulation materials are contained in the appendix to the article.) The mini-simulation was a supplement to the students' legal work in the clinic. The semester-long simulation immersed the students in a comprehensive, complicated legal dispute in which the teachers could control the pace of the litigation. A field placement clinic was the next experiment. The article

discusses how to use different techniques to evaluate the students' performances, and provides detailed descriptions of the situations that students had to confront and the problems that arose.

Michael Meltsner & Phillip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978).<sup>‡</sup> This article discusses the authors' experiences with developing an "in-house" clinic after several years of experimentation. (Those years are covered in *Report from a CLEPR Colony* by the same authors.) The article focuses "on the structural, interpersonal, and group-related aspects of a clinic and de-emphasizes encounters between students and their clients." Several principles guided the clinic design. The number of students was limited and applicants were "screened" largely through an informational meeting. Students contracted for the goals they wished to achieve and the work that was expected of them. The article discusses and gives examples of the issues that arose concerning pairing of students, working with the supervising attorney, instructor supervision, and dynamics of large and small group meetings. The clinic model employed by the authors emphasizes that the students are not only responsible for representing their clients but also for a significant amount of the institutional policymaking. Such an environment requires/encourages the faculty to be more like "resources than teachers."

Michael Meltsner, James V. Rowan & Daniel J. Givelber, *The Bike Tour Leader's Dilemma: Talking about Supervision*, 13 VT. L. REV. 399 (1989). The authors explore supervision of new lawyers in the workplace. They use the metaphor of an alpine bike tour leader to compare elements of legal and non-legal supervision. They describe how the bike tour leader might balance the different skill levels and objectives of the tour group before and during the trip, and suggest ways the leader could structure preparation, pacing, and goals with all group members' interests in mind. The authors then apply this model to legal supervisors, particularly in private sector practice, and distinguish it from other models of supervision extracted from open-ended interviews with lawyers in the field and models borrowed from the business world. The authors advocate a flexible, contextual approach to supervision that accommodates different modes of communication, the organizational structure of the firm, the attitudes and capacities of the parties to the supervisory relationship, and external factors, such as economics and firm reputation. While recognizing the difficulty of identifying a predictable sequence of steps in the development of a supervisory relationship, the authors project four stages as a framework to enhance opportunities for growth. In the first stage, participants assess personal and firm goals and needs. In the second stage, parties to the relationship engage in discourse, not only about specific tasks, but also about the working process and relative roles. The third stage involves the parties' checking with each other about the progress of specific tasks in execution, and the fourth stage requires evaluation of performance with feedback that is invited, objective, positive, detailed, immediate, and nonjudgmental.

Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555 (1980). The article examines several theories of lawyering that have been developed in response to the question "What is it that lawyers do?" The theories are divided into groups that focus on individual lawyering roles and behaviors and those that focus on the lawyer's interaction with the legal system and his or her impact on the larger world. The micro-theories ask the question "What does the lawyer do, for whom, in what context and why?" The macro-theories ask "What can law and lawyers accomplish?" The article discusses Gary Bellow's and Beatrice Moulton's notion of roles of lawyering. "This scheme divides the lawyering process into constituent roles, skills,

models and issues.” David Binder is credited with the most sophisticated work on conceptualization of lawyer’s skills. “Binder argues that the lawyer must develop the most effective skills to effectuate the client’s purpose.” For example, during an initial client interview, the lawyer must have the skills to assist the client in defining the client’s goals. Other micro-theories of lawyering include lawyer decision-making, lawyering as an interpersonal process, and the meta-learning of lawyering. Clinical educators and students are in a unique position to develop, test, evaluate, and refine these theories. The macro-theories address the purposes, power, structure and substance of the legal profession. Macro-theories that address purposes of lawyering require that lawyers ask themselves what they are trying to accomplish in larger terms for their clients. Other meta-theories seek to bridge the gap between the law as written and the law as experienced by actors in the legal system. Still others are concerned with the appropriateness of professional rules of conduct. Within each of these branches of a macro-inquiry, the author argues, clinics should be advancing research and development.

Philip N. Meyer, *Making the Narrative Move: Observations Based Upon Reading Gerry Spence’s Closing Argument in The Estate of Karen Silkwood v. Kerr-McGee, Inc.*, 9 CLIN. L. REV. 229 (2002).\* † Effective advocates often convert persuasive closing arguments to a jury into stories. Analyzing Gerry Spence’s closing argument in *The Estate of Karen Silkwood v. Kerr-McGee* as an illustration, the essay explores how Mr. Spence employs the structural components and genre conventions of melodrama and myth to transform evidentiary argument into story. The essay argues that there is a close relationship between the conventions of legal storytelling at trial and other popular storytelling practices, particularly the genre conventions of popular entertainment films. Using the closing argument in *Silkwood* as an exemplar, this essay provides illustrations of this relationship, drawing upon popular films, screenwriting texts, and film and narrative theory.

M. Ann Miller, *Learning From Our Elders: Teaching Professional Responsibility in an Elder Law Setting*, 2 T.M. COOLEY J. PRAC. & CLINICAL L. 59 (1998).† Focusing on the Sixty Plus Elder Law Clinic at Cooley Law School, this article examines the range of lawyering skills and substantive knowledge to which students are exposed in a clinical setting. The article also explores a teaching methodology that supplements and enhances a classroom component and considers several issues of professionalism that arise in the elder law clinic context. The article discusses why teaching professionalism in the clinical law context is an important supplement to classroom teaching. The article concludes that an elder law clinic provides an outstanding opportunity to learn about the practical application of theory and that such preparation will help build a sense of professionalism that the author notes “is decried as lacking in practitioners today.”

Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994).\* † The author argues that the idea of case theory must be reconstructed to take into account the client’s life experience and the fact that both clients and lawyers have something to contribute to the development of a case theory. In her view, case theory “is a lens for shaping reality in light of the law – a lens that explains the facts, relationships, and circumstances of the client and other parties in the way that can best achieve the client’s goals.” She argues that traditional lawyering practices and client-centered lawyering distort case theory by focusing too much on technical legal issues and by failing to challenge the lawyer-centered decision-making values articulated in writing about case theory. She finds a greater role for case theory in critical lawyering theory because of the value placed on the client’s voice, but criticizes the view of that

movement that lawyers have nothing to contribute to the development of a case theory. She applies her theoretical reconstruction and her critique to a criminal case in which she was involved as a clinical supervisor. She posits that her reconstructed theory could have led the client and her students to a richer set of imaginative possibilities about how to present the case. She also fully explores the difficulties that she, the client and the students had or might have had in using her reconstructed theory.

Binny Miller, *Teaching Case Theory*, 9 CLIN. L. REV. 293 (2002).\* † As the key means of framing a case, case theory is *the* central problem that lawyers confront in constructing a case, and many of the decisions made during the life of a case are decisions that rest on case theory. Building on the author's earlier scholarship on case theory, this essay articulates a concept of case theory called "storyline," and sets out a framework for teaching this concept. The framework for this process has three basic stages – imagining case theory, evaluating (and constructing) case theory, and choosing case theory. The material for this process is stories, which are the starting point from which storylines can be distilled. The essay discusses some of the challenges in teaching case theory in the metaphor of stories, which include overcoming the doctrinal messages of legal education, conveying the complexity of the idea of story, and devising a curriculum beyond that available in lawyering texts. The article then demonstrates how to build a case theory curriculum from the ground up, using examples from film, fictional accounts of lawyering, newspaper articles about actual cases, stories written by clinical professors and others about their cases, and simulations. These materials allow students to learn case theory in increasingly complex settings and to begin to confront the complex strategic and ethical questions of choice of case theory, whether in a clinical course, a simulation course, or a traditional classroom. The article concludes that as students move along the spectrum from imagining to finally choosing case theory, actual cases and clients become much more important in the equation.

Elliott S. Milstein, *Clinical Legal Education in the United States: In-house Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375 (2001).† The author identifies the three different categories of clinical education in the United States: in-house live client clinics, externships, and simulations. According to the article, the in-house live client clinic setting provides the advantage of faculty supervision while teaching students professional values in addition to the theory and practice of lawyering. The article suggests that this setting lends itself to multiple learning modes of structuring student activities and faculty supervision within the clinic. Each of these learning modes can be employed to foster a number of valuable practical and theoretical lawyering skills. The article also describes approaches for simulations and externship programs. The article concludes with a call to the legal education community to muster the resources to make clinical education programs available to all students.

John B. Mitchell, *A Clinical Textbook?*, 20 SEATTLE U. L. REV. 353 (1997).\* † This article explores the creation of a clinical textbook to present material so as to "explicitly situate the student within the world/context/perspective/schemata of the client and practicing attorney, as contrasted with that of a law professor and appellate justice." The author argues that such a textbook is one vehicle for embedding clinical perspective throughout the law school curriculum. The author maintains that clinical perspective provides a context that is easy for students to understand. The clinical perspective guides students in transferring the knowledge base that they have acquired in doctrinal

courses into practice. Based on the fact that many students either enter a small firm or become sole practitioners, practical knowledge of the law is critical as they enter the legal profession. The author next describes a clinical textbook, paying particular attention to the role of the student in performing its exercises, as well as its objectives. The article concludes by providing excerpts from a mock torts clinical casebook to illustrate the author's vision.

John B. Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer to Do When His Two Favorite Theories Collide?*, 6 CLIN. L. REV. 85 (1999).\* † This article explores the relationship between narrative and client-centered representation. It presents two criminal cases with troubling stories in which clinical students represented the defendants. The author then discusses his own model of narrative theory that he uses in preparing students to engage in criminal defense advocacy and applies that model to the two cases. Next, the author analyzes the sources of conflict between narrative and client-centered representation in the two cases, specifically considering schema theory, social construction of personal reality, and the "story theory" of juror decision making. Finally, the author discusses the use of experts in the two cases to deal with this conflict. Affirming the merits of using experts to provide a "voice" for clients, the author concludes that "the public defender and defense bar need to develop a panel of volunteer or court-compensated experts who can describe the 'worlds' of their clients for jurors."

Marla Lyn Mitchell-Cichon, *What Mom Would Have Wanted: Lessons Learned From an Elder Law Clinic About Achieving Clients' Estate-Planning Goals*, 10 ELDER L.J. 289 (2002).\* † This article identifies difficult issues that arise when counseling elderly clients on estate planning and outlines specific strategies to address these problems. The author, a clinical supervisor in the Sixty Plus Elderlaw Clinic at Cooley Law School, bases her conclusions on her experiences in the clinic. The article outlines six "no-nonsense lessons" for practitioners to follow relating to client goals and decision making, the importance of the retainer agreement, and implementation of an estate plan. The author illustrates each lesson by examples drawn from the Clinic's cases. The author details techniques for interviewing the elderly client using a "client-centered" approach, discusses the role of the family in the representation, relates special problems related to the representation of elderly clients, and highlights ethical issues. The author concludes that a client-centered and collaborative approach is more likely to result in a legal solution that best serves the client's goals and needs.

Wallace J. Mlyniec, *The Intersection of Three Visions – Ken Pye, Bill Pincus, and Bill Greenhalgh – And the Development of Clinical Teaching Fellowships*, 64 TENN. L. REV. 963 (1997).\* † The author celebrates the 50<sup>th</sup> Anniversary of the University of Tennessee's Legal Clinic by encouraging others to learn about the history of clinics. The author also states, however, that such a pursuit should be tempered by an unwillingness to overstate the vision and achievements of early programs. With this caution in mind, the author examines the contributions of Ken Pye, Bill Pincus, and Bill Greenhalgh. Specific attention is paid to their ideas about the use of graduate legal fellowships to train clinical teachers and consideration is given to whether such fellowships are good for clinical education today. The author gives a detailed description of how each educator contributed to the development and spread of legal clinics in law school. The author highlights how their establishment of fellowships for clinical teachers flourished in schools like Georgetown but failed in other institutions. After surveying the reasons for this discrepancy, the author praises the contributions of Pye, Pincus, and Greenhalgh, but concludes that the successes of their fellowship

programs were largely due to the idiosyncratic character of the schools in which their programs were placed. Because of this, the author warns that graduate legal fellowships are not a panacea to the problems of clinical programs. The author further advises that one be fully aware of the history and difficulties surrounding such programs before implementing such programs.

Wallace J. Mlyniec, *Remembering Bill Greenhalgh*, 31 AM. CRIM. L. REV. 1005 (1994).<sup>†</sup> This essay, by a colleague of Bill Greenhalgh at Georgetown University Law Center, remembers Professor Greenhalgh as a “pioneer in the clinical legal education movement,” and a “recognized authority on both the Fourth and Sixth Amendment[s].” He also is recognized for his “belief in the importance of client service” in clinical education and “his belief that the values embodied in [the Fourth and Sixth Amendments] had to be instilled in each new generation of students in order to be preserved in a free society.” Finally, he is recognized for “the fierce loyalty he gave to his friends and students.”

James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83 (1991).<sup>\* †</sup> The article examines historical developments in legal education concerning the teaching of ethical principles, categorizes and describes goals served by teaching ethics, analyzes the goals that may be served by various teaching methods, and describes formats that allow such methods to achieve goals of ethics courses. According to the author, a major difference between professional responsibility and other fields of law is that lawyers experience the law of professional responsibility directly through their own actions and relationships; by contrast, lawyers experience other fields (contracts, torts, etc.) vicariously through the law’s effect on the lawyer’s clients. The shift from the apprenticeship system to the “Harvard” system carried with it a shift away from the day-to-day ethics of a lawyer’s work to “the tough minded ethic of rigor upon which the Harvard method was based.” Exclusive use of either method results in deficiencies in ethical education. The goals of ethical teaching are diverse and are best achieved through diverse methods. Apprenticeship-type externships are better suited than classroom methods to teaching goals such as character, integrity, virtue, and values. Classroom methods (lecture, problem solving, case analysis) may each have certain advantages for narrow goals of ethics teaching. A comprehensive skills development (CSD) program pools the strengths and avoids the weaknesses of classroom and apprenticeship teaching. The CSD is a long-term (at least a year) simulation in which students represent clients who are role-played by the same person for the length of the program. Some of the benefits of a CSD are that issues can be controlled, students who “blow off” an assignment will suffer lower respect among their peers (their behavior has real implications), professors will not have to interfere with a student’s choices to avoid harming a real client’s interests, and a student’s drive to win will provide the self-interest necessary to flesh out ethical issues.

James E. Moliterno, *In-House Live-Client Clinical Programs: Some Ethical Issues*, 67 FORDHAM L. REV. 2377 (1999).<sup>\* †</sup> This article discusses ethical issues arising in law school and in-house clinical programs. In the first section, the author attempts to identify and examine broad questions about the ethics of clinical legal education. The second section identifies and examines applications of the professional responsibility rules to law school clinics, selecting a few situations that are either unique to law school clinical practice or that arise with “special frequency or character” in law school clinical practice (such as conflicts of interest among law students with other job

commitments, interclinic conflicts, and confidentiality applications). The article concludes by asserting that law school clinics, like law firms and government law offices, must take measures to comply with professional ethics rules so that law students will be exposed early in their careers to the significance of the legal profession's governing norms.

James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71 (1996).<sup>\* †</sup> After a brief introduction, this article explores the integration of experiential education into legal education and suggests that professional responsibility should become more experiential. Part II describes the concepts of experiential education and experiential learning. Part III traces a brief history of experiential learning and education in legal education. By drawing upon the experiential education-oriented model used in medical education, the author argues that professional responsibility courses in law school should become more experiential. Part IV contains a proposed program description for teaching professional responsibility, which includes a four-semester, broad-based but general practice-oriented simulation skills and ethics course, combined with a coordinated variety of simulations that are an integrated part of ten or more substantive law courses in a law school's curriculum, with a team-teaching component to the program. The article concludes that "creating experiential models for the education of lawyers that are about the ways in which lawyers behave and about professional ethics and professional techniques can usefully advance the teaching and learning of professional ethics law and practice."

James E. Moliterno, *On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010*, 46 J. LEGAL EDUC. 67 (1996).<sup>†</sup> The author models his article after Anthony Amsterdam's 1984 prediction of the state of clinical education in the 21st century, offering his essay as a supplement rather than a replacement for the original work, which has influenced the course of clinical structure and methodology since its publication. From the perspective of a writer in the year 2010, he describes the changes clinical education will undergo in response to its current shortcomings. Among other changes, he envisions greater assimilation of clinical teaching with substantive course subjects and ethics training. This combination of skills education with traditional teaching will give rise to redeployment of faculty, such that professors and clinicians will work in pairs and teams to implement simulations and other experiential exercises concurrently with traditional classes. Live-client clinics will diminish in importance with the improvement and increase in popularity of required externships. As a result, some clinicians will redefine their roles as externship administrators and supervisors. This shift will result in clinical experience for a greater percentage of students and a net increase in public service activity. In addition to the more cost-efficient externships, the cost of simulations and expanded faculty will be further defrayed by contributions from the practicing bar, who will endorse the realistic and effective changes in clinical education. The author predicts these and other improvements, with emphasis on the increased integration of professional responsibility teaching with skills training.

James E. Moliterno, *Practice Setting as an Organizing Theme for a Law and Ethics of Lawyering Curriculum*, 39 WM. & MARY L. REV. 393 (1998).<sup>\* †</sup> This article argues that "the most efficient and constructive organizational theme for the law and ethics of lawyering curriculum is practice setting." The article describes the components of practice-setting differentiation and maintains that such an approach allows a focus on the varying cultures of practice and the attendant differences in the law and ethics of lawyering that attach to the various practice settings. The article concludes that

creating experiential models for the education of lawyers that consider the ways lawyers behave, professional ethics, and professional techniques, “can usefully advance the teaching and learning of professional ethics law and practice.”

Marie A. Monahan, *Towards a Theory of Assimilating Law Students into the Culture of the Legal Profession*, 51 Cath. U. L. Rev. 215 (2001).\* † This article, which arises from the author’s experience in teaching legal writing and a judicial externship course, focuses on teaching legal skills within the context of skills-oriented courses. In Part II the author describes two skills-oriented courses, legal writing and judicial externship, that provide the context for the remainder of the discussion. In Part III the author develops a “unified perspective of skills teaching” that is designed to integrate skills learning within other skills courses and also across the entire curriculum. The author describes three perspectives, drawn from composition theory, on teaching legal skills: the textual perspective, which focuses on the end product, or the text; the individual perspective, which focuses on the writer, including the writer’s sense of self-expression and the actual conduct and thought pattern in which the writer engages; and the social perspective, which focuses on the context in which the text or product is generated. Part IV describes specific teaching techniques for teaching ethical dilemma resolution, time management, legal analysis, legal research, factual investigation, problem solving, and communication.

Margaret E. Montoya, *Voicing Differences*, 4 CLIN. L. REV. 147 (1997).\* † This article is a comment on three other papers in the same symposium issue of the *Clinical Law Review*. (See Jane Harris Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLIN. L. REV. 1 (1997); Kimberly E. O’Leary, *Using “Difference Analysis” to Teach Problem Solving*, 4 CLIN. L. REV. 65 (1997); and Carolyn Grose, *A Field Trip To Benetton ... And Beyond: Some Thoughts on “Outsider Narrative” in a Law School Clinic*, 4 CLIN. L. REV. 109 (1997)). In her article, the author notes that the background of the students discussed in the articles was “too often overlooked.” The author argues for the creation of a pedagogy that re-maps learning environments to make power and privilege visible and capable of being discussed within the classrooms and clinics of law schools. The author says that the diverse backgrounds of the various participants in the work of the law school – professors, students, clinical staff, clients, and other persons with whom these participants interact – must be understood in the full heterogeneity of race, ethnicity, gender, sexual identities, class, language and other pertinent characteristics with their multiple intersections. The article closes with a description of some of the clinical work at the University of New Mexico law school that sought to give voice to difference.

Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 Mich. J. Race & L. 847 (2000).† This article examines the linguistic concepts of silence and silencing in the context of legal communication and legal pedagogy. In the first part of the article, the author argues that “one’s use of silence is an aspect of communication that, like accents, is related to one’s culture and may correlate with one’s racial identity.” The second part of the article argues that “silence can be a force that disrupts the dominant discourse within the law school classroom” and creates “learning spaces where deeper dialogue from different points of view can occur.” The third part of the article focuses on the “silencing” of racial issues within legal discourse and public policy debates. The author argues that issues are systematically framed within legal discourse with a “deliberate inattention” to issues of race and

other identity characteristics as a mechanism for maintaining the ideology of White supremacy. The author calls for LatCrits and other progressive scholars of color to use silence in a counter-hegemonic manner: to hear silence in oral and written communications and inquire into its meanings; to hold silence as a means of resistance or as a way of communicating counter-majoritarian values; and to teach with and about silence in order to introduce courtesies and modes of behavior that disrupt and subvert the dominant conventions.

Wayne Moore, *Are Organizations that Provide Free Legal Services Engaged in the Unauthorized Practice of Law?*, 67 *FORDHAM L. REV.* 2397 (1999).\* † This article argues that the concept of unauthorized practice of law (UPL) is “outdated insofar as it applies to entities that provide free legal services.” The article explores three considerations emphasized in UPL cases involving corporations: (1) the role of lay persons in influencing the legal judgment of lawyers; (2) how attorneys’ fees are handled; and (3) a corporation holding itself out as practicing law. The article uses case law to illustrate that the application of UPL to public interest litigation groups is analogous to an analysis based on Rules 1.8(f), 5.4(a), and 5.4(c). Thus, it maintains that the UPL concept as it applies to free legal services programs is “redundant and unnecessary.” The article concludes that innovative methods of increasing access to legal services “should not be constrained by outdated UPL rules.”

Thomas D. Morgan, *Use of the Problem Method for Teaching Legal Ethics*, 39 *WM. & MARY L. REV.* 409 (1998).\* † This article discusses the problem method for teaching legal ethics, which the author describes as “the use of hypothetical fact situations as the centerpiece for student analysis and discussion.” The article describes the problem approach to instruction and explores the many advantages of this type of instruction. First, the author argues that the problem method requires the students to think about the law and ethics of lawyering, using whatever sources may be relevant. Also, problems help students see issues that might not be obvious at first glance or that cases may not have raised. The author maintains that such questions are fun to discuss and the answers are not easy. Hypothetical problems inevitably abstract from real life some important aspects of a lawyer’s decision-making process. The author concludes that the problem method is an excellent way to teach the law of lawyering because “it can help students see the impact of law and lawyers on social issues and help them develop a sense of what it means to be a moral person who is accountable to others.”

Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 *CLIN. L. REV.* 623 (2003).\* † This article explores the phenomenon of “stuckness” from both theoretical and practical perspectives and the authors’ endeavors to develop teaching methods to address it. As used in this article, stuckness refers to a clinical law student’s inability to perceive and pursue a resolution to a client’s ill-structured problem. The authors posit that in order to resolve complex, ill-structured problems, a student must exercise reflective judgment and that, conversely, deficiencies in the exercise of reflective judgment will give rise to stuckness. Drawing upon cognitive science theories and models of judgment, the authors have developed a synthesized model of the processes through which students develop reflective judgment in the clinical legal education setting. Although there is not a perfect fit among the theories that provide the foundation for the synthesized model, the authors believe that it provides a strategic tool that will enable clinicians to apply theory to the law school context; to identify cognitive processes that may be at work in students’ thinking, either hindering or helping the thought process; and to assess the thinking of clinic students without reducing that

assessment to static, decontextualized measures. This article describes the authors' two-phase project, in which they applied their model in the development of teaching tools to assess and facilitate the development of their students' reflective judgment abilities. The authors offer insights gleaned from their experiences and observations and conclude with a problem-solving checklist to help students move through their stuckness to higher levels of reflective thinking.

Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 ME. L. REV. 19 (1993).<sup>\*</sup> The article compares traditional Langdellian philosophy with the experiential philosophy of field placement programs. The author suggests methods of incorporating feminist pedagogy into a classroom companion to field placement as a means of improving students' educational experience. Feminist concepts of "experience sharing" and consciousness raising further the learning objectives. The author identifies the following principles of feminist teaching methodology: 1) contextual reasoning through consciousness raising and perpetual questioning and 2) interdisciplinary learning through collaboration and rejection of false dichotomies (e.g., feminist rejection of the theory-practice dichotomy). In attempting to create an environment more conducive to collaboration than competition in the classroom component of the placement program, the author made several changes. Instead of presenting an experience or topic, students were facilitators and encouraged and guided classroom discussion. Faculty members were treated and acted as peers, not professors. Decisions the class had to make were reached by consensus, not democratic majority or autocratic decision-making. The success of this classroom component is based, in part, on the complementary qualities of feminist pedagogy and clinical self-learning techniques.

Linda Morton, *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375 (1998).<sup>\*</sup> † The article discusses the use of a visual model to teach creative problem-solving skills in law school. According to the author, the teaching of problem-solving skills in law schools focuses too much on the lawyer-client relationship. Because so much of lawyering involves tasks outside of this relationship (policy work, legislative work, consultation, etc.), the author argues that lawyers should be instructed in more global problem-solving skills that draw attention to "the humanistic roles of values, interests, problem prevention, interdisciplinary analysis, creative-thinking, and self-reflection." The author suggests that, unlike traditional methods of problem solving, training in "creative problem solving" (CPS) promotes a deeper and broader analysis of potential problems. First, CPS focuses on underlying needs and interests—not merely the positions of people. Second, a focus on interests requires consideration of societal and cultural values. Third, CPS requires the exhaustive use of resources and disciplines outside of the law. Fourth, CPS also requires modes of thinking that are outside of legal analysis. Fifth, CPS places greater emphasis on problem prevention than problem resolution. Finally, CPS requires conscious self-reflection instead of mere abstract analysis. In light of these factors, the author argues that law schools should integrate CPS techniques into the traditional law school education. The author describes and gives examples of a six-phased process that can be used to construct paradigms that foster CPS skills in the classroom. The author concludes that although empirical data is lacking, teaching CPS skills can potentially result in a more humanistic and balanced practice of law.

Linda Morton & Floralynn Einesman, *The Effects of Mediation in a Juvenile Incarceration Facility: Reduction of Violence Through Transformation*, 49 CLEV. ST. L. REV. 255 (2001).<sup>\*</sup> † This article

describes the objectives and structure of a mediation program conducted by California Western School of Law at the juvenile detention facility in San Diego, California. The article briefly describes the sociological and psychological theories underlying the program design, which seeks to develop empathy and self-empowerment in the disputants. The article assesses the program by examining the number of disputes successfully resolved between summer 1998 and summer 2000, whether the facility experienced a decrease in violence during the period of the mediation program, and whether there was evidence of increased levels of empathy or sense of empowerment in the resident juveniles. The article concludes with a discussion of the perceived limitations of the program in terms of design and evaluation and proposes changes to improve them.

Linda Morton, Janet Weinstein & Mark Weinstein, *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469 (1999).\* † This article explores the difficulty of applying andragogical theory to an externship program's goals and methods. The first section of this article provides a brief background of humanism and andragogy, and clinicians' responses to the latter. The second section describes the application of andragogical theory to the authors' own program and the tensions they encountered in its application. The third section analyzes why these tensions exist. Finally, in the fourth section, the authors discuss why they use a "blend of educational theories" consistent with their humanistic approach, and why such a blend appears to work in their externship course.

Janet E. Mosher, *Legal Education: Nemesis or Ally of Social Movements?*, 35 OSGOODE HALL L.J. 613 (1997).\* This article examines whether law schools have responded to social movements and speaks to the role that clinical education plays in facilitating the responsiveness of law schools to social movements. The author argues that responsiveness to social movements should be measured by "reference to the extent to which a law school systematically produces lawyers with the skill, knowledge, and ability to work with subordinated community members." The author argues that no Canadian law school can claim to have accomplished this and further contends that "there is much in the existing practices of many progressive lawyers which is deeply troubling." The author attempts, through this article, to identify those troubles and to explore their relationship to the legal profession. The article concludes that the core of legal education has remained largely unchanged, with a focus on doctrinal analysis. The author proposes "a much more dialogic and dialectic relationship between social movement actors and legal educators," and asserts that clinical legal education might be the vehicle for such dialogues.

Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M.L. REV. 211 (1989). Seeking to illustrate the educational value of out-of-house placement programs and assist others in establishing or reshaping such a program, the article describes the California Western program. It discusses the theory behind the program, how the actions of the supervising attorney, student, and clinical faculty member affect the program's objectives, which include training students in lawyering skills, giving students greater insight into the works of the legal system, promoting in students a sense of professional responsibility, and developing students' ability to learn from experiences, and the challenges running such a program present. The first part examines the fundamental assumptions upon which California Western's program is based. The second part examines how the fulfillment of each of the program's objectives is dependant upon the student, supervising attorney, and faculty member performing their interrelated roles. It notes that one of the clinical faculty member's most

important functions is to ensure that students and supervising attorneys fulfill their respective obligations. The last part of the article discusses some of the advantages of an out-of-house placement program, which include the ability to expose students to a wider variety of placements, to allow them to interact with the community, and to serve students at a lower cost than the in-house model. It comments on the challenges that are presented in running such a program, including the possibility that students' supervisors may not focus sufficiently on students' educational needs or may serve as negative role models by exposing students to poor lawyering.

Eleanor W. Myers, *Teaching Good and Teaching Well: Integrating Values with Theory and Practice*, 47 J. LEGAL EDUC. 401 (1997).† This article describes Integrated Transactional Practice (ITP), an approach developed at Temple Law School that “merges the teaching of theory and practice, keeps upper-level students engaged by providing a program of active learning, and provides a concrete and realistic context for students to experience the moral dimension of practice.” ITP combines trusts and estates, professional responsibility, and transactional skills – interviewing, negotiating, counseling, and drafting – in an integrated two-semester sequence. The article first explores the concept behind this course. Next, the article describes the course structure, skills teaching and mentoring, and integration and evaluation of ITP. Finally, the article explores the benefits of teaching Integrated Transactional Practice. The author concludes that ITP “gives students a chance to learn the course material in a better and more realistic way, and also to appreciate who they are in their professional roles.”

Stephen Nathanson, *Legal Education: Designing the Problems to Teach Legal Problem Solving*, 34 CAL. W. L. REV. 325 (1998).\* † This article examines the challenges facing skills teachers in providing well-designed “problems,” or factual material for law students to simulate what real lawyers do. The article describes a “problem-centered” curriculum and argues that it is the “cornerstone of all formal legal education” because its ultimate purpose is to teach students how to solve problems. The article argues that if learning to solve problems is the ultimate goal of legal education and learning through problems is an essential learning method, then nothing can be more important for curriculum design than the development of good problems. The article next outlines six features of good problems. According to the author, problems must be user-friendly; realistic; relevant; consistent with objectives; similar to, but different from, each other; and challenging. The article provides an example of a problem entitled “Pat Arthurs,” which embodies all six features. Appendix A provides instructions for using the problem. The article affirms the importance of good problems, concluding that they stimulate curiosity, challenge and motivate students to work hard, and equip students for professional practice by preparing them to solve their clients' problems. The article concludes that if educators want students to make the most of their professional education, they need to become patrons and designers of good problems.

Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725 (1989).\* † The article examines how teachers critique student work in law schools. The first and second parts of the article show how Socratic dialogues can be productive and supportive in individual critiques even though they are usually ineffective and damaging in the classroom. The third part of the article explains how individual critiques can help students develop their own creativity. The fourth part describes barriers in both teachers and students that can inhibit effective

critique. And the final part examines how critiques are structured as well as some matters of technique.

Richard K. Neumann, Jr., *Donald Schön, The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLIN. L. REV. 401 (2000).<sup>\* †</sup> This article presents an overview of the work of Donald A. Schön, “one of the most oft-quoted of non-lawyers” in the clinical literature. Part II of the article summarizes Schön’s key insights into professions and professionals. Part III suggests how those insights may be used to improve professional legal education.

John Nivala, *Zen and the Art of Becoming (and Being) a Lawyer*, 15 U. PUGET SOUND L. REV. 387 (1992). The author relates Robert Pirsig’s eastern philosophy-inspired book, *Zen and the Art of Motorcycle Maintenance*, to concepts of legal theory and education. He describes Pirsig’s concentration on quality as the goal of good mechanics. Around this goal of quality, Pirsig divided people into classics or romantics, according to what aspects they valued in their work products. Classic people value objectivity, organization, analysis, and other formal attributes; romantic people value creativity, feelings, and intuition. From Pirsig’s perspective, quality is only possible when classic and romantic values complement each other. Nivala extends this scheme to lawyers and law students, highlighting legal education’s emphasis on classic training, which places reason and rules over romantic feelings and ideals. Nivala counsels that legal education should strive for a balance between the two ideologies such that lawyers learn to apply intellectual principles to real-world situations incorporating feelings and other human concerns. He argues that quality in lawyering can only be achieved if lawyers and law students are encouraged not to separate their personal and professional selves and to let practical experience inform rational analysis.

Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 NEV. L.J. 32 (2002).<sup>\* †</sup> This article discusses how law professors can integrate the skills and values identified in the MacCrate Report into doctrinal courses that have traditionally not included a lawyering skills component. Part I presents an argument in support of teaching skills and values across the legal curriculum. The article argues that integrating skills and values into doctrinal courses is beneficial for students in three ways. First, integration leads to enhanced skills and values education because the doctrinal subjects provide context for the teaching of skills and values, which allows students better opportunities for understanding and practice. Second, when taught in doctrinal courses, skills and values provide students with a better way to grasp substantive concepts, while also providing a mechanism in which misunderstandings can be diagnosed. Third, an integrated curriculum fosters holistic rather than compartmentalized thinking. Part II provides examples of how the author has used various simulation and writing exercises to incorporate skills and values into the course curricula for Trusts & Estates and Property courses. Part III offers strategies for overcoming obstacles to integrating skills and values such as using commercially produced MPT-type exercises to help with the preparation of problems. The author concludes by suggesting that the traditional model of segregating substantive law and skills and values has failed to achieve the goals set by the ABA in the MacCrate Report. Integrating skills and values with doctrinal courses provides an alternative method for meeting these standards.

Jacqueline M. Nolan-Haley, *Lawyers, Clients, and Mediation*, 73 NOTRE DAME L. REV. 1369 (1998).<sup>\* †</sup> This essay begins by discussing Professor Mary Ann Glendon's corrective for American lawyering in *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society*, which includes more civility in the practice of law, more deliberation between lawyers and clients, and a more relational understanding of autonomy. The author locates Glendon's appeal in the context of the mediation process and explores how her principles of civility and deliberation can help in developing a theory of representational mediation practice. The author explores how lawyers can respect the dignitary and participatory values of mediation and protect clients' interests at the same time. The author proposes an approach to mediation client counseling based on a deliberative process, which calls for greater attention to the principle of informed consent in mediation. The article concludes that "Glendon's critique of the adversary culture is a powerful catalyst for beginning to think about developing a theory of representational lawyering in mediation," and argues that civility and professionalism will inspire a much needed transformation in legal practice.

Jacqueline Nolan-Haley & Maria R. Volpe, *Teaching Mediation As a Lawyering Role*, 39 J. LEGAL EDUC. 571 (1989).<sup>‡</sup> This article explores the merits of teaching mediation as a nonadversarial method of conflict resolution in law schools. Part I defines mediation and explains the process of mediation. Part II explores the study of mediation in law school, and articulates course goals and methods of teaching. Part III addresses the pedagogical challenges of teaching mediation in an academic setting. The article concludes by affirming the need for additional teaching models, in light of the emergence of mediation in law school curricula, and maintains that mediation courses benefit students and professors alike.

J. Michael Norwood, *Requiring a Live Client, In-House Clinical Course: A Report on the University of New Mexico Law School Experience*, 19 N.M. L. REV. 265 (1989). The article reviews the University of New Mexico law school's clinical experience from seven vantage points: the clinical course requirement; the clinical course structure; the professional skills faculty; the goals of professional skills training; the law school's fiscal commitments; the professional skills training program's relationship to the school's academic program; and the program's future. Each point is developed from the inception of the program in the early 70's to its current configuration. The clinical requirement was implemented to address the role of the law in providing professional skills training. Prior to the clinical program, students were required to work in outside agencies. Following a change in the state's rules governing practice that allowed students to engage in the practice of law, the school implemented the program, eventually making participation in the clinic a requirement of graduation. The structure of the program continues to evolve and has included outside placement, advanced specialty clinics, and involvement of traditional faculty in the clinical courses. There has been a blurring of the lines between non-clinical and clinical faculty: tenure tracks and requirements have been equalized; there has been cross-over teaching; and traditional faculty have been utilized by the clinic as expert consultants. "The fundamental goals of the Clinic are to instill in law students the behavioral habits of competent and ethical legal problem-solvers, and to stimulate in students a strong commitment of professional responsibility for clients, community, and the institutions of law and lawyers." The trend at New Mexico's law school has been toward the fiscal, faculty, and physical integration of the clinic into the traditional curriculum.

J. Michael Norwood, *Scenes From the Continuum: Sustaining the MacCrate Report's Vision of Law School Education Into the Twenty-first Century*, 30 WAKE FOREST L. REV. 293 (1995).\* † The author provides an overview of the goals and conclusions of the MacCrate Report. Among other elements of an improved law school program, the report called for greater emphasis on performance of lawyering tasks, reflective evaluation, and the creation of a national institute to develop and maintain educational standards. The author illuminates the report's vision of improved legal education by describing his projection of how a law school might operate in the future. In his imagined description, students attend substantive law classes via the Internet, as part of a network of thousands of students from the U.S. and other countries. They apply what they learn in context classes, taught by clinicians, upper-class tutors, and non-legal experts. As the first stage in a clinical program that culminates in live-client representation in the third year, context classes require students to engage in simulations of legal problems that involve lawyers, clients, judges, legislators and administrators. Acceptance to law school is conditioned on completion of a week-long course on the legal profession to prepare students for professional development. Once enrolled, the curriculum places emphasis on multi-disciplinary problem-solving, reflection, and holistic learning. The author notes the MacCrate Report's failure to identify a strategy for implementing its recommendations, but expresses the view that collaboration among academia, the judiciary, and the practicing bar, as well as the efficient use of available technology, will guide legal education toward the MacCrate Task Force's vision.

Dr. Mark Novak & Sean M. Novak, *Clear Today, Uncertain Tomorrow: Competency and Legal Guardianship, and the Role of the Lawyer in Serving the Needs of Cognitively Impaired Clients*, 74 N.D.L. REV. 295 (1998).\* † The article examines the current understanding of competency and how it can broaden the attorney's options in seeking to serve older, cognitively-impaired clients. Part II explores what an attorney needs to know about cognitive impairment and competency to help a client and family make a decision about guardianship. Part III discusses the concept of competency in an attempt to shed some light on this complicated area. Part IV addresses mental capacity assessment of a client, and discusses how an assessment can assist the attorney in advising a client and the client's family on the best course of action. The article concludes by recognizing that more clients in the future will reach old age and more will suffer from cognitive impairment, thus leading to more clients and families seeking legal advice in deciding how to cope with these changes in mental capacity. The author argues that "an attorney will serve clients best if he or she has an understanding of capacity, its assessment, and the options available to a particular client."

J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996).\* † This article explores the use of an academic journal in an instructional setting. It seeks to explain the benefits of using such a tool and to address the challenges educators face in achieving such benefits. Part II of the article begins with a discussion of the pedagogical goals that the author seeks to achieve through journal assignments, reflective of the author's view of the important goals of legal education and the assessment of the contribution that journal assignments can make to these general objectives. Part II also discusses the ways in which journal assignments can assist in accomplishing each goal. In Part III, the author explores some of the challenges inherent in the use of journals and suggests how to respond to those challenges in ways that maximize the pedagogical benefits journals can provide, while minimizing their costs, including the teacher's time commitment. The author concludes that the total benefit to the students and the teacher far

outweighs the difficulties and costs, and the therefore encourages law teachers to make more use of this tool.

Charles J. Ogletree, Jr., *From Mandela to Mthwana: Providing Counsel to the Unrepresented Accused in South Africa*, 75 B.U. L. REV. 1 (1995).\* † In this comparative analysis of the right to counsel in South Africa and the United States, the author concentrates on the history of the rights of the accused under Apartheid and on projections for the future under the new constitutional government. The article focuses on individual cases, both South African and American, which deal directly with the right of the indigent criminal defendant to court-appointed counsel and the circumstances under which such counsel is required. The author recognizes the historical constraints on the right to counsel in South Africa and attempts to predict the Constitutional Court's interpretation of the newly enshrined right, taking into account scarce resources and the racial, social, and cultural context. He concludes by recommending that the South African legal system enhance its ability to respond to the needs of criminal defendants by defusing the traditional bar/side-bar system, allowing law school graduates and clinical students to engage in representation, and legitimizing the role of criminal defender through creation of specific public defender offices. He acknowledges that the counsel-on-demand model employed in the United States is unrealistic in light of South Africa's current political and financial circumstances, and suggests a critical cases model in the interim. This model would require representation in cases with special circumstances as determined by a consistently applied test. This model could be implemented by a government-created public defender's office, a scheme of mandatory *pro bono* by all members of the profession, or by incorporation of recent graduates, clinical students, and lay advisors into the criminal justice system.

Charles J. Ogletree, Jr., *In Memoriam: A Tribute to W. Haywood Burns and M. Shanara Gilbert: Revolutionaries in the Struggle for Justice*, 2 CLIN. L. REV. v (1996).† The author reflects on Dean Burns' and Professor Gilbert's many accomplishments as litigators, teachers, and scholars. The author also describes the ways in which Dean Burns' and Professor Gilbert's paths intersected at various points in their careers and then "for a final, tragic time" when they died in an accident in South Africa on April 2, 1996, while there for a conference of the International Association of Democratic Lawyers.

Charles J. Ogletree, Jr., *A Tribute to Gary Bellow: The Visionary Clinical Scholar*, 114 HARV. L. REV. 421 (2000).\* † This memorial tribute to Professor Bellow reviews his rich legacy as "a creative scholar, a gifted teacher, an extraordinary advocate, and a visionary in the clinical legal education movement." The author describes the profound impact that Professor Bellow had on individual clients, political causes, public interest lawyers, law teachers, and law students.

Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLIN. L. REV. 485 (1998).\* † The author explains how new law students who have come to expect professional guidance from their employers have in effect sacrificed autonomy over career growth. The article then describes ways in which clinical legal education offers opportunities for law students to gain professional direction from a more meaningful and self-directed process. Unlike the typical employer who stresses conformance in the decision-making process, clinic programs often create structures and foundations

that foster autonomous lawyering decisions by students. Instilling this autonomy creates happier students and happier lawyers, resulting in a more helpful and service-oriented profession. Because students are not trained to accept the “beaten path,” they become thoughtful, reflective, and autonomous professionals who are more likely to promote changes within the legal system. After describing methods and exercises that can foster autonomy, the author concludes that clinical legal education is in a unique position to foster lawyers’ ability to attain professional happiness.

Edward D. Ohlbaum, *Basic Instinct: Case Theory and Courtroom Performance*, 66 TEMP. L. REV. 1 (1993).<sup>\* †</sup> The article proposes a methodology for advocacy courses that embraces teaching case theory, which the author defines as “the basic, underlying and comprehensive idea that accounts for and explains all of the evidence – factual details, legal claims or defenses.” The author writes that the NITA style teaching model stresses technique, tactics and litigation style but omits the critical skill of case theory development. Appended to the article is a complete case file with a parallel commentary describing how each aspect of courtroom performance is guided by the theory of the case. The article describes a course plan that simulates trial preparation from the development of case theory through the verdict. Ten principles that should guide case theory development are included: comprehensiveness, theme, consistency, plausibility, legal structure, accountability, congeniality, simplicity, community and flexibility. “The pedagogical keys to teaching case theory development provide the best avenues to programs and courses that integrate skills training with case analysis and evidence. Simply put, while case theory serves as the conceptual foundation for trial skills, it is through trial performance that the processes of conceptual analysis and case theory development may be learned.”

T.O. Ojienda & M. Oduor, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya*, 2 INT’L J. CLIN. LEGAL EDUC. 49 (2002). The article examines the challenges faced by Moi University in incorporating clinical legal education into its curriculum in 1994, detailing the basis for the university’s program and assessing both the areas in which the university has successfully implemented its plan and those in which further improvement is required. The first part provides background on Kenya’s legal education system which, like the British system upon which it is based, divides the learning process into distinct stages in which students first acquire a theoretical understanding of the law through lecture-based courses as an undergraduate and then acquire practical skills through a one-year apprenticeship in an advocate’s chambers. The article outlines some of the advantages of incorporating clinical techniques into a curriculum: promoting continuity between theory and practice and providing free legal services to disadvantaged members of society. The second part of the article examines the structure and objectives of the curriculum instituted at Moi, which is focused on promoting social justice and providing instruction in legal doctrine, theory, and practical skills of advocacy such as fact-finding, research, and analogical reasoning. The article assesses the university’s performance in both an academic context and a legal and professional context. It finds that although the university has succeeded in designing a public interest-oriented curriculum, it needs to better publicize the availability of legal services through its legal aid clinic, grant the clinic greater autonomy regarding the solicitation of funds and the planning of routine operations, promote greater active participation in clinical programs amongst faculty, and increase the level and quality of student instruction prior to their interaction with clients.

Kimberly E. O’Leary, *Creating Partnership: Using Feminist Techniques to Enhance the Attorney-Client Relationship*, 16 *LEGAL STUD. F.* 207 (1992). This article discusses three techniques with origins in feminist jurisprudence that can be used by a lawyer to enhance the lawyer’s relationship with a client. The article first describes, generally, how traditional scholarship defines the lawyer-client relationship with particular emphasis on questions of control. Next the article describes how a lawyer can use the techniques of asking the “excluded person” question, that is, identifying implications of legal rules that appear to be neutral or objective, but are not given the specific experiences and values of the client; consciousness raising; and engaging in practical, contextual reasoning. The author illustrates the use of each technique by drawing from examples in her own practice. The article concludes with some suggestions to clinical teachers for teaching students how better to establish the attorney-client relationship and make decisions with a client.

Kimberly E. O’Leary, *Evaluating Clinical Law Teaching – Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 *N. KY. L. REV.* 491 (2002).\* † This article is written to provide non-clinical faculty with an understanding of clinical teaching’s goals and methodologies so that they can better evaluate their clinical colleagues for retention, promotion, and tenure. The article offers specific questions that non-clinical faculty might ask of clinical faculty in the process of evaluation. Part I focuses on the particular goals and objectives of the professor under review. Part II covers clinical methodology, which is summarized as a three-part process involving developing action plans, engaging in an experience, and reflection on the action plan and experience. The article points out how each of these processes might be approached differently and suggests questions that an evaluator might ask of the clinician with regard to each of the three parts of the process. Part III discusses some of the special challenges involved in evaluating clinical teaching such as temporal considerations; the variety of teaching methods available to the clinician; and the problem of the teaching, service, and scholarship paradigm in evaluating clinical teachers. The author points out that client confidentiality and student privacy concerns, which are unique to evaluation of clinical teaching, call for different evaluation strategies from those employed in traditional teacher evaluation.

Kimberly E. O’Leary, *Using “Difference Analysis” to Teach Problem-Solving*, 4 *CLIN. L. REV.* 65 (1997).\* † This article explores how law professors, especially clinical law professors, can better integrate “difference analysis” into teaching law students the central skill of problem solving. The author posits that the primary purpose of teaching students this form of “difference analysis” is to teach them to engage in routine examinations of a diverse range of viewpoints when assisting a client rather than focusing primarily on options derived from the student’s own world. Engaging in “difference analysis,” the author argues, is an important mindset early in a case, especially when differentiating the lawyer’s view of the world from the client’s. Part I of this article explores the ways in which traditional conceptions of lawyering limit the viewpoints most lawyers consider when they begin to generate a set of options to assist clients. This section shows that the common-law doctrine of standing limits the voices that are heard in legal disputes, thereby affecting the range of perspectives lawyers consider. It then demonstrates how two aspirational documents – the model rules of ethics and the MacCrate Report – fail to fully consider diverse perspectives. Part II examines a different conception of lawyering in which the lawyer engages in “difference analysis” as the foundation for formulating options to present to a client. Part III describes in some detail how a clinical course might integrate “difference analysis” into the teaching of problem solving. It

describes specific exercises, reading assignments, practice choices, and supervision techniques that integrate “difference analysis” throughout the course. Finally, Part IV discusses some of the problems “difference analysis” might pose.

Kimberly E. O’Leary, *When Context Matters: How to Choose an Appropriate Client Counseling Model*, 4 T.M. COOLEY J. PRAC. & CLINICAL L. 103 (2001).† This article provides an overview of how an attorney might determine when to employ one of several different approaches to client counseling. The author suggests three sets of variables as important: an awareness of differences in law practice settings and how certain counseling models might be more appropriate for some practice settings than others; an awareness of how specific values, desires, talents, cultural backgrounds, experiences, and attributes held by individual attorneys and individual clients affect the choice; and an awareness of how abilities related to levels of experience, age, and professional growth of law students and lawyers affect which counseling models can be used. The article begins by summarizing the literature on counseling models, briefly exploring the dominance of the client-centered counseling model, the critiques of that model, and the development of alternative models. The next section explores each of the sets of variables describing how the variables affect which counseling models should or should not be used. The final sections of the article address the implications of a context-based approach on the teaching of client counseling giving specific examples for weaving context-based concepts into a counseling course. Appendices include a summary of characteristics of client counseling models, a sample syllabus for an interviewing and counseling course, and a simulation exercise planning and self-evaluation form.

Joan L. O’Sullivan, Susan P. Leviton, Deborah J. Weimer, Stanley S. Herr, Douglas L. Colbert, Jerome E. Deise, Andrew P. Reese & Michael A. Millemann, *Ethical Decision Making and Ethics Instruction in Clinical Law Practice*, 3 CLIN. L. REV. 109 (1996).\* † This article utilizes case studies to consider how clinical teachers and students make ethical decisions and how ethics are taught. The article raises questions pertaining to how ethical decisions should be made and taught in the context of clinical legal education. The authors argue that “clinical supervisors should use a multi-perspective approach (‘pluralism’), working dialectically to produce the best ethical answer.” They present case studies to illustrate and elaborate upon this concept as used in the context of a supervisor-student team. The authors identify some factors that bear upon the question of when a clinical supervisor should decide ethical issues arising in clinical legal education and when judgment should be deferred to the student. The authors explore their theses with the help of experiences from their clinical practice, which offers a context for their analysis, and ultimately conclude that “the tensions that the competing perspectives in the pluralistic process produce are an important source of ethical development.”

Gary Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction*, 1 CLIN. L. REV. 127 (1994).† The author reaffirms a view, which he expressed in a much earlier publication, that clinical scholarship should not follow the model of traditional law review-type theoretical research and writing. He suggests that this type of scholarship is inconsistent with the goals and mission of clinical legal education because it detracts clinicians’ attention from their primary roles as collaborative case supervisors. In the alternative, he suggests that clinical instructors experiment with collaborative scholarship with students, engaging students as co-authors to foster their understanding of the theoretical foundations of lawyering. In addition, he encourages clinicians to

publish reports on current clinic-based systemic law reform efforts, so that the entire clinical education community is aware of successful approaches in action. Finally, he urges that students' "reflective" pieces be considered for publication under the category of clinical scholarship. He suggests that journals such as the *Clinical Law Review* should play a role in reconceptualizing clinical scholarship in this way.

Calvin G. C. Pang, *Eyeing the Circle: Finding a Place for Spirituality in Law School Clinic*, 35 WILLAMETTE L. REV. 241 (1999).\* † This article advocates that clinical teachers address the place that questions of spirituality might have in legal education. The article argues that 1) the work of lawyering and maintaining a sense of self is inevitably difficult and requires considering how to develop the "spiritual muscle" to deal with the tension; 2) to improve the image of the profession, lawyers need to "become pilgrims on a higher journey"; and 3) by ignoring our spiritual dimension, we deprive ourselves of an essential element of our beings. The first part of the article is an attempt to provide a working definition of the term "spirituality." The second part details why clinical teachers should embrace spirituality in clinical legal education. The article concludes by suggesting that clinical teachers incorporate spirituality into the vocabulary of their professional and teaching lives, and it introduces five journaling exercises under the rubric of "quest" journaling as a step toward engaging with students on questions of spirituality in their learning and practice of law.

William Wesley Patton, *Externship Site Inspections: Fitting Well-Rounded Programs into the Four Corners of the ABA Guidelines*, 3 CLIN. L. REV. 471 (1997).\* † This essay explores the ABA's approach toward unifying law school externship programs and the methods employed during site inspections to insure uniformity. The empirical base was developed through a 1995 survey sent to the 60 ABA law schools that had been inspected. The essay examines the survey results and addresses the discriminatory application of the standards among the top- and bottom-tier law schools. The essay further explores the law schools' responses to the ABA Inspection Report. The article recognizes the need for more surveys, and argues that externship programs should continue to be monitored "so that our members can better predict what the ABA concerns will be, so that we can more intelligently seek modification of the standards, and so that we can be assured that inspections are not aberrant and that particular programs are not singled out for inconsistent treatment."

William W. Patton, *Law Schools' Duty to Train Children's Advocates: Blueprint for an Inexpensive Experientially Based Juvenile Justice Course*, 45 JUV. & FAM. CT. J. 3 (1994). Juvenile justice has been neglected by the courts, as evidenced by the lower status afforded juvenile court judges in the legal community, and the law schools, as evidenced by the dearth of juvenile justice classes offered in law schools. Given the growing complexity of litigation in the field, the article argues that law schools have an ethical obligation to offer students the opportunity to specialize in juvenile justice and describes an inexpensive experiential juvenile justice course to illustrate how schools can expand their juvenile justice course offerings. The course offered by the author is non-client based, but still focused on engaging students in ongoing juvenile law cases through assignments such as drafting requests to California's Appellate Courts to publish opinions or in support or opposition to granting petition for review in the state Supreme Court. It is thus a viable means of expanding a school's focus on juvenile justice law without requiring an exorbitant investment of resources.

Michael L. Perlin, “*You Have Discussed Lepers and Crooks*”: *Sanism in Clinical Teaching*, 9 CLIN. L. REV. 683 (2003).\* † There has been virtually no attention paid to the role of sanism in the clinical setting. Sanism is an irrational prejudice of the same quality and character of other irrational prejudices that cause and are reflected in prevailing social attitudes of racism, sexism, homophobia, and ethnic bigotry. It permeates all aspects of mental disability law, and affects all participants in the mental disability law system: fact finders, counsel, expert and lay witnesses. Sanist myths exert great power over lawyers who represent persons with mental disabilities. This is especially troubling in the clinical setting, in which students are exposed for the first time to the skills that go to the heart of the lawyering process: interviewing, investigating, counseling, and negotiating. The difficulties can be exacerbated when the clinical teacher – either overtly or covertly – expresses sanist thoughts or reifies sanist myths. This article explores the meaning of sanism, the impact of sanism on the representation of persons with mental disabilities, the special problems faced when sanism infects the clinical teaching process, and some tentative solutions to the problem.

Don Peters, *Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling*, 48 FLA. L. REV. 875 (1996).\* † This article outlines a way for lawyers to help law schools achieve a better balance between professional skills learning and traditional methods of legal instruction. It recommends that lawyers work closely with faculty members who teach large-enrollment classes and assist smaller groups of students to develop and improve their legal skills through practical simulations. This article argues that lawyers willing to map, model, and critique can help law schools extend learning opportunities in simulation-based interviewing, counseling, and negotiation skills courses, the most neglected areas of the professional skills curriculum. The article concludes that reflective practice of these roles “supplies important demonstrations while simultaneously helping students develop essential negotiation skills.”

Don Peters & Martha M. Peters, *Maybe That’s Why I Do That: Psychological Type Theory, The Meyers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 N.Y.L. SCH. L. REV. 169 (1990).† The article begins with a description of legal interviewing and current methods of teaching this skill. The two primary goals of legal interviewing, building and maintaining rapport while obtaining complete and accurate information, are rarely attained. Learning effective legal interviewing is complicated on its own, and is made even more difficult by the failure of current methods for teaching legal interviewing to take into account the varieties of clients, situations, and students’ abilities. The article describes a study conducted at University of Florida Law School’s Virgil Hawkins Civil Clinic that compared psychological type preferences with interviewing strategies. The type preferences were measured by the Meyers-Briggs Type Indicator, which measures type preferences along four indexes: sensing-intuition index, which measures processes of perception; thinking-feeling index, which measures the judgment processes; introversion-extroversion index; and the judgment-perception index, which measures attitudes of meeting the external world. The primary goal of the study was to facilitate development of collaborative working skills; the secondary goal was to enhance interviewing and negotiation skills. The study covered twenty-three students conducting one interview each. A small test group of students participated in a pre-test interview that was compared to the later interviews and showed improvement in interviewing skills after participating in the program. The two aspects of legal interviewing that were measured were question formulation and listening responses. The article includes detailed descriptions of the students’ type preferences and analyzes the interviewing skills,

showing the relation between type preferences and the ability to engage in client-centered interviewing.

Patricia Pierce & Kathleen Ridolfi, *The Santa Clara Experiment: New Fee-Generating Model for Clinical Legal Education*, 3 CLIN. L. REV. 439 (1997).\* † This article reports on the creation and operation, between January 1995 and May 1996, of an experimental fee-generating clinic at Santa Clara University Law School. The authors report that the results of the experiment exceeded their expectations and “offer an encouraging new model for a clinical program that can generate substantial fees without compromising the goals and values of clinical educators.” The authors identify their pedagogical goals and describe the components of the clinic, which involved taking both employment discrimination cases and cases involving criminal misdemeanors. The article also responds to common criticisms of fee-generating clinics.

Marilyn L. Pilkington, *Parkdale Community Legal Services: An Investment in Legal Education*, 35 OSGOODE HALL L.J. 419 (1997).\* In this brief text, the author remarks on the endeavors and success of the Parkdale Community Legal Services and the poverty law program of Osgoode Hall Law School. The author describes the evolution of the 25-year-old clinic and expresses gratitude and admiration for the clinicians, professors, and students who helped establish the clinic. The author commends the commitment of Osgoode Hall Law School to exploring law as an instrument of social change and social justice through its poverty law program. The author concludes by highlighting the contributions that Parkdale and Osgoode Hall have made to the community.

Kamina A. Pinder, *Street Law: Twenty-Five Years and Counting*, 27 J. L. & EDUC. 211 (1998).\* † This article explores the Street Law Clinic at Georgetown University Law Center (GULC), which allows law students to teach a year-long Law Related Education course to high school students. This article uses the GULC Street Law Clinic as a model of the program because it has developed an extensive curriculum and provides substantial supervision to its students. Part I of the article describes the history of the program and its clinical structure and requirements. Part II uses the GULC model to illustrate the benefits of Law Related Education to high school students. In Part III, the article explores the many benefits to law students as future advocates. The author argues that the GULC Street Law Clinic embraces learner-centered pedagogy, and that this learner-centered model of education enables its participants to use law as a tool to promote discourse and intellectual inquiry. The author concludes that many of the requirements and philosophies of the program sharpen the skills necessary to become a conscientious lawyer and effective advocate. Moreover, the Street Law Program provides opportunities for law students, lawyers, and judges to connect with the community in a profoundly meaningful way.

Fernando M. Pinguelo, *The Struggle Between Legal Theory and Practice: One Law Student's Effort to Maintain the "Proper" Balance*, 1998 BYU L. REV. 173.\* † Drawing on personal experience, the author provides an example of the types of experiences that law school clinics can offer students. The article spans the author's three years of law school and his search for a more fulfilling education. The author describes how his clinic experience at Boston College Law School allowed him to “confront the anxieties associated with being a new attorney in a manner that fostered a learning from those anxieties through reflective means.” In showing how this was accomplished, the author first describes the goals, objectives, and history of the program in which he enrolled. The article then

goes on to describe the “thoughts, expectations, insecurities, questions, tensions, and triumphs of a student undergoing an experiential learning process,” in the hope that such an exposition will illustrate the potential value of clinical experiences.

Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000).\* † The author urges a closer look at the ideas of proponents of a more egalitarian collaboration between lawyers, lower-income clients, and community activists and institutions. He argues that progressive critics of this literature have prematurely dismissed its potential. Part I of the article provides an overview of the fundamentals of collaborative lawyering theory that emerged in the late 1980s and early 1990s, the theoretical antecedents of this literature, and the central criticisms of this approach. These criticisms view this approach to lawyering as excessively focused on the one-on-one attorney-client relationship and consequently ill-equipped to effect structural or institutional change. Seeking to rectify what he perceives as a “monolithic” regard for the initial body of collaborative lawyering literature, in Part II of the article the author attempts to differentiate the work of each of the three major theorists of collaborative lawyering and to assess the applicability of the critiques to each. The author concludes that the critiques are only fairly applied to one of the proponents. Part III returns to the “packing” of the East Palo Rent Board that introduced the article. The author attempts to show how implementing collaborative strategies situates disputes in their full social, institutional, and political context and helps avoid the inadvertent “transformation” and de-politicizing of disputes by forcing them into the narrower confines of a legal case. He argues that by involving clients in the implementation of multidimensional persuasive strategies, collaborative lawyering not only changes the “interior” dynamics of the lawyer-client interaction but also portends a transformed set of external relationships for both lawyer and client with their social and political worlds.

John D. Proffitt, *Professionalism and Internship*, RES GESTAE, Jan. 1996, at 5.† This essay posits that the Inns of Court program may help to cure some of the problems concerning civility in the legal profession. The author describes the structure and functions of an Inn of Court and explores the benefits of such an organization to both new lawyers and third-year law students, who receive valuable insights into the legal and judicial process from more senior Inn members. The author concludes by extending support for Inns of Court and advises readers how to obtain more information about the organization.

William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463 (1995).\* † This article offers an overview of the history and utility of clinical legal education and explores some of the issues and decisions facing new clinical law professors. The author draws from his own experience as an educator and from the scholarship of other clinical teachers to provide a range of approaches to such challenges as controlling the extent of student autonomy, facilitating self-directed learning, and defining student and supervisor roles. The author addresses the importance of cultivating strong student-teacher relationships and maintaining high professional ethics standards, while also encouraging students to take control of their own educational experiences. The article concludes with some tips on soliciting criticism and feedback from students to ensure that both student attorneys and supervisors are reflecting and self-critiquing throughout the clinical education process.

E. Michelle Rabouin, *Walking the Talk: Transforming Law Students into Ethical Transactional Lawyers*, 9 DEPAUL BUS. L.J. 1 (1996).\* † This article explores the need for incorporation of ethical values into the law school curriculum and argues that a single professional responsibility class is insufficient. The author argues that producing ethical practitioners requires pervasive ethical training, and she emphasizes the need for such training in business law classes. In Part I, the author suggests that there is a universal, teachable dimension of ethical reasoning that can be taught successfully to law students. Part II describes a method of cognitive development called “conscious conflict,” which, the author argues, is vital to ethical development toward action. After contrasting the suggested pedagogical tool of conscious conflict with more traditional approaches, Part III examines the proposed pedagogical approach of “conscious conflict” in a business-law context. The author contends that this model of analytical training is adaptable to all law school courses and concludes that the conscious conflict analytical framework would increase ethical development and decision-making abilities, and therefore the ethical actions, of future transactional practitioners.

Robert Rader, *Confessions of Guilt: A Clinic Student’s Reflections on Representing Indigent Criminal Defendants*, 1 CLIN. L. REV. 299 (1994).† The author, a former student in Harvard University Law School’s criminal defense clinic, describes how he tried, and “failed,” to become a criminal defense lawyer. Drawing on his own experiences representing indigent criminal defendants in the clinic – including his contemporaneous journal entries – the author describes the anxiety he faced when confronted by a world he couldn’t control despite previous feelings of personal mastery typical of law students. Relating to clients of different racial and socioeconomic backgrounds also was a challenge. The greatest obstacle, however, was the overwhelming sense of responsibility the author felt to help the “disadvantaged” beyond any practical means at his disposal. In light of the many difficulties facing indigent criminal defendants outside of their immediate legal problems, the author’s inability to fix things created a cycle of guilt, frustration and resentment directed at his clients. Contrary to what he describes as received clinical pedagogy, the author suggests that some students may “care too much for their clients,” which gets in the way of helping them. Although the author is loathe to recommend a detached attitude toward fellow human beings, he maintains that some level of detachment is necessary for effective lawyering and the psychological well-being of the lawyer.

Joseph W. Rand, *Understanding Why Good Lawyers Go Bad: Using Case Studies in Teaching Cognitive Bias in Legal Decision-Making*, 9 CLIN. L. REV. 731 (2003).\* † This article examines the impact of characteristic weaknesses of human reasoning on legal decision making and ways to help students recognize and protect themselves against these cognitive limitations. The article reviews and explains well-established empirical findings in cognitive psychology on how cognitive heuristics can undermine rational judgment. Like many aspects of effective lawyering, the impact of heuristics is best learned in the context of actual, or effectively imagined, lawyering experiences. The article demonstrates the value of case studies similar to those employed in management and public policy schools, to provide this context, and argues for the inclusion of such legal decision-making case studies in clinical and related courses to supplement existing clinical education on professional judgment. The article concludes by presenting a model case study fashioned on the Woburn, Massachusetts environmental lawsuit recounted in Jonathan Harr’s, *A CIVIL ACTION*, a book whose vivid contextual portrayal illuminates the potential cognitive biases implicated in the decisions by

the plaintiffs' attorneys not to settle the case before trial, and so underlines the importance, and potential, of addressing these issues in legal education.

Allen Redlich, *Perceptions of a Clinical Program*, 44 S. CAL. L. REV. 574 (1971).‡ The author reflects on clinical education from his perspective as Director of the University of Wisconsin Law School Clinical Program during its first years of operation. He describes the structure and goals of Wisconsin's early clinical offerings, which placed students in legal aid projects as interns under attorney and faculty supervision. Despite positive feedback from students, reproduced in part as an appendix to his article, Redlich reports dissatisfaction with clinical programs from an educator's standpoint. He argues that the engineers of clinical education are unable to formulate productive program goals or to devise an efficient system of evaluating student performance. Redlich claims that the goals that frequently are attributed to clinical education – such as skills acquisition, professional responsibility training, and service to indigent clients – might be better achieved by other means. He advocates for less strict adherence to established clinical models in favor of first selecting the specific educational goals to be achieved and then tailoring teaching methods to effect them. He also suggests organized evaluation of the empirical success of clinical learning in order to justify the expense of programs like Wisconsin's. He offers some suggestions for how schools can integrate the practice and education elements of clinical programs in the future. He also offers some simple tests for checking the effectiveness of clinical education as compared to traditional teaching methods.

Norman Redlich, *The Moral Value of Clinical Legal Education: A Reply*, 33 J. LEGAL EDUC. 613 (1983).‡ This article responds to Robert Condlin's earlier critique of clinical education as a vehicle for teaching professional responsibility, in which Condlin characterized clinicians as employing "persuasion mode," or domineering and manipulative tactics when interacting with students, thus hindering their professional development. The author faults Condlin's analysis for overemphasizing the impact of clinician "persuasion" on students' experiences with professional responsibility issues in clinical settings. He argues instead that the "situation" in which clinical students find themselves exerts a more powerful influence on moral development than a single supervisor's teaching. He points out that clinic students learn ethics by encountering decisions that have real-world effects, as opposed to traditional students who learn professional responsibility by discussing hypotheticals in law school classrooms. He argues that traditional classrooms are as susceptible to "persuasion mode" teacher dominance, if not more so, than clinics because the traditional academic has control of all factors affecting the students' experiences. Clinics present practical conflicts and moral dilemmas that provide students with opportunities for moral growth, with or without the influence of supervisors.

Paul D. Reingold, *Harry Edwards' Nostalgia*, 91 MICH. L. REV. 1998 (1993).\* † The author responds to an article by Judge Harry Edwards about the growing disjunction between the legal academy and the practicing bar. Reingold describes the judge's feelings about the denigration of practice among academics, the lack of intellectual diversity on the faculty, and the loss of practical legal scholarship that historically provided useful commentary for lawyers and judges. Observing that Edwards links these deficiencies in legal education to the shift from doctrine to theory, Reingold says that Edwards' ideal of legal education overstates the value of doctrine without giving theory or

clinics enough credit. He argues that clinical legal education has the potential to cure the theory/practice imbalance without turning back the clock.

Paul D. Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLIN. L. REV. 545 (1996).<sup>\* †</sup> The article presents a central dilemma confronted by law school clinics: whether to accept “hard” cases – the non-routine, atypical litigation – as part of their curriculum. The author explains that “hard” cases pose the risk of taxing the program’s resources; may be controversial; are likely to outlive the students assigned to them; and present legal issues of a scope, scale, character, or complexity not ordinarily handled by such a program. The author next outlines arguments against the “hard” case. Engaging in an “easy” case allows a student to see its resolution from beginning to end, creates less likelihood of serious error or malpractice, and allows law school clinics to handle a higher volume of cases, thereby providing a more direct and measurable service to the community. Moreover, the author suggests that the higher the volume of cases a clinic handles, the higher the likelihood of student exposure to ethical issues. Finally, in support of “easy” cases, the author argues that such cases are more consistent with the academic calendar, whereas “hard” cases cannot easily be resolved in this period of time, nor easily transferred. The author, however, advances arguments in defense of using “hard” cases in clinics, based on his personal experience working at the Michigan Clinical Law Program in the early 1980s. The author explains how the clinic’s use of “easy” cases often resulted in feedback from students claiming the experience was routine and dull. He also argues that easy cases often featured weak, if any, opposition. The article describes the transformation of the clinic to include “hard” cases, and presents two case studies to illustrate the virtues of such cases. Ultimately, the author concludes that hard cases provide a provocative, stimulating experience for clinical students.

*Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992).<sup>†</sup> In 1986 the Association of American Law Schools (AALS) Section on Clinical Legal Education created the Committee on the Future of the In-House Clinic. The Committee was charged with examining a broad range of issues related to live-client, in-house clinical education. The Committee report was completed in August of 1990, and revised slightly in October 1991. As revised, the report was adopted by the Section as a whole. The Committee chose to divide into four subcommittees. The Pedagogical Goals subcommittee identified several major goals common among clinics including: providing professional skills instruction, mastering unstructured situations, understanding the legal system and how it relates to the poor, and fostering an integrated, unique and collaborative learning experience. The Data Collection subcommittee surveyed law schools across the country, and examined trends that these statistics revealed concerning clinical programs. The Working Conditions for Clinical Teachers subcommittee concluded that improved status and working conditions for clinicians would help clinical legal education as a whole. Lastly, the Committee set out seven flexible Guidelines for Assessing Clinical Programs, in an effort to provide a road map for clinics attempting self-evaluation. Each subcommittee has its own distinct section in the report, in which findings and observations are detailed. The report is a thorough exploration of the issues that are of major importance to the clinical education community.

Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415 (1999).<sup>\* †</sup> This article examines the relationship between legal education and *pro bono* services. Part I discusses the rationale for *pro bono* involvement by lawyers. Part II

explores the origins of *pro bono* commitments. Part III offers a rationale for law school *pro bono* programs, and Part IV proposes a structure for law school *pro bono* programs. The article concludes by advocating the adoption of *pro bono* programs and by suggesting strategies for increasing their effectiveness.

Dean Hill Rivkin, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*, 64 TENN. L. REV. 1065 (1997).\* † The author reflects on the roles that lawyers historically have played in social reform litigation. He suggests that there no longer is a sense in which the term “reform lawyer” has a cohesive meaning. The author believes that “there are a set of interlocking themes about lawyering for reform that remain in deep tension, but whose resolution is central if lawyers who care about social change are to transform themselves to adapt to the complex needs of clients, communities, and democracy.” The author identifies these themes as first, “the heightened struggle over our relationships with our clients,” by which he means the right of the lawyer to speak for “those who have not spoken for themselves”; second, the disintegration of the paradigms of reform that activist lawyers viewed as enduring; and finally, the growing feeling that the reform lawyering of the past, a type of guerrilla warfare, should be replaced by an ethic of connections that focuses on building alliances and creating alternative institutions. He urges that “what is needed today most of all . . . is talk, talk, talk . . . among lawyers, clients, and others with an interest in making sense of our past efforts in reform litigation and charting new transformative strategies.” The author then describes a project that seeks to begin such a discussion around issues in community environmental litigation. The goal of the project is to produce materials that better explicate the “diverse roles that lawyers can and do play in community reform litigation.”

Diana A. Romano, *The Legal Advocate and the Questionably Competent Client in the Context of a Poverty Law Clinic*, 35 OSGOOD HALL L.J. 737 (1997).\* This article maintains that advocates for the poor must take into account the extreme vulnerability of their clients, and that such a challenge is heightened when the advocate suspects that a client may lack the capacity to provide appropriate instructions. The article considers how competency should be defined and the options available in situations of client incompetency is determined. Part II examines the definition of advocacy. Part III explores the definition of incompetency. In Part IV of the article, the role of the legal advocate in obtaining medical treatment for the client is addressed. Finally, in Part V, models of advocacy are discussed. Ultimately, the article concludes that advocacy must include personal empowerment as well as legal representation.

Amy D. Ronner, *Some In-House Appellate Litigation Clinic’s Lessons in Professional Responsibility: Musical Stories of Candor and the Sandbag*, 45 AM. U. L. REV. 859 (1996).\* † This article aims to show how an in-house appellate clinic synthesizes theory and practice while it trains students in appellate advocacy and professional responsibility. The author describes her in-house appellate clinic and summarizes five of its objectives. Part I attempts to demonstrate how such a clinic can unite theory and practice. In Part II, the author focuses on two of her appellate clinic’s lessons in professional responsibility. She demonstrates how professional responsibility issues become entangled with the process of appellate work. In the conclusion, the author revisits Walter Pater’s analysis of artistic achievement and attempts to further define an affinity between in-house appellate clinical education and music.

Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA L. REV. 95 (1987).‡ The author identifies the need for practical skills training in addition to traditional substantive legal education. His roster of the goals of law school includes skills development, professional role formation, and experiential learning. He defines lawyering skills to encompass interviewing, counseling, fact investigation, analysis, research, theory formation, negotiation, and other important elements of practice. Rose praises clinical educators for incorporating these goals into simulations, in-house representation, and externships. In particular, he notes the capacity of externships to expose more students to experiential learning than any other clinical teaching method. Rose argues that by placing students in real work settings outside the law school, under the supervision of practicing members of the bar, law schools can offer clinical experience to a greater percentage of students at lower cost than they could if they operated in-house clinics. He recognizes the need for structure in securing adequate supervision, evaluation, theory education, range of activities, and reflection, but advocates for collaborative effort among legal educators and practitioners to achieve these goals. Ultimately, Rose believes such cooperation would result in law school graduates who are better prepared to accept the challenges of modern practice.

Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense*, 44 J. LEGAL EDUC. 548 (1994).† In this critique, the author assesses the MacCrate Report recommendations for improving practice skills- and values-oriented legal education. He applauds the report's authors for recognizing that professional development grows along a continuum that begins before law school and continues throughout a lawyer's career. He acknowledges that the report may correctly identify a need for greater emphasis on lawyering skills and values training, but he disagrees with the list of skills identified in the report and the authors' concentration on the role of law schools in implementing the necessary changes. He argues that the report's Fundamental Statement of Lawyering Skills and Values (SSV) is imprecise and problematic because it fails to rank the skills in order of importance or universal applicability and it envisions an unrealistic objective for today's professional culture. In the alternative, he suggests a limited subset of important skills which would form the basis for specialization without requiring lawyers to learn skills they will not need in practice. Rose challenges the ABA's assumption that the legal education system is equipped to adapt to the changes the MacCrate Report recommends. He argues that the ABA failed to recognize the potential for a more focused post-law school transitional or continuing education system which would relieve questionably adequate law schools of this new burden. While he recognizes the importance of issues raised by the report, he believes it unnecessarily narrows the focus of reform and glosses over the resource allocation issues that would arise were the recommendations implemented on a large scale.

Margaret M. Russell, *Entering Great America: Reflections on Race and the Convergence of Progressive Legal Theory and Practice*, 43 HASTINGS L.J. 749 (1992).\* † The author views the use of appearance-based "gang profiles" – criteria used to screen young, minority entrants to a California amusement park – from the perspective of critical race theory. She defines race theory as critiquing the idea that law provides a forum for challenging white supremacy and as exposing the elements of law and legal practice that perpetuate and legitimate racial subordination. She traces the historical and cultural roots of this body of scholarship and describes the approaches it takes to deconstructing the existing legal policies and principles opposed to it. After describing specific examples of

abusive, unconstitutional applications of gang profiles by amusement park security officers, she explores the inherently racist motivations behind their creation and implementation. To illustrate her point, she borrows another scholar's technique of "race-switching" – inverting the racial backgrounds of the teens and officers involved in the accounts-- to check for culturally subjective interpretations of supposedly objectively threatening situations. She also highlights the ambiguous criteria assigned to the gang profiles which allow security officers to justify instinctive racist behavior. Russell concludes by advocating that lawyers advance critical race theory when organizing communities to combat gang violence by exposing institutional racism, emphasizing individual narratives, and developing scholarship that explicitly applies critical race theory to legal problem-solving.

Howard R. Sacks, *Student Fieldwork as a Technique in Educating Students in Professional Responsibility*, 20 J. LEGAL EDUC. 291 (1968).‡ This article evaluates the success of fieldwork programs funded by the Ford Foundation in 1959 and 1965 and administered by the National Council on Legal Clinics (NCLC) and the Council on Education in Professional Responsibility (COEPR). The programs were designed to educate students in professional ethics, public responsibility, and client counseling, all of which are defined as elements of professional responsibility. The first part describes the basic theory behind using fieldwork programs to teach professional responsibility, noting that they can fuel greater interest in students regarding issues such as ethics and injustice by placing them in real life settings, produce data otherwise unavailable in printed form, and more effectively teach some skills, such as interviewing clients. The article emphasizes the importance of a strong classroom component to provide context for the problems and situations encountered by students. The second part outlines several of the programs administered by the NCLC. Although the programs generally were not successful in making students more humanitarian or less cynical, they often did succeed in arousing greater interest in particular social problems, changing students' attitudes regarding other disciplines, improving client interviewing and counseling skills, and, to a lesser extent, teaching legal ethics. The article discusses some principles gleaned from examination of regular school year and summer field placement programs that might prove useful to legal educators or foundations, specifically noting that funding and faculty recruitment for field placement programs are a constant challenge, especially for summer programs.

Jacqueline St. Joan, *Building Bridges, Building Walls: Collaboration Between Lawyers and Social Workers in a Domestic Violence Clinic and Issues of Client Confidentiality*, 7 CLIN. L. REV. (2001).\*  
† This article is the first in a series that examines the experience and impact of lawyer, social worker and researcher collaboration on clients, students, and cases in an interdisciplinary domestic violence clinic and the ethical challenges that such a design creates. After describing the collaborative structure of this particular clinic design, the author summarizes the reports of students and faculty about interdisciplinary collaboration, and makes suggestions for improvement in collaborative service delivery. The article reviews the current literature on interdisciplinary legal collaboration, evaluates alternative solutions to confidentiality dilemmas, and proposes the use of a confidentiality wall as a means of reconciling the competing professional ethics. The article provides a discussion of how to construct such a wall and how to provide interdisciplinary clinical training to teach students to work together and to maintain the integrity of the confidentiality wall. Based on one-on-one, structured interviews with students and faculty, the author reports the effectiveness of the confidentiality wall from various viewpoints: those of lawyers inside the wall, those of social

workers outside the wall, and those of a hypothetical child advocate considering the impact of the confidentiality wall on children. The article also describes some of the details of client, student, and faculty experiences of collaboration. Finally, the article concludes with several proposals to fix gaps the author and her colleagues identified in the confidentiality wall and to remedy the conflicts of confidentiality.

Jacqueline St. Joan & Nancy Ehrenreich, *Putting Theory into Practice: A Battered Women's Clemency Clinic*, 8 CLIN. L. REV. 171 (2001).\* † This article describes a clinical course in which law students petitioned Colorado's governor for clemency on behalf of three women who had been convicted of homicide in the deaths of their batterers. It also describes the broader clemency project that evolved out of that course, in which volunteer attorneys submitted five additional clemency cases. Intended primarily for use by individuals who are considering starting a battered women's clemency project or similar undertaking, the article canvasses the pedagogical, political, media relations, and strategic questions that arose during this particular project. Thus, it recounts how decisions were made as to which women to represent, what arguments to use on their behalf, and how to structure the course. It also describes inadequacies in Colorado's (fairly typical) clemency rules as they affect battered women, and presents rule reform proposals aimed at addressing those shortcomings. Finally, the article explores the authors' experience in grappling with some of the thornier challenges faced by advocates of women who defend themselves against abuse – such as how to counteract media demonizing of their clients; how to articulate clemency arguments for women who had submitted evidence of battering at trial or who were convicted as co-defendants; how to deal with clients who might not be telling the truth; and how to respond to prosecutorial use of domestic violence as evidence of a motive for murder.

Jacqueline St. Joan & Stacy Salomonsen-Sautel, *The Clinic as Laboratory: Lessons from the First Year of Conducting Social Research in an Interdisciplinary Domestic Violence Clinic*, 47 LOY. L. REV. 317 (2001).\* This article describes the interdisciplinary clinical model used in the first year of the domestic violence clinic in the Student Law Office at the University of Denver College of Law. Part I details the quasi-experimental design, research objectives, and the various instruments and methodologies used to measure particular outcomes. Part II discusses some of the modifications made to the evaluation, the challenges faced in protecting the validity of the evaluation results, and the difficulties discovered in obtaining an adequate sample size to conduct comparative statistical analyses. Part III reflects on the process of conducting research in a law school clinic, including conflicts with pedagogical, ethical, and practical dimensions of the clinic, and the unexpected benefits to legal practice that emerged from the research process itself.

Peter W. Salsich, Jr., *Interdisciplinary Study in a Clinical Setting*, 44 ST. LOUIS U. L.J. 949 (2000).\* † This essay is a tribute to Professor Eileen Searls, whose “approach to learning is an excellent example of the Jesuit approach to education that combines the heuristic methodology (identifying what remains to be discovered or proved) with the concept of praxis (learning by doing) in order to be able to serve others.” The author presents the history of an interdisciplinary program at the Washington University School of Architecture and the Saint Louis University School of Law. Created eight years ago as an experiment to generate feasible solutions to a housing crisis for low-income families, this program is an example of the heuristic/praxis teaching approach. The author describes the structure of the program in which architecture, law, public policy, social work, and

business students work together on real issues facing the local communities. The author addresses various problems associated with the program, such as the difficulty in collaboration and discussion among students from various disciplines, the lack of certain prerequisites essential for the successful completion of work, and non-uniform grading systems for students from different disciplines. In order to fully institutionalize the program, the author suggests expanding it to two semesters, where the first semester would be spent in the solicitation of community proposals and their preparation, which would then be implemented in the second semester.

Austin Sarat, “...*The Law Is All Over*”: *Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 *YALE J. L. & HUMAN.* 343 (1990). Based on informal interviews with individuals in legal services waiting rooms and observed interactions between legal services attorneys and their welfare-recipient clients, the author offers his perspective on the attitudes of public assistance recipients about the impact of law on their lives. He identifies a distinct legal consciousness stemming from awareness of bureaucratic domination and dependency which characterizes people receiving public assistance. Inherent in this consciousness is the contradictory concept of law as powerful enough to change their lives and the function of the welfare system, but at the same time inextricable from that same flawed system. He describes the resistance reaction of many in these circumstances, who distrust law and lawyers but have no other recourse to redress their complaints with caseworkers, agencies, and other instruments of bureaucratic domination. He describes their perception of the conflict between their felt needs and the rules and legal formalities which define valid cases. He illustrates this contrast with vivid examples from his research.

Suellyn Scarnecchia, *The Role of Clinical Programs in Legal Education*, 77 *MICH. B. J.* 674 (1998).\* † This article praises the role that clinics play in legal education and the development of professional identity. The article provides a description of University of Michigan clinical offerings, and examines the role that clinicians play and the goals of the programs, which include preparing students, assisting in the development of their professional identities, and exposing students to public interest law. The article also describes grants and fellowships available at the University of Michigan to promote clinical legal education and extends its discussion of clinical programs to include other offerings of other Michigan law schools. While the author recognizes that there has been a growth in clinical programs in Michigan law schools, she argues that perceptions held by traditional classroom faculty and the high cost of clinical legal education continue to constitute significant barriers to increased program growth. The author concludes that clinical programs in Michigan enrich the State Bar. They provide valuable training in legal analysis, practical skills, ethics and professional responsibility, as well as service to the community. She appeals to judges and Bar members for support and promotion of clinical legal education.

Brett G. Scharffs, *Law as Craft*, 54 *VAND. L. REV.* 2245 (2001).\* † This article explores the similarities between the law and other craft traditions, such as carpentry, pottery, and quilting. Its thesis is that law – and in particular adjudication – combine elements of what Aristotle described as practical wisdom, or *phronesis*, and craft, or *techne*. The article begins by defining craft, which is knowledge learned practically through experience and demonstrated through practice. The author then contrasts craft with other concepts, including art, science, mass production, craftiness, and hobby. The article argues that crafts are characterized by four simultaneous identities: crafts are made by hand – one at a time – and require not only talent and skill but also experience and situation

sense; crafts are medium specific and always are identified with a material and the technologies invented to manipulate that material; crafts are characterized by the use and usefulness of craft objects; and crafts are defined by their past. The article also considers how one becomes a craftsman, focusing on the role of rules and theory, the dialectic of certainty and uncertainty, tough love and exploitation in apprenticeship, and the necessity of failure and disillusionment. The author concludes that although the craft ideal is “old-fashioned, even quaint and mildly embarrassing,” it nevertheless provides a paradigm for understanding lawyerly work that holds the promise of both enabling lawyers to be better at their jobs and of finding meaning and fulfillment in their professional lives.

Alexander Scherr, *Lawyers and Decisions: A Model of Practical Judgment*, 47 VILL. L. REV. 161 (2002).\* † Part I poses the question, “How do lawyers think?” The author suggests that the lawyer’s practical judgment is the result of a developed process informed by intellect, emotions, values, and social capacities, which is forged through the lawyer’s experiences over time. Part II draws on the ideas of numerous legal theorists and philosophers to distill a standard model of what constitutes a lawyer’s practical judgment. Part III articulates a model of practical judgment, observing that the various types of legal contexts (i.e., advocacy, litigation, transactional) require the lawyer to assess past conflicts in the light of future opportunities and to choose with care the different processes through which final decisions occur. The author suggests that although legal contexts differ from each other, each demands the same kind of strategic assessment on the part of the lawyer and the ability to appreciate and integrate legal principles and non-legal realities into the decision-making process. The article concludes by suggesting that the standard model may aid the development of a teaching model for law students that represents a more thoroughly pragmatic approach to the study of law.

Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 WASH. U. J.L. & POL’Y 195 (2003).\* † This article explores the idea of an interdisciplinary transactional law clinic. Part I articulates the advantages to clients and students. Students would receive a more authentic transactional experience, gain collaborative skills, and better appreciate the current debate over multidisciplinary practice. Clients would be better served because more professional help would be devoted to each client. Part II describes some of the challenges to the design and operation of an interdisciplinary transactional legal clinic, with attention to the difficulties in developing successful collaborations between law school clinics and business schools due to the differences in culture and training and the differing professional and ethical norms. Part III provides examples of how existing transactional law clinics integrate interdisciplinary theory and modes of practice into their clinical design by describing the programs at St. Louis University School of Law’s Urban/Housing Issues Symposium and the East St. Louis Action Research Project, an interdisciplinary group of faculty and students from the University of Illinois and community organizations of East St. Louis, Illinois.

Andrea Kupfer Schneider, *Building A Pedagogy of Problem-Solving: Learning to Choose Among ADR Processes*, 5 HARV. NEGOT. L. REV. 113 (2000).\* † The article addresses the author’s concern that the Alternative Dispute Resolution (ADR) system fails to assist lawyers in counseling clients to choose among ADR processes. The author argues that by using theories of therapeutic jurisprudence and preventative law, a lawyer will be able better to explain to a client the diverse

types of ADR and to recommend the most suitable alternative for the client. After discussing how the theories of therapeutic jurisprudence and preventative law can contribute to the pedagogy and practice of ADR, the article presents a model for lawyers to use in advising clients as they choose among ADR processes. To illustrate the approach, the model is applied to a problem found in many ADR textbooks.

Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLIN. L. REV. 231 (1995).\* † This article is an edited version of the speech the author delivered at the Mini-Workshop on Theory and Practice: Finding Bridges for the Classroom held at the 1992 AALS Annual Meeting. The article sketches how the author became interested in the question of what it is that competent professionals know and how they acquire this knowledge. After pointing out that the dominant model of epistemology of practice arose out of the insinuation of the professional schools into the research university, the author notes that this epistemology depends on establishing at least these three dichotomies: means and ends; research and practice; thinking and doing. The author's criticism of the dominant model of epistemology of practice derives from the recognition that there are indeterminate zones of practice: uncertainty, uniqueness, and conflict, that do not fit the model. The author's approach to the issue of the shortcomings of the dominant model is to turn the problem on its head. Rather than asking "how do we apply science to practice better?" or "how do we generate more useful science for practice?," ask "what is it that competent practitioners actually know when they are being competent?." The author argues that most knowledge is tacit knowledge or "knowing-in-action," which is exhibited by the competent behavior the professional carries out but is unable to describe. To learn what the professional knows, one must observe the actual behavior, reflect upon it, construct a description of it, and, finally, test that description against further behavior. Situations arise where "knowing in action," does not work, resulting in surprise. At that point, the professional conducts an on-the-spot experiment that the author terms "reflection-in-action." Later reflecting on the process of "reflection-in-action" is an attempt to describe the knowledge that was generated and the conditions under which it was generated. The author terms the combination of "reflection-in-action" and reflection on "reflection-in-action" artistry in practice. The question then becomes, how should legal education be designed to achieve artistry in practice? The article concludes by sketching the author's answer, which is termed "the reflective practicum." In the reflective practicum, the learner begins by working on a problem or task in the presence of a senior practitioner who is good at doing it and whose business is to try to help the learner learn how to do it, in the company or presence of other people who also are trying to learn how to do it, in a virtual world that represents the practice context. The ultimate goal for teachers in many fields is to design methods of teaching for a reflective practicum that more directly assist students to seek self-learning and to find it.

Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175 (1996).\* † In this article, the author seeks to provide a systematic road map to clinic development and design. First, the author addresses basic structural questions arising in the design or renovation of a clinical program. The article next discusses systems for case handling, addressing how students and teachers will acquire knowledge of the doctrine and practice in the areas of law in which the clinic will work, what methods will be employed by teachers, and the possibility of a clinic manual and its contents. This section also addresses practical issues facing a clinic, such as planning physical space; locating and using experts; generating forms and a filing system; building relationships with judges and administrators; and

creating an effective system of case transfer and referral for cases that the law school cannot handle. The third section of the article examines the classroom component of the clinic, discussing syllabi, class assignments, and lesson plans applicable to a clinical setting. Finally, the author concludes that relying on this article, or at least asking some of these questions before beginning or reorganizing a clinic, can save time and effort. Once a clinic becomes operational, the clinic should institute a formal evaluation mechanism to identify changes that may be necessary or desirable, as well as a formal mechanism to encourage annual changes in the design of the clinic.

Kandis Scott, *Additional Thoughts on Romanian Clinical Legal Education: A Comment on Uphoff's "Confessions of a Clinician Educator,"* 6 CLIN. L. REV. 531 (2000).\* † This article responds to Professor Rodney Uphoff's essay, *Why In-House Live Client Clinics Won't Work in Romania: Confessions of a Clinician Educator*. In this article, the author concurs with Uphoff's general descriptions and conclusions finding that alternative approaches must be enacted in Romania if its lawyers are to have some of the benefits of clinical education. The author proposes that reformers go "outside" law school and use continuing legal education programs for recent graduates to teach lawyering using clinical methodology. The next part of the article proposes curriculum for those courses, taking into consideration the *stagiaari*'s status as 22 year-old graduates with the maturity and preparation to flourish in a clinical training program. The article next discusses teachers for the clinical courses, looking to the "same respected practitioners and professors with extensive local practice experience who currently teach in the bar associations' programs for *stagiaari*." This section addresses potential problems with convincing teachers to share their practice "secrets" and to cover new subjects. Finally, funding of continuing legal education is addressed. Because existing educational programs for *stagiaari* are provided without cost, she proposes adding clinical courses to those programs. Requiring payment, as in the United States, or enticing Romanian lawyers to volunteer as instructors, which would advance the learning of values and professional responsibility, are suggested alternatives.

Robert F. Seibel, *Do Deans Discriminate?: An Examination of Lower Salaries Paid to Women Clinical Teachers,* 6 UCLA WOMEN'S L.J. 541 (1996).\* † This article describes the findings of salary differentials between male and female clinical law teachers and salary differentials between whites and people of color in clinical legal education. This article first relates the background of the research and describes the methodology. The article then reports findings of salary differentials based on gender and race from data collected for the 1993-94 academic year. Finally, it analyzes some possible causes of these salary differentials. The article concludes that law schools perpetuate general market inequities instead of making efforts to provide fair and equitable compensation to women with similar rank and experience as men. The article also concludes that the findings of discrimination exemplify subtle ways in which discrimination pervades the job market and other aspects of contemporary society.

Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities,* 2 CLIN. L. REV. 413 (1996).\* † This article provides data on the content and methodology of legal externships, based on a survey the authors conducted of externship programs offered at law schools during the 1992-93 school year. Part I of the article describes some of the goals possible for externship programs and an explanation of the role such goals might play in law school pedagogy. The authors argue that externship programs can provide a valuable educational

experience not available in traditional classrooms. Externships also offer some benefits unavailable through in-house clinics. Part II examines the data, which confirm that externship programs are fulfilling the potential discussed in Part I. The data also illustrate the diversity of programs that currently exist, and the authors argue that such diversity points to “the discretionary judgments of sound pedagogy rather than to an inconsistency of design needing correction.” Part III focuses on the implications of the data for the question of the regulatory approach that the ABA should take towards field placement programs. The authors conclude that although the ABA can and should play an important role in facilitating field placement programs in law schools, it should refrain from imposing too many detailed requirements about the content of such programs, which the authors argue is the current practice of the ABA.

Robert F. Seibel, John M. Sutton, Jr. & William C. Redfield, *An Integrated Training Program for Law and Counseling*, 35 J. LEGAL EDUC. 208 (1985).‡ The article describes the establishment of a combined clinical program for law students and counseling students. The motivation for this establishment is the realization that professionals in both fields encounter complex problems that go beyond the scope of their profession. The goals of the program include a more comprehensive perspective based on interdisciplinary learning, integration of legal and non-legal analysis, and provision of an environment in which law students can learn more effective communication skills. In short, the goal for the law students is to teach them that clients are not abstract legal problems, but rather people who should be viewed holistically. Further, the students should learn to identify client issues that require non-legal aid. The article briefly describes the program. Initial client interviews are conducted by the law students. The law student will consult with a supervisor if the student believes that the client may need a counselor’s help. A seminar focuses on specific cases and issues that have arisen, not only to help those law students who don’t have a client in counseling, but also to develop further analysis of the issues faced in client representation. Two issues raised in establishing the program are confidentiality – which is present in a lawyer-client relationship, but not in a counselor-client relationship – and students’ attitudes towards the other discipline. Both are critical during the referral stage of the process.

Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLIN. L. REV. 445 (2002).\* † Modern problem-solving theory stresses the need for lawyers to look beyond client’s legal rights and interests, and consider methods and solutions beyond those offered by the formal mechanisms of the law. This article considers how education in creative problem solving can be enhanced in the clinical context through work with poor communities engaged in community building. It describes how the clinic at the University of Dayton Law School became involved in helping community groups in Dayton, developed a method of clinical teaching that emphasizes broad-based problem solving, operated in conjunction with individual representation of poor people, rather than as a stand-alone development clinic, and was structured to function consistently with the school calendar and faculty research needs. Clinic faculty and students began to explore ways to help the communities by reaching out to private social service agencies and legal services lawyers, to identify some key problems, and to research possible legal solutions. As clinic faculty and students began to meet more community members, they discovered informal neighborhood networks and organizations led by inspirational neighborhood residents with well-developed problem-solving skills. Rather than offer traditional legal services, such as drafting formal documents for not-for-profit corporations or

litigating on behalf of organizations or individuals, the clinic entered into a dialogue with its community “partners” to provide information about legal and other options and to find ways for the community members to set their own goals and choose their own methods. The result was a fruitful and invigorating relationship that resulted in palpable and significant improvements in the neighborhood and brought law students into working professional contact with people who were quite different from them in race, formal education, age, and income. In addition to describing the development of this project, the article describes a method of identifying and developing collaborations between law clinics and community groups. It also proposes a process for easing students into different forms of community development work as a means of focusing on the development of creative problem-solving skills.

Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 CLIN. L. REV. 127 (1999).\* † This article addresses the problems law practitioners experience as they attempt to navigate the informal and unwritten rules, customs, and local legal cultures that exist in the formal legal systems of most American judiciaries, including state, municipal, and federal courts. Part I discusses the presence of these unwritten rules, including how they manifest themselves and how they can interact with or contradict the written law. Empirical studies, case law, and examples from several comparative legal systems are used to illustrate the problem within the context of the American judicial system. Part II describes the processes by which competent legal practitioners ascertain the unwritten rules of local legal cultures and negotiate and challenge such systems of rules. Part III provides a framework for incorporating local legal culture and unwritten rules into the planning, execution, and evaluation of case work in the clinical context. It includes ideas and materials for the clinical educator to incorporate into the classroom or clinical program. Finally, the conclusion emphasizes the importance of integrating the concept of local legal culture and unwritten system of rules into the clinical curricula of American law schools.

Thomas L. Shaffer, *On Teaching Legal Ethics with Stories about Clients*, 39 WM. & MARY L. REV. 421 (1998).\* † This article describes the use of a clinical ethics seminar as a vehicle for teaching legal ethics to students. The article compares such a seminar to Professor James Boyd White’s law and literature classes at the University of Michigan, which attempt to provoke students with an array of assigned readings, all of them about people. The author suggests that good legal education might also include consideration of real clients, and proposes comparisons with White’s view of legal education under the headings “Relationships,” “Language,” “Disruption,” “Translation,” and “Anthropology.”

Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLIN. L. REV. 217 (1999).\* † In this article, the author takes a three-part approach to examining community development by analyzing the separate motivations of policymakers, mediators, and communities to illustrate how different agendas shape community development. By examining the “genesis and evolution of community development policies” against the backdrop of recent historical research on the post-war urban crisis, the author provides a larger framework for studying the social implications of the legal field of community development practice. Using examples from his own experiences in representation, the author evaluates the limitations of working as a mediator between community groups and powerful outside interests. In conclusion, the author suggests that the

strength of transactional legal representation “is bound to the specific social priorities of groups whose work stimulates community empowerment.”

Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993).<sup>†</sup> This article examines fundamental aspects of clinical supervision and its impact in shaping students’ visions of law, lawyering and legal institutions. She presents an opening memorandum and three scenes from a clinical case to illustrate the kinds of choices clinicians constantly make when supervising student attorneys. In the presented scenario, two students representing a victim of spousal abuse engage in a planning session, a trial, and an evaluation session with their supervisor. The author guides the reader through an analysis of the supervisor’s interactions with the students, highlighting the ways in which the teacher facilitated their learning process by encouraging reflection, client-centered representation, and acceptance of responsibility. She places special emphasis on the clinician’s flexibility in shaping the supervision to meet the educational needs of the individual students and her sensitivity to opportunities for connecting classroom and clinical knowledge. However, the author also encourages the reader to critically examine the clinician’s choices, particularly with respect to her active intervention in the development of a case theory for a client with whom she had no direct contact. Finally, she extracts from the scenario a vision of clinical supervision that embraces self-conscious decision-making, centrality of students’ experiences, and broad institutional critique. She acknowledges the tentative nature of this clinical vision, which must be adapted to the nuances of different student- and client-contexts.

Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731 (1993).<sup>\*</sup>  
<sup>†</sup> The author explores how hypothetical constructions and actual treatment of clients in traditional and clinical legal education contexts impair students’ abilities to understand the role of the client in legal theory and practice. She argues that the failure of legal education to encourage holistic understanding of clients’ backgrounds, goals, and values results in lawyers who are ill-prepared to bring productive positive, efficient services to the disadvantaged and marginalized public. In particular, she critiques the traditional teaching method which presents students with “facts” about non-contextualized, constructed clients’ problems and encourages students to unilaterally determine the appropriate legal remedies. She emphasizes the failure of this method’s proponents to critically examine the fallibility of appellate courts in their recitations of facts, the margin for distortion which follows from multiple reinterpretations of clients’ stories, and the impact of social, economic, and cultural values on authoritative representations and interpretations of cases. She warns that clinical experiences only provide the opportunity to challenge traditional client constructions through alternative forms of legal practice; live-client interaction does not guarantee that traditional forms of practice will not taint students’ perceptions of attorney-client roles. The author proposes a client-centered, case-by-case approach to student-client interaction with emphasis on awareness of power dynamics and psychosocial factors which affect clients’ relationships to the legal world. To support her argument, she draws on the works of Lucie White, Gerald López, Austin Sarat, William L. Felstiner, and other clinical education scholars.

Ann Shalleck, *The Feminist Transformation of Lawyering: A Response to Naomi Cahn*, 43 HASTINGS L.J. 1071 (1992).<sup>\*</sup> <sup>†</sup> The article is a critique of Naomi Cahn’s use of “connection” and the “ethic of care” as critical tools to transform conceptions of lawyering. According to the article,

the use of connection fails for two reasons: “it does not create a framework for challenging what is dangerous or harmful within dominant forms of lawyering activity and ... the critique based in the characteristics of the ethic of care fails to create any new ways of being a lawyer.” The author suggests grounding feminist theory in the context of experience: “We need to look at our particular experiences as lawyers in relationships with our clients and within the institutions that we and our clients confront on a daily basis . . . When we explore these experiences, we might discover that the experiences are quite common and the understandings widely shared; but by starting with the particularity of the experience, we are in a better position to see and accept differences within gender, as well as to find those across gender.”

Ann Shalleck, *Theory and Experience in Constructing the Relationship between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019 (1997).\* † This article discusses two theoretical frameworks prompting a re-examination of legal representation for women who have been abused and the implications of these critiques for both the education of lawyers representing women who have been abused and the conceptualization of the process of developing legal theory regarding the abuse of women. First, the author identifies the main elements of the emerging feminist critique of the ascendant conception of domestic violence that underlies many of the legal reforms accomplished during the last twenty-five years for women who have been abused. Second, the author explores the principal themes in the attempts by theorists of legal practice to articulate a vision of lawyering on behalf of women who have been abused. Third, the author examines the roles of theory and experience in educating students to provide representation to women who have been abused. Based on the analysis of theory and experience, the author discusses ways to approach the education of lawyers to provide representation to women who have been abused that not only address domestic violence from the perspectives of those women but also contribute to the developing understanding of abuse in the lives of women.

Randall T. Shepard, *From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar*, 31 IND. L. REV. 445 (1998).\* † This article discusses recent efforts of law schools to reform legal education in an attempt to comport with the principles and objectives articulated in the MacCrate Report, specifically in the context of preparing law students for legal practice. The article examines the financial challenges facing law schools in implementing skills teaching and clinics, and argues that the bar and bench are a more appropriate forum for taking action to address the challenges in legal education. The author offers five suggestions to improve student preparation for legal practice: undergraduate programs should try to teach a little about the law school experience and the legal profession through pre-law counseling or orientation; there should be trial practice course offerings at every law school and the author calls upon practitioners to promote this result; there should be training for young lawyers at the beginning of their legal careers; the bar examination should emphasize testing a student’s capacity for solving problems, because that is the role of lawyers; finally, there should be a better system of continuing legal education, which entails building better standards. The author concludes that the Indiana legal community possesses the capacity to implement these five ideas and expresses optimism that these goals will be met.

Randall T. Shepard, *Classrooms, Clinics and Client Counseling*, 18 OHIO N.U. L. REV. 751 (1992). This article on the role of skills instruction in the traditional law school curriculum was adapted from a speech by the author, Chief Justice Shepard of the Indiana Supreme Court. He traces the

development of formal legal education through American history to illustrate the shift from practical apprenticeship to classroom instruction. Against this background, he describes the resurgence of a demand for skills training and the corresponding development of clinical education. While he recognizes the benefits of incorporating clinical instruction into the curriculum, he warns against retreat to the original apprenticeship roots of legal education. His ultimate message is an affirmation of the “think like a lawyer” approach of traditional classroom teaching.

Avrom Sherr, *The Value of Experience in Legal Competence*, 7 Int'l J. Legal Prof. 95 (2000). This article reports on the results of a research study to monitor the work of a number of lawyers in the United Kingdom across a range of experience carrying out real client interviews in their own offices. The study sought to provide answers to several related questions: Is experience alone necessarily a good teacher? Can experience be sufficient, without training, for picking up legal skills? Are more experienced practitioners necessarily more competent at legal skills than their less experienced colleagues? The researchers video-taped 143 first interviews with new clients and then subjected the interviews to analysis in three ways. Expert legal assessors considered how well the lawyers had performed 13 tasks to be carried out in a first client interview, how well the lawyers performed on 19 techniques or subskills that should be used in lawyer-client interviewing, and the quality of 12 categories of information emanating from the interview. The lawyers who had conducted the interviews were asked to rate their own performances and the clients likewise were asked to rate the performance of the lawyer who had conducted their interview. In general, the lawyers were very satisfied with their interviews and thought that their clients had been even more satisfied. Lawyer interviewers also were generally satisfied with the advice and plan of action they had given their clients. The clients rated the advice given and confidence in their lawyer significantly higher than the lawyers. By contrast the expert assessors scored the lawyers significantly lower than the lawyers' self-assessments on most measures. The author concludes that “contrary to intuitive expectation and a view expressed sometimes by practitioners, experience largely seemed to enhance competence in a few discrete areas of performance only.” The results suggest that experience over time does not appear by itself to turn out vastly better client interviewers, and “is a very poor second compared to the results of training.”

Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y & L. 1173 (1999).\* † The article argues that legal educators are generally averse – or at best ill-equipped – to supporting training in the empathic and psychological skills good lawyering demands. The author discusses how emotional intelligence is essential to good lawyering and argues that it can and should be cultivated in law school. The article draws upon three examples in popular culture to explore both the absence and possibilities of interpersonal intelligence in the practice of law. The author also describes her own law school's current project of re-imagining legal education and explains how the development of emotional skills might be incorporated into that vision.

William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487 (1980).‡ The article explores a trend in legal theory that embraces psychological influences and emphasizes interpersonal relationships over other personality-shaping forces. He contrasts this trend, which he calls the Psychological Vision, with traditional doctrine and past trends which focused on economics and sociology. Psychological Man, who is wholly concerned with feelings and personal dynamics, differs from Economic Man in that he is not rational, materialistic and aggressive.

Whereas Sociological Man was shaped and directed by social forces and norms, Psychological Man is influenced only by his internal need for a sense of emotional well-being. The structure of the author's analysis is based on critique of other legal writers who have borrowed from the works of Rogers and other psychologists in formulating theories of professional ethics, attorney-client relationships, and lawyers' roles. In particular, he criticizes Rieff and other writers who characterize the attorney-client relationship as a "community of two," independent of material or social factors. He argues that this rigid construction of the legal system and the relationships within it constitutes a brand of "formalism," which he defines as any misuse of form in a manner which systematically inhibits understanding. The author explains that by abstracting psychology from the other forces which affect people's experience of law, the proponents of the Psychological Vision advocate a method of lawyering and teaching that is ultimately exploitative, manipulative and ineffective for attorneys, clients, professors, and students alike. To conclude, he introduces an alternative model, Political Man, who recognizes the value of seeking personal fulfillment as well as the need for occasionally subordinating individual goals for collective action across social groups. The author admits that this scheme is also a formalism, but one with a more pragmatic and focused approach than the Psychological Vision.

William H. Simon, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213 (1991).\* † The author argues that "any plausible conception of good practice will often require lawyers to make judgments about clients' best interests and to influence clients to adopt those judgments." The author contrasts the autonomy or "informed consent" view with a paternalist or "best interest" view of lawyer counseling that is involved in client decision making. The author posits two versions, "crude" and "refined," of both views. The crude version of the autonomy view states that "the lawyer's job is to present to the client, within time and resource constraints, the information relevant to the decision at hand"; the refined version of the autonomy view suggests that "the lawyer's duty is to present the information a typical person in the client's situation would consider relevant except to the extent the lawyer has reason to believe that the particular client would consider different information relevant, in which case [the lawyer] is to present that information." By contrast, the crude version of the paternalist view suggests that the "lawyer simply consults her own values . . . and tries to influence the client to adopt" the course of action the lawyer would adopt under the circumstances. The author describes two versions of a more refined paternalist view, one finding that "paternalist coercion is justified when, among other conditions, the client's articulated goal fails to meet a minimal test of objective reasonableness," and another that justifies paternalism when the lawyer is convinced that the client's "articulated choice did not truly express his identity, for example, because of fear and depression." The author claims that it is hard to distinguish the autonomy and paternalist views once one moves beyond the crude versions of each view. Each view is seen as involving "a dialectic of objective constructs (the 'typical client' presumption or the minimal reasonableness test) and efforts to know the client as a concrete subject." In conclusion, the author argues "that there is a large category of cases involving legal decisions, where, given the circumstances in which the decisions must be made, we have no criteria of autonomy entirely independent of our criteria of best interests." Although believing that the debate between the autonomy and paternalist views is often moot, the author speculates that the debate still inspires so much energy because of the anxiety lawyers feel in representing clients socially distant from themselves.

Joseph William Singer, *Persuasion*, 87 MICH. L. REV. 2442 (1989).\* † The author argues that much of lawyering is persuading parties, juries, and judges to agree with one perspective rather than another. In this article, he explores how one persuades others about the values they should have. To illustrate his problem, he describes a property course in which he taught students about factory closings. While he expected students to identify the unfortunate social costs of closings on the surrounding towns and released employees, he repeatedly met with impersonal doctrinal arguments about managerial prerogatives, freedom of contract, and deference to the legislature. Concerned about the students' professional competence development, he developed a method of creating a relationship between the students and the people affected by factory closings. He constructed a hypothetical in which his law school decided to fail the lowest 33% of first-year students after their first-semester exams in an attempt to protect the public from unprepared lawyers in the future. Faced with similarly desperate and unfair circumstances, the students learned to appreciate the other side of factory closings cases. They felt empathy and connection with the released employees and were able to perceive the imbalance of bargaining power and breach of good faith where they had previously seen only market values. By creating a situation in which the students felt vulnerable and powerless, the author cultivated a relationship between the students and workers, thereby influencing the students' values.

Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873 (1998).\* † This article discusses a video entitled *So Goes a Nation*, featured at the Seventh Annual Stein Center Symposium, *Lawyering for Poor Communities in the Twenty-First Century*. The video featured three public interest organizations that, according to the author, "represent community lawyering at its best." This article focuses on the work of one of the organizations featured in the video and further examines its place within the model of community-based lawyering. Part I describes the community-based model – rebellious lawyering – and explores what rebellious lawyering might look like in practice. Part II introduces the work of Brooklyn Legal Services Corporation A ("Brooklyn A"), expands upon the case study featured in the video, and thereby further explores the lawyering involved in expanding a community-based health care center. Part III identifies common themes and inconsistencies between Brooklyn A's practice within the theoretical concept. This article concludes that such reformulations "are necessary to truly maximize the impact of newly developed solutions."

Stella L. Smetanka, *The Multi-State Performance Test: A Measure of Law Schools' Competence to Prepare Lawyers*, 62 U. PITT. L. REV. 747 (2001).\* † This article argues that implementation of the Multi-State Performance Test (MPT) as an integral part of bar examination in some jurisdictions will necessarily affect how law students prepare for the profession and will have an impact on the way law students are educated. The article begins by sketching the design of the MPT. The author suggests several techniques for preparing students to perform well on the MPT, including converting law school open book examinations to the MPT format to familiarize students with the MPT format and test skills essential to the practice of law, and incorporating writing exercises into legal writing programs that have the same product and time constraints as the MPT. The author argues that the live client clinic offers the potential to be the greatest preparation for lawyering, and by extension, success on the MPT. Finally the author argues that implementation of the MPT will encourage students to develop their own practical lawyering skills by identifying many venues in which to learn and practice essential skills. To support these endeavors, the author recommends providing students

with copies of the MacCrate Report's statement of fundamental skills and values and encouraging them to review the inventory each semester before selecting courses, co-curricular, and extra-curricular activities.

Abbe Smith, *Carrying On in Criminal Court: When Criminal Defense is Not So Sexy and Other Grievances*, 1 CLIN. L. REV. 723 (1995).\* † In this article, the clinical supervisor of Robert Rader, author of *Confessions of Guilt: A Clinical Student's Reflections on Representing Indigent Criminal Defendants*, published in the same volume, comments on his reportedly disastrous clinic experience. She acknowledges that criminal defenders enjoy little respect from other actors in the legal system, and that the work of a criminal defender is often tedious and frustrating. She criticizes Rader, however, for placing undue emphasis on his own comfort rather than on his professional role and duty to his clients. A former public defender, Smith draws upon her own experience to examine her student's frustrations and feelings towards criminal defense. She acknowledges that she has a goal of convincing students to embrace her love for the work, but insists that recruiting public defenders is not the only objective of her clinic participation. She concludes that Rader's decision not to pursue a career in criminal defense does not render his experience a failure, nor does it indicate failure on her part as a supervisor.

Abbe Smith, *Criminal Responsibility, Social Responsibility, and Angry Young Men, Reflections of a Feminist Criminal Defense Lawyer*, 21 N.Y.U. REV. L. & SOC. CHANGE 433 (1995).† The author proposes that evidence of a criminal defendant's deprived background be heard by a jury only in cases in which the defendant can show that he or she is a member of a disenfranchised social group. This would force the jury and society to face and understand the unjust social forces that lead to criminal behavior. The author illustrates her point with three criminal cases recounted in two different types of stories. The first story in each instance is a short synopsis of the crime itself, typically a prosecutor's view. The second story for each crime involves the motivation of the defendant, the background of the defendant, and the social factory that influenced the defendant's behavior, typically a defense lawyer's perspective. In cases in which the defendant's background is a product of unjust social forces, the background should be heard by the jury; where that background is a product of individual misfortune, the background shouldn't be heard by the jury. The article admits that this is an imperfect solution in an imperfect system, which increasingly looks to rigid schemes of punishment as the answer to crime. The article addresses the lack of meaningful sentencing, discretionary rules of evidence, the strengths and weaknesses of the jury system, and the complex relationship of race, class and sex in crime. The author advocates that we must not only take responsibility for our individual actions, but that we, as a society, also must take responsibility for societal conditions and forces.

Abbe Smith, *Defending Defending: The Case For Unmitigated Zeal On Behalf Of People Who Do Terrible Things*, 28 HOFSTRA L. REV. 925 (2000).\* † Using the facts of a brutal attack on a Haitian immigrant by a police officer, the article examines the challenges of counseling a client accused of a terrible crime and defending the client at trial, including the issue of exploiting racism, sexism, homophobia, and ethnic bias in criminal defense. The author concludes that "as a matter of professional ethics, criminal defense lawyers are required to thoughtfully consider all lawyering strategies that ethical rules allow and employ them if they serve the client's interests."

Abbe Smith, “*Nice Work if You Can Get It*”: “*Ethical*” Jury Selection in Criminal Defense, 67 *FORDHAM L. REV.* 523 (1998).\* † This article argues that it is unethical for a defense lawyer to disregard what is known about the influence of race and sex on juror attitudes in order to comply with *Batson v. Kentucky* and its progeny. The author argues that although *Batson* (and *Georgia v. McCollum*, which extended the prohibition against race-based peremptory challenges to criminal defense attorneys) has spawned an “ethics” of its own, it is at odds with other longstanding and controlling ethical obligations of criminal defense lawyers. Part II discusses the new ethics of jury selection derived from *Batson* and its progeny. Part III examines social science data on race, gender, and juror attitudes, supplemented by the author’s own experience as a criminal trial lawyer and teacher. In Part IV, the author argues that the new ethics of jury selection ignore the impact of race and gender on jurors’ attitudes and are thus “directly contrary to the mandate of zealous criminal defense and serve to disadvantage the criminally accused.”

Abbe Smith, *Rosie O’Neill Goes to Law School: The Clinical Education of the Sensitive New-Age Public Defender*, 28 *HARV. C.R.-C.L.L. REV.* 1 (1993).† Smith describes feminist-clinical education theory as integrating experiential learning, interdisciplinary inquiry, context, and critical reflection to provide students with an understanding of lawyers’ conflicting interests in the personal, political, and professional aspects of their work. Against this background, and in a criminal defense context, she explores various aspects of the clinical student’s experience, including lawyer-client relationships, pressures of zealous advocacy, and personal/professional conflicts. She uses excerpts from literature, pop culture, and student reflections to illustrate how feminist-clinical theory challenge students to critically examine their preconceptions and perceptions of difference, professional role, and truth. In particular, she describes the conflicts faced by lawyers who choose to represent the indigent accused, and analyzes methods for coping with contradictions between personal morality and professional responsibility.

Linda F. Smith, *Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap*, 5 *CLIN. L. REV.* 527 (1999).\* † This article draws upon the history of clinical legal education and theories of experiential learning to describe the process for creating a vibrant extern program. The author maintains that “the design of a field placement program should progressively consider the available placements and the opportunities they offer to acquire skills, understand legal institutions and lawyering roles, put doctrinal knowledge into a practical context, and solve problems which require substantive and procedural knowledge as well as lawyering skills.” Moreover, potential field placement programs should be compared with existing courses that aspire to these same educational aims. The author challenges law schools to think critically about how necessary it is to have these educational goals addressed through a field placement program and how these goals will be met through student and professor inquiry. The author concludes that “the educational mission will ultimately be a shared endeavor of the law school and the placements for the service of the student and the community.”

Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the “Traditional” Interview and the “Client-Centered” Interview*, 1 *CLIN. L. REV.* 541 (1995).\* † The author uses a linguistic approach to analyze components of initial interviews conducted by students in a simulated landlord-tenant case. Students had been educated about client-centered interviewing in the Binder & Price mode. The analysis focused on interruptions, control of the floor, directives and question

form, control of subject and interview structure in identifying problem-goal, questioning to develop legal theories, and definition of client goals. The author concludes that the Binder & Price model is less controlling than the “traditional” interview but that the model should be modified in some respects. For example, the funnel-shaped format was rarely used and not missed, while a number of closed questions, after an extensive narrative, usefully pinned down important facts. The author identifies areas for further study.

Linda F. Smith, *The Judicial Clinic: Theory and Method in a Live Laboratory of Law*, 1993 UTAH L. REV. 429.\* † Based on the goals and methods of live-client clinical legal education, the author sets forth a model for the design, oversight, instructional methods and educational goals of a judicial clinic. After a brief review of clinical history and theory, she outlines her plan for the implementation of a program which would provide students with traditional clerkship experience within the reflective, supervised clinical context. Under her model, students would improve analytical and writing skills, gain understanding of procedure in application, understand how jurisprudence affects judicial determinations, and be exposed to problems unique to the adversary system through their work with appellate and trial court judges. These educational processes would be facilitated and supplemented by a classroom component that would cultivate critical insight into the legal system and judicial function and would explore constitutional and policy questions raised by student work. The author argues that such an approach would allow students to learn valuable practical skills while studying the legal system from a macro (or broad institutional perspective) rather than the micro perspective advanced through most clinical programs which focus on interpersonal relations between lawyers and clients in individual representation.

Linda F. Smith, *Medical Paradigms for Counseling: Giving Clients Bad News*, 4 CLIN. L. REV. 391 (1998).\* † This article relies upon the medical literature on delivering “bad news” to develop a new paradigm for use in legal counseling. The article first reviews the medical literature about problems in counseling patients about bad news and then considers critiques of legal counseling. Next, it describes the medical model for delivering bad news and discusses how this model can be used to develop a paradigm for delivering bad news in legal counseling. The article considers when and how this counseling paradigm should be used in conjunction with the paradigm of identifying alternatives, predicting consequences, and assisting the client to choose a course of action. The article draws upon social science findings, individual reports, and film portrayals of attorney-client counseling sessions to describe and defend this new paradigm for counseling.

Marcus Soanes, *Flexible Paradigms and Slim Course Design: Initiating a Professional Approach to Learning Advocacy Skills*, 5 CLIN. L. REV. 179 (1998).\* † The author examines whether the Inns of Court School of Law (ICSL) or the Bar Vocational Course (BVC) adequately prepare students for legal practice in England. The author expresses his hope that such a study will yield insight into methods that might be useful at other schools. To begin his study, the author looks at the introduction of advocacy classes and the theory behind their use. Within this context, the author also examines the usefulness of exemplars, how-to-do-it guides, and performance criteria. The author assesses how each of these tools can either succeed or fail in promoting the important educational objectives that he lists. The author also establishes criteria to determine the value of programs that allow students to prepare cases. The author concludes that although there are many means by which

law schools can equip their students for actual practice, successful programs consolidate and integrate these in a coherent and consistent vision.

Martin J. Solomon, *Client Relations: Ethics and Economics*, 23 ARIZ. ST. L.J. 155 (1991).† The author analyzes the relationship between a lawyer's professional responsibility to her clients and her prosperity in a competitive legal services marketplace. He explores the non-legal aspects of lawyer-client relations that contribute to a lawyer's professional success by creating a positive, cooperative atmosphere for communication and interaction. He describes the importance of interpersonal skills and adherence to the professional rules of conduct to generating a satisfied client base that will grow by word of mouth. Client-centered communication and problem-solving, characterized by empathetic understanding, careful listening, and accessibility of services, are crucial to Solomon's model of marketing. He encourages lawyers to make use of support staff, including carefully trained "file managers" who maintain individualized service by keeping clients informed about the status of their cases and answering questions when a lawyer is unavailable. By specifically addressing their clients' demand for courteous, quality treatment, lawyers will increase the size of their markets and reduce malpractice complaints and client dissatisfaction.

Robert A. Solomon, *The Clinical Experience: A Case Analysis*, 22 SETON HALL L. REV. 1250 (1992). As an example of successful collaborative learning in the clinical setting, and within the context of a symposium on homeless clinic experience, the author describes the involvement of the Yale Homelessness Clinic in the landmark housing case, *Savage v. Aronson*. He describes the background of this case, which was brought on behalf of AFDC recipients whose Emergency Housing Program provisions were not equitably and realistically administered by the State of Connecticut, and describes in detail the participation of clinic students in every aspect of planning, theory-building, preparing, and trying the case. Breaking down the process chronologically from problem-identification to appeal, Solomon analyzes the aspects of advocacy and student collaboration that were more or less successful in maximizing the educational value of client representation in this case.

John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 Wm. Mitchell L. Rev. 327 (2000).\* † This article reports on the results of two surveys conducted by the authors of Minnesota lawyers, some of whom had attended William Mitchell College of Law and completed a simulated lawyering skills course. The survey instrument for lawyers was designed to study how well prepared Minnesota lawyers felt after law school in seventeen legal practice skills and nine management areas. The survey also asked to what extent Minnesota lawyers felt those skills were important and from what sources they received those skills. The instrument asked for demographic information and measured job satisfaction. The survey results suggest that graduates perceive themselves to be well prepared with respect to ability in legal analysis and legal reasoning and in written communication. The results also suggest that law school training does not provide a significant source of training in the other legal practice skill areas and in all of the management skill areas. Since the lawyers who had participated in the William Mitchell College of Law Legal Practicum course were more likely than the non-William Mitchell lawyers to feel prepared for practice after law school, the authors suggest that formal training using simulations directed toward focus areas would yield substantially better returns in lawyers' perceptions of preparedness following law school.

John Sonsteng, John Cicero, Resa Gilats, Roger Haydock & John McLacchlan, *Learning by Doing: Preparing Law Students for the Practice of Law – The Legal Practicum*, 21 WM. MITCHELL L. REV. 111 (1995).\* † This article profiles one law school’s response to the MacCrate Report. The William Mitchell Law School has devised a “Legal Practicum” in which students perform a set number of routinized simulations of standard general law practice activities. Students gain experience in drafting, research, fact investigation, and oral advocacy, among other areas of legal practice, within the context of hypothetical problems. Judges and lawyers work with a director to implement the practicum and provide students with feedback and critique. Students must account for all time spent on practicum work through time sheets and billing statements. This article describes the positive aspects of this skills-training method, including student satisfaction and low operating costs.

Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121.\* † This article questions whether nonadversarial planning work by lawyers remains rare today. Drawing on empirical research on lawyers in Chicago, the author explores how lawyers’ planning skills advance community organizations’ efforts to respond to urban poverty and minority entrepreneurs’ efforts to navigate a regulated economy. Part II of this article briefly describes established forms of lawyer service in civil rights and poverty issues and factors influencing strategy choices. Part III describes the research design. Part IV describes the planning work performed by lawyers in the author’s sample, the types of clients served by this work, the practice settings in which lawyers performed planning work, and the lawyers’ understanding of their roles. Part V analyzes the implications of lawyers’ planning work for the debate about lawyers’ roles in social change movements. It suggests that lawyers who provide counseling and transactional services to community organizations and small businesses are performing a type of “impact” work that is conceptually different from litigation to establish or enforce rights through the courts. This article highlights the differences between two distinct categories of work: preventing problems and establishing and maintaining relationships, and responding to claims of injury. It argues that planning, more than litigation, may lend itself to collaboration with clients. Part VI sketches a research agenda regarding clients’ needs for planning services and the adequacy of existing structures for delivering those services.

Ann Southworth, *Collective Representation for the Disadvantaged: Variations in Problems of Accountability*, 67 FORDHAM L. REV. 2449 (1999).\* † This article draws on an empirical study of civil rights and poverty lawyers to identify variations in accountability problems that lawyers confront in representing groups and to suggest that these problems are “much less pressing in some types of collective representation than in others.” It examines structural factors that may help predict accountability problems in collective projects and presents empirical support for a differentiated approach with respect to collective practice for disadvantaged practice. In Part I, different forms of collective representation are compared. Part II applies current ethics doctrine to collective representation. The article concludes by calling for a revised ethics doctrine that takes into account the different types of collective representation in order to “avoid discouraging lawyers from helping clients build organizations and institutions serving clients’ collective as well as individual needs.”

Ann Southworth, *Lawyer-Client Decisionmaking in Civil Rights and Poverty Practice: An Empirical Study of Lawyers’ Norms*, 9 GEO. J. LEGAL ETHICS 1101 (1996).\* † This article presents

a study by the author to determine lawyers' norms regarding allocation of decision-making authority between lawyers and clients in civil rights and poverty law practice. Part I describes the research design. Part II shows how the lawyers' views about how they should interact with clients varied by the types of practice settings in which they worked, and offers several explanations for these differences. Part III comments on how this research bears on debates about how civil rights and poverty lawyers should serve their clients. This article concludes with a call for further study on the ideologies of lawyers who work on civil rights and poverty issues.

Ann Southworth, *Taking the Lawyer out of Progressive Lawyering*, 46 STAN. L. REV. 213 (1993).<sup>\*</sup> † This review of Gerald López's book, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992), criticizes the author's narrow evaluation of the skills lawyers can offer to poor client communities. Southworth describes López's use of fictional narrative to illustrate how most lawyers employ the traditional, "regnant" style of lawyering to the disadvantage of their poor clients instead of empowering poor communities by organizing, educating and encouraging clients to rely on their own problem-solving skills. Southworth faults López for his lack of empirical support and his failure to identify concrete examples of critical lawyering tactics and important political goals. While she commends López for encouraging creative law approaches, she draws from her own preliminary research on Chicago civil rights lawyers to argue for applying traditional transactional skills in creative ways to benefit community-based development organizations. She offers examples of how lawyers provide general counsel services to tenant groups, non-profits, and school councils to improve opportunities for the poor within existing legal frameworks.

Mark Spiegel, *The Case of Mrs. Jones Revisited: Paternalism and Autonomy in Lawyer-Client Counseling*, 1997 BYU L. REV. 307.<sup>\*</sup> † This article presents a response to William Simon's essay on lawyer-client counseling, *Lawyer Advice and Client Autonomy: Mrs. Jones's Case*, 50 MD. L. REV. 213 (1991). Part II of this article describes Simon's essay and his claims. In Part III, the author argues that Simon "is able to claim there are no significant differences in theory only by adopting particular definitions of the paternalist and autonomy views." The author also contends that even accepting Simon's definitions, there still may be differences in theory between the refined paternalist and the refined autonomy view. In Part IV, the author argues that despite the similarities between the two views, there are still significant differences in practice, with the case of Mrs. Jones being illustrative. In Part V, the author argues that Simon is correct that there are no significant differences between the results achieved by the practitioner of the refined paternalist or the refined autonomy view; he has not proven that the refined paternalist and the refined autonomy view are the same. Simon ignores the fact that the lawyer's intentions have moral significance.

Mark Spiegel, *The Story of Mr. G.: Reflections Upon the Questionably Competent Client*, 69 FORDHAM L. REV. 1179 (2000).<sup>\*</sup> † In Part I of this article, the author outlines the case of Mr. G. whom the Boston College Law School clinic represented in eviction proceedings. In Part II, the author uses the facts of Mr. G's case to comment about working with questionably competent clients. This part focuses on the difficulty of making the judgment that a client's decision-making capacity is impaired. Part III analyzes what to do when the client's competency is in question. The author explores some of the tactics the clinic employed in its representation of Mr. G and reflects upon whether the tactics were justified.

Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 557 (1987).<sup>\*</sup> † Spiegel argues that the academy's definitions of "theory" and "practice" predetermine the nature and impact of courses described by these labels. He describes how these terms came to mean what they do through the "law as science" tradition begun by Langdell, and through the critique offered by the legal realists. He argues that the meanings are not static or organic, but rather contingent and dependent on context. He explores ways in which clinical education can be described as either theoretical or practical. On the theoretical side, he discusses Bellow's idea of clinical education as a methodology of putting the student in role and using those experiences for intellectual inquiry. On the practical side, he argues that the label "practical" includes questions of judgment, not solely of skills. In the clinical realm, practical teaching might include opportunities to explore and think about lawyer decision making, and to "apply a critical perspective to a student's own lawyering experiences and to connect those experiences to the political, social and psychological dimensions of lawyering." He argues that the commitment of these labels to one or another curricular element actually affects the substance of the educational experience, and he concludes that labeling clinical education as skills training adversely prescribes the rank and role of clinical education in the academic hierarchy. The result has been limiting not only to clinical legal education but also to legal education more generally by precluding serious discussion of the relative merits of different approaches to and balances within legal education.

Paul J. Spiegelman, *Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, 38 J. LEGAL EDUC. 243 (1988).<sup>‡</sup> The author identifies a positive goal of reforming legal education by incorporating both theory and practice perspectives into the traditional law school curriculum. He proposes applying Carol Gilligan's moral development scholarship to legal education as a framework for integrating collaborative, cooperative teaching methods with the individually-oriented rules-driven law school standard. Gilligan's theory of moral development distinguishes two modes of thinking about moral questions based on the responses of two eleven-year-olds to the "Heinz dilemma." When asked whether a man should steal medicine from a druggist to give to his dying wife, "Jake" responds that he should, while "Amy" responds that he should attempt to compromise with the druggist. Gilligan argues that Jake applies an abstract, hierarchal "ladder" of values to balance the man's rights against the druggist's; Amy approaches the conflict contextually and cooperatively, calling attention to the "web" of relationships and responsibilities among the man, his wife, and the druggist. Spiegelman compares legal education with Jake's viewpoint and contrasts it with Amy's, identifying the strengths and weaknesses of both. He proposes specific classroom methods for balancing both perspectives, including open discussion of the differences between Jake and Amy, and incorporation of experiential learning exercises into the traditional appellate case method. Among the exercises he suggests are simulation, role-play, and drafting. To make room for change in the curriculum, he suggests computer-assisted self-learning tools to check students' mastery of traditional materials.

Angela Stamm & Marla L. Mitchell, *Teaching the Law Student to Become a Lawyer: How Personal Perceptions Form Realities and Impact Our Role as Lawyers*, 2 T.M. COOLEY J. PRAC. & CLINICAL L. 135 (1999).<sup>†</sup> The authors start by exploring what they see as a discrepancy between what is taught in the traditional law school classroom and what is required to represent a real client. This discrepancy is relayed through a student's narrative of her experiences with an elderly client in her law school's clinic program. The second half of the article is a reflection upon the narrative by the

student's supervisor. In this portion of the article the author relates how the client, student, and supervisor all had different perceptions of each other and the law. Included in this discussion is how these different perceptions manifested themselves in the legal proceedings that took place. The article describes how understanding and bridging these different perceptions is crucial to a successful clinic experience, competent legal representation, professionalism, and personal growth. The article concludes by describing what skills are necessary for bridging these perception gaps, and furthermore, how these skills can be taught through a clinical experience.

Debra Pogrud Stark, *See Jane Graduate: Why Can't Jane Negotiate a Business Transaction?*, 73 ST. JOHN'S L. REV. 477 (1999).\* † This article examines the lack of attention law schools devote to the development of skills necessary to the practice of law, particularly transactional skills. The article calls for stronger efforts by law schools to teach the "often neglected core transactional skills necessary to adequately represent clients," including hiring more faculty with private practice experience, creating transactional legal clinics, and establishing "pro bono partnerships." The article notes that law schools need the cooperation of the private bar to accomplish these goals. The article concludes that measures such as these will "improve the quality of the legal profession and the public's perception of lawyers."

James H. Stark, *Preliminary Reflections on the Establishment of a Mediation Clinic*, 2 CLIN. L. REV. 457 (1996).\* † Utilizing his own law school mediation clinic as a springboard for discussion, the author analyzes the distinctive characteristics, strengths, and weaknesses of mediation clinics in general. The author begins his examination by describing the influences that led to the evolution and development of his program. Next, he describes the constituent skills necessary to be an effective mediator, concluding that these skills are, for the most part, generically important skills for the practice of law. Then he turns his attention to aspects of mediation that complicate skills training, including the fact that mediators must "navigate between two or more disputants with differing, if not hostile, interests"; that mediation is a pluralistic, diverse profession, with "disputed norms"; and that effective mediation requires a good deal of psychological adeptness (high "E.Q.") that is hard to teach in law school. The fluidity and nonlinear character of mediation also are cited as creating difficulties in planning, supervision, and critique. Despite these difficulties, the author concludes that mediation clinics offer students a uniquely important educational experience by, among other things, promoting ideals of party empowerment, fundamentally altering students' understanding of conflict and fostering an integrative, problem-solving approach to the practice of law.

James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Supervision*, 3 B.U. PUB. INTEREST L.J. 35 (1993). This article presents the authors' research on clinicians' attitudes towards directiveness in supervisory relationships. The inquiry focuses on the tension between the educational value of student autonomy and clinicians' professional interest in ensuring high-quality client representation. The authors base their findings on a survey of 107 clinicians from around the United States, supplemented by input from participants at two workshops where the study was first presented. Based upon the results of their survey, the authors classify the respondents as "directive," "non-directive," or "neutral," depending on how the clinician resolves the tension between student autonomy and responsibility to the client. They then analyze the findings for finer distinctions between directive and non-directive teaching approaches (in such areas as decision-making, information-sharing, and task allocation and performance) and identify external factors that may

affect a clinician's attitudes, including demographics and personal values. A copy of the survey, selected responses, and statistical background are attached as appendices.

James H. Stark, Philip P. Teller & Noreen L. Channels, *The Effect of Student Values on Lawyering Performance: An Empirical Response to Professor Condlin*, 37 J. LEGAL EDUC. 409 (1987).<sup>‡</sup> This response to Robert Condlin's articles on the relationship between clinician dominance and student professional development in clinical education explores the effects of existing student values on lawyering behavior in clinical settings. The article describes a study of clinic students' values concerning "adversary behavior" and how these attitudes affected the students' performance in witness interview simulations. Witness interviewing was chosen as a subject for study because it is one of the few opportunities lawyers have to deal directly in a professional capacity with non-lawyers who are not their clients, in private, at a time when the lawyer may have specific adversarial goals to achieve. The authors define "adversary behavior" as the goals and techniques associated with traditional zealous advocacy, or commitment to advancing client interests by all lawful means. Based on study participants' responses to questionnaires and performances in simulations, the authors identify three categories of adversary behavior that encompass a variety of specific tactics: coercion, or pressure to produce a favorable statement; deception, or misrepresentation of any fact, law or other factor to encourage compliance with client goals; and manipulation, which includes any other approach to witness interviewing intended to favorably affect the client's interests. The article describes the authors' research procedures and offers insight into the difficulties of securing social science data from law school studies. It concludes with the finding that student values regarding the adversarial system significantly affect clinical performance.

Jean R. Sternlight, *Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications*, 50 U. MIAMI L. REV. 707 (1996).<sup>\* †</sup> This article examines the "fierce war over the soul of legal education in the United States" between lawyers and legal academics. The author argues that practice and legal theory are complementary, not contradictory, and calls for the symbiotic integration of the two by advocating a "common sense jurisprudence toward law and its practical applications." Section I establishes the background context for this discussion. This section also provides the author's definitions for the terms "theory," "practice," and "doctrine," while briefly discussing these definitions in the context of philosophers' definitions of related terms over the years, and provides a historical examination of the relationship between theory and practice in American legal education. In Sections II and III, the author details critics' current attack on legal education and the academy's response, focusing particularly on the desired relationship between theory and practice. In Section IV, the author argues that theory and practice should be linked through a jurisprudence of applications and supports this view by applying three abstract theories to a current legal problem. Section V details steps that academics, practitioners, and students should take to further a jurisprudence of applications. Finally, Section VI addresses policy consequences of the symbiotic relationship between theory and practice.

Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 19 N.M. L. REV. 287 (1989). This article discusses the role externship programs play as a source of clinical legal education in American law schools. Part I provides a historical context for the debate concerning whether or not law schools should integrate externship programs into their curricula and the status that externship programs have had relative to other clinical and non-clinical curricular

offerings. Part II draws on data collected from a national study of fieldwork programs at American law schools conducted between 1982-1983 to provide insight into the contemporary approach to operating externship programs. The article argues that many problems associated with externship programs are attributable to the fact that they frequently suffer from insufficient financial, administrative, and faculty support. Part III offers a new model for externship programs that calls for greater collaboration between the field office and the law school in structuring and supervising externship programs. The article concludes by suggesting ways in which faculty members can make the case for greater resource allocation to externship programs.

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 (2002).\* † This article describes the Innocence Project clinical model adopted by California Western School of Law. It discusses the areas that must be considered when creating a new Innocence Project clinical program, including course content, case type, case intake, credit hours, number of students involved, faculty-student ratio, teaching resources, student selection, grades, and physical plant. Each topic is illustrated by the choices adopted by the California Western program. The article also identifies several lawyering skills developed in a typical Innocence Project clinical program, such as written communication, finding and proving facts, organization and time management, and dealing effectively with others who will play roles in the professional lives of students after graduation.

Roy T. Stuckey, *Apprenticeships and Clinical Education: The Only Real Performance Tests?*, THE BAR EXAMINER, Aug. 1986, at 4. This article explores the potential of apprenticeships and clinical education as performance tests for admission to the bar. It also describes how clinical programs could complement apprenticeships and make them more valuable. The author notes that apprenticeships and clinical education share a common premise that new lawyers should have some supervised experience before being allowed to practice law on their own. The article argues that the use of apprenticeships or clinical education as tests may be the only way to acquire some of the information that is most critical for the prediction of future lawyer behavior, such as integrity, motivation, and conscientiousness, attributes that are not tested by pen and paper bar examinations or performance tests like the California Performance Test. The article also argues that the most important benefit of using law school clinics in conjunction with apprenticeships would be the research potential for testing the validity of the California Performance test and for developing economical methods for testing lawyer competencies.

Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648 (1996).\* † After praising the MacCrate Report and the efforts of others for the push to “educate students for the practice of law,” the author suggests that this most recent push has the potential to produce sweeping changes in legal education. Resistance from teachers and bar examiners who do not focus upon practice skills is identified as a potential impediment to increased attention to practice skills. After identifying the impetus for change, the author narrows his argument to suggest that law schools should stress the development of problem-solving skills as “the core function of lawyers.” The author offers a definition of these skills from the cognitive science perspective. He argues that the “primary purpose of legal education is to teach students to be competent problem solvers.” The author next discusses some methods, structures, values, and sample curricula that build problem-solving skills. The author concludes that the “logical

culmination of a law student's instruction in problem solving is to give the student responsibility for real clients' problems and allow the student to help resolve these problems under the supervision of a member of the faculty."

Roy T. Stuckey, *Preparing Lawyers for Law Practice: New Roles for The NCBE and the ABA*, THE BAR EXAMINER, May 1990, at 12. This article argues for a concerted, coordinated effort by the law schools, the ABA, and the state admitting authorities to investigate the need for legal education reform and the need for bar admission reform. The article argues that newly admitted lawyers are not qualified to have unrestricted licenses to practice law. It argues that law schools are not doing as good a job as they should to prepare students for law practice, and that they are incapable of reforming themselves. The ABA has not done enough to help law schools understand what they can do and to make certain they do it. The state bar admitting authorities have not done enough to define expectations for law schools, to design bar examinations that test the full range of knowledge and skills that are necessary for competent law practice, or to impose post-admission requirements that help the new lawyer become fully competent while protecting the public. The author suggests several steps, including greater cooperation between the ABA Council of the Section of Legal Education and Admissions to the Bar and the National Conference of Bar Examiners; holding of joint conferences about the content of the law school curriculum, the bar examination, and CLE for new lawyers; creating a system of restricted licenses that would permit newly admitted lawyers to engage in increasingly sophisticated kinds of practice until they become fully admitted; and creating a progressive, structured program of CLE instruction. The author also suggests that the NCBE should begin a research project to design and promote new bar admission evaluation tools to implement the restricted licensing scheme and should undertake to evaluate proposals for changes in admissions standards such as the California State Bar's Committee on Professional Standards and Admissions proposals (1988).

Roy Stuckey, *Understanding Casablanca: A Values-Based Approach to Legal Negotiations*, 5 CLIN. L. REV. 211 (1998).\* † This article discusses a values-based approach to legal negotiation. The central thesis of the article is that each party's desire to attain personal happiness underlies all decisions in negotiations and that this paradigm can help lawyers develop and employ effective negotiation strategies and tactics. Part I explores the role of personal values in decision making. It describes concept of happiness as the basic goal of humanity, and it defines personal values and explains how the relationships among values determine each person's concept of happiness. Part II then considers the practical implications of the theories presented in Part I, both for collecting and evaluating information and for influencing opponents in negotiations. Finally, Part III uses excerpts from the movie *Casablanca* the concepts discussed in Parts I and II.

J. Thomas Sullivan, *Teaching Appellate Advocacy in an Appellate Clinical Law Program*, 22 SETON HALL L. REV. 1277 (1992). As an alternative to traditional moot court exercises and legal writing programs to teach appellate practice skills and concepts, the author offers the possibility of an appellate practice-oriented clinical course. His evaluation is based on experiences as an appellate clinic teacher at Southern Methodist University, where he supervised student attorneys in their acquisition of decision-making, brief and motion writing, and oral advocacy skills in a one-semester, 4-credit course. He describes the appellate clinician's role as a demanding one, which requires an experienced appellate attorney who is qualified to teach practice rules and substantive law and who

maintains strong contacts with the local bench and bar. He or she must have tenure or tenure-track status and the opportunity to teach traditional classes in order to reinforce the relationship between the appellate clinical program and traditional case teaching method. The author argues that the structure of the clinic should involve classroom simulations of oral advocacy skills in addition to live-client representation so that students have the opportunity to prepare oral arguments for cases that may not develop fully over the course of one semester. The author stresses the clinician's responsibility to stay actively involved in students' representation to ensure that clients' interests are adequately protected and advanced.

Kathleen A. Sullivan, *Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 IND. L. REV. 115 (1993). The author discusses the close relationships that develop between clinical supervisors and their students. These relationships are characterized by physical proximity, mutual familiarity, trust and appropriate self-disclosure. She contrasts these relationships with students' relationships with traditional faculty and describes conflicts that can arise when student-teacher intimacy affects authority roles and evaluation. The author compares her concepts of clinical relationships with others developed through clinical and feminist scholarship, with an emphasis on different theories about how students acquire knowledge. In particular, she explores three "ways of knowing" advanced by feminist scholars: "separate knowing," which describes traditional classroom teaching; "connected knowing," which characterizes supervision tutorials; and "constructed knowing," which integrates the other two ways such that students learn by comparing others' experiences with their own. She concludes with an analysis of her own personal approach to intimacy in relationships with students.

Lawrence A. Sullivan, *Law Reform and the Legal Services Crisis*, 59 CAL. L. REV. 1 (1971).<sup>‡</sup> This article describes the establishment and operation of publicly-funded legal services programs in the United States to provide legal aid to people who would otherwise be denied access to the system. He specifically emphasizes ways in which programs achieve law reform objectives in such areas as the administration of welfare. To illustrate how legal services programs can be effectively focused on law reform, he presents a case study of the Housing and Economic Development Law Project, a collaborative effort by law students and legal services attorneys to abate private and public sector housing problems by means of various legislative, administrative, grassroots, and impact litigation strategies. The author describes the salutary effects of aggressive, quality legal representation through legal services offices, both for the clients themselves and for the field of poverty lawyering. He argues for cultivation of more comprehensive, diverse, and creative legal services programs, like the one described above.

Agata Szypszak, *Where in the World is Dr. Detchakandi? A Story of Fact Investigation*, 6 CLIN. L. REV. 517 (2000).<sup>\*</sup> † This article is a first person account of a law student's experience at Georgetown University Law Center's asylum law clinic, the Center for Applied Legal Studies (CALS) in the spring of 1999. In a foreword by Philip G. Schrag, Professor and Director of the CALS, the value of "challenging or encouraging students to undertake apparently impossible tasks" is advanced. Buttressing that argument is a student's retelling of her experience representing a refugee from Liberia who appealed the denial of her request for asylum. The article provides a highly personal account of the student's experiences, highlighting her search for the only witness

who could corroborate her client's story. Both her methodology and the role of her advisor are detailed, providing a clear sense of the learning experience.

Nina W. Tarr, *Clients' and Students' Stories: Avoiding Exploitation and Complying with the Law to Produce Scholarship with Integrity*, 5 CLIN. L. REV. 271 (1998).\* † This article explores the problems associated with scholarship that is based on clients' and students' experiences. Among the issues addressed by the article are whether the topics chosen by scholars reflect their values, avoid exploitation and contribute to clients' or students' lives; whether the process for reviewing research is inclusive and "client-centered"; and whether informed consent is obtained from clients and students in a meaningful manner. This article begins by exploring the concept of exploitation. Then it examines the federal law and regulations on human subject research, arguing that "most clinical scholars have not thought through whether their projects fall under the parameters of the laws or comply with their underlying policies." The next section reviews the case law on informed consent that dominates medical research and practice. The article notes that lawyers have not been held accountable under the tort system for failing to obtain informed consent from their clients in a fashion similar to doctors. The Model Rules of Professional Conduct described in the article provide guidance regarding confidentiality, client consent, conflict of interest and exploitation of clients for the purposes of publication. Integrated into the discussion are statements by other clinicians that illustrate the difficulties of this scenario. Ultimately, regardless of whether any law applies to a research project, the article concludes that "the underlying value of respecting the autonomy and dignity of the individual reflected in the laws is shared by most clinician scholars."

Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31 (1993).\* † The article reviews four issues affecting and affected by clinical legal education. First, the author reviews the ongoing debate about whether the mission of clinical education is to address poverty in a legal/political manner or to transmit lawyering skills. She concludes that clinical education is not simply a pedagogical method, but is a philosophy about the role of lawyers in our society. The roots of clinical education are in radical or at least liberal reform. The implications of this political orientation, according to the author, must be addressed in issues such as the selection of types of cases, an issue that also raises questions about pedagogical approach and the tension between client needs and student needs. The author argues that when a clinical program focuses on skills training, it does so at the expense of a political orientation. She criticizes pure skills training courses that use simulation technique for failing to expose students to the learning that can only be achieved when students have the kinds of unpredictable and emotionally-challenging experiences that take place through client representation. The second issue is clinical education economics, and the implications of the fact that many law schools have relied on grants, rather than hard funding to support clinics. This structure could result, for example, in a funder's demanding that a clinic engage in litigation even though there is much for students to learn from using other approaches, such as alternative dispute resolution or legislative advocacy. The third issue is the tension between in-house clinics and externship programs and how both have improved through contact and dialogue with the other. Finally, the author addresses the many forms of marginalization to which clinical programs are subject, from the students' perspective and the faculty perspective. The author concludes by describing some of the richness of clinicians' work in the classroom and in scholarship, and surveys briefly some of the trends in clinical theory scholarship.

Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990).‡ The author presents the following arguments in favor of making evaluation an explicit part of clinical training: 1) a student who can engage in self-evaluation is able to use the skill to continue learning from his/her experiences throughout his/her career, 2) the self-evaluation skill assists the student to develop independence of judgment from the supervisor through the exercise of self-responsibility, which is more consistent with the reality that the students are and are becoming competent adult learners, 3) the self-evaluation skill enhances the student's ability to integrate theory with practice through the process of systematically examining the applicability and adequacy of a particular theory to a particular practice, and 4) explicit self-evaluation facilitates critique and grading of students. The author provides a six-step process for self-evaluation: 1) focus the evaluation, 2) identify goals, 3) identify responsibility, 4) articulate specific components of theory, 5) articulate a new theory of action, and 6) confirmation. She provides an example of teaching self-evaluation in a simulated course and examines how her theories worked and what she would change if she were to offer the course again.

Scott A. Taylor, *Computer and Internet Applications in a Clinical Law Program at the University of New Mexico*, 6 J. L. & Info. Sci. 35 (1995). This article describes a clinical course in which students use computers, expert system software, on-line legal research, cd-rom legal research, local and Internet email, and Internet access to prepare federal and state tax returns for the working poor so they will be able to claim their earned income tax credit and low income rebate. The purpose of the course is to expose students to applied technologies in a legal context so that they will increase their computer literacy while acquiring important legal knowledge and lawyering skills. The author also briefly explores some issues, such as client confidentiality and unauthorized practice of law, that the program faced in trying to expand services over the Internet to potential clients outside of New Mexico.

Karen L. Tokarz, *Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship*, 11 WASH. U. J.L. & POL'Y 1 (2003).\* † This introduces a volume of Washington University's Journal of Law and Policy that published articles from a national conference on "Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship." It notes that although interdisciplinary techniques have increasingly been utilized at law schools, there has been little discussion focused specifically on their goals, organization, and ethical impact. Brief summaries of the articles presented in the Journal are included.

Joseph P. Tomlin & Michael E. Solimine, *Skills Skepticism in the Postclinic World*, 40 J. LEGAL EDUC. 307 (1990).‡ The authors address the challenge of incorporating practical skills training into the law school curriculum. They discuss three models of skills instruction currently employed in legal education: the Integrated Curriculum model, which incorporates skills education techniques such as simulation and drafting into traditional substantive courses; the Lawyering Process model, which emphasizes professional development through progressive exposure to legal practice contexts; and the Center model, which establishes a centrally-administered research and skills-training institute that borrows from the other models for specific teaching approaches. The authors criticize some schools' reliance on clinical programs as skills-training vehicles, citing strategic, normative, and intellectual defects in the development of clinical methodology as it relates to skills acquisition. The authors contend that by placing the onus of skills education on clinics and clinicians, some schools

have sacrificed the political, moral, and pedagogical goals of experiential learning. Despite the authors' skepticism about the value of skills training for its own sake, they conclude with ideas about how legal educators can draw connections between theory and practice by tying skills training to professional development and the search for justice.

Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, 1994 GONZ. L. REV. 1.† This is a bibliography compiled by the editors in order to assemble, in one place, helpful articles that have resulted from a recent shift in emphasis towards consciousness of teaching pedagogy in legal education. The bibliography includes practice-oriented articles that have practical application to the classroom setting. All materials were published in or after 1985 and are readily available in Canada and the United States. They are organized under 45 headings based on law school subjects and are arranged alphabetically by author in each category. Each listing includes the citation and a very brief description of the article. Among the materials are 13 articles listed under the heading "Clinical Education."

William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201 (1996).\* † This article's thesis is that law schools should prepare students to practice law competently upon graduation and that cost-effective means are available to achieve this objective. The authors base this thesis on the legal profession's failure to perform its obligations to provide new lawyers with adequate supervision and training in the craft of being a lawyer. This article outlines a program for making cost-effective skills training a central component of the law school curriculum. The proposed program includes increased support of upper-class elective courses and incorporation of focused study in a field of interest. Moreover, the authors emphasize the importance of practice skills training, and argue that more attention should be given to legal writing and lawyering tasks, which can be accomplished through clinics and simulations. The authors conclude that complete representation of a client in a relatively complex matter within the students' area of concentration is the culmination of the law school phase of the students' legal education. The authors acknowledge that the proposed program creates costs and forces law schools to make hard choices. The central mission of educating competent lawyers, however, requires implementation of such a program.

Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475 (1999).\* † This article seeks to understand the ethics and the strategy of legal services triage. It explores how legal services lawyers ought to allocate scarce resources among the many clients, and groups of clients, who need and ask for assistance. The article begins by envisioning a metropolitan legal services office with a limited budget, situated in a community with a diverse population. It then considers and defends, on ethical grounds, the notion of "weighted triage," and follows by identifying criteria that should inform ethical triage decisions. The article then turns to broader "macroallocation" questions and develops a "taxonomy of practice visions," including individual case representation, focused case representation, law reform, and mobilization lawyering. The author argues that an effective community-based organization must develop a "portfolio" of practices that includes both immediate-need and deferred-need activity, in compliance with fiduciary duties to existing clients and to future clients. Finally, the article considers the ethics of abandonment (arguing that sometimes accepted cases will be sacrificed for more pressing new cases), the question of "who decides" among competing demands (concluding that the office

personnel, and not community members, must decide), and the “money chase” factors (noting that more money is not always a good thing for a program, such as if the additional funding requires distorted delivery of services).

Paul R. Tremblay, *Coherence and Incoherence in Values-Talk*, 5 CLIN. L. REV. 325 (1998).\* † This essay explores the “values” theme of the 1998 Conference of the Clinical Section of the Association of American Law Schools. Based on the author’s belief that the Conference failed to resolve many of the questions about values and their role in education, this essay is an attempt to develop the ways in which the discussion could have been reframed. Part II notes how the conference participants defined values. In Part III, the author argues that the view of values expressed by conference participants is flawed. The author describes the flaws briefly and argues that “values-talk cannot shake the central assumption that moral sensibility is personal and subjective.” The author argues that most disputes about values are better described as disputes about facts. The essay concludes with a plea for continued discussion about values in order to preserve ethics in legal practice.

Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373 (2002).\* † Increasingly in recent years, critics and commentators have noted the importance of the role of culture within the lawyering process. Lawyers now understand better that culture matters in their day-to-day work with clients and that not all cultures share the same habits, customs, values, traditions, and preferences. This article explores how the reality of cultural diversity might affect some fundamental lawyering practices and models, particularly the models for interviewing and counseling. In their work, lawyers must take cultural background into consideration while at the same time avoiding harmful and unfair generalizations and stereotypes. This article proposes the concept of “heuristics” to capture the idea that lawyers might assume tentatively, but only tentatively, that a member of a recognized non-dominant cultural group will share the values, habits, and preferences of his or her group. It then employs the concept of “biases” to remind lawyers of the need to be aware of their own cultural preconceptions when working with clients. Throughout, the article emphasizes a commitment to “disciplined naïveté” and “informed not-knowing” – reminding readers that individuals can only begin to appreciate the richness of cultures different from their own.

Paul R. Tremblay, *Rebellious Lawyering, Regnant Thinking and Street Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992).\* † In an article that discusses political opposition, client vulnerability, absence of economic restraints, and other challenges of representing subordinated clients, the author critiques Gerald López’ model of “rebellious lawyering.” López’ vision centers on group mobilization, community organization, and destruction of social and cultural barriers between the profession and the client population, with an emphasis on achieving long-term, collective goals. The author argues that this approach incorporates necessary changes but requires lawyers to consciously sacrifice the present, identifiable goals of the individual client in the name of long-range empowerment. He calls this trend the “deferral thesis,” a term he defines as the future orientation of rebellious lawyering – efforts intended to benefit current clients in the future or unnamed future clients. He argues that such an allocation of resources may ultimately prove even more paternalistic than the traditional, or “regnant,” poverty law practices López criticizes. By drawing analogies to ethical decision-making conflicts in the medical field, the author shows that the deferral thesis can be ethical. Since it may be more effective as well, he argues that legal services organizations should

recognize the psychological and institutional factors impeding the use of rebellious lawyering practices and move to change them.

Paul R. Tremblay, *Toward a Community-Based Ethic for Legal Services Practice*, 37 *UCLA L. REV.* 1101 (1990).<sup>\* †</sup> This article addresses the conflict of ethics faced by legal services lawyers who are forced to deny service to certain clients in order to provide service to others. The author refers to the work of Gary Bellow and Jeanne Kettleson, specifically their 1978 *Boston University Law Review* article, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, in which they analyzed the manner in which poverty lawyers satisfy their professional responsibility under circumstances of scarce time and other resources. The authors proposed a justification for prioritizing cases and exclusions that satisfied the Model Code of Professional Responsibility at the time. Essentially, the authors provided a moral justification for focusing on “certain identifiable injustices or legal needs” in order to make fair, rational, and acceptable decisions. Using Bellow’s and Kettleson’s thesis as a springboard for his own, Tremblay argues that it is not possible to impose the “conventional notions of informed consent and zeal” that exist in the private sector to the legal services practice. Having established that a pure client-centered model cannot be applied to decision making in a legal services context, Tremblay suggests that the lawyer or her institution will more frequently control decisions in the legal service arena than in the private sector in which the client’s wishes govern. He supports Bellow and Kettleson in their acknowledgment of scarcity as a primary reason for that difference. As a second explanation, he offers the “peculiar relationship that exists between a legal services lawyer and her community of clients.” Here, he distinguishes legal service lawyers from other public interest lawyers and from *pro bono* lawyers volunteering their time and services. He explains this unique relationship as a consequence of the public funding of legal services lawyers and their charge to represent a certain group of poor people. Tremblay uses “triage” as the contextual model for his discussion of the role and responsibility of legal services lawyers. Similar to emergency room physicians, these lawyers must prioritize which clients receive what level of service, having recognized that some will receive only limited service. The article describes a triage system that employs community-based ethics to mitigate the contradictions inherent in poverty law work.

Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 *D.C. L. REV.* 123 (1992).<sup>‡</sup> In this article the author addresses the inconsistency inherent in the practice of poverty law, which is that poverty lawyers “can do as much harm as good for their clients.” He assesses a manner of practice styled to mitigate the harms lawyers do. Among those harms, he includes excluding clients from their work, viewing the lives of clients “through the distorted prism of law training and legal practice,” and expending too much energy on litigation-oriented practices, which seldom are successful in transforming their clients’ lives. He refers to the alternative style as the “Critical View,” which he describes as an emerging vision that “emphasizes and fosters the goal of empowerment of clients” as it criticizes the prevailing practice of poverty law. While acknowledging that the Critical View is a synthesis of the work of several writers, he emphasizes that they do not speak with a single voice. Although the proposed approach is centered on realistic possibilities within the confines of daily practice, the author asserts that the proposals do not sufficiently recognize the “conflicting pressures” upon poverty lawyers nor their lack of autonomy in a bureaucratic system. Part I describes the Critical View’s assessment of traditional poverty law

practice and its proposals for reform. Part II critiques those proposals, offering what the author calls his “Tragic View” of informed consent and triage practices that limit hope for practice reform.

Louise G. Trubek, *Context and Collaboration: Family Law Innovation and Professional Autonomy*, 67 *FORDHAM L. REV.* 2533 (1999).\* † This article highlights three emerging family law practices developed to respond to gaps in family law services: (1) multi-professional cooperation; (2) community education; and (3) information networks. The article describes each of their origins, funding, and collaborative styles and discusses how professional values influence the construction of the practices. Finally, the article examines how legal institutions are responding to challenges presented by these practices, concluding with proposals to mediate between autonomy values and collaborative techniques.

Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 *HARV. C.R.-C.L. L. REV.* 415 (1996).\* † This article examines two models of alternative legal practices now functioning in Wisconsin. The author maintains that both models may be termed “embedded”: they are in the private sector, provide services for subordinated people, evolve from a local community and legal culture, and are client funded. The first model is the “client nonprofit” – nonprofit organizations that serve specific client groups and integrate lawyering into the operations of these organizations’ mission. The second model is the “social justice law firm” – fee-for-service firms that incorporate lawyering for causes and disadvantaged groups within their overall practice. The article describes the operations of these practices, analyzes their key elements, and compares their effectiveness. The article then discusses how the elements of nonlawyer control, diverse funding, and new lawyer recruitment, which characterize these practices, produce conflict within the profession. The article concludes with a challenge to the bar and to law schools to encourage cooperative coexistence among social change lawyers and tolerance of experimentation.

Louise G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 *FORDHAM URB. L.J.* 801 (1998).\* † This article begins by discussing a video written and produced by Fordham Law School students and staff that highlights the perspective of contemporary law students on lawyering for the poor. The author explains how the video highlights three essential elements in alternative legal practices: multiple organizational structures, expanded lawyering skills, and intensive collaborative relationships. This article then describes why these three elements are essential to innovative practice. It also explores the different ways contemporary lawyering incorporates these elements and examines the challenges faced by such practices. The article concludes with strategies for supporting innovative law practices.

Louise G. Trubek, *U.S. Legal Education and Legal Services for the Indigent: A Historical and Personal Perspective*, 5 *MD. J. CONTEMP. LEGAL ISSUES* 381 (1994).† This article surveys the history of the interaction between legal education and services for the poor in America, assesses this longstanding relationship, traces its evolution, and analyzes the effect of tensions within the academic legal community on poverty law. The author divides this history into three “epochs”: the Informal Epoch (Pre-1970); the Professionalism Epoch (1970-1985); and the Unsettling Epoch (1985-1994). According to the author, the Informal Epoch was characterized by independently-motivated student volunteer efforts facilitated by law school liaisons. During the Professionalism Epoch, law schools began cultivating in-house clinics assisted by funding programs

such as CLEPR and the Legal Services Corporation. During this phase, poverty lawyers found legitimacy and professional identity as full-time clinicians within law school faculties. The Unsettling Epoch was marked by increased awareness of the clinic/public service ideal with the development of internal criticism, critical scholarship, increased student interest in *pro bono* activities, and changes in the global poverty consciousness. Throughout this discussion, chronicles her own professional development as an academic and a poverty lawyer. She concludes with observations on the future of law school-public interest allied activities.

Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLIN. L. REV. 227 (2000). \* † This article discusses multidisciplinary practices (MDPs) as a strategy to expand legal assistance to low and moderate income people. Multidisciplinary practices generally involve lawyers working closely with other professions, lay advocates, and community agencies to solve non-legal as well as legal problems of clients. This article is a report of the research by the authors into the operation of social justice collaboratives in three sectors, at risk families with children, domestic violence, and community economic development. In the context of a particular practice setting in each section, the authors describe the collaborative practice, discuss the theoretical background for the practice, describe the specific legal work done, discuss funding, networks and practical aspects, and conclude with a discussion of ethical concerns. The next part of the article is an analysis of the common elements that constitute the innovations in collaborative practice. The authors conclude the article with proposals for changes in ethical regulation of lawyers and training of law students that would encourage and support the creation of social justice collaboratives.

Joseph B. Tulman, *The Best Defense is a Good Offense: Incorporating Special Education Law into Delinquency Representation in the Juvenile Law Clinic*, 42 J. URB. & CONTEMP. L. 223 (1992). This article describes the special education advocacy project of the Juvenile Law Clinic at the District of Columbia School of Law. The article outlines the direct service and educational goals of the project as well as the goals for raising the standard of practice of special education law in the community. Part II of the article describes the systemic problems that prompted the Clinic to initiate the project, including the large number of children in the delinquency system with undiagnosed educational problems and unmet educational needs and the failure of the principal actors in the delinquency system to recognize the causal connection between educational problems and delinquent conduct. The remainder of the article explores methods for implementing the project. Part III explores the client service considerations and objectives of the project. Part IV describes the pedagogical design of the clinic; Part V provides a brief discussion of the Clinic's plans for raising the standard of practice in the community, principally by conducting training sessions in the law of special education for practicing lawyers who represent clients in delinquency cases and by establishing a network of private special education legal experts who will accept referrals of cases from attorneys representing children in delinquency cases.

Mark V. Tushnet, *Scenes From the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272 (1984). \* † The author characterizes clinical education as unfortunately "marginal" to mainstream legal education because its unstructured, emotion-laden, and poverty-oriented nature contrasts with traditional classroom instruction. He identifies these qualities as culturally associated with "being female," and therefore devalued and

subordinated by male-dominated academia. To combat this association, the author offers several approaches. He describes different defensive postures that would seek to deny the male/female distinction between traditional and clinical education and the values attributed to each, or would attempt to conform clinical subjects to the model of substantive law courses. As a more promising approach to improving the status of clinical education, he suggests that clinicians use writing and research to compete with traditional academics at their most vulnerable point. He suggests that clinical scholarship that reports social grounding of current legal action would better promote the vitality of the law that traditional educators purport to cultivate through scholarly law review publications. Tushnet argues that such positive output might help justify the higher cost of maintaining in-house clinics and clinical instructors.

Ralph S. Tyler & Robert S. Catz, *The Contradictions of Clinical Legal Education*, 29 CLEV. ST. L. REV. 693 (1980). The central thesis of this article is that clinics should replace live-client representation with simulated exercises in order for clinics to realize their full potential as educational institutions. Representing clients presents several problems in a law school setting. The crucial problem is the lack of highly qualified clinic instructors. This lack is rooted in the tension between success as a law teacher and success as a practicing lawyer. The article describes other contradictions inherent in a law school's running a law office. These conflicts include disputes over resources, unpredictability of cases, and use of cases that are interesting versus cases that are appropriate educational vehicles (easy cases are better for educating students, but bore the clinical instructor; interesting cases tend to be too complex for much student involvement). According to the authors, the use of simulated exercises, combined with a small number of highly screened cases, would allow clinics to fulfill their educational potential. The article describes such a program in use at Cleveland State University. Attached to the article is an appendix that describes the rate of turnover among clinical instructors.

Maria Tzannes, *Legal Ethics Teaching and Practice: Are There Missing Elements?*, 1 T.M. COOLEY J. PRAC. & CLINICAL L. 59 (1997).† This article seeks to stimulate debate and scholarship regarding the effectiveness of teaching methods by examining the extent to which teachers of legal ethics are successful in teaching knowledge, skills, and attitudes relating to legal ethics. It attempts to uncover missing elements that may hold the key to more effective legal ethics teaching. This article emphasizes the skills and attitudes aspects of the educational equation. In relation to attitudes, it recognizes the literature in social psychology dealing with the relationship of behavior to attitudes and *vice versa*. The article also describes a method of teaching legal ethics that emphasizes skills as applied to legal ethics behavior. It concludes that legal ethics teaching and practice is “at the very heart of our system of justice,” and calls for the development of new and effective teaching and learning strategies in this field.

Rodney J. Uphoff, *The Criminal Defense Lawyer As Effective Negotiator: A Systemic Approach*, 2 CLIN. L. REV 73 (1995).\* † The author identifies the role of this article as seeking to improve the ability of criminal defense lawyers to negotiate more effectively. Part I of the article explains the systemic pressures on a defense counsel and defendant to plea bargain. Part II briefly examines the importance of client consultation and raises the issue of the need to obtain the client's consent before plea bargaining. Part II also presents a series of steps the criminal defense lawyer should take to ensure that the lawyer is prepared to negotiate a state criminal case. Section III examines additional

factors and considerations likely to affect the negotiation strategy. Section IV concludes the article by urging defense counsel to engage in a reflective critique of each negotiating session in order to improve the abilities to select and implement a successful negotiation strategy.

Rodney J. Uphoff, *Who Should Control The Decision To Call A Witness: Respecting A Criminal Defendant's Tactical Choices*, 68 U. CIN. L. REV. 763 (2000).<sup>\* †</sup> The article begins with a description of a case in which an attorney must either follow the defendant's advice and not recall the defendant's father as a witness or override the client's advice in the best interest of the client. Part II of the article discusses different approaches to the allocation of decision-making power comparing the traditional model with the client-centered model. Under the traditional approach, the attorney would call the father as a witness if the attorney believed that doing so would enhance the client's odds of winning the trial. Under the client-centered approach, however, it is more likely that the client's decision would be honored. Part III of the article examines the general, often inconsistent, guidance provided by ethical rules, case law, and professional norms regarding the allocation of decision-making power. Part IV outlines four factors that an attorney should take into consideration before deciding to call the father contrary to the client's wishes: the defendant's capacity for choice, the reasons for the defendant's preferred strategy, the harm the defendant faces, and likelihood of the defendant suffering the potential harm. Part IV then analyzes three different scenarios and the various approaches an attorney could take. Part V concludes that in each circumstance the attorney should weigh the four enumerated factors in determining to follow the client's choice or the attorney's.

Rodney J. Uphoff, *Why In-House Live Client Clinics Won't Work in Romania: Confessions of a Clinician Educator*, 6 CLIN. L. REV. 315 (1999).<sup>\* †</sup> This essay begins by examining why in-house live client clinic programs are not viable in Romania or in most of the other economically struggling countries of the region. The essay next highlights some of the hurdles facing a country such as Romania in seeking to achieve meaningful legal education reform. Finally, it concludes by reminding American educators promoting "American-style clinical legal education" in other countries of the limits of their roles and by urging potential donors to provide funding that "promotes, rather than frustrates, meaningful curricular reform."

Rodney J. Uphoff & Peter B. Wood, *The Allocation of Decisionmaking Between Defense Counsel and Criminal Defendant: An Empirical Study of Attorney-Client Decisionmaking*, 47 U. KAN. L. REV. 1 (1998).<sup>\* †</sup> This article begins by briefly discussing the conflicting views of the proper allocation of decision-making responsibility within the lawyer-client relationship. Part II describes the two major approaches or models of lawyering: the traditional, lawyer-centered model and the participatory, client-centered approach. Part III then looks at the limited extent to which the legal profession's ethical rules provide guidance regarding the proper allocation of decision-making authority between lawyer and client. Part IV examines how the Constitution and professional norms encourage, but do not mandate, lawyer dominance over most decision-making issues. Part V presents the methodology that the authors employed in an exploratory study of five public defenders offices to determine whether lawyers dominate strategic and tactical decision making in criminal cases. In analyzing the resulting data, the authors conclude that the majority of lawyers adopt a more lawyer-centered approach to decision making. Finally, the article concludes by exploring some of the personal and systemic factors that may affect the allocation of decision-making power between

defendant and public defender. Part VI probes some of the factors that influenced the lawyers in the study to take a client-centered approach and identifies additional avenues of research.

Rodney J. Uphoff, James J. Clark & Edward C. Monahan, *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381 (1997).\* † Through a distillation of surveys, interviews, and group discussions, this article seeks to create a dialogue between those who see the purpose of law school as teaching students to think like lawyers and those who think that law school should more precisely train students to practice law. The authors begin by exploring whether a gap actually exists between the skills learned in law school and the skills required by legal practice. After discussing opinions and facts that can be used to support either conclusion, the authors state “there is widespread recognition that law schools fail to adequately prepare students for practice.” The authors next attempt to pinpoint this deficiency by ascertaining just what skills new attorneys typically lack. The authors identify counseling and other interpersonal skills necessary for developing client relationships as particularly lacking in new law school graduates. While simulation classes might resolve some of these problems, the authors suggest that the true remedy to the lack of interpersonal skills can only be found when students have supervised experiences working with actual clients. The authors state that only actual experiences can adequately expose students to the “pressures, demands, and difficulties they are likely to encounter in practice.” The authors believe that by creating bridge-the-gap training academies and then requiring prospective lawyers to pass competency examinations that will certify them only to practice in areas in which they have demonstrated competence, both law schools and students will be compelled to focus on the knowledge and skills necessary for the actual practice of law.

Greta C. Van Susteren, *Tribute to a Great Guy*, 31 AM. CRIM. L. REV. 1009 (1994).† This essay is a memorial tribute to Professor Bill Greenhalgh by a lawyer who had been a student in the Georgetown Criminal Justice Clinic under Professor Greenhalgh.

Ellen Waldman, *Substituting Needs for Rights In Mediation: Therapeutic or Disabling?*, 5 PSYCHOL. PUB. POL’Y & L. 1103 (1999).\* † In Part I, the author assesses mediation’s trade-off between rights and needs, focusing on the problematic nature of need satisfaction as a benchmark for successful mediation. Part II suggests that needs, unlike rights, are fundamentally subjective and that minorities and other traditionally marginalized peoples may define their needs more minimally than their counterparts. It summarizes data demonstrating that minorities experience greater satisfaction in mediation even though they achieve objectively worse outcomes. Part III explores the validity of need satisfaction as the litmus test for proper or effective mediation, noting that the determination of individual need may be tainted by prejudice or minimized by an improper interpretation of background legal norms and entitlements.

Ray Watterson, Robert Cavanagh & John Boersig, *Law School Based Public Interest Advocacy: An Australian Story*, 2 INT’L J. CLIN. LEGAL EDUC. 7 (2002). The article presents an outline of the curricular model utilized at Newcastle Law School, which incorporates both classroom and clinical training as part of its undergraduate legal education program, and describes the University’s participation in a high profile public interest case involving police misconduct to illustrate how integrating public interest advocacy into law school curricula serves to enhance clinical legal education, bridge the separation between legal theory and practice, and contribute to the delivery of

legal services. Newcastle is divided into two undergraduate LLB streams. One of them, the professional program, provides clinical placements at a variety of locations (the University's Legal Centre, the Legal Aid Commission, and the Many Rivers Aboriginal Legal Service) and entitles students to apply for admission to legal practice without further practical training. The article discusses the matrix of considerations that the University uses to determine the suitability of a case for public interest advocacy, including whether the case confronts students with injustice, stimulates research and learning of substantive law, and fosters the development of practical legal skills. It describes the school's involvement in an inquiry regarding the investigation of a fatal shooting by police in 1997, which the article argues illustrates "the educational, justice, and reformist role and value of law school based public interest advocacy."

Ian Weinstein, *Don't Believe Everything You Think: Cognitive Bias in Legal Decision Making*, 9 CLIN. L. REV. 783 (2003).\* † Drawing on research in cognitive science and law, the article explores the impact of cognitive bias on lawyers and clients. These often subtle mental biases can lead to pervasive errors in decision making by causing lawyers and clients to ignore important information and make inaccurate predictions. They may lead a client to underestimate the risk of litigation. They may lead a lawyer to miscategorize a client's value choice as a misjudgement of fact. The article offers illustrative stories of the impact of bias on both client and lawyer and suggests how to identify and attenuate these biases.

Ian Weinstein, *Lawyering in the State of Nature: Instinct and Automaticity in Legal Problem Solving*, 23 VT. L. REV. 1 (1998).\* † This article analyzes how lawyers face the challenge of reasoning about both fact and law in a particular case by using the reigning cognitive science paradigm to analyze study data collected in episodes of actual lawyer reasoning. Part I of the article discusses recent attention to legal problem solving at the earliest stage of a case, before there has been the creation of a binding factual record. The author describes Newell and Simon's human problem-solving model, which involves a search through a problem space, using domain-specific knowledge and search techniques. Part II discusses the application of the model as an analytic framework for study of lawyerly problem solving. Part III presents two results of the study: that expert/novice distinctions observed in other domains are also found in the law and the solvers consistently used one of two general ways of thinking about the problems, one law-oriented and one fact-oriented. Part IV argues that although we can set up the conditions in which law students can develop their lawyerly thinking, we cannot directly teach them to think like lawyers. The author concludes that each individual must take responsibility for the version of lawyerly thinking that he or she has developed for himself or herself.

Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLIN. L. REV. 247 (2001).\* † This article uses Howard Gardner's multiple intelligences theory as a framework for explaining differences in student grades in a Fordham Law School course that combined graded simulations and a written final examination. Analyzing seven semesters of grades from this interviewing, counseling and negotiation course, which is itself described in some detail in the article, the data shows that some students showed strength in both testing formats and others showed strength in neither. A significant middle group, however, displayed relative strength on just one kind of assessment. The author uses the theory of multiple, independent intelligences to argue that simulations test an independent set of important lawyering abilities and are a useful

addition to law school testing. The article also discusses data showing the persistence of troubling gender and race based differences in grading and cautions that attention must be paid to the limitations of, and potential for bias in, both traditional blind graded exams and non-blind simulation evaluation.

Janet Weinsten & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education*, 9 CLIN. L. REV. 835 (2003).\* † This article focuses on the mental process of creative thinking. The authors discuss what it is, why it is difficult to engage in, and how this difficulty can be overcome through specific techniques and an environment more conducive to creativity. Because creative thinking is an essential component to problem solving, legal educators should incorporate and support creative thinking during law school. The article concludes with a description of some of the authors' efforts toward this objective.

Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLIN. L. REV. 157 (1994).† Following a brief discussion of the current state of scholarship concerning "collaborative lawyering," the author identifies the need for "mapping" progressive legal theory onto real-life experiences of poor people and their advocates. The author's concept of mapping involves careful analysis of the poor communities that form the context for application of legal scholarship ideals, with emphasis on the potential for lawyer involvement in mechanisms for social change already in place. She stresses the role of public interest lawyers as motivating forces in the development of a community's political consciousness. The bulk of the article is devoted to analysis of the author's own mapping project implemented through UCLA's clinical law program, in which students studied community dynamics as observer-participants in local grassroots initiatives and discussed their observations in the context of topical seminar readings. Each student was required to write critically and reflectively about his or her focus group's goals, internal tensions, interactions with non-members, and reactions to law-trained participants in various roles. The author stresses the need for "decoding" the diversity of a community so that lawyers are better equipped to identify and optimize opportunities for collaborative lawyering techniques. She concludes with a range of issues and directions for clinical legal scholarship, including research on the tensions between local empowerment and broader social and political forces.

Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (1990).\* † White describes the tension inherent in poverty law when lawyers seek to empower poor clients but effectively reinforce their subordination by silencing individual voices. She uses *Goldberg v. Kelly*, a 1970 U.S. Supreme Court case on welfare recipients' rights, as a framework for her analysis of this paradox and its implications for today's poverty law practice. She explores the Court's process of fashioning a legal remedy appropriate to the clients' need for fairness and dignity, and celebrates the case as a landmark in empowerment of poor litigants. However, she also warns against allowing courts to name poor people's problems for them and to establish criteria for when the law should protect them. She argues that poverty lawyers must change their lawyering style to allow poor clients to speak for themselves and to "tailor" justice to their own needs and in their own voices.

Lucie E. White, *Mobilization on the Margins of a Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987).† White applauds the efforts of poverty lawyers who achieve success for clients in impact lawsuits, but warns advocates not to overlook opportunities for empowering clients that are incident to the litigation itself. She analyzes the cultural impediments to full participation when clients are members of subordinated groups who already feel dependent and isolated because of their socioeconomic status. Legal culture compounds these feelings by imposing a foreign, formal structure on their methods of communication and problem-solving. White argues for cultivation of client participation in “parallel spaces,” circumstances beyond the rigid limits of the legal system in which clients can collaborate on strategies and engage in reflection and dialogue. She describes two anecdotal examples of client mobilization that occurred in connection with advocacy but operated as separate empowering experiences from legal action. In the first example, a grassroots political organization developed among plaintiffs in a Social Security class action lawsuit. With minimal lawyer participation, clients created a membership organization that held public speaking events to raise consciousness among disabled citizens by encouraging them to communicate their grievances through their own cultural means. In the second example, a legal services clinic provided the setting for homeless persons to unite in improvisational theater performances. White refrains from resolving the role of the lawyer in facilitating these experiences. She urges advocates to be sensitive to different cultural forms and to identify resources to support opportunities for mobilization and education when possible.

Lucie E. White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992).\* † This article is a critique of Anthony Alfieri’s *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991), in which Alfieri defines “interpretive violence” toward poor clients to be the perpetuation of dependent and subordinated roles by well-intentioned public interest lawyers. In this critique, White challenges Alfieri’s external imposition of clinical theory on day-to-day poverty advocacy. While she applauds Alfieri’s change-focused approach, she criticizes his attempt to define poor clients’ problems with a tidy, intellectual metaphor. She warns that such an imposition robs disadvantaged people of their power to name the barriers to their empowerment and operates as an obstacle to lawyer-client communication. She argues that theoretical practice is best developed through collaborative reflection with poor communities, and that lawyer-imposed concepts only distract the legal community’s attention from genuine community-based solutions.

Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).‡ White tackles the topic of how speech norms and language practices associated with subordinated race, class and gender groups affect their members’ access to legal help and justice in American society. She gives a historical perspective on the institutional subordination of women and other marginalized groups through valuations of speech patterns. White then discusses this phenomenon as it relates to legal testimony. She offers examples of powerless women’s speech habits and describes the negative impact they have on perceptions of women by juries, judges, and other people in authority. Finally, she maps these ideas onto the story of a former client, Mrs. G., whom she represented in an administrative hearing on alleged welfare overpayment. White admits to having initially devalued Mrs. G.’s gender-, class-, and race-affected speech. By planning the woman’s case around a safe but tenuous procedural claim and a characterization of her as stereotypical welfare mother, White intended to win by perpetuating the client’s subordinated role. However, when Mrs. G. departed from the plan and asserted her own

voice at the hearing, she challenged the social, cultural, and economic forces that threatened her right to be heard. In this article, White analyzes the atmosphere of intimidation, humiliation, and objectification in which Mrs. G. spoke out, and explores her motivations for departing from the agreed upon strategy. Ultimately, White argues for reforms, such as increased education of judges and lawyers, to reduce the risk that gender-, class-, and race-linked speech habits will affect the assessment of testimony's credibility.

Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699.\* † The author describes how a lawyer and an organizer helped mobilize a black South African village to resist relocation by the Apartheid government in 1985. She offers their community organization and creative problem-solving skills as a model for non-traditional lawyers who wish to change the practice of law to accommodate socially subordinated client populations. White describes how the community responded to different obstacles by drawing on internal support networks and cultural identity. She focuses on how the lawyer and organizer carefully preserved the client-villagers' autonomy while helping to engineer their resistance. As part of her analysis of the model, she identifies a three-level schema of subordination and corresponding three-level pattern of change-oriented lawyering. She discusses subordination in terms of 1) a group's inability to prevail through formal, traditional problem-solving mechanisms; 2) a group's inability to overcome institutional and social barriers that keep their interests from being served by those formal, traditional mechanisms; and 3) a group's inability to recognize the forces behind their powerlessness and subordination. She then offers suggestions for how lawyers can address subordination on each of these levels.

Lucie E. White, *The Transformative Potential of Clinical Legal Education*, 35 OSGOODE HALL L.J. 603 (1997).\* This comment was originally delivered in a panel discussion on "The Transformative Potential of Legal Education," part of a symposium at Osgoode Hall Law School in September 1991. That symposium was organized to commemorate the twentieth anniversary of Parkdale Community Legal Services. In this essay, the author focuses on clinics like Parkdale – the "empowerment-focused, community-based clinics both visionary in their goals and down-to-earth in their law practices." The author notes how such clinics have triggered great change, most significantly in creating a new approach to the practices of legal advocacy. Moreover, the article examines the impact such clinics have had, not only on individuals and communities, but also on law schools. The author next argues that "the strong vision of the transformative potential law school clinic suggests ways that even the best of our clinics may be improved," and provides suggestions for such improvements. The author concludes by embracing the challenge to practice law for the impoverished but encourages advocates to question their capacities and legitimacy to act out these commitments, while resisting elitist concepts of lawyering.

Gerald R. Williams & Joseph M. Geis, *Negotiation Skills Training in the Law School Curriculum*, 16 ALTERNATIVES TO HIGH COST LITIG. 113 (1998).† This article reports on writings pertaining to teaching negotiation skills in law schools in order to make this information more accessible to others. Two sources of information are used in this article: articles by law professors on how they teach negotiation and syllabi that teachers have shared. The article compares key aspects of the courses taught by twenty law teachers. Comparisons include type of course, place in curriculum, class size, course objectives, teaching methods, grading criteria, use of outcome information, aids to self-

understanding, assigned readings, and use of journals or other writings for reflective learning. This article highlights some of the information the authors have charted for the comparison and concludes that two main objectives are the focus of negotiation skills training: learning by doing and exposing the student to the best available substantive knowledge about negotiation.

Paulette J. Williams, *The Divorce Case: Supervisory Teaching and Learning in Clinical Legal Education*, 21 ST. LOUIS U. PUB. L. REV. 331 (2002).\* † This article is based on the observations of the author while teaching at Cornell University's Legal Aid Clinic in 1998. It provides an overview of the general goals of clinical education, the structure of the Legal Aid Clinic, and a case study that traces the experiences of teacher and student as they work to obtain a divorce for a client, including the contribution of the experience to the student's formation of lawyer identity. The article focuses on supervision in clinical teaching and argues that clinical teaching methods of interactive, collaborative, reflective learning experiences can be integrated effectively into classes outside the clinic.

Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741 (1997).\* † The author, a law professor who is a member of the Lumbee Indian Tribe of North Carolina, describes how he turned to "critical race practice" after obtaining tenure to avoid feeling like he had become a vampire, a faceless member of the law school faculty who focuses on theory rather than practice, on writing rather than teaching, on protecting his own time rather than giving it to those who need legal services. Rather than continue to focus on writing critical race scholarship, the author chose to be a resource to the Indian community in Arizona where he was teaching. The later part of the article describes some of the activities in which he engaged as part of his critical race practice, including the creation of a clinical seminar on Tribal Law, which then became the Tribal Law Clinic at Arizona.

Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLIN. L. REV. 515 (2002).\* † This article examines the history and development of three law school clinical programs in Chile, from the time of their founding through 2000. The three programs – the University of Chile Law School, the Catholic University of Chile Law School, and the Diego Portales University Law School – also are examined in the broader legal and political cultures of Chile and the structures of university education there. The structures and operation of the three clinics are examined in detail to provide a model for other clinical programs in the South. Some broader questions about clinical legal education in Chile are addressed, such as whether clinics there meet legitimate educational objectives and whether clinic students are trained for what lawyers do in Chile. The article concludes that adult experiential learning is culturally transcendent. Finally, it explores the tensions inherent in the justice mission of clinics, particularly during times of great political repression.

Stephen Wizner, *Beyond Skills Training*, 7 CLIN. L. REV. 327 (2001).\* † This article promotes a broad view of clinical legal education as having a political and moral purpose that informs the field's intellectual and skills-training functions. Consulting the history of the field, the author demonstrates that the clinical approach to legal education has always been rooted in a social justice mission. The author urges clinical teachers not only to teach legal knowledge and lawyering skills but also the value of pursuing social justice. The author uses the Yale clinical program to illustrate some of the

ways in which clinical legal educators can use client-centered legal services work to teach students to reflect on and recognize the lawyer's responsibility to seek social justice.

Stephen Wizner, *Can Law Schools Teach Students To Do Good? Legal Education and the Future of Legal Services for the Poor*, 3 N.Y. CITY L. REV. 259 (2000).<sup>†</sup> This article argues that law schools need to develop a strategy for teaching and inculcating in law students a sense of personal obligation for the provision of legal services to the poor as an essential component of their professional identity. The author criticizes law schools for completely ignoring the crisis in legal services to the poor and middle class. Part III outlines three components of an educational agenda for exposing law students to the crisis in legal services and for inspiring them to take part in addressing the problem: make students aware of the injustices of the system; show students how law can be used to reform existing social arrangements and legal practice; and teach and motivate students to participate in the struggle for economic and social justice.

Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929 (2002).<sup>\* †</sup> This essay seeks to defend three related claims: (1) that there is a vital connection between legal education and the public interest because lawyers use their education, for better or worse, in the real world; (2) that the public interest requires law students to learn they have a social and professional responsibility to challenge injustice and to pursue social justice in society; and (3) that the law school clinic is the primary place in the law school where students can learn to be competent, ethical, socially responsible lawyers. After briefly describing clinical legal education and tracing its history, the author situates it within the law school curriculum to carry out its vital role of instilling the thirst for social justice in nascent lawyers.

Stephen Wizner & Dennis Curtis, *"Here's What We Do": Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673 (1980). The article uses the clinical program at Yale Law School to discuss the goals of a law school clinic and how those goals are best implemented. The Yale program, an "in-house" clinic, has two distinctive features. First, the student-practitioners work with clients in an institutional setting, either in prison or in a mental health facility. This results in economic savings as well as increased predictability of the clinical experience. Second, the Yale clinic uses a tiered system in which experienced students act as senior associates in the clinic, thus decreasing time demands on the clinical instructors. Another significant feature of the Yale clinic is the presence of a classroom component that focuses more heavily on substantive law and less heavily on skills training. Several factors prompted the change of focus of the classroom component to substantive from skills training: the demand by non-clinic students for skills training, the fact that substantive law study is a more efficient use of classroom time because most clinic students do not go to court, the necessity for clinic students to have a better understanding of the substantive law in the area of their clinical practice, and the fact that skills training in the clinic is best accomplished when one of the students is actually going to court. The goals of the clinic are to "introduce students to the workings of the legal system" and to "provide a laboratory in which students and faculty study, in depth, particular substantive areas of the law." The clinic work of the student should inform and be informed by the students' work in traditional classroom courses. These goals guide the development and implementation of a clinical program. The article compares "in-house" clinics with farm-out clinical programs. The increased economic cost of an "in-house" clinic is justified on the ground that it is a superior educational method. The most problematic part of the clinic

process remains the difficulty of integrating the clinic program into the rest of the law school curriculum.

Molly M. Wood, *Changing With the Times: The KU Elder Law Clinic and the Kansas Elder Law Network*, 44 U. KAN. L. REV. 707 (1996).\* † This article provides an overview of the University of Kansas Elder Law Clinic. The author offers a brief history of the clinic, which became operational in the Fall of 1995. Composed of four broad categories of law (health care, income maintenance, housing matters, and consumer problems) the clinic affords students the opportunity to learn substantive law and procedure in a variety of cases. The article identifies characteristics of the classroom component of the clinic, which include a combination of lecture and discussion on topics relevant to the work undertaken by the clinic. Another component of the clinic is the mandatory participation in the development of the Kansas Elder Law Network (KELN), a World Wide Web site designed to provide nationwide electronic access to primary and secondary materials pertaining to “elder law.” The article provides a description of the contents of this website. The author observes that elder law practice is a growing area of the law and points out the important role computers and Internet resources play and will continue to play in the context of law practice. Based on this, the author contends that the KU Elder Law Clinic and KELN are playing a very important role in serving the growing needs of society.

The Yale Law School Clinical Faculty, *Lessons We Are Still Learning from Kathleen*, 8 CLIN. L. REV. 3 (2001).† The authors touch on some of the themes that were central to Professor Sullivan’s life, teaching, and scholarship, including her compassion and empathy for her clients, her ability to learn and teach lessons from everyday life experiences, and her unwavering allegiance to and respect for her clients’ privacy and autonomy.

Steven Zeidman, *Sacrificial Lambs or the Chosen Few?: The Impact of Student Defenders on the Rights of the Accused*, 62 BROOK. L. REV. 853 (1996).\* † This article examines the quality of student representation in clinical settings and its effect on defendants. Part I of this article explores possible methods for comparing student representation with that provided by assigned counsel. It analyzes studies that have examined the quality of various types of criminal defense attorneys and discusses the advantages and disadvantages of using an outcome-based analysis, as opposed to one focused on the degree of effort expended and the type of work performed by the attorneys. Part II discusses the means used to collect the relevant data and compares the outcomes of cases handled by students with those of other defense attorneys. Part III analyzes the nature and quality of the performance of lawyering tasks by students and defense attorneys for the indigent. In the course of that analysis, the article addresses the extent to which outcomes or results can be related to the effort put into the representation. The article concludes that students provide superior representation of defendants as compared to criminal defense attorneys. The author expresses optimism that further examination of student defense counsel will lead to improvements in the delivery of indigent defense services and suggest better ways to evaluate attorney performance.

Steven Zeidman, *To Plead or Not to Plead: Effective Assistance and Client-Centered Counseling*, 39 B.C. L. REV. 841 (1998).\* † In this article the author explores the defense attorney’s constitutional obligations to clients in the context of the decision whether to plead guilty or to go to trial. It examines the implications of the Second Circuit’s analysis in *Boria v. Keane*, which held

that the defendant has a constitutional right to be advised whether or not the offered bargain “appears to be desirable” and that the failure to advise the client may constitute ineffective assistance of counsel. Part I of the article describes the development of the effective assistance of counsel doctrine and its relationship to client counseling. Part II analyzes the concept of client-centered counseling and its implications for an attorney’s role in advising clients, concentrating on clinical legal scholars’ attempts to apply client-centered counseling to clients in criminal cases. Part III evaluates in greater detail the history and holding of *Boria*. The author analyzes the effect of the Court of Appeals’ opinion in *Boria* on the provision of services to defendants in criminal cases and on the continued viability of traditional definitions of client-centered counseling. Part IV argues that the holding in *Boria* did not go far enough to ensure that defense attorneys provide effective assistance of counsel. The article concludes that, in order to authenticate the constitutional guarantee of effective assistance, the court should have required attorneys not only to offer their opinions to clients but also to attempt to convince clients to accept their recommendations.

Frederick H. Zemans, *The Dream is Still Alive: Twenty-Five Years of Parkdale Services and the Osgoode Hall Law School Intensive Program in Poverty Law*, 35 OSGOODE HALL L.J. 499 (1997).<sup>\*</sup> This article details the formative years of the Parkdale Clinic and its ongoing partnership with Osgoode Hall Law School. Despite initial opposition from the legal profession, the clinic has survived, evolving into an innovative educational tool and model for delivery of legal services. This article documents the considerations in situating the clinic in Parkdale, the opposition of the legal profession to the opening of the clinic, the removal of the prohibition on advertising by the Law Society of Upper Canada, and the early development of the poverty law clinical program at Parkdale.

Amy L. Ziegler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575 (1992).<sup>†</sup> This article examines the teaching of self-evaluation skills in clinical legal education. Ziegler argues that a structure that teaches skills of self-evaluation can be the pedagogical core around which all experiential teaching activities are organized. Such a structure would be flexible enough to incorporate various teaching methods, tailored to fit a particular clinical program. The author uses the term “teaching self-evaluation” to refer to a collaborative style of student-clinician interaction, designed to foster self-reflection skills. The first part of the essay is theoretical. It explores the role of evaluation in clinical education as a whole; three models of evaluation in clinical legal education; and evaluation techniques used by medical schools. In the second part of the article, Ziegler describes the evaluation methodology used at the law clinic in which she is a supervisor. Pre-task reports, learning contracts and the importance of supervisor feedback are some of the components of her program. Noting that this topic is one sorely lacking in documentation, the author makes the case for the goal of teaching self-reflection skills as a basis for legal clinics to arrive at a common ground.

Mary Marsh Zulack, *Rediscovering Client Decisionmaking: The Impact of Role-Playing*, 1 CLIN. L. REV. 593 (1995).<sup>\*</sup> <sup>†</sup> The author advocates increased use of lawyer and law student role playing with clients for the purpose of helping clients make decisions and learning more about a client’s circumstances and goals. The article includes descriptions of student attorney work with group clients and individual clients and the uses of role playing in those situations. The author’s theory is that role playing enhances a client’s autonomy in the decision-making process by enlarging possibilities for equal exchanges between lawyer and client. In addition, lawyers using the technique

effectively will have access to more information about clients, a result that will lead to greater respect for, and fewer judgments about, their clients.