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Beryl Blaustone
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TEACHING LAW STUDENTS TO SELF-CRITIQUE AND TO DEVELOP CRITICAL CLINICAL SELF-AWARENESS IN PERFORMANCE

BERYL BLAUSTONE*

This article describes a feedback model designed to engage law students in a rigorous and routinized analysis of lawyering performance. The feedback model is intended to empower law students to take leadership in the exploration of their strengths and weaknesses and to internalize an effective approach to their ongoing professional development throughout their future years of law practice. The author explores the factors that contribute to feedback failure. The author then presents the core principles of learning theory that are the basis for the structured feedback model. The feedback model is then presented, exploring each of the stages. Finally, the model's strengths are identified and potential drawbacks are discussed.

Teachers open the door, but you must enter by yourself.¹

INTRODUCTION

In a small discussion group in which I participated at the 2005 Clinical Legal Education Conference, a fellow clinician shared his distress over a group of “slacker law students” in his clinic in the semester that had just ended. The horrific performances he described were of the sort that most clinical teachers would probably find familiar. This colleague asked the small group for assistance on how to give effective feedback, especially when one is dissatisfied with the performance of a law student. As he discussed his feedback meetings with these errant law students, I heard the disdain in his voice and the derogatory terms he used in his communication with the students. He went on to describe the impenetrable barriers to communication with these students and his need to arrange for alternative supervision. He

* Professor of Law, CUNY School of Law, and Director, Mediation Clinic, Main Street Legal Services, Inc. I thank CUNY School of Law for awarding me a research grant to undertake this publication. I am indebted to Professor Susan Bryant for her astounding contributions, guidance and suggestions. My research assistant Christopher Oldi provided invaluable research assistance and collegial support in the final stages of this piece. I also thank Elisabeth Drew, Jocelyn Greene and Michael Nunziata, Sharon Ferguson and Ransie Howell for their research assistance.

¹ ZEN GARDEN BOOK OF MEDITATIONS (1999).

expressed a sense of failure as supervisor and stated that he was deeply dissatisfied with the outcome.

In telling this story, this colleague was searching for different teaching choices for giving feedback. He did not possess a developed approach to the feedback process and was searching for answers. I, along with others in the small group, offered partial remedies for achieving more effective feedback results in the future. But, at the point at which our small group was entering this situation, there was little we could suggest for how to repair the relationship and permit the students to hear the professor's feedback.

My goal in this article is to describe a feedback process that may avert such kinds of feedback failure before the relationship is irreparably damaged and before the learning process is irremediably disrupted. What I present here is a six-stage feedback model that I designed for use in both my simulation instruction and live case clinical supervision. The model engages students in a rigorous and routinized process of self and group reflection, identifying clear roles for students and faculty, fostering students' adoption of critical-minded lawyering habits, and providing students with an approach for learning from experience that will be useful to them throughout their years in practice. The model empowers the learner to explore both strengths and weaknesses as the means to improve future performance.

The model I present here grew out of my background as a mediation trainer.² The model is rooted in theories of active learning or self-directed learning,³ psychological theories of preference,⁴ and the "Socratic" mentoring process, and stems from the value of self-determination in lawyering, mediation and learning. In developing and refining the model over the years, I have used my own experiences and

² I have been a mediator for 26 years.

³ Dr. Georgi Lozanov of Bulgaria began the development of integrated learning with his pioneering study of the mental processes of successful learners. For the ease of learning, Dr. Lozanov's theory advocated creating conditions in which there are few constraints or learning blocks to impede the functioning of the brain. These conditions promote curiosity by overlaying several different modes of stimulation in understanding any matter. G. LOZANOV, *SUGGESTOLOGY AND OUTLINES OF SUGGESTOPEDY* 5 (1979).

⁴ The theory of preference refers to habitual, mindless choice in mental functions that accounts for individual approaches to perception and decision-making. See generally *THE COLLECTED WORKS OF CARL G. JUNG* (H. Read, M. Fordham & G. Adler eds., 2d ed. 1966). This theory was refined by Isabel Briggs Myers and Katharine D. Myers and is reflected in the design of the Myers-Briggs Type Indicator (MBTI). For readings on the basic theory and application to leaning, see ISABEL B. MYERS WITH PETER B. MYERS, *GIFTS DIFFERING* (1995); KATHARINE D. MYERS & LINDA K. KIRBY, *INTRODUCTION TO TYPE DYNAMICS AND DEVELOPMENT* (1994); John K. DiTiberio, *Education, Learning Styles, and Cognitive Styles, in MBTI APPLICATIONS: A DECADE OF RESEARCH ON THE MYERS-BRIGGS TYPE INDICATOR* (A.L. Hammer ed., 1996).

accounts that other teachers have shared with me to try to identify some of the key manifestations of feedback failure. I also drew upon learning theory to identify positive feedback opportunities,⁵ and I continue to test feedback techniques.

Section I of this article explores the factors that may contribute to feedback failure by examining existing approaches to the feedback process that may create problems of various sorts. Section II identifies the core principles of learning theory that are the foundation for the creation of my structured feedback model. These include: learning as distinct from conveying information; self-generated observations; ownership; honesty; a focus on strengths as well as weaknesses; the power of structure and the importance of repetition. Section III presents the model itself, identifying each of the stages⁶ and providing illustrations of law student learning. This discussion shows how the feedback model can move past surface observations in debriefing performance and can establish a context for exploring competence in a balanced manner. Part IV reflects on the experiences I have had with this feedback model and uses these experiences and student comments to identify the model's strengths and to consider potential problems and what can be done to avoid such problems.

I. PROBLEMS WITH FEEDBACK METHODOLOGIES AS CURRENTLY PRACTICED AND CONCEPTUALIZED: CRITIQUING CRITIQUE⁷

A. *Current Conceptions of Feedback*

Scholarly reference to the term "feedback" in legal education and

⁵ The term "learning theory" refers to the bodies of scholarly literature in the fields of psychology and education that examine the mental functions used in the learning process. Learning theory focuses on heightened retention, recall, and performance by the activation of all mental processes in completing a particular learning task. With logic and emotion working together, greater association allows for improved recall. See P. KLINE, *THE EVERYDAY GENIUS: RESTORING CHILDREN'S NATURAL JOY OF LEARNING – AND YOURS TOO* 54, 72-73 (1988).

⁶ Interestingly, in the past decade, the Appreciative Inquiry school of thought has become widespread in organizational development endeavors and in schools of management. Appreciative Inquiry is a system of doing work premised upon "strengthening a system's capacity to apprehend, anticipate and heighten positive potential" through asking positive questions. The six-step feedback model was developed independently of this trend. I have just recently become aware of the theory and practice within this "system." See DAVID L. COOPERRIDER & DIANA WHITNEY, *A POSITIVE REVOLUTION IN CHANGE: APPRECIATIVE INQUIRY* (2000). The Weatherhead School of Management at Case Western Reserve University hosts a website devoted to research, case studies and other resources in Appreciative Inquiry: <http://appreciativeinquiry.case.edu>.

⁷ As Part III(A) *infra* explains, I believe that experiential learning starts best with a focus on what is positive about the performance. Nonetheless, I am starting this analysis with a critique of the feedback process to alert the reader to problems that the model is

in clinical legal education abounds. Much of this scholarship emphasizes the importance of feedback in learning.⁸ In this literature, the term “feedback” is frequently used without definition or reference to explicit goals. Some legal scholars have identified suggestions for effective feedback in legal education without identifying precise methods to carry out the suggestions. These often overlapping suggestions call for the teacher to focus on timeliness; to make the feedback concrete and specific; to ask questions;⁹ and to focus on action, not on the person. For example, one author, in identifying criteria for effective feedback, emphasizes references to objective actions and not intentions, regularity of feedback, immediacy of feedback, and peer or group discourse.¹⁰ Another author sets forth a full inventory of feedback choices, discussing the benefits and shortcomings of each choice with respect to a variety of considerations, including timing and specificity.¹¹ Another article stresses that the teacher should pay attention to the appropriate level of feedback and motivational quality of the feedback.¹² And yet another author draws on early clinicians’ experiences with fieldwork to emphasize that feedback should be honest, specific and individualized, timely, nonjudgmental, and focused on behavior relevant to the lawyering task being performed.¹³

Although these suggestions are extremely valuable (and certainly

designed to address as well as to illustrate some of the thinking that led to the model’s focus on the positive as well as the negative.

⁸ See, e.g., Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999) (describing law student engagement in the feedback process as essential to professional development).

⁹ Glesner Fines sets forth a “stop, ask and listen” method for assessing individual student comprehension. See Barbara Glesner Fines, *Classroom Assessment Techniques for Law School Teaching*, in ASSESSMENT, FEEDBACK AND EVALUATION (2001). Shultz & Sirico provide another technique for ensuring student comprehension by encouraging students to do “minute papers” describing the most important point the student learned on that particular day, and what points remain unclear. See Nancy Shultz & Louis Sirico, *Day to Day Feedback for Students and Teachers*, in *id.*

¹⁰ Paul T. Wangerin, *The Evaluation of Teaching in Law Schools*, 11 J. PROF. LEGAL EDUC. 88 (1993) (discussing feedback to teachers).

¹¹ Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1995).

¹² RICHARD JOHNSTONE, JENNY PATTERSON & KIM RUBENSTEIN, *IMPROVING CRITERIA AND FEEDBACK IN STUDENT ASSESSMENT IN LAW* (1998). Munro states that it is essential for students to have a fluid “feedback loop” and “learning loop” in their law school education, and that continuous and frequent student assessment are essential to ensure that the “loop” does not break. Munro takes issue with the “do or die” approach in which the course for a grade is determined by a single written examination rather than multiple diagnostic tools that can more accurately assess student performance. See Gregory S. Munro, *Assessment for Law Schools and Individual Teachers*, in ASSESSMENT, FEEDBACK AND EVALUATION (2001).

¹³ See Victor M. Goode, *There Is a Method(ology) to this Madness: A Review and Analysis of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223 (2000).

ones with which I agree), the legal education literature thus far has not provided an explicit structure to implement these principles in simulations and in live-client experience. Moreover, the literature tends to use the terms “active-learning” and “feedback” interchangeably, even though feedback failures often occur because the student is passive and/or resistant, and such situations typically are not conducive to an active-learning approach.¹⁴

B. Causes for Feedback Failures

In our dominant cultural experience, rigor in instruction or coaching often is accomplished by focusing on the *negative*. This orientation often results in information being conveyed in damaging ways. Almost every person I ask can recount a personal story of damaging feedback.

One of my research assistants recounted one such experience to me. It occurred in her Junior High School, where she had been placed in the honors program. She experienced problems adjusting to the other students, and as a result her grades began to drop. She asked for extra-credit assignments to counteract her dropping grades. She was given some papers to write, but when she asked for feedback, she experienced the following:

Eventually she [her teacher] relented and gave me a paper to do. But when I kept turning it in to her for corrections, she just said non-committal things like “I don’t think you get it”. . . or . . . “weren’t you listening in class the day I taught this?” She gave me nothing constructive, nothing to help me understand her class or comprehend the work. I couldn’t make her see how important getting a “good” grade in her class was to me, because as a 12 year old, all I could do is feel hurt, angry and impotent. I wanted to yell “I’m slipping and no one is catching me.”¹⁵

Needless to say, negative feedback experiences also occur in environments other than school. They can occur anywhere and often in the workplace setting. Another research assistant commented:

I learned business memorandum writing by having a lot of the drafts that I submitted in my first two months on the job returned to me with vast amounts of red ink on them. Entire paragraphs were marked through with an “X” and the words “NO,” “REPHRASE,” and “UNACCEPTABLE” written in the margins. The written comments were also occasionally accompanied by the verbal commen-

¹⁴ The term “feedback” is often used to indicate how a law teacher gauges substantive comprehension of doctrine by students in the classroom. This is not feedback to the student but feedback to the teacher.

¹⁵ Written statement of Jocelyn Greene, 2006 graduate of CUNY School of Law (Sept. 6, 2005) (on file with author).

tary that she was running out of red pens so I had better figure out how to write “properly.” I found this process demoralizing at first, and I measured my progress by the amount of red ink that I saw. Even today, the term “red ink” is one that I subconsciously associate with the word “wrong.”¹⁶

My own personal experiences with receiving negative feedback include an instance when I was in private practice, serving in an “of counsel capacity” to a law firm, and I submitted a set of interrogatories for review by one of the partners. I expected that there would be at least some revisions of the interrogatories before they were sent out. What I certainly did not anticipate was that the partner, while telling me what portions needed revision, would be incensed, swear at me and pound his fist on his desk. My status as a practicing lawyer and the nature of my relationship with the firm made it possible for me to indicate my disapproval of the partner’s feedback method. Nevertheless, that encounter was difficult and unproductive for me in moving forward with the necessary revisions.

Because law students are in a less personally powerful position than I was at my firm, negative comments that are less harsh than those I received can seem just as oppressive. Moreover, the damage caused by such feedback encounters may be far greater for law students, like my research assistants above, because their teachers or supervisors are gatekeepers to future employment.

From countless scenarios like these and others that are less extreme, I have identified four factors in the ways in which feedback is provided that may contribute to feedback failures and to problems in learning. First, feedback comments are almost always focused on the negative. Second, no distinction is made between negative assessment in feedback and the manner in which the negative assessment is delivered. Third, the feedback recipient is passive and at the mercy of the one giving the feedback, and thus has very little control over the content, tone or style of the encounter. Finally, feedback recipients are not given a methodology or incentive to develop the ability to assess themselves rigorously as a means to achieving excellence in performance. The following discussion will examine each of these factors in greater detail.

1. Negative Feedback

My major reservation about many feedback methodologies in legal education is that feedback essentially is a process in which the novice learner (novice legal thinker) is asked to explore performance by

¹⁶ Written statement of Elizabeth Drew, 2006 graduate of CUNY School of Law (Aug. 14, 2005) (on file with author).

having “objective” observers comment on weaknesses and/or failures. Because the common expectation is that the feedback recipient is to be told what was wrong, the feedback recipient’s resulting view of her or his own work is primarily framed in terms of what was “wrong.”

This approach is in keeping with the dominant cultural experience that critique is all about leaning what was done wrong.¹⁷ Often this construct of focusing exclusively on weaknesses results in the recipient transforming the feedback on performance into implied negative personal judgments about the recipient’s character or potential. In fact, the term “critique” means “the act of criticizing”¹⁸ and connotes negative content regarding the subject. Thus, many individuals subject to a scheduled feedback discussion will immediately jump to negative judgments about their own performance that may have little to do with an accurate examination of the weak or undeveloped aspects of their work.

2. *Negative Tone and Style of Delivery*

Often, in the mind of the one delivering the feedback, the content is viewed as essential while the process of delivering the information is secondary. For the feedback provider, substance wins out over form, but usually the reverse is true for the feedback recipient. To add insult to injury, often the negative content furnishes a convenient rationale for the peer or supervisor to deliver the feedback in ways that further impede the learner from benefiting from the observations. If the feedback is given in a discrediting, disdainful tone or if the content is personalized with pejorative labels, the learner may feel humiliated, lose some degree of positive self-concept, feel vulnerable, and lose trust in the peer or supervisor.

For more than twenty years, I have heard from students and practitioners that they have been on the receiving end of negative feedback that closed them down to valuable content and to people from whom they might have learned.¹⁹ What is common in all of these situations is that the feedback comments were framed in terms that were (or appeared to be) judgmental about the performer rather than the performance. Often these comments contained sweeping labels such as “you are immature” or “you were unprofessional” or even “you are

¹⁷ Blanco & Buhai discuss the prevalence of this orientation in law students’ approach to learning. See Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLIN. L. REV. 611, 637 (2004).

¹⁸ WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (1983).

¹⁹ Although I do not universally credit these reports, I tend to credit the existence of the phenomenon because most of the individuals who have reported this experience to me are students whom I supervise and who generally perform well, desire to learn how to perform better, and are mature and diligent workers.

committing malpractice.”

Negative tone and delivery can result in a law student’s experiencing greater dissonance and power imbalance in the learning relationship with the teacher/supervisor. Law students may respond by engaging in insulating or cocooning behaviors that decrease meaningful access or interaction with faculty supervisors. The net outcome is the very opposite of clinicians’ goal of increasing students’ critical-minded confidence so as to incorporate effective reflection habits for self-directed assessment in future professional development.

3. *Student Passivity*

Notwithstanding differences in the use of terms such as active learning, learning theory²⁰ and feedback, scholars commonly emphasize the value of student interaction for substantive mastery and retention.²¹ Yet, in legal education, the feedback recipient often is essentially passive and has neither responsibility for nor control of the feedback encounter.²² The topics addressed and the tone and style of the feedback may cause the law students to be avoidant, defensive or dismissive, thereby impeding the pedagogical goal of improving performance. Moreover, the feedback process rarely involves active in-depth interactions with peers.

4. *Hidden Methods*

Because the teacher’s feedback process often lacks a clear method, it is difficult for students to develop the skills they would need in order to take an active role in feedback (whether in self-assessment and self-feedback or in engaging with others in giving feedback and participating in reflection). Even if the teacher employs a

²⁰ In this article, I separate the treatment of learning theory from the treatment of feedback theory because the former covers the entire multi-disciplinary scholarly literature on the acquisition of knowledge and skills while the latter refers to a subset of theories on input, reflection, evaluation and self-inquiry.

²¹ See, e.g., JOSEPH B. CUSEO, IGNITING STUDENT INVOLVEMENT, PEER INTERACTION, AND TEAMWORK: A TAXONOMY OF SPECIFIC COOPERATIVE LEARNING STRUCTURES AND COLLABORATIVE LEARNING STRATEGIES 8, 10 (2002). Cuseo explains that the integration of active learning techniques into traditional classroom instruction triggers positive emotional and psychological responses that increase retention in contrast to the level of learning by exposure to a single or passive teaching technique. A variety of techniques provides stimuli to the brain which enhance learning. The social interaction, peer acceptance, and peer support of active learning techniques also aid in retention and mastery.

²² Blanco & Buhai point out that, in traditional supervision models, the law student is often “the passive recipient of whatever type or style of direction and evaluation the supervisor imparts.” Blanco & Buhai, *supra* note 17, at 614. Batt & Katz emphasize the importance of a student’s active participation in the feedback process. Cynthia Batt & Harriet N. Katz, *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10 CLIN. L. REV. 581, 610 (2004).

clear method, the law student recipient is a novice and accordingly needs preliminary instruction in the feedback process before it is undertaken. As a novice learner and novice legal thinker, the feedback recipient is likely to observe and reflect on performance in a vague and rudimentary manner until and unless s/he receives feedback on the quality of his or her feedback and is thereby taught how to make effective use of the learning process.

For instance, a student may comment that s/he thought that s/he “asked good questions” during a simulated fact-gathering exercise or that s/he was “a good listener” or that s/he delivered opening remarks in a calm manner. Students often offer feedback to each other at the same level of generality. Such simplified analysis may be explained by a lack of an internal legal architecture needed to describe the lawyering experience at a professional level. However, this surface level of engagement may also be attributable, at least in part, to the lack of clear demonstration and instruction by the faculty supervisor in the feedback experience.

II. CORE LEARNING THEORY: THE BASIS FOR THE SIX-STEP FEEDBACK MODEL

My understanding of how to mentor in the professional relationship, which shaped the feedback model that I present in this article, was significantly influenced by the work of Donald Schön. His theories are now commonplace in clinical legal education but a brief summary may be useful.

Schön’s model of effective professional practice requires conscious use of non-logical processes and acquisition of knowledge by means of reflection in action.²³ Schön identifies various types of coaching and feedback styles that maximize learning potential. Schön emphasizes the central role of reflection in a “learning by doing” process that he regards as essential in professional education.²⁴

Applying Schön’s theories to the law school context, Richard Neumann has identified the Socratic objective in critique as the move from acknowledgment of ignorance to an appreciation of complexity and active construction of knowledge. The successful “dialogue” is based on several principles as well as sensitivity to student resistance and distrust.²⁵ Peter Hoffman has identified three stages in the evolution of law student learning in clinical settings, starting with the inex-

²³ DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983).

²⁴ DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987).

²⁵ Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 *HASTINGS L.J.* 725, 730-44 (1989).

perienced novice who requires intensive monitoring and ending with an effective self-directed learner.²⁶

I have a natural inclination to organize and provide structure in any deliberative process which, in part, explains my evolution as teacher, lawyer and mediator. The mediation process is a structured approach to organizing, deconstructing and reframing thought processes, and assessing inferences and judgments.²⁷ This orientation towards structured examination of thought processes is reflected in the six-step feedback model that will be presented in the next section.

Underlying that model are the following core principles of learning theory:²⁸

- *The feedback process should be structured as a source of learning.* The feedback process should generate learning in the recipient. This orientation differs from the prevailing practice's tendency to use feedback primarily for quick transmission of information from the supervisor to the student²⁹ and to assume that learning and improved performance will necessarily accompany the delivery of information.³⁰
- Self-generated observations deepen and expand learning. Own-

²⁶ Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986).

²⁷ See Beryl Blaustone, *Training the Modern Lawyer: Incorporating the Study of Mediation into Required Law School Courses*, 21 Sw. U. L. REV. 1317 (1992) for the structure and underlying values of a rigorous mediation process.

²⁸ This treatment is not intended to be a primer on the multi-disciplinary literature on learning theory. Nor is it intended to convey that the legal scholarship cited influenced the development of this model. However, all the sources cited can be consulted for further study.

²⁹ This focus on designing a process centered on learning has been emphasized by others. Zimmerman distinguishes between teacher-centric learning and student-centric learning, the latter of which focuses on student mastery rather than on the desires and habits of the teacher. To foster student mastery, Zimmerman gives careful attention to structuring tasks and setting clear learning expectations. He articulates the responsibilities of the law teacher to provide clear direction to students about their roles and tasks in collaborative assignments. Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957 (1999).

³⁰ From the anecdotal data I have gathered, this assumption appears to be the default mode within dominant culture as well as within legal culture. I recall a conversation decades ago with one of the deans of Yale Law School about my candidacy for a teaching LL.M. program. I mentioned that I wanted to become the law teacher that I never had while I was a law student, and that I wanted to learn how to teach my material better. He replied sternly that it is sufficient for law students to be exposed to brilliant minds that convey great ideas and intellectual girth. He indicated that a focus on pedagogy would not be available because that realm is the responsibility of the student. It dawns on me that I have spent my entire teaching career placing central importance on the principle that was rebuffed from the start. For the curious reader who wants to know the end of this story, I was not admitted to that LL.M. class. That year was however, the year I was hired as one of the founding faculty members of CUNY School of Law.

ership by the student³¹ in the assigned task increases the potential for mastery by enhancing the quality of the knowledge that is gained and the ability to apply the lessons in future situations.³² Self-generated observations in the feedback process create the expectation of positive contribution to both the content and the learning. Such observations also reduce the student's subjective experience of power imbalance with the supervisor because the student assumes the role of "critical observer" jointly with the teacher.³³

- Careful, rigorous, guided and structured reflection on performance increases the learning of both skill and substance.³⁴ This degree of attention leads to deeper comprehension of the substance of the task and how to accomplish the task successfully. Deliberate attention to structured feedback encourages increased accuracy in the observation of the self in performance.
- Without a structured feedback process, self-assessment is an after-thought rather than an assimilated aspect of the conduct of professional work. Self-assessment in professional delivery of service is often underdeveloped, inconsistent, and incomplete, and priorities often are incorrectly selected. As Schön and others have pointed out, the development of a capacity to engage in reflection enables a professional to move from novice to expert.³⁵
- Repetition anchors knowledge and fosters movement from simplistic to complex understanding of knowledge. Repetition increases the ability to apply and manipulate lessons in a variety of new settings. Repetition contributes to mastery and ownership.
- Safety in self-assessment motivates improvement. Students strive for improvement when they feel that this goal is attainable. Although the safety is only partial, it provides a crucial counter-balance to the resistance to taking the next steps to-

³¹ Ownership may refer to two levels of engagement. The first level is the assimilation of the structure of the process and the opportunity to use the process proactively to solicit input as well as to provide input. The second level of ownership is the deeper anchoring of the substantive content or information elicited in the feedback process.

³² Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 403 (1999).

³³ Mary Jo Eyster observes that improved learning occurs when law students are assigned substantial responsibility for their learning objectives. Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLIN. L. REV. 347 (1999).

³⁴ Lustbader states that law students need a rigorous feedback mechanism that facilitates awareness of lessons learned from past performance that can be applied consciously in future cases. See Lustbader, *supra* note 32, at 454. Blanco & Buhai emphasize the importance of the clinical supervisor's conveying a commitment to the law student's success. See Blanco & Buhai, *supra* note 17, at 622.

³⁵ Although CUNY Law School students have many opportunities to practice lawyering and thus enter the profession far better prepared for practice than most law students, even CUNY students are still novices who need to develop the capacity for continued learning.

wards mastery. As Neumann points out, resistance is commonplace in the learning dialogue as is student distrust of supervisors due to previous negative encounters.³⁶

III. AN ALTERNATIVE APPROACH: THE SIX-STEP FEEDBACK MODEL

The six-step feedback model that I present here is one that I use in both simulations and clinical supervision, varying the model somewhat to take into account the distinctions between written and oral work and between individual and group feedback. I teach both advocacy and mediation skills, and I utilize the six-step feedback model for both types of skills. Although this model can be used in many contexts, including in fields and situations other than legal education, this article will focus solely on the law school setting. I will concentrate on the clinical setting, which is optimal for the kinds of repetition and expansion that promote deeper learning.

The model is not just one for teachers to use in providing feedback to students. It is designed for use also by students in providing feedback to their peers. When used in this manner, the model fosters in students an expectation of contributing to the learning of others.³⁷

I teach the six-step feedback process to students at the start of a semester by conducting a feedback session in class. The students observe the interaction between volunteer student performers and me after an in-class skills exercise. They watch as their classmates engage in a balanced discussion of the strengths and weaknesses in their performances.³⁸ In this demonstration, students also observe the feedback recipient actively leading the construction of the feedback agenda. The exercise is designed to help both the participants and the observers appreciate that the model takes much of the "angst" out of

³⁶ Neumann, *supra* note 25, at 738-39.

³⁷ Weisberg asserts that teachers must challenge and assess their own strengths and weaknesses in order to interact with their students in a cooperative and comprehensive way. For strategies on how to accomplish this, see Mark Weisberg, *Learning from Ourselves: Strategies for Self-Assessment*, in ASSESSMENT, FEEDBACK AND EVALUATION (2001). Kovach and Cooper also emphasize the importance of learning from and incorporating peer interaction to create a more in-depth educational experience. Kovach discusses the value of peer learning in legal education and suggests that a teaching component be embodied in the team assignment. See Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Education in Lawyering*, 4 CLIN. L. REV. 359 (1998). Cooper characterizes cooperative learning as an essential component in legal education and scholarship. Jim Cooper, *Fostering Higher-Order Thinking Skills through Cooperative Learning*, in THE SCIENCES AND ART OF LAW TEACHING 2 (1995).

³⁸ Although the use of a classroom skills exercise at the beginning of the semester to demonstrate the feedback process may seem to take an excessive amount of class time, I find that the feedback process can be efficient and that it does not place excessive demands on the time for supervision.

the feedback process because “you just do it step by step and follow the instructions.”³⁹

A. Step One: The Feedback Recipient Identifies Strengths of the Performance

The feedback process that I use in simulations and clinical supervision begins with the performer identifying those aspects of the work that s/he feels were done well or with which s/he feels satisfied. The feedback recipient’s statement should include an identification of what the performance accomplished. Most individuals are unaccustomed to rigorously examining what was done well and accordingly the instructor may have to insist on developing this point of discussion in the face of a student’s resistance, minimization or simply oversight in the rush to talk about problems or difficulties. Often the feedback recipient will indicate that they can think of nothing that was done well or they will insist upon using vague generalities. In response, the instructor should insist that the student take more time to reflect and add to their previous comments. The instructor must model comfort with silence and encourage further thinking by the student. As the feedback experience is repeated, students will usually increase the extent and specificity of their comments in this first stage.

Many teaching colleagues state that they start their feedback/supervision meetings in the same manner by asking the student to identify the strengths of the performance. Although seemingly similar, such an approach is likely not to have the same focus as the one I am describing here. These teaching colleagues indicate that they regard their approach as merely a preliminary step which is not as important as the negative critique that follows. If these statements are accurate, the preliminary inquiry is likely to be brief and lacking in depth, precision and rigor. By contrast, the first step of the six-step feedback model⁴⁰ requires the same quality of focus as the remaining steps and is neither preliminary to nor less significant than the “negative” comments.

Students gradually internalize the lesson that ongoing professional development involves the ability to deconstruct all aspects of one’s own work perpetually. The student also comes to the realization that such balanced deconstruction keeps the activity fresh. For in-

³⁹ Written comments of Professor Maria Arias, Battered Women’s Rights Clinic, CUNY School of Law (June 13, 2005) (on file with the author). Professor Arias audited my intensive two-credit summer law school course on basic mediation theory and practice and thus was exposed to and required to engage in my feedback model as part of the course.

⁴⁰ The first three steps focus on what was done well and thus the first step simply initiates the discourse that follows in steps two and three.

stance, in the feedback demonstration at the beginning of the course, I often present the analogy of becoming a virtuoso in our work. A true virtuoso deconstructs their performances with balanced passion over a lifetime and can see the differences in each performance with great nuance and clarity. A true virtuoso does not assume that mastery of the art obviates the need for feedback and reflection. Moreover, a true virtuoso owns both what was done well in the specific performance and what s/he would do differently next time. This balanced approach to assessment is in stark contrast to the self-battering comments and the denial/rationalizations of deficiencies that are commonplace in unstructured feedback discussions.

The underlying rationale of this first feedback stage is to reinforce the premise that *all* performance contains strengths as well as areas to target for further improvement.⁴¹ I explicitly tell my students that my teaching approach is firmly rooted in the belief that owning one's strengths in executing a task increases the desire to explore how the work should be improved. I emphasize that the purpose of feedback in clinical supervision is to build capacity and not to strip down confidence. I explain that I am aware that individuals may be uncomfortable discussing their work because most people are unfamiliar with my approach, especially if previous experiences with feedback left them feeling stripped of confidence.

Fellow teachers often ask me what to do when they review a student's work and cannot identify any positive aspects. If the teacher takes the time beforehand to deconstruct the performance, the teacher usually will be able to find some aspects that are satisfactory. These positive aspects may not always be vital or core, but they will still be an essential part of the delivery of performance. My sense is that often clinical supervisors minimize the existence of such positive aspects if the teacher is dissatisfied with the student's work and wants to cut to the chase and focus on the glaringly apparent weaknesses. Such an approach rests, of course, on the questionable assumption that simply addressing the weaknesses will cure the defects and that the student will integrate the lessons.

Teachers also regularly tell me that they are concerned about encountering a student who views a performance as well-done even though, in the instructor's opinion, the performance was problematic. Options for managing this kind of feedback encounter will be offered in the next section.

⁴¹ Charles D. and Randell Kelso state that the most fruitful learning occurs "when people receive positive feedback for what they have done." Charles D. Kelso & R. Randell Kelso, *Techniques for Teachers: Using Feedback in the Classroom*, in 1977 AALS LAW TEACHING CLINIC 1.

B. Step Two: The Peers and/or Supervisor Respond Solely To Those Items Raised by the Feedback Recipient

In the second step, the peers and/or supervisor confine their remarks to the points that were raised by the feedback recipient. The feedback provider should limit herself or himself at this stage to positive reinforcement even if there are problems to be discussed and even if the feedback provider may have a strong wish to discuss those problems immediately.

In the above-mentioned scenario in which a student views the performance much more positively than does the peer or instructor who is giving feedback, the feedback provider should find an aspect of the student's performance on the specific point raised that showed potential and should highlight how this aspect could have been further developed. The comments at this point should *not* discuss weaknesses of the performance. Rather, the speaker should simply state that additional feedback suggestions will be given when step six of the feedback process is reached. An alternative approach would be to indicate in a general fashion that feedback suggestions on the particular point will be made when step six is reached.

The underlying rationale of step two is to reinforce the importance of and respect for the agenda items set by the feedback recipient. Accordingly, all comments at this point should remain confined to those topics raised by the student. Responding in this way gives the student a feeling of control and leadership with respect to the "seeking" of feedback. As a result, the student will feel more capable of learning to assess her/his own performance and will feel that s/he understands, at least to some extent, the professional expectations for the work. Step two allows the feedback recipient to experience less vulnerability in the ensuing stages of the feedback process.

C. Step Three: The Peers and/or Supervisor Identify Other Strengths of the Performance

The peers and/or supervisor now add additional points that were done well. This wide-open stage explores all facets of the performance that were accomplished satisfactorily or that show a potential for success, with specific illustrations of why these aspects were executed successfully. Ordinarily, the feedback recipient learns at this stage that more was accomplished than s/he may have realized. Often, the student's unarticulated hunches about her or his own work are clarified. Significantly, the student also learns that there is breadth to lawyering tasks beyond what may appear on the surface. The student experiences the peer and/or supervisor targeting points of value in the work performed. The third step reinforces ownership and increases

conditional acceptance of the constructive purpose of feedback. The student is able to move beyond her or his subjective views (which are often colored by performance anxiety) and to hear how others perceive the work product. Successful aspects of the performance that the student may have dismissed or undervalued are reinforced for future use.

When the feedback provider is a peer or fellow student rather than a teacher or supervisor, the first three stages of the feedback process provide collateral benefits to the feedback provider. As the peer engages in a precise, balanced discussion of a fellow student's work, the feedback provider gains a more balanced approach to self-reflection and often will develop a greater ability to evaluate her or his own performance in the future.

D. Step Four: The Feedback Recipient Identifies Difficulties and/or Changes to be Made

In this step, the feedback recipient takes the initiative in identifying areas in need of improvement. The student should come forward with specific comments. Extra time should be allotted if the student experiences difficulty in formulating such comments. By this stage in the process, the feedback recipient should subjectively experience that s/he is taking the lead in selecting the areas for inquiry and in initiating the discussion of each of these areas. It will often be the case that the areas the student selects are the very ones that the supervisor wishes to raise, even if the student's observations may not be as acute or clearly focused as the supervisor's assessments would have been. As the student moves on to subsequent stages of the process and discovers that s/he accurately targeted areas for improvement, the student will gain confidence in her or his ability to be a self-directed learner capable of refining work and effectively soliciting objective feedback.

E. Step Five: The Peers and/or Supervisor Respond to the Identified Difficulties

The peers and/or supervisor confine their remarks at this point exclusively to those issues raised by the feedback recipient. The comments here should elaborate on the observations made by the student. If a point made by the student was accurate, the commenter should indicate agreement and offer additional reactions to that specific point. The comments should indicate how the issue could be handled differently next time. The comments should be designed to engage the student in deepening her or his own reflections.

F. Step Six: The Peers and/or Supervisor Indicate Additional Difficulties

This final stage involves another wide-open exploration of all facets of the performance. This time, the discussion focuses on aspects that were not satisfactorily accomplished, again with specific illustrations and concrete analyses. This discussion will allow the peer/supervisor to target core issues that may have remained unaddressed until now. In many cases, the major points will already have been identified in prior stages, albeit perhaps insufficiently, and the supervisor can now deepen the discussion. If an item has not been raised previously, this step allows direct discussion of any such omissions. Students may experience discomfort at this stage but often any such feelings of unease will have been ameliorated in large part by the student's previously having taken ownership of the discussion.

When I demonstrate the feedback process at the beginning of a course, I indicate the great importance I attach to a student's ability to reflect critically on how to improve performance. I explain that I give serious consideration to this aspect of the student's work when evaluating and grading students. Thus, the student receives the message before any actual feedback encounter that openness to feedback is central to a successful clinical learning experience.

IV. REFLECTIONS ON THE MODEL

An article about feedback would be incomplete without an account of the feedback I have received from students when I seek their reactions and their suggestions for improving the model that I use.

I have found that most students embrace the model. They typically report that it allows them to open up more, to think more critically about their practice, and to be more receptive to comments from supervisors and peers and less defensive when feedback providers identify weaknesses in a performance.

Many of my former seminar students and clinic alumni tell me how they have continued to use the feedback model in their active approach to learning and in assisting others to learn. Many of them state that they emerged from the course with a greater degree of confidence in their ability to self-correct their choices in professional environments. They describe greater confidence in their work overall and they link that feeling to their incorporation of the feedback model into their approach to legal work. As one of my seminar students wrote:

Through practice in the six stages of feedback, I think that I became more honest and more perceptive with my comments because I had a regimented approach to feedback that really focused

on supporting each other and helping each other. I know that after I used the model for some time my critiques became more insightful, more observant, more helpful and more nuanced. This enabled me to become a better listener, both in an educational environment as well as a social one.⁴²

More generally, students express appreciation for the experience of respectful treatment as a professional colleague at a time when they were “lawyers in training.” Often I hear remarks that the feedback model encouraged support and respect from their peers and fellow team members. One student stated:

The six-step feedback session gave me a chance to be critical about myself and glean valuable responses from my teammates. My colleagues’ feedback allowed me to gain confidence in my self . . . and make me aware of tips and ideas I would never have thought about on my own. . . . [M]y fellow classmates seemed genuinely interested in helping me. . . .⁴³

Another student observed:

I learned how to provide feedback on another’s work in an open, honest and caring way. This is a skill that many have discussed, but no one has ever demonstrated or taught to me. I appreciate your rules of feedback and especially the principles behind them. I look upon my ability to use these feedback rules as an important skill and strength I have gained. . . . I believe that these skills and strengths that result from integrating them into my personal and professional lives are the most valuable lesson that I gained in the Mediation Seminar.⁴⁴

Many students reported that regular use of the feedback model creates more texture, deeper mastery and sophistication in learning from the assigned lawyering tasks. This has sometimes been described by students as moving from superficial understanding to becoming more insightful about the work performance.

It is not unusual for students who initially experience discomfort with the regimented feedback requirement to comment at a later time that they found that the experience turned out to be valuable for their ongoing professional development. Thus, even if a student displays resistance and distance at first, those reactions may subside, and the student may come to embrace the model. One of my seminar students who initially was uncomfortable with the model and thereafter en-

⁴² Written comments of Christopher Oldi, J.D. Candidate, CUNY School of Law, Class of 2007 (May 23, 2006) (on file with author).

⁴³ Written comments of A. Sheralynn Fields Obalanlege, 2006 graduate of CUNY School of Law (May 5, 2005) (on file with author).

⁴⁴ Written comments of Elain Berger, M.D., 2006 graduate of CUNY School of Law 2006 (May 2, 2005) (on file with author).

rolled in the Mediation Clinic and eventually served as one of my teaching assistants and led feedback discussions for seminar students in simulations, wrote at the end of the seminar and on the cusp of her clinic experience:

The difficulty I will need to work on regarding feedback is that I need to learn not to be resentful when receiving feedback that focuses on what I need to work on. In one early mediation, one of the parties said that I was not in tune with the underlying emotion of the party's complaint. Although I know that feedback helped me in my future mediations, I was very hurt and upset at the moment. In the future, I will need to try to remember that the feedback model is set up to help everyone involved become better at the process of mediation.⁴⁵

Admittedly, there is a small number of law students who do not buy into or do not invest in the feedback process as the semester progresses. If the root problem is an unwillingness to engage in self-reflection and to take part in a collaborative process of feedback, then usually there is little that can be done to rectify the situation. In these cases, the student probably will derive little value from the feedback sessions and possibly from the course overall. On the rare occasions when such severe problems arise, I find that the student's lack of engagement often carries over into other aspects of the student's performance in the seminar or clinic and also impedes the student's ability to collaborate with peers on clinical work or projects. Indeed, the lack of engagement in the feedback process often is an early warning signal for the teacher and other students of problems that are likely to surface in other aspects of the seminar or clinic.

Might it be the case that the model I have presented here is not well-suited to certain students and/or certain situations? Of course, this is always a possibility, but it has been my experience in many years of using the model that wholesale failure of the model usually is attributable either to the above-described problem of a student's unwillingness to engage in self-reflection or else to flaws in the ways in which the feedback provider applies the model. It is worth saying more about the latter because, until now, this discussion has been presupposing a feedback provider who is adept at using the model.

Effective application of this *reflective* process requires a feedback provider who has an adequate degree of self-awareness and is able to engage in genuine self-reflection. The supervisor needs to model how s/he engages in balanced dissection of her or his own performance as teacher, supervisor, and legal practitioner. Moreover, if the supervi-

⁴⁵ Written comments of Paula Griffith Edgar, 2006 graduate of CUNY School of Law (May 9, 2005) (on file with author).

sor lacks sufficient self-insight (which will usually be patently apparent to the students), there is a learning paradox: The teacher would be preaching what s/he cannot practice. A teacher's insisting that students "do as I say, not as I do" will engender greater distance and a more extreme power imbalance, and will erode whatever trust the students might otherwise feel. The savvy student will simply self-protect as much as possible and master how to "play the game" of feedback. In such situations, the non-reflective feedback provider may not even be able to differentiate such shams from real engagement.

Optimal use of the model also requires that the feedback provider make careful, sound judgments about what aspects of a performance should be reviewed with a structured feedback methodology. If the supervisor covers too many aspects of a performance in too exacting a manner (which may be the inclination of clinicians, who tend to be exhaustive in reviewing work), the result may be that the student feels overwhelmed and perhaps even demoralized by the number of aspects of the performance that were scrutinized so intensely. The feedback provider must weigh the benefits of thoroughness against these potential costs.

As is surely apparent from the description of the model, it is one that requires that the feedback provider treat the feedback recipient as a full partner in the process. A teacher or peer who insists upon maintaining control or retaining a position of authority will be incapable of fostering the environment necessary for effective operation of the model. In a similar vein, the teacher needs to be able to trust that the process will work over the course of time and that s/he cannot give up on the process if a student needs more time in order to feel comfortable with the approach. As is explained above, some students need more time than others to become accustomed to the feedback process. Trying to expedite this evolution will surely turn out to be counterproductive.

Finally and inevitably, it is worth considering whether the model must always be used in precisely the manner in which I have laid it out in this article. Obviously, any pedagogical model (or any piece of work at all, for that matter) is susceptible to refinement, especially when viewed by others with a different perspective. Indeed, that is the insight that is at the core of the entire concept of feedback. I am convinced that the model would benefit from revisions and refinements by others. I think that the sequence that I have identified needs to remain constant because the initial steps are essential for anchoring the learning method and building up the feedback recipient's confidence. Apart from this central structural question, however, there are undoubtedly many ways to improve the model I have presented in this

article. I hope that other teachers and students will build on and refine what I have begun here.

CONCLUSION

In closing, I return to the story of my clinical colleague, with which I began this article. I now imagine meeting him at least a year later – after he has used this feedback model several times with his clinic students. He is, by nature, a reflective practitioner, as he demonstrated by genuinely seeking assistance in the small group discussions at the Clinical Conference. As we talk about his feedback experiences of the past year, I envision him telling me that he now looks at the teaching of feedback very differently. He relates that he views his role and obligations in feedback as a larger part of his supervision relationship with his students. He indicates that he values the ability to stay objective and to adhere to a structure rather than impulsively reacting negatively in his discussions with difficult students. He appreciates the distance he maintains and the conservation of energy in these difficult discussions. He tells me that the most valuable change for him is his enjoyment when he experiences the appreciation from his best students for the rigorous feedback discussion. As we say our goodbyes, he warmly encourages me to refrain from overemphasizing the importance of the feedback process to the detriment of the legal substance of the case and competent client service. I thank him for keeping me and my remarks in the proper perspective.

