MEETING THE PROFESSIONAL IDENTITY CHALLENGE IN LEGAL EDUCATION THROUGH A RELATIONSHIP-CENTERED EXPERIENTIAL CURRICULUM

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ABSTRACT

Legal education is facing a series of crises, the worst of which may well be its graduates' perceived lack of professionalism—qualities such as civility, judgment, and commitment to service. This urgent message has been amplified by recent high-profile critiques emphasizing the need to teach professionalism, as well as to make law schools more nurturing and humanistic environments. The purpose of this article is to show that the challenge of preparing law students to become caring and competent professionals can be met by using a sequence of experiential learning opportunities to teach relational competencies.

Even the harshest critics of legal education agree that clinical programs in law schools succeed; however, the idea of expanding such programs presents challenges. Others worry that law schools will be tempted to do clinics "on the cheap." Nevertheless, if we truly are concerned about the quality of legal education, we should focus instead on understanding what exactly students learn through clinics that contributes to their development of professionalism, and, further, whether other academic experiences, such as externships or simulations, can contribute to these same goals.

This article sets out a conceptual model for exploring this professional identity challenge. The first part is called the "Experiential Learning Helix," a developmental approach that

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identifies three different roles all law students should experience toward becoming a professional: (1) simulated practice, (2) the "mentee" role, and (3) the "first-chair" role. The second part of this model is "Relationship-Centered Lawyering," a normative framework focusing on three areas of competency every effective lawyer needs: (a) understanding theory about the person-in-context, (b) promoting procedural justice, and (c) appreciating interpersonal, cultural, and emotional issues. When grounded in this relational framework, the Helix holds promise for legal education's sustainability into the future.

PROLOGUE: MATT'S STORY

Matt[1] was a third-year student enrolled at the law school where I had just been hired to teach my own child and family advocacy clinic. He got through his first two years with a relatively high grade point average. Matt worked at his father's prestigious law practice during his first two summers, and he did not have another job offer as he entered his third year; although he knew if all else failed he could work for his dad upon graduation.

From the start, I experienced Matt as hostile and disrespectful. His tone of voice came across to me as aggressive or dismissive or condescending—actually, all of the above. As a new teacher, I was rattled by my interactions with Matt. I kept questioning myself: Was I just imagining his tone? Was my reaction to him about my own insecurities rather than anything he was doing? Was he acting this way because I was young and female, as I had thought I observed with a few other male students in the clinic? The social worker in me wanted to reframe his challenging behavior. Perhaps it was unintentional on his part? Maybe it was a reflection of Matt's own insecurities or shyness? I did not relish the opportunity to discuss his behavior with him, so I tried to ignore it.

About a month into the semester, the class did an exercise for all students enrolled in our clinical program in which we met in small groups comprised of a cross-section of the students. My colleague, who was Matt's group facilitator that day, approached me after his session. "What's up with Matt?"—he wanted to know. "He seems hostile and angry." When I heard my colleague's feedback about Matt, I had a sinking feeling, a mixture of anxiety and relief. I realized I needed to speak with Matt.

As I attempted to think through how I could conduct what I expected to be an awkward conversation, I drew upon my years as a

1. This is not his real name, although the story is real.

social worker. I thought about principles and techniques such as mutual respect, focusing on strengths, and taking a nonjudgmental posture. I also kept coming back to my strong sense that addressing this type of interpersonal issue was necessary and important, as much as I expected it to be difficult.

Shortly after the small group session, I arranged a time to meet with Matt. I opened the conversation by telling him that I wanted to discuss an issue with him that was hard to talk about, and that I was hoping we could have a constructive conversation about it. Knowing what I know now, I should have waited longer and tried to gain his permission to go forward at that point. I tried to lead with the positive—I told him that from what I had seen so far, he seemed to be smart and capable. And, I was experiencing his interaction with me as hostile and disrespectful. My experience of him was getting in the way of our supervisory relationship. I did not assume that he meant to be hostile or disrespectful toward me, so I wanted to check it out with him to see what he intended.

Matt immediately physically backed away from me and said that this was an inappropriate conversation and that what I was discussing with him was personal. While shaking a bit inside, I calmly responded that I did not view it as personal. It was professional because I was concerned that if I experienced him that way, perhaps others might as well—and I had received some feedback from other faculty that they experienced him in a similar way. Matt continued to insist that this was not an appropriate conversation for us to be having. I tried to explain how my experience of him as hostile was getting in the way of my being able to "hear" him and teach him effectively in the clinic. Matt said he couldn't respond in that moment and more or less ran out of my office.

I came away from this awkward and unsatisfactory conversation feeling like I had learned something. Matt's defensiveness and his embarrassment convinced me that the tone I was hearing was probably attributable to something like Matt's insecurity and not hostility or disrespect. Although his tone still concerned me, I thought that at least I had attempted to raise the issue with him, and I would just wait and see how things played out. I was also a bit rattled and unsure about what next steps to take. My instinct was to step back for a while and see what happened before trying to raise the issue again.

For several weeks after that, our interactions were limited. I found Matt to be less hostile, although he simply said very little to me at all. I assigned him a federal prison inmate's civil rights case that was scheduled for a hearing in federal court. Most of Matt's work on the

case was about finalizing the brief for court, so we limited our interaction to the task at hand. In hindsight, to make myself feel better, I can re-interpret that moment as my deciding to respect his apparent wish for distance, or it may well be that focusing on the brief was a refuge for our shared awkwardness.

When it came to the actual hearing, Matt had to cross-examine the government's expert witness, a "hired gun" physician who had reviewed the record and was there to testify that the prison officials had not acted improperly toward our client. As Matt began to question the witness on the stand, his voice took on the same tone that my colleague and I had found so difficult earlier in the semester. Immediately, the judge admonished Matt—something along the lines of "counselor, you need to refrain from badgering the witness."

It was *the* teachable moment, and I confess that it stands out in my nearly twenty years of teaching as a highlight of my career. And I made a conscious choice to say **nothing** to Matt about the judge's admonition. Something about the fact that the feedback had come straight from the judge's mouth convinced me that I needed to let Matt take in that feedback, and hope that he would process it in a way that would lead to something more positive.

For Matt, hearing that feedback from the judge was a turning point. His behavior changed dramatically. He calmed down. His tone softened and became warmer, and pretty soon he even began joking with me. Our rapport shifted to one of much greater comfort and openness. Toward the end of the year, he asked me if I would be a reference for him for a job or two, and of course I agreed.

About ten years later, I bumped into Matt at a playground with his wife and his two children. He had built a successful legal career, and, from what I could tell, he seemed to have a happy family life as well.

Matt's story illustrates the power of experiential learning when informed by a relational framework. My willingness to address Matt's challenging interpersonal issues *combined with* the real-world feedback from the judge created a transformative process for this student. Either of these two elements without the other would have been less effective. I also believe that Matt could have learned this lesson through another type of experiential opportunity, such as a simulation-based course in which he received constructive feedback from his peers, or in the context of a field placement, in which he might have gotten similar feedback from his supervisor or from someone else in that setting.

The pages that follow explore the theoretical underpinnings of this approach to make the case that we need to create opportunities for every law student to experience the role of a lawyer in three ways: simulated practice, doing pieces of a legal matter, and being the "first

chair." This article also relies on a relational approach to lawyering, which recognizes that truly effective lawyers need to have much more than simply solid analytical reasoning. If we want to help students develop a sense of professional identity and purpose, we must expose them to the importance of appreciating the person-in-context, just and fair legal processes, and interpersonal, affective, and cultural issues.

> *If law school valued relationships as highly as it valued the law, the curriculum, pedagogy, and evaluation structures would be radically altered. The law school curriculum would include more courses about such things as communication skills, family systems, the impact of cultural or personality differences on human interactions, . . . and the relationship between psychological wholeness and professional competence*.[2]

INTRODUCTION

Legal education at this moment is a bit like a deer caught in the headlights. For the first time in years, law school applications nationwide are down.[3] The legal market, while seemingly weathering the worst of the storm of the recent global economic downturn, nevertheless has constricted with no sign that it will ever return to its heyday of expansion and largesse.[4] Meanwhile, the cost of legal education has continued to increase in both the public and private sectors.[5] Alongside these developments, prospective employers—be they judges or hiring partners at law firms or public interest organizations—have increasingly given legal educators a strong message that they must do a better job of preparing students for real-world practice, and that the area in which law graduates are most

2. Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555, 561 (2007) (emphasis added).

3. *See* Nathan Koppel, *Law School Loses Its Allure as Jobs at Firms Are Scarce*, WALL ST. J. Mar. 17, 2011, http://online.wsj.com/article/SB10001424052748704396504576204692878631986.html.

4. *See id.*

5. Section of Legal Educ. & Admissions to the Bar, *Law School Tuition 1985–2009*, A.B.A., http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_5.authcheckdam.pdf (last visited May 15, 2012) (depicting the rise in law school tuition in both the public and private sectors).

deficient is not their ability to apply case precedents; rather it is their *professionalism*.[6]

This message has been echoed and amplified by recent high-profile critiques from academic sources both outside of[7] and within[8] the legal academy that emphasize the need for law schools to inculcate in law students a sense of a professional identity and purpose, as well as figuring out how to make the law school environment more nurturing and humanistic.[9]

Before going any further, I need to pause here and consider what we are really talking about when we use the term "professionalism" or refer to law students' need to develop a greater sense of their "professional identity and purpose." Do we simply know it when we see it? In recent years, it seems that just about every state's supreme court or bar association has created a committee or commission on professionalism, nearly universally in response to a perceived crisis in professionalism within their ranks.[10] In surveying the "canons" and other types of guidelines, or in some cases aspirations, developed by these groups, the following common principles emerge:

- Civility and Collaboration
- Competence/Excellence
- Integrity/Judgment
- [Public] Service to Others[11]

With respect to defining lawyers' professional duties, the Supreme Court of Ohio, for example, in its monograph setting out professional "ideals," states that "[p]rofessionalism requires lawyers and judges to

6. *See* ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 79 (2007) [hereinafter BEST PRACTICES REPORT], *available at* http://law.sc.edu/faculty/stuckey/best_practices/.

7. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT].

8. *See* BEST PRACTICES REPORT, *supra* note 6, at 2.

9. *See, e.g.*, Kennon M. Sheldon & Lawrence J. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883, 883–84 (2007); Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 516–17 (2007); Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313, 314 (2008).

10. *See* Wm. Reece Smith, Jr., *Professionalism? What's That?*, 72 FLA. B.J. 28, 30 (1998).

11. LAURENCE R. TUCKER & LAUREN E. TUCKER MCCUBBIN, THE RULES OF PROFESSIONAL CONDUCT: THE FOUNDATION OF PROFESSIONALISM (2010), *available at http://www.docstoc.com/docs/76579754/Missouri-Professional-Conduct-Lawyer*.

remain mindful that their primary obligations are to the institutions of law and the betterment of society, rather than to the interests of their clients or themselves."[12] In addition to the principles listed above, professionalism also seems to imply a duty to do justice and to contribute to the common good.[13]

The authors and sponsors of these initiatives are clear that what they describe as ideals of professionalism go beyond the ethical rules of the legal profession and, indeed, are of a completely different nature. The web site of the Florida Bar points out this "crucial distinction: while a canon of ethics may cover what is minimally required of lawyers, 'professionalism' encompasses what is more broadly expected of them—both by the public and by the best traditions of the legal profession itself."[14]

So, how would this aspirational model of professionalism translate into the legal education context? At least one prominent and outspoken law school dean has identified the following five ways legal education would need to change in order to focus on the development of students' professional identity:

> (1) integrate moral and ethical along with other cognitive tools;
> (2) value relationship skills;
> (3) emphasize collaboration and an understanding of the complexities and uncertainties inherent in professional judgment;
> (4) cultivate students' connections with lawyers; and
> (5) help students retain their sense of purpose.[15]

12. THE SUPREME COURT OF OHIO, PROFESSIONAL IDEALS FOR OHIO LAWYERS AND JUDGES, at i (2011), http://www.sconet.state.oh.us/publications/proIdeals.pdf.
13. Tucker & Tucker McCubbin, *supra* note 11; OHIO R. PROF'L CONDUCT pmbl. (2007), *available at* http://www.sconet.state.oh.us/legalresources/rules/profconduct/profconductrules.pdf.
14. *History of the Henry Latimer Center for Professionalism*, FLA. B., http://www.floridabar.org, (last visited May 15, 2012) (search "Center for Professionalism History" using search box on the front page; select "Center for Professionalism: (About) History" link). Similarly, the Preamble to the Virginia Rules of Professional Conduct states: "The Rules do not . . . exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law." VA. R. PROF'L CONDUCT pmbl. (2008), *available at* http://www.vsb.org/pro-guidelines/index.php/rules/preamble/.
15. Floyd, *supra* note 2, at 557–64.

Although she suggests that achieving these changes in legal education would be extremely difficult, if not impossible,[16] the purpose of this article is to show that the challenge of helping law students become civil, collaborative, caring, competent, and committed professionals is indeed achievable through a concerted effort in which we use a sequence of experiential learning opportunities to teach relational competencies.

With respect to experiential learning, even the harshest critics of legal education have suggested that one place where law schools have succeeded in meeting these goals, at least in some measure, is in their clinical programs.[17] Yet the idea of expanding in-house clinical programs presents challenges for most law schools for a number of reasons, including the expense of funding in-house legal clinics,[18] with student-faculty ratios of eight-to-one,[19] as well as the historical reality that clinics and clinicians have been viewed as less rigorous and have been given less respect than their non-clinical colleagues for their contributions to the academic enterprise of many, if not most, law schools.[20]

So while these recent developments might easily be interpreted to support the growth and elevated status of clinics, there is a worry, particularly within clinical legal education circles, that law schools will be tempted to try simply to figure out "cheaper" ways to give a greater number of students something resembling clinical legal education.[21] The worry that economies of scale rather than a focus on ensuring high quality might dictate curricular decisions seems to be at least one concern with the increased use of externships as well as the inclusion of courses that involve simulations under the umbrella of "experiential learning."[22]

Nevertheless, if we truly are concerned about the quality of students' learning experiences, we should focus our energy instead on understanding more fully what exactly students learn through in-house clinics that contributes to their development of a professional

16. *See id.* at 559.
17. *See generally* Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1 (2000) (documenting the vital role of legal clinical education in training competent and ethical lawyers and calling for the integration of clinical methodology as a core feature of the curriculum).
18. *Id.* at 21–22.
19. *Id.* at 27.
20. Margaret Moore Johnson & Daniel M. Schaffzin, *Preaching to the Trier: Why Judicial Understanding of Legal Clinics Is Essential to Continued Progress in Legal Education*, 17 CLINICAL L. REV. 515, 522 (2011).
21. Barry et al., *supra* note 17, at 22, 28.
22. *Id.*

identity and purpose. And further, we should investigate whether other law school courses or experiences, such as those that might be provided through externships or simulations, might well contribute to these same goals in perhaps different ways.

This article sets out a conceptual model for exploring this professional identity challenge. The first part of the model is called the "Experiential Learning Helix."[23] The Experiential Learning Helix is a way of envisioning a developmental approach to experiential education in the law school context that looks beyond the usual structural distinctions between in-house clinics and externships. This model identifies three different roles that all law students should have the opportunity to experience in law school: (1) simulated practice; (2) the "mentee" role; and (3) the "first-chair" role. These roles reflect increasing levels of responsibility along a continuum toward the assumption of the full role of attorney and, accordingly, can also be grouped in two broad categories: (a) simulated practice (e.g., interviewing and counseling courses; trial advocacy courses) and (b) supervised practice (e.g., externships/field placement programs and in-house clinics). Within each category, there are variations that have implications for helping administrators to consider different models of curricular design, helping faculty to refine different teaching approaches and methods, and helping students to develop different professional competencies.

Importantly, this progression is not intended to be linear; rather, students should ideally be given the opportunity to experience all three roles over the course of their legal education (as well as after graduation), including the possibility of repeating different roles with increasing levels of sophistication.

As alluded to earlier, to ensure that our students become competent and ethical professionals, it is important to acknowledge that the Experiential Learning Helix is necessary *and yet not*

23. I refer to this as a "helix" because, as I imagine it, the learning occurs more in the form of a spiral than any other form. I have not used the word "spiral" in deference to others who have used that visual model for other purposes. *See, e.g.*, Phyllis Goldfarb, *A Theory Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991). I also like the idea that the helix brings to mind the scientific model for DNA. Another way of stating the goal of this project is to recognize that relational competencies are an essential building block for professional identity and values. Credit for visualizing this model is shared with my colleagues at Drexel Law, Professors Kevin Oates and Emily Zimmerman, and also our communications/marketing guru Jerry Arrison, a wizard of graphic artistry who helped us capture the helix in an academic poster we presented at the AALS Annual Meeting in 2008.

sufficient by itself. To be truly effective, experiential learning must be grounded in a framework that supplies the normative content to inform and nurture students' development of a professional identity and purpose. The second part of this model is therefore "Relationship-Centered Lawyering" (RCL): a normative framework that has been described in detail in my previous work (with co-author Robert Madden).[24] RCL focuses on three areas of competency every lawyer needs in order to be effective: (1) substantive social science perspectives—representing "contextualized" approaches to human development; (2) process-oriented perspectives—focusing on justice as well as effectiveness; and (3) affective and interpersonal perspectives—including cultural competence and emotional intelligence.[25]

When grounded in this relational framework, the Experiential Learning Helix holds great promise for informing legal educators who are interested in thinking innovatively and holistically about how we teach as well as what we teach now and into the future.

This article will describe both parts of this model, and will highlight contributions from the literature outside of the legal field that illuminate how the model could be used in more intentional ways by legal educators to assist our students in becoming caring, ethical, and self-reflective practitioners. It will also explore the potential opportunities and challenges in trying to implement this approach in an integrated fashion as well as assessing its effectiveness within the law school curriculum.

This work builds upon and is intended to complement the work of many of my clinical colleagues, most notably Professors Roy Stuckey and Frank Bloch. Roy Stuckey has championed many significant achievements within the field of clinical legal education, including his role in spearheading and serving as the lead author of the *Best Practices Report*, discussed below.[26] In 2007, he published an article in the *Clinical Law Review*, the main title of which is *Teaching with Purpose*.[27] As will become apparent in the pages that follow, his identification in that article of the unique strengths of different modalities of experiential learning from the standpoint of the student

24. For a detailed description of this approach, see RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE 5, 14—15 (Susan L. Brooks & Robert G. Madden eds., 2010).

25. *Id.*

26. BEST PRACTICES REPORT, *supra* note 6, at vii–ix.

27. Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Programs*, 13 CLINICAL L. REV. 807 (2007).

learner provides a major source for this project.[28] Frank Bloch, also a leader and scholar who has made important contributions to the lexicon of clinical legal education, and who was a founder of the global clinical movement, was my senior colleague for the many years I taught at Vanderbilt Law School. He and I envisioned co-authoring an article long ago in which we would describe a developmental scheme in which all law students could experience simulations, externships, and clinics over the course of their three years of law school. On one level, this work is the end result of the lengthy percolation of that idea.

Part I of this article will provide a brief overview of Relationship-Centered Lawyering. Part II will describe the Experiential Learning Helix. Part III will summarize recent developments that reflect longstanding critiques of legal education and will discuss how both parts of this model are responsive to a number of these ongoing concerns. Part IV will highlight strengths of each of the different student roles to demonstrate how experiential learning contributes to the formation of a professional identity and purpose from the standpoint of the student/learner. For each student role, it will also suggest areas for further research and development drawn from other disciplines that hold promise for meeting the professional identity challenge set out here. Part V will provide some preliminary reflections and recommendations for various stakeholders within legal education. And finally, Part VI will address some of the potential opportunities and difficulties of implementing this approach, including possible ethical concerns, questions about assessment, and next steps.

I. RELATIONSHIP-CENTERED LAWYERING

"The soft stuff is the hard stuff," or so I've been told.[29] This statement carries with it a number of meanings that ring true. The ingredients that make up the kind of professional identity and values that we want our students to achieve cannot be prescribed like a pill or followed like the recipe in a cookbook. Yet if you ask any lawyer that you or I might admire, "What is the key to your success?" you undoubtedly will hear the following refrain: It's all about

28. *See id.*

29. Deborah L. Rhode, *Lawyers as Leaders*, 2010 MICH. ST. L. REV. 413, 422 (2010) (citing Richard J. Leider, *The Ultimate Leadership Task: Self-Leadership, in* THE LEADER OF THE FUTURE: NEW VISIONS, STRATEGIES, AND PRACTICES FOR THE NEXT ERA 189, 189 (Frances Hesselbein et al. eds., 1996)).

relationships. So, even if the soft stuff is the hard stuff, perhaps the time has come to face it head on.

To my mind, the necessary tools and methods are readily available to assist law students in the development of a professional identity. In conversations with law faculty on this topic, however, I often hear that these types of competencies—how to be effective in professional relationships—simply can't be taught. Students either have them, or they don't. According to these colleagues, if students have strong interpersonal and communication abilities, for instance, or qualities such as empathy, they must have possessed those abilities already, perhaps as a result of their upbringing or other prior experiences. This attitude implies that if those abilities are lacking, it is not worthwhile for legal educators to spend our time trying to help students attain them. My strong belief is that these competencies indeed can and should be taught in law school, and that we can find meaningful ways to assess them as well.

We have to begin by embracing a normative framework that can guide legal educators and students on how to develop committed, caring and compassionate, and at the same time appropriately balanced and boundaried relationships with clients and with others they encounter in their professional lives. RCL offers an organized, three-part framework that supplies the necessary grounding to guide law students toward the development of their professional identity, particularly when combined with the opportunity to participate in meaningful experiential courses.

The three components, or as we refer to them, areas of competency, include (a) substantive theory about the person-in-context, (b) process-oriented considerations (i.e., procedural justice), and (c) interpersonal, cultural, and emotional considerations.

A. Understanding the Person-in-Context

Despite our American legal system's emphasis on individualism,[30] in reality, all of us live our lives as a part of many systems. Immediate and extended families, neighbors, networks of friends, and work colleagues are examples of social systems that provide each of us with support, resources, and identity. What occurs to individual members has a ripple effect on the larger systems to which they belong. These dynamics help explain how important it is for law students to consider context and environment in order to minimally understand their individual clients and to improve their strategies and

30. Kerry Dunn & Paul J. Kaplan, *The Ironies of Helping: Social Interventions and Executable Subjects*, 43 LAW & SOC'Y REV. 337, 341–43 (2009).

decisions. Moreover, law students exposed to these ideas will be more effective in navigating their work environments and in appreciating the other contexts that affect their day-to-day professional lives.

The theoretical models that make up this competency area include family systems theory, and attachment and network theories.[31] Having recited this list, it may need to be emphasized that by educating law students about these theories, the intention is *not* to turn them into social scientists or mental health professionals. Rather, the theories help provide students with specific guidance about human development and interpersonal dynamics, as well as respect for clients and a nonjudgmental posture, so that they can appreciate legal matters in an informed way that will help them to become more effective practitioners.

B. Promoting Procedural Justice

The second competency area, which is similar to concerns identified as "procedural justice," explores how legal professionals can provide clients with a sense of trust and respect for the law and its actors, as well as the underlying values that guide the analysis of issues and decision-making. All encounters with the legal system, whether or not they are voluntary, involve process issues such as questions of trust, respect, fair-mindedness, judgment, and perceptions around the opportunity to be heard.[32] Relationship-centeredness requires attending to these factors, with the goal of enhancing positive feelings and minimizing anti-therapeutic costs.[33] Significantly, these factors generally support procedural alternatives to traditional adversarialism, such as mediation and other more collaborative legal mechanisms.[34]

31. *See, e.g.*, Robert G. Madden, *From Theory to Practice: A Family Systems Approach to the Law*, 30 T. JEFFERSON L. REV. 429 (2008); Alan Sroufe & Daniel Siegel, *The Verdict Is In: The Case for Attachment Theory*, PSYCHOTHERAPY NETWORKER MAG., March–April 2011, *available at* http://www.psychotherapynetworker.org/magazine/recentissues/1271-the-verdict-is-in.

32. *See* Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, *in* RELATIONSHIP-CENTERED LAWYERING, *supra* note 24, at 202.

33. Susan L. Brooks & Robert G. Madden, *Epistemology and Ethics in Relationship-Centered Legal Education and Practice*, 56 N.Y.L. SCH. L. REV. 331, 345 (2011/2012).

34. While this approach tends to support non-adversarial legal processes, it also recognizes that conventional adversarial processes may be more appropriate, depending on the particular situation. *See id.* at 351–53.

C. Appreciating Interpersonal, Cultural, and Emotional Issues

Knowledge of systems and human development alone will not ensure that a student becomes a good lawyer.[35] Effective interactions with clients and other individuals encountered in our daily work require attention to four key dimensions to build positive professional relationships: (1) culture, (2) empowerment, (3) strengths, and (4) emotion. These perspectives are not monolithic; rather, each reflects a rich and diverse body of research and its accompanying literature.

In terms of taking account of the latest research on culture, clinical scholarship has produced a number of meaningful contributions.[36] A relatively new field worth noting in addition is the increasingly studied phenomenon of "racial microaggression": day-to-day verbal, behavioral, or environmental indignities, which may be intentional or unintentional, and which nonetheless communicate racial slights or insults toward people of color.[37] Although the recognition of the existence of this phenomenon is not new, social scientists have recently found innovative ways to categorize and study these seemingly invisible and innocuous interpersonal dynamics.[38]

The next two components, the empowerment and strengths perspectives, represent two practice approaches that have become fundamental components of social work training and education.[39] The overarching theme of the empowerment perspective is one of giving clients, specifically those who come from disadvantaged groups or communities, a voice.[40] The strengths perspective focuses on the notion that all people and environments have significant strengths that can be marshaled to improve the quality of clients'

35. *Id.* at 346.

36. *See, e.g.*, Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Classes*, 45 STAN. L. REV. 1807 (1993); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002); Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369 (2005); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

37. *See* Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCHOLOGIST 271, 272–73 (2007).

38. *See id.* at 273–78.

39. RELATIONSHIP-CENTERED LAWYERING, *supra* note 24, at 287.

40. *Id.*

lives.[41] These three approaches are all consonant with and reinforce each other.

Fourth, despite what most law school grading schemes seem to suggest, analytical thinking is only one subset of what is needed to make an effective lawyer.[42] Client and lawyer satisfaction depends on inter- and intra-personal capacities that cry out for the cultivation of emotional intelligence for lawyers. [43]

By setting out these three competency areas, the relational framework offers a relatively simple and straightforward scheme for organizing a wealth of knowledge and presenting it in ways that can be useful for purposes of the wide range of roles students might play in the legal system. It is also important to note that each of the three areas of competency that make up the relational framework is supported by a considerable body of empirical research.[44]

D. Relationship-Centeredness and Professionalism

So, how does this scheme relate to professionalism as we defined it?[45] As much as legal educators (and scholars) seem to want to avoid anything normative, if we want to ensure that legal education supplies the necessary foundation to guide students in developing a professional identity and purpose, we must be willing to get behind certain values. In other words, we need to be willing to adopt a normative stance beyond the guidance provided by our existing professional rules, many of which admittedly revolve concerns around preserving the monopoly of our profession rather than embracing humanistic values.[46] The normative content within RCL, which has the strong theoretical grounding mentioned above, supports the following values, which I hope are principles—or at least ideals—we can all get behind: respect for and acceptance of the

41. *Id.* at 294.
42. Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y & L. 1173, 1174, 1180 (1999).
43. *Id.* at 1176–82.
44. *See, e.g.*, John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 323–26, 343–48 (2008) (reviewing research on emotional intelligence competencies); Ross A. Thompson, *The Legacy of Early Attachments*, 71 CHILD DEV. 145 (2000) (evaluating research on the attachment theory of human development); Tom R. Tyler, *Trust and Law Abidingness: A Proactive Model of Social Regulation*, 81 B.U. L. REV. 361 (2001) (analyzing empirical research on social regulatory activities in the context of procedural justice).
45. *See supra* text accompanying notes 10–15.
46. *See* Madden, *supra* note 31, at 434.

dignity of all clients; empathy; compassion; appreciation of client strengths; client self-determination and "voice"; social justice; fair and just legal processes; efforts toward collaboration, finding common ground, and civility within the legal system; and appreciation and due consideration of psychological, social, and cultural factors in ourselves and others.[47]

At this juncture, it also needs to be stated that implementing a relational framework in the law school curriculum will require a willingness on the part of legal educators to devote a greater portion of our time and energy as law teachers to working with students on their relational competencies. This will undoubtedly require at least somewhat of a shift in emphasis in comparison with how most law schools currently allocate time and resources. One way to think of this is to consider how much of the typical course offerings at law schools focus squarely on relationships. In most institutions,[48] this component of legal practice, to the extent it is taught at all, is relegated at best to some part of an elective course—often a course on interviewing and counseling. To truly bring more of a relational focus to legal education, we would therefore need to transform what is currently a tiny piece of the curriculum and make it a much, much bigger piece of the pie. The easiest way—because we all already have experiential course offerings—also happens to be the most effective way to accomplish this end: the answer, I believe, is that we can teach relational lawyering through experiential learning. First, though, we need to tease out the ways in which different forms of experiential learning affect students as learners.

II. THE EXPERIENTIAL LEARNING HELIX

> *We shall not cease from exploration*
> *And the end of all our exploring*
> *Will be to arrive where we started*
> *And know the place for the first time*.[49]

47. *See* Robert G. Madden & Raymie Wayne, *Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model*, *reprinted in* RELATIONSHIP-CENTERED LAWYERING, *supra* note 24, at 41, 45–48.

48. There are noteworthy exceptions. For an example of such, see *Innovative Curriculum: Doctor of Jurisprudence (JD)*, IND. UNIV. MAURER SCH. L., http://www.law.indiana.edu/degrees/jd/curriculum.shtml (last visited May 15, 2012).

49. DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT 20 (1984) (quoting T.S. ELIOT, *Little Gidding*, *in* FOUR QUARTETS (1943)).

Within the existing curriculum at most law schools, experiential learning offers rich opportunities for students to develop the core competencies that can assist them in becoming successful and ethical professionals.[50] Of course, experiential learning can potentially take place in many settings in the law school, from discrete exercises that take place in a doctrinal course to externships and clinics of various sorts. This article focuses largely on courses that are solely experiential courses, rather than courses that might include some experiential components, although the lessons here undoubtedly apply to the experiences themselves, whether they occur in a discrete manner, or over an entire course.

So, how do students learn these competencies through experiential courses? And how does the learning differ across different modalities, such as engaging in a role play or other simulation in contrast to a "real life" experience that occurs in a law office in the community, or in an in-house clinic? For these purposes, we need to hone in on *how students learn*, rather than how we teach. A considerable and highly meaningful body of literature has been developed over the past twenty to thirty years on clinical legal education,[51] most of which address how legal educators should teach using these different modalities. In comparison, much less has been written in the legal field about the differences in how students learn, and what they learn, when they assume different types of roles.[52]

The Experiential Learning Helix is an attempt to describe, and to prescribe, a scheme for lifelong professional learning. For the purposes of this article, I will limit the discussion to its application in the context of legal education, although it is worth noting that this

50. *See Law School Clinics/Clinical Courses*, USLEGAL, http://lawschool.uslegal.com/resources-when-you-are-in-law-school/law-school-clinicsclinical-courses/ (last visited May 15, 2012).

51. *E.g.*, Jane H. Aiken et al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985); Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLINICAL L. REV. 1 (1999); Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLINICAL L. REV. 167 (1995).

52. *E.g.*, Stuckey, *supra* note 27, at 834–35. This article builds upon these lasting contributions, many of which have become part of the lexicon of clinical scholarship, thoughtfully borrowed and adapted from other disciplines. A significant amount of this work was public, particularly in the *Clinical Law Review*, long before the *Carnegie Report* and the *Best Practices Report* and is worth visiting in light of these developments. *E.g.*, Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347 (1999); Mary Marsh Zulack, *Rediscovering Client Decisionmaking: The Impact of Role-Playing*, 1 CLINICAL L. REV. 593 (1995).

model pertains to learning that takes place in the professional world of lawyers and probably to other professional education/practice as well.

Another fundamental premise of this work is that experiential learning is highly valuable whether it takes the form of simulation, the kind of supervised practice experiences that occur in an externship setting, or in a "live-client" clinic.[53] Rather than privileging one modality over another, the model seeks to describe the qualitative distinctions among these modalities from the standpoint of the student and to explain what and how students learn differently from each of these types of modalities in ways that add value to the students' relational competencies.

The helix contemplates two basic modalities: (1) simulated practice and (2) supervised practice. Simulated practice means any kind of replicated or imitated experience related to the work of a lawyer.[54] This modality includes interviewing, counseling, and negotiation courses; trial practice courses; and moot court. It also includes courses such as New York University's Lawyering Course, in which first-year law students are placed "in role" as associates at a law firm and are given a series of assignments that mirror the work of real associates.[55]

Supervised practice, a term other scholars have used to refer to similar types of learning experiences,[56] includes situations in which law students participate in school-sponsored courses for academic credit in which they are working on actual legal matters under the supervision of licensed practitioners. These school-sponsored courses involve the participation of law school faculty and incorporate opportunities for students to reflect on their real world experiences with faculty, other supervisory input, or both.

Within the category of supervised practice, there are two distinctive kinds of roles, which I refer to as the "mentee" and the "first chair." Generally, the mentee role entails the kinds of experiences that a law student typically might engage in at a law

53. Stuckey, *supra* note 27, at 812.

54. *Id.*

55. *The Lawyering Program*, NYU L., http://www.law.nyu.edu/academics/lawyeringprogram/index.htm (last visited May 15, 2012).

56. *See, e.g.*, Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909, 920 (2008) ("Clinical and externship courses that provide supervised practice opportunities contribute to developing a professional perspective and identity . . . ."); Stuckey, *supra* note 27, at 830.

office directly following the first year of law school.[57] These tasks include researching and writing memoranda on pertinent legal issues; drafting correspondence to clients; interviewing witnesses; and learning from observation by shadowing senior attorneys and sitting in on professional meetings, court proceedings, and the like.

The first-chair role, which generally relies upon student practice rules, is usually available to students only after they have completed at least half of their coursework.[58] It entails placing students more squarely in the shoes of a practicing lawyer, while still being closely supervised.[59] An example of the first chair would be a student who is able to represent clients under a student practice rule that creates a type of certification or other special licensing, such as exists in every state in the United States.[60] Yet the idea of the first chair also applies to experiences in which a student may not be operating specifically under a practice rule, as long as the student is able to take on a high level of direct responsibility for the legal matter at hand.[61] It would also apply to situations where the client is an entity or a community organization and where the student practitioner is doing work of a transactional nature, or perhaps something like mediation.[62]

The suggestion here is that there is a developmental sequence—from simulated practice to supervised practice: and, within supervised practice, from the mentee to the first chair. As stated earlier, this sequencing is not a linear progression. Ideally, the learning occurs in the form of a helix or spiral, such that law students can revisit and re-experience learning in each modality throughout their careers. Spiraling—upward in these situations—occurs as students learn new substantive knowledge, such as taking on new

57. Eyster, *supra* note 52, at 349.

58. *E.g.*, D.N.D. GEN. L.R. 1.4(B)(1)(a) (requiring law students to "have completed at least four semesters or equivalent time of law study" in order to be eligible); S.D. OHIO CIV. R. 83.6(b)(1)(b) (requiring law students to "have completed at least two-thirds of the requirements for graduation" to be eligible).

59. *See* D. ARIZ. LRCIV 83.4(c)(1); D.N.D. GEN. L.R. 1.4(A); S.D. OHIO CIV. R. 83.6(b)(3).

60. *E.g.*, D. ARIZ. LRCIV 83.4(e). Such rules do not exist in many other parts of the globe, which creates challenges for law faculty in those countries interested in creating a wide array of meaningful experiential learning opportunities for law students.

61. David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507, 1532 (1988).

62. Carl J. Circo, *An Educational Partnership Model for Establishing, Structuring, and Implementing a Successful Corporate Counsel Externship*, 17 CLINICAL L. REV. 99, 111–12 (2010).

substantive areas of practice, and it continues as students increase their level of sophistication.

It is worth reiterating that in this scheme the developmental sequencing of these modalities is not intended to imply a hierarchy with respect to the value of the educational experience. A basic premise of the helix is that all of these modalities are valuable and necessary in order for law students to be able to develop fully their professional identity.

The acceptance of this scheme has two immediate implications. First, every law student should ideally have the opportunity to participate in an experiential course in which they learn in each of these roles while in law school, and if possible, more than one. Second, legal educators, and particularly clinicians, are encouraged to rethink the usual, often hierarchical distinctions between "in-house" or "live-client" clinics and "externships" or courses taught through simulation. Rather than focusing on structure, this scheme directs the focus onto the *role* of the student and the particular type of learning that can occur within that role. The point here is that each modality and type of role contributes toward students' development of professional expertise and values—two key ingredients in the formation of a professional identity.

To tease out *how* the larger model—contemplating both the relational content and the vehicle of experiential learning—addresses and ideally transcends some of these tensions, it is worthwhile to investigate further how this model relates to recent important developments that represent the latest installments in the long litany of critiques of legal education.

III. SCHOLARSHIP ON EXPERIENTIAL LEARNING AND PROFESSIONAL IDENTITY FORMATION

A. Legal Education Perspectives

Two recent high-profile reports, *Educating Lawyers: Preparation for the Profession of Law* (*Carnegie Report*)[63] and *Best Practices for Legal Education* (*Best Practices Report*)[64] both support a greater emphasis on experiential learning as a key toward supporting law students' development of their professional identity and purpose. The *Carnegie Report*, which examines legal education as part of a broader effort to study professional education and training, observes that legal education has not paid sufficient attention to teaching about

63. *See* CARNEGIE REPORT, *supra* note 7, at 12–14.

64. *See* BEST PRACTICES REPORT, *supra* note 6, at 8–9.

issues related to professionalism compared with the amount of emphasis it has placed on teaching legal theory and analysis.[65] Of the three "apprenticeships" the report identifies—(1) intellectual or cognitive; (2) practice-based/performance skills; and (3) identity and purpose—it finds that the third apprenticeship is lacking.[66] The *Carnegie Report* suggests that this gap is tied to the absence of a body of theory or "science" to support the teaching of professional identity and purpose.[67] The report therefore advocates that legal educators focus on articulating theories and principles related to the ethics and values of the profession that can be taught and applied in different contexts.[68]

The *Best Practices Report* supports the development of competence—the ability to resolve legal problems effectively and responsibly—as a primary goal for legal education.[69] "Competence requires the integrative application of knowledge, skills, and values" (similar to the *Carnegie Report*'s three apprenticeships).[70] The authors of the *Best Practices Report* point out that competence is "context-dependent," in that it represents the interplay between the lawyer, the lawyer's tasks, and the legal framework in which the tasks must take place.[71] Both publications recognize that the expert legal professional needs to comprehend fully a highly contextualized understanding of the client, case, and situation.[72] Contextualization also means the exploration of moral and ethical-social issues as integral elements of legal representation, including the qualities of "compassion, respectfulness, and commitment."[73] Like the *Carnegie Report*, the *Best Practices Report* also makes the case for greater emphasis and intentionality connected to the teaching of what it calls "affective skills."[74] These skills include values, attitudes, and beliefs, such as how students related to clients, how they respond to ethical concerns, and how their values inform their role.[75]

The many contributors to the *Best Practices Report* strongly support supervised practice as more effective than classroom

65. *See* CARNEGIE REPORT, *supra* note 7, at 12–15.
66. *See id*. at 27–29.
67. *See id*.
68. *See id*. at 103–04.
69. *See* BEST PRACTICES REPORT, *supra* note 6, at 60.
70. *Id.*
71. *See id.*
72. *See id*.; CARNEGIE REPORT, *supra* note 7, at 115.
73. *See* CARNEGIE REPORT, *supra* note 7, at 144, 146.
74. *See* BEST PRACTICES REPORT, *supra* note 6, at 167.
75. *Id.*

instruction for purposes of teaching the standards and values of the legal profession and for inculcating a commitment to professionalism.[76] At the same time, the *Best Practices Report* cautions that there are a number of important criteria for achieving these goals through field placement programs or externships.[77] These criteria include the need for high-quality supervision, high level of engagement between the institution and the field placement, and significant student preparedness and interaction with faculty as well as field supervisors.[78]

In addition to these two highly influential publications, another influential source of critique is the Humanizing Legal Education (HLE)[79] movement, which aims to promote a more humanistic culture within law schools. Professor Barbara Glesner Fines, a leading voice in this movement, describes three components: (1) eliminating or minimizing unnecessary stressors;[80] (2) assisting students in becoming "confident, caring, reflective professionals";[81] and (3) aiming toward humanizing the profession by recapturing the essential professional values of "peacemaking, problem solving, and justice work."[82] The HLE movement has quickly grown in popularity within the legal academy to the point that in 2006, the Association of American Law Schools (AALS) established a new section focused on "balance in legal education."[83]

The focus on humanizing the law school experience can be perceived as a direct response to the prevailing culture in many, if not most, law schools, which tends to be highly competitive and individualistic in its orientation.[84] Professors Lani Guinier and Susan Sturm, in their 2007 critique, referred to it as a "culture of competition and conformity."[85] The authors lament that adversarial

76. *Id.* at 154.
77. *Id.* at 198–205.
78. *Id.* at 200–05.
79. *See* Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235, 235 (2008).
80. Fines, *supra* note 9, at 314.
81. *Id*. at 320.
82. *Id*. at 322; *see also* Schwartz, *supra* note 79, at 239–40 (discussing Glesner's three components). Other leading voices include Professors Michael Hunter Schwartz, Gerry Hess, Larry Krieger, Bob Schuwerk, Susan Daicoff, Marjorie Silver, and Bruce Winick.
83. *See* Bruce J. Winick, *Greetings from the Chair*, EQUIPOISE (AALS, Washington, D.C.), Dec. 2009, at 1.
84. For a detailed discussion on the extent to which legal education inculcates in students "a culture of competition and conformity," see Sturm & Guinier, *supra* note 9.
85. *Id.* at 519.

culture of law schools grows out of the "adversarial idea of law that is inscribed in the dominant pedagogy."[86] According to them, this adversarialism is reinforced by the prevailing metrics of success, "which rank students through relentless public competitions (for grades, jobs, law journals, moot court, and clerkships) and provide very little opportunity for feedback that encourages students to develop more contextually defined or internally generated measures of accomplishment."[87]

All of these developments focus on the extent to which legal education has not given sufficient attention or emphasis to the inculcation of professional identity and purpose among law students.[88] All of these developments point to the need for law schools to place a greater emphasis on relational competencies, including understanding the person-in-context, appreciating the importance of collaborative rather than purely adversarial or competitive processes, and cultivating interpersonal and affective awareness.[89] Additionally, all of these developments suggest that, within the range of courses currently taught in law schools, experiential learning courses—done "right"—are uniquely well-suited to provide students with the necessary tools to become competent and caring professionals.[90]

IV. HOW THE HELIX WORKS: BEGINNING TO ASSESS THE CONTRIBUTIONS OF EACH MODALITY

> *[T]he problem of man's knowledge is not to oppose and to demolish opposing views, but to include them in a larger theoretical structure.*[91]

In conceptualizing the Experiential Learning Helix, I am starting with two assumptions. The first, as stated above, is what appears to be a widely held assumption, especially among legal education critics and most practitioners: experiential learning courses are the best way to teach students about professionalism.[92] My second assumption is that each modality and role—from simulated practice, to the mentee

86. *Id.*
87. *Id.* at 520.
88. *Id.* at 546.
89. *Id*. at 550–51.
90. *See* BEST PRACTICES REPORT, *supra* note 6, at 154; Fines, *supra* note 9, at 320.
91. ERNEST BECKER, THE DENIAL OF DEATH, at xi (1973) (emphasis added).
92. *See supra* text accompanying notes 63–65.

role, to the first chair—offers distinctive strengths from the standpoint of the student learner.[93] Another way to say this is that each modality can contribute *in distinctive ways* to the student's professional development.

So what are the distinctive contributions or potential strengths of simulated practice experiences as contrasted with opportunities for students to be in a mentee role, and as contrasted with students' experiences as a first chair? When I began this project, I had hoped to provide comprehensive answers at this stage. I now realize that answering these questions could easily (and may well) consume the remainder of my professional career. The discussion that follows is merely a first offering reflecting the beginning phase of my investigation of these questions. By opening up this discussion, I invite my colleagues inside and outside of the legal academy to continue to explore these issues, including perhaps initiating some form of ongoing dialogue.

My starting point is the groundbreaking work of Professor Roy Stuckey, who, in his 2007 article, describes a scheme that is very similar to the helix, and then proceeds to do exactly what I propose to do here—identify the unique strengths of each modality.[94] By his

93. *See supra* text accompanying notes 56–62.

94. Stuckey, *supra* note 27, at 824–38. While I highly value Professor Stuckey's important contribution in initiating this discussion, it is worth noting that we have chosen different terminology to characterize the three student roles, which may suggest a greater divergence in our approaches. Both of us refer to simulations, or what I call simulated practice, as the first modality. Professor Stuckey refers to the second modality as "practice observation courses," by which he seems to be referring to most externships. While it may be a minor point, I am uncomfortable with identifying externships as "practice observation courses," in part because I think this terminology carries with it a bit of a negative connotation. More importantly, though, in my experience, students in these programs actually do much more than simply observe, even if they are not "certified" or specially admitted to represent clients. I mention this point not to devalue observation, as I believe it is a critically important learning tool. Nevertheless, I prefer the term and the viewpoint reflected in the notion of the "mentee role," as I believe it more accurately reflects other competency-building tasks that students are given in such settings (including many externships), such as researching and writing legal memoranda, drafting correspondence with clients, interviewing, etc.

My other minor quibble with Professor Stuckey is that he describes his third modality, "client representation courses" as having "unique strengths." This language, especially when combined with his language contrasting "practice observation courses" from "client representation courses," might well be interpreted to mean that clinics have greater value than externships. And perhaps that is his intent. Here, while I agree that client representation courses have unique strengths, as should already be apparent, my concern lies with the notion that externships or other field

own description, Professor Stuckey's work draws from the collective wisdom of other distinguished clinical legal scholars,[95] so in describing his work, on some level I am also synthesizing and reflecting that larger body of clinical scholarship.

To try to add even greater value to Stuckey's helpful insights, for each student role, I identify one or more unique strengths or distinctive contributions of that modality to student learning that seem worthy of further attention by legal educators.

A. Simulated Practice

According to Professor Stuckey, simulation-based courses can be an important site for developing skills and understandings essential for practice, including "self-directed learning skills."[96] Simulated practice can also assist students in learning about the ethical demands of practice by "work[ing] through professionalism issues in contexts that replicate actual practice."[97] Additionally, simulation-based courses can help students with practical reasoning and judgment.[98]

Beyond the usefulness of simulated practice to provide an introduction to this range of issues, he highlights three objectives for which this modality is well-suited:

- ✓ to help a student begin to develop the "'capacity to recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skill and to develop strategies that will enhance professional performance;'"
- ✓ "to develop a student's 'ability to recognize and resolve ethical dilemmas' and 'employ risk management skills;'" and
- ✓ to provide students—at least in part—with "'a practical understanding of and commitment to'" professionalism, meaning "'the values, behaviors, attitudes, and ethical requirements of a lawyer.'"[99]

placements where students are not representing clients in a direct manner are of lesser value from an educational and professional development standpoint.

95. *See, e.g.*, *id.* at 822–23 (quoting CARNEGIE REPORT, *supra* note 7, at xii).
96. *Id.* at 824.
97. *Id.*
98. *Id.* at 825.
99. *Id.* at 827 (quoting BEST PRACTICES REPORT, *supra* note 6, at 135).

Professor Stuckey goes on to state that in order to achieve these goals, we must design our simulations and feedback mechanisms in appropriate ways.[100] The importance of a simulation's design and feedback mechanisms, along with the recognition that simulated practice can provide significant opportunities for students' self-reflection on their inter- and intra-personal competencies, sparked my interest in thinking more about how this modality is perhaps uniquely well-suited to focusing on group dynamics and group processes. There is, of course, a voluminous body of scholarship addressing these topics.[101] Based upon my early research, I see several immediate areas where greater attention to group dynamics and group processes in simulated practice courses could help students with particular relational competencies that have been identified here as either ignored, or worse, significantly thwarted, within the law school curriculum.[102] Here, I am thinking especially about competencies such as team building and collaboration, important aspects of professionalism that can potentially be encouraged through group work in all its dimensions.

A particular criticism I increasingly hear from practicing lawyers is that students graduate from law school not knowing how to work effectively in teams or how to "play well with others." With limited—albeit notable—exceptions,[103] law schools place little value in and tend to devote minimal class time to cultivating students' ability to work collaboratively with other students.[104] Simulated

100. *Id.* at 827–28.

101. *E.g.*, Roark M. Reed, *Group Learning in Law School*, 34 J. LEGAL EDUC. 674 (1984) (explaining the advantages of integrating group work into law school curriculums); Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469 (1995) (discussing simulation courses and how they can be integrated into law school curriculums); Don Peters, *Using Simulation Approaches in Large Enrollment Law Classes*, 6 J. PROF. LEGAL EDUC. 36 (1988) (discussing the importance of using simulation methods in large classes); Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143, 158 (2006) (describing a six-step feedback model for educators); WILLIAM R. TORBERT, LEARNING FROM EXPERIENCE: TOWARD CONSCIOUSNESS (1972) (discussing the relationship between feedback and experiential learning).

102. Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 961–63 (1999).

103. *See* Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING 185, 186 (2003); CARNEGIE REPORT, *supra* note 7, at 10–11.

104. Zimmerman, *supra* note 102, at 963; *see also* John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 335–36 (2007).

practice courses would be a natural starting point for a greater emphasis on this direction because they often are taught with small numbers of students and are more likely to be ungraded.[105] The need to evaluate and grade students as individuals is one of the common refrains—the "yeah-buts" heard in the halls of law schools as an excuse for not having students work in groups.[106] Yet including a greater focus on collaboration and team building in simulation courses could begin to have a positive ripple effect that would engender more of a collaborative and supportive culture within law schools on the whole.

1. William Torbert's Work on Effective Feedback

In addition to teaching students how to collaborate with others, group feedback, when done well, can assist individuals in looking inward and gaining deeper and more meaningful appreciation of their own feelings and emotions, as is contemplated by the interpersonal and affective competency area within the relational framework.[107] William Torbert, a pioneer in the field of experiential learning, views feedback as perhaps best effectuated in group settings, where the learner can benefit from self-analysis along with her analysis of fellow group members, rather than solely from an expert's analysis.[108]

According to Torbert, feedback—information from the environment that tells the system whether or not it is effectively moving toward its goal—is central to relational approaches, that is, understanding the person-in-context, as well as to experiential learning.[109] In the context of simulated practice, this means that individual students or groups of students that receive meaningful feedback are much more likely to be able to diagnose and correct their behavior, and therefore, to achieve their goals than if they operate blindly.[110]

105. *See* BEST PRACTICES REPORT, *supra* note 6, at 135; Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 438–39 (2002); *Trial and Appellate Advocacy Seminar*, NYU L., https://its.law.nyu.edu/courses/description.cfm?id=9160 (last visited May 15, 2012) (course description); *Advanced Trial Practice*, NYU L., https://its.law.nyu.edu/courses/description.cfm?id=9304 (last visited May 15, 2012) (course description).

106. Zimmerman, *supra* note 102, at 983–84.

107. Blaustone, *supra* note 101, at 158.

108. TORBERT, *supra* note 101, at 11.

109. *Id.* at 8.

110. *Id.*

Although this statement may seem like common sense, in my experience, legal educators often shy away from addressing group dynamics or encouraging group feedback regarding inter- or intra-personal issues, even when the issues may be the "pink elephant in the room"—that is getting in the way of achieving pedagogical or other course objectives. I imagine that these law teachers are reluctant for any number of reasons, including their own discomfort with discussing relational issues of any sort, and their lack of clarity about how to go about introducing and discussing these seemingly "purely personal" issues in a professional manner with students in the context of simulated practice.

Torbert's work introduces two related concepts that are useful in considering the challenges law students and legal educators face in giving and receiving effective feedback. These concepts are the "mystery/mastery complex" and "cognitive dissonance."[111] Torbert points out that these two concepts help to explain the empirical data showing that feedback processes within and among persons and organizations are often so muted and distorted as to be of little or no help, or even a hindrance.[112]

"The mystery/mastery social process discourages [the genuine] sharing of feelings, motives, and goals with others"—hence the mystery.[113] And it encourages people to behave in a manner that allows them to gain control over a situation in order to influence others as may be necessary, without revealing themselves—the mastery.[114] We are all familiar with the students who exhibit this behavior in dramatic ways, such as the "class clown," or the student who invariably sits in the back row and refuses to participate. Torbert states that the mystery/mastery dynamic is counter-productive for the individual as well as the group[115] "because the lack of sharing leads to lack of clarity about one's own goals, feelings, and motives, and because each person's efforts to gain control over others mean that whatever control is established tends to be conformity-producing, and thus reduces everybody's autonomy."[116]

A second, related (and probably somewhat more familiar) concept used by Torbert is cognitive dissonance.[117] Cognitive dissonance leads us to avoid sharing feedback, in part because we would rather

111. *Id.* at 12, 23.
112. *Id.* at 9.
113. *Id.* at 12.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.* at 27.

"avoid [having to face] our own incongruities and . . . inaccurate self-images."[118] Our efforts to control situations arise out of our wish to stay safe, and also to prevent others from seeing our possible vulnerabilities.[119]

Awareness of these dynamics affecting our students and ourselves is perhaps a first step toward considering how we can use feedback more effectively in simulated practice courses. Torbert recommends establishing a set of guidelines,[120] which resonate with the relational framework described earlier in this article.[121]

Effective and authentic feedback should be:

- shared with the group
- self-acknowledged
- authenticity-enhancing
- non-evaluative/descriptive
- non-controlling[122]

Torbert's ideas in general, and these feedback guidelines in particular, undoubtedly could apply to other experiential learning modalities. The distinct advantage of focusing on simulation courses to teach these competencies is the ease with which the teacher can stop the action at any time and ask the participants to consider some inter- or intra-personal dimension of the simulated situation in an immediate way that is usually not possible in real-life situations.

2. William Schutz's Group Process Theory: Inclusion, Control, and Affection

In considering how legal educators who teach simulated practice courses could make greater use of group process, a first step would be to study different approaches to the ways groups function and develop. An important scholar of group process is William Schutz, whose work focuses on how experiential learning can help learners in group settings achieve their potential.[123] His work offers useful

118. *Id.*
119. *Id.* at 27–28.
120. *Id.* at 10–12.
121. *See* discussion *supra* pp. 109–10 and Part II.
122. TORBERT, *supra* note 101, at 11 (citing EDGAR H. SCHEIN & WARREN G. BENNIS, PERSONAL AND ORGANIZATIONAL CHANGE THROUGH GROUP METHODS: THE LABORATORY APPROACH 39 (1965)).
123. WILLIAM C. SCHUTZ, THE INTERPERSONAL UNDERWORLD, at vi, ix (Sci. & Behavior Books 1966) (1960).

lessons about how we, as law teachers, can assist student learners in achieving their professional identities.[124]

Schutz's theory of group process relies on his assertion that we all have three needs from and toward other people: "inclusion," "control," and "affection."[125] If these needs are met in a balanced way, a person generally will have interpersonal success.[126]

Inclusion, control, and affection also define the developmental phases of a group's process according to Schutz.[127] Inclusion involves issues that arise in the early formation of the group.[128] One person may show reluctance to join, while another may seem overly enthusiastic or willing to disclose. What surfaces next are issues of control, which means that as people take or seek out different roles power struggles, competition, and influence become central issues.[129] Because affection is based on building emotional ties, it is usually the last phase to emerge in this developmental scheme.[130] Schutz states that inclusion is characterized by the need to *encounter* others, control is characterized by the need to *confront* others, and affection is characterized by the need to *embrace* others in order to form a lasting bond.[131]

Of course, if we look hard enough, we could probably find these dynamics in any classroom. The point here is that there may well be unique opportunities in simulation courses, which are often taught in small groups, to make constructive use of these group dynamics and

124. *Id.* at vi.

125. *Id.* at 13. Inclusion refers to the need to be with people and to be alone. *Id.* at 18. In striving toward inclusion, people are trying to have enough contact to avoid loneliness, and enough aloneness to avoid feeling enmeshed with others. *Id.* Control is the effort to achieve enough influence to determine the course of one's future, while still being able to lean on others for support, teaching, and guidance. *Id.* at 18, 20, 22. Affection involves a wish to avoid emotional entanglement to the point of engulfment, or having a bleak, sterile life without warmth, tenderness, and someone to confide in. *Id.* at 23–24.

126. SCHUTZ, *supra* note 123, at 20. Schutz identifies that the other two levels where balance is needed are at the level of simple bodily strength and health, and at the societal/organizational level. The kinds of things that block joy or inhibit us from achieving balance in these dimensions are related to the mystery/mastery complex and cognitive dissonance. *Id.*

127. *See id.* at 20–24.

128. *See id.* at 21.

129. *See id.* at 22–23; *see also* Sturm & Guinier, *supra* note 9, at 542 (focusing on the competitive culture of law schools as potentially a significant obstacle to curricular reform).

130. *See* SCHUTZ, *supra* note 123, at 24, 171.

131. *See id.*

group processes to assist individual students, as well as to promote more collaborative learning experiences.

B. The Mentee Role

Before discussing how students learn in the role of mentees**,** it must be acknowledged that the value of this role, specifically when it comes to law students participating in courses such as externships, has been the subject of years of heated debates within the legal academy and the field of clinical legal education, as well as among regulatory bodies such as the American Bar Association (ABA).[132] An explicit purpose of the larger project undertaken here, as stated earlier, is to transcend at least the political underpinnings of the debate,[133] and to begin to tease out the unique strengths of students' opportunities to be mentees in experiential courses.

Similarly, Professor Stuckey begins his discussion by pointing out that, collectively, we seem to fail to appreciate the mentee role as a forum for studying the "values, behaviors, attitudes, and ethical requirements of lawyers."[134] In other words, by being in the role of a mentee, students have a bird's eye view on professionalism-in-action.[135] Professor Stuckey's diplomatic explanation for the undervaluing of the mentee role is that the opportunity to observe legal practice in an immediate, firsthand way may be such an obvious benefit that it is not always articulated.[136]

Another strength of this modality that he emphasizes is the significance of students' opportunities to work in contexts similar to those that await them after graduation.[137] Professor Stuckey points out that students who are in the mentee role, such as those in externship courses, generally experience the realities of legal practice

132. *See supra* notes 17–22 and accompanying text; *see also* Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLINICAL L. REV. 681, 696–99 (2004).

133. *See supra* notes 6–9, 16, 21–23 and accompanying text. As I understand it, the political underpinnings have a lot to do with years of hard-fought battles by in-house clinicians to gain job security and status within their institutions. To stick with the 'war' analogy for the moment, it seems to me that—deservedly or not— externships and other field placement programs became a major casualty of this still ongoing war. The use of field placement programs and the perceived absence of sufficient oversight and quality assurance in those programs became a political football as well as a pedagogical target on both sides. *See supra* notes 17–23 and accompanying text.

134. Stuckey, *supra* note 27, at 828.

135. *See id.*

136. *See id.*

137. *See id.* at 819.

in truly authentic terms, such as office settings and workloads.[138] This distinctive contribution of the mentee role can be contrasted with students' experiences in in-house clinics, in which office settings and workloads are generally tailored specifically to meet the students' needs.[139] Additionally, students in the mentee role have the opportunity to study "the functioning of the legal system and its capacities and limitations."[140] Importantly, this learning can include issues of access to justice and the rule of law.

Here, it is worth mentioning that that Professor Stuckey's scheme seems to ignore the possibility of so-called "hybrid" or "community partnership" clinics,[141] where students are in the first-chair role and are situated in real legal settings rather than in-house law firms. These students get to experience these same strengths of the "real world" of legal practice, including authentic office settings and workloads, and the opportunity to study the functioning of the legal system.[142]

Importantly, though, with respect to the mentee role, Professor Stuckey also notes that these types of learning experiences can also help students to develop insights into professional skills and expertise in problem solving.[143] Citing the *Carnegie Report*, he highlights the value of learning a profession by observation and imitation because much of what experts know may be difficult to articulate, and therefore may more easily be passed on by example.[144] In this model, teachers guide learners in mastering complex knowledge in small steps.[145] This important idea of "scaffolding," taken from learning theorists, supports such efforts at improved performance over time.[146]

138. *See id.*
139. *Id.* at 835.
140. *Id*. at 819, 829.
141. We call these "field clinics" at the Earle Mack School of Law. *Field Clinics*, EARL MACK SCH. L., http://earlemacklaw.drexel.edu/academics/clinical/field_clinics/ (last visited May 15, 2012).
142. Although these types of clinics represent a truly immersive learning experience, it should be noted that the hybrid clinical instructors may not share the "specialized teaching skills" that Stuckey attributes to in-house instructors. Stuckey, *supra* note 27, at 835. Of course, this possible deficiency may easily be offset by the consequential nature of first-chair experience, which may enhance a student's "understanding of the law" more than any class could ever do, as this type of clinic allows them to see first-hand "how the law can affect people's lives by bringing fear or hope, sadness or joy, pain or relief, frustration or satisfaction." *Id.* at 829.
143. *Id.* at 818, 820.
144. *Id.* at 829 (citing CARNEGIE REPORT, *supra* note 7, at 26).
145. *Id.*
146. *Id*. (citing CARNEGIE REPORT *supra* note 7, at 26–27).

In addition to the considerable insights Professor Stuckey has provided, it strikes me that we can improve our understanding about what students learn in the mentee role by focusing on two distinctive features of this modality: (a) the opportunity to participate in a complex community of experts and apprentices; and (b) the tripartite structure of roles and relationships among the student, the faculty member, and the field supervisor.

1. Legitimate Peripheral Participation

The work of Jean Lave and Etienne Wenger emphasizes the idea of sustained developmental cycles within communities of practice.[147] Rather than simply focusing on the often-discussed stages of novice and expert, these scholars recognize the diversification and complexity of relationships among newcomers and old-timers "within and across the various cycles, and the importance of near-peers in the circulation of knowledgeable skill."[148]

The use of the term "peripheral" is meant to indicate a place in which one is moving toward more intensive participation, but is kept from participating more fully.[149] Yet peripherality must be understood as dynamic—meaning that the partial participation, "when it is enabled, suggests an opening, a way of gaining access to sources for understanding through growing involvement."[150] The point here is that peripherality is not simply about learning from observation.[151] "It crucially involves *participation* as a way of learning—of both absorbing and being absorbed in—the 'culture of practice.'"[152] And an extended period of legitimate peripheral participation provides opportunities for learners to take ownership of the culture of practice within a particular community of practice.[153]

Lave and Wenger's work on legitimate peripheral participation is similar to Howard Gardner's portrayal of apprenticeships.[154] He, too,

147. JEAN LAVE & ETIENNE WENGER, SITUATED LEARNING: LEGITIMATE PERIPHERAL PARTICIPATION 56–57 (John Seely Brown et al. eds., 1991).

148. *Id.*

149. *Id.* at 36.

150. *Id.* at 37.

151. *Id.* at 95.

152. *Id.*

153. *Id.* Communities of practice are defined as "set[s] of relations among persons, activity, and world, over time and in relation with other tangential and overlapping communities of practice." *Id.* at 98. We can envision a given legal community as a community of practice.

154. *See* HOWARD GARDNER, THE UNSCHOOLED MIND: HOW CHILDREN THINK AND HOW SCHOOLS SHOULD TEACH 124–25 (1991).

points out that interim steps of accomplishment are available and can be witnessed in the form of workers situated at different levels of the hierarchy.[155] As such, the learner can see where he's been and anticipate where he's headed. Like Lave and Wenger, Gardner also recognizes that, in apprenticeships, "peers and others of slightly differing competencies can offer help and instruct one another.[156] Additionally, Gardner highlights the strengths of apprenticeships as including the ability for aspiring professionals to work alongside experienced, accomplished ones, which allows for personal bonds as well as a sense of progress toward an end."[157]

2. Relational Supervision

A strikingly similar development to the emergence of RCL, although in reality the two developments occurred completely independent of each other, is the movement known as "relational theory." Relational theory grew out of the interest of contemporary mental health professionals who are adherents to Freudian approaches, also known as psychodynamic therapists, in incorporating more ideas and attitudes consistent with family systems thinking into their practice.[158] It focuses on the interpersonal dynamics between therapist and client, rather than having an exclusive focus on the client's intra-psychic processes, and places the therapist and client on more equal footing in terms of co-producing outcomes.[159]

Eric Ornstein and Helene Moses, faculty directors of the field placement program at a graduate school of social work where students participate in supervised practice experiences similar to our externships, have written about the applicability of relational theory to students' learning in these types of field experiences.[160] Their framework emphasizes that student learning can be enhanced by the field supervisor's willingness to raise concerns that arise within the supervisory relationship and to encourage the student to provide feedback as well as to receive it.[161] The faculty member's role is to encourage and facilitate this level of meaningful communication

155. *Id.* at 124.
156. *Id.*
157. *Id.*
158. LEWIS ARON, A MEETING OF MINDS: MUTUALITY IN PSYCHOANALYSIS 124 (Stephen A. Mitchell & Lewis Aron eds., 1996).
159. *Id.*
160. Eric D. Ornstein & Helene Moses, *Goodness of Fit: A Relational Approach to Field Instruction*, 30 J. TEACHING SOC. WORK 101, 103 (2010).
161. *Id.* at 104.

between the student and the field supervisor, which may require the supervisor to disclose feelings and reactions, rather than simply trying to elicit them from the student.[162] Purposeful self-disclosure is seen as an avenue to "help build trust and mutuality in the relationship."[163]

Relational supervision also emphasizes the use of "parallel process," which I have previously referred to as mirroring or modeling.[164] The faculty member can seek to provide a model both for the student and the field supervisor through her own demonstration of relational competencies. "Attending to the unfolding process between the field instructor and student sets the stage for identifying parallels between what may be happening in the supervisory relationship and what is occurring in the relationship between the student[s] and their clients."[165]

C. The "First-Chair" Role

Professor Stuckey uses the terms "client representation courses" and "supervised law practice" to describe the first-chair role.[166] Quoting again from the *Carnegie Report*, he echoes the striking feature of these courses as "'the power of clinical experiences to engage and expand students' expertise and professional identity through supervised responsibility for clients.'"[167] Professor Stuckey does seem to contemplate the inclusion of some externships in describing this modality, although most of his references seem to relate more to the structure of in-house clinics.[168]

In any event, he describes a core strength of this modality in terms of students' decisions and actions potentially having real world consequences, such that "students' values and practical wisdom can be tested and shaped."[169] The combination of responsibility for clients and accountability lies at the core of these experiences, and allows the learner "to go beyond concepts, to actually become a professional in practice."[170] Accordingly, he emphasizes the unique

162. *See id.* at 106.
163. *Id.*
164. Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients, and Communities*, 13 CLINICAL L. REV. 213, 218–19 (2006).
165. Ornstein & Moses, *supra* note 160, at 107.
166. Stuckey, *supra* note 27, at 830.
167. *Id.* (quoting CARNEGIE REPORT, *supra* note 7, at 120).
168. *See id.* at 830–36.
169. *Id.* at 830.
170. *Id.* at 830–31 (quoting CARNEGIE REPORT, *supra* note 7, at 121).

contribution of the first-chair role to the development of professional competence, specifically in terms of the development of professional judgment and lifelong learning skills.[171] In sum, Professor Stuckey endorses the *Carnegie Report*'s view that actual experience with clients is "an essential catalyst for the full development of ethical engagement."[172]

Professor Stuckey's discussion brings to mind a number of ideas introduced over the years by other clinical scholars that reflect key contributions of the first-chair role to professional identity formation.[173] In a forthcoming article, I (along with my co-author) outline five concepts that have been introduced by clinical legal scholars over the years that have been heavily influential.[174] Although these ideas have been discussed generally in the context of "live-client" clinics, from the student learner's standpoint, they can be viewed as emerging out of the first-chair role.

1. Andragogy

"Andragogy," taken from the work of Malcolm Knowles, is a term that identifies adult learners as having unique and distinctive learning needs and interests.[175] The distinctive qualities of adult learners include an interest in being self-directed; an ability to draw on their personal experiences; an inclination toward learning subject matter that is relevant to their social roles; and an interest in being able to apply their learning immediately to solve problems.[176] Knowles's approach supports teaching ethical and professional conduct using

171. *Id.* at 831.

172. *Id.* (quoting CARNEGIE REPORT, *supra* note 7, at 160).

173. *See, e.g.*, Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 341–42 (1982) (discussing how client representation by law students in the first-chair role fosters the development of human relations skills); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 50–63 (2001) (discussing how the experiential learning aspect of the first-chair role can help law students develop cross-cultural sensitivity); Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice Law School Clinics*, 2 CLINICAL L. REV. 37, 44–46 (1995) (discussing how working with clients in the first-chair role teaches law students important lessons in social justice).

174. Susan L. Brooks & Robert G. Madden, *Epistemology and Ethics in Relationship-Centered Legal Education and Practice*, 56 N.Y.L. SCH. L. REV. 331, 356–60 (2012).

175. *See* Bloch, *supra* note 173, at 328 n.23 (citing MALCOLM KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION (1970)). Bloch points out that Knowles relied on the work of clinical psychologists, Abraham Maslow and Carl Rogers. *See also* Quigley, *supra* note 173, at 47 (citing MALCOLM KNOWLES, THE ADULT LEARNER: A NEGLECTED SPECIES (1990)).

176. Bloch, *supra* note 173, at 328–39; Quigley, *supra* note 173, at 47.

methods that involve law students in decision-making and planning, and that create learning experiences in which students are actively engaged and can relate their own life experiences to helping to resolve the issues at hand.[177] Frank Bloch[178] and Fran Quigley, both of whom advocate a focus on andragogy, share the view that an andragogically driven model would emphasize actual client representation with close supervision.[179] Both also agree that simulations are less effective as a teaching method, although they may have some value if they are sufficiently connected to real experiences.[180]

2. Democratic Teaching

Fran Quigley's work also highlights the idea of "democratic teaching," drawing upon "critical theorists of adult learning" such as Paulo Freire and Jack Mezirow.[181] Democratic teaching builds upon Knowles's emphasis on involving law students in decision-making and planning, based on their capacity as adult learners to utilize critical scrutiny in examining their own and their culture's values, assumptions and beliefs.[182] His understanding of democratic teaching also draws upon the work of John Dewey, whose "philosophy of adult education focuses on the extension of the skills of deliberation, civic awareness[,] and public advocacy to learners previously shut out of the democratic process."[183] Democratic teaching emphasizes "self-directed learning," an idea that has become familiar in clinical legal education, and is a common refrain in externship programs around the country in which students' "clinical" supervision is provided by practitioners in the field.[184] Self-directed learning, according to Quigley, suggests that legal educators should "loosen the reins" both in and outside of the clinic, and allow students to be involved in the selection of their clinical and other educational experiences.[185] This approach is consistent with another well-

177. Bloch, *supra* note 173, at 333–37.
178. *See supra* notes 175–177 and accompanying text.
179. Bloch, *supra* note 173, at 346–50; Quigley, *supra* note 173, at 69–70.
180. Bloch, *supra* note 173, at 346–48; Quigley, *supra* note 173, at 69–70.
181. Quigley, *supra* note 173, at 47.
182. *See id.* at 47–48.
183. *Id.* at 48.
184. *See id.* at 48–49; Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211, 212, 215 (1989).
185. Quigley, *supra* note 173, at 65–68.

accepted notion among educators, which is that different students learn in different ways.[186]

3. Disorienting Moments

Quigley's other major contribution to the clinical lexicon is the idea of the "disorienting moment,"[187] which also draws upon adult learning theory, specifically the work of Jack Mezirow.[188] The idea of the disorienting moment is that opportunities for significant—"transformative"—learning arise "when the learner confronts an experience that is [unsettling] or . . . disturbing because [it] cannot be easily explained by reference to the learner's prior [knowledge]."[189] The change that can result from such moments is known as "perspective transformation" insofar as a single trigger event may cause the learner to critically reassess "societal and personal beliefs, values, and norms."[190] Disorienting moments have three stages: first, the "disorienting experience"; second, the "exploration and reflection"; and third, the "reorientation."[191] We are told that this theory has been tested and proven empirically,[192] and those of us who have been teaching for a long time, particularly in clinical settings, know it to be true as part of our felt experience with students.

Quigley focuses on "seizing" disorienting moments experienced by students in live-client clinical settings as a tool for teaching social justice,[193] although the same could easily be said about teaching ethics and professionalism. He emphasizes the importance of providing the environment for exploration and reflection, and providing the opportunity for reorientation, as necessary conditions for such transformative experiences to occur.[194] The array of methods for facilitating the reflective component of process within the classroom setting will be familiar to many of us, including student-to-student discussions, such as case rounds; student self-

186. *Id.* at 65.
187. *See id.* at 46.
188. *Id.* at 46, 51–52.
189. *Id.* at 51 (citing JACK MEZIROW ET AL., FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING 13–14 (1990)).
190. *Id.* at 52 (citing JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING 167–68 (1991)).
191. *Id.*
192. *Id.*; *see also* MEZIROW, *supra* note 189, at 167–71 (discussing various studies which have tested and proven the idea of the "disorienting moment" and the transformative learning which results).
193. Quigley, *supra* note 173, at 38.
194. *See id.* at 52.

evaluation, such as the use of reflective journals; and supervision sessions with individual students.[195]

4. Parallel Universe Thinking

Sue Bryant and Jean Koh Peters have given us what might be interpreted as another lens on disorienting or disturbing moments that students experience: "parallel universe thinking."[196] Parallel universe thinking is one of the six "habits" they suggest can be inculcated in students that will help them achieve better cultural proficiency.[197] It requires the learner to seek "other possible explanations or meanings for clients' words and actions."[198] Parallel universe thinking bears a strong resemblance to "reframing," a fundamental technique in social work practice.[199] Reframing is defined as viewing a problem or an issue with a new outlook or understanding it in a new way.[200] Both of these concepts provide a useful vehicle for helping a student who has experienced a disorienting moment reflect on that experience in a way that promotes ethical and professional behavior.[201]

Bryant and Peters also describe three dynamics that help to contribute to a student's cross-cultural sensitivity, which is a subset

195. *Id.* at 57–62.

196. Susan J. Bryant & Jean Koh Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches*, *in* THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 183, 186 (Marjorie A. Silver ed., 2007).

197. *Id.* Note that the use of proficiency rather than competence is a concept borrowed from Christine Zuni Cruz. Christine Zuni Cruz, *Toward a Pedagogy and Ethic of Law/Lawyering for Indigenous Peoples*, 82 N.D. L. REV. 863, 889 (2006) (rejecting the term "cultural competency" in favor of "cultural literacy" because the use of the former implies an understanding of many aspects of indigenous knowledge that are not accessible to outsiders of the culture). The six practices are essentially: "(1) employ narrative as a way of seeing the client [in] context; (2) listen mindfully . . . ; (3) use parallel universe thinking . . . ; (4) speak mindfully, taking into account the client's culture . . . ; (5) work [effectively] with interpreters; and (6) apply the Habit Four analytical process continuously to identify [miscommunication] and [appropriate] corrective measures." Bryant & Peters, *supra* note 196, at 188.

198. Bryant & Peters, *supra* note 196, at 186. They identify this habit as playing a "vital role in cross-cultural communication." *Id.* at 186 n.4.

199. *See, e.g*, KAREN H. KIRST-ASHMAN & GRAFTON J. HULL, JR., UNDERSTANDING GENERALIST PRACTICE 338, 350 (5th ed. 2009); BEULAH R. COMPTON ET AL., SOCIAL WORK PROCESSES 412 (7th ed. 2005).

200. KIRST-ASHMAN & HULL, *supra* note 199, at 350.

201. Social workers often use reframing to try to offer a more positive perspective on something that is seemingly negative. In this way, reframing can potentially help one person—the lawyer—to empathize more effectively with another person—the client—or to "understand content more clearly from [the client's] perspective." *Id.*

of ethical and professional conduct.[202] These dynamics are (1) nonjudgment, (2) isomorphic attribution, and (3) daily practice and learnable skill.[203] Isomorphic attribution asks the learner to try to attribute the same meaning to the client's conduct that was intended by the client, rather than solely as understood from the lawyer's perspective.[204] This dynamic requires an understanding of countertransference, as well as an appreciation of one's own cultural biases.[205] Further, it is significant that Bryant and Peters emphasize the importance of daily application of the skills and dynamics they discuss. Their work reminds us that genuine student learning can effectively occur only with constant reinforcement as well as thoughtful and reflective practice.[206]

5. Reflection- in-Action

Another highly regarded set of ideas that complement and build upon what has already been discussed come from Donald Schön's work on educating the reflective practitioner.[207] Schön is a scholar in the theory of education, whose ideas on inculcating professional confidence and judgment were published in the *Clinical Law Review* and have become a must-read for every new clinician.[208] He discusses "indeterminate zones of practice": problematic situations in which the learner experiences uncertainty, including situations that are unique to the learner or in which the learner experiences some conflict in trying to come up with a workable solution.[209] These indeterminate zones may well be the kinds of experiences that produce disorienting moments as described earlier.[210] Similar to Quigley, Schön emphasizes that indeterminacy can potentially be a

202. Bryant & Peters, *supra* note 196, at 186–87, 213.
203. *Id.* at 186–87.
204. *Id.* at 187.
205. *Id.* at 186–87.
206. *Id.* at 187.
207. Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231, 231 (1995).
208. "Countertransference" refers to negative or positive feelings that the lawyer may project onto clients and which can interfere with the client-lawyer relationship. Allwyn J. Levine, *Transference and Countertransference: How It Affects You and Your Client*, 15 FAM. ADVOC. 14, 14 (1992). Bryant and Peters argue that the risk of projecting these stereotypes onto clients requires that the lawyer use 'Habit Five' to identify potential biases and eliminate them or minimize their effect. Bryant & Peters, *supra* note 196, at 186.
209. *Id*. at 237–40.
210. *See supra* Part IV.C.3.

rich source of professional education.[211] Schön emphasizes that the ability to navigate a problematic situation requires acting and reflecting essentially simultaneously, and that this "reflection-in-action" is what seasoned professionals do, and what we need to inculcate in our students.[212] Essential to that process is "reflection *on* reflection-in-action," meaning that learning professional competence requires discussions after the fact that help generate an understanding of what occurred in that disorienting moment.[213] Schön calls this "educating for artistry" and suggests that it can best be taught in a reflective practicum, which has the elements of learning by doing, close supervision, group process, and a context that is representative of the professional practice to which your students aspire.[214] Like Quigley (and those he borrows from), Schön also emphasizes that to be successful, education must be a self-directed, self-learning process.[215]

The goals of client representation and, accordingly, the demands of the role of the first chair demonstrate the importance of inculcating in students the relational competencies identified earlier.[216] Relationship-centered lawyering, taught through supervised practice experiences, can begin to equip students to practice the following critical competencies for client representation: understanding their clients-in-context; promoting fair and just legal processes, including, in appropriate situations, apprising clients of alternatives to litigation; and appreciating the intra- and inter-personal and cultural aspects of their work with clients.[217]

V. WHAT THESE PERSPECTIVES TELL US ABOUT PROFESSIONAL IDENTITY FORMATION AND LEGAL EDUCATION

An important purpose of exploring this wide range of perspectives has been to make the case that by offering a broad menu and repeated opportunities for experiential learning in law school, students have the best possible chance to develop the kind of professional identity and purpose that will meet our aspirations, the aspiration that drove

211. *See* Schön, *supra* note 207, at 239–40.
212. *See id.* at 245–47.
213. *Id.* at 247.
214. *Id.* at 247–48.
215. *See id.* at 249–50.
216. *See supra* notes 166–174 and accompanying text.
217. The framework of RCL is essential to the effectiveness of experiential learning of all types and enhances each of the modalities identified here and explored *supra* Part II.

most of them to apply to law school in the first instance, and the aspirations of the legal community and society at large.

Another purpose has been to demonstrate that the idealized notion of a law school curriculum that is more effective in inculcating in students professional values and practices consistent with those articulated by state bar associations and law school deans is indeed attainable. What is required is a willingness on the part of legal educators and administrators to invest in, and to support and encourage, high-quality experiential learning courses that embrace a relational framework.

Here are some thoughts about key audiences that should consider making use of this scheme.

A. Law School Administrators

Deans, associate deans, and clinic directors should examine the curriculum at their schools and consider whether and how it (a) contributes to students' development of relational competencies, and (b) offers opportunities for students to participate in the three experiential learning roles identified here, beginning with the first year. Beyond simply offering an array of courses, law schools need to invest resources to ensure that experiential components promote the achievement of the kinds of goals identified for each modality, such as opportunities for meaningful reflection. This investment of resources might mean, for instance, involving clinical faculty in helping to design simulation-based courses for first-year students, ensuring that externship programs include rigorous classroom components and a high level of engagement between the law school and students' placements, as well as possibly creating hybrid clinics or other community partnership clinics in which clinical faculty provide direct supervision and co-teach with practitioners.

Law school administrators also need to examine the culture of their institutions to encourage more collaborative and community-building activities inside as well as outside of the classroom. Without encroaching on academic freedom, administrators can provide forums for interested faculty members to learn more about the use of group work and peer-to-peer learning in the classroom. The more the leaderships within law schools promotes collaborative and team-building approaches, as well as a focus on interpersonal, affective, and cultural competencies, the greater the chance that students will begin to incorporate those competencies into their development of a professional identity and values.

B. Law Professors

Law faculty that teach experiential courses, and particularly clinical faculty, should re-evaluate their teaching methodologies and consider whether they are maximizing the pedagogical opportunities to help students fully integrate the content of their courses. For example, those who teach simulation-based courses should examine whether they are taking full advantage of the special opportunities simulations present for group learning processes, as well as the safe exploration of students' feelings and emotions when faced with challenging situations. Law faculty may want to consider seeking out further guidance and expertise to assist them in helping students to cultivate relational competencies, as well as facilitating meaningful and effective feedback.

C. Law Students

Students should be encouraged to take a proactive approach to putting together their own "helix," provided that the curriculum offers possibilities to do so. Ideally, there should be a first-year offering that is simulation-based, as mentioned earlier.[218] Following the first year, students should consider participating in well-structured summer externships in which they can experience the mentee role. Alternatively, they should pursue externships or other supervised practice experiences in which they can be closely mentored during their second year. Third-year students should pursue clinics or other opportunities to be the first chair. It's possible that students will be able to experience the first-chair role through externships or hybrid clinics. Students' focus should be on whether the program will allow them essentially to practice law under close supervision, and on the quality of the supervision provided through the program.

VI. OPPORTUNITIES, CHALLENGES, AND ASSESSMENT

While there is no single recipe, there are several key ingredients to the success of this venture:

- Experiential learning must be integrated as much as possible throughout the curriculum.
- Experiential learning must be defined to include and to value the distinct and equally valuable contributions that

218. *See supra* Part V.A.

can be made by simulations, externships of all kinds, including those available to students who are not able to take on direct client representation as well as those who are, and live-client clinical experiences.

- Experiential learning, and, indeed, ideally all learning in law schools, should be informed by a relational framework that grounds students' experiences in principles and concepts that derive from well-established understandings of human development and interpersonal relations in context, as well as principles related to procedural justice, cultural competence, and emotional intelligence.
- Experiential learning must be accompanied by meaningful and effective feedback and opportunities for reflection at all levels.[219]
- Experiential learning should be supported by other efforts to shift the institutional culture more toward cooperation and collaboration rather than a culture of competition.

There are many opportunities to do a more effective job at implementing this framework. At the macro level, we need to look across the entire curriculum beginning with the first year to see where experiential and other creative teaching methods can be used so that students are engaged in the ways described above[220] and encouraged to experience "disorienting moments" upon which they can reflect. We also need to encourage faculty to loosen the reins and to give students more of a voice in decision-making and planning.[221] We need to maximize the opportunities for meaningful experiential learning in non-clinical courses by connecting them up with service learning projects or other real-world experiences wherever possible.[222] We also need to incorporate multiple methods, including the use of literature drawn from the humanities, film, etc.[223]

At the micro level, the content of the discussions that take place, be they one-on-one or in group settings, can be guided and informed through exploration of the core competencies within the relational framework.[224] What can be learned from an understanding of the client in context—be that the family system, neighborhood, or

219. *See* discussion of reflection on reflection-in-action, *supra* Part IV.C.5, and discussion of Torbert's guidelines, *supra* Part IV.A.I.
220. *See supra* Parts II–V.
221. *See supra* Part V.B.
222. *See supra* Part V.A–C.
223. *See supra* Part V.A–C.
224. *See supra* Part I.A–C.

community?[225] How do procedural justice issues affect the client, the situation, or both?[226] What is the interplay of culture issues and interpersonal issues, including those that arise between student lawyers and clients, and in other contexts, such as students' encounters with co-counsel or opposing counsel, and clients' encounters with others in the legal system?[227]

Many, if not most, of the ideas outlined above are at least somewhat familiar in the scheme of legal education generally, and even more familiar within clinical legal education. Yet in the same vein as RCL offers a way of grounding, as well as organizing, important ideas into a normative framework, we need a more grounded and organized approach to how we go about inculcating ethical and professional conduct in our students and emerging lawyers.

In implementing this vision, we need to consider ethical challenges that may arise in connection with adopting a relational model or some other aspect of bringing more experiential learning into legal education. There will certainly be other challenges, most notably resource issues connected with implementing this model.[228] There may also be regulatory challenges in addressing concerns that may be raised by accrediting bodies such as the ABA or the AALS.

Needless to say, challenges will also be presented by our colleagues within the legal academy and many of our administrative leaders as well. Maximizing the use of experiential modalities will be threatening to many who are unfamiliar or uncomfortable with these methods, or view them as undermining students' mastery of "doctrinal" knowledge.

One critically important mechanism and strategy for responding to some of these challenges (naysayers in particular) is to do a thorough and rigorous assessment of these efforts. My own anecdotal and small-scale assessment projects to date suggest that we will find positive outcomes. Nevertheless, we need to do a much better and more comprehensive, long-term job of tracking our students and being able to document our successes, as well as any failures or limitations of our work, as they present themselves.

225. *See supra* Part I.A.
226. *See supra* Part I.B.
227. *See supra* Part I.C.
228. *See supra* Part I.D.

CONCLUSION

Now, more than ever, we need to focus on preparing law students to enter the professional world from the moment they graduate. Given our financial woes, and the ever-tightening job market, they are likely to have fewer chances to make mistakes, and fewer opportunities for on-the-job training.

First and foremost, we need to teach students relational competencies while they are in law school. The main vehicle for teaching relationship-centeredness to our students will be to provide them with meaningful opportunities to simulate practice, to be mentees, and to sit in the first chair as an integrated, core component of their legal education. If we can make this vision a reality, we can make legal education the template for lifelong professional education, and shape future generations of lawyers to be truly competent and caring professionals.