Chapter 1

CLINICS AND THE LAW SCHOOL CURRICULUM

Casebook-based law teaching, with its exclusive focus on the study of law through theory and doctrine, dominated legal education for the better part of a century before law schools began to develop clinical programs in the late 1960s and early 1970s. Already in the 1920s and 1930s, a few law schools, including Duke, the University of Southern California, and the University of Denver, set up mostly student-run legal aid clinics. The idea was to give law students some opportunity for practical training, but those clinics were not part of the regular curriculum. A small group of law teachers saw a greater value to clinical education and began to make the case for including clinical instruction in law schools in an effort to make law study more directly relevant to the practice of law. One prominent member of that group was Professor, later Judge, Jerome Frank, who tried to start a dialogue in the 1930s on the value of practice-based training for law students. The following excerpt is from his classic article in which he sets up and answers what now seems to be an obvious question: why not a clinical lawyer-school?

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

I

The method of teaching still used in some university law schools (and accepted by them as more or less sacrosanct) is founded upon the ideas of Christopher Columbus Langdell. It may be said, indeed, to be the expression of that man's peculiar temperament.

Langdell unequivocally stated as the fundamental tenet of his system of teaching *"that all the available materials . . . are contained in printed books"*. The printed opinions of judges are, he maintained, the *exclusive* repositories of the wisdom which law students must acquire to make them lawyers.

Now it is important to observe the manner of man who impressed those notions on American legal pedagogy for more than half a century:

When Langdell was himself a law student he was almost constantly in the law library. His fellow students said of him that he slept on the library table. At that time he served for several years as an assistant librarian. One of his friends found him one day in an alcove of the library absorbed in a black-letter folio, one of the year books.

"As he drew near", we are told, "Langdell looked up and said, in a tone of mingled exhilaration and regret, and with an emphatic gesture, 'Oh, if only I could have lived in the time of the Plantaganets!' "

He practiced law in New York City for sixteen years. But he seldom tried a case. He spent most of his time in the library of the New York Law Institute. He led a peculiarly secluded life. His biographer says of him: *"In the almost inaccessible retirement of his office, and in the library of the Law Institute, he did the greater part of his work. He went little into company."* His clients were mostly other lawyers for whom, after much lucubration, he wrote briefs or prepared pleadings.

Is it any wonder that such a man had an obsessive and almost exclusive interest in books? The raw material of law, he devoutly believed, was to be discovered in a library and nowhere else; it consisted, as he himself said, solely of what could be found in the pages of law reports. One of his biographers praises him because he sought *"the living founts"* of law in the works on the library shelves! Practicing law to Langdell meant the writing of briefs, examination of printed authorities. The lawyer-client relation, the numerous non-rational factors involved in persuasion of a judge at a trial, the face-to-face appeals to the emotions of juries, the elements that go to make up what is loosely known as the "atmosphere" of a case, — everything that is undisclosed in judicial opinions — was virtually unknown (and was therefore meaningless) to Langdell. A great part of the realities of the life of the average lawyer was unreal to him.

What was almost exclusively real to him he translated into the law-school curriculum when, in 1870, at the age of forty-four, he became a law teacher at Harvard. The so-called case system (the "Harvard system" which the university law schools adopted and by which some of them are still largely dominated) was the expression of the strange character of a cloistered, retiring bookish man. Due to Langdell's idiosyncrasies, *law school came to mean "library-law".*

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A brief outline of the history of legal education in American universities is helpful as a preliminary to some tentative suggestions for changes:

It began with the apprentice system. The prospective lawyer "read law" in the office of a practicing lawyer. He saw daily what courts were doing. The first American law school, founded by Judge Reeves, in the 1780's was merely the apprentice system on a group basis. The students were still in intimate daily contact with the courts. Then (about 1830) came the college law school with teaching on the college pattern of lectures and text-books. This step is ordinarily pictured as progress. For the student now devoted full time to his books and lectures and the distractions of office and court work were removed. A more unpleasant story could be told: The student was cloistered; he learned of court doings from books and lectures only; the *false* aspects of theory could no longer be compared by him with the actualities of practice.

There followed the period when the leading law schools were dominated by the great systematic text-book writers, the makers of so-called (American) "substantive

law", substantive law which was divorced and living apart from procedure. The rift widened between theory and practice.

Then came Langdell. Noting his plea for induction, his efforts to avoid the glib generalities of text-books, one cannot help feeling that he was seeking obliquely and fumblingly to return to some limited extent to court-room actualities. But he was patently thinking of the lawyer as brief-writer and nothing more. Consequently, the material on which he based his so-called "induction" was hopelessly limited.

Ostensibly, the students were to study cases. But they did not and *they do not study cases.* They do not even study the printed records of cases (although that would be little enough), let alone cases as living processes. Their attention is restricted to judicial *opinions. But an opinion is not a decision.* A decision is a specific judgment, or order or decree entered after a trial of a specific lawsuit between specific litigants. There are a multitude of factors which induce a jury to return a verdict, or a judge to enter a decree. Of those numerous factors, but few are set forth in judicial opinions. And those factors, not expressed in the opinions, frequently are the most important in the real causal explanation of the decisions.

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The trouble with much law school teaching is that, confining its attention to a study of upper court opinions, it is hopelessly oversimplified. Something important and of immense worth was given up when the legal apprentice system was abandoned as the basis of teaching in the leading American law schools. This does not mean that we should return to the old system in its old form, that we want mere apprentice-trained lawyers or law schools which are merely "expanded law offices". But is it not plain that, without giving up entirely the case-book system or the growing and valuable alliance with the so-called social sciences, the law schools should once more get in intimate contact with what clients need and with what courts and lawyers actually do? Must we not execute an about-face and return to Judge Reeves' 18th century apprentice method, but on a higher, more sophisticated level?

II

To be more specific, the following ideas are recommended for consideration:

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*Suppose * * * that there were in each law school a legal clinic or dispensary.* As before indicated, a considerable part of the teaching staff of a law school should consist of lawyers who already had varied experience in practice. * * *

The work of these clinics would be done for little or no charge. The teacher-clinicians would devote their full time to their teaching, including such clinical work, and would not engage in private practice.

The law school clinics would not confine their activities to such as are now undertaken by the Legal Aid Society. They could take on important work for

government agencies or other quasi-public bodies. The professional work they would do would include virtually every kind of service rendered by law offices.

In this way, the students would learn to observe the true relation between the contents of upper court opinions and the work of the practising lawyers and the courts. *The student would be made to see, among other things, the human side of the administration of justice,* including the following:

(a) How juries decide cases. The factors that count in jury trials. The slight effect of the judges' instructions on verdicts. The hazards of a jury trial.

(b) The uncertain character of the "facts" of a case when it is "contested", *i.e.*, when conflicting testimony is introduced. The difference between what actually happened between the parties to the suit and the way those actual happenings can be made to appear to a judge or jury. The transcendent importance of the "facts" of a case. The inherent subjectivity of those "facts" in "contested cases". The inability to guess future decisions (even when the "legal rules" seem clear) because it is impossible to guess, before a suit has been begun, whether there will be an issue of fact, and, if so, whether conflicting testimony will be introduced, what judge or jury will try the case and what the reaction of that unknown judge or jury will be to that unknown testimony.

The student should learn that "legal rights and duties" are inextricably intertwined with litigation, — that, for instance, there is no such thing as "the law of torts" as distinguished from decisions in lawsuits, and that the so-called rules and principles of torts are only some among the many implements employed by lawyers in their efforts to win lawsuits.

(c) How legal rights often turn on the faulty memory of witnesses, the bias of witnesses, the perjury of witnesses.

(d) The effects of fatigue, alertness, political pull, graft, laziness, conscientiousness, patience, impatience, prejudice and open-mindedness of judges. How legal rights may vary with the judge who tries the case and with that judge's varying and often unpredictable reactions to various kinds of cases and divers kinds of witnesses.

(e) The methods used in negotiating contracts and settlements of controversies.

(f) The nature of draftsmanship: How the lawyer tries to translate the wishes of a client (often inadequately expressed by the client) into wills, contracts or corporate instruments.

What is intended is not that (as a scoffing neo-Langdellian recently suggested) the student should in his law-school days learn "the way to the post-office" or "the mechanics of the short-trial list". What is intended is that, almost at the beginning of and during his law-school days, the student should learn the very limited (although real) importance in the actual legal world of so-called substantive law and of so-called legal rules and principles. He should learn that "legal rights" and "duties" mean merely what may some day happen at the end of specific lawsuits. And that all so-called legal rules — including the so-called rules of substantive law — are "procedural"; *i.e.*, among the many implements to be used in the kind of fight, conducted in a court room, which we call "litigation". He should learn that judges are

fallible human beings and that legal rights often depend on the unpredictable reactions of those fallible human beings to a multitude of stimuli, including the rules, but also including the fallible testimony of other human beings called witnesses. The student should become aware of the slippery character of "the facts" of a case, when there is conflicting testimony, and of the marked importance of what happens in trial courts.

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Clinical education has been debated and reported on by major committees of both the profession and the academy since its "modern era" began to take hold in the 1970s. An important catalyst was Chief Justice Warren Burger's widely reported concerns, expressed after the Watergate scandal broke, about the competence and professional ethics of the practicing bar. He placed a fair amount of the blame on law schools and listed the rise of clinical courses, along with post-graduation skills training, as a hopeful sign for the future. *See* Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232-33 (1973). Picking up on that theme, the American Bar Association's Section on Legal Education and Admissions to the Bar appointed a task force on lawyer competency, which issued an influential 1979 report that examined the role of law schools in preparing lawyers for the practice of law. The report — titled "Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools" and known generally by the name of the Task Force chair, then-Dean of the Cornell Law School (and future President of the Association of American Law Schools) Roger Cramton — called upon law schools to engage more actively in professional skills training and not leave young lawyers to learn how to practice law at the expense of their first clients.

As noted by then-Dean of the University of North Carolina Law School, "the Cramton report emphasized the linkage of legal education within the academy to the ultimate delivery of high-quality legal services; stressed the responsibility of the academy in fostering greater competency; and suggested ways through which the academy could enhance training in 'practical skills.' " Judith Wegner, *The Changing Course of Study: Sesquicentennial Reflections*, 73 N.C. L. REV. 725, 730 (1995). "In this respect," Dean Wegner observed, "the Crampton report picked up the trail of the legal realists, particularly Jerome Frank, who had advocated the creation of 'clinical lawyer-school[s]' in both the 1930s and the 1950s." *Id.* at 730, n.24 (citing both Frank's *Why Not a Clinical Lawyer-School* article excerpted above and Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20 (1951), in which he revived his earlier critique of legal education. Still from the same article by Dean Wegner, 73 N.C. L. REV. at 729-30:

> The Cramton task force concluded that the historical practice by which young lawyers gained acceptable levels of competence in practice was no longer as acceptable as it had been in the past; skillful professional performance could indeed be improved by curricular reform within law schools; and

the practicing bar had a responsibility to assist law schools in undertaking such curricular reform by helping identify new resources needed to fuel such an endeavor.

The Cramton task force also offered more specific recommendations, including the following: (a) consideration of the full range of qualities and skills important to professional competence in reaching admissions decisions; (b) providing training in fundamental skills including legal analysis, legal research, writing, oral communication, fact gathering, interviewing, counseling, and negotiation; (c) modification of pedagogy to emphasize constructive work habits, attitudes, and values and to incorporate more small classes, cooperative work among law students, and alternative approaches to evaluation; (d) introduction of greater structure and coherence into the three-year law school curriculum; and (e) involvement of lawyers and judges along with traditional faculty members as teaching personnel. In short, the Cramton report emphasized the linkage of legal education within the academy to the ultimate delivery of high-quality legal services; stressed the responsibility of the academy in fostering greater competency; and suggested ways through which the academy could enhance training in "practical skills."

Around the same time, the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar and the Association of American Law Schools initiated a joint project aimed at developing guidelines for clinical legal education. A joint committee, chaired by then-Dean Robert B. McKay of NYU Law School, surveyed existing programs and prepared a set of guidelines, published in 1980, that could be used to assist law schools in either setting up new programs or evaluating existing ones. *See* Clinical Legal Education: Report of the Association of American Law Schools/American Bar Association Committee on Guidelines for Clinical Legal Education (ABA 1980). Following the lead of the Cramton Report, the committee provided further support for professional skills training in law school — but it stopped short of endorsing mandatory clinical education: "While the Committee believes that each law school must determine its own curriculum, the Committee also believes that each law school has a responsibility to provide its students with the opportunity to gain an understanding of the basic competencies required by lawyers in order to function in the attorney-client relationship." *Id.* at 11. The committee balanced its support for the professional and practice values of clinical legal education with a strong endorsement of the primacy of law schools' educational mission. Thus, while it defined "clinical legal studies" as "law student performance on live cases or problems, or in simulation of the lawyer's role, for the mastery of basic lawyering skills and the better understanding of professional responsibility, substantive and procedural law, and the theory of legal practice," *id.* at 12, it also made it clear that "[t]he primary purpose of clinical legal studies is to further the educational goals of the law school, rather than to provide service." *Id.* at 14. This view was carried over in one of the key the operational guidelines for law school clinics, which states that "[s]tudent caseloads should be limited quantitatively in accordance with the educational goals of the clinic and the demands which can justifiably be made on student time." *Id.* at 24 (Guideline VII E).

With the credibility reports that such as these brought to clinical education, Jerome Frank's vision of a clinical lawyer-school began to take hold as persistent cries went out for relevance — social and professional — in legal education. The going was slow, however, and there remained deep resistance among traditionalists in law schools and in the legal profession. In the following excerpt, Professor Amsterdam looked back at what he imagined would still be a resilient status quo fifteen years later, while charting the future for clinical legal education into this century.

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

Introduction

Clinical legal education offers students direct experience as lawyers working for social justice. Students learn about justice through the practice of poverty law; they bring justice to under-served communities by meeting essential legal needs; they affect systemic justice through strategic use of civil rights actions. In short, students play significant roles in delivering justice. Nevertheless, I am not at all sure that I am teaching enough about justice by merely ensuring that my students experience the fight for it.

A "justice experience" is too often like that trip to Paris: it was an exciting trip that one occasionally reflects upon and that provides fodder for good stories. It makes me interesting but not a Parisian. Mere exposure to substance is insufficient to train good lawyers. Relying on pure case-handling as the medium in which we teach about justice reflects a belief that we communicate values through our content choices rather than by engaging the student in the moral and ethical discourse about those choices. In the excitement and the constancy of the lawyering, we sometimes view ourselves as "providers of apprenticeships." Many of us would rather describe ourselves as teachers dedicated to justice. If we truly are going to fulfill our justice mission, we must determine what skills and content make our students more likely to be able to identify injustice and develop teaching interventions that will increase the probability that our students will acquire those skills.

I aspire to be a provocateur for justice. A provocateur is one who instigates, a person who inspires others to action. A provocateur for justice actively imbues her students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work toward a legal solution to that injustice. This article attempts to identify ways in which clinicians can be provocateurs. What kinds of interventions with students can make this happen? Are there particular kinds of cases that make such interventions more potent? How do we relate to our students as peers and experts in order to maximize the chance that they will be faithful trustees of justice? How do we teach students to recognize injustice when they see it, engage in meaningful analysis of the causes and potential cures for that injustice, and develop an abiding desire to use their legal skills to ensure that justice is done? How do we do this and still accomplish other pedagogical goals?

One of the special problems that clinicians face is the urge to try to do it all - often within the space of one semester of law school. We want our students to come away from the clinic with a more varied understanding of what it means to be a lawyer serving a client, with strong lawyering skills including negotiation, counseling,

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interviewing, and fact investigation. We hope to give them opportunities to develop their trial preparation and presentation of evidence skills and to gain an understanding of effective legal writing. On top of this, we want to expose our students to the deep injustices of poverty and abuse of power. We want to instill in them an abiding desire to use their legal skills to remedy these injustices and the wisdom to know the limitations of the legal system in effectuating comprehensive change in the conditions within which they operate. Needless to say, this is a set-up for failure.

Most of us have learned that we cannot do it all. Most of us have recognized that we cannot expect our students to leave our clinics with well-developed client and litigation skills. Instead we have developed teaching interventions that attempt to identify what the student's level of skill is and provide opportunities to improve. We have learned that if we can teach students, at best, how to reflect on their experience, engage in meaningful self-criticism and learn lessons on their own, then we have accomplished a great deal. We have launched the student on his way toward being that skillful lawyer we would like to produce. I think that this goal is a reasonable one, one that meets our students where they are, one that empowers them and at the same time, realistically reflects what we can do as teachers in that one semester course in clinic. I take comfort in understanding my limitations in training students in the technical skills of lawyering. It is a sign of my maturity. More importantly, I believe that operating with an awareness of this limitation has made me a much more effective teacher.

This article advocates a similar approach to our social justice agenda in the clinic. It is time we recognize that our success as social justice educators is not determined by how many Thurgood Marshalls or Marion Wright Edelmans we produce. We would be far better off if our students learned how to reflect on their experience, place it in a social justice context, glimpse the strong relationship between knowledge, culture and power, and recognize the role they play in either unearthing hierarchical and oppressive systems of power or challenging such structures. I call this "justice readiness." If we can move our students toward "justice readiness" through their clinical experience, then we should count that as success. It is then up to them what choices they make about the kind of lawyers they want to be. We have pulled back the curtain and dethroned neutrality.

Just as with differing levels of lawyering skills, our students come to us with differing awareness of social justice and differing levels of commitment. Our job is to become effective diagnosticians of our students' "justice readiness" and to employ a wide range of interventions that will enhance the likelihood that they will appreciate the role they play in promoting or inhibiting justice as they act as lawyers.

Therefore, this article is divided into two parts. First, I garner information from educational theorists on moral development and the evolution of higher order thinking skills. I translate these theories into a diagnostic mechanism for determining our students' "justice readiness." Then I discuss the process of critical reflection: a long-used technique for clinical teachers. At heart, critical reflection is the ability to identify and expose assumptions. Long-held but incorrect assumptions often stand in the way of real personal and political change. The ability to identify these assumptions in oneself and translate them into legal claims are key skills for a lawyer

committed to social justice. The article closes with practical teaching tips and examples of ways to develop these justice insights.

"Justice Readiness": A Developmental Approach

The first step in moving our students toward a commitment to justice is for teachers to understand that the ability to recognize injustice and participate in creative solutions involves a developmental process that usually occurs in sequence. First, a student must develop effective critical thinking skills. Critical thinking in the law is the ability to see that law is constructed rather than discovered. The law does not exist "out there" to be found; rather it is a reflection of a complex interplay of information, expertise, and value choice. Being "justice ready" takes critical thinking one step further: the student sees that she can play an active role in exposing the inherent biases in law. She can use that understanding to construct legal challenges that will enhance human dignity and move toward a more just society. As teachers we can become competent diagnosticians of where our students fall within the developmental sequence and foster movement toward "justice readiness."

Students come to us at varying stages in the development of critical thinking skills that require different interventions. Educational theorists have identified several developmental stages for adult learners, which I present in a legal context. First, the learner manifests right-wrong dualist thinking. At this stage, students still hang on to the idea that there is a right and wrong answer to every legal problem. The lawyer's job is to find that answer. In the second stage of development, critical thinking, the learner recognizes that there are very few or no absolute answers to legal problems. Law students at this stage believe that there is absolutely no certainty in the law. The lawyer's job is to figure out what the decision-maker wants and pitch legal arguments that appeal to the decision-maker. These students understand the important developmental step that the law is "constructed," but they feel powerless in their ability to make change. In the final stage of a lawyer's development toward "justice readiness," the lawyer demonstrates an appreciation for context, understands that legal decision-making reflects the value system in which it operates, and can adapt, evaluate, and support her own analysis. At this stage, the "justice ready" lawyer can become proactive in shaping legal disputes with an eye toward social justice.

Stage One: Dualistic Right-Wrong Thinking

The first stage of intellectual development, right-wrong dualism, is very familiar to legal educators. Students often begin their legal education with the idea that they are learning the "facts" of law. The role of the law professor is to be the "authority" who conveys to the student the "truth." Students believe that once they know what the law/truth is, they can apply it and act as lawyers. Students believe that this is what we mean when we say we are training them to "think like lawyers." If one applies precedent from similar fact situations to current facts, then one can arrive at an "answer" or argument that is likely to be persuasive to a court. "Thinking like a lawyer" suggests that the lawyer's own values play no role in the analysis, that the process is neutral. This inculcated belief in the possibility of neutrality ensures the triumph of the status quo. Indeed, students coming from traditional law school

courses are often imbued with values that promote established economic and social interests. The students themselves are often unaware of this inculcation.

It is the student's understanding that legal knowledge does not exist "out there" for the student willing to do enough research that indicates an ability to think critically, to understand that what we know is a complex interplay of information, experience, power and culture. In order to become "justice ready," students must also be able to apply their critical skills and understand that decisions are "contextual, as based inevitably on approximations, as involving trade-offs among conflicting values, and as requiring that we take stands and actively seek to make the world a better place."

Usually by the time we see students in our clinics, they have abandoned this right-wrong dualist approach. Students learn early on that they are not learning "black letter" law, but the ability to make persuasive arguments. For the students who do arrive in our clinics at this stage, we should be satisfied if we begin to undermine their conviction that the playing field is level. One way is to reveal the contradictions of poverty and the ways in which justice is denied when the person seeking it has no money. Once they encounter a client, the blind faith that there is a "truth" or a "law" that can be applied must give way to a more sophisticated understanding. Clients' cases rarely present simple facts that lend themselves to right or wrong answers. It is the complexity and unpredictability of working with real people that makes clinical legal education so rich.

A student who is grounded in a dualistic right-wrong perspective and is always looking for the "answer" needs clinical opportunities in which she must cope with a great deal of uncertainty in the law. Through that experience she will be able to learn that the law is rarely prescriptive. At this level of thinking, the learner looks to authority for the "right answers." Therefore, we should maximize the student's ability to make independent decisions, rather than to provide her with "answers." Of course, with a student who resists thinking for herself, it is often difficult to allow independent decision-making for a client. We can, however, focus our feedback on the student's lack of comfort in coming to decisions and assist her in learning to appreciate the contextual complexities for which there is no "right" answer. We cannot expect our students to embrace a justice agenda if they do not understand the degree to which power and privilege affect how law is created and enforced. Understanding that legal issues are grounded in decisions about what we value, what we believe matters, permits students to understand that they must choose what to value when they practice law. They cannot avoid the choice. Students modify their idea that there are right and wrong answers for everything when they are required to accommodate those situations where there are multiple solutions to a problem or the possibility of uncertainty.

Stage Two: Critical Thinking

In clinic, we rarely encounter the student who believes that the law is a collection of rules that, once known, can be applied to any situation and an answer discerned. Instead, we are more likely to encounter the student at the next stage of intellectual development as a lawyer: the beginning stages of critical thinking. These students no

longer believe that the law is determined, but they are relativists regarding justice. At this stage, critical thinkers manifest a belief that there are a multiplicity of options, but believe that the lawyer is powerless to shape the outcome except through "playing the game." We can move them along toward "justice readiness" by helping them realize that they are themselves a source of knowledge and authority.

In law, the recognition that there are multiple approaches to a legal problem usually occurs in the first year, when students recognize that when applying precedent, one must choose which precedent to apply and, based on the facts of the case, argue appropriate outcomes. Despite the fact that students are beginning to be able to identify cases on the margins and the ways in which arguments can be made for either party in a case, they frequently take the position that there is no nonarbitrary basis for determining what is right. Law school reinforces this "relativism" by teaching students that the right outcome will result from the efficient functioning of the adversary system. In the educational setting, students begin to think of their task as figuring out the "teacher's games," that is, reflecting back on exams what they believe the teacher wants to hear as the "right" answer. Many students remain at that level of thinking about the law, taking essentially a "hired gun" approach to what it means to be a lawyer. If any opinion can be just as valid as any other opinion, it is not surprising that the law appears chaotic and lacking in principle to students at this stage of intellectual development.

One way to move the student at this stage toward "justice readiness" is to structure their learning experience so that they have cases that require creative solutions to clients' problems. Cases that require the student to create causes of action or legal remedies otherwise unavailable might be appropriate. The fact that there is no "outside authority" from which to draw a remedy may force the student to draw from her own knowledge base and to draw connections based on context. These challenges require the student to assert his own values and not merely echo the law's authority. Such cases are not so rare: the gay partnership that needs legally created "familial protections" that are not available if relying on the default protection of the law; the battered woman/parent who needs her seemingly acquiescing behavior translated into a reasonable coping response to the violence in her life; the civil rights challenge that transforms a factual situation into something that arguably can be redressed under the law. There is no shortage of opportunities for students to face the fact that they cannot rely on "the way things are" and meet the needs of their clients. Reliance on authority may work unfair results for the client. Our choice of cases also allows the teacher to be a role model by demonstrating a lawyer taking a stand grounded in values despite uncertainty and complexity.

The critical thinker must recognize herself as a legitimate source of knowledge along with authorities, such as the teacher or case law and statute. Much of clinical education is set up to give the students the responsibility for cases and inspire this kind of development. In the clinic, a student encounters raw facts from which she must determine if there is a cause of action and the relevance of the available facts. She must gather enough information and experience so as to be able to have sufficient expertise to counsel a client meaningfully about possible outcomes. In the clinic, the learner is given the autonomy and the responsibility to make critical decisions in handling clients' cases. These experiences, enhanced by skillful supervisors, reinforce

higher-level learning. A student who has reached this level of thinking recognizes that legal problems can be approached from diverse frameworks, is able to identify the costs and benefits of embracing a particular approach, can identify the reason for choosing one framework over another and takes responsibility for her beliefs and their impact on the world. Students demonstrate higher-level critical thinking skills when they develop a sense of themselves as experts, can evaluate strategies for coping with problems and make choices and judgments. If we are successful in bringing the student to a realization of her own power to shape the law to achieve justice, we have brought her to the threshold of "justice readiness." All too often we leave our students there: poised and ready, but not committed. That is the trip to Paris. As provocateurs for justice, we can usher them through that door and support them in actually making a commitment to justice.

Stage Three: Justice Readiness

Once our students develop this appreciation for the role values play in the justice system, we can help them identify that they can play a role in the delivery of justice and teach them ways in which they can mediate their actions and values through that identity. Teaching an appreciation of and desire to do justice focuses on a process. That process is one step beyond critical thinking to becoming "justice ready." One educational theorist calls this the development of "critical consciousness." A provocateur for justice assists in the development of this "critical consciousness." It is a difficult and complex task.

Provocateurs do not punish those who do not share this value. Our job is not to produce automatons spouting "justice rhetoric." Students will only make a true commitment to justice if they are aware of what it means to think about their role in the delivery of justice. It is only then that they can choose this value in the face of alternatives. We do not have to worry about ensuring that students know that there are many alternative identities that they can embrace as lawyers. If there is one thing with which law school confronts our students, it is the value choice of how they want to be as lawyers. We call this "Career Services." Our problem will be ensuring that the justice alternative is clear. It is not enough to offer public interest commitment as an alternative to corporate practice. We need to assist the student in making an initial commitment to justice as an essential part of their identity as lawyers. We can help them understand the implications of the commitment and the responsibilities that such a commitment imposes.

Provocateurs share their passion so that students can see the value of such a choice. Provocateurs also validate that a sincere commitment to justice is difficult for virtually any person graced with a professional education. A commitment to justice is affirmed through multiple responsibilities and is always unfolding throughout one's life. Therefore, in addition to teaching our students to be critical thinkers who are active makers of meaning, we must teach in such a way as to have them develop a sensitivity to injustice and learn how to synthesize solutions that move toward justice. We must focus on the student's ability to identify the value conflicts that are a necessary component of a justice-oriented value system.

What things do I want students to consider when thinking about justice? Justice

has no absolute meaning because it, too, like all knowledge, is grounded in context. At a minimum, however, those of us who dedicate ourselves to social justice must ask ourselves if our proposed action as a lawyer will support and increase human dignity. We must also educate our students about the obstacles they are likely to face while seeking social justice. Therefore, understanding how oppression manifests itself in the law is critical to the educational process. I assume in my clinic that oppression is pervasive, restricting, hierarchical, complex, and internalized. Understanding how oppression operates assists in making sense out of many of the phenomena that my students experience. Many of the students in the clinic have given little or no thought to these ideas. Soon enough they will encounter evidence of the effects of oppression in their case handling. It is helpful during our supervision sessions to focus our students on questions such as: "Where do you see resistance to the solution you seek for your client?" and "Who benefits if this solution is denied?"

The step from critical thinking to "justice readiness" cannot be made if we merely rely on the issues that the cases raise. At every point, we must intervene to enhance the experience for our students. At this particular stage of intellectual and ethical development, our interventions should be directed toward uncovering the values that underlie the law, the limits of what law has to offer our clients and the consequences of using law in the particular context in which we operate. Perhaps our biggest obstacle to achieving these insights is legal training's pervasive insistence that the law is "neutral." The cases we choose are likely to rebut that presumption, but their teaching impact can be enhanced by focusing the student's attention on questions such as: "What are the interests that the client has that underlie the legal problem?" "What options might respond to those interests?" "What are the relative benefits of those options?" "What values underlie the legal solutions to this problem?" "Are those values consistent with the values of the client?" "What values are reflected in your particular suggested solution?" These questions will assist the student in combating that ingrained notion that the law is neutral (and the playing field is level).

Once we have introduced values as a legitimate source of knowledge and a critical component of lawyerly thinking, we can begin the process of helping our students recognize that they must make choices among conflicting values, and that necessarily means taking "stands." As provocateurs for justice, we can play critical roles in helping our students make the transition from being able to identify the values content of their choices to making a commitment to social justice.

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Conclusion

As educators in a professional school, we are in the business of providing credentials to the elite and thereby reinforcing the ideological justification for oppressive social orders. We need not fulfill that role. Instead, we can transform our practices so that we can be provocateurs for justice. It is not enough to use our legal skills and our students to fight for justice. As clinicians, we have made a commitment to justice through our role as educators, not front-line lawyers. This means that we must hone our skills as educators to ensure that the future lawyers we are training

have an appreciation for justice and work to inspire them to use their legal skills to bring about a more just society. * * *