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Reflections Upon the 25th Anniversary of The Lawyering Process

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REFLECTIONS UPON THE 25TH ANNIVERSARY OF THE LAWYERING PROCESS: AN INTRODUCTION TO THE SYMPOSIUM

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This article introduces the Clinical Law Review's symposium issue celebrating the 25th anniversary of the publication of The Lawyering Process: Materials for Clinical Instruction in Advocacy by Gary Bellow and Bea Moulton. The introduction briefly describes the book's contents and places the book and its contributions in context by describing the nature of clinical legal education at the time of the book's publication. The introduction also summarizes some of the contributions identified by the articles in the symposium issue. Finally, the article introduces recurring questions that are addressed in the symposium articles, including those about the appropriate goals and pedagogy for clinical programs.

"This is a book about the experience of being a lawyer. It asks the student practitioner to describe and generalize from his or her law practice, or—to state it more expansively—it asks that lawyers make lawyering a subject of inquiry. Hopefully it provides some guidance and assistance along the way."

Bellow and Moulton, The Lawyering Process

This grand goal, stated so modestly in the opening paragraph of the introduction to the book that is the subject matter of this symposium, has been embraced as the mantra for most clinical teachers. It is difficult to imagine the form that clinical legal education would have taken had the intellectual agenda and the pedagogy spawned by Bea Moulton's and Gary Bellow's project not influenced so many of us who are or have been clinicians.¹ Working interactively throughout the 70's with other clinicians trying to invent the field, they shaped the fundamentals of clinical methodology, made it possible for clinical ed-

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ucation to claim intellectual legitimacy, and created the agenda for decades of clinical scholarship. Their ideas about what learning to be a lawyer required, expressed most completely in 1978 with the publication of *The Lawyering Process*, came to define the field of clinical education.

This symposium issue of the *Clinical Law Review* celebrates the 25th anniversary of the publication of *The Lawyering Process* by examining the book’s influence on lawyering, clinical education and, more broadly, legal education. To engage in this inquiry, the Board of Editors of the *Review* solicited reflections by Bea Moulton and Jeanne Charn, Gary Bellow’s co-director at the Harvard Legal Services Center and partner for many years, and also extended an invitation to the authors of other highly influential clinical texts to submit articles and essays. A number of those authors enthusiastically accepted the invitation.

In February 2003, the two of us served as facilitators for a colloquium in which the authors of the articles in this issue and the members of the Board of the *Clinical Law Review* gathered to exchange thoughts about the book and plans for this symposium issue. The colloquium, which was hosted by the American University Washington College of Law, provided an opportunity for the authors to examine the book and identify its contributions to the development of lawyering theory and the pedagogy of clinical education.

The Board of Editors’ selection of other authors of clinical texts as contributors to the symposium issue provides a useful vantage point from which to assess *The Lawyering Process* (TLP). As authors of their own books, these contributors can bring their own experiences and insights to the exploration of the functions of a text such as TLP and the examination of the choices an author has to make in writing such a text. The two of us realized, however, as we prepared for the colloquium, that this group of authors is not fully representative of the national community of clinical faculty. Live-client clinical faculty are underrepresented and the group is less diverse than a typical clinical teachers’ conference. At the colloquium, the group explicitly focused on these aspects of the composition of the group and considered (among a host of topics that surfaced in a wide-ranging conversation over the course of two days) the ways in which the clinical legal education community has changed over the decades since TLP’s publica-

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2 The fact that so few of the texts have been written by clinicians engaged in live-client teaching shows “how emotionally and physically exhausting good supervision can be,” see David Chavkin, *Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLIN. L. REV. 245, 272 (2003), and how time-consuming writing a textbook can be, see Bea Moulton, *Looking Back at the Lawyering Process*, 10 CLIN. L. REV. 33, 49-69 (2003).
tion. Because not all of the insights expressed at the colloquium are found in the articles, we have tried to include some of them in this introduction.

Although TLP "profoundly (and directly) influenced a generation of clinicians,"\(^3\) newer clinical teachers may not have a copy of the book and may not even have had an opportunity to read it.\(^4\) Accordingly, we begin this introduction by briefly describing the book's contents. Any such description of the book, however, cannot even begin to tell the whole story because the "story of TLP" is essentially also the "story of clinical legal education." Many of the book's contributions to the field are hidden because the ideas and concepts set forth in the book have become the accepted norms of modern clinical theory. In this introduction, we will summarize some of the contributions identified in the various articles in this issue. We will also try to place the book and its contributions in context by describing the nature of clinical legal education at the time of the book's publication. Finally, we will identify the recurring questions raised by the symposium authors that are implicated by Bellow and Moulton's design of the clinical course and the book that accompanied it.

I. **Bellow and Moulton's Lawyering Process: An Introduction to a Book and an Era**

A. **The Book**

The Book, which is 1121 pages long, is organized into three parts. Part I ("The Lawyer's Experience: Preliminary Perspectives") focuses broadly on questions of professional role and how one is socialized as a professional. The "perspectives" chapters deal with conformity and professional values and lead students to consider the relationship between the kind of lawyer they want to be and the forces that might pull them in a different direction. Questions about justice pervade the discussion. Part II, entitled "The Lawyer's Craft: Tasks and Relation-

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\(^3\) Bastress & Harbaugh, *supra* note 1, at 115. Chavkin identifies four generations of clinicians based upon various factors. In his clinical family tree, the first generation is made up of those who started between 1968 and 1976, the second generation from 1977 to 1985, the third generation from 1985 to 1998 and the fourth generation encompassing those who started after 1998. He says that as a "third generation" clinical teacher and author he was not even aware of TLP when he wrote his book although he acknowledges the indirect effect it has had upon his understanding of pedagogy. See Chavkin, *supra* note 2, at 248-49.

\(^4\) We would encourage you to ask your library or a senior clinician for a copy of *The Lawyering Process* to review as you begin reading the articles in this issue. Some have told us that they got copies of the book through inter-library loans. We expect that as you read the articles in this symposium issue and are inspired to examine TLP, you will find a rich source of material for clinical study that still has relevance.
ships in Practice,” covers almost 90% of the book and is divided into chapters that focus on six primary tasks of lawyers: interviewing, constructing a case, negotiation, witness examination, argument and counseling. Part III ("The Lawyer’s Life: An Epilogue") explores issues of professional satisfaction.\(^5\)

Each of the “Lawyer’s Craft” chapters is organized into three separate sections: “Preliminary Perspectives,” “The Skill Dimension,” and “The Ethical Dimension.” These chapters begin by developing preliminary perspectives from fictional and real stories of lawyers and clients, analogous stories from other professions, and practice manuals from lawyers and other professionals. In traditional casebook fashion, a section entitled “notes” follows each set of readings and provides additional excerpts and explores a variety of questions. The questions are broad and profound, often explicitly indicating the practical consequences of choices. In framing the broad questions, the book offers models from other disciplines—psychology, philosophy, mathematics—as well as advice from legal articles and practice books. The questions and notes almost always communicate to the reader that a resolution of the broad issues requires consideration of the alternatives and consequences. For example, in the perspectives part of the counseling chapter, the authors note: “we have here not a model of the lawyer-client relationship, but a framework for working through, with our clients and among ourselves, what relations with those who come to us for legal help might be.”\(^6\)

In the “Skills Dimension” of each chapter, the subject area is divided into sub-parts that provide an analytical framework for the respective skill. For example, the “Counseling” chapter is divided into two main parts: “Assessment” and “Advice.” The “Assessment” subsection is further subdivided into clarifying objectives, providing alternatives and predicting consequences, while the “Advice” subsection addresses allocation of responsibility, communication of judgments, clarification of the client’s preferences, and coping with ambiguities and emotions. Each of these subsections has other internal

\(^5\) The issues discussed in this section are illuminated by Bea Moulton’s article, Moulton, supra note 2, at 69-73. Also see Leah Wortham, The Lawyering Process: My Thanks for the Book and the Movie, 10 CLIN. L. REV. 399, 433-36 (2003).

\(^6\) Gary Bellow & Bea Moulton, The Lawyering Process: Materials for Clinical Instruction in Advocacy 995 (1978) (emphasis in the original). This passage is followed by a strong cautionary note in a quote from Bellow, Turning Solutions into Problems, 34 BRIEFCASE 106, 122 (1977) in which Bellow cautions that in making legal decisions about what claims exist, lawyers shape what clients see as possible. The article criticizes the narrow approach taken by some legal organizations practicing on behalf of poor people. Thus, while the book acknowledges no “model,” it does articulate potential negative consequences to clients, especially poor clients, when a lawyer adopts a dominating role that views a client’s problems too narrowly and sees unimaginative solutions.
frameworks. For example, in predicting consequences the authors provide concrete complicated mathematical models for how to make predictions.

Although the authors provide a framework for thinking about how to perform the lawyering task, they most often expose choices for the students and consequences of those choices, without expecting rote application of the proposed model. For example, in the "Allocating Responsibility" subsection, the authors use stories and social science research to identify the pros and cons of the traditional and participatory models for assessing who is responsible for decisions throughout the representation. They present Rosenthal's study of Lawyer and Client Relationships\(^7\) to identify the benefits of the participatory model, and they conclude the subsection with the observation that "the 'traditional model' \ldots may also fall short of being the best means of providing effective service."\(^8\) At the same time, they acknowledge that the decision of who decides is a complex one and often influenced by the choices already made. Thus, answering the question of who is in charge, like most of the issues raised in the book, should be the subject of inquiry, negotiation and reflection.

The "Ethical Dimension" sections of each of the "Lawyer's Craft" chapters raise the issues typically encountered when engaging in the various lawyering tasks. For example, in the interviewing chapter, the authors focus on conflict of interest, conflict and confidentiality, illegal conduct by the client, fabricating evidence, the ethics of government attorney work and refusal to represent particular clients.

As Peters and DiPippa recognize in their article in this symposium, TLP uses a variety of types of materials to instruct students.\(^9\) These include charts, narratives, and lawyer-client dialogues. Topics are addressed from a variety of perspectives. The authors expect that students and presumably teachers will choose from the wide variety of options offered in the readings. As the authors note in the introduction, "The readings, models and commentary are not to be 'learned.' Their function is to suggest ways of looking at the particular tasks or relationships involved and to raise issues and concerns relevant to

\(^7\) See Richard K. Neumann, Jr. & Stefan H. Krieger, Empirical Inquiry Twenty-Five Years After The Lawyering Process, 10 CLIN. L. REV. 349, 370-72 (2003), challenging the Rosenthal study for its limited application. TLP did acknowledge the possibility that Rosenthal's results were caused by the nature of the cases (personal injury) and the location (New York City). Bellow & Moulton, supra note 6, at 1031.

\(^8\) This is in contradistinction to the position taken in David A. Binder & Susan C. Price, Legal Interviewing and Counseling: A Client Centered Approach, (1977), published prior to TLP. An excerpt from Binder and Price is included in TLP. See Bellow & Moulton, supra note 6, at 1046.

describing, evaluating or doing them." The authors characterize the book as a "starting place" for each reader to make explicit their "own images of . . . 'good lawyering.'"

As Bastress and Harbaugh observe, "The Lawyering Process taught students—and the lawyers they would become—the means by which they could analyze and evaluate their lawyering skills (to deconstruct them in current parlance), and those means would, in turn, enable the students-turned-lawyers to continue to learn and improve throughout their careers." Equally important, the book made it clear that there is an ethical dimension to every task.

B. The Context for Development of the Book

The modern era of clinical education began around 1968 with the creation of the Council on Legal Education for Professional Responsibility (CLEPR). By the end of 1972 CLEPR had funded clinical programs at 90 schools and had spent more than $4 million. Needless to say, that was a serious amount of money in those years and getting some of it proved irresistible to many schools that otherwise might have resisted being part of the clinical experiment. The result was an influx of lawyers into law schools to teach in this new form of legal education in which the sine qua non was to involve students in representing real clients under faculty supervision. Part of the genius of what CLEPR accomplished was the creation, through the convening of conferences and the circulation of written materials, of a national network of clinical teachers. And, among the matters high on the agenda for that network was the development of pedagogy to guide the students' experiences.

Our backgrounds are similar to those of many clinical teachers of our generation. Like nearly everyone else, we had experience in

10 Bellow & Moulton, supra note 6, at xxiv.
11 Id.
12 Bastress & Harbaugh, supra note 1, at 117.
13 Id. at 144.
15 CLEPR's funding was reserved for in-house live-client clinics in which students received academic credit and someone with faculty status provided instruction. See William Pincus, Legal Education in a Service Setting, in Clinical Education for the Law Student, Working Papers Prepared for CLEPR National Conference 27 et seq. (1973).
16 Elliott started right out of law school as a clinical teacher at University of Connecticut in 1969 and Sue as a Prettyman Intern at Georgetown in 1975. Each of us has been at nearly every national meeting of clinical teachers, sometimes as planner, often as discussion leader or facilitator, and always as learner. We have both been directors of clinical programs, have started multiple new clinics, and have mentored many new clinical
representing poor people, were frustrated that our own legal education did not better prepare us for our work (although Sue was a student for two years in a clinical program and was substantially better prepared than her public defender peers), and we were given the opportunity to direct new clinical programs at what now seems a ridiculously young age (we were each only 28). We saw ourselves as part of the Skirmish on Poverty\(^{17}\) and identified closely with various social reform movements of the time that were concerned with economic, racial and gender equality. Our experience as lawyers exposed us to daily injustice in the courts and caused us to believe that lawyers, individually and collectively, could make things better. We also believed that involving law students in the representation of poor people would contribute to this effort. This background, which we share with so many other clinical teachers, has shaped the agenda of the clinical movement as well as many of the tensions within it.

Although we were convinced that students would learn valuable lessons through their work on real cases, we were not sure exactly what to teach. The initial thought for many clinical teachers was to offer an advanced course in procedure and substantive law. The idea that predominated was that the best lawyers were the ones who had mastered the relevant doctrine in their areas of practice. At the same time, we saw in the trial courts that the ways in which the law and the legal system operated in the lives of our clients had less to do with legal doctrine than we had been taught. Successes and failures in casework rested only partially upon what was said in appellate decisions. We learned about rules of evidence that existed only before one judge and *ratio decidendi* unheard of in any text. It was readily apparent that the actors with whom we dealt—clients and their adversaries, cops, prosecutors and opposing counsel, and particularly judges—were not always persuaded by reason and that there were other factors at play. Trying to get the actors to obey the rules made us feel like we were the law enforcement officers.

Our belief that lawyers could make a difference stemmed from our understanding that systemic injustices were the cause of our clients' oppression. Litigating, legislating, organizing, publicizing and educating were all tools that lawyers could use to promote changes in the people and institutions that mattered. The fact that we were young and had little inherited wisdom from which to benefit (or against which to rebel) left us open to new ideas. We existed within the context of a generation that expected to change the world and was searching for ways to do it. And, because legal education was stuck in

\(^{17}\) At the time, we thought of it as – and it was called – “The War on Poverty.”
the appellate case-method that had resisted change for more than half a century and legal scholarship was numbingly fixated on doctrinal analysis, we wanted to remake the enterprise.

Advice on all of these concerns was available in these formative years from Gary Bellow. At first, his observations and suggestions circulated by word of mouth in training sessions for new clinical teachers and in presentations at conferences. Later, his collaboration with Bea Moulton produced written materials that were circulated in various stages of completion. Finally, in 1978, these written materials were published in book form as *The Lawyering Process*.

Bea Moulton reminds us that the goals of TLP did not include developing proficiency in the skills areas covered by the book. In expectation of the fact that students would have but one course in which to engage in practice while in law school, the book and the teaching method it promoted were intended to equip students to continue to learn throughout their careers. To achieve that end, the book focused on the acquisition of the professional role, explicitly encouraging students to examine the "values and attitudes" of the profession and to develop "a critical perspective" on the "tasks and relationships" involved in lawyering. All models and frameworks proposed in the book were designed to provoke questions and introspection.

The materials in TLP were not designed to serve as the primary focus of a clinical course. Bellow and Moulton intended that the book be read while students are immersed in either real or simulated law practice that would provide perspectives on both role and task. They envisioned that teachers of live-client clinics would supplement the 1100+ page book with readings in the law and procedure relevant to the area in which students would be practicing.

Upon publication, the book was distributed to clinical teachers across the country, free of charge, for consideration as a text for a course. And, unfortunately for the authors and the publishers, many a page was photocopied from the book without payment of any kind.

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19 *Id.* at 42.
20 Bellow & Moulton, *supra* note 6, at xxiii.
21 Michael Meltsner, who spoke with the president of the publisher, Foundation Press, reported at the colloquium that Foundation saw the book as a public service project and never expected to make money from it. Transcript, Colloquium: Critical Moments in the Conceptualization of Lawyering: Reflections Upon the Quarter Century Since Publication of Bellow's and Moulton's "The Lawyering Process" 38-39 (American University, Washington College of Law Feb. 21, 2003), available at http://www.wcl.american.edu/clinical/lawyeringprocesstranscript.cfm [hereinafter Colloquium Transcript]. Although Bea was relieved to hear that news (Moulton, *supra* note 2, at 65-66), the authors of the book would have felt better if the publisher had benefited financially. It is certainly unfortunate that the authors, who devoted countless hours over eight years to the project, never received
But the dissemination of the book ensured that it would reach its target audience of clinical teachers. They read it; they learned from it; they discussed it with their peers; and they incorporated its conception of clinical legal education into their thinking, teaching and scholarship.

Bea recounts that she and Gary first began assembling teaching materials for their own use, starting in 1970. Three years later, as the materials evolved, Gary agreed with Bea’s proposal to produce the book, a push that took until 1978 for the publication of TLP and more time thereafter to produce two major books of simulations based on TLP. But the book was influential even before its publication. As Michael Meltsner reminds us, TLP “was the book long before it was actually sent out in the world between hard covers.” Many drafts of the book were circulated and used by clinical teachers who were thirsty for teaching materials. Early clinicians learned both from the drafts of the book and from conversations with both Gary and Bea during the years from 1971 up to the time of its publication; the authors, in turn, received comments from those who used the book. Bea’s article, which vividly describes the history of writing the book, recounts that the reactions and contributions of clinicians who used the drafts helped to shape the final product.

Meltsner’s recollection—that the early drafts of TLP generated dialogue that powerfully influenced the direction of clinical education—is consistent with Elliott’s experience. He started as clinic director at American University in 1972 and created its first in-house clinic. The seminar portion of his clinic was initially a course in advanced criminal procedure, much like the seminar he offered in his first year of clinical teaching under the tutelage of Joe Harbaugh at the University of Connecticut. Several months after the semester began, Elliott visited Harbaugh, who was by then a visiting scholar at Harvard. After several days of conversations with Harbaugh and Bellow and a visit to Bellow’s class, Elliott was converted to the idea that the ideal format for a clinical seminar is a rigorous course in lawyering, addressing topics such as interviewing and negotiation. By the next academic year, Elliott had scrapped his original syllabus. The readings for the new version of the course were filled with photocopies of materials that would later become TLP.

compensation for their labor.

22 Moulton, supra note 2, at 53.
24 Id.
25 Moulton, supra note 2, at 52.
Surely the fact that Gary trained a number of clinical teachers who went on to direct and teach in clinics across the country helped spread the influence of TLP. The “Bellow Fellows” program, as it came to be nicknamed, brought in talented lawyers as teaching fellows for two-year stints and exposed them to the methods and texts that constituted the lawyering process course. Moreover, many of Gary’s students in the Harvard lawyering process course, inspired by Gary’s teaching and predisposed to pass on the lessons they had learned, went on to become clinical teachers.

Another way in which the ideas spread among clinical teachers in the early years was through the Legal Services Corporation’s New Lawyer Training Program (NLT). Bea became the Associate Director of NLT with a mandate to create simulation-based educational programs for new lawyers. Clinical teachers were hired and trained to be among the group of trainers for that program because of their experience with simulations, critiquing, and teaching from videotapes, all of which were innovations of NLT. As Bea recalls, “It was a mix of people who were still working in legal services and those who had recently left to become clinical teachers, and there was very much a feeling that we were all engaged in the same enterprise. Ideas and materials were freely shared.” These training programs became informal supplemental clinical teachers’ training conferences. As a result, the clinical movement was indelibly shaped by TLP’s methodologies and its core philosophy that lawyers need to learn lawyering and not just law.

Bea relates that she was concerned that clinical teachers’ involvement in NLT might have negative effects. In order to train the trainers, she wrote three very straightforward skills papers on interviewing, investigation/discovery, and negotiation. She based these papers upon her notes of Gary’s classes and some of the readings from the draft TLP book. She worried that Gary would disapprove of the simplifica-

26 See Meltsner, supra note 23, at 333. Gary’s essay, On Teaching the Teachers: Some Preliminary Reflections on Clinical Education, in CLINICAL EDUCATION FOR THE LAW STUDENT, WORKING PAPERS PREPARED FOR CLEPR NATIONAL CONFERENCE (1973) describes what he was trying to accomplish.

27 Two of the Symposium Authors, Ann Shalleck and Leah Wortham, are two such clinicians. One story recently told to Elliott by Norman Stein, who formerly taught in the clinical programs at the law schools of the University of Pennsylvania, the University of Arkansas at Little Rock, and Hofstra University, illustrates another way that the gospel got spread. In an early version of the clinical program at U. Penn, Stein was hired to teach while also serving as a lawyer at Community Legal Services of Philadelphia. Ann Shalleck worked there in the summer of 1977 while still a law student at Harvard. She shared her notes from Bellow’s course with him. Stein photocopied them because he learned so much from them about what he was to teach. He said that he still has those notes in 2003.

28 Moulton, supra note 2, at 46.
tions. She also feared that some clinicians might “see these expositions as *enough* to teach and learn for the time being, without grappling with the more nuanced, complex views we had begun to incorporate in our teaching materials. I was afraid they might offer an ‘easy way out.’”

Soon after TLP was issued, Gary and Bea published its two companion paperback problem supplements, one for criminal clinics and one for civil clinics. These supplements had lives independent of the main book. Each volume contained problems keyed to each chapter of the book, plus whole case files for simulations that related to the problems. Both supplements contained the ABA Code of Professional Responsibility and various ABA ethics opinions, and the criminal supplement also contained the ABA Standards Relating to the Prosecution and Defense Function. The problems in both supplements raised questions relating to skills, values and ethics. The simulations were used for a long time in many clinical programs.

When it became clear that TLP would never sell well in its original incarnation, the authors and the publisher decided to divide it into three paperback volumes. Some of the material was “slightly re-worked,” new introductions were written, and relevant chapters were grouped to produce “The Lawyering Process: Negotiation,” “The Lawyering Process: Preparing and Presenting the Case” and “The Lawyering Process: Ethics and Professional Responsibility.” These were published in 1981 and, Bea recalls, sold better than did the whole book. Bea reported that the negotiation volume is still in use in some courses.

II. The role of the Book in the Development of the Field of Clinical Education

As Bob Dinerstein, one of the authors in this symposium, has written:

In the field of clinical legal education, textbooks matter. At their best, they serve not just as pedagogical tools reflecting doctrinal developments but as intellectual signposts. Clinical texts organize what we think we know about the world of lawyers and lawyering.

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29 Moulton, *supra* note 2, at 47. In a recent email to Bea, Elliott confessed that he was guilty of the very thing that concerned her. In teaching a course during the 1970’s that combined professional responsibility with a few classes each on interviewing, counseling, and negotiation, the essays were a perfect length to assign along with a simulation for some of these classes.


31 Email from Bea Moulton to Elliott Milstein (Sept. 3, 2003) (on file with the authors).
They also let us see, sometimes unwittingly, what we do not yet know about that world. TLP and its supplements, the legal services training material, and the work that Gary and Bea were doing in clinics and legal services training were the intellectual signposts in 1978 and made lasting contributions to clinical education. They also made contributions to developing theories of the "good lawyer." Their work combined the methods of learning with the substance of what they were teaching and illustrated how theory and practice can be integrated.

Several of the articles in this symposium acknowledge the ways in which TLP benefited the authors and, more broadly, the field of clinical legal education. These benefits included the following:

A. Demonstrating that the Study of Lawyering is Intellectually Challenging and Belongs in the Academy

Michael Meltsner, a contemporary of Bellow and Moulton, observes that many of TLP's lessons are taken for granted today as foundational elements of clinical education. For this and many other reasons, he says, the book simply has "no rival." Among the book's many important contributions was the call to take a "rigorous perspective on lawyer training . . . in the context of legal work." David Binder and Paul Bergman, also contemporaries of Bellow and Moulton, agree that the book helped establish that lawyering tasks are complex and worthy of study in their own right and helped cement their study in law school. TLP provided the quality and quantity of materials to demonstrate that Lawyering is a valuable subject of inquiry and belongs in the academy. Marilyn Berger, Ron Clark, and John Mitchell credit Bellow and Moulton with bringing together skills, ethics and substantive content in a way that provided "a strategically-guided model for teaching advocacy as a complex, coherent, and intellectually challenging endeavor."

As Meltsner explains, Bellow's and Moulton's conceptualization of the teaching of lawyering integrated a wide range of other profes-

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33 Meltsner, supra note 23, at 327.
34 Id. at 330.
35 David A. Binder & Paul Bergman, Taking Lawyering Skills Training Seriously, 10 CLIN. L. REV. 191, 192 (2003). While Binder and Bergman acknowledge this contribution, they also point out that Bellow's and Moulton's suggested syllabus that limits the amount of time spent on each of the lawyering tasks diminishes the capacity of students to bring the analytical rigor that is needed. Id.
sional disciplines and challenged even the most knowledgeable and motivated audiences. Meltsner points out the importance of having a powerful figure like Gary Bellow teaching at Harvard Law School as an ally in the fight for legitimacy that characterized early clinical education. As Meltsner recalls, “Gary forced the skeptics to dignify and even sometimes confront his message, and thus empowered us all. In a fight over faith, it was comforting to be able to hold up *The Lawyering Process* like the true cross to ward off satanic intrusions.”

**B. Validation of the Clinical Method**

In addition to validating the study of lawyering, TLP validated the methods used by clinical teachers for that study. In TLP's Introduction, the authors identified a three-step process for studying lawyering that continues to define the clinical method for learning: (1) place students in role with a simulated or actual case; (2) provide students with multiple opportunities to describe, evaluate and solve problems; and (3) encourage students to generalize, utilizing what they are reading to focus the learning from experience.

**C. Development of Analytical Frameworks for Discrete Lawyering Tasks**

At the colloquium, Dinerstein pointed out the pivotal role that TLP played for teachers who were making a transition from knowing how to do a task to thinking about how to communicate that task to novices. TLP broke down lawyering tasks such as interviewing or argument into sub-tasks and identified sub-components in the emotional, cognitive, moral, ethical and values dimensions. As Peters and DiPippa observe, this fostering of a systematic approach to thinking about lawyering tasks also promoted a greater awareness, on the part of both teachers and students, of the nature of the learning process. By organizing learning into discrete areas, TLP permitted an analysis of the different roles that a lawyer plays, “such as the interviewer, planner, investigator, debater and counselor.” Many of

38 Colloquium Transcript, *supra* note 21, at 62.
39 Binder and Price, *supra* note 8, did this as well in their classic 1977 text on interviewing and counseling.
41 Id.
42 Wortham, *supra* note 5, at 425 (quoting Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555, 559 (1980)). See also id. at 425 n.70 (“Menkel-Meadow refers to Gary Bellow as ‘generally regarded as the theoretical father of clinical education.’ . . . While citing TLP’s major theoretical contribution as attention to role and Amsterdam’s as focus on decision-making as the unit of analysis, . . . [Menkel-Meadow] also . . . [identifies] David Binder as the major person to
TLP's insights about the challenges of these roles continue to be the focus of clinical courses today.

D. Organizing the Study of Lawyering as a Process

To study lawyers' work, Bellow and Moulton developed a syllabus that resembles the one used in many modern clinical courses. The syllabus—and the TLP book itself—arranges lawyering tasks in a sequence that reflects the nature and process of client representation in a litigation setting. Today this approach of making the lawyering process the focus of clinical instruction may seem obvious, but in the 1970's many clinical course syllabuses were focused more on doctrine or more narrow tasks such as how to draft a particular type of motion.44

The symposium authors identify several benefits of TLP's focus on the lawyering process. First, TLP illustrated how choices made while engaging in one task may influence other tasks and the entire course of the representation. Second, TLP's process-oriented focus encouraged theory-driven lawyering that analyzes choices across tasks. Finally, the focus enabled students to recognize the existence of decisionmaking models that can be used in all lawyering tasks. As Wortham explains, "Each choice in pursuing a case and each exercise of a lawyering skill passed through the decision-making model."

conceptualize lawyer's skills to that date . . . [and] Michael Meltsner . . . [and] others as having a focus on interpersonal processes . . . [and] discuss[es] a focus in the Harvard clinical program in conjunction with the Harvard School of Education on how the learning mode in law school may contribute to the way lawyers practice.

43 Chavkin, supra note 2, at 251.
44 As a clinical student in 1971-72, and a Prettyman Fellow in 1974-76, Sue learned and taught in a clinic at Georgetown University Law Center designed to teach criminal defense lawyering. Structured by the late Bill Greenhalgh and taught by Addie Bowman and Robert Reed, Sue's clinic was heavily focused on constitutional criminal defense and emphasized motion and trial practice and zealous advocacy. No time was spent on interviewing clients or witnesses or fact investigation skills. Classroom instruction consisted of Socratic dialogue interspersed with war stories. For all its limitations, Sue learned much through watching and talking with people who were excellent lawyers and Greenhalgh, who demanded that "each of us put 150% into our work as we had awesome responsibilities as defenders." When Sue started teaching in 1976 at Hofstra Law school, she taught in a general practice clinic and used The Lawyering Process to organize her teaching around lawyering tasks. Elliott's roots are closely related to Sue's. He attended University of Connecticut School of Law before there was a clinical program there. In his last year of law school Joe Harbaugh joined the faculty as its first clinical professor and he served as Joe's research assistant. Because Joe was a graduate of the Georgetown Prettyman Program and was close with Greenhalgh, he modeled the new clinic somewhat on the Georgetown model.
45 Berger et al., supra note 36, at 163, and Dinerstein et al., supra note 32, at 308.
46 Wortham, supra note 5, at 424. Wortham notes that this was more prevalent in the class than in the book. "[The] focus on decision-making, that I saw as central and enormously valuable, gets lost for a reader of the books" in the "complexity" of "disaggre-
The decisionmaking model operated as a “prod to creativity,” incorporating conventional lawyer solutions but encouraging students to problem solve by looking “within oneself and without to a variety of sources for inspiration.”

E. Encouraging a Critical Perspective

TLP reflects what Bea describes as one of Gary’s core goals: to develop in students a critical perspective on lawyering, relationships, and the institutions they will encounter in their work. The explanatory models and analytic frameworks were designed to assist students in reflecting upon and understanding their experiences. The way things were always done was not a reason to do them that way again. Students were encouraged to examine the effect of their actions on their clients, on others in the process, on society and on themselves. TLP asked students to look for the relationship between an individual client’s problems and systemic problems so that alternative solutions could be explored.

Peters and DiPippa comment that TLP’s identification of the larger, theoretical context for the skills and actions of lawyers enabled teacher and students to explore the “why” questions that often elude examination. Frank Bloch, Susan Brooks, Alex Hurder and Susan Kay point out that the development of critical perspectives about “existing paradigms” of practice was a goal of the book and, more broadly, of the field of clinical education. In their view, the book began a dialogue about the nature of “good lawyering” that continues in modern clinical scholarship. Following the lead of Bellow and Moulton, most clinical teachers today consider critical dialogue integral to the clinical method and an essential characteristic of the good lawyer.

F. Encouraging Reflection about Self

In addition to encouraging students to generalize from their experiences lawyering tasks and exploring each through metaphor, cross-disciplinary approaches, and detailed analysis of ethical issues.” Id. at 426.

47 Worthing, supra note 5, at 424.
48 Moulton, supra note 5, at 41.
51 They point out that the context of poverty law practice with no market definition of the good lawyer inspired this inquiry. Previously, lawyers could define practice standards by what clients were willing to pay for but this model did not work for the new legal services practice. Also Bellow was critical of the lawyering being done in those settings and believed that new paradigms were needed. See id. at 232-33.
periences and thereby to learn how to be better lawyers, TLP encouraged students to think about their feelings about cases and clients. Throughout the book, the student learns how feelings can influence representation and decisionmaking. Closely related to the importance of feelings were personal values and their connection to professional satisfaction. As Gary and Bea indicated in TLP, thinking and talking about such issues can often be difficult:

This leaves us, finally, with the sober problem of how we will talk to each other (and us) about such things. However you personally resolve values questions, we do urge you on you the premise that discussion of values—of goals, purposes and consequences—is possible and desirable in lawyer work.52

TLP consciously promoted a new approach of reflecting on and talking about moral, ethical decisionmaking and its connection to professional satisfaction.53 As is apparent in the articles in this symposium, that focus is a critical part of modern-day clinical teaching and texts.54

G. Promoting a Vision of a Responsible Lawyer Committed to Social Justice

TLP was designed to enable teachers to motivate students to explore the role of lawyers in promoting a just society and to situate themselves in that process. As Richard Neumann noted at the colloquium, the book makes the student the issue and encourages students to examine available choices in the context of what is just.55 Leah Wortham explains that the book prompted students, who were motivated to learn how to lawyer, to ask why, what are the "ends to which that [new found] proficiency would be used."56 Because the book was

52 Dinerstein et al., supra note 32, at 296-97, quoting Bellow & Moulton, supra note 6, at 117.

53 As Wortham notes, "An important message in the book—as I recalled from the class—is that values matter." Wortham, supra note 5, at 432. She says that the book rejects the post-modern rejection of values hierarchies and leads students to make moral judgments about lawyer behavior and, perhaps most importantly, to consider whether their own reasons for actions "are better than others." Id.

54 See J.P. Ogilvy, Leah Wortham & Lisa G. Lerman, Learning from Practice: A Professional Development Test for Legal Externs (1998), in which Chapter 12 is about reconciling personal and professional goals and David Chavkin, Clinical Legal Education (2002) in which Chapter 13, entitled "Attorney Satisfaction," explores similar themes. Both Wortham, supra note 5, at 457-58 and Moulton, supra note 5, at 71 describe in their symposium articles how they incorporate these concepts into their externship courses.

55 Colloquium Transcript, supra note 21, at 44. Neumann read from the prefatory note of Chapter 1 of TLP, a quote from the biography by R. Coles of Erik Erikson, that ends with ". . . the issue is not whether we agree with what we have heard and read and studied. . . . The issue is us, and what we have become."

56 Wortham, supra note 5, at 442.
organized like a traditional casebook, providing materials and examples along with questions but not answers, the authors' vision of what constitutes a just lawyer was not thrust upon the reader; instead the teacher was free to use the materials to guide students in reaching their own conclusions.

**H. Demonstrating the Value of Interdisciplinary Learning**

Although TLP was not the first legal text to draw on other disciplines,\(^{57}\) it is safe to say that no other reached as widely or as ambitiously to gather knowledge from outside the legal field. Harbaugh and Bastress counted it up: More than 40% of the references in TLP are from outside the field of law.\(^{58}\) Bea provides us with a very instrumental explanation of this aspect of the book: there just wasn't much written about law practice then that satisfied the authors' goal of reaching beyond "this is how I (we) do it."\(^{59}\)

TLP's interdisciplinary approach served as a model and a stimulus for the authors of the next generations of clinical texts.\(^{60}\) For example, Berger, Clark and Mitchell report that their pretrial and trial books\(^{61}\) were inspired by Bellow's and Moulton's "brave departure... from... hermetically sealed legal education to wide use of interdisciplinary readings."\(^{62}\) Influenced by TLP's references to the performance of a play as a metaphor for a trial, Berger and her co-authors set out to sensitize students to the use of stories throughout the trial process.\(^{63}\) In writing their book on interviewing, counseling and negotiation,\(^{64}\) Bastress and Harbaugh found that TLP "enhanced [their] appreciation for the usefulness of materials from related disciplines in developing those three interactive, interpersonal lawyering skills."\(^{65}\)

As Neumann and Kreiger observe, TLP carefully selected and used interdisciplinary materials to further a goal of encouraging students to generalize—to extract theory from experience both about

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\(^{57}\) One notable example is Binder & Price, supra note 5. It combined the insights of a lawyer with those of a psychologist.

\(^{58}\) Bastress & Harbaugh, supra note 1, at 116 n.4. "In a dozen pages of copyright permissions, the authors listed more than 150 sources from almost a score of disciplines, including law, ethics, medicine, psychiatry, psychology, sociology, economics, journalism, literature, poetry, rhetoric, political science, history and more." Id. at 115 n.3.

\(^{59}\) Moulton, supra note 2, at 50.

\(^{60}\) Bastress & Harbaugh, supra note 1, at 116.


\(^{62}\) Berger et al., supra note 36, at 167-68.

\(^{63}\) Id. at 183-84.


\(^{65}\) Bastress & Harbaugh, supra note 1, at 116.
what they had learned and how they had learned it. The disciplines included: "cognitive psychology, rhetoric, economic analysis, labor relations, social work, literary criticism" and more. TLP introduced general theories in regard to particular skills, for example, strategic and game theories for the negotiation process; theories on interpersonal dynamics for counseling; and communication theory for interviewing and argument. Others give them explicit models for performing a particular skill, for example strategic decision-making and questioning techniques for interviews.

Neumann and Kreiger comment that the amount of empirical research presented in TLP is particularly striking. They point out that legal skills literature in 1978 was largely anecdotal and that TLP therefore was "ahead of its time" in this respect as in so many others.

I. Stressing the Centrality of Ethics and Values

One of TLP's most important and lasting contributions was to situate ethics and values as a central focus of clinical study. As Bob Dinerstein, Steve Ellmann, Isabelle Gunning and Ann Shalleck point out, the integration of ethical concerns into learning from experience, with the result that students study their own choices to act or failure to act, produces an experiential learning experience that is powerful and very distinct from what can be learned in the classroom. Many of the ethical issues that TLP raised with regard to attorney-client relationships and access to legal services continue to be of great importance today. At the symposium, Berger recounted that she went through TLP to identify the ethical issues it raised so as to be sure to address these issues in materials and simulations.

Wortham entitles a section of her article, "Pioneering Work on Legal Ethics." As a professional responsibility teacher, she has sought to emulate the "more critical and deeper" discussions of ethical issues that she finds in TLP. She has adopted the perspective that she gained from the book, engaging with her students the questions of "who benefits from a particular rule, what values a rule reflects, to what do the ethical rules and their application add up, and what effect the rules have on the lawyers who adopt them."

66 Neumann & Kreiger, supra note 7, at 350.
67 Id. (footnotes omitted).
68 Id.
69 Dinerstein et al., supra note 32, at 305.
70 Colloquium Transcript, supra note 21, at 73.
71 Wortham, supra note 5, at 430.
72 Id.
J. Influencing the Scope of Clinical Scholarship

Some of the early (and, in some places, ongoing) struggles about clinical faculty status involved the claim that clinicians would not be scholars or that the subjects they would choose to address in scholarship would not be worthy of intellectual endeavor. For those open to it, TLP changed that perception. Here was a book about legal pedagogy, about lawyering, about the connection between lawyering and pedagogy,\textsuperscript{73} about the role of lawyers and the effects of that role on justice, and about ethics. TLP emphatically sent the message that these are not merely subjects that are important to teach but they require more thought, research and study within the academy. Although TLP was styled as a textbook, Kate Kruse has observed that early books such as this were scholarship.\textsuperscript{74} It may be that TLP spoke more clearly to faculty than it did to students, but Randy Hertz has noted that TLP thereby helped clinical faculty learn from each other and to benefit from the collective experience of the community of clinical teachers.\textsuperscript{75}

As Frank Bloch and Bob Dinerstein commented at the colloquium, the complexity and breadth of the questions identified in TLP demonstrate the intellectual rigors of the study of lawyering. TLP used concepts still found today in clinical scholarship and provided a model of integrating method and substance that many authors of clinical scholarship have followed. Bloch characterized TLP as having had a profound influence on the direction of clinical scholarship.\textsuperscript{76} As Dinerstein observed, the publication of a book "like this about lawyering with all this complexity" demonstrated unequivocally that "there's really some future in here in understanding this as an intellectual."\textsuperscript{77}

III. The Recurring Questions

The articles in this issue and the authors' comments at the symposium identify many tensions or questions that existed in clinical education at the time TLP was written, many of which linger today. Because many students will take only one or two clinical courses out of the thirty or so courses they take in law school, the various types of

\textsuperscript{73} Bloch et al., \textit{supra} note 50, at 237.
\textsuperscript{74} Colloquium Transcript, \textit{supra} note 21, at 227.
\textsuperscript{75} \textit{Id.} at 187.
\textsuperscript{76} \textit{Id.} at 35. In Bloch et al., \textit{supra} note 50, the authors compare the treatment of four topics in TLP—"the public role of lawyers, ethics and professionalism, theory of lawyering, and the clinical methodology"—with the way those topics are treated in their own book, \textsc{Frank S. Bloch, Susan L. Brooks, Alex J. Hurder & Susan L. Kay, Clinical Anthology: Readings for Live-Client Clinics} (1997).
\textsuperscript{77} Colloquium Transcript, \textit{supra} note 21, at 62-63.
Clinics are sometimes in competition with each other for law school resources, a place in the curriculum and for student attention. Much of what seems important to clinicians (and lawyers) remains untaught in so many law school curricula. Clinicians sometimes squabble over what is of greatest importance: developing practice skills (arguably the forte of simulation pedagogy) or developing the critical perspective and insight on the work of lawyers within legal institutions that is a unique strength of externship programs or grappling with the value conflicts and ethical dilemmas inherent in representing real clients in in-house clinics.

When TLP was written, clinical education was more of a blank slate and Bellow and Moulton tried to fill in the slate, at least in part, by designing a book that would address all of the possible teaching goals on the skills-values spectrum. Twenty-five years after TLP's publication, most clinical teachers share a general goal of graduating students with greater competence and satisfaction in doing the tasks of lawyers, but we are divided on how best to accomplish this goal. Our divisions rest in part on our differing conceptions of what is most needed by graduates as they begin practice and as they progress in their careers and in part on different views about which pedagogies are best-suited to the fulfillment of these goals. Not surprisingly, the articles in this symposium, and the pedagogical developments they favor, reflect some of these divisions.

A. The Social Justice/Values Spectrum

David Chavkin asks whether the purpose of a clinic is simply to turn out responsible and effective practitioners, or whether it should aspire to being an instrument of social justice through the services it provides and the types of work its graduates do or through conveying to students critical perspectives on law and legal practice. With regard to clinic design, Chavkin argues provocatively that some issues that have long been the subject of debate, and that some regard as worthy of continuing inquiry, have long since been resolved. Responding to David Binder's comment at the colloquium that we seem to be asking "the same old questions"—big case versus little case, service versus education, and lawyer versus professor—Chavkin says that clinic design needs to respond to a core test of how to allocate the available resources "to help the largest number of students possible

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78 Melsner, supra note 23, at 334-35, quotes Bea speaking at Gary's Memorial Service, "Clinicians were starting from scratch. . . . They needed a book."

79 Chavkin, supra note 2, at 257-60; Binder and Bergman point out that social justice was one of two goals of the CLEPR project, Binder & Bergman, supra note 35, at 194, and continue to be among the goals of clinical education, id. at 197.
develop into responsible and effective practitioners.\textsuperscript{80} Applying this test, he rejects models in which clinical resources are used to enable clinical teachers to pursue law reform agendas, either by taking large numbers of cases that value service over education or by conducting major litigation in which students are foreclosed from having primary responsibility. Chavkin believes that a student's assumption of complete responsibility for a case creates an environment that is most conducive to reflective learning. As the student learns to ask and answer the right questions, the students' skills and values will be transformed. The presentation of skills and values as interrelated concepts helps to ensure the transmission of appropriate lessons about professional values.

At one time it might have been possible to imagine that clinicians were producing lawyers for the under-represented. At the colloquium, Jeanne Charn recalled that in 1978 the Legal Services Corporation was expanding and it seemed as if there would be thousands of jobs available in legal services offices.\textsuperscript{81} Bea recounts that she and Gary were motivated by a desire to increase the competence of those students who would become legal services lawyers and public defenders;\textsuperscript{82} the intertwining of the writing of the book and the creation of the New Lawyer Training Program of the Legal Services Corporation ensured that connection.\textsuperscript{83} Yet, as was true even at that time and is certainly true now, only a relatively small number of the students we teach in clinics are likely to become full-time lawyers for the poor.\textsuperscript{84} Is it enough to produce lawyers who are sensitized to injustice and inequality on the theory that they will do \textit{pro bono} work or someday be policy makers who can make a difference? And so must we be satisfied that the values that students derive from participation in clinics will ultimately have a positive effect on the legal profession, legal institutions, the quality of justice, and their own lives?

\textsuperscript{80} Chavkin, \textit{supra} note 2, at 256. While Binder and Bergman agree with Chavkin's core test, they identify a radically different solution. They are focused on developing lawyering skills and see the "holistic" lawyering that Chavkin suggests as a poor design to accomplish learning to perform skills at a competent level. Binder & Bergman, \textit{supra} note 35, at 203-04.

\textsuperscript{81} Colloquium Transcript, \textit{supra} note 21, at 22. In 1978-82, Charn and Bellow developed a third-year program at Harvard, co-sponsored with Northeastern, that was designed to teach students from those two schools and others who would make a commitment to work for legal services after law school. Jeanne Charn, \textit{Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School}, 10 CLIN. L. REV. 75, 97-98 (2003).

\textsuperscript{82} Moulton, \textit{supra} note 2, at 43.

\textsuperscript{83} \textit{Id.} at 43-49.

\textsuperscript{84} Except perhaps for Sue. In a recent survey of the CUNY School of Law clinic graduates, more than 50% of the graduates responding from the classes 1999 and 2001 were employed in fields directly related to the legal work they had done in their clinic.
Clinicians are, because of our traditions and experiences, acutely aware of our responsibility to transmit professional values and to counter some of the negative messages that may come from the rest of the law school experience. Our full-time occupation as teachers and our position in straddling the legal profession and the academy permits enough distance from practice to permit a critical perspective and sufficient familiarity with practice to ensure that this perspective is informed by an understanding of the nature of practice.

The authors in this symposium present a rich mix of views on the perspective that a clinical teacher should bring to questions of values. Sometimes we use the word "values" to refer to the rules of legal ethics. Interestingly, however, Bellow and Moulton embedded other kinds of values questions in both the skills and the perspectives sections of each chapter and saved the legal ethics questions for treatment in a separate chapter. As Dinerstein, Ellmann, Gunning and Shalleck note in their article, "[t]hese discussions are not only very rich, but also urge students to go beyond 'what the rules require' and examine the moral dimension of the activities in which lawyers engage."  

Perhaps the decision to treat ethics separately stemmed from the fact that at the time the book was written, students could opt to take "The Lawyering Process" course instead of a separate elective legal ethics course at Harvard. It is also possible that this was a political choice since one of the justifications for clinical education from the beginning was that it was an effective way to teach professional responsibility. This approach troubles Chavkin, who views it as obscuring the interrelationship of skills and values.

Dinerstein and his co-authors observe that the nature of clinical practice, in which students confront professional responsibility issues throughout their experience in representing clients, make these issues particularly intense and challenging and thereby provide "unparalleled opportunities for student learning." Their choice, like Chavkin's, has been to organize their book in a way that integrates

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85 And thus The Lawyering Process includes a chapter, "The Legacy of Law School."
86 Dinerstein et al., supra note 32, at 305.
87 Wortham, supra note 5, at 418.
88 Chavkin, supra note 2, at 254.
89 Hence the name Council on Legal Education for Professional Responsibility (CLEPR) was chosen for the organization created to provide the seed money to start modern clinical legal education.
90 Dinerstein et al., supra note 32, at 306. They are at the same time critical of the ethics transcripts because their sheer length interferes with understanding and the "extreme nature" of the ethical sins portrayed makes the scenarios seem unrealistic. Id. at 306 n.45.
ethical issues throughout the text.  

There are, of course, many other values questions concerning lawyers' conduct, for which the Model Rules of Professional Conduct provide no guidance. In their textbooks for simulation courses in pre-trial advocacy and trial, Berger, Clark, and Mitchell cover questions of legal ethics throughout the text but also use their discussions of storytelling in trial practice to try to sensitize students to values questions in those stories, particularly as they embrace or reject racial and gender stereotypes.

Dinerstein and his co-authors view "skills, values, ethics, and difference" as separate but interrelated concepts and address issues of race, ethnicity, gender, sexual orientation, ability, and cultural differences quite explicitly throughout the text. They explain that their decision to deal so directly with these topics derives from years of scholarship about lawyering, feminism, race and difference. They make the important point that none of this scholarship existed at the time that Bellow and Moulton wrote *The Lawyering Process*.  

A values question that engaged the authors at the colloquium concerned the degree to which a lawyer may or ought to influence client choices. Steve Ellmann observed that Bellow and Moulton believed that an attorney cannot avoid influencing a client to some extent and that the appropriate question to address therefore is how to do so properly. Michael Meltsner wondered why this view should surprise anyone since influence is inherent in professional communication. Ellmann pointed out that there is a lot of clinical scholarship to the contrary, and he compared the Bellow and Moulton position with that taken by Binder, Bergman and Price in their widely followed text on interviewing and counseling. Ellmann expressed the view that clinicians are now more likely to share the view expressed in TLP. David Binder replied that he worries that giving students permission to influence at all may result in their going too far. For this reason, Binder explained, he overstated his position on reducing im-

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91 *Id.* at 306.
92 "The teaching of advocacy encompasses three dimensions: the why (the substance of what you are accomplishing); the skill (how you do the specific skill — interviewing, counseling, developing case theory, direct examination); and the ethics and values." Berger et al., *supra* note 36, at 162-63.
93 Dinerstein et al., *supra* note 32, at 297.
94 *Id.*
95 Colloquium Transcript, *supra* note 21, at 7.
96 *Id.* at 8.
97 *Id.*
99 Colloquium Transcript, *supra* note 21, at 12.
proper influence "to be provocative." Binder's comment highlights that clinical teachers need to resolve not only the question of what is the right approach but also how best to teach it to students. Paul Bergman reported that he and Binder are still struggling with these questions in the writing of the next edition of their book.

Kate Kruse observed that a significant difference between the treatment of counseling in TLP and in Binder, Bergman and Price is that TLP uses the style of a casebook to pose questions and provide a vocabulary for answering them while Binder, Bergman and Price provides a theoretical argument for a non-interventionist model. Given that (as Bea reminds us) Gary sought to teach students to resist the socialization inherent in all legal communities to accept "the ways things are done here," it is not surprising, as Kruse says, that TLP asks students to consider the intervention question in light of their own values and the kind of lawyer they seek to become. As John Mitchell put it, the Bellow and Moulton approach is less about how to counsel a client than who the student wants to be as a lawyer.

B. Skills: the Models/Reflection Spectrum

Although TLP eschews skill proficiency as a goal, some of the authors in this symposium view skill proficiency as attainable and desirable. Treating skill proficiency as a goal, they ask: How will students learn these skills best? Should teachers teach models of good lawyering or should students extract models from their experience, aided by readings? Should the models we are teaching be appropriate for the beginning lawyer or for all time? Finally, do we know what good lawyering is or isn't?

In their article, Binder and Bergman criticize the dominant "case-centered" approach in clinical education, arguing that classroom instruction in skills and fieldwork exposure to experiences that vary according to case developments is "ill-suited" to the successful learning of lawyering skills. Drawing on pedagogical research, Binder and Bergman take the position that TLP and other clinical texts try to teach too much and thereby fail to convey the complexity of the skills they cover and the capacity to transfer what students have learned from one setting to another. The traditional case-based fieldwork setting, they maintain, is too varied and random to permit students to see

100 Id. at 13-14.
101 Id. at 15-16.
102 Moulton, supra note 2, at 40.
103 Colloquium Transcript, supra note 21, at 16.
104 Mitchell contrasted that with the approach taken in his books, which he characterized as being about becoming a "marginally competent professional" when others aren't. Colloquium Transcript, supra note 21, at 19.
how similar problems present themselves in different settings and to give students an opportunity to re-do a certain task with the benefit of reflection on the previous attempt. Binder and Bergman suggest that “skill-focused” clinics would serve as a better vehicle for teaching lawyering skills.\(^\text{105}\)

Berger, Mitchell and Clark apply a similar learning theory in their teaching of and texts on pre-trial and trial practice. Situating their pedagogy in expert/novice learning theory, their goal is to teach students a model that can be used in the first years of practice to “hit the ground running.”\(^\text{106}\) They organize their book and teaching around a “theory of the case model” that students learn and apply throughout an eight-credit simulated course.

The discussion of models at the colloquium prompted an exchange of views regarding the appropriate focus of such a model: Should they illustrate what expert lawyers do (or should do) or should they be attuned to the actions and abilities of a beginning lawyer?\(^\text{107}\) Berger and Binder identified theirs as expert models while Mitchell described his trial practice models as using theories that would serve beginning lawyers well. Mitchell wondered whether TLP is like a car that one sees at a car show that will never be used in the real world but that “will influence what cars will be like.” To Mitchell, TLP was “that visionary auto,” while others viewed TLP as offering component parts of the visionary car and thereby encouraging students to question what they have come to accept and opening their minds to new possibilities.\(^\text{108}\)

The colloquium discussion also considered why some clinical texts embrace student learning through application of models even though TLP explicitly rejected this method of learning lawyering.\(^\text{109}\)

\(^{105}\) Binder & Bergman, supra note 35, at 207. While Binder and Bergman recommend abandoning the case-centered clinic to improve skills teaching, Chavkin recommends its abandonment because it does not teach client-centered lawyering. Chavkin urges a client focused clinic that involves students in general practice that addresses the whole client in legal and non-legal matters. By focusing on the client and using “client theory” instead of “case-theory,” students learn to be better client-centered lawyers. See Chavkin, supra note 2, at 267-68. In her description of the Harvard model, Charn focuses on the importance of students handling a number of cases so that they can engage in the repetitious learning espoused by Binder and Bergman. She advocates for practice units that allow for a degree of specialization so that the student can experience more complex lawyering tasks with less focus on learning new practice areas for each case. Charn, supra note 81, at 97-98.

\(^{106}\) Colloquium Transcript, supra note 21, at 75.

\(^{107}\) Ellmann, Colloquium Transcript, supra note 21, at 90-91 (“... is what you wrote down as how to do the skills you discussed the way you would do it as an expert yourself or the way that you thought novices could handle it as a starting point?”).

\(^{108}\) Id. at 53.

\(^{109}\) Bergman, Colloquium Transcript, supra note 21, at 94; Binder, Colloquium Transcript, supra note 21, at 89-91; Mitchell, Colloquium Transcript, supra note 21, at 75.
Some participants suggested that the choice of approach may be influenced by the type of legal practice that students at a particular school are likely to enter upon graduation. For example, Mitchell's students are expected to do trials and pre-trial work in their first weeks of practice while graduates of some other schools may spend their early years doing research. Another difference may be the author's analysis of what is wrong with the legal profession and how best to cure it. Berger and her co-authors seek to avert lawyer incompetence while Binder hopes to correct lawyer domination. The models they favor reflect these distinct goals. Gary Bellow, as noted above, sought to foster in students a strong ethic of resisting the prevailing legal norms. By requiring students to make their own choices about what the model ought to look like, he and Bea sought to foster a critical and reflective mindset. Although Binder and Mitchell also seek to teach critical judgment and reflection and they count on students to test and modify models rather than following them blindly, these authors' differing priorities lead them to rely more heavily on models than did Gary and Bea.

As symposium participants noted, the choice between expert models and novice models must take into account the possibility that a model may have its most significant impact years after the student has graduated. In re-reading TLP for this symposium, Wortham "found a wealth of information on trial techniques to which I think I would have referred in the two years after law school when I was a trial lawyer, if I had then owned the book." At the colloquium, Charn described an e-mail she received from a former student, recounting a conversation the former student had with a senior partner in her Washington D.C. firm regarding the taking of depositions. Saying "I have something that will help you," the partner pulled TLP off the shelf and said: "I found this the most useful thing in 20 years of practice. I use it all the time. It's outdated in some ways but take a look at it." When the student commented, "Oh, this was my professor," the partner was surprised. He had never met Gary or Bea and had no knowledge of their teaching but had used the book and found it rich and valuable.

Authors in this symposium write convincingly about the models

110 Mitchell, Colloquium Transcript, supra note 21, at 75.
111 Bea Moulton came to a similar analysis when she was training legal services lawyers. She realized that TLP materials would not help the trainers and trainees learn the lawyering skills that they needed for practice and so she developed the legal services training materials that simplified the approach to the lawyering tasks. Moulton, supra note 2, at 47.
112 Berger et al., supra note 36, at 164.
113 Colloquium Transcript, supra note 21, at 13.
114 Binder, Colloquium Transcript, supra note 21, at 86.
they posit for particular lawyering skills, and yet Neumann and Kreiger ask whether there is any empirical support for what the authors purport to know. At the time that Bellow and Moulton began the research for TLP, there was very little legal literature to guide them. Accordingly, Bea and Gary drafted outlines of each topic and then tried to figure out what other disciplines involved a similar skill or issue. At the colloquium, Kate Kruse reported that the editors of the Clinical Law Review examined the various clinical texts and found that "there were a lot more empirical interdisciplinary materials" in TLP than in any other book. Consistent with that observation, Berger and her co-authors claim only to be relying on their own and other trial lawyers' experiences and Dinerstein and his co-authors recognize their "ability to rely more on insights from within clinical pedagogy and clinical scholarship." Although clinicians' theories about lawyering are tested by students and lawyers in the context of the real world, Neumann and Kreiger object to the practice of extrapolating from limited studies. They call for adherence to the norms of social science to test hypotheses about lawyering rather than the informal empiricism and reflections upon experience that characterize much of clinical scholarship.

Conclusion

As we read this symposium and develop a deeper understanding of the many facets of TLP, it is important for us to keep in mind that Gary and Bea intended the book to not just be read and learned but instead to be read as background for reflective analysis of experience in role as a lawyer. They expected the book to serve as a backdrop for classroom and supervisory conversations. Two of the symposium authors, Ann Shalleck and Leah Wortham, were students in Gary's Lawyering Process course. Their vivid recollections of the experience and what they learned makes graphically clear that in addition to texts, teachers matter. This is particularly true in clinical courses in which the teacher is the bridge between theory and practice. Shalleck, who read the last draft of the text as a student, found that its richness and complexity made it difficult to process and apply. But, when com-

115 Moulton, supra note 2, at 51.
116 Colloquium Transcript, supra note 21, at 143.
117 Id. at 73-78.
118 Dinerstein et al., supra note 32, at 284-85.
119 Neumann & Kreiger, supra note 7, at 393-94. They urge us to be wary of confusing anecdotes with data. "Nonmethodological observation is observation without the benefit of methodological controls. Without methodology, generalizations drawn from observation have no assurance of validity or reliability." Id. at 380.
120 Bellow & Moulton, supra note 6, at xxiv.
bined with the context and critical framework that Gary provided in the classroom, the text projected a coherent vision about how to lawyer. Shalleck observes that "the book needs to be seen against how we use it in the different contexts in which we teach and then what we either explicitly or implicitly communicate to our students." \(^{121}\)

Wortham took the course prior to the publication of the book but used pre-publication versions of it while she was a student. In her symposium article, she describes the classroom experience as "cosmic":

> In class, we watched Gary, and other students, try out the lawyering tasks. We reflected on what worked and what did not. We practiced being critical of ourselves and others, feeling that was a constructive way to get better, not a personal attack. The readings provided a framework—a theory—upon which to proceed and a perspective for our critical reflections.\(^{122}\)

She found Bellow's passion and joy at being a lawyer for marginalized people to be infectious and she appreciated that the values he represented were a counterbalance to the message coming from the rest of law school that the definition of success is large firm practice.\(^{123}\) Interestingly, Wortham has a clear vision of skills she learned from the class and says that even though the book appears to provide no clear answers, she found "coherence and consistency" in her experience as a student.\(^{124}\)

Of course, not all of us are as gifted teachers as was Gary Bellow. But we clinicians all use texts and student experiences as the beginning point for trying to inspire our students to learn what we and they believe they should take from their limited time with us. We bring our own insights to the material and to the relationships with our students, and our choices play an essential role in shaping students' understanding of what we teach. And who among us doesn't exult when a graduate returns and says that he or she was able to use something learned in our clinic, especially if the lesson they describe as having learned is one we actually intended to teach?

In deciding on the appropriate level of complexity for a textbook, authors try to understand two audiences: the faculty members who might choose to employ the book in a course; and the students who will have to read it. Ideally, both will learn from it. And, as John

\(^{121}\) Colloquium Transcript, *supra* note 21, at 28-29.
\(^{122}\) Wortham, *supra* note 5, at 406.
\(^{123}\) *Id.* at 407-08.
\(^{124}\) *Id.* at 426. Among the things she learned from the class that she has found valuable over the course of her career are a useful decision-making model, a framework to prepare for negotiation and for trial and how to parse a cause of action or defense into elements and use those elements to prepare a case theory. *Id.* at 408-19.
Mitchell observed at the colloquium, the author can never address every variation that would be responsive to particular situations and must rely on teachers to make adjustments to the written text. The teacher's manual can help but in the end it is up to the teacher to figure out how to use and enhance what appears in the text.¹²⁵

This focus on the use of the book in the classroom leads us to a recurring and perplexing question: Why wasn't the book more of a pedagogical and commercial success?¹²⁶ Bea herself has not used TLP in her own teaching for many years. Jeanne Charn recounted that the students in Gary's and her Lawyering Process course at Harvard reported in their end-of-term evaluations that they did not find TLP useful, and that she and Gary stopped using the book as a text for the course. Meltsner related that, after an initial distribution of 1750 copies in 1979, the book dropped down to 1000 copies in 1981, and is now out of print.¹²⁷

Perhaps the book was a victim of its own success in presenting lawyering in its manifold levels and forms of complexity. Looking back at the book from the perspective of a seasoned clinical teacher, Bea takes the view that the book is probably “overwhelming” for a new clinical teacher and that students would be “hard-pressed” to get through all of it.¹²⁸ She recognizes that the learning agenda created by the book and the amount of reading asked of students was too ambitious for even high-credit clinics. Charn similarly suggests that students, as neophyte lawyers, are not ready to handle the complexity of practice explored in the book.¹²⁹ Other symposium authors share this evaluation of the book. Dinerstein and his co-authors conclude that TLP was a failure with students because its insights were too sprawling and demanding in nature.¹³⁰ Chavkin expresses the view that the political choice of creating a book in a format that looked like other casebooks—with excerpts from many different sources—re-

¹²⁵ Colloquium Transcript, supra note 21, at 148-50.
¹²⁶ This is not unique to TLP. As other authors at the colloquium recognized, all clinical texts are among the least commercially successful books. Id. at 123.
¹²⁷ Meltsner, supra note 23, at 338.
¹²⁸ Moulton, supra note 2, at 35-36.
¹²⁹ Colloquium Transcript, supra note 21, at 47; see also Charn, supra note 81, at 87. In describing the program at Harvard, Charn explains that she uses sections of the book and explicitly defends their use for studying practice. She also justifies the importance of students getting as much case experience as possible for them to be able to contextualize their learning and study. Id. at 88.
¹³⁰ Dinerstein et al., supra note 32, at 284. See Wortham, supra note 5, at 425, citing Alexander Scherr, Lawyers and Decisions: A Model of Practical Judgment, 47 VILL. L. REV. 161, 164 (2002): “While Scherr rhapsodizes about TLP trilogy as a ‘complex, challenging modern symphony, rich with dissonance and compelling improvisational riffs,’ he also terms the book as ‘something like an encyclopedic account of lawyering . . . [whose] . . . very ambition makes the book difficult to read, to absorb and especially to emulate.’”
sulted in a book that "sacrificed internal coherence in the pursuit of external credibility."^{131}

Although acknowledging TLP’s complexity and difficulties, Richard Boswell reminds us that many teachers photocopied pieces of TLP, eliminating some of the materials students found most problematic and adjusting the material to particular uses in individual clinics.^{132} And some probably continue to do that.

In addition to focusing on some of the problems with TLP as a text for the early days, the symposium participants ask whether any text, even one as comprehensive as TLP, could serve as a text for all time. As Harbaugh and Bastress comment, “What is remarkable about *The Lawyering Process* twenty-five years later is that so much of those diverse materials remains relevant today and that what Gary and Bea said at the time continues to be profoundly useful for lawyers and law students of the current generation.”^{133} Perhaps this is true because, as Susan Kay notes, much of lawyering involves common human issues that remain the same with different nuances.^{134}

Nonetheless, several of the symposium participants conclude, Gary and Bea would probably have written a very different text today.^{135} Some of the authors point to changes in what we have learned about lawyering since 1978. These include, for example, new theories to explain the role of narrative in legal work^{136} and more experience in using a client-centered model of practice.^{137} The emergence of the *Clinical Law Review* has resulted in the publication of a substantial amount of clinical scholarship, much of which builds upon or responds to other clinicians’ work that appeared in the *Review*. A wealth of critical scholarship that has emerged in the areas of gender, race, language, sexual orientation and difference contributes in many important ways to what casebook authors know and can use in their analyses of good lawyering. Moreover, as Cecelia Espenozza reminds us, students today are different: They are more diverse and they bring

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131 Chavkin, *supra* note 2, at 254.
132 Colloquium Transcript, *supra* note 21, at 49.
133 Harbaugh and Bastress, *supra* note 1, at 116-17.
134 Colloquium Transcript, *supra* note 21, at 203.
135 Bea reported at the symposium that she has written chapters of materials for her course, Roles and Ethics, a pre-clinic course. Colloquium Transcript, *supra* note 21, at 221.
136 Hertz, Colloquium Transcript, *supra* note 21, at 210.
137 See Dinerstein et al., *supra* note 32, at 302 n.35; Hertz, Colloquium Transcript, *supra* note 21, at 211; Colloquium Transcript, *supra* note 21, at 122. The authors also noted that a book with that many excerpts from others would not happen today because the cost of using excerpts from other publications is too prohibitive. Today, textbook authors are more likely to paraphrase and give credit for the concepts. See Colloquium Transcript, *supra* note 21, at 263-65.
different educational and life experiences to the classroom. As Harbaugh and Bastress show us, technology has created new opportunities and challenges for the lawyer and the teacher of lawyers. Ideas about solutions to clients' problems change, demanding new and different skills. And of course the law changes and shapes the texts.

Notwithstanding these considerations, it can hardly be doubted that TLP was—and remains—an extraordinary accomplishment. The book played a vital role at a pivotal point in the history of clinical legal education and it continues to be a rich source of information and ideas for those who consult it. For those recent generations of clinical teachers who sadly missed out on exposure to the book while they were in law school clinics and when they began to teach, we hope that this 25th anniversary commemoration will serve as an introduction to the book and an incentive to explore the many lessons it offers.

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138 Espenoza, Colloquium Transcript, supra note 21, at 179.
139 For example, as Espenoza points out, TLP was written at a time when litigation was presumed to be the primary medium to address poor people’s concerns. Today, many clinical programs with social justice goals teach students different transactional and community building skills than those addressed in TLP. Id. at 147.
140 For example, the Model Rules of Professional Conduct that inform many state disciplinary codes were not promulgated until after TLP was published. See Dinerstein et al., supra note 32, at 305 n.40.