

ONE STUDENT'S THOUGHTS ON LAW SCHOOL CLINICS

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Law school offers few opportunities for students to move beyond the ink and paper law of textbooks to see the actual effects of real law on real communities. Because law school clinics offer a rare opportunity for students to see the real and imperfect law-in-action, the import of immersive clinical experiences on the education of tomorrow's lawyers is inestimable. Through clinics, students learn how the law really works, witness its power and its shortcomings, and ideally begin to envision what shape the law ought to take. Expressing a student's perspective on how to make the most of the extraordinary opportunity of clinical legal education, this article advances that goal through five core directives: 1) immerse intensely, 2) balance hubris and humility, 3) challenge legal structures, 4) expect the whole law school to join in confronting issues of social justice, and 5) discuss visions of social justice openly. These directives not only challenge law schools to make issues of access to justice and the social responsibility of lawyers a central theme of the curriculum, they should also embolden clinical teachers to offer intense immersion experiences that encourage students to indict structures of injustice and to work toward particular visions of justice and social change.

INTRODUCTION

Much has been written about clinical legal education.¹ Very little, though, has been written from a student's perspective.² Having had several clinical experiences,³ I add one student voice to some of the discussions and debates that are prevalent within the clinical legal

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¹ See J. P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, 2 CLIN. L. REV. (SPECIAL ISSUE) 1 (2005).

² These very few examples include Robert Rader, *Confessions of Guilt: A Clinical Student's Reflections on Representing Indigent Criminal Defendants*, 1 CLIN. L. REV. 299 (1994) and Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLIN. L. REV. 167 (1995).

³ At Duke Law, I participated in the Guantanamo Defense, Community Enterprise, and Advanced Community Enterprise clinics as well as Wrongful Convictions, Advanced Wrongful Convictions, and Poverty Law, all classes with clinical components at the time that I was enrolled.

community, offering here a few of my core beliefs about clinical legal education.

Each law school clinic, operating in different communities with different students, faces different resources and different challenges. The personal anecdotes that I share throughout this article highlight the idiosyncratic nature of any clinical experience. To ensure that my ideas are not too idiosyncratic, however, I have solicited the wisdom of several clinical educators from around the country and included as many and as much of their voices as possible here.⁴ Aided by their insights, I have framed five core beliefs about how law students can draw the most learning out of their clinical experiences. This article offers those five core beliefs in the form of five instructions to professors and students for maximizing learning in law school clinics.

In Part I, I argue that clinics should aim to provide students with intense immersion experiences. Part II challenges clinical students to combine both hubris and humility. Part III states that clinical students must learn not only to work within conventional legal structures but also to question these structures and to recognize the winners and losers that any structure creates. Part IV moves beyond clinics to argue that notions of access to justice and advocacy for the poor must be integrated into the law school curriculum as a whole and not left to a single poverty law course or a single clinical experience. In Part V, I conclude that clinics are not a place for neutrality or for the non-partisan teaching of "skills" alone. Rather, clinics should promote visions of justice, which students are free to accept or reject.

I. CLINICS SHOULD AIM TO PROVIDE STUDENTS WITH INTENSE IMMERSION EXPERIENCES

Enlisting students' sympathy for distant lives is . . . a way of training . . . the muscles of the imagination.

—Martha Nussbaum⁵

A student could build an entire law school career out of textbooks, occasional attendance in large lecture halls, and late-semester cram sessions. A student could graduate from law school having had social interactions only with like-minded classmates and discussions with professors about the realities of lawyering only during the occasional visit to a professor's office hours. For some law students, clients might remain two-dimensional characters, as in the oft-overlooked

⁴ Perhaps even more than the insightful comments they offered, the responsiveness and willingness of these educators to give of their time speaks well for the state of our clinical legal community.

⁵ Martha Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. CHI. L. REV. 265, 271 (2003).

(and sometimes redacted) facts sections of judicial opinions. The degrees conferred and the hands shaken at graduation might signify a competence in understanding doctrine, technical rules, and the "proper" modes of legal analysis, but nothing more.

Whether any law school career happens entirely at this caricatured level, its possibility should be worrisome. Is this the level of engagement our society wants from the future guardians of its laws? If not, then law school clinics provide a way for students to engage the law more deeply, to explore the various real-life contexts in which it works, and to build relationships with the people whose lives it affects. Because a clinic offers nearly exclusive access during law school to these vital opportunities, I believe that intense immersion in its subject matter should be a guiding value of clinical legal education.

Of all the conclusions I drew about clinics from my clinic experiences, this one seemed least controversial among the clinical professors I interviewed. Indeed, immersion was accepted as a purpose of "any live client clinic,"⁶ and there was a sense among all clinicians that "it is the responsibility of clinics to challenge students" in ways that other components of the curriculum do not.⁷ The value of immersion in real-life situations as law school pedagogy is reflected in the clinical literature as well.⁸

Still, intense immersion will take on different meanings in different clinical settings. Any clinic's ability to provide students with intense immersion experiences is determined in large part by external factors. First, the institutional setting in which each clinic operates is unique. Clinics are limited by the practical realities of funding, curriculum design, and the kinds of teaching and other professional duties

⁶ Telephone Interview with Lawrence Sanders, Acting Director, Turner Environmental Law Clinic, Emory Law School (Apr. 15, 2009).

⁷ E-mail from Gregory Travaglio, Professor Emeritus of Law, The Ohio State University–Moritz College of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 15, 2009, 13:27 EST) (on file with author).

⁸ See, e.g., Christopher T. Cunniffe, *The Case for the Alternative Third-Year Program*, 61 ALB. L. REV. 85, 118 (1997) (stating that "[t]he educational value of externships lies in the authentic immersion of the student in a professional setting"); see also Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287, 316-17 (1994). Baker argues that "learning occurs readily and effectively in authentic, real-world contexts" and pushes for immersion in these real-world contexts:

The more a student becomes embedded in context as a legal worker, the more she wrestles enactively with the problematic events of the context, the more she subjects herself to the multiple forces of legal actors—clients, colleagues, opponents, supervisors, support staff, judges, or legislators—the more she functions within particular legal institutions and "behavior settings"—law offices, courts, bar associations, legislative bodies, and administrative agencies—the more she struggles to construct a comprehensible story about her new way of life, the more mature, measured, and effective her education and her practice is likely to become.

placed upon clinical teachers.⁹

Andrea Lyon, Associate Dean for Clinical Programs at the DePaul College of Law, explains that her ability to provide students with the “hot-house effect” of immersion depends a lot on her school’s environment.¹⁰ Having taught in both Ann Arbor and downtown Chicago, she has found that not only opportunities for immersion but also opportunities for distraction differ greatly depending on setting.¹¹ Differences in setting are compounded by differences in the structure of clinical programs. The number of semesters¹² or credit hours¹³ devoted to any clinic, for example, can significantly affect the level of immersion that the clinic can provide.

Of course, time is also an issue for the clinical professors who supervise the students. For instance, the clinician who is obligated to publish scholarship or to teach classroom courses necessarily has less time to devote to clinical supervision. Some full-time clinical faculty have extra-curricular responsibilities similar to traditional faculty.¹⁴ Susan Bennett, Director of the Community and Economic Development Law Clinic at the Washington College of Law of American University, wonders how this affects students’ clinical experiences, noting that “[a]s clinical faculty grows more immersed in the regular faculty, intense student immersion experiences grow more difficult.”¹⁵ Other institutional differences can affect student immersion opportunities as

⁹ Philip G. Schrag, *Constructing a Clinic*, 3 CLIN. L. REV. 175, 179 (1996).

¹⁰ Telephone Interview with Andrea Lyon, Associate Dean for Clinical Programs and Clinical Professor of Law, and Director of the Center for Justice in Capital Cases, DePaul College of Law (Apr. 15, 2009).

¹¹ *Id.*

¹² E-mail from Ian Weinstein, Professor of Law and Associate Dean of Clinical and Experiential Programs, Fordham University School of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 18, 2009, 09:59 EST) (on file with author) (“We can only provide real value in the brief time we spend with students if we give them intense experiences, but this forces us to think carefully about the kind of experiences we offer and how we manage them”).

¹³ Telephone Interview with Marci Seville, Professor of Law and Director of the Women’s Employment Rights Clinic, Golden Gate University School of Law (Apr. 15, 2009) (“As a practical matter, 12 [credit] hours would prevent most students from enrolling. We offer options that allow students to choose 1 to 3 add-on hours. When they choose 1 hour, we work around it, but it is generally not successful”).

¹⁴ Schrag, *supra* note 9, at 179 (acknowledging that, [i]n addition to teaching goals, all clinical teachers have some non-teaching goals that influence clinic design, such as . . . non-clinical courses, scholarship, public service, and family life); see also A.B.A. STANDARDS FOR APPROVAL OF LAW SCHOOLS §405(c) (2009–10), available at <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter4.pdf> (“A law school may require [clinical] faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members”).

¹⁵ Telephone Interview with Susan Bennett, Professor of Law and Director of the Community and Economic Development Law Clinic, American University–Washington College of Law (Apr. 17, 2009).

well.¹⁶

Beyond the institutions that house them, clinics are shaped by the students who enroll in them. Student preparedness for intense immersion will vary depending on age, socio-economic background, work experience, etc.¹⁷ Ian Weinstein, Director of Clinical Legal Education at Fordham Law School eloquently summarizes this diversity:

[S]tudents bring so many different experiences to law school and we also need to account for that. Some of my students have been only students all their lives and have never ventured far from their privileged confines. Others grew up in places I still don't have the courage to go to and have worked in settings far more demanding than those I have known. I have something to offer each, I hope, but those can be very different cases.¹⁸

In response to this diversity of student experiences and student preparedness, clinical educators suggest that "flexibility is key."¹⁹ According to Professor Janet Weinstein, Director of Clinical Internship Programs at California Western School of Law, "There should be opportunities for a variety of levels of immersion depending upon student interest, time, prior experience, etc."²⁰ It seems appropriate, then, for intense immersion to take various forms. To some extent, any intense immersion in clinical experiences is valuable, but, if there are two general goals of intense immersion—1) understanding the realities of the lawyer's work and 2) understanding the interactive realities of the law and clients' lives—my preference is for the latter.

A. *Intense Immersion in the Realities of the Lawyer's Work*

Law is not an easy career path. Many see intense immersion in lawyering during law school as a way to prepare students for the pro-

¹⁶ Telephone Interview with J. Dean Carro, Dean's Club Professor of Law, Professor of Clinical Education, and Director of Legal Clinics, The University of Akron School of Law, C. Blake McDowell Law Center, (Apr. 15, 2009) ("[e]xternal placements [aim at] immersion in service" while "[t]he goal of in-house clinics is different, which is to teach skills for particular tasks, a discrete topic or a project"); *see also* Seville Interview, *supra* note 13 (noting that in many clinics, such as her women's employment rights clinic, "boundary issues are involved," which warn against students giving clients their phone numbers, meeting at their homes, etc.).

¹⁷ Lyon Interview, *supra* note 10.

¹⁸ E-mail from Weinstein, *supra* note 12 (adding that "I have also seen some students shut down in the face of a level of intensity that was barely provocative for others. People have very different reactions to strong experiences and I think we must attend very carefully to student reactions as the experience progresses and be ready to modulate and respond").

¹⁹ Seville Interview, *supra* note 13.

²⁰ E-mail from Janet Weinstein, Professor of Law and Director of Clinical Internship Programs, California Western School of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 15, 2009, 17:55 EST) (on file with author).

fession's difficulties. They view clinics as "a chance [for students] to perform in authentic role[s] . . . [and] [t]o do the things that lawyers do, under pressures similar to ones they will experience in practice but with much more support and structure than they are likely to have after graduation."²¹

In this version, intense clinical immersion is a pedagogy. It adds to the lawyering skills that students read about by providing "multiple opportunities to exercise different skills and to see different skills modeled by teachers and peers."²² Real life scenarios add a level of complexity that encourages the development and application of the more sophisticated skills needed for real lawyering. Many in the legal community have recognized the development of lawyering skills as one of the goals of immersion experiences in clinical settings.²³

Where immersion is justified by the development of lawyering skills, *intense* immersion can be justified as making students more "practice ready" by forcing them to "confront the sort of workload (albeit in a smaller measure and in a more controlled setting) [that] they will encounter in a firm or other professional position."²⁴ The goal is to acclimate students to the realities of being a lawyer: "more responsibility" leads to better student performance,²⁵ intense immersion is more realistic in that it "provides for *gestalt* rather than sequen-

²¹ E-mail from James V. Rowan, Professor of Law and Director of Clinical Education, Northeastern University School of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 16, 2009, 11:00 EST) (on file with author).

²² E-mail from Travaglio, *supra* note 7.

²³ See TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES: NARROWING THE GAP (1992) (repeatedly asserting the role of "well-structured clinical programs" in helping law students to develop the skills they need for professional readiness); see also Schrag, *supra* note 9, at 185 (noting that an "obvious" goal "widely shared by clinics" is the teaching of "traditional skills").

²⁴ E-mail from Michele Halloran, Clinical Professor of Law and Director of Clinical Programs, Michigan State College of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 16, 2009, 13:22 EST) (on file with author) (adding that "[w]hile students are somewhat reluctant about this approach at the beginning of the semester, I see that they are most grateful for it by semester's end—it truly makes them much more 'practice ready' than they would be had we approached their education with a good deal of 'hand-holding' and simulation"). Importantly, though, some of those who see virtue in demonstrating the realities of professional demands caution that intensity alone should not be an end in itself. Professor Ian Weinstein, for example, urges that clinical legal education not "foster[] the legal culture of narcissism" or the "endemic" legal "tendency to be so chronically stressed that we have an excuse for never reflecting or taking full responsibility." E-mail from Weinstein, *supra* note 12 (explaining that he has "seen folks keep their students at the clinic day and night and then offer a seminar class on work life balance" and concluding that "[t]here is entirely too much intensity for the sake of intensity in the law").

²⁵ Schrag, *supra* note 9, at 180.

tial learning,"²⁶ and greater workloads allow clinics to address more effectively the "general scarcity of legal services" available to their client populations.²⁷ Although such realism offers practical lessons, intense immersion alone is not enough.

B. Intense Immersion in the Interactive Realities of the Law and Clients' Lives

Looking at my own clinical experiences, I would conclude that—while I have valued learning the skills of managing a lawyer's workload—the kind of intense immersion that I have valued most has been immersion in the lives of my clients and their worlds. My experience in Duke Law's Community Enterprise Clinic afforded me the opportunity to work closely with a non-profit that runs a community center in a relatively underserved part of Durham, North Carolina. As often as possible, I spent time away from the law school and at the community center. On many occasions, I sat in the lobby and watched as residents of the neighborhood would come and go, walking their children to Head Start's school readiness programs or heading to the health clinic for needed medical services. When my schedule permitted, I joined community meetings and heard the stories of lifelong community residents who loved the neighborhood that the community center serves.

Each of these experiences helped me to understand a social reality different from my own. I have grown close and committed to many members of the organization I serve. I have witnessed with them some small triumphs and suffered with them a few setbacks. With Professor Andrew Foster's patient guidance, I was able to reflect on what I learned. I view this holistic learning method as the antithesis of textbooks, large lecture halls, and late-semester cramming.

Reflection is a key component of a rich immersion experience. Clinics inspire learning that is recursive: student worldviews interact with clients in ways that reshape worldviews, which, in turn, reshape student interactions with clients.²⁸ But in order for this recursive process to work, "[i]mmersion experiences require the added perspective of reflection," a process that clinical professors must encourage.²⁹ The

²⁶ Lyon Interview, *supra* note 10.

²⁷ Bennett Interview, *supra* note 15.

²⁸ Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. 1, 47 (1997) (noting that clinics offer many opportunities for "self-analysis").

²⁹ E-mail from Maureen Armour, Co-Director of Civil Clinic and Associate Professor of Law, Dedman School of Law, Southern Methodist University, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 24, 2009, 17:41 EST) (on file with author) ("You can be one of the dancers on the floor, but you need to be able to climb into the balcony at times and look at the process from a critical perspective. This is also part of the

clinical literature is replete with examples of the central role that reflection plays in clinical pedagogy.³⁰

In other words, intensity alone is not sufficient.³¹ Reflective immersion experiences may be unlikely to happen with heavy workloads.³² Reflection requires time. Therefore, making room for student reflection involves certain pedagogical decisions: for example, between “providing needed services” and “keeping case loads manageable so that students can be reflective about the process and [the] decisions they make,” “between teaching a larger number of students and enabling a smaller number of students to have a deeper experience.”³³ In short, reflective immersion experiences require commitment: commitment among clinical students to spend time in their clients’ worlds and reflect upon these experiences,³⁴ as well as commitment among clinical professors to leave space and provide guidance for this reflection.

Another component of a richly intense immersion experience involves students entering another’s world in a way that fosters “intense affective experiences.”³⁵ As I prepared to graduate, the experiences

engaged dialogue we attempt to create as part of our supervision”).

³⁰ For example, Professors Stephen Wizner and Jane Aiken describe how time for professor-guided reflection is necessary to help students critique the larger legal structures that affect their clients’ lives:

It is not enough to provide students the experience. [Clinical instructors] need to help them reflect on that experience, to learn the larger lessons. We do not want our students just to learn how to handle a domestic violence case; we want them to reflect on how the justice system responds, or fails to respond, to domestic violence.

Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997, 1008–09 (2004). See also William P. Quigley, *Prosecutorial Externship and Clinical Programs: Reflections from the Journals of Prosecution Clinic Students*, 74 *MISS. L.J.* 1147, 1147–48 (2005) (asserting that “reflection on experience is the core of clinical education”); 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, 899 (1996) (describing in detail the use of journal-based reflection to help students “autonomously interact. . . with [their] experiences, and solv[e] [their] own problems”); Phyllis Goldfarb, *The Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 *MINN. L. REV.* 1599, 1616 (1991) (asserting that an “interaction between theory and experience, enabled by conscientious reflective practices” is “the epistemological model that animates clinical education”).

³¹ Wizner & Aiken, *supra* note 30, at 1008 (2004) (suggesting that “we cannot assume that those lessons will be learned from that intense experience alone”).

³² E-mail from Weinstein, *supra* note 12.

³³ Schrag, *supra* note 9, at 180–81, 198.

³⁴ E-mail from Larry Spain, Professor of Law and Director of Clinical Programs, Texas Tech University School of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 17, 2009, 09:52 EST) (on file with author) (asserting that “[o]nly by having the student assuming sole responsibility for the representation of the client, making tactical decisions and interacting with the client, does the student gain the perspective of what the representation of clients entails and [enable herself to] reflect upon the experience”).

³⁵ E-mail from Weinstein, *supra* note 12; see also Schrag, *supra* note 9, at 182 (explain-

that shaped my vision of the law and my future within it were the relationships with my clients, the successes and failures we shared, and my continuing struggles to deal with social realities beyond my usual comfort zone. Not only am I enriched by these experiences, but some might argue that my legal education would be incomplete without them.³⁶ Many agree that “encounters with people and situations very different from what folks may have experienced before is a much more important kind of intense immersion than lots of work or super complex legal issues.”³⁷

Professor Fran Quigley has called these encounters “disorienting moments,”³⁸ those moments during clinical experiences that “arise . . . fortuitous[ly], often precipitated by the student’s glimpse of the client’s reality—in the client’s home or in court”³⁹—when students are forced to rethink their ways of looking at the world. These are emotional experiences that push students to grow in ways that typical classrooms cannot.⁴⁰ Such moments are often precipitated by cross-cultural encounters, by students meeting people, entering neighborhoods, or witnessing realities with which they are unfamiliar. Clinical structures can encourage these moments.⁴¹ In this context, intense im-

ing that “practicing law with real clients and before real judges often generates very strong feelings, and a clinic can help students to become more aware of those feelings and better able to make feelings work for them rather than prevent them from achieving their goals”); *see generally* Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 *CLIN. L. REV.* 135 (2002).

³⁶ Mark R. Rank, *Toward a New Understanding of American Poverty*, 20 *WASH. U. J.L. & POL’Y* 17, 17–20 (2006) (asserting that a separation of policy and legal theory from reality is dangerous).

³⁷ E-mail from Weinstein, *supra* note 12.

³⁸ *See generally* Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law Schools*, 2 *CLIN. L. REV.* 37 (1995).

³⁹ Aiken, *supra* note 28, at 46. These disorienting moments seem difficult to achieve in the conventional classroom. Partly for this reason, it seems, Professor Aiken argues for a kind of intense immersion that would facilitate disorienting moments:

When providing direct service to poor clients, students should go to their clients’ homes rather than requiring the client to come to the law school clinic office. Students should take all opportunities to be with their clients. Interview them in their homes; wait in lines with them; attend meetings with caseworkers, doctors, or court personnel; and, of course, attend appearances in court and administrative hearings. If it is true that students experience more disorienting moments when they are not on their own ground, then venturing into the client’s world should increase the likelihood of developing a critical understanding of power and privilege.

Id.

⁴⁰ Schrag, *supra* note 9, at 182; *see also* Seville Interview, *supra* note 13 (explaining that the emotions of clinical immersion often require clinical professors to model for students how to deal with the inevitable ups and downs, losses and triumphs, of practice in settings where the odds are frequently stacked against their clients).

⁴¹ Schrag, *supra* note 9, at 182 (explaining, for example, that “[c]linic supervisors who make inter-cultural experience one of their goals tend to make structural decisions to facilitate it. For example, they might decide that the clinic will represent only poor people, or

mersion means “exposure” to “the urgency of unmet needs and to the capacities and constraints of law in addressing social problems.”⁴²

Any intense immersion seems valuable in some way; that is, intense immersion seems superior to no immersion at all. But, in my view, the ideal immersion is that which includes world-view challenging sojourns into unfamiliar territory, meaningful relationships with underserved clients, and plenty of room for guided reflection on these experiences. Professor Martha Nussbaum identifies one of the three critical capacities of an education that “cultivates humanity” as the capacity to foster “the narrative imagination,” which she describes as “the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person’s story, and to understand the emotions, wishes and desires that someone so placed might have.”⁴³ The development of a narrative imagination seems an appropriate goal for the intense immersion experiences of legal clinics.

II. CLINICAL LEGAL EDUCATION MUST COMBINE BOTH HUBRIS AND HUMILITY

Refuse to accept the reality of those who think that our future is pre-determined by the powerful and will never change. Certainly never accept our reality as the inevitable future. Accept no limits. Never let anyone tell you what you can achieve or who you can become. Challenge injustice even if you do not know the solution Do not accept it, transform it!

—William Quigley⁴⁴

Hubris is rarely considered a virtue. As a personal trait, it is often reviled. Lawyers, especially, need no encouragement to display hubris, lest they be prompted to fulfill the least flattering stereotypes of the legal profession. In law school clinics, where any personal hubris will encounter real clients, some professors believe that “[h]ubris is the

they might encourage students to meet in clients’ homes rather than at the law school”).

⁴² DEBORAH RHODE, *ACCESS TO JUSTICE* 158 (2004).

⁴³ Nussbaum, *supra* note 5, at 270. Interestingly, Professor Nussbaum speaks of legal education in terms less familiar to professional schools and more familiar to liberal arts education. In fact, she finds some guidance in the Roman philosopher Seneca, whom she describes as believing that:

[Liberal] education will develop each person’s capacity to be fully human, by which he means self-aware, self-governing, and capable of recognizing and respecting the humanity of our fellow human beings, no matter where they are born, no matter what social class they inhabit, no matter what their gender or ethnic origin.

Id. at 267. Rarely do we speak of legal education in terms of developing one’s capacity to be fully human. Perhaps we should.

⁴⁴ William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL’Y 101, 161 (2006).

enemy of clinical teaching"⁴⁵ and indicate that they "never want . . . students to exhibit the arrogance associated with hubris."⁴⁶ Others warn that they "doubt law students need more hubris than they already have"⁴⁷ and that, like innumerable characters in Greek or Shakespearean tragedies,⁴⁸ "lawyers get burned by hubris."⁴⁹

Personal hubris—an excess of confidence or pride to the point of delusion—seems offensive and dangerous. Shortly I will argue that, ultimately, clinics must teach humility. Yet perhaps surprisingly, I also insist that there is room for legal hubris. My belief in the value of hubris derives from a clinical experience of my own.

Like many others, I entered law school wanting to change the world. I had visions of the people for whom and the causes for which I would be fighting. I saw the law as a bold weapon of justice. Some of these visions may have been silly and misinformed, but, by the end of my first year, I missed my earlier idealism. As much as I enjoyed my coursework intellectually, little of what I was doing involved the passion for justice that first brought me to the law. After one year of law school, I was thinking smaller and less boldly than I had been before.

In my second year, however, the opportunity for boldness returned when I joined the Guantánamo Bay Defense Clinic. Our first orientation involved traveling to Washington D.C., obtaining security clearances, and meeting all weekend in a Department of Defense building with experts in military justice and humanitarian law. Together we set out to right what we all believed to be a series of grave injustices. We were encouraged to dream big. By the end of the weekend, I felt a long way from taking notes in a lecture hall. I felt like one of a band of warriors for justice, arming our metaphorical longbows and aiming our legal trebuchets against a mighty fortress. We embarked on a semester (and for others who were there, a career) with the feeling that we could actually succeed despite the odds.

At least two particulars of the Guantánamo Bay Defense Clinic fostered this feeling. First, the clinic itself was bold. Inherent in its very existence was the goal of undermining a specific legal system. Though many of the cases on which we worked involved individual detainees and particular arguments that did not necessarily implicate

⁴⁵ Telephone Interview with Victoria Chase, Clinical Associate Professor and Chair for Clinical Programs, Rutgers School of Law-Camden (Apr. 15, 2009).

⁴⁶ E-mail from Halloran, *supra* note 24.

⁴⁷ E-mail from Michael Mitchelson, Director of Externships and Clinical Instructor in Law, Oklahoma City University School of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 29, 2009, 15:43 EST) (on file with author).

⁴⁸ For example, see *Antigone* or *Oedipus* in Greek drama, *King Lear*, *Claudius*, or *Macbeth* in Shakespearean drama.

⁴⁹ Carro Interview, *supra* note 16.

the whole, all of our clinic work targeted the Military Commissions Act of 2006.⁵⁰ As a second-year law student I was emboldened to question and challenge an unjust legal system and to believe in the power of David against Goliath. Second, Professor Madeline Morris was bold. She would gather the class for marathon brainstorming sessions in her office, where the only limitations we perceived were the amount of caffeine in our cups and the number of available chairs (and floor space). When a classmate would offer a rough idea in need of fine-tuning, Professor Morris would reach for the phone and bring into our lives via conference call a judge advocate general, an expert in the laws of war, or an ex-general. Just as when I first dreamed of going to law school, I felt once again like I could help to change the world.

To be sure, the Guantánamo Bay Defense Clinic was unique, as are all clinics. With any clinic, though, it seems important to embolden students, to help them recognize the power of the law in the hands of those committed to a cause, to push students to “reach as high as [they] can reach.”⁵¹ Clinics seem the ideal place to do this, if “at least at some level, every clinic professor is a public interest lawyer who believes he can change the world.”⁵²

But why “hubris”? Why not “boldness” or even “aggressiveness”? I argue for hubris because, unlike boldness or aggressiveness, hubris persists in the face of extreme obstacles. At our most rational, when we step back and ask if we will ever change the world, the best answer is, of course, “Not likely.” At our most idealistic, where desire begins to overcome reason, we *believe* that we can change the world. But at our most hubristic, we *actually try* to change the world. Despite the odds and perhaps our better judgment, we choose to battle the powerful alongside the powerless. Professor William Quigley describes the benefits of this kind of hubris:

If you work for radical change, people will frequently tell you that the future is already determined, and there is nothing anyone can do about it. Do not believe them. In the past, slavery was widespread and legal; women were persecuted and jailed for voting; domestic violence was an acceptable part of relationships; child labor was legal; labor unions were outlawed; only white men with substantial property could vote; there was no minimum wage; and the disabled were told to stay home and hide away, as were gays and lesbians. Everyone who worked to bring about those changes was told repeatedly that it was useless to organize for justice, that the

⁵⁰ Pub. L. No. 109-366, 120 Stat. 2600 (Oct. 17, 2006).

⁵¹ Lyon Interview, *supra* note 10.

⁵² Sanders Interview, *supra* note 6.

present was the best that could be done under the circumstances, and that the powerful would never allow change.⁵³

If all lawyers remained rational actors and considered the odds against such changes, perhaps none could justify the efforts to fight for change. This is when hubris and its concomitant refusal to accept reality becomes a virtue. Some “revolutionary thought” seems necessary in clinical education.⁵⁴ Without it, the danger is that “[c]onventional education . . . reinforces the idea that there is nothing anyone can do to change this best of all possible worlds.”⁵⁵

Another benefit of the word “hubris” is that it highlights by contrast another essential trait, humility, which should permeate everything a lawyer does. Even where education is not necessarily revolutionary (indeed, then, in most situations), clinical legal education should be empowering. “Students learn how powerful law can be”⁵⁶ and “gain confidence in their legal skills” and abilities to put the law’s power to use.⁵⁷ But at the same time, clinics should aim to empower the people and the communities that they serve, a task that requires humility—both personal and structural.

Structural humility involves gaining a real sense of the limits of the law, and learning that “lawyers are not the complete solution.”⁵⁸ Teaching this may be no easy task.⁵⁹ Nonetheless, to produce effective attorneys, law schools must help students to understand the sometimes-limited “role of law and legal advocates in the process of social change.”⁶⁰ This kind of humility will demand, among other things, that lawyers learn to look beyond the law to help clients find solutions to their problems.⁶¹ One thing that rich clinical experiences should make clear is that client issues are often much more complex than the law

⁵³ Quigley, *supra* note 44, at 160–61. Professor Quigley adds that “[p]overty, wealth, racism, materialism and militarism cannot be changed by aiming at small revisions or modest reforms. If we are going to transform our world, we need lawyers willing to work with others to dismantle and radically restructure our current legally protected systems. We need revolutionaries”. *Id.*, at 101.

⁵⁴ *Id.*, at 135.

⁵⁵ *Id.*

⁵⁶ E-mail from Armour, *supra* note 29.

⁵⁷ E-mail from Travaglio, *supra* note 7.

⁵⁸ Stephanie M. Wildman, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, 55 J. LEGAL EDUC. 252, 253 (2005) (noting, though, that “lawyers remain a key ingredient needed to work with communities”).

⁵⁹ Seville Interview, *supra* note 13 (calling the teaching of law’s limits and inadequacies “a long, tall struggle”); *see also* E-mail from Weinstein, *supra* note 20 (“My experience is that many students are not psychologically ready to hear much about the law’s weaknesses or failures to solve the big problems of society”).

⁶⁰ Raymond H. Brescia, Robin Golden, & Robert A. Solomon, *Who’s in Charge, Anyway? A Proposal for Community-Based Legal Services*, 25 FORDHAM URB. L.J. 831, 863 (1998).

⁶¹ E-mail from Spain, *supra* note 34.

contemplates or than the law alone can solve.

Even more importantly, though, humility must be personal. Typically vociferous law students must learn above all else to listen.⁶² They must learn that "they are only a *tool* in their client's life"⁶³ and that only a humble attitude and a humble approach toward clients will lead to a kind of lawyering that "enable[s] a group of people to gain control of the forces which affect their lives . . . and [that] joins, rather than leads, the persons represented."⁶⁴ Much has been made in clinical and community lawyering scholarship about the need to allow clients' voices to be our guides,⁶⁵ and clinics seem like the ideal place to practice the essential skills of listening, learning, and being led. When this humility does not come naturally to students, it must be taught, serving as a counterweight to the hubris that enables students to fight uphill battles.

III. STUDENTS MUST LEARN NOT ONLY TO WORK WITHIN THE STRUCTURE OF THE LAW BUT ALSO TO QUESTION THE STRUCTURE AS A WHOLE AND TO RECOGNIZE THE WINNERS AND LOSERS MADE BY ANY STRUCTURE

Students act affirmatively within the channels cut for them, cutting

⁶² E-mail from Rowan, *supra* note 21 (suggesting that "learning to listen and to learn from our clients seems as likely to produce growth and satisfaction as any other personal quality").

⁶³ Chase Interview, *supra* note 45.

⁶⁴ William P. Quigley, *Reflections on Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 455-56 (1995).

⁶⁵ See, e.g., Lucie E. White, *To Learn and To Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1987-88); GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); but see Cathy Lesser Mansfield, *Deconstructing Reconstructive Poverty Law: Practice-Based Critique of the Storytelling Aspects of the Theoretic of Practice Movement*, 61 BROOK. L. REV. 889, 891-93 (1995) (responding to the "trend in legal scholarship . . . to condemn poverty lawyers for interpreting the client's story into a paradigm dictated by lawyer understanding," by arguing that these approaches "do not address the impact of such practices on the results reached for the individual client" and further that such an approach "fails to take into consideration certain realities of poverty law practice, derives from a singular, romanticized view of the poor, and actually may frustrate client goals by eviscerating the *raison d'etre* of the attorney-client relationship"); Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 142 (1992) (asserting that he "embrace[s] these views" for [their] persistent defense of subordinated clients in an arena where their voices are too often suppressed," but, "question[s] how the ideals of [these views] might be reconciled, even if they indeed will be compromised, with the street-level bureaucracy of most poverty law practices"); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLIN. L. REV. 217, 218 (1999) (exploring the possible divide between the "rhetoric of empowerment and the realities of practicing community development law").

them deeper, giving the whole a patina of consent, and weaving complicity into everyone's life story.

—Duncan Kennedy⁶⁶

A call to question whole legal structures is intimately related to the call for legal hubris. The reason that students should develop (or maintain) a revolutionary sense of their ability to change the world is precisely so that they are willing to take on the structures that continue to perpetuate injustice.

Though many clinical professors seem to agree that clinics should encourage this kind of questioning, some express reservations. Some point out “the danger of making students too cynical,” which could work not to inspire students to work for structural change but rather to undermine their inspiration, “so they end up with little hope of bringing about important change through their work as lawyers.”⁶⁷ Others remind that “in order to change the system, you first have to know the system” and that the shortcomings of any system are, in part, caused by the players who put the system into effect.⁶⁸ Some suggest that because of institutional limitations—time, budget, expertise, issues of academic freedom, etc.—few clinical teachers see it as their mission to “radicalize students.”⁶⁹ And some even wonder whether clinics are best-suited for this task.⁷⁰ Some of these concerns ring true, but clinics seem to be the *most* appropriate place to question legal systems and “economic, political, and social structures.”⁷¹ To do so elsewhere is to derive our questions from theory only whereas to do so in clinics is to derive our questions from first-hand knowledge of how our legal and other systems affect people's lives.⁷²

⁶⁶ DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (CRITICAL EDITION) ii (2004). See also Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 *ASIAN L.J.* 65, 69 (2003) (arguing that “mainstream education, in its dominant, uncritical form, formalizes and systematizes the inclusion of cultural politics to ratify the world ‘as is’”).

⁶⁷ E-mail from Weinstein, *supra* note 20.

⁶⁸ Carro Interview, *supra* note 16 (citing the example of Durham District Attorney Mike Nifong and the attempted prosecution of three Duke University lacrosse players for the alleged sexual assault of a dancer. The charges were eventually dropped, Nifong was disbarred and held in criminal contempt of court, and the case now stands as an example of how bad actors can undermine the integrity of our criminal justice system).

⁶⁹ Sanders Interview, *supra* note 6.

⁷⁰ E-mail from Travalio, *supra* note 7 (arguing that “[t]here are other places, both in and out of law school, where [critiquing the legal system] can be more effectively accomplished. If students don't recognize that the system (and any legal system) creates winners and losers, they don't belong in law school”); see also Carro Interview, *supra* note 16 (suggesting that most law professors did not enjoy working as lawyers and are therefore quite capable of critiquing the systems they chose to leave).

⁷¹ Rank, *supra* note 36, at 26.

⁷² Professor Schrag explains the value of this real-life clinical exposure:

One good example of this difference is found in my own experience in two classes: Wrongful Convictions and Criminal Law. Involvement in wrongful convictions work is a surefire way to generate questions about the legal system. In the Wrongful Convictions class at Duke Law, we often described our work as trying to rescue people downstream. Each of us worked hundreds of hours investigating colorable (and sometimes downright convincing) claims of actual innocence. And as we all shared stories over the course of a year, patterns of injustice arose. Some related to access to legal counsel. Some involved the use of eyewitness testimony. Some regarded preservation of evidence. Many were exacerbated by issues of race and poverty.

Once these injustices became predictable, it was not long before we all began to ask in frustration: Why are we working so hard and against such odds to pull people out downstream when they should not have fallen into the river in the first place? Our attentions moved naturally from wrongful convictions to wrongful systems. These injustices were preventable. How could we change things, we wanted to know, to prevent them from happening again? Without the harsh reality of a person incarcerated bringing the system to life, few of us would have felt compelled to ask these same questions in our doctrinal class in Criminal Law.

Clinics naturally elucidate law's failings in ways that most doctrinal courses do not. With these repeated and seemingly preventable systemic injustices in mind, it would seem irresponsible for clinics not to "work[] with students to understand that they can't just function in broken systems."⁷³ Indeed, "students need to question the structure of the law and how it creates winners and losers"⁷⁴ and then "work to

Most clinics represent primarily or exclusively indigent people, and clinics are places where law students sometimes meet poor people for the first time in their lives. These encounters cause some students to appreciate how much privilege they enjoy. Some clinicians urge students to think very hard about class differences and about whether the students' relative wealth and education imposes on them an obligation for public service, and for continuing reform of the laws and the legal profession itself, after the clinic experience ends.

Schrag, *supra* note 9, at 183.

⁷³ E-mail from Tania Tetlow, The Felder-Fayard Early Career Associate Professor of Law and Director of the Domestic Violence Clinic, Tulane Law School, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 20, 2009, 20:12 EST) (on file with author).

⁷⁴ Professor Maureen Armour explains how questioning the system would work in a less obvious setting:

For example we are currently grappling with the issue of advising clients about "judgments." We found ourselves using a distorting rule of thumb, "the client is judgment proof." We were using a very middle class notion, i.e. they are indigent and have no fear of payment because they can't pay, to describe what could be seen as a "winner," a judgment proof client. We looked deeper and found the legal system in concert with the debt reporting system and debt collection system can generate tre-

change those systems.”⁷⁵

Without guidance, though, it is doubtful that students will know how to move from an individual case to systemic issues.⁷⁶ For this reason, some clinical professors choose to balance their students' individual case experiences with some focus on “how the system gets changed.”⁷⁷ Even where the need for structural change was obvious to me in my Wrongful Convictions class, there was no way that I could discover routes to systemic change unless I received instruction and guidance. Because clinics offer more opportunities for guidance than conventional classes, they seem ideal places for creatively questioning the structure of law and the legal system.⁷⁸

With the benefit of a first-hand view of how law works in real people's lives, clinical students can question the law at many levels. First, they can question “the tools of conventional advocacy,”⁷⁹ asking whether traditional litigation and the fight for “rights” might be insufficient to serve their clients' needs.⁸⁰ Beyond a critique of traditional legal tools, students can develop “the ability to deconstruct power, to identify privilege, and to take responsibility for the ways in which the law confers dominance.”⁸¹ Perhaps most profoundly, students can

mendous pressure on these clients. We have looked at the need to protect exempt assets and the impact of a judgment on a client's job application. On the other hand we ask students to look at the issue of judgment collectability as a power/resources question. Many of our clients lack the resources to collect on judgments; as a result we commit to collection efforts when we agree to take a case to trial.

E-mail from Armour, *supra* note 29.

⁷⁵ Tetlow Interview, *supra* note 73.

⁷⁶ E-mail from Russell Engler, Professor of Law and Director of Clinical Programs, New England School of Law, to Jeffrey Ward, 2009 Graduate, Duke University School of Law (Apr. 16, 2009, 15:13 EST) (on file with author) (noting from experience that “[a]ll too often, students and lawyers are sympathetic to individual cases and clients, yet resistant to structural changes that would ameliorate their situation, and those similarly situated”).

⁷⁷ Seville Interview, *supra* note 13.

⁷⁸ Schrag, *supra* note 9, at 185. Professor Andrea Lyon adds that, in fact, clinics might be superior even to externships for encouraging students to question legal structures because the chances for guided reflection that are often a part of clinics are often missing from externships. Lyon Interview, *supra* note 10.

⁷⁹ See, e.g., Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 447 (2001) (highlighting the need to question and empirically study “the efficacy of market-based [Community Economic Development] as a social change tool”); see also Tetlow Interview, *supra* note 73 (describing this as everything “from appeals that will piss off trial judges to impact litigation and media exposure . . . [to] just having meetings with the people in power and negotiating change”).

⁸⁰ See, e.g., GERALD ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 343 (1991) (arguing that “[t]o ask [courts] to produce significant social reform is to forget their history and ignore their constraints. It is to cloud our vision with a naïve and romantic belief in the triumph of rights over politics”).

⁸¹ Aiken, *supra* note 28, at 11. Professor Aiken adds that “[u]nmasking privilege allows a person to challenge long-held assumptions and to develop a healthy skepticism about

learn to question not only the structure of the law but the social assumptions that underlie it,⁸² to identify “[t]he root causes that support and underpin [any] current unjust system.”⁸³ Once these underpinnings are seen as socially constructed and mutable, students and lawyers can work to reconstruct the legal system on foundations more conducive to just outcomes.

As much as our law schools succeed at teaching legal doctrine and legal skills, we must guard against “legal education [that] sharpens the mind by narrowing it.”⁸⁴ The Model Rules of Professional Conduct contemplate inadequacies in our legal system,⁸⁵ and ABA standards call for “advocacy that addresses . . . systemic problems.”⁸⁶ But do law schools do enough to encourage students to critique the system?⁸⁷ Perhaps all legal educators should encourage students to ques-

law’s neutrality.” *Id.* at 18.

⁸² See, e.g., David Abraham, *Liberty without Equality: The Property-Rights Connection in the “Negative Citizenship” Regime*, 21 LAW & SOC. INQUIRY 1, 63 (1996) (providing an example of the power of “rooted” “legal-social ideologies” in arguing that the entrenched conception of “[n]egative liberty . . . has proven a mighty barrier to redistributive (let alone egalitarian) projects in the United States”); see also Rank, *supra* note 36, at 46 (explaining causes of poverty in terms of “paradigm[s] that . . . dominate our understanding of the issue” and arguing that this dominant paradigm must change before poverty will end).

⁸³ Quigley, *supra* note 44, at 112 (adding that, beyond identifying these unjust systems, students should learn to “dismantle” them); see also Valdes, *supra* note 66, at 71 (arguing for the greater use of critical legal theories in legal education); Chase Interview, *supra* note 45 (stating that “students must understand that the justice system is premised on a certain system of rationality often different than the client’s”).

⁸⁴ Erwin N. Griswold, *Intellect and Spirit*, 81 HARV. L. REV. 292, 299 (1967).

⁸⁵ MODEL RULES OF PROF’L CONDUCT R. 6.1 (2004); but see Chase Interview, *supra* note 45 (noting her surprise that the Rules of Professional Conduct do not do more to suggest or require efforts to address these inadequacies).

⁸⁶ In the course of serving its clients, a provider [of legal assistance] is likely to identify laws, policies and practices that have a detrimental effect on low income persons and that deter it from accomplishing desired results. It will also encounter the efforts of others to change policies and laws in ways that harm the interests of low income persons. A provider should engage, when appropriate, in advocacy that addresses such systemic problems. Advocacy to accomplish systemic change is called for when an issue is likely to recur, affects large numbers of clients and is unlikely to be resolved favorably for individual clients on a one-on-one basis. Advocacy is appropriate to defend the status quo when proposed changes will erode the rights of low income persons or harm the interest of low income communities.

ABA Standing Committee on Legal Aid and Indigent Defendants, Standards for the Provision of Civil Legal Aid, Standard 2.6 (2006).

⁸⁷ Griswold, *supra* note 84, at 299 (“[D]o we encourage imagination in the broad sense? Do we encourage our students to devise new premises, to start out on whole new lines of reasoning, to come up with solutions?”). Some authors advocate the need to consider even more sweeping changes to our systems of higher education in order to bring about real social change. Mark Taylor, for instance, recently argued for the abolition of conventional disciplinary divisions at institutions of higher learning and for the formation instead of “problem-focused programs” organized around such topics as “Mind, Body, Law, Information, Networks, Language, Space, Time, Media, Money, Life and Water.” Mark C. Taylor, *End the University as We Know It*, N.Y. TIMES (Apr. 26, 2009), available at

tion the legal structure as a whole.⁸⁸ Clinical legal education, at least, “must deviate from system-reinforcing behaviors and challenge the students to examine and reflect upon the prevailing social, political, and cultural realities that affect their own and their clients’ lives.”⁸⁹ Clinics may offer students the best opportunities they will have to imagine a better legal system.

IV. NOTIONS OF ACCESS TO JUSTICE AND ADVOCACY FOR THE
POOR MUST BE INTEGRATED INTO THE LAW SCHOOL
CURRICULUM AS A WHOLE AND NOT LEFT TO
A SINGLE POVERTY LAW COURSE OR
SINGLE CLINICAL EXPERIENCE

If we want lawyers to see public service as a professional responsibility, that message must start in law school.

—Deborah Rhode⁹⁰

The last fifteen years have seen calls for law schools to devote more resources to skills training throughout the curriculum.⁹¹ Even more, there have been frequent calls “to make consciousness about social justice pervasive in law school and accessible to all students”⁹²

http://www.nytimes.com/2009/04/27/opinion/27taylor.html?pagewanted=2&_r=1&em.

⁸⁸ In Part IV, I suggest that part of the mission of every law school should be to integrate into its institutional design an explicit concern for issues of poverty and access to justice. See *infra* notes 90–118 and accompanying text. Professor William Quigley argues that law schools should encourage among students a revolutionary bent:

There are enough lawyers in the world defending the way things are. Plenty of lawyers protect unjust people and institutions in our social, economic and political systems. Plenty of lawyers work for structures that perpetuate and increase the racism, militarism and materialism in our world. These lawyers are plentiful and well-compensated. True structural and fundamental change will not come by aiming at small revisions or reforms. If we are going to transform our world, we need lawyers willing to work with others toward a radical revolution of our world. We need no more lawyers defending the status quo. We need revolutionaries.

Quigley, *supra* note 44, at 168.

⁸⁹ Jane H. Aiken, *Provocateurs for Justice*, 7 CLIN. L. REV. 287, 298 (2001).

⁹⁰ RHODE, *supra* note 42, at 19.

⁹¹ TASK FORCE, *supra* note 23; see also A.B.A. STANDARDS FOR APPROVAL OF LAW SCHOOLS §302(b)(1) (2009–10), available at <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf>; see also Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report Into a Doctrinal Course*, 3 NEV. L.J. 32 (2002) (explaining the values of combining the legal skills normally practiced in clinics with the substantive, doctrinal study of other courses).

⁹² Wildman, *supra* note 58, at 253. Professor Wildman argues throughout her work that “[t]he notion of a professional as someone dedicated to public service and to the provision of justice needs to attain more prominence in legal education.” *Id.* at 255. Professor Deborah Rhode reiterates this point, asserting that the “curricular integration of materials concerning access to justice and pro bono service in professional responsibility courses, orientation programs, and core courses” is a best practice in legal education. RHODE, *supra* note 42, at 181.

and to bring “the normative dimension” into more of the law school curriculum.⁹³ Though “[c]linical legal educators have been pioneers in offering students direct experience in working for social justice,” change in the rest of the curriculum has not come easily.⁹⁴

For a century, the Langdellian case method has achieved a certain hegemony,⁹⁵ and the separation between courses that confront access to justice issues and those that do not has become a “cultural matter.”⁹⁶ Even beyond the general momentum of the status quo, several factors weigh against curricular reform. Primarily, “[c]urricular reform is a minefield for any faculty.”⁹⁷ Law schools are made up of a range of professors with a range of views, many who “do not view social justice as their cup of tea.”⁹⁸ Even many clinical professors are loath to question the sanctity of traditional curricular grounds or to intrude upon the autonomy of doctrinal law professors.⁹⁹ Some law students, too, may be resistant to such developments.¹⁰⁰ And law schools themselves are under increasing pressures not to grow in creative or new directions but rather to “homogeniz[e] legal education” as part of the race for rankings in widely disseminated law school guides.¹⁰¹

⁹³ Nussbaum frames the argument this way:

[L]awyers are also citizens, public figures, and agents of social change. They should learn to engage in normative ethical reasoning, by examining alternative accounts of decisionmaking, social justice, and other related topics. This normative dimension of legal education should not be confined to the required “Legal Ethics” course, typically a very narrow course concerned with professional conduct, but should permeate the curriculum, since normative questions and questions of justice are raised by all areas of law. This sometimes happens today, especially in areas such as constitutional law and environmental law, but it should happen more and more pervasively.

Nussbaum, *supra* note 5, at 274.

⁹⁴ Wildman, *supra* note 58, at 255 (stating further that “clinical faculty cannot do this work alone”); *see also* Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 23 (2006) (noting that “[a]mong [clinics’] most widely cited goals are providing practical skills training in a real world context, instilling a public interest ethos in students, advancing social justice, encouraging the critique of the law and legal institutions, inculcating high standards of ethics and professionalism and imparting the habit of self-reflective lawyering”).

⁹⁵ Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1930–31 (2001–2002) (describing the “scientific” case book method of Harvard Law School Professor Christopher Columbus Langdell).

⁹⁶ Lyon Interview, *supra* note 10.

⁹⁷ Wildman, *supra* note 58, at 261.

⁹⁸ Seville Interview, *supra* note 13.

⁹⁹ E-mail from Rowan, *supra* note 21 (arguing that “[m]any brilliant and capable faculty members would not agree with the need or wisdom of integrating such messages and should be free to do as they deem correct”).

¹⁰⁰ Sanders Interview, *supra* note 6 (explaining that “[l]aw students are [in law school] for many different reasons. We wouldn’t want to force-feed them. If we do, it becomes unnatural”).

¹⁰¹ Jeffrey E. Stake, *The Interplay Between Law School Rankings, Reputations, and Re-*

A consequence of all of these pressures is that “[i]ssues concerning access to justice and public service have been missing or marginal in core law school curricula.”¹⁰² Yet despite the preeminence of the status quo, the power of the arguments for attempting to integrate into the core curriculum issues of poverty, access to justice, and the social implications of the law suggests that more attention should be paid to the available options for doing so. I offer one example of such an effort from my own law school experience.

In some ways my first-year contracts course was probably like many others. We explored the requirements of contract formation, issues of consideration, mutuality of obligation, and other aspects of basic contract doctrine. I am certain, however, that in many ways my experience with contracts was very different than that of most law students. Professor John Weistart taught not from a textbook but rather from a multi-media video series. Instead of just reading the famous case of *Jackson v. Seymour*—in which a brother purchases land from his financially distressed sister after understating its worth—we watched the case scenarios acted out with two very different characters playing the part of Lucy Jackson. The first Lucy was elderly, reposed on a bed as if ill, and quite unsophisticated about financial matters. In this version she looked to her brother, Benjamin Seymour, like a knight in shining armor. Vulnerable, in need of money, and dependent upon his judgment, she sold him her land. When the scene played again, though, the second Lucy was a younger, energetic businesswoman, financially savvy and assertive. Suddenly the court’s equitable decision to grant Lucy relief through the unorthodox route of a constructive trust seemed questionable. And as a class we grew ever more aware of the ways in which context, social assumptions, even stereotypes, shape the way that the law takes effect.

Later in the semester, video recordings and articles by various professors encouraged us to challenge the assumptions upon which our dominant legal frameworks are founded. Professor Mel Eisenberg, for instance, suggested that the assumptions about rational actors that underlie the conventional contract framework are, according to many psychological studies, far from accurate. We began to see how imbalances of power could work to subvert justice. And each time a student struggled to comprehend a lengthy procedural history, Profes-

source Allocation: *Ways Rankings Mislead*, 81 IND. L.J. 229, 242 (2006).

¹⁰² RHODE, *supra* note 42, at 19; see also E-mail from Armour, *supra* note 29 (agreeing that “notions of access to justice, advocacy for the poor and general pro bono norms . . . aren’t [integrated] at our school. A poverty law course, clinics, [professional responsibility] and our public service program may emphasize this norm, but it is not generally integrated”); Aiken, *supra* note 28, at 9 (noting that law schools typically allow one professional responsibility class to do the heavy lifting in this area).

sor Weistart would take the opportunity to point out just how few people could afford to pay for litigation of such length, beginning an access to justice conversation where others might have offered only a technical explanation. Each of these small introductions of social reality into the core doctrinal subjects of the class served not only to bring the material to life but also to help all of us achieve a deeper understanding of law as a social phenomenon with disparate impacts on the poor and the powerless.

While the innovative methods used by Professor Weistart may be rare, they need not be. Many courses during law school's critical first year "could explore issues of access to justice and poverty."¹⁰³ For example, in a constitutional law class, professors could ask students to consider whether "the standard metaphor for the First Amendment—the 'marketplace of ideas'—tends to ignore the effects of poverty on the enjoyment of expressive rights."¹⁰⁴ Professors of civil procedure could encourage students to see "civil procedure in its political, social, and economic context," and to ask "whether the rules provide effective, and not merely theoretical, access for all claimants."¹⁰⁵ In any class, in fact, "placing procedural rules in a social context" could advance the important lesson "that procedural rules, like all legal rules, result from political choices that cannot be separated from social values."¹⁰⁶ Such discussions would add to each of these courses a measure of social reality.

Of course, like all pedagogical choices, the inclusion of these discussions in the classroom would involve time and possibly some sacrifice of other content. I view such sacrifices as justifiable. One might argue, in fact, that a law school that does not integrate these concerns "has failed in its mission."¹⁰⁷ That is, any legal analysis uninformed by social realities would be incomplete. Without this consideration of social realities, "instruction tends to develop an excessive concern for structure and mechanics . . . [and] encourages a tendency to look inward at the consistency of the system rather than outward at the rela-

¹⁰³ Helen Hershkoff, *Poverty Law and Civil Procedure: Rethinking the First-Year Course*, 34 *FORDHAM URB. L.J.* 1325, 1353 (2007) (declaring that, "[u]nless we want our teaching . . . to encourage uncritical acceptance of existing legal arrangements—the first-year course by necessity must provide a conceptual framework that includes poverty and inequality as factors for evaluation").

¹⁰⁴ *Id.* at 1333–34 (2007) (explaining that some First Amendment scholars have argued that, "[i]n the marketplace . . . 'money talks.' No model has replaced this one in the United States, and, in fact, in contrast to other liberal, capitalist, and democratic societies in Europe, the power of free speech has increasingly been used to protect those individuals and corporations already strongest in our society").

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 1326.

¹⁰⁷ E-mail from Halloran, *supra* note 24.

tion of the system to the real world, and at its impact on people and events."¹⁰⁸

Some might argue that no class can do everything and that it is the role of clinics to supplement core courses with considerations of poverty, access to justice, and social reality. Although clinics are a "natural" place to approach these issues,¹⁰⁹ clinics should not be left to fill this void on their own for several reasons.¹¹⁰ First, in most law schools, only a limited number of students take clinics, so only a "limited number of students will be exposed to and be challenged by these fundamental issues."¹¹¹ Even where a select few additional courses address subjects of access to justice and poverty, these courses "generally attract students who are open to such an approach," so other students miss out.¹¹² As a result, our law schools produce many practitioners who are "often ill-informed" about issues of poverty and access to justice.¹¹³ This seems inappropriate, if not irresponsible, in a nation where "[e]qual justice under the law" is one of [our] most firmly embedded . . . legal principles."¹¹⁴

Even for those students who choose to take clinics and the few other courses where issues of access to justice and poverty are at the fore, there are reasons to think that integration of these concerns into the core curriculum would be beneficial. Given the gravity of the problem of access to justice, it "needs to be a constant refrain over

¹⁰⁸ Griswold, *supra* note 84, at 299.

¹⁰⁹ E-mail from Spain, *supra* note 34 (explaining that, "[a]s a result of the clients and legal problems addressed in most legal clinics, it is natural to raise issues of 'access to justice' and encourage students to reflect upon their views and how the experience of representing disadvantaged clients has changed their views").

¹¹⁰ Wildman, *supra* note 58, at 255; E-mail from Halloran, *supra* note 24 (arguing that "we need to infuse our students with a commitment to community . . . [and] clinics are not the only venue in which this sort of education should take place"). Professor Wildman adds that "[t]wo groups of students attend law school: those who wish to pursue careers in public interest and social justice work and the rest of the student population, who need to understand that access to justice is the province of all lawyers." Wildman, *supra* note 58, at 255.

¹¹¹ E-mail from Spain, *supra* note 34.

¹¹² Aiken, *supra* note 28, at 62. Even those courses that are traditionally chosen by students pursuing corporate law careers might explore justice issues. As Professor Ian Weinstein says:

[E]veryone should talk about justice. Of course justice talk gives rise to different insights in Corporations and Securities Law classes, but I am fine with that. I don't need my particular ideas of justice to triumph but I do want everyone to talk about justice—I am enough of a chauvinist to believe that the world would come closer to my ideal in that case, even if it would not look exactly as I might think it should.

E-mail from Weinstein, *supra* note 12.

¹¹³ RHODE, *supra* note 42, at 192 (adding that "only 1 percent of surveyed lawyers recall any coverage of pro bono issues in their courses on professional responsibility").

¹¹⁴ Deborah L. Rhode, *Access to Justice*, *FORD. L. REV.* 1785, 1785 (2001).

and over again."¹¹⁵ Furthermore, silence about these issues can disappoint student expectations, as "many students who came to law school because they care about justice are surprised to feel the absence of that connection during their first year."¹¹⁶ In fact, Deborah Rhode's survey of law graduates indicated a desire for law faculty to be more concerned with social justice issues and for law schools to be more supportive of access to justice initiatives.¹¹⁷ While clinics should continue to confront issues of access to justice and poverty, if we agree that these issues should no longer be marginalized, then "lessons of social justice should be a core element of the law school curriculum in general and the content of clinical courses in particular."¹¹⁸

V. CLINICS ARE NOT THE PLACE FOR NEUTRALITY OR FOR THE NON-PARTISAN TEACHING OF "SKILLS" ALONE. CLINICS SHOULD PROMOTE VISIONS OF JUSTICE, WHICH STUDENTS ARE FREE TO ACCEPT OR REJECT.¹¹⁹

We have to encourage our students to dream of justice . . . [to] ensure that improving the lives of marginalized, subordinated, and underrepresented members of society remains integral to the lawyer's calling.

—Stephanie M. Wildman¹²⁰

A high school history teacher once admonished our class, "Never trust a history teacher who won't tell you his political party." I have carried this advice with me and have since developed a considerable suspicion of all things supposedly neutral, non-partisan, and dispassionate in education. This suspicion, coupled with the sense that far too few opportunities exist in law school to wrestle with issues of justice, leads me to believe that clinics are an especially important place

¹¹⁵ Carro Interview, *supra* note 16.

¹¹⁶ Wildman, *supra* note 58, at 260.

¹¹⁷ RHODE, *supra* note 42, at 175 (noting that "[o]ne of the most common [survey] complaints was that the majority of faculty showed no serious 'interest in or commitment to . . . public service,' " and that "[m]any survey participants also criticized their school's inadequate support for clinics").

¹¹⁸ Quigley, *supra* note 38, at 38; *see also* Wildman, *supra* note 58, at 260 (expressing the need to make social justice concerns part of the general law school culture); RHODE, *supra* note 42, at 193 (arguing that because "[l]egal education plays an important role in socializing the next generation of lawyers, judges, and public policymakers . . . law schools have a unique opportunity and obligation to make access to justice a more central social priority").

¹¹⁹ When I shared these ideas and values with several clinical professors, I had articulated this last value as follows: "Clinics should promote *particular* visions of justice, which students are free to accept or reject." Based on their feedback, I have dropped the word "particular."

¹²⁰ Wildman, *supra* note 58, at 255.

for professors and participants to express and debate openly their visions of justice.

This idea is controversial. Some clinical professors “disagree profoundly” and offer the fair warning that “[i]t is NOT the job of clinics to politically indoctrinate our students.”¹²¹ This *seems* obvious, and few would argue in favor of any form of indoctrination. But this warning is important because the line between healthy guidance and indoctrination may not be clear.¹²² To avoid crossing this line, Professor Lawrence Sanders of the Turner Environmental Law Clinic at Emory Law School says he “sets out not to teach public interest environmental lawyers, but to train lawyers.”¹²³ Only if a student expresses interest in social justice issues will Professor Sanders then individualize discussions to meet that student’s self-selected direction.¹²⁴

Similarly, some clinical professors indicate that they try to create a “‘neutral zone,’ in which the director [and] staff should not impart their visions of justice to students.”¹²⁵ To be sure, even a purportedly “neutral” clinical experience would have value in that, “[l]ike other forms of experiential learning, participation in public service helps bridge the gap between theory and practice” and can provide valuable training in traditional lawyering skills.¹²⁶ To protect this neutrality, many professors promote a focus on skills,¹²⁷ insisting that “it is not [a clinical professor’s] job to ‘direct’ students in any particular way except to be caring, competent, and ethical practitioners.”¹²⁸

¹²¹ E-mail from Travalio, *supra* note 7 [capitalization in original].

¹²² Sanders Interview, *supra* note 6.

¹²³ *Id.*; see also E-mail from Travalio, *supra* note 7 (stating with conviction, “I firmly do NOT believe that it is our obligation to make public interest lawyers out of our clinical students (speaking as one who has immense respect for public interest lawyers and who has functioned as one)”).

¹²⁴ Sanders Interview, *supra* note 6.

¹²⁵ E-mail from Halloran, *supra* note 24 (adding that “students should use their clinical experience to develop their own justice vision”).

¹²⁶ RHODE, *supra* note 42, at 158; see also E-mail from Weinstein, *supra* note 20 (suggesting that, despite a preference for a forum where students explore issues of access to justice, “non-cause-oriented clinics that teach skills can be useful in helping students become better lawyers; that should be an important outcome for any law school”).

¹²⁷ Wizner, *supra* note 95, at 1934; see also Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1466 (1998) (noting a move toward skills training in clinical legal education because of various pressures in this direction in the 1980s); Schrag, *supra* note 9, at 185 (noting that teaching “such standard legal activities as interviewing, case planning, investigating facts, counseling, legal writing, witness examination, and oral argument” are the “goal[s] that non-clinical faculty most often attribute to clinics, sometimes not realizing how many more subtle skills clinics can teach along with traditional skills”).

¹²⁸ E-mail Travalio, *supra* note 7; see also E-mail from Armour, *supra* note 29 (explaining that in her clinic they “teach skills in the service of the client, but I am not sure we can claim to teach a vision of justice that is more ideologically informed than that. All of our students accept the idea that our clients deserve outstanding representation and they can-

The need to guard against proselytizing is apparent.¹²⁹ Preaching and partisanship can threaten the learning environment by undermining openness among students.¹³⁰ Beyond undermining openness, too much direction could abuse the teacher's position of authority. Professor Ian Weinstein explains this danger:

For me, respect and openness are very important. I cannot pretend that my students are really free subjects in their relationship to me. I grade them, I approve their legal work and I exercise all kinds of authority over them. Clinicians come in many different stripes, but I am quite conscious that as a fifty-year old white male tenured law professor my views carry a lot more weight with my students than I wish they did. Although my authority is evanescent, it is real and imposes great strictures, in my view, on how I promote my vision of justice.¹³¹

These thoughtful words demonstrate the evident respect that clinical educators often have for their students. This respect encourages professors to see their clinics as open "for[a]" and to recognize "a certain educational benefit when the class is composed of students with different views."¹³²

We must recognize that the phenomenon of complete neutrality 1) cannot exist and 2) would not be desirable in clinical legal education even if it were possible. Without a doubt, "law schools are intensely political places,"¹³³ and their ability to provide "clinical training that is morally and jurisprudentially neutral" seems unlikely.¹³⁴ To some extent, everything about legal education is "value-laden"¹³⁵ and everything a law professor does "suggests something about justice."¹³⁶ Even the most technical, scientific, doctrinal, or pro-

not impose their own ideas of fairness and justice on the client").

¹²⁹ RHODE, *supra* note 42, at 175 (noting that some lawyers participating in her post-law school survey "complained that their institution's pro bono and public interest opportunities had a 'liberal agenda' that they did not share, and a few resented the 'self-righteous[ness]' or 'excessive preachiness' of program proponents").

¹³⁰ E-mail from Weinstein, *supra* note 12 (noting that "it is very hard, but not impossible, to be transparent about one's own position, practice in a normatively coherent way in a given area of the law and remain open, respectful and encouraging to those who do not agree").

¹³¹ *Id.*

¹³² Seville Interview, *supra* note 13.

¹³³ KENNEDY, *supra* note 66, at i.

¹³⁴ Bernard K. Freamon, *A Blueprint for a Center for Social Justice*, 22 SETON HALL L. REV. 1224, 1231 (1992).

¹³⁵ Aiken, *supra* note 28, at 3.

¹³⁶ *Id.*; see also Griswold, *supra* note 84, at 299 (commenting on the power of legal education to reinforce traditional power structures). Professor Griswold suggests that by the subjects taught and "[b]y methods of teaching, by subtle and often unconscious innuendo, we indicate to our students that their future success and happiness will be found in the traditional areas of the law." *Id.*

cedural subjects often involve values and political choices.¹³⁷

There is no “perspectivelessness.”¹³⁸ Scrutinizing the history of law’s development reveals that “what is understood as objective or neutral is often the embodiment of a white middle-class world view.”¹³⁹ Because there can be no complete neutrality, it seems ill-advised—if not dangerous—to hide behind teaching “a set of skills” when “practicing law . . . requires developing a set of fundamental values.”¹⁴⁰ At the very least, striving for neutrality may lead us to miss opportunities for the kind of political engagement that could bring about greater change.¹⁴¹

Even were it possible, a neutral classroom or clinical experience may not be desirable. First of all, “most students attend law school because they are interested in and concerned about social justice.”¹⁴² Those who do “find in the curriculum too little that will channel that passion”¹⁴³ because “legal educators have not done enough histori-

¹³⁷ Professor Kenneth Graham develops the point in this way:

For anyone who is concerned with justice, the most salient feature of contemporary American society is the wildly unequal distribution of wealth and power. Only the complacent or the ideologically blinded can avoid the issue of the complicity of rules of procedure in fostering inequality. But this is ultimately a question of values, of choosing sides in a deeply political struggle—it cannot be answered by “scientific” methods. To come down on the side opposing the status quo is not simply to take up arms against very powerful interests, it is also to abandon the posture of political neutrality that many proceduralists see as their sole claim to authority.

Kenneth W. Graham, Jr., *The Persistence of Progressive Proceduralism*, 61 TEX. L. REV. 929, 948 (1983).

¹³⁸ As Professor Kimberlé Williams Crenshaw observes:

[B]ecause of the dominant view in academe that legal analysis can be taught without directly addressing conflicts of individual values, experiences, and world views, these conflicts seldom, if ever, reach the surface of the classroom discussion. Dominant beliefs in the objectivity of legal discourse serve to suppress the conflict by discounting the relevance of any particular perspective in legal analysis and by positing an analytical stance that has no specific cultural, political, or class characteristics.

Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN’S STUD. 33, 35 (1994).

¹³⁹ *Id.*

¹⁴⁰ Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT’L. L. 505, 521 (2003) (observing that “[s]ome would argue that central to these values is the belief that the law school be an instrument of justice and, further, that legal education should imbue aspiring lawyers with the notion that the profession is guided by truth, reason, fairness, and equity”).

¹⁴¹ See, e.g., Cummings, *supra* note 79, at 454 (noting that, for example, “[b]y privileging market-based housing and business development strategies, CDCs have distanced themselves from the type of political engagement necessary to redress the problems of concentrated poverty, joblessness, and income stratification” and further that “[t]he failure to confront the politics of poverty has limited the effectiveness of CED efforts”).

¹⁴² Wildman, *supra* note 58, at 254.

¹⁴³ Nussbaum, *supra* note 5, at 274. Professor Nussbaum adds that “[a]ll too often . . . [a]mbitious idealistic young people become narrower, more fixed on narrowly instrumental goals.” *Id.* at 279.

cally to ensure that students graduate with this interest intact."¹⁴⁴ Too frequently legal education conquers idealism by "the exaltation of rationality over other values which are of great importance to our society."¹⁴⁵ Students may sense that legal education could better address social justice needs¹⁴⁶ and that, in doing so, they would be better prepared to address existing legal injustices.¹⁴⁷

Beyond failing to meet student expectations, a purportedly neutral classroom or clinical experience may fail the public interest.¹⁴⁸ Undeniably, injustices persist. "Equal Justice Under Law" . . . remains aspirational."¹⁴⁹ Some argue that the existence of poverty itself demonstrates injustice,¹⁵⁰ and the familiar critique that there is "one law for the rich and another for the poor" has reverberated for genera-

¹⁴⁴ Wildman, *supra* note 58, at 254.

¹⁴⁵ Griswold, *supra* note 84, at 300.

¹⁴⁶ Wildman, *supra* note 58, at 255 (asserting that "[l]egal education need not dissociate students from the aspiration for justice that motivated many of them to choose law as a profession").

¹⁴⁷ See ELIZABETH DVORKIN, JACK HIMMELSTEIN, & HOWARD LESNICK, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (1981). This compilation includes one law student's comment on the failure of legal education to offer real problem-solving techniques:

I did find problem-solving skills being taught in the law school, but somewhere along the way I became dissatisfied with the means of solving the problems and the solutions. I felt constrained; everything seemed to have been simplified, streamlined and made unreal. The world as presented in law school felt two-dimensional to me: yes/no, win/lose, action/reaction, question/answer, guilty/not. Everything is set up in dichotomies and many times that feels very wrong. I feel I am being taught to solve problems and then devising stop-gap half measures that do not begin to deal with the original, or basic, problem. I am being trained to create practical solutions that may be fine for some things, but I find the techniques incapacitating for approaching other areas of law and life—especially the broader societal problems. The two dimensional win/lose syndrome gets in the way when I look for common themes and higher principles. It also makes it very hard for me to recognize the narrow perspective that I am using to "solve" the problem. I also wonder how many problems we actually solve. I find an overwhelming desire to control, order and certainty manifested in our method of solving problems. We lawyers and students help create so much particularistic garbage we can't see the forest anymore.

Id. at 170.

¹⁴⁸ Wizner, *supra* note 95, at 1929 (stating as part of his thesis that "the public interest requires law students to learn that they have a social and professional responsibility to challenge injustice and to pursue social justice in society"); see also REGINALD HEBER SMITH, *JUSTICE AND THE POOR* 230 (1971 Reprint Edition) (1919) (calling the theory that lawyers are obligated to the poor "a characteristic of the lawyer's position in all civilized communities . . . that has been recognized from the earliest times").

¹⁴⁹ Ruth Bader Ginsburg, *In Pursuit of the Public Good: Access to Justice in the United States*, 7 WASH. U. J.L. & POL'Y 1, 2 (2001) (stating that "[i]t remains true . . . that the poor, and even the middle class, encounter financial impediments to a day in court. They do not enjoy the secure access available to those with full purses or political muscle").

¹⁵⁰ See, e.g., Rank, *supra* note 36, at 39, 41 (arguing that "poverty constitutes an injustice of substantial magnitude" that "is both unnecessary and preventable").

tions.¹⁵¹ Because every modern lawyer will operate in a world where these problems exist, an education that claims to be neutral or based on "skills" alone "may have little success in preparing its graduates for [modern lawyering]."¹⁵²

Once we acknowledge pervasive problems of injustice, we might also accept that "law schools have some obligation to contribute to the solution."¹⁵³ Indeed, some argue that "[a]ny hope for change in [the pattern of lack of access to legal services] must begin with professional education. As the gatekeepers for the profession, law schools play a critical role in educating students for social justice."¹⁵⁴ As another commentator notes, "Criticism of legal education has been constant and repetitious for many years," and "law school fails to produce public spirited and socially responsible lawyers"¹⁵⁵ Especially in clinics, where students are most likely to develop a "compassionate concern for the plight of people living in poverty and a sense of professional responsibility for increasing their access to justice," education for social justice takes on a heightened importance.¹⁵⁶

Fortunately, many clinical professors have found a middle road between the danger of indoctrination, on the one hand, and the myth of neutrality, on the other. Many faculty address the indoctrination threat with honesty and openness, by being "up front about [their visions of justice] from the beginning, [f]rom the time students choose

¹⁵¹ SMITH, *supra* note 148, at 3.

¹⁵² Freamon, *supra* note 134, at 1230 (warning against "[a]ny law school clinic that myopically defines its educational mission as simple 'skill development' "); Professors Wizner and Aiken also assert that skills alone are not enough:

[T]here is more to the project of enhancing access to justice than simply offering law students the opportunity to learn lawyering skills by representing low-income clients or collaborating in impact litigation. In order to increase the number of law school graduates who embrace a professional responsibility to assure access to justice for the poor, clinicians must strive to inculcate in their students an understanding and compassionate concern for the plight of people living in poverty, and a sense of professional responsibility for increasing their access to justice.

Wizner & Aiken, *supra* note 30, at 1011.

¹⁵³ *Id.*, at 997; see also Wizner, *supra* note 95, at 1934 (agreeing that law schools have a duty to prepare students to ameliorate shortfalls of justice). Wizner writes that "[l]awyers should see themselves as trustees of justice. On them rests a fiduciary responsibility to see to it that the legal system provides, as far as practically possible, justice for all citizens, not only for the rich and powerful. Law teachers share that responsibility." *Id.*

¹⁵⁴ Wildman, *supra* note 58, at 255.

¹⁵⁵ John O. Calmore, *Social Justice Advocacy in the Third Dimension: Addressing the Problem of "Preservation-Through-Transformation,"* 16 FLA. J. INT'L L. 615, 632 (2004).

¹⁵⁶ Wizner & Aiken, *supra* note 30, at 1011; see also Dubin, *supra* note 127, at 1505 (arguing that "the importance of clinical legal education's historic commitment to social justice becomes manifest "where a widening gulf emerges between rich and poor in American society and access to legal services becomes further removed from subordinated communities").

whether to enroll,"¹⁵⁷ and by asserting that "a faculty member is most effective when open about her vision of justice as well as tolerant about disagreement."¹⁵⁸ Others find the middle ground not by denying visions of justice but by encouraging dialogue among many particular visions of justice.

Professor Tania Tetlow, who directs the Domestic Violence Clinic at Tulane Law School, says that she does "not require students to come to the same vision as I have, but I do require them to challenge themselves and to think hard about their beliefs."¹⁵⁹ Similarly, Maureen Armour, Co-Director of the Civil Clinic at Southern Methodist University School of Law, describes an approach shared by the clinicians with whom she works: "We don't teach a particular redistributive theory of justice, we simply raise questions about the justness of the system we are in."¹⁶⁰ Still others insist that there is some fundamental aspect of any vision of justice that all must share¹⁶¹ and "do not believe that lawyers can reject the pursuit of justice without serious risk to their professional responsibility."¹⁶² Professor Victoria Chase, the Chair of Clinical Programs at Rutgers, believes that the "[l]egal profession has no monolithic ethical vision save one: *access to justice*."¹⁶³ Perhaps at this basic level—encouraging access to justice—there is even some room for indoctrination. At the very least, perhaps we can agree that law schools must supplement "the pursuit of the academic values of precision and truth" with "the social values of truth and justice."¹⁶⁴

¹⁵⁷ Bennett Interview, *supra* note 15. Professor Bennett says that these issues are especially important to her because her clinic is "the clinic with the most students involved in transactional, commercial law. It draws students who wouldn't necessarily think of commercial law in the public interest".

¹⁵⁸ Chase Interview, *supra* note 45.

¹⁵⁹ E-mail from Tetlow, *supra* note 73.

¹⁶⁰ E-mail from Armour, *supra* note 29.

¹⁶¹ E-mail from Spain, *supra* note 34.

¹⁶² E-mail from Rowan, *supra* note 21.

¹⁶³ Chase Interview, *supra* note 45. While access to justice may be the most likely value to garner universal support, there is strong evidence that actual support for access to justice initiatives is not, in fact, universal:

While most Americans would probably identify access to legal counsel as an important, if not the most important, attribute of equal justice, federal funding to insure legal representation for the poor in civil legal disputes continues to be the political equivalent of the Mason-Dixon line—dividing liberal from conservative instead of North from South, and establishing a well-defined political fault line. In fact, there are few subjects that engender more vituperative discourse among conservative politicians than the Legal Services Corporation.

Robert Hornstein, Daniel G. Atkins, and Treena A. Kaye, *The Politics of Equal Justice*, 11 J. GENDER, SOC. POL'Y & L. 1089, 1090 (2003).

¹⁶⁴ Nussbaum, *supra* note 5, at 274 (adding that "[w]e should get much clearer about what parts of a legal education promote each of these goals. Frank discussion even of these matters would be a lot more helpful than the confusion between sophistry and philosophy

CONCLUSION

As I finished my final days of law school, the lessons I learned during my clinical experiences seemed most salient. I leave behind these words, with the primary goal of applauding and emboldening professors who teach in clinics. Encourage your students to immerse themselves—to get their hands dirty and to allow their hearts to grow heavy. Push them to confront social realities with which they are unfamiliar or uncomfortable and to reflect on how this confrontation shapes their views of the law. Model for them the utmost humility, but allow them to dream big, to believe in their power to effect change or even revolution. Teach them the tools of change and teach them to indict injustice wherever they see it. Expect all of your colleagues to do the same. And let your visions of justice be known.