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REFLECTION-IN-ACTION: DESIGNING NEW CLINICAL TEACHER TRAINING BY USING LESSONS LEARNED FROM NEW CLINICIANS

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Clinical legal education focuses on reflective learning, yet data collected from newer clinical faculty reveal that few schools offer training to assist new clinicians in understanding and incorporating reflective learning teaching techniques as they make the transition from law practice to clinical law teaching. To the extent that training is offered to newer faculty, it may range from ad hoc guidance and informal mentoring to more deliberate programs, which may include periodic meetings devoted primarily to discussing clinical methodology, teaching techniques, and other issues important to newer clinical faculty. Although informal and unstructured approaches to training new clinical faculty may well be suitable, there does not appear to be a consensus on the types of training that would best serve the needs of new teachers and their students. The authors argue here that the same care and consideration that are customarily devoted to developing effective clinical experiences for students should be employed to devise effective in-house training programs for new clinical faculty.

Based upon the data collected and the lessons the authors learned from their experiences of working with new clinical faculty at the 1999, 2001, and 2003 Clinical Legal Education Association (CLEA) New Clinical Teachers' Conferences, the authors make a series of recommendations for clinical faculty in-house training programs. The recommendations address the major issues confronting new clinical faculty: the classroom component in clinical courses, establishing scholarship goals, understanding clinical legal education, non-directive supervision versus directive supervision, when to intervene in client representation, and dealing with unmotivated students. The authors also propose guidelines for designing in-house training programs for newer clinical faculty. They conclude the article by ad-

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vocating for more training to assist new clinical faculty in making the transition from practicing law to teaching law.

INTRODUCTION

In a teaching discipline as focused on reflective learning as is the field of clinical legal education, one might expect that new teachers would receive training in the philosophy and techniques of clinical teaching. Yet, surprisingly, surveys of newer clinical faculty from 1999-2003 reveal that few clinical faculty receive structured training in how to make the transition from law practice to clinical law teaching.¹

Most clinical faculty come into teaching with experience in law practice. They come from a variety of backgrounds, including legal services and other nonprofit legal practice, government practice, and private law firms. They know how to practice law, but do not necessarily know how to teach law students how to learn how to practice law.²

¹ There are a few graduate fellowship programs that seek to train persons with law degrees to become law teachers. For example, Georgetown University Law Center "offers one graduate fellowship each year to a recent graduate or practicing lawyer" in its Fellowship Program for Future Law Professors. Georgetown University Law Center Graduate Fellowship Program for Future Law Professors, <http://www.law.georgetown.edu/graduate/fellowships.html#3> (last visited Oct. 12, 2003). Georgetown also offers a Clinical Graduate Fellowship, which provides new and experienced lawyers the opportunity to learn about clinical teaching methodology, assist in teaching the classroom component of a clinic, and assist in supervising clinical students. See Clinical Graduate Fellowships, <http://www.law.georgetown.edu/clinics/fellowships.html> (last visited Oct. 12, 2003).

Unlike the Georgetown fellowship programs, which enroll students in LL.M. programs, some law schools have begun hiring "clinical fellows" in less structured settings. "At most of these law schools, the 'fellows' are not given the opportunity to pursue an advanced degree nor are they permitted to carry a lighter supervision/teaching load that would afford time for scholarship and thereby advance the fellow's long-term prospects for a career in academia." Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 27 (2000). It is unclear how much training clinical fellows receive at the various schools offering such positions, and whether these clinical fellows are successful in securing full-time teaching positions after the fellowships end. More research is needed on clinical fellows programs and other short-term clinical positions, such as "practitioner-in-residence programs," to determine whether such programs are beneficial to the lawyers in those positions, the students taught by these short-time faculty, and the clinical faculty working with them. Some faculty have noted that such short-term positions, particularly those that do not lead to an advanced degree or provide the temporary faculty with support for scholarship, are low cost for law schools but may be leading to a "new underclass of clinicians." *Id.* at 27 (quoting Professor Scott Hughes, University of Alabama); see also Wallace J. Mlyniec, *The Intersection of Three Visions – Ken Pye, Bill Pincus, and Bill Greenhalgh – and the Development of Teaching Fellowships*, 64 TENN. L. REV. 963, 984 (1997).

² See, e.g., Mlyniec, *supra* note 1, at 978 (discussing fellowship training for prospective clinical faculty).

Twenty-five years ago, Professor David Barnhizer argued that the traditional criteria for hiring law faculty, relying on law school attended, class rank, law review experience, and possible judicial clerkships, fell short of the qualifications for hiring clinical law professors. David Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implemen-*

Those new clinical faculty who have only limited experience as practitioners face even greater challenges: They have to learn how to practice law *and* how to use clinical pedagogy to engage students in a process of planning, executing the plan, and self-reflection on their experience to assist in future planning to solve client problems.

The clinical approach to legal education requires a sophisticated understanding of legal practice and the process of learning from experience. Much of clinical teaching methodology relies upon faculty starting with the explicit premise that the experiences of law students, practicing law under law student practice rules or in clinical courses where students are serving as lawyer assistants, become the "text" for the students' continuing education in law.³ Clinical faculty teaching in

tation, 30 J. LEGAL EDUC. 67, 134 (1979). Barnhizer maintained that the traditional hiring criteria emphasized scholarship potential and not teaching ability or potential, and he reasoned that a "specific and powerful desire to teach" was essential for selecting qualified clinical faculty. *Id.* Barnhizer also argued:

Specialized training and preparation must be developed for persons involved in clinical teaching, in order that they may effectively work within the specialized individual teaching relationship. This training and preparation is both a preliminary and "on-the-job" process, and should deal with theoretical frameworks and techniques for implementation of the clinical theory through the dynamic of the legal experience. It should require at least some minimal measure of previous lawyering experience.

Id. Despite Barnhizer's call for specialized training for new clinical faculty, we have found that few law schools provide such training. See *infra* notes 153-57 and accompanying text.

³ In 1969, the American Bar Association (ABA) promulgated a Model Student Practice Rule with the express purpose of assisting the bench and bar in "providing competent legal services for . . . clients unable to pay for such services and to encourage law schools to provide clinical instruction." *Proposed Model Rule Relative to Legal Assistance by Law Students*, 94 REP. OF THE A.B.A. 290, 290 (1969). Since that time, every state, the District of Columbia, and most federal courts have adopted student practice rules, usually based on the Model Student Practice Rule. See Jorge deNeve, Peter A. Joy & Charles D. Weisselberg, *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, 549-50 (1998). Students certified under student practice rules are admitted to the limited practice of law and may perform all of the essential lawyering functions in the jurisdictions in which they practice. Thus, law students practicing under student practice rules are authorized, under faculty supervision, to meet with clients and witnesses to gather facts, analyze clients' legal problems and provide legal advice, negotiate matters with opposing parties, and represent clients before courts and administrative tribunals. In each of these activities, clinic students "provide legal advice and represent clients in role a lawyer – something that nonlawyers such as paralegals, law clerks, legal assistants, or law students in clinical programs who are not certified under a student practice rule may not do." Peter A. Joy & Robert R. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLIN. L. REV. 493, 497 (2002).

Not all clinical courses involve students practicing law under the authorization of student practice rules. Some courses, both in-house and externship, expose students to lawyering skills and professional values in settings where students work as law clerks or law assistants, or represent clients in administrative matters that permit nonlawyer representatives. The major distinction between in-house and externship programs is that in-house clinical programs typically involve students supervised by faculty in law offices operated by

both in-house and externship programs work with the text of their students' experiences to assist them in the process of becoming reflective practitioners.⁴ Implicit in the clinical approach is that law students, as adult learners, start their legal education aware of many of their own strengths and weaknesses in the essential lawyering skills and professional values they hope to develop.⁵ As a result, many clinical programs employ learning contracts or other devices that permit students to incorporate their own personal learning goals into their clinical curriculum.⁶ Clinical scholars state that the primary goal of clinical legal education is to teach students how to learn from expe-

the law schools, and externships usually rely upon practicing lawyers or judges to supervise law students in settings outside of the law school. Another frequent distinction is that the "opportunity for law students to be the primary lawyer – or 'first chair' – for clients" is less frequent for students in most externship programs. *Id.* at 494-95 n.5.

Today, every ABA-approved law school must have at least one clinical course. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 301(b) (2003) (stating that all law schools "shall offer . . . live-client or other real-life practice experiences") [hereinafter ABA STANDARDS]. In the 2002-2003 academic year, 15,385 law students took in-house clinical courses while 14,857 students enrolled in externship courses. E-Mail from David Rosenlieb, ABA Data Specialist, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Dec. 19, 2003) (reporting the number of students in faculty-supervised clinics and the number of students in externships or field placement programs). Thus, clinical teaching is reaching a very large number of law students each year.

⁴ See DONALD SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER (1987). Donald Schön maintains that students in professional schools must be taught a body of knowledge that he terms the "art of practice," which in the context of legal education is thought of as the "art of lawyering." This art requires that students learn how to solve real legal problems in the indeterminate "swampy lowland" of practice and not just from the "high, hard ground" of classroom study. *Id.* at 3. Thus, a clinic student's experiences in role as a lawyer for clients provide clinical faculty with the opportunity to enter the "swampy lowland" of law practice and "teach students how to reflect on the practice of law; how to integrate the doctrines learned in traditional classes into practice; how to formulate hypotheses and test them in the real world; how to approach each decision creatively and analytically; how to identify and resolve issues of professional responsibility; and how to expand existing legal doctrine for the poor and powerless." deNeve, Joy & Weisselberg, *supra* note 3, at 544.

⁵ Although much of clinical teaching methodology relies upon adult learning theory, some commentators maintain that not all law students have reached a level of "adulthood" sufficient to permit clinical teaching to rely upon adult learning. Compare Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982) (arguing for the active use of adult learning techniques in clinical teaching) with 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) (arguing that adult learning theory does not work for students in externships).

⁶ This process may be as informal as an interview between the supervising faculty and students in which the students identify personal learning goals for the clinic, a questionnaire each student completes, or, at the more formal end of the spectrum, a learning contract consisting of learning goals that each student completes with all supervising faculty. See generally 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); Janet Motley, *Self-Directed Learning and Out-of-House Placement*, 19 N.M. L. REV. 211 (1989).

rience.⁷ Feedback sessions with students often include an opportunity for the students to engage in self-critique.⁸

To the extent that training is offered to newer faculty, it may range from *ad hoc* guidance and informal mentoring to more deliberate programs, which may include periodic meetings devoted primarily to discussing clinical methodology, teaching techniques, and other issues important to newer clinical faculty.⁹ Although informal and unstructured approaches to training new clinical faculty may well be suitable, there does not appear to be a shared understanding of the types of training that would best serve the needs of new teachers and their students. We argue that the same care and consideration that are customarily devoted to developing effective clinical experiences for students should be employed to devise effective in-house training programs for new clinical faculty.

This article describes a systematic effort to structure a training session for new clinical faculty based on the self-identified issues and concerns of participants at the 1999, 2001, and 2003 Clinical Legal Education Association (CLEA) New Clinical Teachers' Conferences.¹⁰ Based upon the data collected and the lessons we learned from our experiences of working with new clinical faculty at those three conferences, we make a series of recommendations for clinical faculty in-house training programs. We hope that the data collected and lessons learned from newer clinical faculty will be useful to persons considering a clinical teaching career, newer clinical faculty who are becoming acclimated to clinical teaching methodology, and anyone providing training to new clinical faculty. This article discusses issues applicable to clinical faculty in externship programs as well as in-house clinical courses, though not all of the issues discussed are equally applicable to both types of clinical teaching.

Part I of the article discusses the survey design and analyzes data

⁷ See generally 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).

⁸ Schön describes self-critique as "reflective practice" or "reflection in action." SCHÖN, *supra* note 4, at 31-36. "[I]ntensive critical review" is an essential aspect of effective clinical teaching. *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992).

⁹ See *infra* Part III. In addition, the authors' own experiences teaching at six different law schools support the observation that law schools vary widely in the amount of training and guidance they provide to new clinical faculty.

¹⁰ CLEA has held New Clinical Teachers' Conferences in odd numbered years since 1999, on the day preceding the Association of American Law Schools' Clinical Workshops. The 1999 CLEA New Clinical Teachers' Conference, at Lake Tahoe, California, had a registration of sixty-nine law professors; the 2001 CLEA New Clinical Teachers' Conference, in Montreal, Canada, had a registration of fifty-one law professors; and the 2003 CLEA New Clinical Teachers' Conference had a registration of thirty-eight law professors.

from the 1999, 2001, and 2003 surveys. We utilized these surveys to structure presentations at the New Clinical Teachers' Conferences in those years. Part I uses the survey results to identify the issues new clinical faculty specifically and repeatedly identified as ones they find especially rewarding or challenging.¹¹

Part II presents recommendations to new clinical faculty based upon the comments by new clinical faculty in their responses to the questionnaires and guidance from commentators. The recommendations address the major issues confronting new clinical faculty: the classroom component in clinical courses, establishing scholarship goals, understanding clinical legal education, non-directive supervision versus directive supervision, when to intervene in client representation, and dealing with unmotivated students.

Part III proposes specific steps that clinic directors and other experienced clinical faculty can take to structure in-house training programs for newer clinical faculty. This section sets forth guidelines for designing successful training programs for newer clinical faculty, and it suggests the timing for different aspects of the training. We conclude the article by advocating for more training to assist new clinical faculty in making the transition from practicing law to teaching law.

I. THE QUESTIONNAIRES: WHAT WE LEARNED

Three goals led to our soliciting information from participants prior to the CLEA New Teachers' Conference in 1999. First, we wanted to make our session at the conference as concrete and useful as possible. Second, we wanted to employ clinical methodology in designing the session to model how this methodology can be employed in adult learning situations. Finally, although we vaguely remembered from our own experience that the transition from law practice to clinical law teaching can be quite difficult, we decided that we could not assume that we sufficiently understood the particular challenges of the new clinical teachers attending the conference without first seeking their input.¹²

With these goals in mind, we decided that a survey questionnaire would be a useful tool to help us prepare an introductory training session for new clinical law teachers. Using this questionnaire, a copy of which is reproduced as Appendix A, we sought information about the participants' years of legal experience, teaching experience, and the

¹¹ These include student supervision, time management, and seminar content. See *infra* Part I.

¹² Justine Dunlap entered clinical law teaching over eight years ago, and Peter Joy has been a clinical law teacher for more than twenty years.

issues and challenges facing them.¹³ The responses we received from the survey questionnaires¹⁴ made it possible to craft a productive session for new clinical teachers – one that explicitly considered their experiences, spoke to the needs they identified, and built upon our experiences.¹⁵

Based upon the positive feedback we received after the 1999 session, we decided to take two additional steps. First, we would replicate the survey and session at future CLEA New Teachers' Conferences.¹⁶ Second, we would write an article to discuss the experience, what we learned from it, and how those lessons could be used to structure in-house training programs for new clinical faculty.

A. *The Method*

We distributed the same, relatively simple questionnaire in advance of each of the three conferences.¹⁷ In 1999, we distributed the questionnaire through the law clinic listserve and direct e-mailing or faxing to those already registered for CLEA's New Teachers' Conference. By using the listserve, we were overinclusive in that we invited responses from new clinicians who were not attending the conference as well as those who were.¹⁸ We welcomed this input and thought it would be useful as we developed the session.¹⁹ Use of the listserve

¹³ See Appendix A.

¹⁴ The results of the 1999 survey appear as Appendix B.

¹⁵ The questionnaire results were useful, not merely for our discrete sessions, but for what they revealed about what new clinicians need and want. Planners used data collected for the 1999 CLEA New Clinical Teachers' Conference to design some of the components for the conference in 2001, and planners considered data from 1999 and 2001 in designing the program for the 2003 CLEA New Clinical Teachers' Conference.

¹⁶ The results of the 2001 and 2003 surveys appear, respectively, as Appendices C & D. The authors administered the questionnaires, analyzed the data, and conducted sessions at the 1999 and 2001 CLEA New Clinical Teachers' Conferences. One of the authors, Peter Joy, along with Kim Diana Connolly, Director of the Environmental Law Clinic at the University of South Carolina, followed the same approach for the 2003 CLEA New Clinical Teachers' Conference.

¹⁷ Although we considered "improving" the questionnaire, reproduced in Appendix A, we decided that any potential benefits to be gained would be outweighed by potential problems in analyzing data collected from dissimilar questionnaires over the period of our study.

¹⁸ Most of the questionnaires were returned anonymously, so it was not possible to track the number returned by persons who did not plan on attending the conference. It is likely, however, that almost all of the respondents were attendees at the conference as the general request for newer clinical faculty to complete the questionnaire specifically stated that the questionnaire was directed to newer clinical faculty planning to attend the conference.

¹⁹ Accepting responses from those not attending the conference is not completely consistent with one of the primary reasons for getting student input: that of students taking responsibility for their own learning. See Gerald F. Hess, *Student Involvement in Improving Law Teaching and Learning*, 67 UMKC L. REV. 343, 348 (1998). We initially felt, however,

was underinclusive as well, however, because not all clinicians belong to the listserve. To compensate for this shortcoming, we contacted conference registrants and requested that they complete the questionnaire and return it to us prior to the conference. In 2001 and 2003, we sent the questionnaire only to those persons registered for the conferences.

There was a high rate of response to the questionnaires. In 1999, forty-four out of sixty-nine new clinicians attending the conference responded, yielding a response rate of sixty-four percent.²⁰ In 2001, thirty-eight out of fifty-one responded, and thus a seventy-four percent response rate.²¹ In 2003, twenty-three of thirty-eight conference attendees completed questionnaires, producing a sixty percent response rate.²² In each year, we analyzed the responses to the questionnaires prior to the conference so that we could identify the key issues necessary to structure our session. We also prepared a summary of the results to share with the conference organizers and participants.

B. The Instrument

The questionnaire was relatively straightforward. First, we sought background information so that we would know something about each respondent's situation.²³ For instance, we asked how long each respondent had been a lawyer and how long the respondent had been teaching in a clinical program.²⁴ We sought information about the type of clinic in which the respondent taught and the other responsibilities the respondent might have within the law school in addition to clinical teaching. We asked questions about full-time versus part-time teaching and, obliquely, a question about status.²⁵ We also sought the fol-

that the issues identified by newer clinical faculty who did not attend the conference would be relevant to our session. After the 1999 conference, we decided that there would be a greater benefit derived from the questionnaire process if only conference attenders completed them. We felt that undiluted learner input would enhance session relevance for those attending, which was one of our primary goals.

²⁰ Appendix B. It is possible that a few of the questionnaires were returned by persons who did not attend the conference, so the 1999 response rate may be overstated. *See supra* notes 18 & 19.

²¹ Appendix C.

²² Appendix D.

²³ The questionnaires were returned anonymously to encourage candid responses.

²⁴ The conferences specifically targeted clinicians with three or fewer years of clinical teaching experience. Each year, however, some faculty with more experience completed questionnaires and attended the conferences. *See* Appendices B, C and D.

²⁵ *See* Appendix A. One of the questions asked whether the new clinicians taught part-time, as adjuncts or clinical fellows, or if they had an administrative title. The variety of answers demonstrated a wide range of different titles, which suggested to us different statuses. We did not specifically ask new clinical faculty if they were tenure-track, long-term

lowing information:

1. When I first started clinical teaching, I wish I had known:
2. The greatest obstacle/challenge I have faced as a clinical teacher is:
3. The most difficult student trait I have encountered is:
4. The biggest surprise I experienced in my first year of teaching in the clinic was:
5. The hardest thing about teaching in the clinic is:
6. The easiest thing about teaching in the clinic is:
7. If I were clinic director, the first thing I would do is:
8. I most want to improve or develop the following skill:
9. If I could tell a new clinician one thing, it would be:
10. I would most like to discuss the following with other clinical faculty:²⁶

We did not engage in any formal process to formulate these questions. We selected questions that, in our view, would elicit information and identify topics that would be fruitful for discussion. By asking general, open-ended questions, we collected information that allowed us to focus our session on the issues that the new clinicians deemed important.²⁷ We shared the responses with the newer clinicians attending the conference so that they could see similarities among the responses and perhaps find some comfort in knowing that they were not alone in the experiences and challenges facing newer clinical faculty.²⁸

C. Survey Results

Once we received the questionnaire responses, the reading, tallying, and categorizing began.²⁹ Although there were many common

contract, or short-term contract employees. *Id.*

²⁶ *Id.*

²⁷ Although we earlier posited that this learner-directed inquiry is an underused technique, several new clinicians demonstrated in their responses that they, too, believe in the efficacy of this approach. Two respondents in the 1999 survey answered the question "If I could tell a new clinician one thing, it would be:" as follows: "To listen early on to student feedback. Find out what they need to get the most out of their clinical experience," and "Listen carefully to the students." Appendix B.

²⁸ We found that several of the answers revealed a type of aloneness or isolation. For example, in response to the question about what new clinicians would most like to discuss with other clinical faculty, one person stated: "Isolation from 'real' law professors." In response to the question soliciting the "hardest thing" about clinical teaching, responses included: "Brace yourself for the politics with the administration," and the "lack of faculty . . . support or recognition of [clinical] program." Responses to 2001 Questionnaires (on file with authors).

²⁹ It was compelling reading and, at times, a little sad. Many clinicians, the authors among them, believe that they have the best job in the world. Teaching, lawyering, fighting for social justice, nurturing and mentoring students – what more could one want? Most of the respondents indicated this sentiment and enthusiasm for their work, but many also

themes, there were also idiosyncratic responses that could not be shoehorned into particular categories.³⁰

Different questions could elicit similar responses. For example, the questions "When I first started teaching, I wished I'd known," "The hardest thing about teaching in clinic is," and "The most difficult student trait I've encountered is" could produce answers arising from a set of experiences with a particular student or from a certain incident.

1. *Demographic Data*³¹

a. *1999 Demographics*

Of the forty-four respondents in 1999, twenty-three had been teaching one year or less, and three had not even started to teach yet. This cohort of new clinicians, however, was relatively seasoned as lawyers. The majority of respondents, twenty-five out of forty-four, had been lawyers for five to fifteen years. Six respondents had twenty-one or more years of experience as lawyers. Only five had been lawyers for fewer than five years.

Respondents indicated that they worked in over twenty-two different types of clinics. Three-quarters of the respondents had no teaching responsibilities other than clinic.

b. *2001 Demographics*

In 2001, we distributed the same survey and received a slightly higher response rate with thirty-eight out of fifty-one conference attendees responding.³² The demographics differed from 1999. Seven had fewer than five years of practice experience, seventeen had five to fifteen years of practice experience, and two had twenty-one or more years of experience. It appeared that, overall, law schools were hiring

discussed the difficulty of the job and its challenges. For example, many expressed the difficulty of being masters of many different skills, and the difficulty of balancing clinic teaching duties with obligations to clients while meeting scholarship expectations. For many clinical teachers, the substantive challenges are exacerbated by political ones: namely, the second-class status of clinicians at some institutions within the academy. Professor Nina Tarr expresses this as the marginalization of clinicians and their clients. Nina W. Tarr, *Current Issues in Clinical Legal Education*, 37 *How. L.J.* 31, 40-43 (1993). Tarr notes that when the non-clinical faculty marginalize clinical faculty, that message is received by the students and may well play out negatively in the teacher-student relationship. *Id.*

³⁰ For example, one respondent commented that the easiest thing about clinical teaching was that it was like "practicing law in slow motion." Response to 2001 Questionnaire (on file with authors).

³¹ The following sections discuss data found in Appendix B, C, and D. Individual, repetitive citations to the appendices will be omitted.

³² In 2001, the response rate was seventy-four percent, as compared to a sixty-four percent response rate for 1999. See *supra* Part I.A.

clinicians with fewer years of lawyering experience.

The number and types of different clinics changed as well. In 2001, thirty-eight respondents listed eighteen types of clinics, compared to forty-four respondents listing twenty-two different types of clinics in 1999.³³ Some of this change may be attributed to how respondents defined their clinics. In 1999, for example, respondents listed one Community Development clinic and one Transactional clinic.³⁴ In 2001, respondents listed four Community and Economic Development clinics and no Transactional clinics.³⁵ It is impossible to say whether such variations in categorization are substantive or semantic. On the other hand, Technology Law, Securities Arbitration, and Intellectual Property clinics were some of the new types of clinics, and no one listed working in Poverty Law or Prisoners' Legal Services clinics. The data suggest that clinic expansion appeared to be moving away from the traditional legal service office types of cases into emerging areas of law practice.

More respondents identified themselves as fellows, practitioners, or adjuncts in 2001 than in 1999.³⁶ These titles suggest a greater degree of impermanence for those newer clinicians at their institutions. These findings raised potential issues about the status of clinical courses at those institutions and, more broadly, about the status of persons entering clinical teaching.

c. 2003 Demographics

In 2003, twenty-three of the thirty-eight conference registrants responded to the questionnaire. Compared with the conference attendees in 1999 and 2001, the 2003 attendees were a more experienced group of lawyers. Three had more than twenty-one years of lawyering experience, eight had more than ten years of practice experience, and ten had been lawyers from five to ten years. Only two persons had fewer than five years experience. There were fifteen different types of clinics represented, and one person reported having full-time administrative clinical duties.

2. Substantive Responses

a. 1999 Substantive Responses

The substantive responses generally fell into four categories: Classroom Component, Supervision, Administrative, and Time Management. We created a fifth "Miscellaneous" category for responses

³³ See Appendices B and C.

³⁴ Appendix B.

³⁵ Appendix C.

³⁶ Response to 2001 Questionnaire (on file with authors).

that did not fit into any of the foregoing general categories.

Several overarching themes emerged from the data and across these general categories. First, new clinicians were eager to learn how to balance the multiple components of clinical teaching with case work, scholarship, and personal life. Some noted that a clinical law teacher's responsibilities for lawyering, teaching, mentoring students,³⁷ and scholarship create overwhelming demands at times. Second, new clinicians identified and bemoaned the challenges presented by students who lack initiative and motivation, and who do not give clinic clients the priority they deserve.³⁸ Finally, new clinicians lamented the lack of support from non-clinical faculty.

New clinicians listed many things that they needed to know, wanted to learn, and found to be challenging. Their answers suggested that most new clinicians, although secure in their role as lawyers, are not yet comfortable in their role as teachers. The discomfort often manifested itself in issues raised about the classroom component. Respondents asked, in various ways, questions such as: "How do I prepare a syllabus?" or "How do I manage class time effectively?" The classroom component emerged as a prime area of concern: Numerous respondents listed classroom teaching as the skill they most wanted to develop.

Respondents also raised supervision issues as a broad area of concern and an area in which they needed to improve. New clinicians readily identified the areas of feedback, intervention and non-directiveness as the perpetually thorny challenges of supervision.³⁹

Building effective relationships with students were not the only relationships on new clinicians' minds. A number expressed concern about the lack of connection with those law school colleagues who did not teach in the clinic. Responses also identified status for clinical faculty, law school support, and resources for clinical programs as important issues.

b. 2001 Substantive Responses

The 2001 answers did not cluster readily into the 1999 categories of Classroom Component, Supervision, Administrative and Time Management, and Miscellaneous, and we did not try to force the fit. Many of the issues identified in the 1999 responses were evident, how-

³⁷ Law teacher as mentor is a natural fit for the clinician-student relationship. For a discussion of non-clinical professors in mentoring roles, see Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 759 (2004).

³⁸ Respondents also celebrated the pleasures and joys of working with motivated, committed students.

³⁹ See *infra* at Part II.C.4-6 for a discussion of these issues.

ever, in the 2001 responses. New clinicians still identified the classroom component as a major area of concern. Clinicians again identified the difficulty of supervision, with a focus on three areas: feedback (how to give it appropriately and effectively), intervention (when should the supervisor insert herself in the process of client representation?), and non-directiveness (how to let the student be the primary lawyer for the client).

The data suggested that new clinicians continued to find poor student aptitudes and attitudes to be very challenging parts of the job, but the clinicians also reveled in working with motivated students. One notable difference between the data in the two years was that new clinicians articulated less concern about support and status in 2001 than they had in 1999.⁴⁰

c. 2003 Substantive Responses

The 2003 responses sorted into five different categories: Classroom Component, Supervision Issues, Law School Organizational Issues, General Teaching, and Miscellaneous. Supervision issues emerged as the most frequently cited concerns for the new clinicians. Some issues highlighted under this category included the by-now-common concerns: "how to cede control to the students," and "directiveness vs. non-directiveness." Another frequent response was "how little students know."

3. The Lists of "Easiest" and "Hardest"

We knew we would not have the time to report every word from the surveys in our presentation at the conferences. Accordingly, for each data set, we created lists of the easiest and hardest things about clinical teaching. In general, we composed these lists by tabulating the responses and listing the most common responses in inverse order from less frequently identified issues to those identified with greater frequency. Although some of the concerns focus on issues that only in-house clinic teachers may face, many of the concerns apply equally

⁴⁰ This is particularly interesting in view of the greater number of clinicians with less permanent status, such as fellows. Although there was no direct question concerning status, a smaller percentage of respondents in 1999 stated that they had less permanent status – such as fellows, visitors, adjuncts or other impermanent positions – than percentage of respondents with less permanent status in 2001. Responses to 1999 Questionnaire (on file with authors); responses to 2001 Questionnaire (on file with authors). In 2001, thirteen of thirty-eight respondents – more than one-third – stated that they were fellows, adjuncts, visitors or held similar impermanent positions. Responses to 2001 Questionnaire (on file with authors). There could be several explanations for this. For example, more schools may be designating entry-level positions as fellowships and seeking persons to fill these positions without providing them with an expectation of permanence or equal status with other faculty.

to clinical faculty teaching externships. From the 1999 survey, those lists are:

The Ten Easiest Things About Clinical Teaching

10. Nothing is easy.
9. Having students deal with case details and file management.
8. Mooting court appearances.
7. Not worrying about the survival of the office.
6. Sharing what I know.
5. Supervising strong, motivated students.
4. Doing work I believe in and teaching others to do it well.
3. Working with students committed to social justice.
2. Freedom and autonomy of the job.
1. Spending time with or talking to students.⁴¹

The Ten Hardest Things About Clinical Teaching

10. Being responsible for someone else's work.
9. Losing my activist self for a more patient, blander, law-school-focused self.
8. Being the enforcer — calling students on failure to meet deadlines, etc.
7. Knowing how much or when to intervene.
6. Having students keep their eye on the ball.
5. Grading students fairly.
4. Second class status.
3. Lack of colleagues.
2. Supervising students who lack basic skills and/or who are not working up to potential.
1. Balancing time between teaching, casework, and scholarship.⁴²

Of the ten hardest items, six relate to students and the remaining four straddle institutional and personal issues. Of the ten easiest, six also relate to students. Two others implicate personal issues, and one is an expression of irony. In comparing the two lists, some of the items are opposites or perhaps even the same issue seen through the lens of different clinical faculty. For instance, compare an easiest item: “freedom and autonomy of the job” with a hardest item: “acquiring a blander, law-school focused self.” Or the easiest task of “sharing what I know” with the hardest issue of knowing “when to intervene” — which is, on some level, the clinician sharing what she knows by directly engaging the client, opposing counsel, or the decision-maker, and taking the place of the student in controlling the client's representation. Thus, even the organizational technique of categorizing new clinicians' concerns into “top ten” lists illustrates the paradoxes and challenges inherent in clinical teaching.

⁴¹ Appendix B.

⁴² *Id.*

The 2001 data lent itself only to a list of the five easiest things. Cataloguing the ten hardest things remained easy. Those lists are:

The Five Easiest Things About Clinical Teaching

5. No need to reinvent the wheel.
4. Working with colleagues.
3. Interesting work.
2. Student commitment.
1. Working with great students.⁴³

The Ten Hardest Things About Clinical Teaching

10. Learning to say no.
9. Staying out of the way.
8. Balancing client needs with student needs in the context of student time constraints.
7. Keeping track of everything.
6. Giving effective critiques.
5. Making the classroom component interesting.
4. Time management and getting it all done.
3. Making the switch from practice to teaching.
2. Dealing with apathetic students.
1. Being non-directive.⁴⁴

Interestingly, the 2001 lists seemed to implicate students less frequently or, at least, less directly, than in 1999. For instance, three of the easiest things – “interesting work,” “working with colleagues,” and “no need to reinvent the wheel” – are not directly about working with students. And several of the hardest items, such as “learning to say no,” “keeping track of everything,” and “time management,” certainly could include student issues but may also cross over into other areas of a clinical teacher’s work.

The lists from 2003 are:

The Five Easiest Things About Clinical Teaching

5. Nothing is easy.
4. Teaching skills in the areas of my expertise.
3. Great clients/cases.
2. Enjoyable work – especially working with students enthusiastic about helping others.
1. Relationships/rapport/working with students.⁴⁵

The Ten Hardest Things About Clinical Teaching

10. Staying ahead of the students.
9. Clients and cases don’t adapt well to the academic format and schedule.
8. Dealing with deadlines when the students are supposed to be in

⁴³ Appendix C.

⁴⁴ *Id.*

⁴⁵ Appendix D.

control of the cases.

7. Knowing when to keep my mouth shut and let students make mistakes.
6. Encouraging students to develop and implement their own case plans.
5. Knowing when to intervene when the student is supposed to be in control.
4. Balancing obligations to clients with educational needs of students.
3. Striking the balance between directive and facilitative.
2. Supervising students who lack basic skills and/or who are not working up to potential.
1. The enormous time and effort it takes to do it right and never having enough time.⁴⁶

Many of the "hardest things" implicated student issues, and the remainder dealt with the perennial concerns of finding enough time to do it all and relinquishing control over cases to students.

For the easiest items, new clinical faculty cited, as they had in the prior two surveys, the pleasure of working with students. We saw in 2003, as we did in 1999, that at least one person thought nothing was easy.

The survey results from the three years also demonstrate that there are a number of recurring issues confronting most new clinical faculty. Although we have not surveyed more experienced clinical faculty, it is likely that they encounter many of these same issues, regardless of the number of years they have been teaching in clinical programs.⁴⁷ Time management and balancing time between teaching, casework, and scholarship are issues that resonate with most, if not all, clinical faculty. Balancing ethical obligations to clients with educational needs of students, knowing when to intervene, and drawing the proper line between being directive and non-directive are issues every clinical faculty member confronts. Perhaps the greatest difference that level of prior legal experience makes in this regard is that there may be a greater sense of discomfort in confronting the unknown and extra uncertainty when the clinical faculty member does not have a base of experience to draw upon for guidance. The following section provides recommendations for dealing with many of these issues based on advice from the newer clinical faculty participating in the

⁴⁶ *Id.*

⁴⁷ In reviewing an earlier draft of this article, Professor Bridget McCormack observed that even after teaching in clinical programs for eight years she still faced many of the issues identified by new clinical faculty. E-mail from Bridget McCormack, Clinical Professor and Associate Dean of Clinical Affairs, University of Michigan School of Law, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Nov. 19, 2003) (on file with authors).

surveys and a variety of resources.

II. RECOMMENDATIONS FOR NEW CLINICIANS

"Where are the instructions on clinical teaching?" "Where is the clinic teacher's manual?" Professor Bill Quigley posed these rhetorical questions at the beginning of an article for new clinicians,⁴⁸ and these questions are worth considering for several reasons.

First, these questions are a reminder to read Quigley's article, which is very helpful for new clinicians.⁴⁹ It is curious, however, that there are not more articles that seek to provide guidance for new clinicians. Based on the constant influx of new clinical faculty into legal education, there is both a need and demand for more scholarship and materials to assist new clinical faculty.

Second, there is a teacher's manual, the "CLEA Handbook for New Clinical Teachers."⁵⁰ The handbook contains, among other things, a compilation of resources, suggested clinical legal education articles, and a brief history of clinical legal education.⁵¹ It is prepared for the CLEA New Clinical Teachers' Conference, and it is available from CLEA.⁵² The manual is designed to avert the oft-heard complaint "I wished I had known about this article or that book or that colleague who does the same thing I do."

Third, Bill Quigley's questions parallel the entreaties of our students: "Tell us what to do," followed quickly by "What should we do next?" In other words, "Where is the instruction manual?" It is one of the ironies of clinical teaching that new clinical teachers may be too overwhelmed to recognize or appreciate that we often want to be given the answers just as our students do. Certainly, the educational curve is different for new clinical faculty than it is for students. An occasional "answer" may be provided to new clinicians without risk of impeding the learning process.⁵³ New clinical faculty are, as a general

⁴⁸ William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 463 (1995).

⁴⁹ Quigley also recommends several articles to new clinical faculty as being "particularly clear and helpful in learning more about clinical education." *Id.* at 494 n.121.

⁵⁰ CLINICAL LEGAL EDUCATION ASSOCIATION, CLEA HANDBOOK FOR NEW CLINICAL TEACHERS (2d ed. 2003).

⁵¹ *See id.*

⁵² Copies of the CLEA Handbook for New Clinical Teachers can be obtained by writing to Professor Alex Scherr, University of Georgia, Hirsh Hall, Room 338, Athens, GA 30602, or by sending an e-mail to him at scherr@arches.uga.edu. Additional information about CLEA is available by visiting the CLEA website at <http://www.cleaweb.org/>.

⁵³ Much of clinical pedagogy holds that students learn from the process, from the doing, and from the struggling for answers, rather than by being handed the answers. *See* Appendices C & D. Of course, it could be argued that this is the basis of the traditional Socratic method as well.

rule, experienced lawyers who have mastered the lesson of learning from experience. They arrive at the clinic already equipped with the knowledge of how to act in role as a lawyer, skills of self-reflection, familiarity with the principles of ethical lawyering, and concern for the poor and for justice.⁵⁴

Because some answers to the questions facing new clinical faculty are desirable, the balance of this section contains references to and descriptions of useful resources for analyzing issues confronting new clinicians. We also offer some suggestions and recommendations for new clinical faculty.

But as we sometimes have to remind our students, the answer – even for the clinical teacher – is often best reached through a critical self-reflective process. As Quigley states: “New clinic teachers will discover that teaching is not so much a task that can be accomplished but a process that never ends.”⁵⁵ As in the process that clinical students use to analyze a client’s legal problem, there are few shortcuts for us as teachers. We must identify the issues confronting us as clinical teachers, conduct our own investigation and research, plan our response, and then engage in self-critique and seek feedback.

A. Advice from Newer Clinicians

A good place to start in identifying advice to give new clinicians is the collective wisdom of the new clinicians who answered the questionnaires. One survey question asked the respondents, who typically had one semester to three years of teaching experience, what they would tell new clinicians. The responses we received were varied and thoughtful, candid and humorous. Included was frank political advice such as “brace yourself for the politics and dynamics of the administration.”⁵⁶ Other advice provided insights into the most common issues facing newer clinical faculty.

New clinicians communicated quite clearly that clinical teaching is difficult and can be a little scary, too. Patience, flexibility, and willingness to yield control were oft-repeated values to be cultivated, values perhaps not emphasized in their prior careers as lawyers and thus a bit harder to acquire and apply. But new clinical teachers also of-

⁵⁴ Thirty-nine of forty-four new clinicians in 1999 had at least five years of lawyering experience. Appendix B. For 2001, thirty-one of thirty-eight respondents had at least five years of experience. Appendix C. In 2003, twenty-one of twenty-three respondents had at least five years of experience. Appendix D.

⁵⁵ Quigley, *supra* note 48, at 494. And the poet Rilke urges: “Try to love the questions themselves. . . . Live the questions now. Perhaps you will then gradually, without even noticing it, live along some distant day into the answer” RAINER MARIE RILKE, *LETTERS TO A YOUNG POET* 35 (M.D. Herter Norton, trans., Norton 1962).

⁵⁶ Appendix C.

ferred lots of encouraging words, such as, "there's no need to reinvent the wheel," and "this is a fabulous job."⁵⁷

Some of the recommendations may be easier to give than to achieve. The data from the three different sets of newer clinical faculty support the following three principles for newer clinicians.⁵⁸

First, new clinicians should be advised in advance that clinical teaching is hard work. Many respondents seemed surprised to discover this.⁵⁹ Newer clinical faculty should not enter clinical teaching with the view that it will be easier than law practice.

Second, new clinicians should realize that teaching students in a clinic is different from supervising other lawyers or even law students in a legal practice. The experience of supervision in practice settings and the skills involved in such supervision may be helpful to understanding clinical pedagogy, but clinical teaching requires an emphasis on helping students develop their ability to learn from experience. Rather than telling a clinic student what to do, clinical methodology calls for asking the student what he or she thinks needs to be done and why. Next, the clinician discusses the student's plan for accomplishing the work, reviews and critiques the student's work when it is complete, and then discusses what the student believes to be the next steps. Many new clinicians were surprised by the demands of clinical teaching and the fact that the experience of supervising law clerks or other lawyers does not transfer wholesale to clinical teaching.⁶⁰

Third, new clinicians should be aware that there are many resources available for new members of the field. Many new clinical faculty start their work without reading much of the literature on clinical teaching or consulting with others about clinical teaching methodology. The next section contains references to some of the most useful resources.

B. General Recommendations from the Authors

A consistent recommendation from new clinical faculty, and one we endorse, is that clinical faculty benefit enormously from becoming

⁵⁷ Appendices C & D.

⁵⁸ Gerald F. Hess and colleagues have developed seven principles for good practice in legal education, which he modeled after seven principles for good practice in undergraduate learning. Gerald F. Hess, *Seven Principles for Good Practice In Legal Education*, 49 J. LEGAL EDUC. 367, 367-68 (1999). Those principles provide that good practice in legal education: encourages student-faculty contact; encourages cooperation among students; encourages active learning; gives prompt feedback; emphasizes time on task; communicates high expectations; and respects diverse talents and ways of learning. *Id.* Clinical faculty may find it helpful to become familiar with these principles and apply them.

⁵⁹ One respondent said it is "more work than you can ever imagine." Responses to 2001 Questionnaire (on file with authors).

⁶⁰ "This is nothing like handling your own cases and having student interns." *Id.*

connected to the national community of clinical teachers and scholars. The following section provides some specific suggestions for doing so and refers to websites, conferences, and other activities currently coordinated by organizations of clinical teachers.⁶¹

As noted by numerous respondents to the questionnaires, the clinical community is generous, and newer clinical faculty will benefit from getting to know clinical colleagues in their law school and in neighboring law schools.⁶² In addition, the regional and national communities of clinical faculty are good sources of support. One note of caution, however, should be sounded. The community of clinical faculty is largely composed of faculty who have developed longstanding friendships over a number of years. Do not be put off by this. The community of clinical faculty is not a group that likes to exclude people, but you may have to screw up your courage and take the first step to connect with other clinicians.⁶³

There are numerous ways to be an active member of the regional, national, and international community of clinical faculty. They include: 1) joining existing clinical organizations (currently CLEA and the AALS Section on Clinical Legal Education),⁶⁴ 2) attending as many clinical conferences as your travel budget will permit,⁶⁵ and 3)

⁶¹ All of the activities described have been in place for several years, and we expect the activities to continue for the foreseeable future. Although all of the information provided is accurate as of 2004, we cannot predict if and when there may be changes in the web addresses or persons identified. For that reason, we caution future readers that some of the specific information provided here likely will change, and that they should be prepared to engage in additional research if any of the specific information appears outdated.

⁶² "Call me anytime – I have gotten credit for ideas from other clinicians," and "Tap your resources" are two such responses reflecting the generosity of the clinical community. Responses to 1999 Questionnaires and 2001 Questionnaires (on file with authors).

⁶³ As one respondent said, "talk a lot with these colleagues, even if it means having to insist." *Id.* See *infra* note 64 for information on how to become involved in CLEA. More experienced clinical faculty also may consider making more of an effort to mentor newer clinical faculty and to establish relationships with newer clinical faculty whom they meet. Professor Michael Pinard notes that "[i]t can be fairly intimidating for newer folks to crack this circle" of more experienced clinical faculty. E-mail from Michael Pinard, Assistant Professor of Law, University of Maryland School of Law, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Sept. 25, 2003) (on file with authors).

⁶⁴ Both CLEA and the AALS Clinical Section have committees for member involvement. Currently, there is a joint mentoring project to connect newer clinical faculty with more experienced clinicians. The CLEA website also provides a direct link to an on-line directory of clinical faculty that lists other clinical faculty by name, school, and type of clinic. The on-line directory is also currently available at https://cgi2.www.law.umich.edu/_GCLE/index.asp.

⁶⁵ At the present time, there are regional conferences as well as the national conference held every May, and the CLEA New Teachers' Conference held in odd-numbered years. The regional conferences are smaller and can be a good way to make connections with colleagues.

signing up for the clinic listserve.⁶⁶

1. *Joining CLEA and the AALS Section on Clinical Legal Education*

CLEA and the AALS Section on Clinical Legal Education ("Clinical Section") are the two professional organizations for clinical faculty.⁶⁷ CLEA was formed in 1992 to serve as an independent voice for clinical teachers and to take positions on issues important to legal education and access to justice.⁶⁸ Due to the structure of the AALS,

⁶⁶ Washburn Law School currently hosts the clinic listserve, "lawclinic." One can subscribe to the listserve by sending an e-mail addressed to listserv@lawlib.wuacc.edu, place nothing in the subject space, and in the body of the message state "subscribe lawclinic" followed by first and last name. An e-mail confirming the subscription and providing information about how to post messages to the list will follow. For more information about the lawclinic listserve, contact the co-owners, Professor John Francis, Washburn Law School, at zzfran@washburn.edu or Professor Sandy Ogilvy, The Catholic University School of Law, at oglivy@law.cua.edu.

⁶⁷ In addition to joining CLEA and the AALS Section on Clinical Legal Education (Clinical Section), clinical faculty may consider joining the Global Alliance for Justice Education (GAJE). As the name suggests, GAJE promotes achieving justice internationally through education, and recognizes that clinical legal education is a key aspect of justice education. Membership in GAJE is free, and one can become a member by visiting the GAJE website and following the instructions. Members are automatically subscribed to the GAJE listserve. See GAJE Website, *Membership*, at <http://www.gaje.org/>. The AALS also has other sections that may be of interest to clinical faculty, such as the Litigation, Poverty Law, and Minority Groups Sections.

⁶⁸ CLEA's Mission Statement provides:

The Clinical Legal Education Association was founded after several years of discussion among clinical teachers. Membership is open to all people interested in using clinical methodology to prepare law students and lawyers for more effective law practice. Clinical methodology includes supervised representation of clients, supervised performance of other legal work, and the use of simulated exercises in a variety of settings, both within law schools and outside of them, and is designed to teach skills and values necessary to the ethical and competent practice of law.

CLEA was incorporated as a nonprofit corporation in 1992. What follows is a list of some of the principal goals and accomplishments of the organization:

1. To bring together in one organization all those involved in clinical education. CLEA welcomes as members not only full-time clinical teachers at law schools belonging to the Association of American Law Schools, but also field supervisors, adjunct teachers, faculty at schools outside the U.S., and other people who are involved in clinical education or are interested in its continued development.

2. To serve as a voice for clinical teachers and to represent their interests inside and outside the academy. CLEA has been a vigorous advocate for the interests of clinical teachers on a number of issues, including: the proposed interpretation of the ABA/AALS externship accreditation standard; the ABA proposal for mandatory Pro Bono; the proposed cuts in Legal Services Corporation funding; and a uniform law that would make admission to practice easier for clinical teachers.

3. To promote and disseminate clinical scholarship and research. CLEA was instrumental in founding the first Journal of Clinical Legal Education, a peer-review journal which publishes useful and readable articles about improving the teaching of law and the quality of legal practice. Membership in CLEA includes a subscription to the Journal.

its Clinical Section is not able to take independent positions on matters important to clinical faculty but must present the matter to and obtain approval from the Executive Committee of the AALS.⁶⁹ Most clinical faculty join both organizations, and many schools pay the modest annual dues.⁷⁰ Both organizations also have committees, and a member is able to join a committee by simply contacting the committee chair or the leadership of the organization. Joining a committee is a great way to get involved and, perhaps more importantly at this stage, to get to know other clinicians.⁷¹

CLEA membership benefits currently include a subscription to

4. To foster professional development of clinical teachers. CLEA organized the first national conferences on externships and on Alternative Dispute Resolution clinical programs and a workshop for newer clinical teachers. In addition, CLEA has provided training on advanced supervision issues for experienced clinical teachers and field supervisors in two geographic regions. Members receive discounts on the cost of CLEA conferences and training.

5. To gather and distribute to clinical teachers information about issues and developments that affect clinical teachers. CLEA publishes a newsletter, maintains active telephone and Internet communications, and sponsors an annual salary and demographic survey of clinic teachers.

6. To foster the development of clinical methodologies, the integration of clinical methodology into legal education, and the integration of clinical teachers into Law Schools. CLEA organized a workshop on the MacCrate report during the 1993 AALS annual convention which attracted a diverse group of faculty and administrators. CLEA also has a committee to help coordinate local efforts of law schools and the organized bar to review and implement MacCrate recommendations where appropriate.

CLEA Mission Statement, available at <http://www.cleaweb.org/aboutus/mission.html>.

⁶⁹ The AALS bylaws provide:

A Section may communicate a statement of position on matters affecting legal education to members of the Section and deans and faculty of member and ABA-approved schools, with a disclaimer that the statement is that of the Section and not the Association. A Section may also post such a statement on its Section website so long as the statement is preceded immediately by the prominent posting of the disclaimer found in Executive Committee Regulation 12.4(c) with an additional notice that the official AALS position may be obtained by contacting the AALS National Office, with phone number and e-mail address provided. A Section may not otherwise publish a statement. A Section may submit to the Association Executive Committee a recommendation that the Association take a stated position. A Section may not communicate to a member school the Section's views concerning the school's compliance with rules of membership in the Association or concerning the quality or characteristics of the school's educational program or institutional policies.

AALS Executive Committee Regulations, 12.4a, available at <http://www.aals.org/chapter12.html>.

⁷⁰ Current CLEA dues are forty dollars (\$40.00) per year, and include a subscription to the *Clinical Law Review*. AALS Clinical Section dues are fifteen dollars (\$15.00) per year. Membership forms are available on-line at https://cgi2.www.law.umich.edu/_GCLE/index.asp.

⁷¹ If you want to get involved, but need guidance as to how to do so, you can contact the CLEA Connect Committee, which is designed to help all clinicians find a way to become more involved in the national clinical community. You may reach this committee through the CLEA Website or the CLEA president.

the *Clinical Law Review*, which is a joint effort of CLEA, the Clinical Section, and New York University School of Law. If you read nothing but the *Clinical Law Review* each time it is published, you will be well on your way to understanding clinical legal education pedagogy and issues.

CLEA and the Clinical Section also publish newsletters with information about upcoming conferences, committee reports, developments of interest to clinical faculty, information concerning recent articles and accomplishments of clinical faculty, program and case news submitted by clinical programs, and clinical job listings.⁷² CLEA also maintains an on-line listing of job postings for clinical positions and positions of interest to clinical faculty, and the listing is available on the CLEA website.⁷³

There is also a bibliography of clinical publications⁷⁴ and a bibliography of publications concerning issues of equal justice.⁷⁵ By perusing the bibliographies, you will be able to develop a sense of the breadth of scholarship on clinical teaching methodology, lawyering skills and professional values, and access to justice. You may find it useful to set aside some time to identify and read articles that bear on your work.

As a new clinician, you may want to take advantage of a formal mentoring process. There is a mentoring committee of the AALS Clinical Section that will provide you with a mentor just for the asking.⁷⁶ A mentor can assist you in learning the ropes, provide guidance for scholarship and serve as a sympathetic ear and sounding board. If you prefer less structure, find your own clinical buddy and make a regular appointment to talk on the telephone.⁷⁷ Either of these can be

⁷² The *CLEA Newsletter* is available on-line at the CLEA Website, <http://www.cleaweb.org/>. Both newsletters celebrate a variety of accomplishments for clinical faculty, including, for example, starting a new course, publishing an article, successfully concluding important litigation, and winning community and law school awards. Newer clinical faculty may find the newsletters to be a helpful way of letting others in the clinical community know what they are doing.

⁷³ The CLEA Website, <http://www.cleaweb.org/>.

⁷⁴ J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography (Second Edition)*, CLIN. L. REV., Special Issue No. 1 (2001). An on-line version of the this bibliography is available at <http://faculty.cua.edu/ogilvy/Index1.htm>.

⁷⁵ Professor Dean Hill Rivkin of the University of Tennessee School of Law compiled the "Equal Justice Bibliography," available at <http://www.aals.org/equaljustice/bib.html>.

⁷⁶ The Mentoring Committee usually makes announcements in the AALS Newsletter, a copy of which is automatically provided to new section members upon joining the section. Also, the committee chairs are listed in every newsletter, so you can contact the chair of the committee directly.

⁷⁷ This idea was made popular by Professor Jean Koh Peters at the AALS Clinical Conference in Portland, Oregon, in May 1998. At the closing plenary, Professor Koh Peters asked the clinical faculty attending to identify a colleague and set up a phone date. These calls could have many purposes, from general support to hard-nosed accountability

very helpful if you are at a school without other clinical colleagues or in a clinic that is isolated from other clinics, physically or otherwise. These pairings are also useful if you are required to or simply want to produce scholarship, as your mentor or buddy can help in setting deadlines and prioritizing tasks, and can review drafts.

Several models exist for building an internal clinical community at a law school. At least one clinic has a monthly reading group, and a participant reports that this is a good way to read, discuss, and implement ideas from articles in the *Clinical Law Review* and other sources.⁷⁸ Another clinical program has a bi-weekly discussion group composed of new/newer clinicians and a senior member of the clinical faculty. Participants raise and discuss issues running the clinical gamut – including, for example, supervision, ethics, intervention, and grading.⁷⁹ Many clinics have regular faculty meetings. If your clinical program has regular meetings, participating in and helping to shape the agendas for the meetings will ensure that the issues you face can be discussed. If your school's clinical faculty does not meet regularly, you may consider suggesting regular meetings as a way to share information and to identify collaborative work.⁸⁰

In addition to providing support as well as a release valve, these interactions allow you to realize that you need not reinvent the wheel and that senior colleagues have been down this road before and can lend a hand. Sometimes structure can help. For instance, if you have a particular skill you want to develop, such as giving students specific feedback, ask a colleague to assist you with that. You can role play or have that colleague observe a class in which you perform that task and critique you afterwards.⁸¹ Although clinicians have busy, often uncontrollable schedules, frequently interrupted by case emergencies, you

about writing schedules, or implementation of new teaching techniques. As one survey respondent reminded: "Plan time away . . . to write . . ." Appendix C. A mentor or good friend can help enormously with this.

⁷⁸ Professor Carrie Kaas of Quinnipiac Law School reports that her school has such a reading group. Telephone Interview with Professor Carrie Kaas, Clinic Director, Quinnipiac Law School (Sept. 16, 2003).

⁷⁹ Professor Elliott Milstein at American University, Washington College of Law, leads such a group there. One of the authors, Justine Dunlap, participated in the group while a Visiting Assistant Professor of Law at American University from 2000-2002.

⁸⁰ The authors are mindful of the possibility that not all clinics or clinical directors will kindly receive or adopt such suggestions. We are confident, however, that this will be the exception, not the norm. We are certain, moreover, that new clinicians are, at a very basic level, responsible to some degree for their own learning and support, again paralleling our students' need to take responsibility for their own learning.

⁸¹ This concept, called a performance agreement, is among the techniques taught by Professor Liz Ryan Cole of Vermont Law School in her Performance Critique Workshops, which are well worth attending and which you may learn about by subscribing to the clinic listserve.

should not let time constraints get in the way of meeting with and learning from other clinicians.

Of course, one also has to be realistic. No one can do everything. Time management and priority-setting were identified repeatedly by new clinicians as central issues.⁸² Pick some things to do, find a support system, create a schedule and try to follow it, and do not be too hard on yourself when you slip. In the words of one new clinician, "take care not to be overwhelmed."⁸³ Other new clinicians advised that it would take at least a year to learn how to become a clinical teacher, and that there would be mistakes along the way.⁸⁴ Indeed, some suggest that it takes several years to become an effective clinical teacher.⁸⁵ Obviously, no one wants to fail in any way during the first or any year of clinical teaching, but over-commitment and lack of good organization can contribute to that possibility.

2. *Attending Clinical Conferences*

Attending clinical conferences will assist you in getting to know other clinicians and becoming familiar with the principles of clinical pedagogy. The AALS currently sponsors a national clinical conference or workshop each year, usually in early May. The AALS also sponsors a director's conference in odd-numbered years immediately preceding the general conference or workshop in May.

There are also regional conferences. Even if your region does not have an annual conference, every clinician is an honorary member of the Midwest Region and is invited to its annual conference, usually held in October of each year. Further, clinicians and public interest advocates who are interested in achieving justice through education and building international clinical legal education have started an organization called the Global Alliance for Justice Education (GAJE), which sponsors biennial conferences.⁸⁶

CLEA sponsors the New Clinical Teachers' Conference every odd-numbered year, and you should attend the first available New Clinical Teachers' Conference. CLEA also sponsors supervisor training sessions and subject matter specific conferences on a regular basis. Once you join CLEA and the Clinical Section, you will receive newsletters and other information about the various conferences.

⁸² See Appendices B, C, and D.

⁸³ Response to 2001 Questionnaire (on file with authors).

⁸⁴ Responses to 1999, 2001, and 2003 Questionnaires (on file with authors).

⁸⁵ E-mail from Michael Pinard, Assistant Professor of Law, University of Maryland School of Law, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Sept. 25, 2003) (stating that some clinical faculty believe it takes longer than one year to become an effective clinical teacher) (on file with authors).

⁸⁶ See *supra* note 67 for information on joining GAJE.

3. *Signing Up for the Clinic Listserv*

The clinic listserv is an excellent way to keep abreast of what is happening in clinical teaching. Often, clinicians will seek advice about particular issues on the listserv. It also functions as a national clinical community bulletin board, with various announcements going out. It is well worth the time to subscribe and read the postings. There is also an externship listserv,⁸⁷ and a listserv for humanizing legal education.⁸⁸

It is a good idea to bookmark the CLEA website for many of its helpful resources.⁸⁹ There is an on-line clinical directory/database,⁹⁰ so you can establish contact with or stay in touch with other clinicians with whom you have something in common: geography, clinic type, or even anxiety level.

C. *Specific Recommendations from the Authors*

1. *The Classroom Component Conundrum*

Clinical faculty, especially newer clinicians, often struggle with the classroom component.⁹¹ What to teach and how to balance substantive coverage with case discussions and skills development are perennial issues. Here are four resources that will assist you in planning your classroom component. First, there is an anthology of clinic readings that you may find helpful.⁹² Second, there is a text for use in externship courses that contains information that is also useful for in-house clinical courses.⁹³ Third, there is a new text on clinical legal education that focuses on in-house civil clinical courses,⁹⁴ and the instructor's manual contains sample syllabi, advice about teaching different subjects, and some suggested readings.⁹⁵ Fourth, there is the previously discussed clinic bibliography, which is an invaluable compi-

⁸⁷ Subscribe to the externship listserv by sending an e-mail to listserv@lists.cua.edu and the text of the message should read: "Subscribe LEXTERN."

⁸⁸ Subscribe by sending an e-mail to legaled-subscribe@mail.law.fsu.edu.

⁸⁹ *Supra* note 73.

⁹⁰ Available at https://cgi2.www.law.mich.edu/_GCLE/index.asp

⁹¹ Professor Michael Meltsner has criticized the use of the term "classroom component," which he finds to be indistinguishable from simply "classroom" in describing this aspect of clinical courses. See Michael Meltsner, *Writing, Reflecting, and Professionalism*, 5 CLIN. L. REV. 455, 456-57 n.4 (1999).

⁹² ALEX J. HURDER, FRANK S. BLOCH, SUSAN L. BROOKS & SUSAN L. KAY, CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS (1997).

⁹³ J.P. OGLIVY, LEAH WORTHAM & LISA G. LERMAN, LEARNING FROM PRACTICE (1998) [hereinafter LEARNING FROM PRACTICE].

⁹⁴ DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2003).

⁹⁵ DAVID F. CHAVKIN, INSTRUCTOR'S MANUAL, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2003).

lation of articles about clinical teaching.⁹⁶

Even with texts and articles to assist you, one of your hardest tasks likely will be preparing the materials for the classroom. As helpful as you may find the texts for externships or in-house clinical courses, you may well find yourself assembling some or all of your own class materials. For many new clinical faculty entering established clinical programs, that task is made much easier by the fact that there are existing materials that have been used in the past and clinical colleagues to consult. Still, many new clinical faculty will find themselves in a clinical setting where they will have complete or partial autonomy to determine the class content, or where they are starting a new clinic without any assistance. In the latter instances, clinic faculty may consider using the previously mentioned on-line directory of clinical faculty and programs to identify and consult with clinical faculty who teach the same or similar types of clinics.

As is true with all good teaching, one must decide upon the overall goals for the classroom component and the goals for each class session before planning the substantive content of the classes. In some clinical programs, the classes are used to focus on lawyering skills, such as client interviewing, counseling, negotiation, pretrial, and trial skills. Other clinical programs focus upon the substantive law and procedure of the clinical course's particular subject matter, such as community development, consumer law, criminal defense, or family law. In these latter programs, the class sessions usually focus on aspects of the procedure and substantive law involved in representing clinic clients. Still other clinical programs use the classroom component for case conferencing or case rounds focusing on the students' cases and strategies they are considering.

In many, if not most, clinics, the classroom component often serves all three of these functions, though some class sessions may focus on one dimension more than another. No one can do everything in every class, however. One useful approach is to pick a focus for the overall class component, and then decide what to teach in each class. In making these decisions, one should consider whether there are other ways to handle some of the issues to be covered in the classroom component.⁹⁷ For example, some clinics have a special, pre-semester

⁹⁶ See Ogilvy & Czapanskiy, *supra* note 74. The externship and in-house clinical legal education texts cited in the preceding two footnotes also contain cites to many useful law review articles and books.

⁹⁷ At the 2003 New Clinical Teachers' Conference, some newer clinicians talked about the issue of students using the classroom component as a substitute for meeting with the faculty person to discuss their cases. The best way to avoid this may be to insist on at least one meeting per week with each student or team of students to discuss their cases even if the case was discussed in class. By having weekly meetings with all clinic students regard-

orientation or they front-load classes so that essentials are covered before students begin to handle cases.

Some clinics require that students take a pretrial or interviewing and counseling course as a prerequisite. This approach allows clinic teachers to spend less time on these skills in the clinic classroom component. Another frequent prerequisite or co-requisite is a legal ethics course, which prepares students to identify ethical issues and gives students some grounding in these areas before they encounter them in clinic practice.⁹⁸ If the clinic is a subject-specific clinic, such as family law, requiring the doctrinal course as a prerequisite will often lessen the burden on covering the basics of the applicable substantive law in the clinic classroom component.

There are several approaches for integrating case discussions into the classroom component. Some programs engage in separate, structured case rounds in which designated students are responsible for presenting their cases, raising issues for discussion, and perhaps leading the discussion.⁹⁹ Other programs encourage discussion about cases during the classroom component but do not require that students make a formal presentation.

less of whether or not their cases are discussed in the classroom component, faculty can assist students in understanding the types of questions and issues that may be best discussed during their individual meetings rather than in class. In addition, the clinical teacher should feel free to steer the classroom discussion away from smaller case-specific issues that may not be of general interest to the class.

⁹⁸ Some states require students to complete their law school ethics course prior to student practice rule certification. See, e.g., LA. SUP. CT. R. XX (2004) (stating that law students must “[h]ave complete the required law school coursework in legal ethics”); OKLA. STAT. chap. 1, app. 6, R. 2.1 (2004) (law students must have “successfully completed . . . Professional Responsibility”); VA. SUP. CT. ORGAN. AND GOV. § 15 (2004) (students must be certified by their deans “as having completed satisfactorily a course or program of study in . . . professional ethics”). Whether or not the state student practice rule requires students to take an ethics course prior to obtaining student lawyer status, law schools may choose to make legal ethics a prerequisite or co-requisite. Clinical faculty, regardless of their years of experience as teachers, frequently find themselves referring to the ethics rules and consulting with others who teach ethics. Professor Michael Pinard has suggested that it may be worthwhile for new clinical teachers to review the relevant ethics rules in their jurisdiction before they start teaching. E-mail from Michael Pinard, Assistant Professor of Law, University of Maryland School of Law, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Sept. 25, 2003) (on file with authors).

⁹⁹ “Case-rounds are conducted in a variety of ways, but the two most common appear to be either a general presentation of a client or case or a targeted approach. In the latter approach, the teacher might ask the students to present a case that illustrates a particular theme, such as difficulty in obtaining information or ethical problems. The students present a case that illustrates the theme to the rest of the group.” Kimberly E. O’Leary, *Evaluating Clinical Law Teaching – Suggestions for Law Teachers Who Have Never Used the Clinical Teaching Method*, 29 N.KY. L. REV. 491, 519 n.31 (2002). Some clinical programs use “case rounds” for students to discuss “unusual or difficult client matters.” Mary Helen McNeal, *Unbundling and Law School Clinics: Where’s the Pedagogy?*, 7 CLIN. L. REV. 341, 361 (2001).

Once you decide what to cover in the classroom component, you must decide how to cover it. A hallmark of clinical teaching is its range of innovative teaching techniques that, by now, many non-clinical faculty have adopted. Informal role play, formal simulations, movie clips, and student discussions are all commonly used in clinic classes. You can obtain information about these approaches – and the types of lessons for which the various approaches are best suited – by reviewing articles and by asking other clinical faculty. Clinical colleagues also can supply syllabi, suggested readings, simulations, and other teaching materials. A note of caution is worthwhile, however. Most clinical faculty find that they cannot successfully teach exactly like someone else. Thus, it is essential to allot sufficient time for class preparation.

A last word about the classroom. In the clinic, much of the important learning occurs in the course of lawyering, not in the confines of the classroom. While the classroom component is important in assisting clinical students to become effective and reflective practitioners,¹⁰⁰ do not overstate its importance either to your students or yourself.

2. *Publish or Perish: Establishing Scholarship Goals*

Whether or not a law school expects its clinical faculty to produce scholarship, law schools are preoccupied with the scholarship of its faculty. Professor Nina Tarr observes in an essay advocating a unitary tenure system that, “regardless of the stature and the mission of the law school, every institution has become painfully self-conscious of the drive to produce law review articles that are published in the most prestigious law reviews.”¹⁰¹ As a result of this pressure, clinical faculty with scholarship expectations have to write to continue teaching. Even faculty without scholarship expectations will find that writing enhances their standing in the eyes of their law school’s dean and non-clinical faculty, and will make them more employable at law schools that treat faculty teaching clinical courses as equals with those who teach classroom courses.¹⁰²

¹⁰⁰ The concept of a reflective practitioner owes much to the work of Donald Schön, who describes the process of learning reflective practice or “reflection-in-action.” SCHÖN, *supra* note 4, at 31-36. Clinical faculty continually engage students in the process of self-reflection, critique, and self-critique so that clinical students can develop the skill of learning from their own experiences.

¹⁰¹ Nina W. Tarr, *In Support of a Unitary Tenure System for Law Faculty: An Essay*, 30 WM. MITCHELL L. REV. 57, 68-69 (2003). Tarr attributes this preoccupation to *U.S. News & World Report* law school ranking, ABA accreditation site visits, central university administrators, and law students who equate the value of their law degrees with the ranking of their law schools. *Id.*

¹⁰² Although he argues against the emphasis on scholarship, Professor John Elson notes

Writing is not easy. The task is particularly difficult if a law school fails to factor scholarship into the setting of a clinical teacher's course load and/or fails to furnish clinical teachers with the resources commonly afforded to non-clinical faculty to facilitate scholarship production (support staff, research assistants, mentors, and research leaves).¹⁰³ For clinical faculty without scholarship expectations and for clinical faculty who are expected to produce scholarship but denied adequate institutional support, writing will be a particular struggle.¹⁰⁴ For some clinical faculty, particularly those who do not have to write to continue teaching, the personal costs of writing may outweigh the benefit. If one either has to pursue scholarship to continue to teach or chooses to write in order to fulfill personal or professional objectives, deciding what and how to write are critical issues, however.

The first place to look for advice about a scholarship agenda is other faculty, both clinical and non-clinical, at your law school. Many law schools have orientation sessions or workshops for new faculty, and some of these sessions focus on establishing scholarship agen-

the "importance of scholarship to the careers of law teachers is difficult to overestimate." John S. Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343, 354 (1989). Professor Patrick Schlitz also notes that "[i]ntellectual satisfaction, prestige, promotions, increased salaries, and opportunities to move laterally all depend as much upon writing, and as little upon teaching, as does tenure." Patrick J. Schlitz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 751 (1998).

¹⁰³ See Tarr, *supra* note 101, at 111. Clinical faculty who are on a tenure track are more likely to receive some support for their scholarship, and for those who have "have employment conditions similar to those who do not teach in the clinic, they are as likely to be productive scholars as anyone else." *Id.* For example, at Syracuse University College of Law, all tenure track faculty, including faculty who teach in clinics, receive a paid semester leave before tenure to allow them time to write and meet the school's publication requirements for tenure. E-mail from Arlene Kanter, Professor of Law, Syracuse University College of Law, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Oct. 10, 2003) (on file with authors). At Washington University in St. Louis, faculty teaching clinical courses are on a unified tenure track with faculty who do not teach in the clinic, and all faculty receive the same treatment, including a nine month contract, summer stipend support for scholarship, and participation in a three course load with a banking option. The banking option permits any faculty member either to teach three courses each year or to teach four courses one year and "bank" the extra course for the following year to receive a semester off. E-mail from Karen Tokarz, Professor of Law, Washington University School of Law in St. Louis, to Peter A. Joy, Professor of Law, Washington University School of Law in St. Louis (Oct. 12, 2003) (on file with authors).

¹⁰⁴ Clinical faculty without scholarship expectations generally will not be given the institutional support, particularly in terms of the time, needed to research and produce scholarship. For these latter clinical faculty, the only way that they may be able to write will require them to work even longer hours than their teaching positions demand. As one legal writing professor noted about producing scholarship without institutional support, writing was "cutting hours off my sleep frequently enough to make me wonder about the long term effect on my life span." Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007, 1009 (2001).

das.¹⁰⁵ In addition, sessions devoted to scholarship are frequent at regional and national clinical conferences.¹⁰⁶ The AALS also has a "Workshop for New Law Teachers," which is usually held each June. At this workshop there are sessions on finding a topic, setting an agenda, how to start the writing process, how to submit an article, dealing with law review student editors, and what to do when an article is in print.¹⁰⁷

There also are some excellent books and law review articles that address scholarship issues. Some discuss the nuts and bolts of scholarly writing.¹⁰⁸ Others discuss scholarly writing and the role it plays in teaching and the tenure process.¹⁰⁹ Professor Cheryl Hanna has prepared an excellent introduction to the "nuts and bolts of scholarship," aimed at new faculty, which covers topic selection, setting a writing schedule, getting feedback, the article submission process, article placement strategy, and how to use reprints effectively.¹¹⁰

In an address to the First Annual Northeastern People of Color Legal Scholarship Conference, Professor David Hall explored the issues of finding and keeping one's voice in scholarship.¹¹¹ Professor Susan Leimer has written about some of the challenges of identifying and pursuing a scholarly agenda, particularly without adequate institu-

¹⁰⁵ See generally Daniel Keating, *A Comprehensive Approach to Orientation and Mentoring New Faculty*, 46 J. LEGAL EDUC. 59 (1996) (discussing orientation and mentoring of new, untenured full-time law school faculty).

¹⁰⁶ See, e.g., 18th Annual Midwest Clinical Teachers Conference, *Hard Choices in Hard Times: Crafting Creative Solutions* (2003) (agenda) (noting a concurrent session for works in progress) (copy on file with authors); AALS Workshop on Clinical Legal Education (2003) (conference materials) (listing a concurrent session for scholarly works in progress) (copy on file with authors).

¹⁰⁷ See, e.g., 2003 AALS Workshop for New Law Teachers Agenda (listing a sessions entitled "Scholarship I: Finding a Topic, Setting an Agenda" and "Scholarship II: The Professor as a Scholar: Nuts and Bolts") (copy on file with authors).

¹⁰⁸ See generally EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, AND SEMINAR PAPERS* (2003) (describing the elements of various types of scholarly writing); Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445 (1986) (discussing how to convert an idea into a law review article).

¹⁰⁹ See generally Robert H. Abrams, *Sing Muse: Legal Scholarship For New Law Teachers*, 37 J. LEGAL EDUC. 1 (1987) (explaining the role of scholarship in the tenure process); Mary Kay Kane, *Some Thoughts on Scholarship for Beginning Teachers*, 37 J. LEGAL EDUC. 14 (1987) (discussing the role of scholarship in teaching, and providing advice on how to succeed); Aviam Soifer, *Musing*, 37 J. LEGAL EDUC. 20 (1987) (stressing the importance of choosing research topics that the author enjoys); Donald J. Weidner, *A Dean's Letter to New Law Faculty About Scholarship*, 44 J. LEGAL EDUC. 440 (1994) (presenting a dean's views and expectations of scholarship for new faculty).

¹¹⁰ See Cheryl Hanna, *The Nuts and Bolts of Scholarship or the Rules for Legal Scholars*, Remarks at the Association of American Law Schools Workshop for New Law Teachers (June 23, 2001), at <http://www.aals.org/profdev/nlt2001/hanna.html>.

¹¹¹ See generally David Hall, *Have You Found Your Voice and Do You Know How to Keep It?*, 19 W. NEW ENG. L. REV. 67 (1997).

tional support.¹¹² Finally, in the Foreword to the first issue of the *Clinical Law Review*, the founding editors describe how clinicians “see scholarship as a means of disseminating information about innovative approaches and exploring ideas that grow out of clinical teaching experiences.”¹¹³ Reading what others have thoughtfully presented about scholarly writing is a good way to begin to understand the process and to initiate one’s own scholarship agenda.

3. *Understanding Clinical Legal Education*

There is an ever-growing body of books and articles that address the many aspects of clinical legal education. This rich literature covers the history of clinical legal education, clinical teaching methodology, and various aspects of teaching lawyering skills and professional values, both in externship and in-house clinical programs.

The clinic bibliography is an excellent resource for accessing this body of work. Rather than duplicating or summarizing the bibliography, the following section will discuss some of the issues you may want to explore as you immerse yourself in clinical teaching and will provide some references to the relevant literature.¹¹⁴ Subsequent sections focus on the most pressing supervision issues new clinical faculty have identified: non-directive supervision versus directive supervision, whether to intervene in client representation, and dealing with unmotivated students.

As a practical matter, most newer clinical faculty will find it useful to explore articles discussing clinic design and pedagogy,¹¹⁵ supervision theory,¹¹⁶ evaluation or grading of students,¹¹⁷ ethical issues in

¹¹² See generally Liemer, *supra* note 104.

¹¹³ Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, *Why Not a Clinical Lawyer-Journal?*, 1 CLIN. L. REV. 1, 2-3 (1994). The authors also explain how the first set of articles and essays in the *Clinical Law Review* illustrate the breadth of clinical scholarship. See *id.* at 1-7.

¹¹⁴ We do not cite to all of the references on a particular topic but rather cite to references presenting alternative points of view which in turn cite to most of the relevant literature on each topic. The on-line bibliography of clinical scholarship provides a more exhaustive listing of books and articles on the topics we discuss and other, related subjects. See Ogilvy & Czapanskiy, *supra* note 74.

¹¹⁵ See, e.g., Barnhizer, *supra* note 2; Binny Miller, *Teaching Case Theory*, 9 CLIN. L. REV. 293 (2002); 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); Philip G. Schrag, *Constructing a Law School Clinic*, 3 CLIN. L. REV. 175 (1997).

¹¹⁶ See, e.g., Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459 (1993); Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 (1982); Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986); Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process*

clinical programs,¹¹⁸ and teaching case theory.¹¹⁹ New clinicians will probably also find it worthwhile to consult articles on using student journals,¹²⁰ teaching lawyering skills and judgment,¹²¹ exploring the interpersonal dynamics of the student-supervisor relationship,¹²² and raising issues of diversity and social justice in clinical programs.¹²³ In

of *Learning to Learn From Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981); Stephen Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 564-65 (1990); Michael Meltner, James V. Rowan & Daniel J. Givelber, *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399 (1989); James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Supervision*, 3 B.U. PUB. INT. L.J. 35 (1993). Supervision theory encompasses a variety of issues. Respondents to the surveys identified the following subjects as the most pressing supervision issues they face: non-directiveness, feedback/evaluation, and intervening. See Appendices B, C & D. Of the three issues, the third issue – when to intervene – is the most heavily debated within the clinical community. See *infra* Part II.C.5.

¹¹⁷ See, e.g., Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLIN. L. REV. 299 (1997); Nina Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990); Amy L. Ziegler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575 (1992).

¹¹⁸ See, e.g., Alexis Anderson, Arlene Kanter & Cindy Slane, *Ethics in Externships: Confidentiality, Conflicts of Interest, and Competence Issues in the Field and in the Classroom*, 10 CLIN. L. REV. 473 (2004); Naomi R. Cahn, *Critical Theories and Legal Ethics: Inconsistent Stories*, 81 GEO. L.J. 2475 (1993); George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 GONZ. L. REV. 415 (1991); Peter A. Joy, *The Ethical Obligations of Law School Clinic Students as Student Lawyers*, 45 S. TEX. L. REV. 815 (2004); Peter A. Joy, *The Law School Clinic as Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35 (2003); Peter A. Joy & Robert E. Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLIN. L. REV. 493 (2002); James E. Moliterno, *In-House Live-Client Clinical Programs: Some Ethical Issues*, 67 FORDHAM L. REV. 2377 (1999).

¹¹⁹ See, e.g., Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narratives in Case Theory*, 93 MICH. L. REV. 485 (1994); 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); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990).

¹²⁰ See, e.g., James R. Elkins, *Writing Our Lives: Making Introspective Writing a Part of Legal Education*, 29 WILLAMETTE L. REV. 45 (1993); Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 T.M. COOLEY J. OF PRAC. & CLIN. L. 7, 26 (1997); J.P. Oglivy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996).

¹²¹ See, e.g., Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 CLIN. L. REV. 247 (1998); Don Peters, *Mapping, Modeling and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling*, 48 FLA. L. REV. 875 (1996); Alexander Scherr, *Lawyers and Decisions: A Model of Practical Judgment*, 47 VILL. L. REV. 161 (2002).

¹²² See, e.g., Jennifer P. Lyman, *Getting Personal in Supervision: Looking for that Fine Line*, 2 CLIN. L. REV. 211 (1995); Kathleen A. Sullivan, *Self-Disclosure, Separation, and Students: Intimacy in the Clinical Relationship*, 27 IND. L. REV. 115 (1993).

¹²³ GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRES-

addition, there are books and articles specifically devoted to externships.¹²⁴

Once a newer clinician feels that he or she is dealing adequately with most of the immediate issues of clinical teaching, it is good to look into the books and articles that provide a general overview of the history and development of clinical legal education and that offer thoughts on the future of clinical education.¹²⁵ Jerome Frank's *Why Not a Clinical Lawyer-School?*¹²⁶ is an excellent article that presents an early vision of the role of clinical education in law school.

It is also helpful to become familiar with the important reports and guidelines for clinical programs as well as the ABA Standards for Law Schools.¹²⁷ For example, the MacCrate Report discusses essential lawyering skills and professional values, many of which are taught

SIVE LAW PRACTICE 192-94 (1992); Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. 1 (1997); 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); Kimberly E. O'Leary, *Using "Difference Analysis" to Teach Problem Solving*, 4 CLIN. L. REV. 65 (1997); White, *supra* note 119.

¹²⁴ LEARNING FROM PRACTICE, *supra* note 93; REBECCA A. COCHRAN, JUDICIAL EXTERNSHIPS: THE CLINIC INSIDE THE COURTHOUSE (2d ed. 1999); Kate E. Bloch, *Subjective Lawyering and Other Clinical Extern Paradigms*, 3 CLIN. L. REV. 259 (1997); 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); 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); Daniel J. Givelber, Brook J. Baker, John McDevitt & Robin Miliano, *Learning Through Work: An Empirical Study of Legal Externship*, 45 J. LEGAL EDUC. 1 (1995); Linda H. Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Goals with Feminist Pedagogy*, 45 ME. L. REV. 19 (1993); Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211 (1989); William Wesley Patton, *Externship Site Inspections: Fitting Well-Rounded Programs into the Four Corners of the ABA Guidelines*, 3 CLIN. L. REV. 471 (1997); Linda F. Smith, *The Judicial Clinic: Theory and Method of Live Laboratory of Law*, 1993 UTAH L. REV. 429. In addition, Volume 5, No. 2, and Volume 10, No. 2, of the *Clinical Law Review* are devoted largely to externship issues.

¹²⁵ See generally WILLIAM PINCUS, CLINICAL EDUCATION FOR LAW STUDENTS (1978); PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION (1998); Anthony G. Amsterdam, *Clinical Legal Education - A 21st Century Experience*, 34 J. LEGAL EDUC. 612 (1984); Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994); Barry, Dubin & Joy, *supra* note 1; Bloch, *supra* note 5; Elliott S. Milstein, *Clinical Legal Education in the United States: In-House, Externships and Simulations*, 51 J. LEGAL EDUC. 375 (2001).

¹²⁶ Jerome Frank, *Why Not a Clinical-Lawyer School?*, 81 U. PA. L. REV. 907 (1933).

¹²⁷ ABA STANDARDS, *supra* note 3; ABA TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES (1992) [hereinafter MACCRATE REPORT]; CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION (1980); AALS Section on Clinical Legal Education, Committee on the Future of the In-House Clinic, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992) [hereinafter *Future of the In-House Clinic*].

in clinical programs.¹²⁸ A report of the AALS Clinical Section discusses issues such as optimum student/faculty ratios in in-house clinical programs,¹²⁹ and the ABA has Standards concerning clinical faculty status, participation in law school governance, and prerequisites for clinical faculty,¹³⁰ as well as guidelines for externship programs.¹³¹

The process of identifying appropriate books, articles and reports

¹²⁸ The MacCrate Report identified the following ten fundamental lawyering skills: 1) problem solving, 2) legal analysis and reasoning, 3) legal research, 4) factual investigation, 5) communication, 6) counseling, 7) negotiation, 8) litigation and alternative dispute-resolution procedures, 9) organization and management of legal work, and 10) recognizing and resolving ethical dilemmas. MACCRATE REPORT, *supra* note 127, at 138-40. The MacCrate Report also identified the following four fundamental values of the legal profession: 1) provision of competent representation, 2) striving to promote justice, fairness, and morality, 3) striving to improve the profession, and 4) professional self-development. *Id.* at 140-41. For those unfamiliar with the history of the MacCrate Report, there are several articles that provide useful information about its history and impact on legal education. See, e.g., Russell Engler, *A Guide to Utilizing the MacCrate Report Over the Next Decade*, 23 PACE L. REV. 519 (2003); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLIN. L. REV. 109 (2001); Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLIN. L. REV. 805 (2004).

¹²⁹ The Report of the Committee on the Future of the In-House Clinic observed a decade ago that "[t]here is no one model of in-house, live-client clinical legal education" but "that certain basic elements are in fact common to the most effective clinical programs." *Future of the In-House Clinic*, *supra* note 127, at 561. The Report sets forth guidelines that represented a consensus on the elements of effective in-house clinical programs, and the guidelines are helpful in considering appropriate student/faculty ratios, caseloads, clinical course credit, and models for teaching, supervising, and evaluating students in clinical programs. *Id.* at 561-72.

¹³⁰ ABA Standard 405 states:

A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory prerequisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

ABA STANDARDS, *supra* note 3, at Standard 405(c). An interpretation of this Standard provides that "security of position reasonably similar to tenure includes a separate tenure track or a renewable long-term contract." *Id.*, Interpretation 405-6. Another interpretation states: "A law school shall afford to full-time clinical faculty members an opportunity to participate in law school governance in a manner reasonably similar to other full-time faculty members." *Id.*, Interpretation 405-8. Although there is not a specific interpretation addressing the issue of non-compensatory prerequisites for clinical faculty, the requirement is that they "must be 'reasonably similar to those provided other full-time faculty' such as adequate staff support, support for scholarship, if scholarship is expected, in the form of research assistants, pre-tenure or pre-contract review leaves, course relief or summer coverage, and sabbaticals." Peter A. Joy, *ABA Site Visits: Everything You Ever Wanted to Know*, at <http://www.cleaweb.org/aba/index.html>.

¹³¹ ABA Standards, *supra* note 3, Standard 304 (limiting the percentage of law school instruction that may take place in externship programs) and Standard 305 (setting forth requirements for externship programs).

is, of course, vastly easier if a law school has an in-house training program for new clinicians. In the absence of such a formal program, new clinicians will surely find it useful to consult clinical colleagues for suggestions of materials to read.

4. *Non-directive Supervision Versus Directive Supervision*

The issue of "supervision" in clinical courses is one that most clinical faculty discuss and consider on a regular basis.¹³² Whether a clinical supervisor is considered "directive" or "non-directive" is determined by the quantity and the depth of the information or "answers" that he or she gives students. In other words, the degree of directiveness is typically equated with how much the faculty member tells the student what to do. Non-directiveness refers to engaging the student in a process by which the faculty reviews with the student the course of action the student identifies rather than telling the student what to do.

Non-directive supervision may be viewed as the manifestation of the Socratic method within clinical teaching. The questions that the teacher asks the student – guiding the student to explore issues, angles, facts, and theories the student may have left unconsidered and untested – is the measure of directiveness. On the more directive end of the scale, the teacher asks fewer questions and gives more instructions. At the opposite end, the teacher gives virtually no instruction but rather asks the students questions such as "what do you think?"¹³³

Many clinicians articulate a desire to be as non-directive as possible.¹³⁴ Non-directive supervision allows the student greater autonomy, and provides the student with the opportunity to be fully in role as the primary lawyer representing the client. This role assumption is generally viewed as one of the core goals of a clinic program. If a teacher is directive and gives the student instructions rather than guidance, the student is in the role of law clerk, not lawyer.¹³⁵ There is a strand of clinical theory that suggests in some situations it is preferable for students to watch the supervisor-lawyer perform and to learn from a

¹³² One respondent to the questionnaire said that the hardest thing about clinical teaching is: "Staying non-directive. When I get tired or feel pressure to cover a lot of ground, I sometimes catch myself telling instead of asking." Responses to 2001 Questionnaires (on file with authors).

¹³³ For an example of what a supervisor-student dialogue might look like, see Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 117-36 (1993-1994).

¹³⁴ One new clinician noted how hard it is to engage in "non-directiveness without abdication." Responses to 2003 Questionnaire (on file with authors).

¹³⁵ New clinicians recognized this difference in their questionnaire responses. One cited the difficulty of "not treating the students like law clerks." Responses to 2003 Questionnaire (on file with authors).

more experienced lawyer's role-modeling.¹³⁶ But the non-directive adherents dominate.

Many clinicians think of directiveness on a continuum that varies depending on – at a minimum – the goals of the particular clinic, the student, and the situation. On this continuum, several factors dictate where a particular supervisory action may fall. A faculty supervisor may choose to exercise greater direction in one of several different circumstances.¹³⁷ First, early in the semester, a student's skill, abilities, confidence, and motivation remain untested, and the faculty member may conclude that a greater degree of directiveness is appropriate. On the other hand, if a student is merely following faculty direction, much of the student's own abilities will not emerge.

Next, a clinician may be more directive when a court deadline or other significant deadline is imminent. Non-directiveness often involves a certain degree of trial and error on the part of the student. Although this may be an effective way for the student to learn, it may be frustrating for the student and faculty member, particularly if a deadline is looming. Thus, clinical faculty who prefer non-directive supervision usually try to schedule student meetings well in advance of deadlines to guard against the need, or temptation, to become more directive.

Finally, in some situations, such as in the midst of a hearing or deposition, or in a negotiation, the non-directive approach may not be a viable option. When a student needs assistance in these types of situations, a faculty member may have to be directive and tell the student a particular question or line of questions to pursue, or perhaps warn the student off from asking that "one question too many." Thorough preparation may minimize or even perhaps eliminate the need for directiveness in many situations but even the most extensive preparation cannot anticipate all of the problems that might arise.

¹³⁶ See, e.g., Kotkin, *supra* note 116, at 197-202. Professor Kotkin is critical of total reliance on putting clinical students in the role as the primary lawyer for clients, particularly at the beginning of their clinical experience. She argues: "Given that some students may not learn best by being thrust into role, the next question is whether clinical teachers can or should adjust their methodology to account for these differences." *Id.* at 196. Kotkin notes that due to different learning styles, some students may benefit more from observational opportunities than from role assumption activities. *Id.* at 198. She also argues that clinical teachers should consider utilizing modeling for more complicated tasks, that modeling may be used gradually to shift the lawyer role from supervisor to student, and that in some instances clinical faculty and students may divide up the primary responsibilities for some client matters. See *id.* at 200-01.

¹³⁷ Of course, the clinician may be directive without necessarily "choosing" to do so. See *supra* note 132. Often clinical teachers are more directive than they wish to be. This can be true for many reasons, including concern over the quality of the client representation. See *infra* at II.C.5 for a discussion of when to intervene – i.e., partially or wholly take control – in a student's representation of a client.

Although directiveness may be required at times, there is a seductive element to directiveness because it is also the simplest path for the clinician. For new clinicians trying to reach beyond this default position, being non-directive only gets easier with time, if one is willing to work at it. It is part of the transformation that a lawyer undergoes in becoming a clinician, and it is often the hardest part. The clinician must cede a significant measure of control to the student. In doing so, the clinician is not only fighting her instincts but often also the student, who may want to be told what to do. In some instances the client also may prefer the faculty member to be more obviously in charge.

Many times a student desires to be told the answer – and assumes that there is “an answer” – as much as the teacher is tempted to provide it. Student expectations may result from experiences as law clerks or other employment, where students usually are told what to do. A student may also want to be told the answer as a result of fear that she may make a mistake or is not yet experienced enough to make important decisions that have real-life consequences for a client.

If the teacher fails to tell a student what the student thinks the teacher knows, the student think that the teacher is “hiding the ball.” In this circumstance, transparency may be the best option.¹³⁸ A student may embrace – or at least be willing to accept – that there is value in non-directive supervision if the teacher reminds the student that she is not a law clerk but rather the primary lawyer for the client. The student should be encouraged to take ownership of the case, the client’s interests, and the issues. It may be useful to point out that the student will soon be a lawyer and may be practicing in a setting in which there will not be anyone else to consult for advice or assistance. The student may thereby come to appreciate the importance of learning how to devise answers on her own, or at least push herself to suggest alternative plans of action and to weigh the benefits and detriments of each plan. Clinicians should assure the student that the faculty member will review each proposed course of action before the student executes the plan.

The process of non-directive supervision produces additional rewards for both students and faculty. Sometimes a student comes up with an answer or plan of action that is better than the answer or plan of action the faculty member initially favored. In these moments, the clinical faculty should tell this to the student and to compare the student’s solution with the faculty member’s initial take on the issue.

¹³⁸ Transparency is a good idea, but some may argue that non-directiveness is really a skilled teacher’s manipulation of students to get them to do what the teacher wants without seeming to be directive.

This process graphically demonstrates that there may be more than one very good plan or approach, and that the choice among options is often strategic rather than substantive. In these situations, the clinician and student are able to engage in wonderful strategic discussions that involve the theory of the case and the student's own lawyering style. These discussions also help students develop lawyerly judgment.

The non-directive approach also enables the relationship between clinical student and faculty to evolve into a more collegial or peer-like relationship, with the faculty member taking on the role of mentor-coach rather than supervisor. Of course, this may not happen with every student, and it often happens at different points in the semester, depending on the faculty, student, and the student's cases. The fact that it does happen with some frequency, however, is sufficient to lead many clinical faculty to prefer the non-directive approach.

5. *Whether to Intervene in Client Representation*

Different types of clinical models give rise to different issues, and the question of whether to intervene in client representation is an issue particular to in-house clinical faculty, who directly supervise clinic students in their work as lawyers for clients pursuant to student practice rules.¹³⁹ Faculty teaching in externships may face this issue in discussing with a field supervisor the way to structure the supervisory relationship when clinic students are the primary lawyers for clients in the extern placement.

Although intervention is often discussed as endemic to litigation, the same types of questions can arise in non-litigation clinics, such as those with community-based projects or that engage in transactional representation. Intervening in the representation of a clinic client involves "the act of the clinical teacher directly engaging the client, adversary party, or adjudicative process in a manner which replaces the

¹³⁹ "Clinic law students certified under a student practice rule are granted a limited license to practice law and can actually provide legal advice and represent clients in role as a lawyer – something that nonlawyers such as paralegals, law clerks, legal assistants, or law students in a clinical program who are not certified under a student practice rule may not do." Joy & Kuehn, *supra* note 118, at 497. Not all in-house clinic courses enroll students who are certified under student practice rules, and in those clinic courses students may function solely as lawyer assistants or law clerks for supervising faculty. *See id.* at 514. In other in-house clinical courses, the supervisory model may take the form of a clinical faculty member's modeling lawyering skills and values, and students – even those certified under student practice rules – may not be the primary client representative but instead function in a role similar to a law clerk. In these types of in-house clinical courses, whether to intervene may not be an issue because the clinical faculty member is the primary lawyer on the case.

teacher's authority and judgment for that of the student."¹⁴⁰ Thus, when students are in role as lawyers for clients, the supervising clinical faculty or field supervisor usually has multiple duties: the ethical duty to the clinic client arising out of a client-attorney relationship,¹⁴¹ the ethical duty to provide adequate supervision so that the student-lawyer provides competent and diligent representation to the client,¹⁴² and the educational duty to maximize the learning for the clinic student.

The supervising faculty member's educational duty to the clinic student and ethical duties to the client and student require that the faculty "attempt to strike the right balance between the clinic student's educational interests and the clinic client's interests in quality representation."¹⁴³ Attempting to strike this balance has been described as one of the hardest questions clinical faculty face,¹⁴⁴ and it highlights the tensions most in-house clinical faculty confront between their roles as teachers and their roles as lawyers.¹⁴⁵

There is some disagreement among clinical faculty about when to intervene in client representation. In an article reviewing clinical faculty attitudes on whether and when to intervene in client representation, Professor George Critchlow concluded that all at least agree that they have a duty to intervene when failure to do so would result in "irreparable damage" to the client's interests.¹⁴⁶ The concept of

¹⁴⁰ Critchlow, *supra* note 118, at 419.

¹⁴¹ In many jurisdictions, student practice rules require the supervising faculty member, as the supervising lawyer, to be counsel of record or otherwise establish an attorney-client relationship with clinic clients. See Joy & Kuehn, *supra* note 118, at 518-19. Even in jurisdictions in which the student practice rules do not require supervising faculty to establish attorney-client relationships with clients, the faculty nonetheless may do so through retainer agreements or implicitly through interactions with clinic clients. *Id.* at 519.

¹⁴² "A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." AMERICAN BAR ASSOCIATION, MODEL RULES OF PROFESSIONAL CONDUCT, Rule 5.1(b) (2004). The Model Code does not contain an analogue to Rule 5.1(b), but the Restatement of the Law Governing Lawyers states: "A lawyer who has direct supervisory authority over another lawyer is subject to professional discipline for failing to make reasonable efforts to ensure that the other lawyer conforms to applicable lawyer code requirements." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, § 11(2) (2000).

¹⁴³ Joy, *The Law School Clinic as a Model Ethical Law Office*, *supra* note 118, at 48.

¹⁴⁴ James H. Stark, Jon Bauer & James Papillo, *Directiveness in Clinical Supervision*, 3 PUBLIC INT. L.J. 35, 35 (1993).

¹⁴⁵ Professors Meltsner and Schrag describe this as the tension clinical faculty face between their roles as "facilitators for intern-oriented learning and as supervisors on cases affecting actual clients' interests." Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic*, 127 PA. L. REV. 1, 24 (1978).

¹⁴⁶ Critchlow, *supra* note 118, at 427. In a nationwide survey of over 100 clinical faculty, 63% stated that students should make "'important tactical decisions' unless the student decisions were 'positively harmful to the client' (12%) or 'clearly less effective than other available choices' (51%)." Stark, Bauer & Papillo, *supra* note 116, at 42. Thirty-five per-

irreparable damage may be defined as legal representation that falls so far below the standard of care or competency as to trigger a cause of action for legal malpractice. At the other extreme, Professor James Moliterno has argued that clinical faculty should be much quicker to intervene, perhaps whenever the supervising faculty can prevent any possible harm to the client due to a student's error.¹⁴⁷ Professor Bill Quigley maintains that many clinical faculty adopt different approaches in supervision based on the student's own progress, and that the faculty strive for each student to take "leading responsibility for the representation and the teacher operates much more as a backup or safety net allowing the student the maximum initiative while preventing mistakes from harming clients."¹⁴⁸

When it is necessary to intervene in client representation, whether at a hearing, in a client meeting, or in discussions with opposing counsel, it is good to use the student's post-performance feedback session to discuss the intervention. Although some students may understand the reasons for intervention at the time faculty member acts, many will not. Some students may even resent the intervention. If the faculty member discusses the intervention with the student, the post-intervention discussion will contribute to what the student has learned from the experience. The faculty member also will benefit because the discussion will cause the faculty member to reflect on the nature of supervision and, as a result, to be better able to handle similar situations in the future.

Most clinical faculty strive to keep interventions to a minimum. Preparing the student for every phase of the representation ordinarily will ensure that the student will provide excellent representation without any need for faculty intervention. Preparation begins when the clinician advises the student of what is expected in the supervisory

cent favored intervening "when students' tactical decisions where 'not optimal for the client' (22%) or 'somewhat less effective than other available choices' (13%)." *Id.*

¹⁴⁷ See Moliterno, *supra* note 118, at 2387-88. Professor Moliterno states:

When the clinician declines to intervene, and instead allows the student to learn from the mistake either by letting the situation play out in its entirety or by counseling with the student after the bad performance, the clinician implicitly says to the student: "Your education was more valuable than good service was to the client." Such a message teaches and reinforces the idea that it is appropriate for the lawyer to care more about herself than the client.

Id. at 2388.

¹⁴⁸ Quigley, *supra* note 48, at 486. Critchlow's discussions with clinical faculty indicated that the standard for intervention "varies from teacher to teacher," but that there appear to be "two camps": "Some teachers will intervene only when they believe it necessary to avoid irreparable harm. Others tend to intervene when they believe student work or performance, while minimally competent, seriously departs from the level of skill and judgment the teacher would bring to bear on the particular case." Critchlow, *supra* note 118, at 428.

relationship and in the student's representation of her client. This usually includes an expectation that the student will research the applicable law and plan the initial client interview before meeting with the supervising faculty to discuss the anticipated client meeting. Next, at a pre-interview meeting between the supervising faculty and student-lawyer, the student can describe her initial interview plan and receive feedback. After the student conducts the interview, there can be a debriefing with self-evaluation, feedback, and the identification of the next steps.

Before each step is taken – whether it is research, writing a letter, or conducting further factual investigation – the supervising faculty member will review the action plan with the student, engage the student in self-evaluation and provide feedback. After each action is taken, the faculty member will continue the same process of engaging the student in self-evaluation and providing feedback. When the planned action involves others, such as contacting opposing counsel to explore settlement, the faculty member often will engage the student in a role play in which the faculty member plays opposing counsel. Such role plays may last several minutes or hours, or may take place over several sessions if the preparation is for a deposition or hearing. Only after the faculty member feels confident that the student is well-prepared and capable of providing excellent representation can the faculty member feel assured that intervention is unlikely.

The high amount of preparation necessary for students to take on primary lawyer roles in representing clinic clients often means that faculty members end up spending more time on clinic cases than they would if they were the primary lawyer on the cases.¹⁴⁹ This, however, is the crux of the clinical teaching methodology's central approach of placing students in role as lawyers.

6. *Dealing With Unmotivated Students*

The motivated student is a joy to teach.¹⁵⁰ The unmotivated student is always a challenge, but particularly so in clinical teaching. Because most clinical programs have the student performing in role as lawyer with the clinical faculty supervisor as back-up, it is important that the student accept and move forward with the lawyering tasks at

¹⁴⁹ Non-directive clinical legal education is not the most efficient method to deliver legal services to clients. For clinical programs aimed at maximizing the number of clients served, a more directive approach in supervision may be desirable. Such an approach will, however, inevitably clash with the premise that students learn best by serving in role as the primary lawyer on a case.

¹⁵⁰ Quigley argues that clinical faculty have to fight the inclination to focus on the best students and find a way "to help the talented, the barely talented, and those in-between learn how to become the best possible advocate." Quigley, *supra* note 48, at 489.

hand. With non-directiveness and infrequent intervention as the teacher's goal, and with a client's interests at stake, a student who is not motivated can be extremely frustrating.

One of the central theories of adult education is that adult students learn well through experience. So it is valuable to have the student in the experience, in the role of lawyer, as fully and quickly as possible. Knowing that one is responsible for a client can be a very powerful motivator in and of itself. It may also be useful to have each student engage in a weekly process of identifying, committing to, and reviewing what needs to be done in a case. Many clinics do this in the form of a weekly memorandum from the student to her clinical faculty supervisor and, if students work in teams, the other students in the team. In some programs, students in a particular clinic or supervision group within a clinic may exchange memoranda with each other.

No matter how the clinic is organized, the key is that there is regular (preferably weekly) case reviews between the student and the faculty, student team and the faculty, or supervisory group and the faculty. At the meeting, each student reviews what has happened in each case in the preceding week. If the student has committed to do certain things on the case but has not done them, there is already a venue in place to discuss progress. This process hinges on two things: the student, in the lawyering role, has taken on more responsibility by identifying for herself what to do – rather than being told what to do by a superior;¹⁵¹ second, the discussion of why things have not progressed and what needs to change takes place as part of a built-in weekly review of the tasks that the student has already identified as important. Thus, the student may be able to explain what happened and switch to a more productive track without experiencing counter-productive feelings of defensiveness.

A clinical supervisor can use this weekly process, or whatever supervision approach she uses, to ascertain what factors are impeding the student's motivation. If the causes can be diagnosed, an effective cure is more likely.

Students enroll in clinical courses for a host of reasons, not all of which center on helping clients. Some students take a clinical course because they want the "hands-on" experience, and may appear unmotivated until and unless they are doing the work that they expected to do. This suggests assigning them cases that require immediate and meaningful work at the start of the semester.¹⁵² Further, a student

¹⁵¹ The student may be assisted, through non-directive supervision, in the process of identifying the tasks to be done but, ideally, she is one who makes the call.

¹⁵² This implicates the type of clinic and case selection and may be something beyond the clinician's control.

may be motivated by client case work, but have lackadaisical classroom seminar participation. As long as students are on notice of the consequences of that choice – and how important the faculty member considers the classroom seminar – a clinical instructor may choose not to make an issue of this particular problem.

Fear is another common cause of what may appear to be a lack of motivation. A student may be effectively paralyzed by at least two things. First, she may believe that she does not know where to start – an initial hazard and challenge of non-directive supervision. Next, the student may be temporarily incapacitated by the awesome weight that accompanies being a lawyer. Learning to handle this responsibility is, of course, one of the many pedagogical reasons for having students in the role as lawyer. But when a student experiences this feeling of responsibility for the first time, the resulting behavior may resemble a lack of motivation. Often drawing this out of a student, and getting it on the table, helps the student start the process of identifying and overcoming the fear that is impeding her work.

Overwork or over-commitment on the student's part is another common cause of what may appear as lack of motivation. Some clinic students have outside employment, positions on student journals, family or relationship commitments or stress, or are struggling in other courses. The time demands of clinical courses, and the inability to cut corners in clinical courses where client interests are at stake, lead some students to fall behind in their clinical work. Again, getting this out on the table is the first step toward finding a workable solution. Sometimes the solution requires obtaining an extension to filing a pleading, brief, or other legal document. At other times, the solution is to cut back temporarily on the usual student caseload. In other situations, the solution may lie in the student's cutting back on non-clinical activities by, for example, limiting outside work or other activities.

In very rare cases, a clinical student is simply not prepared to take a clinical course or, for reasons the student may not disclose, is not willing or able to do what is necessary to provide timely, competent representation to clients. In these situations, no supervisory approach will seem to work. The clinical faculty ultimately may have to advise the student to consider withdrawing from the course, if that is an option, or plainly tell the student that unless there is a change the student will not successfully complete the course. This is not an easy conversation, but sometimes it is a necessary one.

Finally, most clinical faculty find that even with motivated students, it is best to set clinic deadlines with sufficient time for faculty to review drafts, and for the student to make necessary changes and pre-

pare possible additional drafts prior to the filing deadline. Many clinical faculty have the students set their own deadlines, provided that the schedule affords enough time for review. A helpful guideline to remember is that student deadlines should allow sufficient time for the faculty member to prepare what is needed if the student does not deliver what is expected.

III. DESIGNING IN-HOUSE TRAINING PROGRAMS FOR NEWER CLINICAL FACULTY

Very few law schools currently have structured in-house training programs for newer clinical faculty. At the 1999 Directors' Conference,¹⁵³ at least one small group of directors generally and somewhat sheepishly confessed to not doing much formalized training of new clinicians.¹⁵⁴ In response to a clinic listserve query while writing this article,¹⁵⁵ we received approximately one dozen responses, including two from newer clinicians who lamented that their school does not offer such training.¹⁵⁶ Several responses from directors and others admitted that they do little to train their new hires. One respondent perhaps rightly distinguished between the hiring of new and experienced clinicians, suggesting that the latter may well need less in the way of "training."¹⁵⁷ Another indicated that although nothing formal

¹⁵³ As with the New Clinicians, Clinic Directors have their own conference every other year. It generally coincides with the New Clinical Teachers' Conference and, for the past several conferences, new clinicians and directors have shared a lunch together, as one way for new clinical teachers to network with more senior colleagues.

¹⁵⁴ This anecdotal information was gathered when one of the authors conducted a verbal poll in her small group. One of the hallmarks of clinical conferences is for the larger conference to break up into assigned small groups. Many clinicians agree that these small groups and the friendships and allegiances that grow from them are highlights of clinical conferences. The small groups also allow clinical faculty to obtain more detailed information about clinics at other law schools.

¹⁵⁵ The authors queried the clinic listserve with the following question: "[We] are writing an article on new clinicians, based in part on data collected in three separate sets of questionnaires that new clinicians have filled out for the CLEA New Clinicians Conference. We have also inquired, less formally, about what schools do to help initiate new clinicians into the school and into clinical teaching. Now we would like to pose that question again. . . . Please tell us what you do at your institution for new clinicians. We want to hear it all – efforts that span the formal to the informal to the (self-confessed) non-existent." Posting of Justine Dunlap, jdunlap@ubalt.edu, to lawclinic@list.washlaw.edu (May 29, 2003) (on file with authors).

¹⁵⁶ Ten experienced clinical faculty and/or directors responded to Justine Dunlap, and three stated that they did little or nothing, four described relatively formalized training programs or sessions, and three indicated that they did something less structured. E-Mails to Justine Dunlap, Associate Professor of Law, Southern New England School of Law (on file with the authors).

¹⁵⁷ While it is no doubt true that experienced clinicians will need different and probably less training, each institution has its own culture and practice, both within and without the clinics and some type of orientation, at the minimum, may well be useful.

is done, an offer of help is extended to anyone who wants it.

Several law schools have written materials that they distribute to new clinicians.¹⁵⁸ Still others have a more formalized series of meetings during the summer that focus on clinical pedagogy, scholarship, and supervision.¹⁵⁹ Senior as well as new clinicians participate in these gatherings. At least one director meets regularly with new clinicians with an agenda that varies depending on the needs of the new clinical faculty.¹⁶⁰ At other schools, new clinicians pair up with senior clinical faculty to co-teach skills or clinical courses in the first year.¹⁶¹

Law schools may find these training models helpful if they do not have one of their own. Each model has features that can be incorporated into an effective program. No matter what approach is taken, however, some form of structured in-house training program for new clinical faculty will assist their development into effective clinical teachers and will help to integrate them into the intellectual and social life of the law school. Effective in-house training programs usually include articulated goals for training new faculty, a plan for attaining those goals, and an evaluation process to review the effectiveness of

¹⁵⁸ Syracuse University College of School, University of Richmond School of Law, and East Bay Community Law Center, affiliated with Boalt Hall, University at California at Berkeley School of Law, are three such schools. E-mail from Arlene Kanter, Professor of Law, Syracuse University College of Law, to Justine Dunlap, Associate Professor of Law, Southern New England School of Law (May 29, 2003) (on file with authors); E-mail from Margaret Bacigal, Clinical Professor of Law, University of Richmond School of Law, to Justine Dunlap, Associate Professor of Law, Southern New England School of Law (May 29, 2003) (on file with authors); E-mail from Jeff Selbin, Executive Director, East Bay Community Law Center, to Justine Dunlap, Associate Professor, Southern New England School of Law (May 29, 2003) (on file with authors).

¹⁵⁹ American University, Washington College of Law follows this approach, distributing to new clinicians a notebook of essential clinical readings. A description of the American University program is available from its clinic director, Washington College of Law, 4801 Massachusetts Ave. N.W., Washington, D.C. 20016. Georgetown Law Center conducts a two-day intensive training to orient their clinical fellows. In addition to reviewing policies of the fellowship program, there are sessions on the history of clinical legal education, supervision theories and methods, provision of feedback on writing, teaching values, teaching ethics in a clinical setting, evaluating students, dealing with difference, difficult student situations, classroom session, and thinking about scholarship. See Georgetown University Law Center Elements of Clinical Pedagogy, Two-Day Intensive Orientation Program Syllabus (copy on file with authors).

¹⁶⁰ Syracuse University College of Law. E-mail from Arlene Kanter, Professor of Law, Syracuse University College of Law, to Justine Dunlap, Associate Professor of Law, Southern New England School of Law (May 29, 2003) (on file with authors).

¹⁶¹ Law schools at the University of South Carolina and University of New Mexico offer this model. E-mail from Lewis Burke, Professor of Law, University of South Carolina School of Law, to Justine Dunlap, Associate Professor of Law, Southern New England School of Law (May 29, 2003) (on file with authors); E-mail from Antionette Sedillo Lopez, Professor of Law, University of New Mexico School of Law, to Justine Dunlap, Associate Professor of Law, Southern New England School of Law (June 5, 2003) (on file with authors).

the training. If a law school does not have a training program for new clinical faculty, the absence of such a program should reflect a conscious, well-reasoned decision to forego formal training rather than a failure to consider the issue.

The following guidelines for in-house training programs for new clinical faculty borrow from some of the existing models and incorporate aspects of good clinical teaching methodology:¹⁶²

1. *Designate One or More Responsible Persons.* The clinic director and other current clinical faculty should designate one or more persons as responsible for designing the training program for the new clinical faculty. If no one is responsible, the program will never be designed.

Timing: Select the responsible person or persons and start designing the training program well before the new clinical faculty person begins work.

2. *Provide Written Program Objectives.* The faculty designing the training program for new clinicians should formulate written objectives to be used as criteria for evaluating and guiding the program. As a component of this process, new clinical faculty should be provided with the opportunity to express their own goals for their first year of clinical teaching. Faculty designing the training programs should incorporate the new clinical faculty goals and consider the prior experiences of the new clinicians in shaping the training program. The written objectives should be shared with all involved in the training. Without a clear articulation of goals for the training program, the program is likely to be less developed and lack focus.¹⁶³

Timing: A draft of the written objectives should be sent to the new clinical hire prior to her start date, and she should be encouraged to react to the list of objectives. The final set of objectives should be in place prior to the new clinical faculty person's starting date.

3. *Develop a Plan for Meeting the Objectives of the In-House*

¹⁶² The second and third guidelines – those involving written program objectives and discussion of models for teaching, supervision, and evaluation – are adapted from the “Guidelines for In-House, Live-Client Clinical Programs” developed by the Committee on the Future of the In-House Clinic. See *Future of the In-House Clinic*, *supra* note 127, at 561-74. These two guidelines for an effective in-house program provide some of the premises for an effective training program for new clinical faculty.

¹⁶³ Professor Robert Boice has written a very useful book that offers advice to persons entering higher education teaching careers. Although his book is aimed at university or college professors, new clinical teachers will benefit from many of the recommendations, including those for moderating classroom incivilities, developing an approach to teaching, and developing a “mindful” approach to scholarship. See generally ROBERT BOICE, *ADVICE FOR NEW FACULTY MEMBERS*: NIHIL NIMUS (2000). Faculty structuring training programs for new faculty should consider incorporating some of Boice's suggestions into their programs and recommending his book to new faculty.

Training Program. The plan will vary depending on the program objectives. For example: If there are meetings among faculty as part of the training, the meeting dates should be identified so that they may be calendared. If there are materials to be used, the materials should be identified, copied, and distributed.

Timing: The plan should follow immediately after the program objectives are identified, and the plan should be in place prior to the new clinical faculty person starting work.

4. *Discuss Models for Teaching, Supervision, and Evaluation in the Clinical Program.* The training program should include an explicit discussion of the core aspects of the existing clinical program, including a discussion of the models for teaching, supervising, and evaluating students in the clinic in which the new clinical faculty will teach. Most effective clinical programs have systematic approaches for teaching lawyering skills and professional values, supervision of students, and evaluation of students. To be effective teachers, new clinical faculty need to learn about the expectations of their clinical programs. The faculty designing the training program should select readings to supplement and complement the discussions, and new clinical faculty should be encouraged to question existing policies and approaches, and to suggest changes where needed.

Timing: The discussion of models for teaching, supervision, and evaluation in the clinical program should be an on-going discussion throughout the year. The first session should take place prior to giving the new faculty person responsibilities for supervising students.

5. *Discuss Office Procedures, Systems, Court Rules, and Key Personnel.* The training program should include discussions of office procedures, case management systems, and key personnel in the clinical program, the law school, and the local legal community.¹⁶⁴ This aspect of the program should include the clinic director or other current clinical faculty members introducing the new clinical faculty to key personnel. If the new clinical faculty will be teaching an externship course, the clinic director or other faculty should introduce the new faculty to current field supervisors and others key to the success of the course. The faculty involved in the training should distribute and discuss especially important local court rules, and share important information concerning the practices and customs in the local legal community regardless of whether the new faculty are teaching an in-house or externship course.

¹⁶⁴ Clinical faculty and students in some clinical programs appear before one or two judges in a particular court, have frequent contact and interaction with a bailiff or clerk of court, or engage in a high volume of work against the same prosecutor or other opposing counsel. In settings such as these, the new clinical faculty person should be introduced to the key persons. In addition, it may be useful and appropriate to introduce new clinical faculty to the director of the local legal services office, public defender, prosecutor, or others with whom the clinical faculty person may be interacting on a regular basis.

Timing: Except for meetings with key personnel in the legal community, this aspect of the training program should take place during the first week of work for new clinical faculty. Meetings with key personnel in the legal community should take place prior to the new faculty person having her first professional interaction with each person.

6. *Promote Effective Teaching.*¹⁶⁵ A teaching workshop prior to the start of the first semester of clinical teaching will help to promote effective teaching. As Professor Karen Tokarz has written concerning teaching workshops for adjunct faculty: "Trainers can provide insight, through discussion or simulated teaching exercises, about students, the teaching and learning processes, the varieties of effective teaching methods . . . , ways to develop productive teacher-student interactions, checklists for class preparation, suggestions for self-evaluation, and advice on developing course syllabi, problems, hypotheticals."¹⁶⁶ In addition to an introductory session, one or two sessions devoted to specific issues, such as giving effective feedback or preparing students for hearings, may be helpful. The teaching workshop and follow-up sessions also will provide an excellent opportunity for more experienced clinical faculty in the program to review the basics, discuss recurring teaching issues, and explore current literature on teaching issues.

Timing: Start the focus on effective teaching prior to the first semester of clinical teaching and continue through at least the first year of teaching.

7. *Promote Scholarship.* Even if a law school does not expect a new clinician to write, the training program should discuss scholarship issues such as selecting topics, making time to write, dealing with law reviews, and available institutional support for scholarship. If a law school has scholarship expectations for new clinicians, the new clinicians should be encouraged to present ideas to the clinical faculty and to participate in workshops with the entire faculty. One of the best ways to promote scholarship with a new clinician is for more experienced clinical faculty to discuss a work in progress, focusing on how they are researching, writing, and placing their work with law reviews or other publishers. It may also be useful to assign a senior faculty member, whether or not a clinician, as a mentor for scholarship.

Timing: The timing of this component will depend upon the scholarship expectations for new clinical faculty. For programs with scholarship expectations, an introductory session should be scheduled toward the start of the second semester of teaching. For pro-

¹⁶⁵ This guideline is adapted from an article by Professor Karen Tokarz on effective training programs for law school adjunct faculty. See Karen L. Tokarz, *A Manual for Law Schools on Adjunct Faculty*, 76 WASH. U. L. Q. 293, 298 (1998).

¹⁶⁶ *Id.*

grams without scholarship expectations, an introductory session should be scheduled no later than the end of the second semester of teaching. All new clinical faculty should be encouraged to attend faculty workshops devoted to this topic and to discussing works in progress.

8. *Advise New Clinical Faculty About Potential Ethical and Professionalism Issues.*¹⁶⁷ A discussion of the need for sensitivity to issues of race, ethnicity, gender, disability, socioeconomic status, and sexual orientation should be included in the training program.¹⁶⁸ New clinical faculty should be advised of law school and university policies relating to personal relationships with students, harassment, student grievances, accommodating students with disabilities, and confidentiality of grade information and academic status of students. Finally, law school clinical courses are increasingly interdisciplinary, and some clinics merge law students with students from other fields or involve other professionals, such as social workers. The ethical duties of other professions are not always the same as those of lawyers, and new clinical faculty in interdisciplinary clinics should receive an introduction to these differences and copies of relevant ethics codes and rules.

Timing: The discussion of issues and policies relating to students should take place prior to the faculty person having student supervision or classroom responsibilities. An orientation to the relevant ethics codes and rules in interdisciplinary clinics should take place prior to new clinical faculty beginning their work with other professionals or students from other professional schools.

9. *Integrate Clinical Training and Orientation with Law School Orientation Program.* If the law school has a series of seminars or other training for new law faculty,¹⁶⁹ new clinical faculty should be encouraged to attend those sessions.¹⁷⁰ Current clinical faculty should participate in the general law school training for all new

¹⁶⁷ This guideline is adapted from Tokarz's article. *See id.* at 301-02.

¹⁶⁸ *See generally* Hing, *supra* note 123 (describing how to raise personal identification issues in lawyering skills and clinical courses); Jacobs, *supra* note 119 (exploring how race-neutral training of interviewing and counseling skills may lead to continued marginalization of clients of color).

¹⁶⁹ *See generally* Keating, *supra* note 105 (discussing orientation and mentoring of new, untenured full-time law school faculty).

¹⁷⁰ Daniel Keating, Associate Dean, Washington University School of Law in St. Louis, runs an orientation program for new faculty at his law school. The session on teaching includes the participation of several experienced faculty meeting with new faculty and a "roundtable discussion" on course "goals," "attendance and preparation policies," "office hours and out-of-class availability," "thoughts on scheduling class time and classrooms," "dealing with confrontational or embarrassing questions and responses in class," "handling in-class questions to which you don't know the answer," "how to address students and how students will address you," "pacing coverage and using a syllabus," and "use of clinical, simulation, or small-group devices in class." E-mail from Daniel Keating, Associate Dean, Washington University School of Law in St. Louis, to Faculty (Aug. 14, 2003) (on file with authors).

faculty and should discuss incorporating clinical teaching methodology into classroom courses. New clinical faculty should participate in any mentor program that the law school provides. It is important for new clinicians to become fully integrated into the intellectual and social life of the law school as well as the clinical program. If a new clinician receives a mentor who does not teach a clinical course, the new clinician training program should also designate a clinic mentor to work with the new clinician.

10. *Develop an Evaluation Process for the Training Program.*

An evaluation process will assist faculty in refining and improving upon whatever in-house training they implement. The new clinical faculty, as well as other faculty participating in the training, should participate in the evaluation.

Timing: The evaluation can be on-going, such as spending a few minutes after each component of the program, as well as timed to coincide with events such as the end of the semester or school year.

All of these guidelines engage clinical programs in an explicit, deliberate examination of the types of training necessary to prepare new clinical faculty. Many of the guidelines identify subjects that may be covered in weekly or less frequent meetings with other clinical faculty.¹⁷¹ By according new clinical teacher training the degree of careful planning and consideration that clinical programs consistently devote to clinical student training, programs will assist new faculty with no prior teaching experience in making a smooth transition from practice to clinical teaching. Some of these guidelines may prove useful as well to shorter training programs for clinical faculty with one to several years of clinical teaching experience, or for more intensive orientations that may take place prior to the start of teaching.

CONCLUSION

The data collected from three groups of new clinicians spanning six years demonstrate that there are many common issues facing new clinical faculty and much that can and should be done to assist them in making the transition from law practice to clinical law teaching. Clinical legal education is a purposefully reflective enterprise that builds upon and learns from experience. We hope that the experiences of newer clinical faculty discussed in this article will contribute to the development of effective in-house training programs for new clinicians. We also hope that others will build upon the lessons we have learned, create and improve training programs for new clinicians, and help educate persons contemplating careers as clinical teachers.

¹⁷¹ See *supra* note 79 and accompanying text for a discussion of bi-weekly clinical faculty meetings.

If readers find at least one useful piece of information in this article or if this article helps readers to generate at least one new idea or insight, then this project will have been a success.

APPENDIX A

NEW CLINICAL TEACHERS' QUESTIONNAIRE

If you have not done so already, please complete the following questionnaire and **fax** it to Justine Dunlap, 508-998-9564, or Peter Joy, 314-935-5356, **no later than April 23, 1999**. Individual responses will be kept confidential. Your responses will help to shape one session of the conference entitled, "Reflections in Action: Lessons Learned from New Clinicians." Your responses also will help conference planners finalize other parts of the program to meet the particular needs of those attending. If you have questions, please contact Justine, 508-998-9600 x158, or Peter, 314-935-6445. Thank you!

Background Information:

I have been a lawyer for _____ years.

I have been a clinical teacher for _____ years/months.

I teach/will teach in the following type of clinic:

If you teach outside of the clinic, please list what percentage of your teaching is clinical teaching:

If you teach on a part-time or adjunct basis, if you are a clinical fellow, or if you have an administrative title, please indicate that here.

Issues:

1. When I first started clinical teaching, I wish I had known:
2. The greatest obstacle/challenge I have faced as a clinical teacher is:
3. The most difficult student trait I have encountered is:
4. The biggest surprise I experienced in my first year of teaching in the clinic was:
5. The hardest thing about teaching in the clinic is:
6. The easiest thing about teaching in the clinic is:
7. If I were the Clinic Director, the first thing I would do is:
8. I most want to improve or develop the following skill:
9. If I could tell a new clinician one thing, it would be:
10. I would most like to discuss the following with other clinical faculty:

Thank you again for taking the time to complete this. Please remember to fax it either to Justine Dunlap, 508-998-9564, or Peter Joy, 314-935-5356, **no later than April 23, 1999**. We look forward to seeing you at the conference.

APPENDIX B

NEW CLINICAL TEACHERS' QUESTIONNAIRE RESULTS

*CLEA New Clinical Teachers' Conference – May 5, 1999**Lake Tahoe, CA*

by Peter Joy, Washington University School of Law (St. Louis) and
Justine Dunlap, Southern New England School of Law

BACKGROUND INFORMATION

44 Clinicians completed questionnaires by April 29, 1999.

<u>YEARS OF EXPERIENCE AS A LAWYER:</u>		<u>YEARS OF EXPERIENCE AS A CLINICAL TEACHER:</u>	
Less than 5 years:	5	Have not started yet:	3
5-10 years:	18	1 semester or less:	3
11-15 years:	7	More than 1 semester to 1 year:	20
16-20 years:	8	More than 1 year to 2 years:	7
21 or more years:	6	More than 2 years to 3 years:	9
		More than 3 years:	2

TYPES OF CLINICS

General Civil/Several Civil		Elder Law:	3
Areas Listed:	6	Family Law:	2
Civil & Criminal or General		Federal Civil Litigation:	1
Prac. Clinic:	2	HIV/AIDS:	1
Multiple Externships:	4	Housing; Landlord/Tenant:	2
ADR:	2	Immigration:	1
Child Advocacy:	1	Post-Conviction Crim. Def.:	2
Community Lawyering/Legal		Poverty Law:	2
Services:	2	Prisoners' Legal Services:	1
Community Development:	1	Transactional Clinic:	2
Criminal:	2	Simulation Skills:	1
Disability Law:	2		
Domestic Violence:	2		
Education Law:	1		

PERCENTAGE OF TEACHING THAT IS CLINICAL TEACHING

100% Clinical Teaching:	33
75-99% Clinical Teaching:	8
50-74% Clinical Teaching:	3
Less than 50% Clinical Teaching:	0

SOME OF THE MAJOR THEMES

- * Balancing the multiple components of clinical teaching with case work and scholarship and personal life.
- * Challenges of working with students who lack motivation or initiative or who make the clinic a low priority.
- * Lack of support/interest of non-clinical faculty and/or law school (including lack of mentors, isolation from the law school, lack of training in clinical teaching methodology).

SUPERVISION ISSUES

- * Developing realistic expectations for student work and supervising according to student needs.
- * Giving and receiving good feedback.
- * Knowing how much and when to intervene.
- * Balancing the representation of clients and client rights with teaching students.
- * Improving non-directive teaching skills.
- * Teaching students to be self-reflective.

CLASSROOM COMPONENT ISSUES

- * Creating a productive, exciting, challenging, vibrant, cohesive classroom component.
- * How to structure a classroom discussion.
- * Structuring the classroom component for students with various externship placements.
- * Learning more about classroom planning and teaching methods.
- * How to balance the classroom component between trial skills and substantive law.
- * Common ground for class discussion with diverse field placements.
- * Creating effective simulations.

WHAT WE WANT TO DISCUSS MOST WITH OTHER CLINICAL FACULTY

- * Supervision issues such as how and when to intervene and how to give effective feedback.
- * Scholarship, including how to get scholarly work published.
- * How to handle our self-assessment as lawyers in interactions with students.
- * How to set teaching goals.
- * How to encourage more student case planning and analysis.
- * How to handle second class citizenship.
- * Balancing excellent client representation with student learning.
- * How to continue to develop one's own lawyering skills.

- * How to deal with difficult students.
- * Pay/tenure/professional status issues and law school politics.
- * Case selection and case management including simple cases vs. complex cases.
- * Integration of clinical education with legal education and the practice of law.
- * How to build a community.

THE TEN HARDEST THINGS ABOUT CLINICAL TEACHING

10. Being responsible for someone else's work.
9. Losing my activist self for a more patient, blander, law school focused self.
8. Being the "enforcer"— calling students on failure to meet deadlines, etc.
7. Knowing how much or when to intervene.
6. Having students keep their eye on the ball.
5. Fairly grading students.
4. Second class status.
3. Lack of colleagues.
2. Supervising students who lack basic skills and/or who are not working up to potential.
1. Balancing time between teaching, casework, and scholarship.

THE TEN EASIEST THINGS ABOUT CLINICAL TEACHING

10. Nothing is easy.
9. Having students deal with case details and file management.
8. Mooting court appearances.
7. Not worrying about the survival of the office.
6. Sharing what I know.
5. Supervising strong, motivated students.
4. Doing work I believe in and teaching others to do it well.
3. Working with students committed to social justice.
2. Freedom and autonomy of the job.
1. Spending time with or talking with students.

IF I WERE THE CLINIC DIRECTOR I WOULD. . . .

GENERAL TEACHING:

- * Re-evaluate the clinic case priorities and classroom structure.
- * Encourage and formalize discussions of teaching methods.
- * Unify teaching to cut down on duplication, e.g., front-load skills teaching across the clinics.

SUPERVISION ISSUES:

- * Evaluate using exclusively a “role assumption” model versus a mixed “role assumption/mentoring” model.
- * Call a meeting of clinical faculty and address the issue of continuity of representation.
- * Develop a system of consultation and supervision of cases in various practice areas.

LAW SCHOOL/ORGANIZATIONAL ISSUES:

- * Build bridges to the regular faculty; integrate clinical faculty into the law school faculty; or, integrate clinical and “traditional” programs.
- * Start thinking about creating a clinical community where clinicians meet to talk about teaching strategies, possible curricular expansion, etc.
- * Make clinical legal education more of a priority.
- * Work to make clinical education a requirement for graduation.
- * Demand more resources from the law school; seek more funds for litigation.
- * Increase the credits from 3 hours to 4-6 hours; make clinics a full year experience.
- * Create communication between the various clinics.
- * Create a cross-clinic conflict check.

MISCELLANEOUS ISSUES:

- * Provide some training to new clinical faculty, at least a visit to a more experienced clinical faculty person’s seminar.
- * Evaluate the clinic’s effectiveness as a law office and its effectiveness in serving clients and make changes accordingly.
- * Find out what other clinics are doing and compare.
- * Require periodic meetings or lunches.
- * Talk to staff, get to know their goals.
- * Find a way to prevent burnout due to competing demands of clinical education and legal services that sometimes create pressure on time.
- * Improve case selection process to identify cases with a better chance of prevailing.
- * Prepare and distribute clinic highlights periodically.
- * Increase our salaries; look for permanent funding for clinic.
- * Hire contract attorneys for summer so clinicians can do scholarship.

APPENDIX C

NEW CLINICAL TEACHERS' QUESTIONNAIRE RESULTS

*CLEA New Clinical Teachers' Conference - May 9, 2001**Montreal, Canada*

by Peter Joy, Washington University School of Law (St. Louis) and
Justine Dunlap, American University Washington College of Law

BACKGROUND INFORMATION

38 Clinicians completed questionnaires by May 4, 2001

<u>YEARS OF EXPERIENCE AS A LAWYER:</u>		<u>YEARS OF EXPERIENCE AS A CLINICAL TEACHER:</u>	
Less than 5 years:	7	Have not started yet:	5
5-10 years:	17	1 semester or less:	5
11-15 years:	11	1 semester to 1 year:	10
16-20 years:	1	1 year to 2 years:	10
21 or more years:	2	2 years to 3 years:	5
		More than 3 years:	3

TYPES OF CLINICS

General Civil:	8	Externship Clinic:	1
Child Advocacy:	3	Family Law:	1
Community & Economic Development:	4	Housing Rights:	1
Criminal Defense:	1	Human Rights/International	
Disability Law:	2	Human Rights:	2
Domestic Violence:	3	Immigration Law:	3
Elder Law:	1	Intellectual Property:	1
Environmental Law:	2	Securities Arbitration:	1
		Technology Law:	1

PERCENTAGE OF TEACHING THAT IS CLINICAL TEACHING

100% Clinical Teaching:	31
75-99% Clinical Teaching:	4
50-74% Clinical Teaching:	3
Less than 50% Clinical Teaching:	0

SOME OF THE MAJOR THEMES

- * Classroom component freaks us out.
- * How to motivate students who do not care.
- * How to motivate students who do not get that representing clients is not just another class.
- * The perennial challenge of non-directiveness.
- * We like the students and the job.

SUPERVISION ISSUES

- * Getting students to understand the importance of live clients.
- * Creating appropriate student confidence.
- * How to give effective and appropriate feedback.
- * How to strike the correct intervention balance.
- * Being non-directive.

GENERAL TEACHING ISSUES

- * Teaching to different learning styles.
- * Working with poor student writing.
- * How to evaluate student work.

WHAT WE WOULD TELL NEW CLINICIANS

- * Create space for the other things.
- * It's a lot of work.
- * Be patient.
- * Be flexible.
- * It's not like handling your own cases.

WHAT WE WANT TO DISCUSS MOST WITH OTHER CLINICAL FACULTY

- * How to prepare the classroom component.
- * Different supervision styles/techniques.
- * Supervision in general.
- * Time management.
- * Almost anything.

THE TEN HARDEST THINGS ABOUT CLINICAL TEACHING

1. Being non-directive.
2. Dealing with apathetic students.
3. Making the switch from practicing to teaching.
4. Time management and getting it all done.
5. Making the classroom component interesting.
6. Giving effective critiques.
7. Keeping track of everything.
8. Balancing client needs with student needs in the context of student time constraints.
9. Staying out of the way.
10. Learning how to say no.

THE FIVE EASIEST THINGS ABOUT CLINICAL TEACHING

1. Working with great students.
2. Student commitment.
3. Interesting work.
4. Working with colleagues.
5. We don't have to reinvent the wheel.

APPENDIX D

NEW CLINICAL TEACHERS' QUESTIONNAIRE RESULTS
2003 CLEA New Clinicians Conference – May 13-14, 2003
Vancouver, British Columbia

by Peter Joy, Washington University School of Law (St. Louis) and
 Kim Diana Connolly, University of South Carolina School of Law

BACKGROUND INFORMATION

23 Clinicians completed questionnaires by May 9, 2003.

<u>YEARS OF EXPERIENCE AS A LAWYER:</u>		<u>YEARS OF EXPERIENCE AS A CLINICAL TEACHER:</u>	
Less than 5 years:	2	Have not started yet:	3
5-10 years:	10	1 semester or less:	1
11-15 years:	6	More than 1 semester to 1 year:	13
16-20 years:	2	More than 1 year to 2 years:	4
21 or more years:	3	More than 2 years to 3 years:	1
		More than 3 years:	1

<u>TYPES OF CLINICS</u>			
Appellate Litigation	1	Federal Litigation	1
General Civil/Several Civil		Housing Development	1
Areas Listed	3	Immigration:	1
Child Advocacy	1	Intellectual Property	1
Children and Families	1	International Human Rights	1
Community Development	1	Legal Services	1
Criminal Defense	4	Mediation	1
Criminal Prosecution	1	Multiple Externships	1
Domestic Violence	1	Prosecutorial Externship	1
Elder Law	1	Transactional	1
Environmental	1		

PERCENTAGE OF TEACHING THAT IS CLINICAL TEACHING

100% Clinical Teaching:	13
75-99% Clinical Teaching:	2
50-74% Clinical Teaching:	6
Less than 50% Clinical Teaching:	2

SOME OF THE MAJOR THEMES

- * How to render effective supervision that facilitates students assuming primary responsibility for representing clients.
- * Challenges of working with difficult students, particularly those lacking motivation or initiative, who make the clinic a low priority,

who jump to conclusions, or who have other issues such as poor writing or other needs.

- * Balancing the multiple components of clinical teaching with case work and scholarship and personal life.

SUPERVISION ISSUES

- * Ceding control of the cases to students and not treating them like law clerks.
- * Developing realistic expectations for student work and supervising according to student needs.
- * Knowing how much and when to intervene.
- * Improving non-directive teaching skills.
- * Giving good feedback.
- * Balancing teaching students/allowing them to learn and grow with clients' needs/best interests.
- * Learning more about clinical legal education theory and pedagogy.

CLASSROOM COMPONENT ISSUES

- * Creating a productive, exciting, challenging, vibrant, cohesive classroom component.
- * How to structure a classroom discussion.
- * How to balance the classroom component between skills/simulations, substantive law, and case discussion.
- * Learning more about syllabus design, classroom planning, and teaching methods.
- * Creating effective simulations.

WHAT WE WANT TO DISCUSS MOST WITH OTHER CLINICAL FACULTY

- * Directive vs. non-directive clinical teaching; where to draw the line.
- * Managing time as it relates to supervising students; how much to do for them, getting them to meet deadlines, consequences for missed deadlines.
- * Teaching and skills issues.
- * Incorporating teaching difference (diversity issues) into the curriculum.
- * How to develop a syllabus and good simulations.
- * Balancing teaching students/allowing them to learn and grow with clients' needs/best interests.
- * How to make the transition from solely serving as a client's advocate to serving the dual role of teacher and advocate.
- * Supervision issues such as how and when to intervene and how to give effective feedback.

- * Scholarship, including how to get scholarly work published; scholarship vs. experience and how to make the best case for your career; how to become more disciplined with scholarship.
- * What their schools do to train new clinicians.
- * How to help students develop better writing skills.
- * How to handle difficult students in a respectful but firm manner.
- * How to deal with student assertiveness – too much and too little assertiveness.
- * How to deal with students who are not able to do the work.
- * How to deal with disappointing student performance
- * How to become a better/more effective classroom teacher.
- * How to identify cases with the greatest educational value for students.

THE TEN HARDEST THINGS ABOUT CLINICAL TEACHING

10. Staying ahead of the students.
9. Clients and cases don't adapt well to the academic format and schedule.
8. Dealing with deadlines when the students are supposed to be in control of the case.
7. Knowing when to keep my mouth shut and let students make mistakes.
6. Encouraging students to develop and implement their own case plans.
5. Knowing when to intervene when the student is supposed to be in control.
4. Balancing obligations to clients with educational needs of students.
3. Striking the balance between being directive and facilitative.
2. Supervising students who lack basic skills and/or who are not working up to potential.
1. The enormous time and effort it takes to do it right and never having enough time.

THE FIVE EASIEST THINGS ABOUT CLINICAL TEACHING

5. Nothing is easy.
4. Teaching skills in the area of my expertise.
3. Great clients/cases.
2. Enjoyable work – especially working with students enthusiastic about helping others.
1. Relationships/report/working with students.

IF I WERE THE CLINIC DIRECTOR I WOULD. . .

GENERAL TEACHING:

- * Review the curricula with others and evaluate the cases we do and the classroom component.
- * Begin a dialogue on the skills the clinical students are expected to develop in the clinic.

LAW SCHOOL/ORGANIZATIONAL ISSUES:

- * Ensure equal treatment for equal work vis a vis clinical and non-clinical faculty.
- * Push to make a clinical experience mandatory as a requirement for graduation.
- * Export clinical teaching methodology to other courses; perhaps "partner" with stand-up faculty.
- * Clarify the supervisory structure so that fellows know their role.
- * Plan for continual education or training of the instructors in teaching skills.

MISCELLANEOUS ISSUES:

- * Ensure flexibility in case selection to meet changing legal needs of the community.
- * Look at the kinds of cases we accept more carefully and strategically in terms of the educational value and community impact.
- * Resign! Who needs all that administrative headache?

IF I COULD TELL A NEW CLINICIAN ONE THING, IT WOULD BE . . .

- * Meet other clinicians early on and recognize that there is a community doing the same or similar things and learn from them.
- * Don't assume that experience in the practice of law has prepared you to teach practical skills.
- * Don't be too controlling.
- * Try to assess students' level of understanding of the substantive law to get a sense of where they are starting from and what they need most from you at the outset.
- * Network with other clinicians in your field and *write*.
- * Be patient with students.
- * Write about your experiences.
- * You can learn a lot from others, but ultimately you'll have to learn to be your own kind of teacher and integrate your own personal traits into your teaching style.
- * Talk to everybody (clinical and non-clinical faculty) about their

views on clinical teaching.

- * Remember they are students and know nothing about civil procedure, substantive law, fact investigation, etc.
- * Keep organized records of student conferences.
- * Try to meet and get the podium faculty involved in the cases.
- * Wait for a tenure-track or long-term contract job.
- * It's not as easy as you think.
- * This is a "people" job, and that's not as easy as you think.
- * This is a fabulous job.