

## **Collaboration and Modeling:**

### **Reconsidering “Non-directive” Orthodoxy in Clinical Legal Education**

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#### **I. Introduction**

A major focus of clinical legal scholarship has been discerning the optimum teaching relationship between a supervising attorney and a law student. Focusing on how much guidance a supervising attorney should provide to a law student, clinicians’ principal answer has been to promote “nondirective” supervision as the teaching strategy that is most consistent with fundamental educational goals: fostering the development of a lawyer who understand complex role demands and high professional standards and is prepared to reflect on and continually improve his practice. However, my impressions have long been that collaborative exchange between student and supervisor and substantial opportunities for students to observe models of practice by their supervisors and others play a significant role in student learning in externship clinical education. To better understand these teaching relationships, I analyzed student experiences in the Rutgers-Camden externship program. I believe these experiences support the conclusion that collaboration and modeling provide excellent environments for students to begin their development as lawyers. In this Article, I argue further that other settings for clinical education can also embrace collaboration and modeling, along with nondirective supervision, as powerful tools to teach professionalism and reflective practice. These teaching methods have already been acknowledged in some clinical literature for at least some purposes. The purpose of

this Article is to contribute to continued dialogue among clinicians about reexamination of our teaching methods.

Clinical legal education theory links nondirective supervision to role assumption, in which a law student performs the lawyering role as independently as possible at every step and thereby learns skills while feeling the full weight of lawyering responsibility. The student in role develops the counseling relationship with the client, investigates issues, researches alternatives, determines a course of action and takes steps toward implementing her decisions. The nondirective supervising lawyer reviews student preparation and performance, offering feedback and dialogue about decisions, but importantly, ostensibly without revealing the supervisor's own point of view. Proponents of a strictly nondirective method of supervision assume that more explicit direction, for example by having the supervisor instruct the student how to perform a task or demonstrate a skill in a real case, would diminish the educational potential of role assumption and reduce student learning.<sup>1</sup>

Nondirective supervision as a sole teaching method, however, creates significant constraints for clinical education. In addition to conflicting with the learning style needs of some

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<sup>1</sup>Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981) (analyzing clinical teaching method as a feedback loop of theory, action, reflection, and further refinements of theory based on experience, and asserting that learning the clinical method of learning is itself a goal for students so they are prepared to continue to learn from practice); Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993) (systematically examining a clinic case using a nondirective clinical method, with detailed attention to the supervisor's role in working with clinic students). While many otherwise nondirective clinicians are likely to provide some modeling of skills in their ongoing work with students, and willing to share professional judgment at some points in the work, the classic model cautions that "the supervisor cannot tell and show the student how to deal with particular situations in an attempt to alleviate anxiety and most easily solve a particular problem." Kreiling, at 300.

students,<sup>2</sup> a sole focus on nondirective supervision overlooks other powerful teaching methods considered here. It reduces student experience by seeming to forbid students to learn from working in some of their cases as assistants to more experienced and skillful attorneys, where skills and values can be directly observed.<sup>3</sup>

Modeling and collaboration are particularly effective ways to communicate high standards of practice skills and to impress students with regard to professional values. Role assumption can remain a significant part of clinical education for students when supervisors also demonstrate, instruct, or collaborate with students, as it does when a supervisor provides guidance in a nondirective manner. Collaboration is itself a problem-solving practice skill that students can learn as they work with attorneys. Together with nondirective supervision, collaboration and modeling enhance student experience and understanding of the lawyer role, as the students themselves tell us in ways explored in this article. Collaboration is consistent with role assumption and strongly reinforces it; student observations of attorney models is an important preparation for role assumption.

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<sup>2</sup>Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989) (cogently arguing for pedagogy that includes models and simulations for students not ready for full assumption).

<sup>3</sup>This type of learning experience, discussed below in regard to modeling and observation, recalls the apprenticeship tradition for education of lawyers. James H. Backman, *Where Do Externships Fit? A New Paradigm is Needed: Marshaling Law School Resources to Provide an Experiential Education Externship for Every Student*, \_\_\_ J. LEGAL EDUC. (forthcoming) re-examines the premises of apprenticeship and discusses the implications and advantages of an apprenticeship, as opposed to an in-house clinical, model to set the standard by which externship programs are designed and evaluated. For further discussion of the educational theory underlying apprenticeship and its application to complex practice skills see Allen Collins, John Seely Brown, and Ann Holum, *Cognitive Apprenticeship: Making Thinking Visible*, viewed at [http://www.21learn.org/arch/articles/brown\\_seely.html](http://www.21learn.org/arch/articles/brown_seely.html) (Originally published in 1991).

My perspective comes from teaching experience in both an in-house clinic and in externship<sup>4</sup> as well as my examination of student reflections on supervision in their externship experiences. Student responses to a survey, free responses to more open-ended questions, and journal narratives about powerful learning moments paint a landscape of many teaching techniques notably including modeling – lessons by example – and collaboration – partnership with mentors. Student views also strongly support the educational value of nondirective supervision for achieving the primary goal of bringing students to active experience and critical understanding of the lawyer role.

Student experience in externship and in-house settings reflect differences of opportunities as well as somewhat divergent goals. In-house clinics are usually organized to provide students first-chair responsibility for a case, while externship students have that responsibility less often, depending on the nature of the placement. Nevertheless, there are also substantial similarities. As in the in-house clinic, externships can teach practice skills necessary for competency, role formation that orients the student toward ethical advocacy for clients, and practice in reflection on experiential learning that enables a student to continue to learn from her own practice experience as a novice attorney.<sup>5</sup> Externships are at least as well positioned as in-house clinics,

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<sup>4</sup>I was a clinical supervisor at Penn Legal Assistance Office, University of Pennsylvania Law School, 1986-1993, and have been Director of Externships at Rutgers School of Law - Camden since 1993. I am using the common terminology of “in-house” clinics as those located on or near law school campuses, at which students are supervised directly by clinicians who are on the school faculty, and “externships” as clinical programs in which students work in practice settings or judicial chambers under the direct supervision of lawyers or judges, with a faculty member overseeing the program and working with the students on campus in classes and individually. There are also interesting hybrids of these two basic forms at various law schools.

<sup>5</sup>Henry Rose, *Legal Externships: Can They be Valuable Clinical Experiences for Law Students*, 12 NOVA L. REV. 95 (1987). See also J.P. OGILVY ET AL., *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* (Eagan, Minnesota 1998); Brook K.

arguably better positioned, to encourage a critical perspective on the legal system.<sup>6</sup> Externships are well organized to focus on “self-directed learning and broadening students’ perspectives on the legal system.”<sup>7</sup> My observation, and more importantly those of the students, is that a wider range of teaching methods serve very well the common goals of various forms of clinical education. As discussed more fully below, both nondirective and collaborative supervision methods can effectively require a student to assume the lawyer role. Modeling and directive teaching prepare some students well for that role. Various methods can be effective at supporting students to feel “motivated to learn” and to implicitly “demonstrate respect for the integrity of the students’ interpretive process.”<sup>8</sup>

#### **A. Clinical theory and “nondirective” supervision**

Clinical scholarship has long asserted the importance of the supervisor’s role in developing the student lawyer. While commitment to “non-directive” supervision is pervasive in the scholarly literature, it is neither the only teaching method promoted, nor is it without criticism from both theoretical and practical perspectives.<sup>9</sup>

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Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994) [hereinafter Baker, *Beyond MacCrate*]; J. P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. R. 155, 159-160 (2002-2003). The externship format is advantageous for teaching “self-directed learning,” Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211 (1989).

<sup>6</sup>Robert J. Conklin, *Tastes Great, Less Filling: The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 427 (1986).

<sup>7</sup>Robert Seibel & Linda Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL LAW REV. 413, 415 (1996).

<sup>8</sup>Shalleck, *supra* note 1, at 155.

<sup>9</sup>Further, some experienced clinicians have modified their views over the years, developing increasingly nuanced views about supervision. Telephone conversation with Wallace J. Mylniec, Assoc. Dean Clin. Educ. & Public Serv. Programs, Georgetown University Law School, July 21,

The most steadfast proponents of nondirective supervision have asserted that this supervision style alone facilitates the achievement of the two primary educational goals set for the clinic student, that is, fully understanding the role of a lawyer and developing a mode of continued growth in legal skills and values, usually described as “learning to learn from experience.”<sup>10</sup> In this model of clinical instruction, student assumption of the primary lawyer role is coupled with participation in reflective critique on practice decisions, but without direct instruction in how to make decisions or perform a task, or unambiguous information about the supervising attorney’s views on those matters. The supervisor permits – insists on – the student’s relatively independent decisionmaking authority in handling a legal case for a client. As a result of this autonomy in role assumption, the student confronts personal and professional issues of lawyering.<sup>11</sup>

In its pure form, non-directive orthodoxy contends that other supervisor-student working relationships are inferior and that they are sometimes actually detrimental in regard to producing the desired educational results for students. Collaboration with experienced attorneys is rejected

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2004. Nevertheless, anxiety about “failure” to be sufficiently nondirective persists, as clinicians who crowded a discussion at the 2004 San Diego clinical conference took on a confessional tone about “admitting” to more directive supervision, suggesting the persistence of a doctrinal view on the issue. For discussion of the concerns of newer clinicians about directiveness, see *infra*, text at note 31, discussing the recent study by Dunlap and Joy.

<sup>10</sup>Kreiling, *supra* note 1, *passim*; see also Michael Meltsner & Phillip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1, 9 (1978) calling this goal “learning about learning”.

<sup>11</sup>Meltsner and Schrag, *supra* note 10, describe a Columbia Law School clinic in the 1970's where the faculty sought to be so thoroughly nondirective that even the topics for review in classes (called “staff meetings”) and what guidance to expect from supervisors were subject to discussion. *Id.*, at 31-36. The therapy-session tone of the meetings they describe seemed to have worked especially well to surface and confront students’ personal issues that hampered their effectiveness as lawyers. Cynthia Batt and I have commented elsewhere on the difficulty of raising such important but sensitive issues with students. Cynthia Batt & Harriet N. Katz,

as likely to be controlled by the attorney. Modeling by an attorney – from the student perspective, observation by the student – is also rejected. Prof. Kotkin summarized this view as asserting that a student observing a lawyer will imitate bad standards of practice, failing to take a critical perspective on what she observes, or will imitate a good model without the requisite reflection and therefore, learn little. The student may imitate ineffectively, possibly because he will not fully appreciate the nuances of what he is seeing or because he lacks the motivation inspired by personal responsibility, and will engage in unreflective “half-hearted mimicry.”<sup>12</sup>

Although the superiority of nondirective supervision is asserted, some clinical scholars have also long acknowledged its limits on theoretical educational or practical grounds. Kotkin observed that “role assumption” inhibits learning for students whose confidence level, maturity, or learning style requires a more gradual introduction to full lawyering responsibility. To remedy this problem, she recommended greater use of modeling, with supervisors demonstrating skills both by simulated example and by direct involvement in cases.<sup>13</sup> Adding reflective feedback and analysis distinguishes this practice from what she asserts would be the traditional “apprenticeship” and therefore relieves her concern that this practice could harm student

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*Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10 CLINICAL. L. REV. 581, 597 n.60 (2004).

<sup>12</sup>Kotkin, *supra* note 2, at 199. Gary Blasi, writing about lawyers and problem-solving, described an interesting, perhaps inadvertent, counterexample. In Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995), a hypothetical student discussed varied ways to reason in response to a strategy question imbedded in a real case with three different lawyers. Notably for my purpose here, his hypothetical lawyers did not believe it was necessary to hide their views, nor did the student seem to be unable to reflect intelligently on what he was told by each of them, without professorial guidance of his process of reflection.

<sup>13</sup>Kotkin, *supra* note 2, at 187. “Opportunities to observe others ‘in role’ [can] provide an important bridge to the acquisition of skills.” *Id.* at 199.

learning.<sup>14</sup> Like Hoffman, she supported the idea of a gradual shifting of roles in which a student undertakes more responsibility as he is able.<sup>15</sup>

A major concern of nondirective supervision theory is the challenge of determining how to educate students about desirable standards for a practice skill without actually demonstrating the skill in a real case task, if the supervisor believes that demonstrating the skill herself would lessen students' experience of independent lawyering responsibility. Possibly as a result of this conundrum, descriptions of how to implement nondirective supervision sometimes reveal a directive agenda implemented by means of Socratic-style dialogue with between student and supervisor. This paradox was acknowledged by Shalleck in *Clinical Contexts*. Prof. Shalleck's models of student/teacher dialogue to review student case decisions involve questions, not dictated answers, yet are controlling in the traditional Socratic manner. She acknowledges that this effect is often intentional. "While any given interaction between teacher and student may have become very nondirective... in the sense of not leading to a particular answer or way of looking at things, the teacher was nonetheless both defining the educational agenda and making decisions in a self-conscious, directed manner."<sup>16</sup> In addition, clinicians may modify their actual practice of supervision to include some selective modeling.

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<sup>14</sup>"This application is not intended to replicate the apprenticeship or law clerk system, which may be successful over the long term in teaching skills, but does little to teach the ability to learn from experience." *Id.* at 200.

<sup>15</sup>Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986).

<sup>16</sup>Shalleck, *supra* note 1, at 179. Shalleck established what may be called the classical clinical theory about the balance between teaching and nondirective supervision, advocating that supervisors provide guidance while "separating herself from being the lawyer...[and being] careful about imposing her own view of the best case theory," at 178.. *See also* a critique of this practice in Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981).

As a result of this concern for teaching good exemplars of practice, some clinical scholarship has advocated a more varied approach to supervision practices. Peter Toll Hoffman advocates stages of supervision, with independent role assumption by the student delayed. While continuing to view supervision as on a one-dimension continuum measured by the amount of supervisor direction of the student and maintaining that “supervision is at the core of effective clinical teaching,” Hoffman recommended that a supervisor take the student in “stages” from a relatively dependent relationship to the supervisor, to a collaborative relationship “as between partners in a law firm,” to a final stage of relative independence in which the supervisor confirms student decisions, rather than dictating them.<sup>17</sup>

Others also support collaboration in clinical pedagogy, but as a laudable goal, not just an interim step. Gary Palm advocated active and equal collaboration between faculty attorneys and clinic students, asserting that such collaboration should be the foundation for clinical scholarship. “One of the great strengths of clinical education is that clinical teachers and students collaborate on every matter that emerges from the clinics...at [the University of Chicago clinic], for example, every case, project, and activity must be the *joint responsibility* of an attorney and a student...” (italics in original).<sup>18</sup> The student is integrated into all case activities, and that either faculty member or student could perform the public lawyering role. Even earlier, Frank Bloch, applying principles of adult or “androgical” education to clinical legal education, promoted a primarily

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<sup>17</sup>Hoffman, *supra* note 15, at 307. See also Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277 (identifying the relationship between various supervisory teaching methods and educational goals.)

<sup>18</sup>Gary Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction*, 1 CLINICAL L. REV. 127, 128 (1994). This is still the format for the Chicago clinic. Email exchange with Clin. Prof. Mark Heyrman, August 31, 2005. To the author’s knowledge, attorney/student collaboration is rare among in-house clinics.

collaborative approach, emphasizing the “development” of a “co-counsel relationship” between attorney-teacher and student, in which “student and teacher work together at every step in the case” in an “atmosphere of mutual inquiry.”<sup>19</sup>

The most fundamental criticism of clinical education nondirectiveness doctrine has come from Brook Baker. Citing extensive research on what expertise consists of and how novices learn from experts, Baker identifies key features of the replication of expertise in any field of specialized practice: the novice observes and assists an expert, and has opportunities for increasingly complex work under the expert’s guidance.<sup>20</sup> The core feature of acquiring expertise is hands-on experience in a real world context and respectful integration into the workplace. The role of the expert is to provide a model for the student, help select assignments, and keep the student busy. The expert instructs the novice before the task and guides her during

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<sup>19</sup>Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 346 (1982). Bloch also asserted at that time that only law school faculty can accomplish this goal. “Placing students outside of a law school controlled setting in which they are likely either to work unattended or to be limited to observing the ‘real lawyers’ in the office dilutes the educational value of having students represent actual clients. Both of these circumstances are totally at odds with the type of shared responsibility for learning that andragogical theory envisions.” *Id.* at 348-349. As an advocate for the educational value of externship, it is tempting to deny that unmonitored work or an experience limited to observations ever happens. A fairer response to Bloch is that supervision by lawyers in external placements is often excellent, that some observation or independent work has significant educational value, but that supervisory feedback to students in externship settings does not meet the exacting standards espoused by clinicians often enough that training students to seek assignment clarification and feedback from their supervisors has become a common part of the recommended classroom component for externship. See, e.g., OGILVY ET AL, LEARNING FROM PRACTICE, *supra* note 5, at 29-47.

<sup>20</sup>Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLINICAL. L. REV. 1 (1999) [hereinafter Baker, *Learning to Fish*]. See also Baker, *Beyond MacCrate*, *supra* note 5; and Daniel J. Givelber, Brook K. Baker, John McDevitt, & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Externship*, 45 J. LEGAL EDUC. 1 (1995) [hereinafter Givelber, *Learning Through Work*] questioning the significance of supervision style in successful student experience with “ecological” learning in the work setting.

performance in a relationship he describes as “directive with pluralism.”<sup>21</sup> That is, novice and expert engage in “collaboration and...dialogue...in which the expert shares information and expertise in such a way that it empowers a student to act and intensifies the student’s sense of engagement.”<sup>22</sup> Theorizing and “post-mortem” discussion are of relatively minimal importance, and there is no “magic minimum degree of contact” between expert and student.<sup>23</sup>

Surveys of clinicians reveal the challenges posed by a standard of nondirective supervision. James Stark and others surveyed clinicians in 1989 as to what they believed and as to what they actually did in regard to directiveness in supervising clinic students.<sup>24</sup> Nearly all clinicians surveyed believed that directiveness was an important issue, yet while most believed nondirectiveness to be the ideal, a significant minority believed it was appropriate to be relatively directive.<sup>25</sup> In addition, many of those who professed belief in nondirectiveness found

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<sup>21</sup>Baker, *Learning to Fish*, *supra* note 20, at 66. A striking image of what Baker asserts as the core of the expert/student relationship is captured in the article’s opening story, the source of his title: his childhood recollection of his father’s hand on his own, moving his fishing rod slowly until the boy felt the sinker hit the stream floor and knew—really, felt—how to position his rod for flounder. The learner’s experience with the skill to be learned was contextual, immediate, and closely guided at the moment of performance, when guidance was meaningful. The teacher’s direction did not interfere with the student’s truly hands-on experience. To the contrary, it made the student role assumption as a flounder fisher become possible.

<sup>22</sup>*Id.* at 68. Other concepts that Prof. Baker defines as supported by evidence about learning expertise are enlisting participation of the novice, contextualizing performance and being task-centered, and modeling performance in order to explore exemplars of performance.

<sup>23</sup>*Id.* at 57.

<sup>24</sup>James H. Stark et al., *Directiveness in Clinical Supervision*, 3 B.U. PUB. INT. L.J. 35 (1993). Directiveness was studied in regard to student decisionmaking at particular moments of a case. The dimensions examined were: 1. When students should make decisions and how supervisors interact with them; 2. Information-sharing; 3. Task allocation/performance. *Id.* at 40.

<sup>25</sup>In regard to tactical decisionmaking, a little under 2/3 of the Stark survey respondents were scored as primarily nondirective and over 1/3 were scored as directive, with somewhat smaller numbers nondirectives in regard to ethical questions. *Id.* at 42.

they nevertheless were sometimes more directive than their ideas about supervision would seem to permit.

The primary reason for these conflicts among clinicians or between opinion and action was a commitment to providing high quality client service. Respondents were concerned that nondirectiveness meant clients were served by the unavoidably modest abilities of most students, reducing the quality of service below that which the supervisor believed could have been delivered. A majority of the surveyed clinicians stated that clinic clients were entitled to the supervisor's best lawyering, not just the students' best lawyering effort.<sup>26</sup> A similar majority even of the "nondirectives" disagreed with the statement that teaching was more important than client service if the two goals conflicted.<sup>27</sup>

Therefore, many clinicians acknowledged actual interactions with students that appear to conflict with their expressed belief in nondirectiveness. A significant number "rarely or never" allowed students to make decisions they personally disagreed with.<sup>28</sup> A larger majority edited written work extensively.<sup>29</sup>

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<sup>26</sup>*Id.* at 58.

<sup>27</sup>*Id.* at 57. The teaching/quality representation conundrum assumes that a supervisor's intervention to contradict or direct a student might improve representation but at the same time diminish student learning. There is another way to look at the relationship between teaching and high quality representation; consider the possibility that teaching a high standard of practice could best be done by directive means. For another point of view on the service/teaching conflict, see David F. Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507 (1998) (advising that supervisors avoid establishing a lawyer-client relationship with clients represented under a student practice rule "in order to avoid a constellation of inconsistent expectations.") *Id.*, at 1513.

<sup>28</sup>*Id.* at 59.

<sup>29</sup>*Id.* at 49. Experts on teaching legal writing are divided on the pedagogical value of offering a student examples of edited text, as opposed to limiting comments to recommendations on how to edit. Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1158-1162 (1999). A frequently used text advises faculty

Beliefs about how students learn skills best also might have affected respondents' beliefs about appropriate supervision. One survey question explored this topic. The responders acknowledged diversity of learning styles. Nearly half of all respondents answered the question of how "most people learn to perform tasks best" by agreeing with the statement that learning styles varied too much to determine one "best" way to learn. Nevertheless, the largest single answer chosen by those who selected from a short list of alternative learning methods, 31%, was performance and reflection ("they perform the task in question and then reflect on the success or failure of their performance"), a good description of how students are expected to learn from nondirective supervision, although it also is consistent with other ways for students to approach learning new skills. A healthy 19% selected "clear instruction" ("they receive clear instruction on how to perform the task in question before doing it) which seems more consistent with relatively directive supervision.<sup>30</sup>

In a more recent survey conducted from 1999-2003, Dunlap and Joy found that newer clinicians are still quite concerned about supervising students properly.<sup>31</sup> The surveyed clinicians reported that "being non-directive" was one of the "hardest things about clinical teaching," while they made no comments regarding other supervisory methods.<sup>32</sup> Their responses suggest that supervision is still being viewed as existing on a one-dimensional scale, defined principally by the degree of directiveness. The survey instrument itself did not seem to

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to limit rewriting to specific examples. Richard K. Neumann, *TEACHERS' MANUAL, LEGAL REASONING & LEGAL WRITING: STRUCTURE, STRATEGY, AND STYLE* (2001) at 215. Clinicians who rewrite extensively may be responding to deadlines that do not permit continued interaction with the student, or may not have the benefit of expertise in teaching legal writing.

<sup>30</sup>*Id.* at 60; 68, Appendix A, item 1.

<sup>31</sup>Justine A. Dunlap & Peter A. Joy, *Reflection in Action: Designing New Clinical Teacher Training Using Lessons Learned from New Clinicians*, 11 *CLINICAL. L. REV.* 49 (2004).

require a response specifically about the question of directiveness, but instead asked in an open-ended manner for reactions to the “hardest” and “easiest” aspects of teaching.<sup>33</sup>

**B. Externship and models of supervision** Scholarship about externships advocates supervisory commitment to education,<sup>34</sup> clear assignments<sup>35</sup> and “effective feedback,”<sup>36</sup> but generally does not prescribe a preferred supervisory style in the terms used by other clinical writing. In 1989, Janet Motley advocated that supervisors provide “guidance, not answers,” but also noted that students are “expected to observe the supervising attorney in the performance of lawyering tasks.”<sup>37</sup> Two published surveys about the structure of law school externships provide a helpful overview of these programs and courses, but neither was concerned with analyzing the teaching strategy of field supervisors.<sup>38</sup>

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<sup>32</sup>*Id.* At 63.

<sup>33</sup>*Id.*, at 57. Based on their discussion of the survey implications, Dunlap and Joy appear to share the perspective that degree of nondirectiveness is the principle variable defining supervision. However, the format of their open-ended questions invited subjective, freely chosen responses to questions such as “the hardest thing about teaching in the clinic is...” and “the easiest thing about teaching in the clinic is...” This seems completely unbiased. *Id.* at 101, Appendix A. Either the focus on the extent of “direction” is intuitively a central issue to any new clinical teacher, or this focus is being transmitted, even informally, to newer teachers by the community of established clinicians.

<sup>34</sup>Motley, *supra* note 5, at 214.

<sup>35</sup>OGILVY ET AL., *supra* note 5, at 32-36.

<sup>36</sup>Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L Rev. 163 (1989).

<sup>37</sup>Motley, *supra* note 5, at 214-215.

<sup>38</sup>Marc Stickgold analyzed the results of a study of externships in place in 1981-1982, examining the commitment of faculty resources, communication between placement and law school, and form of the class component. Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 211 N.M. L. REV. 287, 305 (1989). In 1996, Robert Seibel and Linda Morton reviewed data collected in 1992 concerning faculty interaction with students, the content of classes, and the uses of journaling and grades, and devoted significant attention to the then current issues concerning regulation of externships by authorities governing accreditation standards for legal education. Seibel and Morton, *supra*, note 7. A third study by Robert Seibel and J.P. Ogilvy is in progress.

In externships, supervision has a complex form, involving an “allocation of academic tasks”<sup>39</sup> that generally identifies assignment, preparation, guidance, and task-specific feedback as responsibilities of the field supervisor, while placing some aspects of supervision, notably critique of the legal practice and context, in the hands of the law school faculty. There is an ongoing vigorous debate among externship faculty about the proper relationship between faculty and field supervisors about how to establish and communicate teaching expectations.<sup>40</sup>

Though the practice of external supervisors has not been systematically studied, Cynthia Batt and I conducted and analyzed discussions with a small group of experienced supervisors in the Camden/Philadelphia area, and found that they appear to use a broad range of teaching strategies with law students.<sup>41</sup> In response to our questions about educational goals and teaching challenges, the external (27 respondents) and in-house (6 respondents) were overwhelmingly similar.<sup>42</sup> In regard to teaching methods, however, we saw some interesting differences in this

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<sup>39</sup>Stickgold, *supra* note 38, at 305. See also Harriet N. Katz, *Using Faculty Tutorials to Foster Externship Students’ Critical Reflection*, 5 CLINICAL. L. REV. 437 (1999); Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 579 (1990); Linda F. Smith, *Designing an Extern Clinical Program: Or as You Sow, So Shall You Reap*, 5 CLINICAL. L. REV. 527 (1999).

<sup>40</sup> At the AALS Clinical Conference April 30-May 3, 2005, a session of the Externship Working Group was devoted to a discussion of improving the practices of field supervisors. Views ranged from those who only approve placements with supervisors who have been individually trained and certified to those who approve externships based on written descriptions provided by students, many of whom have located their own placements. Some faculty use lengthy and frequent site visits to monitor supervisor practice and to set an example of supervision style in the course of their comments. Others asserted that site visits were not a valuable use of their time as compared to working with the students on campus.

<sup>41</sup> Batt & Katz, *supra* note 11. Between July 2002 and November 2002, in approximately one hour sessions, we spoke with seven judges, seven judicial clerks, thirteen practicing attorneys who supervise students in field placement settings, and seven supervisors of in-house clinical programs at Philadelphia-area law schools.

<sup>42</sup>We asked each interviewee what they tried to teach, how they tried to teach, and what challenges they faced. We summarized the educational goals they named as conscientious

small sample. All of the practitioners and most of the judges cited “modeling” as a valuable tool to demonstrate skills such as interviewing and values such as empathy; students were nearly always asked to observe one or more skill performances by an attorney, conducted in real cases, not simulations. Several of the clinicians also stated they used “modeling,” however, they used the term to refer to relatively discrete examples of skills, usually simulated. About half of the judges and practitioners, but none of the clinicians, identified “observation” of practice skills by the students as a teaching method. Many of the judges and practitioners, and one of the clinicians, stated they identified providing “careful explanation of assignments” as part of their teaching responsibility.

Why might there be differences between clinicians and externship supervisors in their attitudes about best teaching practices?

At an agency or chambers in the community a supervising attorney may be less likely than school-based clinics to risk compromising client service for the purpose of student experience, since the agency purpose is defined by service to the client(s) they serve, not by education of the students they accept as volunteers. In the Rutgers program, Externship supervisors are in the public sector – judges, prosecutors, state or federal agency lawyers, legal services and so forth. While they are interested in student education, a factor considered in our

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approach to work, empathy to clients or litigants, and appropriate standards of behavior. The primary challenges they cited were the difficulty of assessing and communicating issues for individual students in the abbreviated experience of clinic, the conflicting demands on their time, and the difficulty of working with some students. *Id.*

approval of their placement, their primary mission is to fulfill a statutory or even constitutional duty.<sup>43</sup>

Primary attention to the mission of the agency is one of the most valuable educational characteristics of externally sited clinics, which expose students to the nuances of those public missions, as well as to the professionalism, the skills and values, of lawyers in public service. Those goals would be unattainable without a broader supervisory repertoire, including modeling practice standards and collaborating with students, which is also a kind of modeling of lawyer reasoning.<sup>44</sup> That is, when an extern sits in on attorney tasks such as witness preparation or agency processes such as case review meetings, she is learning how skills are implemented in the precise context of that practice setting.

As reflected in their journals and statements of individual learning goals, externship students often concentrate on this context-rich potential of the externship experience. While externships do provide an opportunity to improve skills and examine personal development of the student, educational goals for an externship student frequently extend beyond personal

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<sup>43</sup>This is not to suggest that in-house clinic attorneys do not recognize their duty to provide professionally responsible and competent service to clinic clients, but that their own discussion of this issue acknowledges the struggle to set and maintain standards while protecting student autonomy.

<sup>44</sup>Support for the simultaneous importance of collaboration and student responsibility appears in the writing of the late influential education scholar Howard Gardner. HOWARD GARDNER, *THE UNSCHOOLED MIND* (New York, 1991). Gardner's insights into how students learn a discipline resonate with regard to legal experience. In his view, education for understanding of an expert domain requires immersion in "the central problems of the discipline," with attention to the individual process of learning. *Id.* at 237. "Of their various purposes, I consider especially crucial the notion of building up the student's own sense of responsibility— for learning, for maintaining progress, for devising and carrying out a meaningful network of projects or enterprises, and for making it a natural habit of mind to reflect on her progress." *Id.* at 242. He also stresses collaboration with the teacher/expert: "If students observe their own teachers

development to include understanding the legal context. For example, student goals often include learning the norms, style, and career possibilities, as well as the substantive law, of a particular practice domain such as criminal law or equal employment practice. Consistent with those goals, externship provides these students the chance to become immersed in the totality of a legal practice in context – its caseloads, reputation, artistry and challenges - by working closely with, observing, and talking with attorneys who are experienced in that practice setting.<sup>45</sup>

Another significant influence on the supervision choices made by external supervisors may be their personal experience with the traditions of apprenticeship under which they themselves were successfully mentored.

I believe that it is for at least these reasons – agency responsibilities, student educational goals, the types of work assigned, and attitudes of supervisors – that external supervisors embrace the use of modeling, observation, and collaboration, in a dynamic and active blend with student role assumption, as methods of promoting student learning from supervised student legal work.

## **II. Learning from reflection: understanding clinical supervision from a student perspective**

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involved in projects, reflecting on them, and keeping track of their own progress, such a model constitutes the most important lesson of all.” *Id.* at 241.

<sup>45</sup>Externship placements are not all of equal value. Every externship clinician may face the reality of the potential described here not being fulfilled in a placement where a student is not adequately included and mentored in the practice environment and the faculty then may need to intervene. Even so, given the goal of understanding the practice setting as it exists, even less than optimum practice examples meet important student learning objectives, so that occasionally a less than perfect opportunity is on balance an acceptable placement. This is especially true when career assessment or institutional critique is a major goal in the program. A student interested in environmental law practice will benefit from knowing how the EPA operates. A

To investigate student reflection on how they learn in their externship experiences, I asked students enrolled in the Rutgers-Camden Law School Externship Program in the Fall Term 2004 to complete a structured survey<sup>46</sup> and to answer open-ended questions.<sup>47</sup> I also identified comments about learning experiences in their journals.<sup>48</sup> The survey asked students how frequently they encountered five briefly defined models of teaching, and how valuable those experiences were. The models and definitions were: *Modeling* - the student observes an attorney for the purpose of learning how to perform a task; *Feedback* - the supervisor offers positive or negative comments about the student's work; *Collaboration* - the supervisor treats the student as a colleague in the process of discussing options; *Directive supervision* - the supervisor specifically instructs the student how to do a task; and *Nondirective supervision* - the supervisor asks the student to determine a course of action while not revealing the supervisor's opinion. In addition to these supervisory models, surveyed students were asked about learning from *independent reflection*, in which the student gains insight through thinking about experiences independently of a supervisor.<sup>49</sup> Subsequently, they were asked to use a journal

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student considering a career in prosecution should experience the chaotic reality of a busy District Attorney practice.

<sup>46</sup>Survey, Appendix A. Responses came from 44 students in the Fall term 2004. All quoted comments from surveys and journal excerpts are used with permission of the quoted students. Completed surveys and written permission notes are on file with the author. Every student asked gave permission and many expressed interest in the subject of the study.

<sup>47</sup>In November, 2004, students were asked to use their next journal entry to "Choose one event or task that you found very educational and describe your interaction with your supervisor in connection with this task in as much detail as you can." I have also selected illustrative quotations from student journals in some other terms, also with student permission.

<sup>48</sup>Rutgers Externship students write and submit journal notes reflecting on their experiences biweekly.

<sup>49</sup>*Independent reflection* was considered "extremely valuable" by nearly all students. However, this finding is hard to evaluate. Reflection was necessarily a step in the educational value of every type of teaching relationship, if for no other reasons than the fact that reflection was called

entry to describe in detail and reflect on a valuable learning experience. In addition to these responses, I noted examples of student reflections on the same topics from their regular journals and reviewed some journals from previous years.

### **A. Limits**

*Validity:* In several student survey responses, every method was used “frequently” and was “extremely valuable.” In a few, no method was particularly valuable. At least for these students, the survey may really have measured the student’s attitude toward learning in their externship, not the effectiveness of each teaching method. There was a very high correlation between how frequently a method was reportedly used and how highly it was ranked by students as valuable. Frequently used methods were nearly always ranked as valuable. Methods reported as “not very” valuable were almost uniformly “rarely” used. This could mean that supervisors skillfully chose the more valuable methods to use more often. Or supervisors may use more frequently methods with which they are more familiar, or skilled at using. Or students may appreciate the value of a method only after it is used often, or a method may be recalled as “frequent” just because it was so effective that it is more easily recalled, especially in this survey which asked for recall of events that had occurred over a period of several weeks. Student response may be measuring skill of the supervisor at using a method at that moment, rather than the intrinsic value of the teaching method.<sup>50</sup>

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for by the journal assignment and the survey instrument itself. This finding is offered as a sort of null hypothesis and is not further discussed here.

<sup>50</sup>Student comments on methods that were used but regarded as only “fairly” or “not very” valuable sometimes were candid enough to conclude that the method was poorly used in that instance. A student who was generally very positive about her experience at a government agency said in regard to feedback “everyone goes out of their way to thank me and tell me ‘good job.’ I always ask for feedback on things I could do better. So far nothing.” Survey response of

*Reliability:* In addition to the obvious question of whether one student's understanding of the survey's definitions match the next's, or correspond well to my definitions, a student may evaluate a method inconsistently depending on her general learning goals or her goal for the particular experience.<sup>51</sup> More significantly, questions have been raised about the accuracy of any student report concerning their own learning.<sup>52</sup>

Student descriptions of best learning experiences were fascinating, but sometimes hard to categorize by "teaching method" as I had defined them in the survey instructions. Focusing on their experience and not on their supervisors' decisions about how to guide them, the students often did not name a "method" of supervision. More commonly, they described a series of experiences from which I could discern one or more elements of a supervisory repertoire. In addition, student recollection of "best learning experiences" highlighted broad themes of motivation and immersion in the practice setting, regardless of explicit or implicit supervision method.

## **B. Overview of the survey results**

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student KD. In response to the questions about nondirective supervision, a student described her judge as sometimes beginning a meeting about a case she had researched in a nondirective manner, asking her to "assess how [the facts and law] fit together," only to interrupt to explain his views. "It would be more helpful if he would listen to my analysis and challenge me to explain my views." Survey of student SG.

<sup>51</sup>For example, a student gave this example of directive supervision: "judge demonstrated how to manage an attorney who had filed a very sloppy and unprofessional motion." Survey of student RB. This description neatly fits "modeling." It could also be accurately described as "directive," if the judge meant to teach by demonstration what the student was expected to do himself in the next similar situation.

<sup>52</sup>See discussion in Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 CLINICAL. L. REV. 337, 344 (1997).

Every method had substantial support as “extremely valuable,” with modeling, feedback and collaboration at the top of the list. Of 39 respondents in the survey, for any degree of frequency of use, the total number of students who ranked the method as extremely valuable were: Modeling 22; Feedback 25; Collaboration 26; Directive supervision 14; Nondirective supervision 18.

As discussed above in connection with validity concerns, there were a sizable number of students with highly positive evaluations of every method, as well as a few students who reported all-negative evaluations of teaching. Specifically, six students described every method as extremely valuable, and three more ranked four of the five as extremely valuable. At the other extreme, four students ranked no method higher than “fairly” valuable. Taking these students’ at their word, the all-positive externship experiences really did involve varied and consistently valuable teaching methods for a number of students. As a student attitude measure, these results tell us that enthusiastic students learn well from a range of methods.<sup>53</sup>

As noted above, value ranking of methods varied directly with the frequency of use. Students noting that a method was frequently used nearly always ranked that method extremely valuable. Methods used “occasionally” had rankings evenly divided between “fairly” and “extremely” valuable. “Seldom” used methods that were ranked at all (some students left the

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<sup>53</sup>Comparing the rankings set by other students at the same placements would be one way to sort out whether any one student’s response measured the student’s interest or the quality of supervision. This sample did not permit such an analysis. Of the 13 placements with all or nearly all positive students or all negative students, eight had only the one student, two more had only one additional student. Only one placement had a total of five students, two of whom were on the all negative list; two of the others, however, had two or three teaching methods ranked as “extremely valuable.” These numbers suggests a very tentative vote for the view that this survey measured student attitude at least as much as it measured supervisory effectiveness or skill. The

value rank blank, understandably, for “seldom/never” used methods) were scattered among the three choices, but generally weighted toward the lower two ranks of “not very” or “fairly” valuable.

Civil, criminal, and judicial placements had fairly similar patterns in identifying valuable teaching methods, with slight, but interesting differences. About half of the 13 criminal law placements students ranked modeling, feedback, and collaboration as extremely valuable. Eight of these students selected “modeling” in response to the question about “best” method. At least half of the 9 students in civil placements ranked modeling, feedback, collaboration and nondirective supervision as extremely valuable. Eight of these nine students ranked collaboration as extremely valuable, and 4 named collaboration as the best method. For the 17 students in judicial chambers, every method other than “feedback” was extremely valuable for between 9 and 11 students. “Feedback” was extremely valuable to 14 judicial students and was regarded as the most important teaching method. “Modeling” was close behind; as was made clear by their comments, judicial students were often referring to modeling by attorneys they observe appearing before their judges, as well as to judges themselves. The similarities among these three groupings suggest that various teaching models are effective no matter the placement. The modest differences among them, showing a slightly greater repertoire of teaching methods in civil and even greater in judicial placements, suggest further research, examining whether the closer the proximity of supervisor and student, the more varied, and possibly more effective, are the teaching methods.

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negative views of some students where others were positive may also suggest a poor fit between the particular student and the placement.

“Motivation” was a concept not intentionally measured, but frequently emphasized by students. Students frequently commented that supervisors’ interest in mentoring and their efforts to guide the student by any means resulted in increased student confidence, enlivening student interest in all aspects of the clinical experience. Each contact with supervisors increased student motivation and confidence by communicating to the student the importance of the student’s work.<sup>54</sup>

### **III. Getting the big picture: Immersion in practice**

In their free report about their best educational experiences at their placements, students did not limit themselves strictly to my definitions. The most common theme added by students was the eye-opening experience of overall immersion in a lawyering context. Student description of meaningful experiences often described exposure, both through observation and through participation, to an entire complex problem, resulting in in-depth understanding of the legal institutions or of lawyer skills. The impact on students emerging from the cave of book learning into the light of the real world institutions in which there are confused and upset people, sometimes unresponsive legal entities, as well as concerned officials, and ambiguous statutory schemes provides an important reason for clinical experience during law school.

A few examples of students learning from the totality of the practice context: A student investigating the background of a Section 8 housing issue learned “a new perspective into government statutes and [government] employee perception” and appreciated just why it was so difficult for some citizens to get information and assistance in regard to a government

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<sup>54</sup>For a discussion of socialization and context as important factors in forming professional

program.”<sup>55</sup> Journals from students at the US Attorney’s office<sup>56</sup> and at the EEOC<sup>57</sup> described their excitement at working on a single case from investigation planning through witness interviews and strategy meetings with the attorneys, as providing a comprehensive view of the trial process not previously available in their legal education. A student cited an experience of researching a challenging evidence question needed for an important trial, discussing his results with his supervisor as he made progress, reviewing the supervisor’s editing of the final version of the completed motion, observing the argument on the issue and discussing the results – a process that gave him both a significant experience of lawyering strategy and a thorough understanding of how evidence law affects trial practice.<sup>58</sup>

Over the years, student evaluations of externship experience have often discussed this theme, that being involved in a legal matter in a real practice context helps the student achieve a more integrated understanding of the law. In this research, these stories were offered in response to a question directed toward methods of teaching. These students emphasized the immersion itself, not the teaching methods, as the key educational feature of their clinical experience. At the same time, their descriptions often illustrated several teaching methods – notably nondirective independent work, feedback, collaborative discussion, and observation – used in the same case at various points.

#### **IV. Gaining confidence - feedback and modeling/observation**

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identity, see articles cited *supra* in note 20.

<sup>55</sup>Journal of student D.P.

<sup>56</sup>Journal of student P.A.

<sup>57</sup>Journal of student K.D.

<sup>58</sup>Survey response of student P.A.

## **A. Feedback**

Feedback was valuable for nearly all students in straightforward ways. A supervisor's constructive and detailed comments helped the student improve a range of skills, including legal analysis and writing, trial performance skills such as presenting witnesses, and strategic thinking such as how to plan to get evidence admitted or how to prepare a witness. Feedback on specific tasks was often embedded in other teaching relationships, such as collaboration that formed the larger framework for how a task was done.

When constructive feedback is offered as part of a general atmosphere of mentoring, it has an impact well beyond that of sharpening skills. Here is an excerpt of a student's evaluation of her externship experience by a law student who was a nurse placed in a hospital general counsel office:

*I still have much to work on during my legal journey. However, I feel for the first time I have tools to rely upon and resources to revisit if challenges become overbearing. Earlier this summer, my supervisor called me into her office to review a memo...I began noting my many faults within legal writing (ambiguity, length, and weak transitions come to mind). Her response will always stay with me: "How would you know (about corrections we were revising) unless someone shows you? I have been doing this for years." ... her words allowed me to objectively step back and view my legal learning from a more realistic perspective. Of course I cannot yet know as much as a legal expert might, nor should I. Ironically, while the nursing profession is quick to accept [the idea of] stages of competency (novice to advanced beginner to learner to expert), the law seems to burden its students with impossible standards of expertise. It was necessary for*

*me to be reminded the process of learning is simply that: a process with stages of growth. This externship was the best thing I could have done; alone, it made my decision to attend law school worth it.*<sup>59</sup>

This student's reaction to feedback exemplifies how feedback contributed to the educational goal of "learning how to learn from experience." Her supervisor's thoughtfully offered review of her work was a key benefit of the work experience.

### **B. Modeling/observation**

"Modeling" is teaching by example. Modeling occurs intentionally and also with no apparent intention or possibly even awareness by the "model." As I learned from my students' choice of words when describing their learning experiences, from the point of view of the learner, this teaching method is "observation," a word that re-focuses on the observer and not the observed. Modeling is so pervasive a learning experience in all of life<sup>60</sup> that it is very easy to overlook, especially if we as educators are prone to overvaluing our own role.

An observation, or a series of observations, was frequently cited in the free report response about valuable learning experiences.

A student working for a judge described in detail how her judge "work[ed] the attorneys" in an effort to settle a case. In a series of separate meetings among the eight attorneys and five parties who were present, the judge evaluated, advised, and cajoled, figuring out who "she needed to sell," intermittently explaining to the student and the clerk her reasoning along with

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<sup>59</sup>Journal of student C.S. ( July 2004).

<sup>60</sup>"You can observe a lot just by watching." Yogi Berra.

her predictions.<sup>61</sup> As a result of being permitted to view this ordinarily highly confidential proceeding and to discuss her impressions with the judge, this student learned how attorneys need to prepare for settlement discussions, as well as the impact of the judge's influence on this important negotiation context.

A student working for a prosecutor wrote about the development of a plea bargain, noting her supervisor's thorough preparation for trial, candid conversations with the defense attorney, discussions with the student about sentencing options, the process of reaching agreement, and the practical realities of entering the plea, and finally, the prosecutor's compassionate attention to the feelings of the victims. The student concluded: "...I learned about the process of plea-bargaining...the intricacies of Megan's Law...what an AP does to prepare a case for trial and how the office reaches out to the victims..."<sup>62</sup>

Here is an example from a student who graduated two years ago:

*I finally understand how big a part the personal dynamics of the key players in the court system influence how and when justice gets done. Take for example the PD Marcia Soast. She has been in the public defender's office for well over twenty years and she comes off as fair but no-nonsense. I watch her interact with her clients, and they seem to respect her judgment and trust her advocacy. This trust is most apparent when the judge questions clients to get a factual basis for their guilty pleas. When the judge asks her clients "did your attorney explain..." "Are you satisfied with the explanations and advice provided by your attorney" Marcia's clients always give more than yes or no answers.*

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<sup>61</sup>Survey response of student A.H.

<sup>62</sup>Journal of student S.B.

*Today, a defendant said that he was very happy with Marcia's services because she really listened and explained everything. Another time, Marcia, Phil and I were waiting for the elevator and one of Marcia's former clients stopped Marcia to say hello and give her a hug. Marcia asked her how the rehab program was going and the woman said it was going well. She thanked Marcia for all she had done...I was surprised and I'm not sure why. When I think of most public defenders I've seen since I started...they are the beleaguered, harried prototype...hurrying to the next client with just enough time to read the file and remember the name, maybe. It is heartening to see that the system is working on this level, even if not all the time. It helps to alleviate my fears that defendants are "victims" of the system.*

Did you guess that this thoughtful observation was written by a student who was working for the Camden County Prosecutor?<sup>63</sup> A good example of unintended modeling, of a thoughtful student learning from observation of someone plainly not her "supervisor," yet providing a meaningful lesson.

Values, as well as skills, are also learned by others' example. Here's a recollection from my experience as a supervisor in an in-house clinic. My student and I have left a meeting along with the opposing attorney and are chatting on the sidewalk. We represented a mom and her children, in a child protective services case. He hails a cab to get to the airport, I ask if he is again on his way to Pittsburgh, and he says, yes, he is still dealing with the problems there, and takes his leave. The student is confused, asks if the lawyer also represents kids in Pittsburgh.

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<sup>63</sup>Journal of student E.B. (2002). "Who is wise? He who learns from every man." THE ETHICS OF THE TALMUD: SAYINGS OF THE FATHERS, Chapter IV, verse 1, R. Travers Herford, ed., 1945).

She had no idea that his paid position is in-house counsel to a major corporation, specializing in labor relations. He represents kids pro bono. His concentration and preparedness at the family service plan meeting demonstrated how seriously he took his duty to assist in providing legal services to those in need.<sup>64</sup> The look on my student's face told me all I needed to know about how this lesson sunk in.<sup>65</sup>

Similarly, students in any clinical setting often learn empathy for the human beings affected by the legal system. This process may be aided by a supervisor who guides the student toward an observation, like the judge who takes his clerks and students out to lunch and drives them through a rough Camden neighborhood, pointing out where the defendants in their criminal cases come from. Or the reality of the human dimension of legal cases may strike the student from his own independent observation, like the student prosecutor who saw a 20 year old murder defendant in the hallway with his parents "sobbing..I imagine scared to death knowing that he was about to go in and testify, really, in an attempt to save his own life...we better be certain

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<sup>64</sup>RPC 6.1, *Voluntary Pro Bono Publico Legal Service*, ABA Model Rules of Professional Conduct, [http://www.abanet.org/cpr/mrpc/rule\\_6\\_1.html](http://www.abanet.org/cpr/mrpc/rule_6_1.html); American Bar Association, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, 214-215 (1992).

<sup>65</sup>Another story: I once took my University of Pennsylvania clinic students to a Family Practice Section program of the Philadelphia Bar Association. The meeting featured a Penn sociology professor who had written a book about the impact of divorce on children, with a commenting panel consisting of a Family Court judge before whom several of my students had appeared, and an appellate judge who has written significant family law opinions. I assigned some chapters of the professor's book. I wanted the students to see practicing lawyers and judges engaging in thoughtful discussion of the meaning of their work, I wanted them to realize they should plan to continue to be involved in such bar activities, in order to endeavor to improve the profession and the practice of law. I thought it was important they see practitioners and judges modeling this effort.

when we put a kid on trial...that he is the right one, or...that a reasonable jury would say he's the right one."<sup>66</sup>

## **V. The challenge of role assumption - Collaboration and Nondirective Supervision**

### **A. Learning “under fire” - Nondirective supervision**

At its best, nondirective supervision requires students to work at the edge of their comfort zone, absorbing the substantive and emotional lesson of a lawyering task. Students in this study frequently praised experiences in which they took primary responsibility for decisionmaking in all or part of a legal case.

A student at a prosecutor's office wrote a brief in regard to a municipal appeal taken by a defendant, focusing on the standard of review (de novo but only on the record below, in this forum), the evidence, and countering the defendant's effort to supplement the record. The student was in charge of selecting the key legal points and fashioning his arguments. The student handled the initial appearance in court, where the court improperly, as he described it, allowed an argument not based on the record, despite the student's best argumentative effort. This appearance “under fire” as the student put it, taught him that “you can never be too prepared and that judges are not infallible.”<sup>67</sup> Those invaluable lessons were taught powerfully by role assumption, putting the student directly in the hot seat. In this case, role assumption was achieved very effectively by nondirective supervision.

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<sup>66</sup>Journal of student T.W.

<sup>67</sup>*Id.*

Students who found nondirective supervision valuable also valued other methods, as well. For example, a student at a government agency who had stated that “modeling” and “collaboration” were the methods that contributed the most to her professional development, also responded very positively to the question about nondirective supervision: “I prefer to get general guidance...and then be allowed to figure it out on my own.”<sup>68</sup>

Role assumption with nondirective supervision was sometimes achieved after a preparatory experience in which student was instructed directly through the steps of a similar legal task. For example, a student working for a hospital general counsel described his best experience as being guided step by step through the evaluation of a contract proposal, then assigned a contract to evaluate on his own.<sup>69</sup> Another student was guided step by step through the concrete steps of developing a new case file, and provided samples of other motions, and at that point was assigned a new case for which she would determine the law and the relevant facts.<sup>70</sup>

#### **B. “They took me seriously” – Collaboration**

Collaboration is a work process in which participants share ideas and feedback concerning a task, often a large and unstructured task such as strategic planning, but also more finite tasks such as the arguments to be used in a motion. The working participants both feel responsible for the work and are genuinely interested in each others’ ideas and respectful of different points of view, which they anticipate will improve the work outcome. Student responses in this study suggest that the participants need not be equals in the work setting, so

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<sup>68</sup>Survey response of student H.D.

<sup>69</sup>Survey response of student E.S.

long as each participant feels permitted to speak and be heard and is correspondingly listening to the others. Collaboration between skilled attorneys and students holds the additional promise of modeling the collaborative process that will be valuable for the student throughout her career as a practicing attorney.

The question in regard to clinic students has been whether students really can collaborate meaningfully with their supervisors, who significantly outrank them. Will the student, in awe of his supervisor, defer every point? Will the supervisor, assuming superiority, not permit dissent? In a graded clinic, will the student fear consequences for his evaluation?

In this study, students reported meaningful participation in collaborative decisionmaking process together with supervising attorneys, apparently without intimidation or distortion based on rank. In fact, they often emphasized the confidence-building impact of this kind of work process with superiors. Students also approached the collaborative process with confidence already established in part from how the student was prepared for that process. Collaboration appeared to be a final step in a process that began with nondirective or directive guidance concerning the task at hand.

Non-directive task assignment was sometimes an effective way to begin a process toward collaboration. One student in a legislative placement was asked to take materials and use her judgment to draft an amendment to state law. She was then asked to prepare for and participate in a meeting with professionals from several departments of her agency, the State Police. The meeting involved collaborative give and take on ways to refine her proposals. She reported that this was an excellent experience in understanding how to work on such complex matters, and

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<sup>70</sup>Survey response of student K.S.

encouraged her to be confident about the value of her work<sup>71</sup> Another student prepared a memo on the issues of a case based simply on the instruction to read the file and figure out what the issues were, briefed a three judge panel, and discussed with them what else should be researched in a conversation she described as collaborative.<sup>72</sup> A student at the U. S. Attorney's office was asked to prepare a trial notebook, to use her own judgment as to how to organize material that would efficiently summarize all anticipated evidence and arguments and be used as a guide throughout a scheduled trial. When she presented her work to her supervisor, she and her supervisor discussed each aspect of the resulting plan and considered whether additional or other options should be considered for inclusion in the trial plan. Roleplay was also used in this task, as the student was asked to play the defense attorney as a way to vet anticipated arguments.<sup>73</sup>

The collaborative experience of these and other student experiences built on the preliminary independent work of the student, which enabled the student to be prepared both in substance and in confidence, for collegial, even if not completely equal, collaboration. Students sometimes commented in their survey response or journal entries that their own work preparation was significant in such a learning experience. Nondirective instruction was used to start a student on the task to be accomplished. When the student returned to the supervisor with an initial product the next step was a more or less equal exchange of ideas. This collaborative step reinforced the student's role assumption. It appears to contrast with the Socratic dialogue prescribed in the clinical literature about nondirective supervision in which the student reports

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<sup>71</sup>Survey response of student H.S.

<sup>72</sup>Survey response of student J.A. This student later observed the trial and discussed the case with one of the judges.

<sup>73</sup>Journal of student R.F.

her work and her supervisor continues a nondirective role by declining to contribute as a partner with the student, instead staying in a professorial role.<sup>74</sup>

Some students described experiences that appear to be immediate collaboration, not preceded by other steps; I believe that those examples do not contradict the general observation that collaboration was achieved after other stages of supervision. One student at a government agency was asked to review and comment on a supervisor's draft of a brief and to help the supervisor moot the argument.<sup>75</sup> While this was collaborative in nature, a third year student from Rutgers has had experience in moot courts. This task moved the student toward collaborative work by building on an existing student skill. Another student prosecuting a case discussed with his supervisor how to investigate the defendant's self-defense claim, and later, how to integrate the newly found information into the case.<sup>76</sup> This student had volunteered at his placement during the summer preceding his third year enrolment in externship, so his relationship with his supervisor had progressed to a stage where collaboration was possible.

## **VI. Reflecting on experience - allowing collaboration and modeling to enrich clinical pedagogy**

What would convince a skeptical reader, now assured that externship students learn wonderfully from these varied methods of supervision, that in-house or hybrid clinics could enrich their pedagogy, and not damage it, with collaboration and modeling? Evaluate this

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<sup>74</sup>Shalleck, *supra* note 1, see student-supervisor dialogues at 117-123 and 133-136, and discussion of how the supervisor participates in this dialogue throughout the Article, particularly at 146-149, 161, and 178-182.

<sup>75</sup>Survey response of student P.S.

question as a lawyering strategy would be evaluated. First, what are the educational goals? The educational goals for clinical education include the students understanding the lawyer's role and learning to reflect on practice, understanding and becoming personally committed to the ethical and practical requirements of a high standard of professional practice.

Second, examine whether the goals are being met by the teaching method being examined. In the student experiences reported in this Article collaboration and modeling, along with nondirection, feedback, contextual immersion and encouragement, produced powerful learning moments. Students reported an understanding of how to continue learning, more integrated understanding of the legal system, thoughtful exposure to complexities in case strategy decisions, direct experience with client-centered advocacy, practice at communication and collaboration with other professionals, awareness of empathy for clients and other litigants, and recognition of the varied roles of a judge. Students exposed to these varied teaching methods stated that their experiences increased their motivation and confidence, factors which are likely to promote further learning and reflection on experience. These externship experiences suggest that students continue to be thoughtful learners when exposed to practice examples and collaboration with supervising attorneys, at least when such strategies occur in the context of the student's own active participation in the legal task and when reflection is encouraged by faculty.

Third, examine what can be discerned about the connection between the goals that were achieved and the methods used. It may help the evolution of clinical thinking about varying types of supervision to examine carefully the strengths and limits of each method. For example, I believe that some of the success of nondirective task assignment comes from the room that the

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<sup>76</sup>Journal of student T.W.

independent process of determining a course of lawyering action leaves for initiative. Initiative, independently generated work, can create better understanding due to the problem-solving thought process itself, as well as result in providing a sense of ownership of the resulting learning. As described by my students, collaboration can also leave room for individual involvement and initiative. As already discussed above, nondirection is limited in ways to present convincing exemplars of good practice; observation/modeling, along with discussion with the supervisor, can not only fill that gap, but do it in a way that is likely to have a strong impact on the observer.

In regard to matching goals and methods, compare ways to travel in a foreign country, which may be analogous to a student learning to be a lawyer. I loved the feeling of accomplishment becoming reasonably competent at navigating the historic part of Florence on foot, the sense of ownership of the process when, seeing Brunelleschi's crucifixion sculpture, I decided that I had to compare it to Donatello's, and immediately walked to the church with that statue. I can also report that I spent several days in Tokyo and while I did not see everything I planned to see, I never actually got lost. If my goal was to see everything a knowledgeable guide would suggest I ought to see, than a directed guided tour would have been better. If my goals were to see a lot of what I wanted to see, while enjoying the process of setting and accomplishing my sightseeing goals, then I am doing just what I need to do. That said, my favorite experience in Tokyo was experiencing kabuki theater, an experience to which I was explicitly directed, and at which I learned a great deal from an English audio program, which both translated selected speeches and explained the theater traditions as they unfolded. What is

important for a traveler or a student is to identify her goals and be flexible about the methods used to achieve them.

The lessons learned from reflecting on collaboration and modeling in externship could be implemented by clinicians in various ways. Consider this not-quite hypothetical clinical faculty discussion: what to do about students who procrastinate calling a new client, change client appointments to suit the student's paid work schedule at the last minute, or put off preparing a case. The faculty agrees that these students lack a sense of the urgency of taking control of a case, a critical aspect of a responsible professional role. They discuss how the supervisor should teach this student and also protect the client. Then the discussion turns to how such behavior can be prevented. Perhaps students would be responsive to an early educational training or an explicit protocol about exactly how quickly various tasks need to be done, which in some clinic case types could be realistically set out.<sup>77</sup> Students could also be taught by example, the way people learn most ethical lessons, by collaborating with supervising attorneys at the outset. Let students see how the supervisor handles a case, discussing issues of urgency and professional responsibility as the case develops.

Clinical scholars have acknowledged that it is sometimes necessary to model skills for a student<sup>78</sup>, or to establish the educational agenda<sup>79</sup>, or conclude that an acceptable standard of quality of client service requires additional guidance of students.<sup>80</sup> Experience reported by the students cited here suggest that these efforts can be explicit and unapologetic.

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<sup>77</sup>This is done in writing in some otherwise nondirective clinics.

<sup>78</sup>Kotkin, *supra* note 2.

<sup>79</sup>Shalleck, *supra* note 1.

<sup>80</sup>Stark et al, *supra* note 24, at 62.

## Appendix A

### Survey on teaching methods in Externship

Placement \_\_\_\_\_ Week(s) of \_\_\_\_\_  
Name \_\_\_\_\_

#### **Modeling:**

*Did you observe your supervisor or another attorney perform a lawyering task for the purpose of learning how to perform that task?*

Seldom/never\_\_\_ Occasionally\_\_\_ Frequently\_\_\_

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

#### **Feedback about your performance or work-product**

*Did your supervisor offer you feedback (positive or negative comments of specific aspects on your performance or on written work)?*

Seldom/never\_\_\_ Occasionally\_\_\_ Frequently\_\_\_

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

#### **Collaboration**

*Did an attorney treat you as a colleague (relatively equal “give and take” in discussing options) in the process of considering and choosing among options for action?*

Seldom/never\_\_\_ Occasionally\_\_\_ Frequently\_\_\_

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

#### **Directive supervision**

*Did your supervisor instruct you how to do a particular task?*

Seldom/never\_\_\_ Occasionally\_\_\_ Frequently\_\_\_

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

**Nondirective supervision**

*Did your supervising attorney ask you to determine a course of action (attorney possibly asking questions designed to help you clarify your thinking, but not revealing his or her own opinion as to the best course of action)?*

Seldom/never\_\_\_ Occasionally\_\_\_ Frequently\_\_\_

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

**Independent reflection**

*Did you gain insight independently (without input from a supervising attorney) as a result of thinking about the work you are doing or the lawyers you observe? (Note there are two subparts to this question.)*

*A. Supervisor directed you to the experience that you reflected on*

Seldom/never\_\_\_ Occasionally\_\_\_ Frequently\_\_\_

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

*B. You sought out the experience on your own*

*In your judgment, how valuable was this as a learning experience?*

Not very\_\_\_ Fairly\_\_\_ Extremely\_\_\_

*Description and comments:*

**Your overall evaluation of teaching methods**

What experiences or teaching methods described above contributed the most to your professional development?

Does your supervisor seem to take a personal interest in teaching law students?

Any other comments?