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ROUNDS: A “SIGNATURE PEDAGOGY”¹ FOR CLINICAL EDUCATION?

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This article explores the learning opportunities of “rounds,” a facilitated peer conversation among clinic students that is focused on their fieldwork. Through rounds stories, the authors, experienced clinical teachers, describe the ways that rounds conversations teach students important professional habits, including reflecting on experience, engaging in contextualized thinking and making ethical decisions. The article identifies the challenge for faculty in planning and conducting rounds and provides concrete suggestions for improving rounds conversations and student learning.

¹ Signature pedagogy has been defined as a pedagogy that is distinctive to a profession and one that “functions as ‘windows’ into ‘what counts most significantly as the essence of a profession’s work.’” CHARLES R. FOSTER, LISA DAHILL, LARRY GOLEMON & BARBARA WANG TOLENTINO, *EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION* 33 (2005). As described more fully below, rounds conversations model the kind of thinking done by lawyers in practice as well as modeling the ways lawyers work together to improve work product. Signature pedagogies also create “strategies and methods that create a ‘surface structure’ for teacher-student interactions.” *Id.* at 33. Under that definition, supervision may be the pedagogy most associated with clinical courses. First year case dialogue method has been identified as the signature pedagogy of legal education. See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 51 (2007). However, the peer consultation that is unique to rounds pedagogy makes it more likely than either supervision or first year case dialogue to replicate future professional practice and learning. This causes us to question whether rounds might be the signature pedagogy for clinical education.

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INTRODUCTION

In almost every small group of clinicians at clinical conferences, someone raises the subject of "improving rounds."² Heads nod with near consensus that clinical rounds present challenging teaching moments.³ Yet clinical teachers persist in engaging their students in rounds conversation because, when the conversations go well, they are precious sources of learning. In these facilitated classroom conversations in which they discuss with each other their cases or projects, students apply and test lawyering theory in the real world as well as extract theory from their and their classmates' experiences. At this start of their practice as lawyers, students engage with peers in a professional dialogue that reinforces professional reasoning and ethical decision-making. Students learn that the support from a group of other professionals engaged in honest and supportive dialogue can lighten the stresses of law practice. Finally, students develop skills that will enable them to learn from their experience and from other professionals both in the clinic and in their future practices.

The overall learning goals in most clinical programs are ambitious ones⁴ that challenge the teacher to set clear priorities for the course

² In addition to these frequent small group conversations, we have also each separately presented at various AALS Clinical Teachers Conferences on this topic. During a plenary at the 1988 conference at the University of Indiana at Bloomington, Barbara Bezdek, then a CUNY colleague, and Sue simulated a rounds conversation that was centered on an ethical issue in an externship program. Alan Minuskin and Elliott addressed this same topic at the 1999 Conference in Lake Tahoe by leading a "Rounds About Rounds" focused on choices faculty make in conducting rounds. It is in the grand tradition of clinical teachers to learn from partnerships with insightful colleagues such as these. We are indebted to both Barbara and Alan for collaborating with us to conceptualize and to think more profoundly about rounds.

³ Despite these challenges, or maybe because of them, we enjoy rounds conversation and engage our students in these conversations as a regular part of our programs. We like the excitement that rounds discussions generate for students when they go well and take pleasure in the visible "ah ha" moments that the engagement with peers can create.

⁴ Some of our colleagues have claimed that the pedagogical agenda of many (including our) clinical programs is too ambitious. David Binder and Paul Bergman argue for a skills-centered approach to clinical teaching rather than the case-centered approach that characterizes most clinical programs. By having students perform a particular lawyering task repeatedly, they believe that the likelihood of mastery of the skills necessary to carry out that task is increased. They believe that this mastery means that the skills learned will be carried into practice and that the method of acquisition of the skills will be transferred to the learning of other types of skills as needed in practice. See David Binder & Paul Bergman, *The 25th Anniversary of Gary Bellow's & Bea Moulton's The Lawyering Process: Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191 (2003). Our goals are different from theirs. While we agree with David and Paul that skill development is enhanced in simulated classroom exercises and design our clinic seminars around simulated instruction, our clinical course goals are broader than skill development. We want our students to integrate skills, legal knowledge, and ethical decision-making with a professional commitment to justice. We try to accomplish that by giving students responsibility for a client's problem(s) in the role of a lawyer. The complexities, ambiguities and uncertainties that are

content and to use the best devices to accomplish the goals.⁵ Clinical teachers typically engage in three pedagogies: supervision, seminar, and rounds.⁶ These pedagogical modes serve different purposes and, although they overlap, supplement and complement each other to maximize the educational benefits attainable from student practice. Others have explored supervision⁷ and seminar learning modes in depth,⁸ but rounds pedagogy has languished largely unexplored.⁹ This

embedded in that moment of professional development permit us to explore with our students the values that will define their lives as lawyers. We believe that as they acquire these values and embrace their responsibilities, they are motivated to learn the skills necessary to carry out the tasks entrusted to them. We can help them learn how to develop those skills in the context of the decision-making and actions that are the work of a lawyer. In addition, the repetitive inquiries that are part of rounds help teach students habits of mind.

⁵ As we have noted before, because most students take, at most, one or two clinical courses among the twenty-five or so courses they take in law school, much of what seems important to clinicians (and lawyers) remains untaught in so many law school curricula. As a result, clinicians sometimes squabble over what is of greatest importance and what can and should be taught. See Susan J. Bryant & Elliott S. Milstein, *Reflections upon the 25th Anniversary of the Lawyering Process: An Introduction to the Symposium*, 10 CLIN. L. REV. 1, 19-27 (2003). We identify there some of the recurring questions that guide selection of goals and methodology for clinical courses. All too often, the clinical course may be the only course the student takes that teaches the students lawyering skills, legal practice, professional self-identity, and the importance of understanding the client in context, as well as how to learn from experience to continue professional development past law school. Some programs also include teaching relevant law. Unlike the educational programs in the other professions, where students are exposed to the practice early and often in their education and often follow a building block approach to professional competence, legal training often contains too little education involving the practice and normative dimensions of being a lawyer. See SULLIVAN ET AL., *supra* note 1, at 187-93 (identifying the failure of most law schools to teach students how to engage in moral dialogue as well as how to use legal thinking in the complexity of practice); see also Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 36 (2000) (noting the importance of using clinical methodology in non-clinical courses to introduce learning about practice).

⁶ We both teach in clinical programs that are in-house: students have responsibility to handle clients' legal problems while being closely supervised and taught by faculty members within the context of the school-run law office that is located in the law school building. In externship programs, supervision is often split between the field supervisor who supervises the students' legal work and the faculty member who supervises the learning. See Elliott S. Milstein, *Clinical Legal Education in the United States: In-House, Externships and Simulations*, 51 J. LEGAL EDUC. 375 (2001).

⁷ See Ann C. Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1994). The model of supervision that Shalleck describes and analyzes has heavily influenced our own thinking about how to make choices and to set goals for clinical supervision. She also describes in this article the interrelationships among the seminar portion of the clinic, rounds (what she calls "group case analysis meetings"), and supervision. *Id.* at 141-47; see also Margaret Martin Berry, *Clinical Supervision: Walking That Fine Line*, 2 CLIN. L. REV. 137 (1995); Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLIN. L. REV. 167 (1995); Jennifer P. Lyman, *Getting Personal in Clinical Supervision: Looking for That Fine Line*, 2 CLIN. L. REV. 211 (1995); Donald A. Schön, *Educating the Reflective Practitioner*, 2 CLIN. L. REV. 231 (1995).

⁸ Authors of clinical textbooks have influenced the structure of clinical seminars par-

article focuses on the learning opportunities that rounds present and identifies the ways that teachers can maximize this learning.¹⁰

This article proceeds in four parts, each exploring rounds conversations from a distinct vantage point. All professional schools use some pedagogy where group discussions of fieldwork provide the lo-

ticularly by their teachers' manuals and simulation materials. See GARY BELLOW & BEATRICE MOULTON, *THE LAWYERING PROCESS* (1978) and accompanying criminal and civil supplements; DAVID F. CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* (2002) and accompanying instructor's manual. The Annual AALS Clinical Teachers Conferences and Workshops have been the most important venue for clinicians to talk to each other and teach each other about how to set goals for and teach in both the clinical seminar and in clinical supervision. See Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978); Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 ME. L. REV. 19 (1993); Joan L. O'Sullivan, Susan P. Leviton, Deborah J. Weimer, Stanley S. Herr, Douglas L. Colbert, Jerome E. Denise, Andrew P. Reese & Michael A. Millemann, *Ethical Decision Making and Ethics Instruction in Clinical Law Practice*, 3 CLIN. L. REV. 109 (1996); Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990); Stephen Wizner & Dennis Curtis, *Here's What We Do: Some Notes about Clinical Legal Education*, 29 CLEV. ST. L. REV. 673 (1980).

⁹ Articles have addressed the learning opportunities for rounds as part of broader pieces on clinical programs. See, e.g., Binder & Bergman, *supra* note 4 (identifying the problems associated with rounds learning in medical education, including that rounds involved a hit-or-miss method of exposing medical students to a range of common problems that occur); V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLIN. L. REV. 83, 128-30 (2002) (describing six stages for rounds conversations as well as supervisor preparation); Nathaniel C. Nichols, *Modeling Professionalism: The Process From a Clinical Perspective*, 14 WIDENER L.J. 441, 445 (2005) (identifying rounds as sites for discussing professionalism issues); Kimberly O'Leary, *Evaluating Clinical Law Teaching: Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491 (2002) (identifying rounds as one of the pedagogies used by clinical teachers); Ann Shalleck, *Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused*, 64 TENN. L. REV. 1019, 1048-55 (1997) (identifying rounds as a vehicle for developing an understanding of theories of domestic violence, for engaging in contextualized thinking about the way these theories and lawyering theories work in practice and for giving students an opportunity to discuss frustrations and brainstorm solutions).

¹⁰ Our methodology for writing this article included study of our own practices, conversations with and observations of colleagues, and exploration of practice-based learning in other professions. As Sue has described elsewhere with her colleague Jean Koh Peters, one of the best parts of writing this piece is the opportunity to share observations with another colleague and to derive meaning from the observations through conversations. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 100 (2001). In our attempt to find patterns, to identify areas of agreement and disagreement, and to name the unconscious ways we work, we learn from our experiences. In a sense, we had our own small rounds on rounds conversations. In this article we have tried to mine our experiences and insights from our teaching to help us identify and name the successful strategies for rounds conversations. We recently learned that this kind of study is used in teacher education to improve the teaching of the individual teacher as well as to generate insights for other teachers. See Jennifer Gundlach, *Clinicians' Reflective Practice: A Self-Study* (paper presented at NYLS Clinical Theory Workshop, October 13, 2006) (on file with authors.)

cus of learning.¹¹ Students report liking rounds and identify these conversations as a major source of learning.¹² Section I explores learning theory and goals and asks, "What about facilitated conversations about cases with a group of peers makes rounds learning powerful?" In describing the goals for rounds, Section I contrasts rounds with supervision and seminar learning and identifies learning theories that support the value of engaging learners in purposeful conversations about their work.¹³

Section II explores the ways that rounds are well-suited to teach aspects of professional reasoning, including learning to generalize from particular information, thinking contextually, using parallel universe thinking and engaging values to explore professional norms and skills. Rounds also provide students with opportunities to present cases and give and get professional advice, thereby enhancing their communication skills.¹⁴ Section III identifies teachers' decisions that

¹¹ We have also compared our experiences teaching law students to those of faculty teaching other professionals. We read about educating professionals in medicine, education, psychology, clergy, and social work. We were particularly interested in reading about structured conversations among peers that were focused on fieldwork. We examined these sources to help us think about professional education and to identify similarities and differences among the professions in rounds type learning endeavors. Clinical legal education borrowed the idea of rounds from medical education and we wanted to see how our versions of rounds squared with the medical profession. We were fortunate that the Carnegie Foundation for the Advancement of Teaching issued its report on pastoral education during our work, as it provided helpful thinking about professional education. See FOSTER ET AL., *supra* note 1. We did this reading to identify frameworks for analyzing some of the faculty roles and pedagogical choices that we were making in rounds. We have not done an empirical analysis of rounds teaching as the authors of the medical studies often do, nor have we done an exhaustive search of the literature in all of these fields. Instead, we selected from a number of resources to sharpen our reflection and description of our teaching in rounds. See *infra* note 15 for suggested readings in these fields.

¹² We both have received numerous testimonials to rounds from students over the years. They appreciate the opportunity to learn from and support each other.

¹³ By identifying these conversations as "purposeful learning conversations" we mean to distinguish them from the environmental learning that comes from practicing side by side in clinic space and exchanging war stories and the daily conversations in the clinic office.

¹⁴ Students learn a variety of communication skills in rounds, including how to present a case concisely, limiting facts to those the audience needs to know to engage in a conversation about the selected topic. They learn how to get and give feedback and to engage each other rather than simply answering a teacher's questions. These are important skills that will aid their learning in professional settings. Many faculty members identify these communication skills as an important reason to use the rounds format in their teaching. See Posting of Wally Mlyniec to LAWCLINIC@lawlib.wuacc.edu (October 20, 1998) and multiple responses (on file with authors). When a faculty member focuses explicitly on these skills as a pedagogical goal of rounds, student learning of them is enhanced. We have chosen not to explore the learning of communication skills in rounds because others have explored this benefit and because most faculty already have sophisticated frameworks for teaching presentation and feedback skills. *Id.*; see also Amy Zeigler, *Developing a System of Evaluation in Clinical Legal Education*, 42 J. LEGAL EDUC. 575 (1992) (arguing that

influence the quality of rounds learning, including setting ground rules for the conversation, choosing topics, establishing structure and insisting on preparation. Certain topics and structures are more likely than others to take advantage of group learning. This section explores why and how particular topics and conversation structures realize the goals for rounds.

Rounds are difficult. The choices for when and how to intervene are almost endless and are made in the moment. Unlike teaching seminars built around simulations and videotapes, rounds bring the messiness of the real world into the development of lawyering theory. Section IV first explores the different roles faculty can take during the conversations, with different levels of participation and responsibility for decision-making. This section examines how different roles embodying distinct responsibilities affect the dialogue. Second, Section IV provides an initial typology of the teaching interventions available to the clinical teacher to generate productive conversations. These interventions focus on the techniques available to calibrate the depth and the breadth of the group dialogue and to maximize the group learning potential.

I. TEACHING GOALS & LEARNING THEORY SUPPORTING ROUNDS

In supervision, seminars, and rounds, clinical teachers help students increase their capacity to function as independent professionals with the requisite knowledge, skill and ethical values that being a lawyer demands.¹⁵ While the learning goals for all three modes of instruction overlap, each offers particular opportunities to help students make the transition from being students to being professionals.

In rounds conversations, students hear about their colleagues' cases, and their colleagues' relationships with clients and others; they come to have a detailed understanding of the legal work their classmates perform. Although supervision uses the same case experience for conversation as does rounds, supervision is focused more narrowly on the individual learning of the students handling a case and upon

clinics should use rounds presentations as a way to evaluate and learn from student case work).

¹⁵ The Carnegie Foundation Program on the Professions has categorized the types of learning that prepare students for the profession as three apprenticeships of learning: "a cognitive or intellectual apprenticeship, a practical apprenticeship of skill, and an apprenticeship of identity formation." FOSTER ET AL., *supra* note 1, at 5; SULLIVAN ET AL., *supra* note 1. Often students learn these parts separately. In clinical programs and in rounds, students bring these three apprenticeships together as their conversations draw on doctrinal knowledge, lawyering theory and skill, as well as the ethical and moral judgments they are making.

the concrete needs of the case.¹⁶ In contrast, rounds conversations can be more fluid and located in the experience of the entire group. As a result, students broaden the knowledge base from which to assess and draw meaning from their own legal work. Critical perspectives emerge from the patterns they see in their own as well as their colleagues' cases.

Rounds conversations are more determined by students and more focused on cases than is the seminar component of the clinic. Typically, seminars are built around a syllabus that has clear, teacher-defined learning goals for each session. Clinical seminars tend to focus primarily on client-centered lawyering, theory-driven lawyering and social justice practice.¹⁷ To ensure that students grapple with a broader range of skills, knowledge and perspectives than those needed for their individual cases, seminars often use simulations to increase students' experiences of being a lawyer beyond those available from the limited number of cases that each student can handle.¹⁸

¹⁶ Supervision offers privacy, and some issues raised in supervision might be less appropriate for group conversation. This would be particularly true when the supervision issues are personal to one of the students or to the team or when the content of the supervision dialogue does not raise issues that are of general use to the group. Although we recognize there are differences among clinicians about the goals and methods of supervision, we practice the form of supervision taught in Ann Shalleck's classic article on clinical supervision. See Shalleck, *supra* note 9. Her article avoids the directive/non-directive binary trap of many conversations among clinical teachers about clinical supervision and instead provides a nuanced conception of how a supervisor can make decisions in supervision that maximize student responsibility for decision-making in cases but keeps the instructor in control of what will be taught. She describes supervision as a process in which the teacher is constantly identifying those aspects of the law, lawyering, and the legal system that are critical to an understanding of what it means to be a lawyer. "The issues that the teacher frames as the most important for supervision . . . and the ways that she chooses to view those issues . . . create a complex and constantly shifting scheme requiring the teacher's continuing attention to the fundamental assumptions underlying each choice . . . [T]he supervisor [can then] . . . shift 'back and forth between the concrete and the abstract, the practical and the reflective, the specific and the general.' By engaging in this process, the teacher constructs a concept of supervision out of the material presented by the cases and the students, the dynamics of the educational enterprise, and the self-conscious application of critical perspectives to daily work in the clinic." *Id.* at 178-79.

¹⁷ We each teach the lawyering process in our clinical seminar, including some or all of the clinical classics—interviewing, cross-cultural communication, client-centered lawyering, client theory, legal theory, case theory, problem-solving, fact investigation, counseling, negotiation, persuasive advocacy, and trial. Our teaching methods in the seminar include readings, lectures, discussions, role-plays, and simulations and we liberally utilize techniques to bring all of the students into the conversation such as buzz-groups and quick-writes. In specialized programs at CUNY, seminars also teach students relevant law and procedure. And, as in all of our clinical teaching, much of our attention is devoted to values questions such as client-centeredness and other questions about the relationship between lawyer and client, the demands and limits of zealous advocacy, how to achieve social justice and many more.

¹⁸ Simulations also provide for building-block learning in which students can practice engaging in aspects of practice without taking on the whole. Simulations allow students to

The combination of rounds, seminar and supervision allows teachers to tailor learning that draws upon both staged (simulated) and real experiences and addresses simultaneously the personal and professional dimensions of that experience.¹⁹

Rounds conversations build upon learning that occurs in clinical seminars and the rest of law school. Students regularly apply the lawyering skills of planning, decision-making and collaboration taught in seminar as well as get feedback on the many other skills used in their cases. Students' experiences as lawyers also create rounds conversations that explore the norms of the profession and both the fit and the tension between the student and the norms. Finally, and importantly, rounds can be used to explore broader social justice issues that arise in the cases. Whether students talk about law, lawyering or the demands of the lawyer's role, students engage in the types of professional conversations that can enrich their lives and careers as lawyers. They consult peers for support, seek challenge to their own ideas and judgment and discover how dialogue promotes life-long professional learning.

For example, consider this rounds story where three different student teams were handling cases in which their clients were deeply in debt with little prospect of being able to repay the debt. The clients had been referred to the clinic as possible bankruptcy cases. In pre-

test skills and explore values in a setting where no adverse impact for a client occurs. With a controlled environment that permits faculty observation, students can get feedback "without interfering with the students' real-life attorney-client relationships. Students can then utilize these skills in their real-life cases with some confidence in their abilities and with some understanding of the interplay between these skills and their values." David F. Chavkin, *Training the Ed Sparerers of Tomorrow: Integrating Health Law Theory and Practice*, 60 BROOK. L. REV. 303, 330 (1994). Simulations have been used in clinical programs since the earliest days of modern clinical education. See Joseph D. Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in ABA-AALS GUIDELINES FOR CLINICAL LEGAL EDUCATION 191, 192 (1980); MICHAEL MELTSNER & PHILIP SCHRAG, TOWARDS SIMULATION IN LEGAL EDUCATION (1975); see also Binder & Bergman, *supra* note 4 (pointing out that medical education has changed from a reliance on rounds to include both simulations and rounds in its educational programs and arguing that legal clinical programs should not rely on the case-centered method of teaching).

¹⁹ We both split our classroom time between seminar and rounds. We acknowledge the luxury of teaching in programs that give students sufficient credit to enable us to meet with them 3-5 hours per week per semester (in addition to supervision). This enables us to have greater options than some of our colleagues who have less time to work with and thus must exercise more difficult choices about what and how to teach in group settings. In these situations, teachers might explore group supervision as an option that creates some but not all of the benefits of rounds. See Janine M. Bernard & Rodney Goodyear, *Group Supervision*, in FUNDAMENTALS OF CLINICAL SUPERVISION, 69 (1992) (describing group supervision of social workers). The numerous similarities and distinctions between group supervision and rounds are beyond the scope of this article. Group supervision uses the group process to develop some of the same learning that occurs in pairs supervision while also gaining some of the benefits of rounds in that it allows for learning from multiple cases and from multiple participants. Because the case is a main focus in supervision, the conversation often is limited by the particular needs of the case.

paring to counsel clients, students searched for alternatives to bankruptcy for their clients and identified the costs and benefits of the bankruptcy options. In supervision, the students had identified the ways that bankruptcy was harmful to their clients; their counseling plans revealed their intentions to describe the consequences of bankruptcy in dire terms.

The Bankruptcy Rounds

The Teacher introduced the topic by explaining that three teams had been asked to present their cases *"so that we can explore together the advantages and disadvantages of bankruptcy and see if we can help them figure out how to counsel their clients about their choices."*²⁰

One student from each team described each client's situation.²¹ An elderly retired man, living on Social Security and income from a part-time job, had more than \$90,000 of credit card debt. He owned a condominium filled with books, clothing, and collectibles, some of it new, with price tags still attached. Student concerns included obtaining an inventory and dealing with their client's resistance to losing any property to creditors. They were also uncertain about whether the homestead exemption included condos.

A working woman had \$20,000 in unpaid medical bills. Her employer at the time the bills were incurred had failed to give her proper notice of the termination of her medical insurance. If the insurance problem could successfully be attacked, the financial problems would be resolved. However, the client's wages had just been garnished as a result of a ten-year old default judgment for another medical bill that had nothing to do with the one presently at issue.

In the third case, the client's estranged husband made erratic child support payments. Her income from a low-wage job was

²⁰ This rounds conversation took place in the context of a general practice clinic. All of the teacher's questions in the rounds stories are italicized. One of the ways that a teacher can choose a topic for rounds is by recognizing commonalities and themes that are present in multiple cases and organizing a discussion built around them. The collected supervisions in these cases revealed patterns of thought that could improve with examination with peers. See *infra* notes 103–110 and accompanying text for a discussion of topic selection in rounds.

²¹ We have tried in telling our rounds stories to accomplish often conflicting goals: (1) to tell real stories from which readers could discern the progress of the conversation; (2) to maintain confidences of students and clients; and (3) to reduce long conversations to manageable, readable narratives that illustrate points. Thus, the stories are disguised and redacted and are perhaps more concise than would have been the case had we included actual transcripts.

often insufficient to meet her expenses, and she had \$12,000 of credit card debt and a monthly car payment of \$525. Unable to make the monthly minimum payment on her credit cards, she accrued penalties and her interest rates were at the highest level. Without her car she would be unable to get to work, and the students worried that she would lose the car in the bankruptcy.

When asked to generate a list of disadvantages of bankruptcy, students identified: harm to credit rating, difficulty getting credit cards, barriers to becoming an adoptive parent or qualifying for subsidized housing, and interfering with getting a job, as well as stigma and embarrassment. On the positive side, students listed getting a fresh start, wiping out bills, stopping phone calls from creditors, and ending garnishment of wages.

To start the discussion of the pros and cons of bankruptcy, the students shared their basic understanding of bankruptcy doctrine. Each team compared its own knowledge of the law with that of the others and also educated the rest of the class, none of whom had taken a course in bankruptcy; all learned enough about it to participate in the conversation.²² The teacher and student questions framed the discussion of the law: *"How does bankruptcy work?" "What does it mean to get a discharge in bankruptcy?" "What happens to a person's assets in bankruptcy?"*

The discussion revealed issues that each team needed to research further in order to fully analyze the risks and benefits of the choices that lay ahead. Eventually the entire class got involved in making suggestions about what to do.²³ The conversation revealed two unresolved legal issues involving the car and the home.²⁴

The rounds conversation moved to the recurring question of how to find answers, and the teacher used questions at different points to assist the group: *"Where might you look and what might you*

²² See *infra* notes 120–123 and accompanying notes for discussion of preparation for rounds conversations.

²³ Usually, rounds conversations are not the best place (or even a good place) to uncover the specifics of the law involved. Brainstorming and follow-up discussion are good ways to identify what is not known about the law but peer conversations cannot replace the "looking up the law" part that is hard to do in a group, and hard for the faculty member to do without providing "an answer" when often we want the students to learn the law themselves. Sue often asks students to send colleagues memos and citations to the relevant law as preparation for rounds while Elliott rarely asks for this preparation.

²⁴ At that point the instructor had a number of choices. One would be to provide an answer to the legal questions. That would have had the advantage of moving the conversation to other topics but had the substantial disadvantage of precluding discussion of broader and more useful questions.

look for to find answers?" When the group identified that the answers are unclear, *"Since they haven't been able to find the precise answer they want, can we eliminate enough uncertainty to make some predictions about how the court will resolve this issue?"* In considering whether experienced people can be helpful and in what ways, *"You all seem to believe that there is an expert out there who will know the answer. How will you find such a person, what will you ask him or her, and how will you evaluate and use their answers?"* Sometimes teachers remind students of the role of peers in providing fresh approaches: *"You are getting some really good research ideas from your colleagues. Let's see if we can name them or frame them so they can help you develop a research agenda. Maybe we can work together to refine them."*

The conversation about the legal questions concluded with a reflection by the teacher that led back to the central questions on the agenda for the day. *"And so, if we are making a list of the advantages and disadvantages of bankruptcy for these clients we might add 'risk of loss of her car' or 'risk to the equity in her apartment' on the disadvantage side but we would do research before we identified each as such, and then we would assess the seriousness of the risk before counseling our clients."*

In the initial discussion of the pros and cons, the students presented the cons in dire terms and the pros as less significant. In returning to the list of advantages and disadvantages, the teacher then asked, "Let's compare how you think about the advantages and disadvantages of bankruptcy with the beliefs you think your clients have."

In this stage of the conversation, the students revealed that their resistance to bankruptcy came from their own beliefs about the importance of repaying debt as a moral matter as well as some uninformed assumptions about the secondary consequences of bankruptcy. Furthermore, some students were distressed because their clients bought things that were expensive in relationship to their income, including cars with high monthly payments, premium cable television, and high-end cell phone plans. Their comments revealed that they believed these purchases caused the indebtedness.

This exploration of the students' assumptions and beliefs led to a discussion of the reasons that these particular clients got into this situation. Each case presented a counter-example to the popular myth adopted by at least some of the class. Our three-case "empirical" sample included a client whose retirement investment account had been heavily invested in stock that became worthless,

and, after spending the rest, the client had to rely upon Social Security; another whose husband deserted the family leaving her to fend for herself, and still another who had large medical bills because unknown to her, her insurance had lapsed and she was being billed at a higher rate than had she been covered. The first two, after slipping into the hole, got submerged by the practices of credit card issuers who jacked up and compounded their interest rates and tacked on penalties at the first sign of distress. The one with the car had been overcharged for both the car and its financing.

The teacher asked, "What lessons do we take from these three cases about indebtedness?" Through hearing about the experiences of these clients the class was able to understand the kinds of misfortunes that make it impossible for some people to pay their debts. They also had an introduction to the notion that poor people pay more for goods and services than others.

As the conversation returned to the assessment of pros and cons, students could see that many of the items in the initial long list of negatives either were not true or were conditions of financial extremis that precede bankruptcy and disappear after discharge. The teacher invited the group to consider, *"Where did this list come from? What lessons have we learned about vantage point and perspectives in generating pros and cons?"* Conversation about the significance to the client of the problems brought on by the debt allowed students to see the benefits of bankruptcy to the clients. Because of the differing positions of these debtors, one whose wages were garnished, another for whom the debt caused psychological distress and the third whose reluctance to incur more medical debt threatened her health, the students came to see and appreciate disadvantages of not seeking a bankruptcy.

This rounds story illustrates pedagogical theories familiar to clinical teachers. Three premises flowing from these theories underlie learning in rounds. (1) Rounds learning is "in-time;" students can immediately see relevance to their work. (2) Through collaborative learning, students develop insights for contextual thinking, explore professional identity, and find support for stressful work. (3) Dialogue with peers is an important method for engaging reflective practice;²⁵

²⁵ See Constance Barlow, Gayla Rogers & Heather Coleman, *Peer Collaboration: A Model for Field Instructor Development and Support*, 22 CLINICAL SUPERVISOR 173, 178-79 (2003). The authors describe a project where field instructors of social workers meet to discuss field instruction practices and problems. The authors identify self-reflective skills as including aligning behaviors with values, contributing to the learning of others, seeking alternative perspectives and reflecting upon and learning from experience.

reflection in rounds helps students to apply, test, and refine lawyering theory while simultaneously developing professional norms. These premises are examined next.

A. "Just In-Time"²⁶ vs. "Just- In-Case" Learning

Unlike any other classroom conversation, the ideas and thoughts that students have in rounds matter to the work each student is doing. Because students talk about topics they need to and want to address, they engage in "in-time" learning. In the bankruptcy rounds, the students deeply engage in figuring out what to do in their cases. Other students catch the urgency of the task. Much of what students have learned in law school and in the law school clinical seminar, by contrast, is "just in-case" learning. Teachers identify what students are likely to need to know "just in case" it comes up during representation or later in their work as lawyers. In rounds, students often identify topics or, as here, teachers recognize a learning moment arising from an immediate, timely issue in a student's on-going lawyering.²⁷

Because the rounds conversation has no fixed agenda, students can shape it to serve their "in-time" learning as the conversation progresses. Adult learning theorists tell us that adults learn through education that integrates what students know with new experiences.²⁸ In

²⁶ The label of "just-in-time learning" is not ours. While we cannot remember where we first heard it, the concept resonates with what we know about the benefits of clinical teaching. The experience of students practicing law for the first time provides powerful motivation for self-reflection and learning. "In-time" teaching exists in clinical programs as a pedagogical strategy for identifying what students need to know at a particular time and for motivating students to learn. In-time learning also reveals what students are anxious to learn. For example, clinical supervisors have long been encouraged to have students identify what aspects of their performance they want to talk about in feedback as a way to test student openness to learning. See Beryl Blaustone, *Teaching Law Students To Self-Critique and To Develop Critical Clinical Self-Awareness in Performance*, 13 CLIN. L. REV. 143, 152-53 (2006); see also LuAnn Wilkerson, Janet P. Hafler & Philip Liu, *Issues in Problem Based Learning: A Case Study of Student Directed Discussion in Four Problem-based Tutorial Groups*, 66 ACAD. MED. 9 (1991) (recognizing that allowing students to give direction to the inquiry allows a focus on areas of greatest confusion). Others have used the term to describe the kind of learning that "Gen X" students prefer. These authors theorize that "Gen Xers" are overwhelmed with the wealth of information that is available and prefer to learn how to access the information when they need it. See David Irby & LuAnn Wilkerson, *Educational Innovations in Academic Medicine and Environmental Trends*, 16 INNOVATIONS EDUC. & CLINICAL PRAC. 370, 372 (May 2003); Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 LEGAL WRITING 119, 127 (2003).

²⁷ See *infra* notes 103-110 and accompanying text describing topic selection.

²⁸ See, e.g., Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982). In this article, Bloch introduced the clinical community to the idea that teaching adults, "andragogy," was different from teaching children, "pedagogy," and provided the theoretical justification for the learning that takes place in clinical courses.

the example above, the students help their colleagues find answers about the consequences of bankruptcy by integrating what they know about research methods with the clients' experiences. In rounds, students explicitly build on one another's knowledge. Learning located in experience is powerful; once students integrate learning into prior experiences they recall it more readily and can use it effectively.²⁹

Rounds conversations grounded in "in-time" learning for the group work best.³⁰ In the connections between what the presenting students are doing and their own work, students find relevance in the conversation. In the bankruptcy rounds, conversation moved back and forth between concrete suggestions for how to handle the bankruptcy cases and broader ideas about lawyering, poverty, and debt that might be useful in all cases. For the six students representing the clients in bankruptcy cases, the session provided immediate concrete steps. The conversation worked for the group because all students were engaged in similar lawyering tasks including research, problem identification, and counseling low-income clients.

B. Collaborative Learning

Through collaborative learning, students think about legal issues contextually³¹ and see themselves as an important part of that context.³² Working together they often identify a range of options, and in that process, they learn another important lesson: that professional work involves exercising practical judgments under conditions of un-

²⁹ See *id.* at 352.

³⁰ To have all students experience rounds with the same "in-time" intensity that they experience in supervision can be challenging. When discussing one case, a temptation for the teacher is to be so case-focused that the rounds begin to feel more like supervision by a group than rounds. When that happens, students fail to see the relevance of the conversation to their own cases. This is especially true in a non-specialized clinical or extern program. In rounds, the teacher needs to engage the students in ways that let them see the connection to their own work. See *infra* notes 140-41 and accompanying text describing techniques to make connections between students' work.

³¹ Contextual thinking is the hallmark of the professional. See *infra* notes 70-78 and accompanying text. In identifying the factors to use to identify when collaborative learning works, researchers could have been talking about law practice. Collaborative learning researchers have concluded that this kind of learning is especially important when the "task is complex or conceptual, problem solving is desired, divergent thinking or creativity is desired, quality of performance is expected, and higher reasoning strategies and critical thinking is needed." Elizabeth Barkley, K. Patricia Cross & Claire Howell Major, *The Case for Collaborative Learning*, in COLLABORATIVE LEARNING TECHNIQUES: A HANDBOOK FOR COLLEGE FACULTY 18 (2005).

³² See Susan J. Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459 (1992), and David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLIN. L. REV. 199 (1994), for many examples of the potential for collaborative learning in student co-counsel relationships.

certainty.³³ Collaborative learning allows students to develop new ideas through dialogue with others. Finally, collaborative learning provides support to lessen the stress of practice.

Students build skills of contextual thinking by developing the capacity to see situations through the perspectives of others.³⁴ In subjecting their decision-making to exploration by their peers, student lawyers get a window in rounds into how and why others may see different choices.³⁵ They begin to identify which contexts matter in problem definition and how they shape solutions. For example, in the bankruptcy rounds, these students learned the psychological impact of relentless phone calls or the sacrifice of health care because of unpaid medical bills. They understood their clients' problems differently.

³³ What clinicians have come to know is that law is indeterminate, the facts are indeterminate, the lawyer-client relationship is indeterminate, problem-solving itself is indeterminate, and in order to be effective as teachers, we have even created teaching methods that construct the student-teacher relationship as indeterminate. On top of this is that as our understanding of skills pedagogy becomes increasingly nuanced, we ought to admit that skills too are indeterminate. Our teaching must help our students learn to make decisions and take actions through the thicket of uncertainty that plagues the work of lawyers. Although their search for the givens and their attempts to be grounded in precedent and advised by experts are usually fruitless and often frustrating, we help them to recognize decision-moments they hadn't seen and to analyze their way to action even though information is imperfect and the complexity of the variables sometimes difficult to grasp. See Elliott S. Milstein, *Clinical Education, Indeterminacy and the Reform of the Law School Curriculum* (2005) (unpublished paper, delivered at the New York Clinical Theory Workshop and at the University of Puerto Rico, 2004) (on file with authors); see also Richard K. Neumann, Jr. & Donald Schön, *The Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLIN. L. REV. 401, 405 (2000) ("most of professional work starts in confusion, and the professional usually cannot develop certainty").

³⁴ Collaborative learning theorists identify this as an important benefit of collaborative learning. See Barkley et al., *supra* note 32. Others have recognized how collaborative conversations allow insight into the perspective of others. See Melissa Harrison & Margaret Montoya, *Voices/Voces in the Borderlands: A Colloquy on Re/Constructing Identities in Re/Constructed Legal Space*, 6 COLUM. J. GENDER & L. 387 (1996); see also Judy Scales, *Sameness and Difference in the Law School Classroom: Working at Crossroads*, 4 YALE J.L. & FEMINISM 415 (1992) Gloria Anzaldúa, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987) (stating that the capacity to think from the perspective of the other allows the student to "at once see through serpent and eagle eyes").

³⁵ This kind of learning ultimately enables students to see how culture and experience shape their world-views and influence lawyering choices. Good clinical judgment requires a capacity to identify how one's assumptions influence priorities and define what "makes sense" in the situation and to step away from those assumptions and challenge them. Sue Bryant and Jean Koh Peters identify lawyering based on fact rather than assumptions as a key component of good lawyering. See JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* (2d ed. 2001); Bryant, *supra* note 10; Susan J. Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in RACE, CULTURE, PSYCHOLOGY & LAW 47 (Kimberly Holt Barrett & William H. George eds., 2005). See *infra* notes 78-80 and accompanying text for an exploration of parallel universe thinking, Habit Three (The Habit of Not Jumping to Conclusions About Behavior); the 2007 Clinical Teachers' Conference was organized around challenging assumptions; materials from that conference can be found at www.aals.org.

Students explored a range of choices possible in their cases, as well as the assumptions underlying particular choices. In the contexts of their clients' lives, their work and marriage history were important factors in creating the problem and potentially were part of the solutions to the indebtedness.

By engaging in personal narratives about their work, students can begin to see how they are an important part of the context that needs to be explored. When students tell their case stories, they explain themselves to their colleagues and also to themselves.³⁶ Narrative about clients allows the listeners and speakers to position the storyteller; what is told and how it is told identifies the frame of reference of the narrator and reveals the perspective of the storyteller.³⁷ For example, the bankruptcy teams revealed their negative perspectives about how clients spend money by choosing what to describe about their client's possessions. Through faculty facilitation, students saw how those perspectives shaped their view of bankruptcy and client choice.

These same perspective conversations help students learn deeply about themselves. As they justify their beliefs and test them against those of others, students who are engaged in a supportive and challenging collaborative environment can learn how their perspectives shape their judgments.

When colleagues identify new choices supported by different assumptions, students become aware of many unexamined choices. Collaborative conversations help students lose more quickly the "either-or-analysis" of novice thinking.³⁸ As novices, they look for 'the' an-

³⁶ One method used in the field of education to help teachers learn while on the job is to create "professional development and inquiry groups." These groups of six to ten teachers meet regularly to discuss teaching problems "by means of conversation that includes personal narratives of teaching experiences." Christopher M. Clark & Susan Florio-Ruane, *Conversation as Support for Teaching in New Ways*, in TALKING SHOP: AUTHENTIC CONVERSATION AND TEACHER LEARNING 6 (D. Jean Clandinin & Christopher M. Clark eds., 2001). "Personal experience narratives" permit learners to communicate what they know and what they believe, to explore new ideas and challenge assumptions, and to expand their sense of what is possible. *Id.* at 12.

³⁷ See Muneer I. Ahmad, *The Ethics of Narrative*, 11 AM. U. J. GENDER SOC. POL'Y & L. 117 (2002); Susan J. Bryant & Jean Koh Peters, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Mindful Approaches*, in THE AFFECTIVE ASSISTANCE OF COUNSEL: THE LAW AS A HEALING PROFESSION 183 (Marjorie A. Silver ed., 2006); Leslie G. Espinoza, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901 (1997); Gerald Lopez, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984); John Mitchell, *Narrative and Client-Centered Representation: What Is a True Believer To Do When His Two Favorite Theories Collide?*, 6 CLIN. L. REV. 85 (1999); Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 STAN. L. REV. 1731 (1993).

³⁸ Experts are more comfortable with ambiguity and novices are more likely to want and rely upon rules. See Laurie Morin & Louise Howells, *The Reflective Judgment Project*,

swer and are uncomfortable with the ambiguity that collaborative exploration often reveals. However, by offering a supportive environment while identifying these many more options, students can both share the common frustrations that beginners face of acting without knowing all they want to know as well as ways of managing that uncertainty by exploring together the significant contexts of the particular case.

Much of legal education, including clinical education, can be viewed as transmission-oriented education; however, rounds conversations are often sites of dialogic learning³⁹ in which "emergent knowledge" develops.⁴⁰ Through conversation, as students reflect together, they often gain new insights and develop new ideas about what works.⁴¹ As students try to reconcile or assess divergent views, they produce co-constructed knowledge through a dialogue where ideas are shared and built upon.⁴² For example, the students who were each individually trying to understand what bankruptcy meant developed new learning that would have been difficult to learn alone. The collected experiences of their clients' stories and their collective reactions gave them a more contextualized and expansive window into the relationship between poverty and debt as well as what meaningful results bankruptcy might bring to clients.

Rounds conversations also help build a sense of peer cohesion

9 CLIN. L. REV. 623, 666-74 (2003), in which the authors map the stages of intellectual development of law students/lawyers starting with "Black Letter Absolutism" and proceeding through five stages that increasingly involve complexity, ambiguity and interconnectedness.

³⁹ See Clark & Florio-Ruane, *supra* note 36, at 10-12. The authors posit that conversation-based learning (dialogic) meets the needs of adult professionals for "remembering, reinterpreting and reorganizing knowledge and skills." This method permits professionals to work together to solve problems and this constitutes a "powerful kind of learning." It is, therefore, preferred over a "transmission-oriented approach." *Id.* at 10. This learning also enables these professionals to be more tolerant of ambiguity. *Id.* at 108; see also STEVEN BROOKFIELD & STEPHEN PRESKILL, DISCUSSION AS A WAY OF TEACHING 15-16 (1999) (identifying benefits of democratic discussions that are deliberative and foster reflective and informed judgments).

⁴⁰ "Emergent knowledge," a term that comes from the collaborative learning literature, means ideas that are more than just a collection of the ideas of the group. The term describes the potential of a group of learners to develop insight and knowledge through a synthesis of the individual ideas. Bryant, *Collaboration in Law Practice*, *supra* note 32, at 460. Of course the opposite can also result when group-think occurs. Groups can exert subtle pressure to conform, squelch individual differences and develop lowest common denominator thinking. Beginners may be especially reluctant to advance alternatives in a group. See JANINE BERNARD & RODNEY GOODYEAR, FUNDAMENTALS OF CLINICAL SUPERVISION 74, 76 (1992).

⁴¹ Katherine R. Kruse, *Biting Off More Than They Can Chew*, 8 CLIN. L. REV. 405, 438 (2002). Kruse notes that collaboration is especially useful in problem-solving when solution generation is needed as multiple perspectives bring more ideas about possible solutions.

⁴² Barlow et al., *supra* note 25, at 184.

and support.⁴³ Lawyering is stressful work, especially for beginners.⁴⁴ Novice bankruptcy lawyers, unsure of what they knew and needed to know, engaged their classmates in an inquiry that answered many of their questions; the group together improved the counseling to be provided by each team. Their colleagues who have more distance may have greater clarity than the new lawyers in any given case, who can be overwhelmed by ambiguity and indecision.⁴⁵ The more that students work on each other's cases, the more they build a sense of being in a group with a common purpose. By encouraging students to share their feelings and reactions, teachers help group members learn that they are not alone in feeling stress and uncertainty; the pain of client stories overwhelms others too.

Seeing that their problems are not unique, students personalize their problems or reactions less: they do not feel "abnormal."⁴⁶ Sharing this kind of information facilitates mutual aid. For example, when students discuss cases where clients have suffered torture or domestic violence, they share their distress about stories they hear. They can acknowledge the stress that comes with responsibility for cases affecting a client's ability to stay in this country or find safety from intimate partner violence.⁴⁷

Finally, professional identity is inherently a group identity.⁴⁸ Law faculty and lawyers transmit explicitly and implicitly what it means to be a lawyer. As new lawyers, students practice using transmitted knowledge even as they reinvent their identities as lawyers through practice. Creating space while still in school for the group and the individual to adopt and adapt professional norms enables students to make that process explicit and to negotiate their way through it with

⁴³ *Id.* at 183. See Frances Rust & Lily Orland, *Learning the Discourse of Teaching: Conversation as Professional Development*, in TALKING SHOP, *supra* note 36, at 82, 86.

⁴⁴ Among the conversations that rounds normalize are ones that include topics like satisfaction, life goals, and stress reduction. By normalizing these conversations, students will see these as appropriate professional conversations.

⁴⁵ Of course the group may come up with too many good ideas and overwhelm their colleagues. When that happens, the faculty can ask the group's help in developing priorities or eliminating suggestions as the bankruptcy faculty did here.

⁴⁶ ALFRED KADUSHIN & DANIEL HARKNESS, *SUPERVISION OF SOCIAL WORK* (2002). The group acts as a support and individuals begin to see problems more generically as "our problems" rather than "my problem." *Id.* at 39.

⁴⁷ Seeing the value of this type of support can introduce students to a model they can use in practice. This type of debriefing is one of the ways that professionals engage in self-care and lessen vicarious trauma.

⁴⁸ SULLIVAN ET AL., *supra* note 1, at 30-31 (through its code of ethics, a profession agrees to regulate itself to maintain the trust of the public). See Thomas Shaffer, *The Legal Ethics of Belonging*, 49 OHIO ST. L.J. 703, 717 (1988) (exploring the importance of belonging as the place where morals come from).

their professional peers.⁴⁹

C. Reflection

All professionals learn through the process of reflection,⁵⁰ a process frequently taught in clinical programs.⁵¹ Through rounds conversations, students learn reflective practice as well as important lessons about lawyering.⁵² We teach reflection by focusing students on past events and on events as they occur and shape each other's cases. Reflective conversations address specific events in particular contexts that allow students to give concrete meaning to theories about lawyering and legal systems that they are learning in seminar. At the same time, they explore when those theories need refining. By explicitly naming the process, teachers improve students' learning of reflective practice while building substantive knowledge about lawyering.

As in supervision, in round conversations students reflect on actions, but with a broader base of experience and multiple viewpoints that provide additional insights about why the case progressed the way it did⁵³ or how another approach might be more effective. For example, as the bankruptcy conversation explored what was wrong and how the situations needed to be changed,⁵⁴ students offered very

⁴⁹ See KENNETH BRUFFEE, *COLLABORATIVE LEARNING: HIGHER EDUCATION, INTERDEPENDENCE, AND AUTHORITY OF KNOWLEDGE* 3 (1993) (stating that collaborative learning helps students become members of a knowledge community; the most important shared characteristic of members of the community is language from which members construct community knowledge).

⁵⁰ William Sullivan identifies a process of developing practical reasoning in a discipline in which the professional moves "from a theoretical analysis of the situation toward a concrete experience in a fluid, intuitive way that allows practice to take the lead, even to the point of generating new theoretical insight." FOSTER ET AL., *supra* note 1, at 319 (citing WILLIAM SULLIVAN, *WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA* 246-50 (2005)). See also Neumann & Schön, *supra* note 33. To unravel "uncertainty, uniqueness, and conflict" in the "indeterminate zones," an effective professional reflects in action. *Id.* at 406 (citing DONALD SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* 268 (1983)).

⁵¹ Neumann & Schön, *supra* note 50, at 402 (noting that Schön's theories were so popular in clinical legal education that he was invited to speak at an AALS conference and citing numerous references to Schön in the clinical literature).

⁵² But see Richard K. Neumann, Jr. & Stefan H. Krieger, *The 25th Anniversary of Gary Bellow's & Bea Moulton's The Lawyering Process: Empirical Inquiry Twenty-Five Years After the Lawyering Process*, 10 CLIN. L. REV. 393-96 (2003). The authors are critical of conclusions about lawyering drawn from the inferences developed in reflection rather than the more scientifically valid conclusions that can be reached through empirical research. However, Richard Neumann also teaches us that we can, "learn more if we discipline ourselves to study reflection-in-action and treat it as an art, 'not inherently mysterious' but instead 'rigorous in its own terms.'" Neumann & Schön, *supra* note 33.

⁵³ See *infra* notes 78-80 and accompanying text.

⁵⁴ "Professional thinking is best learned in a 'reflective practicum,' where students learn by doing while interacting with teachers who view themselves as coaches." Neumann & Schön, *supra* note 33, at 415.

different answers. The presenting students defined the problem as people not paying their debts; possible solutions needed to address that problem. Other students framed the problem as credit card company practices or employer abuse. As it does in all problem solving, problem definition influenced solutions.⁵⁵

The reflective conversation included an examination of how the students got to the list of pros and cons and how problem definition shaped that list. The students assessed why avoiding the cons of bankruptcy had seemed so much more significant than the benefits gained and how their perceptions compared to those of their clients. Students learned how the ways they felt about money shaped their analysis and what they could do in the future to surface explicitly the values influencing their assessments.⁵⁶

This conversation, focused initially on planning how the students should counsel their clients, changed as the group identified additional essential information and different problem definitions. The group moved from planning to reflecting. Additional pros and cons triggered reflection about how the students had gotten to their initial list.⁵⁷ The students learned many lessons, including substantive lessons about research, problem identification, and the role that perspectives play in these lawyering tasks. They also learned how to reflect by identifying what steps they had taken, by exploring why others might think differently and, finally, whether they should do it differently in the future. By reflecting on their actions to date - how they got to their list, what research they had done, what they had identified - the group helped them assess their approaches and suggest new ones for defining the problem, improving their research and counseling.

Could these process and substantive lessons have been learned in supervision? Perhaps, but peer conversations often trigger reflection and they almost always improve the lessons to be drawn from the reflection.⁵⁸ An important aspect of reflection involves surfacing tacit

⁵⁵ This has been described as "problem setting" - the process used to "define the decision to be made, the ends to be achieved, the means to be chosen." SCHÖN, *supra* note 50, at 40.

⁵⁶ This conversation also illustrates the process of moving from the particular to the general. In trying to surface values and the ways they shape our inquiry and decisions, teachers often prefer the individual conversations of supervision. We see that as a choice as well. But where as here the students began to surface the changed views and approaches, the exploration about values is a natural follow-up, especially if it is raised as a question rather than an accusation. The value of raising it here is to normalize the reflective process as a means to exploring how values shape our decisions and insights.

⁵⁷ Surprise often triggers reflection as we explore why something unexpected happened.

⁵⁸ See *infra* notes 61-70 and accompanying text for a discussion of the move from particular experience to generalized lessons.

norms or assumptions that underlie a judgment made to take a case in a particular direction. Those norms or assumptions often remain hidden until someone in the group articulates a different approach or, as here, the teacher brings client perspectives into the mix. New ideas and points of view generate surprise, causing the student to wonder why somebody else sees it differently.⁵⁹ Rounds conversations encourage reflection because even if the individual student sees no surprises, his or her classmates often do. Through this collective process, students can identify and evaluate the strategies or theories that were implicit in a pattern of behavior or the feeling for a situation that has led them to adopt a particular action.

Learning through reflection on experience requires that novice professionals begin to practice before they know everything.⁶⁰ A difficult and scary process that requires an honest and searching inquiry about paths taken and mistakes, rounds conversations reinforce the value of these inquiries and make the process less intimidating by drawing on the support of the group.⁶¹

Reflective, collaborative and adult learning theories help explain why rounds provide students with meaningful opportunities for professional development. The next sections explore what students learn as well as suggest how teachers can plan for and participate in rounds.

II. PROFESSIONAL REASONING AND ETHICAL DECISION MAKING

Rounds provide each student a rich context for learning that extends beyond the particular slice of a lawyer's work that each experiences alone. This broader and more varied context allows the teacher to introduce and reinforce habits of "thinking like a lawyer," such as moving from the particular to the general, contextualized thinking, and parallel universe thinking. In professional dialogues focused on their colleagues' cases and projects, students practice repeatedly these habits of mind, through which they develop professional skills while shaping their professional identity and accompanying values.

⁵⁹ See Neumann & Schön, *supra* note 33, at 406 (pointing out that much reflection hinges on surprise). While surprise may be the most common trigger, we also know that systematic reflection should occur when things go right as well as wrong; when the activity seemed usual as well as unusual and when it is both consonant and dissonant with expectations and our theoretical framework. See *infra* notes 62-72 and accompanying text for an exploration of how rounds develop theory through reflection.

⁶⁰ See Neumann & Schön, *supra* note 33, at 408 (citing Schön, *supra* note 50, at 249); see also Morin & Howells, *supra* note 38.

⁶¹ See *supra* notes 46-47 and accompanying text that identifies support as an important reason to engage in rounds conversations.

A. *Moving From The Particular To The General*

One of the core competencies of the reflective lawyer that rounds teach is developing, applying and testing theory in the context of the real world. Rounds utilize the experiences of a few to illuminate something of use to all, focusing conversation on a particular moment in one case that takes others to a more general understanding of the meaning of similar moments. Working with the group, on the one hand, to both identify and shape their insights, and on the other, to make visible a process for developing and testing their theories, the teacher helps the students learn how to use clusters of particular experiences to reshape lawyering theory over a lifetime of professional practice. In addition to using this process to understand lawyering activity, this process also is essential for exploring the complexities of lawyering for social justice.

Teaching in rounds, like all clinical teaching, involves a series of judgments about how to get from the practical questions and descriptions that students often bring to the discussion to identifying, naming and developing theories that will inform not only particular questions but practice itself. Sometimes, rounds rely upon those theories that have been taught in another clinic context, such as the seminar with its readings or in supervision. Since students must apply these theories in practice and test their strengths and limitations, rounds examines from the perspective of many students' experiences whether a theory informs reality or how reality informs understanding of a theory.⁶²

At other times, students construct theories from the empirical observations of the group. Starting with a report from a team on an occurrence, such as a trial, a negotiation, or a counseling session, the group looks back at what has happened and organically moves (or the teacher moves it) from a description of a particular event to an analysis of the relationship between that event and a decision or action by the team. By doing so, students develop tentative hypotheses about lawyering that other students test through the prism of similar experiences and insights. They can see the validity and limits of their hypotheses. Teachers help the students see connections that might not otherwise be apparent between their experiences and those of others, often including those of the teacher.⁶³

⁶² Unlike most other legal academics, clinical teachers' theories are constantly being tested and modified in experience-based conversations such as these. *But see* Neumann & Kreiger, *supra* note 52 (criticizing the failure to empirically evaluate our theories of practice).

⁶³ Social work theorists have identified a four-step process called the integration of theory and practice loop. *See* MARION BOGO & ELAINE VAYDA, *THE PRACTICE OF FIELD INSTRUCTION IN SOCIAL WORK: THEORY AND PROCESS* (2d ed. 1998). This process involves retrieval, reflection, linkage, and professional response. Retrieval involves identify-

The thrill of victory and the agony of defeat are enduring moments in rounds conversations.⁶⁴ Through reflection, lawyers find meaning in both instances by exploring not only results but also the decisions and actions that define the lawyer's work on behalf of clients. Consider this rounds story from an International Human Rights Clinic. After one of the Clinic's clients was granted asylum in an affirmative asylum case adjudicated by an asylum officer, the faculty encouraged the students to look back, to understand the relationship between the result and to their strategic decisions and actions. Ecstatic, the two students who represented this client first attributed their victory to Divine intervention.

The Asylum Victory Rounds

"What beyond Divine intervention do you think happened? What did you do that contributed to the result?"⁶⁵

Nadia said that she and Lani won the case because they had some strong facts and that their investigation had turned up a videotape of a newscast that featured the client's son's denunciation of the government in an African country. Although the client himself had a role in the overthrown predecessor government that would have completely explained why he was in danger, establishing that he played that role turned out to be more difficult.

"What we should think about doing, when either we win a case or we lose a case, or when something good happens or something bad happens, is to try to extract from the experience some knowledge that we can apply in some other circumstance."⁶⁶ And it may be easier to be critical of ourselves when we lose than to think when we win about what things we did that really contributed to the result, and what things we might have done differently."

ing the facts that distinguish and define any situation at the beginning of the involvement. Reflection as it is used in the loop explores personal subjective reactions and their effect on the work as well as the appropriateness of the intervention. Linkage involves identifying and labeling knowledge that will help explain the practice data that can be used in planning professional response. To use the Professional Response part of the loop, the social worker uses the generated ideas, knowledge, and insights to develop an action plan.

⁶⁴ Victory and defeat are moments to encourage systematic reflection. See *infra* notes 114-17 and accompanying text.

⁶⁵ The opening question, asking the students to reflect on the reasons for the victory, asks them to begin the process of extracting lessons from the experience that will inform future decisions. It also engages the entire class in learning from the experiences of the team.

⁶⁶ Describing this process both sets the agenda for the rounds conversation and teaches a process they can use in practice. This "process intervention" transcends the analysis of case under discussion. See *infra* notes 142-43 and accompanying text describing process interventions.

Lani then said that the client's testimony on the weaker theory had been shaky and that the asylum officer's questions revealed "huge gaping holes" in the case and that they worried that he was trying to trip up their client. *"If I can paraphrase what you said, it is difficult to resist the temptation to put everything into the case theory, but putting everything there could create many more possibilities for your client to be disbelieved."*⁶⁷ *My perception is that this tension runs through every one of our cases."*

Maricel said that there was a similar situation in a case she and Jay were handling. Their client has "a strong case on the fact that his father was a former diplomat who's disappeared and a weaker case on himself being a political activist. Even though he might have actually been a target because of his own politics, it is easier to prove what happened to his father."

"So, the tension between painting the most vivid picture – 'look at all the reasons why I'm going to be persecuted,' - to narrowing it to 'look at this one very solid reason why I would be persecuted' presents difficult choices. Do you have any tentative conclusions from what's happened so far?" Students expressed a range of viewpoints. Based on Nadia and Lani's experience, Jay, Maricel's partner, concluded that he would always want to build his case around the strongest facts and put all of his eggs in that basket. Nadia expressed her anxiety about leaving anything out: "It scares me to leave it so incomplete, to feel like you're not telling the whole story. . ." Maricel countered that if the officer doubted the client's credibility then it would be hard to win, even with an otherwise strong case.

"Both these cases illustrate that stronger case theory rests on externally generated evidence that was not prepared to help prove this case. Instead of choosing a theory supported solely on a client's testimony, lawyers should consider choosing one where his credibility is corroborated by external evidence. We are always trying to understand our audience and make choices based upon what we think we know about the relevant audience. As we have discussed, if our opponent is a government lawyer or an asylum officer with a limited amount of time to prepare and a lot of cases, then her default mode is likely to be the search for inconsistencies in the evidence or in the story. In my experience, benefit providers often have a bias that benefit seekers are liars or are committing fraud."

⁶⁷ This is an example of "Mirroring and Rephrasing." See *infra* notes 142-143 and accompanying text. Rephrasing the student's comment, the teacher showed the class how a tentative theory can take shape from what happened.

*Welfare workers, student loan officers, prosecutors, and anyone with discretion to grant or deny benefits often become deeply distrustful. Knowing that the credibility and the consistency of the story are always going to be issues in these cases, in a case where you think the client's credibility is vulnerable on cross-examination, when there is a choice of possible theories, you want to avoid a theory that rests on the client's testimony alone."*⁶⁸

Through the particular victory in this and another case, the group analyzed one significant element in evaluating case theory. The reflection on the victory gave the students an opportunity to learn the connection between evaluation of possible evidence and selection of case theory.

Moving from the particular to the general can also facilitate exploration of the social justice issues that are raised by the teams' experiences in asylum cases. In general, the types of social justice conversations that predominate in rounds are defining and explore visions and limits (or the pleasures and the pains) of zealous advocacy on behalf of the wronged (and the wrong),⁶⁹ exploring the ways in which the client's situation is emblematic of broader concepts of injustice in the world (class, race, gender, sexuality, economics, consequences of authoritarianism, etc.), and how to lawyer to make things better.

For example, at some point in the year, students in this rounds group will explore the unfairness of the asylum process in design or operation, the untoward behavior of some of the actors within it (such as the reflexively oppositional character of the government lawyer whose ostensible duty is to do justice), the role that race or place played in their cases, and the relationship between the goals of getting a positive outcome in particular cases and improving the system. As

⁶⁸ Here the teacher shares his experience and summarizes an important point: understanding how decision makers' roles affect how they see the world can be a useful starting point to predict how a particular person is likely to react. The teacher could have asked the students to develop the generalizations from the discussion. Instead, the teacher ends the conversation with a mini-lecture in part because the concept of building case theory on strong facts ought to have been familiar to the students who had read about and discussed case theory in the clinic's seminar. The choice of whether to summarize and move on or to provide a reflective comment or question that tries to lead the students to articulate a theory is often made based upon the realization that time is limited. Here (as always) other topics were available built upon the successful outcome the students had enjoyed. For example, in this case the students were happier than the client was at the moment of victory. They learned that even though he was glad to have the freedom to stay in the United States, he was sad to have had to leave friends, family, and familiarity back home. Changing topics provided, among other things, the possibility of exploring the meaning of this.

⁶⁹ See *infra* notes 81-87 and accompanying text.

students gain more experience with the system and as faculty sense that students have more than a theoretical understanding of these issues, either may generate these inquiries. Whatever the source of these conversations, faculty can decide when to focus upon ways to lawyer in the case or outside of the case to address these issues.

Rounds also provide a site to explore the relationship among the particular human rights violations suffered by this client, the human rights conditions of the country from which he came, and the ways lawyers, laws, and legal processes could be employed to prevent, deter, or stop those violations. The abstract inquiries rooted in the particular experience of the students often lead to a discussion of fundamental role questions about how duties to a client drive lawyers both towards and away from law reform activity. The students' experience with each of these questions makes the social justice discussion richer than if the same questions arose from readings alone.

B. Contextualized Thinking

Thinking like a lawyer also requires thinking contextually.⁷⁰ While we encourage students to move from the particular to the general, generalizations may be useful or problematic depending upon the particulars that define a problem. In rounds, students learn that the answer "it depends" is not an evasion but a call to the critical inquiry of analyzing what factors make a difference. By saying that contexts matter, we teach students to identify what variables matter in applying or revising a theory. Multiple experiences help students develop sophisticated thinking about the categories that alter a generalization. Consider this rounds story about initial interviews as students struggle with the question, "What should the lawyer do when a client brings a third person to the interview?"⁷¹

The Third-Party in the Room Rounds

Ann and Mirna reported that their client, who was embroiled in a child custody matter, had come to the interview with her boyfriend and that he had sat in on the interview. Mirna said that

⁷⁰ The Carnegie Foundation's Preparation for the Professions has stressed the importance of teaching contextualized thinking as an important part of profession education. To accomplish this, in the education of clergy, they identified that students need to develop the "consciousness of context," the "ability to participate constructively in the encounter of context," and "the transformation of contexts." FOSTER ET AL., *supra* note 1, at 132. As noted previously, collaborative learning and reflection on experience are important pedagogical processes for learning this fundamental aspect of lawyering. See *supra* notes 34-37 53-56 and accompanying text.

⁷¹ See *infra* notes 119-20 and accompanying text, identifying lawyering theme or task structured rounds.

they felt it “would have been rude” to ask him to leave.⁷² They now wondered whether they had made the wrong decision. Amjad responded that having a third party in the room negated the attorney-client privilege and, therefore, third parties should not be allowed.

Another team, Dara and Ed, said that their client, who didn’t speak English, had brought a friend to the interview to interpret but, since they had arranged for one of the clinic’s volunteer interpreters to be in the interview, they asked the friend to wait outside. Dara thought that it would have been easier to build rapport with their client had they used the friend.

Fernanda and Greta, when a client was brought to the clinic by her social worker who had referred her for help with her debts, thought there was “no way” they could have interviewed the client without the presence of the social worker; Amjad’s earlier comment, however, worried them.

These situations produced a discussion of the legal rules regarding privilege and the duty of confidentiality under the Rules of Professional Conduct. The group explored the differing legal statuses of the boyfriend, the interpreter, the social worker, and random eavesdroppers, as well as the possibility of changing the status of any of them by including them as part of the lawyer’s team. Drawing upon his own experience, the teacher got students to analyze the probability that the privilege questions would actually matter in particular cases.⁷³

This conversation involved “in-time” exposure to evidence and professional responsibility issues requiring students to apply doctrines and ethical principles in the context of multiple clients.⁷⁴ While these what-to-do conversations are often the subject matter of supervision, rounds offers multiple voices and multiple perspectives and moves

⁷² In rounds conversations, students often reveal mistakes, sometimes inadvertently. Other times they explicitly acknowledge mistakes, seeking solace or advice from the group. Teachers should reward the student’s candor, reinforcing the importance of owning and trying to correct mistakes. By examining whether the planning process, preparation, and/or supervision were flawed, students learn corrective steps for the future.

⁷³ Although all of the students in the clinic had taken both Evidence and Professional Responsibility and had been exposed to these rules in other classes, their understanding of how these rules operate was quite limited. The idea that students understand legal doctrine best, or sometimes for the first time, when they have to learn it in the real world is not new to clinicians. *See* Bloch, *supra* note 28.

⁷⁴ Rounds conversations frequently build from an unexpected or serendipitous event—like a third party showing up to the interview—that requires a team to make an immediate decision about what to do in response. *See infra* notes 108-18 and accompanying text, identifying topic selection.

from focusing on the decision itself to an examination of what factors to consider in making the decision. By examining three instances of third party presence in attorney-client meetings, the students deepened their understanding not only of the rules but of the myriad ways these issues arise. Only by analyzing the multiple contexts could they do the kind of reasoning needed to answer the question. No set of professorial hypotheticals could as richly illustrate or sharpen the contextual analysis of these doctrinal issues as did this collective student experience.

The conversation then shifted to examining the effect of the third person on the development of the lawyer-client relationship and on the quality and the quantity of the information obtained in the interview. The group discussed Amada and Mirna's choices in relationship to the goals of the initial interview, a process earlier developed in class. Students explored the ways the boyfriend's presence affected the lawyer's ability to gain the client's trust and the ways her story might have been different were she alone. The class then compared that client's reaction to the boyfriend's presence with the other client's reaction to the social worker's presence.

The group developed insight about the effect of third parties on trust-building and information-gathering. Finally, the group explored how a lawyer assesses the context to decide when a third party's presence might be beneficial and what role clients should play in deciding these issues.

Contextualizing the analysis both within the framework of doctrinal analysis and then within lawyering theory permits the students to test and refine their understanding of both. Resting their analysis within their combined experiences also permits students to see practically the meaning of applying both doctrinal and lawyering theory in different contexts.⁷⁵

After recognizing the issues raised by having third parties in the room, students explored what to say to the boyfriend and the client concerning the importance of him not being in the room. At this point, students role-played possible conversations to illustrate how to communicate their judgments to the client and the boyfriend.

Finally, the group explored how to think about these issues when the third person is an interpreter. Dara and Ed were the first in the group to interview using a language interpreter. Deciding whether to use an interpreter and who it will be are the most basic questions that

⁷⁵ Instead of the content being predetermined by the teacher's syllabus and readings, the embodiment of "just-in-case" teaching, the students' questions shaped this rounds with a topic that the teacher had not anticipated in the seminar. Extending seminar coverage, the topic permitted an application of theories about interviewing skills and values in the context of third parties in the interview.

lawyers face when representing clients with limited English language proficiency⁷⁶

These students' need to choose between the client's friend and a neutral volunteer enabled the teacher to raise the questions inherent in that choice, questions already discussed in supervision but now useful to the entire class. "*Because there was no choice about whether to have an interpreter, in what ways do you think talking to a client through the interpreter will affect the interview?*" The students explored whether the presence of a friend who interprets would have the same effect on trust-building and information-gathering as the boyfriend or the social worker. The group explored the ways that interpreters can help build trust between lawyers and clients, as well as the ways that interpreters, like all third parties, can cause clients to censor their comments. The students identified how they might recognize if these events were happening.⁷⁷ In addition, students identified the special risks of poor interpretation on information-gathering and how the choice of who interprets matters.

The issues raised by the students about third parties taught the students how to think contextually about the doctrinal issues of privilege and confidentiality as well as lawyering questions of trust-building and information-gathering. Students learned that black letter rules about doctrine or lawyering may be useful starting points for decisions but that answers often lie in thinking through the particulars of the situation. The comparisons offered by conversation about all three cases helped students learn not only which factors matter in the third party presence situation but also the general point that particular factors influence outcomes about most decisions.

C. Parallel Universe Thinking

In other work, Sue and Jean Koh Peters developed and described the process of "Parallel Universe" thinking, an essential habit to building cultural competence in practice.⁷⁸ Parallel Universe thinking involves identifying multiple explanations for the same behavior, a

⁷⁶ Muneer Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 776 (2007); Bryant & Peters, *supra* note 37; Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLIN. L. REV. 347 (2000). Elliott's colleagues at American, Muneer Ahmad, Susan Bennett, Elizabeth Bruch, Sarah Paoletti, Margaret Johnson, Kate Bunker, and Josh Sarnoff created a set of protocols for training, evaluating and using interpreters, called the SCLEP (Serving Clients with Limited English Proficiency) Project.

⁷⁷ Bryant & Peters, *supra* note 37, at 218 (using the concept of red flag to identify problems in the interview).

⁷⁸ See Bryant & Peters, *supra* note 35 and accompanying text. We have collected materials for students and practitioners wishing to learn the Habits on the CUNY Law School website, available at <http://www.cuny.law.edu> under resources for clinical teachers.

core cross-cultural habit in recognition of the role that culture plays in the interpretation we give to behavior. Rounds are ideal conversations to develop the students' skill in parallel universe thinking. When identifying alternative explanations for behavior, especially when they feel judgmental or negative about client behavior, students can help each other see alternative explanations. Often other students who have had experiences similar to the client or to the student can see other explanations based on their experiences.

Consider this rounds story:

The Client Resistance Rounds

In an on-going custody case, Anna described a client as "uncooperative" because she was not taking her child to court-ordered counseling. She had spent many consultations with the client explaining the importance of following the judge's orders. She was fearful that her client would lose custody of her daughter if she failed to take her for counseling. Anna had set up the counseling and had called the client to remind her to go.

Now just weeks before they are scheduled to return to court, she asked her classmates, "What should I do to get the client to perform as the judge expects?" As students started to come up with suggestions, the teacher intervened to elicit parallel universe thinking prior to responding to Anna's request for help: *"Let's help Anna think about why the client was doing what she was doing?"*

Students began to identify possible reasons for the behavior. While Anna was taking the behavior personally as the client's failure to follow her advice, colleagues pointed to other reasons for the clients' actions. Barbara, whose mother had "dragged her" to counseling when her parents were divorcing, saluted the client's decision to protect her children from counselors. Barbara noted, "I wish my mother had done that instead of dragging me off to counselors."

Jean speculated that counseling appointments may be one task too many for a poor, over-stretched client and asked Anna, "What other obligations does your client have?" Another student, originally from a country without significant counseling resources, noted that the client "may be frightened by or unfamiliar with what would happen in counseling."⁷⁹

⁷⁹ In addition to engaging in good parallel universe thinking, the students also offered their colleague empathy. They knew how hard it would be for the student to go before a judge with a "misbehaving client" and they understood the student's anxiety about how to

From parallel universe thinking, the group saw that neither they nor the student lawyer had enough information to answer the question about what to do. Instead, they pursued alternative strategies for developing better understanding of the client's situation and for working with the client based on varying explanations for the client's behavior. The parallel universe thinking helped connect the solution to a concrete explanation for the behavior. Students also brainstormed ways the student could talk with the client and others to understand better the client's behavior.⁸⁰

D. Connecting Skills to Role and Values

Clients and cases that test students' conceptions about the lawyer-client relationship raise good topics for rounds.⁸¹ (Should I go to the client's home to meet with him? Should I accept a gift from my client? Should I help my client find a place to live? Should I tell my client that her clothes are inappropriate for court?) The Rules of Professional Conduct rarely provide answers. In the midst of defining themselves as lawyers, students encounter questions like these daily. Rounds help students spot attorney-client role issues. For example, when one student asks, "Should I give my cell phone number to my client?" other students realize they gave their cell phone numbers without thinking. Having identified the choice, students can evaluate the pros and cons of giving the number, connecting this choice to the kind of relationship they want to have with the client.⁸²

This conversation leads naturally to questions of appropriate boundaries and power dynamics in the attorney-client relationship. For example, what if the lawyer has the client's cell number but the client does not have the lawyer's. Should the relationship be symmetrical? Should a lawyer or client expect immediate contact or should "office hours" be used for communication between lawyer and client? This conversation, like many others, takes the students' experiences and allows them to shape professional boundaries within a modern communication context.

By examining these questions with colleagues, students can ques-

proceed.

⁸⁰ Rounds conversations like these can be aided by the addition of the insights of other professionals. In this particular clinic, social work students worked with the law students. The law students were aided by having social work perspectives to add to the parallel universe explanations as well as to think about different plans for having conversations with the client.

⁸¹ See *infra* notes 108-18 and accompanying text on topic selection.

⁸² Faculty can name these kinds of conversations as boundaries issues, a core concept in professional relationships.

tion their preconceptions about the attorney-client relationship and see opportunities to reconstruct this relationship differently with every client.⁸³ They can begin to understand the connections between the goals and values of both lawyer and client and the decisions and actions available to them.⁸⁴

A recurring rounds theme that explores the attorney's values and resulting behaviors is the professional commitment to zealous advocacy and its limits, as illustrated in the following rounds story.

The Immigration Status Rounds

Tamara and Maria represented a mother in a family law case. They described developing a case theory for requiring supervised visitation of the father with his child, and reported having some disputes about the theory of the case.

They explained that their client was very opposed to her husband getting unsupervised visitation. She feared that he might harm the child or take him out of the state. Tamara reported that the client's husband "suffers from depression" and lost his job because he didn't show up for work. At one point when the client announced she was leaving the relationship, the husband put a knife to his stomach and said he would kill himself if she did that. The husband has rages and has beaten the client frequently. While he had never been physically abusive with the child, she feared that his temper might cause him to lash out at the child.

Maria reported that on another occasion, "the husband told the client that if she left, he would make sure that the child of the marriage would be with him. The client's husband is here illegally and she is afraid that he will take the child to (his home country)."

Tamara and Maria disagreed about how they should treat the husband's illegal status and asked the group to help them think about it.⁸⁵ Maria was opposed to the focus on his status because

⁸³ We might see this example as yet another topic for where the primary frame for thinking about it is thinking contextually. However, framing this as thinking about ethical and role issues that may benefit from contextual thinking helps students begin to identify the issues and choices.

⁸⁴ By questioning preconceptions, identifying possible choice moments that are invisible, and asking students to explore available choices and their consequences, clinical teachers are teaching core lessons about being a lawyer. Rounds provide an ideal setting for mutual exploration of peer preconceptions and choice-making moments.

⁸⁵ We often find that pairs will ask colleagues for help in rounds when they disagree or when they disagree with a supervisor. We also use rounds for conversations where there is a disagreement between students and us. Assuming they and we are open to what they hear, these conversations often provide the opportunity to see an issue more complexly.

she thought there should be no discrimination based on immigration status. She reminded the group that many of the clinic's other clients also have no legal status and their husbands often try to use it against them.

Jose replied, "If lack of immigration status helps the case, can we ethically refuse to use this fact just because we do not think that immigration status should ever be relevant?" Another student responded emphatically that zealous advocacy requires the use of "every possible approach that would improve our client's chances."

A back and forth conversation ensued about zealous advocacy when attorney's values and client's values or needs clashed.⁸⁶ Towards the end of the conversation about raising immigration status, another student pointed out that nobody was asking whether including the father's depression as a factor was similarly problematic. "Were they assuming that people suffering from depression should automatically have supervised visitation?" This student argued that without more information about the effect of depression, they were stereotyping people with mental illness and it might have the same problems as immigration status.

Rounds conversations like these enable a faculty member to enlarge the "either or" conversation and elicit more sophistication. *"What about the call for zealous advocacy? Does it have bounds? How does a lawyer discuss this topic with clients? What choices are available to attorneys who disagree with their clients?"*

The teacher can also encourage students to think about whether and how the two factors – immigration status and depression – might influence a judge's decision. If they adopt Tamara's suggestion and use the father's illegal status and depression as part of their theory, will the team prove the level of harm required to obtain supervised visitation? What assumptions are the students using to prove the harm and would the fact finder accept those assumptions? Are there concrete facts in the case that demonstrate harm more effectively than reliance on stereotypes about undocumented people or people suffering from depression?

Through these conversations, the teacher encourages students to integrate questions of ethical decision making with doctrine and prac-

⁸⁶ Other themes in the conversation involved whether in fact someone without status was likely to leave given the bars to re-entry that exist in the immigration law and whether a judge would think that immigration status was relevant to the question of whether the father would flee the country with the child.

tical skills.⁸⁷ This ensures that students will see that values questions are embedded in every lawyering decision.

III. GENERATING CONVERSATIONS: ROUNDS STRUCTURES, TOPICS & EXPECTATIONS

Faculty members shape rounds conversations by setting ground rules; selecting topics, structures and preparation requirements; or by asking students to make these decisions. Each clinical program's faculty and students will shape rounds differently, depending on learning goals. For example, in all rounds, students learn how to move from the particular to the general, but a clinic's lawyering priorities often dictate the selection of lawyering theories for focused inquiry.⁸⁸ The following section discusses the choice points for setting up the conversations and identifies the unique perspectives that students and faculty contribute to the choices.

A. Ground Rules

Many faculty introduce rounds orally or in writing by describing the expected content, structures and goals. Others spend time preparing students to present in rounds. Few announce the ground rules for the conversation itself.⁸⁹ Yet authors from other disciplines encourage faculty to set ground rules for professional conversations of this type.⁹⁰ Others encourage faculty to let the group set the rules.⁹¹ The

⁸⁷ This is the kind of integration that the Carnegie Foundation recommends for legal education. See, SULLIVAN ET AL., *supra* note 1, at 81-82.

⁸⁸ Because of the cognitive complexity of teaching in rounds, medical educators have argued for developing routines for structure, presentation and faculty engagement to lessen the cognitive load for the teacher. See David M. Irby, *How Attending Physicians Make Instructional Decisions When Conducting Teaching Rounds* 67 ATTENDING PHYSICIANS 630, 636 (1992) (suggesting that faculty use standardized format, consistent allocation of time, structure for case presentations, canned mini-lectures, and generic questioning strategies).

⁸⁹ When we inquired on the clinic listserv how faculty set up rounds conversations, we got responses from a few colleagues who shared with us memos that they gave their students describing rounds. Most others who responded indicated that they described orally what they expected in rounds. This information replicates the responses that Wally Mlyniec collected. See *supra* note 14. Kathleen Sullivan, who taught at the Yale Law School, required that one of her students play the client in the rounds conversation as a way to ensure that students thought about how they talked about clients in their discussions. This practice was one of many that communicated Kathleen's respect for clients and contributions to clinical legal education. See Christine N. Cimini, Bridget M. McCormack & Michael Pinard, *Kathleen A. Sullivan: A True Teacher's Teacher*, 8 CLIN. L. REV. 13 (2001). This practice replicates how medical rounds are often conducted and presents interesting opportunities and challenges. No doubt our round stories would have read differently had we set the same ground rule for our rounds. Still the idea is a provocative one and can be useful at various points in the rounds conversations.

⁹⁰ These authors believe that ground rules that include openness and respect as well as

rules that other professionals use are often ones that clinical faculty follow, either explicitly announcing them at the beginning of a term, or, more often, teaching implicitly by reinforcing these rules or expectations when they arise in the conversation.⁹² The following suggested rules create supportive, open environments that rounds learning depend upon:

- Active participation is the obligation of each student to the group. Rounds involve authentic conversations⁹³ with peers rather than a classroom conversation between student and teacher.⁹⁴
- As participants in a self-reflective community, students should be honest and open to learning from their experiences, willingly giving and getting feedback from each other. Students should show support of their peers and their peers' aspirations for justice and excellence.
- During a rounds conversation involving work being done by a pair of students, both students should participate equally in conversation.⁹⁵ Paired student should feel free to reflect on each other's work honestly in front of their other peers.⁹⁶
- Students should engage each other in respectful conflict and re-

a commitment to confidentiality provide group members with the sense of safety that is needed if they are to risk exposing their clinical work in front of their peers. *See, e.g.,* DONN WEINHOLTZ & JANINE C. EDWARDS, *TEACHING DURING ROUNDS* (1992) (explaining the importance of setting ground rules and expectations to establish a climate for learning); Christopher M. Clark, *Good Conversation*, in *TALKING SHOP*, *supra* note 36, at 172; *see also* BROOKFIELD & PRESKILL, *supra* note 39 (stating that ground rules make participation more likely and cause students to take the discussion more seriously).

⁹¹ *See* BROOKFIELD & PRESKILL, *supra* note 39, at 54-55 (suggesting that students be asked to recall their best and worst discussions as a way to set ground rules).

⁹² In reflecting on our practice and contrasting it with what we were reading in the professional literature, we saw the benefits of being explicit; and yet, we acknowledged our discomfort at announcing rules for conversation. How could conversation be authentic and have rules? While we also see benefits in teachers reinforcing behavior as a way of encouraging students to follow our implicit rules or expectations, we are persuaded that more instruction about what we expect will make that more likely to occur.

⁹³ "Authentic conversation" has been defined as "making sense of and articulating our own experiences, implicit theories, hopes and fears, in the intellectual and emotional company of others whom we trust." *See* Clark, *supra* note 90, at 177.

⁹⁴ In most clinics, students are told participation counts for grading. Our expectation is that those students who have not participated in other classes with this same rule will make a different choice in clinical rounds. We also believe a clear demarcation between rounds and class or seminar will help create a different dynamic for rounds.

⁹⁵ While not the subject of this article, we note that rounds conversations can often reveal collaboration issues in a pair of students. They can reveal that students are not working together, do not share the same understanding of the case, and have not discussed differences. For example, a student who describes all case activities in the first person "I," is potentially signaling problems.

⁹⁶ Selection of a topic ahead of rounds allows pairs to plan how to present the issue. This may enable a more frank conversation where a student may be reluctant to raise something in the larger group that she has not raised first with co-counsel.

sistance.⁹⁷ Conversations are healthy when students disagree with each other or engage someone who thinks differently.⁹⁸ However, a student shouldn't play devil's advocate unless that role is explicitly announced. Instead, the students should engage from an authentic position in a group that is safe from undue peer pressure and intimidation.⁹⁹

- Confidentiality should be the norm. Students may repeat insights or ideas from rounds with non-group members but client facts as well as student facts should remain confidential. This enables students to speak frankly without risking that their admissions of mistakes or problems will become fodder for conversations in the broader law school community.¹⁰⁰

Because rounds conversations are different from conversations in other classes, faculty should introduce students to these ground rules either explicitly or through feedback during the conversation. For example, the teacher could articulate an expectation that students will openly discuss their failures or misgivings or wait until the first student does that and reinforce that openness by thanking the student "for being so honest and making it safe for others to do likewise."¹⁰¹

Despite the teacher's articulation of ground rules, students may violate the norms and, when they do, teachers should intervene in ways that work for the group and the individual. Examples of behavior that merit intervention include: student resistance to exploring their decisions or actions, students' argumentativeness or hostility to

⁹⁷ Of course, this may be especially difficult for the student who holds an unpopular position in the group. See *infra* notes 152-55 and accompanying text.

⁹⁸ See Clark, *supra* note 90, at 174 ("Resistance is as important a dynamic in good conversation as is acceptance").

⁹⁹ Some rounds conversations have goals that require taking on the views of others in role-play. For example, Sue's colleagues Steve Zeidman and Gail Gray often have students present work for feedback by standing and making arguments and inviting their colleagues to challenge them as a judge might. This discourse is used to develop criminal defense lawyers with advocacy skills, including the ability to defend often hostile positions. These kinds of sessions when done well can build the same kind of peer support for high quality work and authentic conversation as other types of rounds sessions bring.

¹⁰⁰ Before keeping detailed notes of rounds conversations for this article, each of us remembered explicitly teaching confidentiality about client facts and had not remembered raising the issue of confidentiality about student facts. Within the first few weeks of the semesters both of us noticed times when the students focused on confidentiality. In a session that we were taping, a student asked that the tape recorder be turned off to be able to talk about a mistake she had made, while in another rounds session a student who was about to criticize someone from an office where she hoped to be hired asked the group for confidentiality.

¹⁰¹ Even a conversational faux pas that threatens openness and honesty can be an occasion to define the rules. The teacher can choose to explicitly bring attention to the problem the comment creates for the group or do so implicitly by redirecting the conversation back to constructive territory. Sometimes it can be useful to explain the problem to the offending student privately.

each other in the classroom, any ridicule or other sanction of any particular student by the group, when a student talks too much, when a student talks too little, and when a student disengages from the group. Behavior that may be tolerable in a large class can damage the dynamics in a small one.¹⁰² For some of these examples, the teacher can play traffic cop, gently calling on the quiet student or asking for other opinions in response to those of the talkative one. Teachers might address other behaviors by talking to the disengaged or hostile student privately to diagnose the problem and develop solutions.

Regularly scheduled rounds develop interactive patterns that are different from the normal classroom pattern and build a sense of community in the shared enterprise that allows students to depend on the group.¹⁰³ Occasional rounds focused on students' presentations are unlikely to develop the kind of professional conversations that these ground rules envision.

B. Topic Choices

Topic selection is another key component to good rounds. Rounds work when the conversation starts with "generative" topics, ones that spark energetic conversation and engagement. Rounds teachers search for generative topics that build community, illustrate the value of collaborative conversation, and promote group learning. Valuable rounds topics keep students in role, allowing them to learn more sophisticated ways to think like a lawyer and engage in ethical decision-making.

Determining initial topics for rounds involves identifying cases, projects or lawyering themes that will provide the jumping off point for the conversation. Teachers or students make topic selection using an open or prepared agenda format. Consider this open agenda for-

¹⁰² The use of laptop computers during rounds can be particularly disruptive. The noise of the keyboards and the way that students disengage and hide behind their screens has led us to ban them from rounds.

¹⁰³ See JANINE BERNARD & RODNEY GOODYEAR, *FUNDAMENTALS OF CLINICAL SUPERVISION* 74 (1992) (noting research showing that weekly meetings created an atmosphere that allowed case workers to express feelings and communicate on a deeper level whereas bi-weekly meetings stayed more formal); Clark, *supra* note 90, at 174 (stating that regular expected meetings develop trust, resulting in more complex and thoughtful conversations as participants raise more difficult issues and develop the courage to disagree in a supportive environment). To develop the kind of learning opportunities that we describe in this article, we think rounds should be held each week. We contrast these regular weekly meetings with the kinds of presentations that occur when rounds occurs infrequently such as those held four times a semester where students present their work on cases. The infrequency of those rounds means they are more likely to be presentations and inherently less interactive than the conversations we describe and promote in this article. These presentations end up looking more like Medical Grand Rounds in which doctors present cases and teach their colleagues what they have learned.

mat conversation that the teacher started by inviting student selection of topic.

The Lawyer-Client Relationship Rounds

"Does any of you have an issue in one of yours cases that you would like to get some help with from your colleagues?"

Larry volunteered that his disabled, unemployed, housebound client in an SSI case said to him in response to a question about how she was doing, "What I really want is a cold Forty." Larry, who was planning to meet the client at her home to prepare her testimony, said that he was tempted to bring her the 40 ounce bottle of malt liquor but that he was having trouble analyzing whether it was "the right thing to do." Did she really want a cold Forty or was she using that as an expression for how she was feeling? Assuming she did really want the Forty, what was the appropriate response?

The ensuing conversation raised issues of class, race, poverty, professional responsibility, boundaries, and the nature of the lawyer-client relationship. The class and race issues were particularly vivid because, as one of the students noted, Fortys are popular in some African-American communities (as well as among high school and college students), and its intoxicating effects have been glorified in rap music.¹⁰⁴

Larry expressed concern that his hesitation about bringing it to her came from class bias and preconceptions about the role of alcohol in keeping people from being upwardly mobile. Since the point of drinking such a big bottle of malt liquor was to get high, should he enable that conduct? He had no reason to believe that she was an alcoholic and so the harm, if any, would be mild and temporary. Her life was sad and desperate and so why shouldn't he do something kind for her? And why should he decide what was best?

Most of the comments from other students were hostile to the idea of bringing her the Forty until Marilyn said that she would have no such qualms about bringing a middle class client a bottle of wine with a bow as a gift. The juxtaposition of this comment with the idea of the Forty led to a conversation about whether it was appropriate for the lawyer to drink with the client ("a bottle of wine is for sharing, a Forty isn't") or whether to do so would transcend a boundary that was important for both lawyer and cli-

¹⁰⁴ Mike Seely, *Behold the Forty*, RIVERFRONT TIMES, June 8, 2005, at 1, available at http://www.riverfronttimes.com/issues/2005-06-08/news/feature_1.html.

ent. *What are these boundaries, where do they come from, and what is their purpose? Would it build a friendship to drink together and wouldn't it help build rapport and trust to have a friendship? Would that different relationship be the kind of relationship a lawyer should have with a client? How might race, gender, and class shape the possibility of friendship in this relationship?*

Sarah said that her father is a small-town lawyer, that many of his clients are also his friends, and that he even played golf with some of them. "Was this the same as sharing a drink with Larry's client or bringing the Forty to her?" Omar asked whether it was possible to have the necessary objective distance from a client who was also a friend and wondered whether a client would be able to tell a friend things that were embarrassing, even when it was important to do so.

Some of the best rounds conversations come, as they did in this instance, from having an open agenda in which students select topics that matter most at the particular moment.¹⁰⁵ Open agenda is not the only way to permit students to control rounds topics. Some clinicians ask students to prepare a memo to be distributed in advance to the group to raise questions they want to discuss.¹⁰⁶ However it occurs, student selection ensures an "in time" conversation for the student doing the selecting and often for others. Faculty have the opportunity to select topics for seminar, ensuring 'coverage' concerns; thus, allowing students to pick topics in rounds they care most about makes good pedagogical sense.

Important topics that faculty would also choose are almost inevitably chosen in a student choice model: questions of zealous advocacy combined with differences between lawyers and clients; client credibility; role of lawyers and clients in the means and goals of legal representation; tensions between doing what "is in the best interest of" clients and doing what the client wants; discussions of the ways that cultural difference affects interpersonal interactions, and more.¹⁰⁷ For

¹⁰⁵ See Wilkerson et al., *supra* note 26 (advocating a method of teaching in medical education that encourages student generated inquiry because it allows a focus on areas of greatest confusion and lack of knowledge).

¹⁰⁶ The memos that students write for rounds resemble the memos that students commonly write to set the agenda for supervision. The memos state the dilemmas that the team is facing, provide the legal, factual or strategic context that the team believes necessary to inform the discussion, and pose questions the team wants to frame for discussion.

¹⁰⁷ We have found topics such as these are among the best for rounds conversations. When they are initiated and "owned" by students, the quality of the students' conversation is different because the presenting student is genuinely struggling with the issue and the other students want to be helpful.

example, the discussion, here nominally about one particular incident involving one student and a bottle of booze, moved from trying to answer the particular question to a more general discussion of the recurring questions about the nature of the lawyer-client relationship and the influence of class and race.

Teachers have insight into generative topics that may not be immediately obvious to students.¹⁰⁸ For example, teachers know from supervision that students are struggling with similar issues.¹⁰⁹ They may also want to link the “just in-case” learning of seminar with the “in-time” learning from the experience. For example, in instances where the seminar has focused on fact investigation, rounds might explore fact investigation issues in their cases. Generative topics usually have some or all of these characteristics:

- *Topics that invite brainstorming and evaluating where multiple answers and perspectives matter.* During supervision, faculty and students can spend some time talking about whether a rounds conversation might assist the student in identifying pros and cons or brainstorming solutions. Supervisors can use the characteristics listed here to help students identify good topics for consulting with colleagues.
- *“In-time” topics that involve current decisions or tasks.* When we encourage students to help each other, we teach the value of consultation with colleagues and build a sense of community within the students. We have found that as students become invested in their colleagues’ cases, a spirit of community develops. For example, students willingly jump in to help plan a client meeting where the presenting student admits to being challenged about how to discuss a difficult topic with a client.
- *Topics that engage experiences of more than one student.* For example, where several teams are drafting affidavits, the group suggests ways to improve the narrative in each draft, identifying differences and similarities. These kinds of conversations encourage contextualized thinking and theory building about narrative, audience and case theory.

¹⁰⁸ We know some faculty leave topic selection exclusively to students. While this models the kind of consultation that they will do in practice, selecting the topic and identifying the questions to be answered, we think that faculty should model how to select generative topics and good questions especially at the beginning of the clinic.

¹⁰⁹ One of the advantages of single-subject matter clinics is that similarity of experience will be a common occurrence and the students will know the law shaping some of the strategy decisions. However, even in general practice clinics students will have parallel experiences involving, for example, the difficulties inherent in the lawyer-client relationship, problems involving the demands and limits of zealous advocacy, ethical issues, as well as experiences that reveal the consequences of poverty, race, gender and class. Mining the similarities and differences of students’ experiences can make for a rich discussion. In externships, teachers have similar opportunities for and, challenges to, finding commonalities.

- *Topics where a group conversation can result in social justice insights that would be difficult for students to learn from their individual case.* For example, the bankruptcy rounds provided students with multiple examples of clients’ paths to bankruptcy and enabled them to see that institutional injustices rather than bad financial management caused the need for bankruptcy.
- *Topics where a teacher suspects that a student can accept advice from colleagues better than from the teacher or where the advice from peers, some of whom know the student better, may be better advice.* For example, if the student had shared the malt liquor story with his supervisor would the faculty member have been able to have a similar conversation with the student? The student initially framed the story as a role issue. The exploration of race and class issues was aided by a facilitated conversation with a group of colleagues.
- *Topics that explore ethical and role issues.* Inevitably, as students take on the role of lawyer, a variety of ethical and role issues challenge them. Students almost always respond enthusiastically to a request to help a colleague figure out what a lawyer can or must do.¹¹⁰

Topics in rounds are rarely static and as the conversation progresses, a key job of the facilitator is to surface sub-topics. While rounds often start with a student describing a particular problem for input, these discussions lead to unexpected areas. Faculty see sub-topics for further elaboration by recognizing novice thinking and encouraging the group to go deeper to expose assumptions or connect the comments to a broader lawyering theory. They also know that different students hold different viewpoints and can encourage a broader exploration of a topic when the group is in “group think mode.”¹¹¹

C. Structure

In addition to finding generative topics, teachers and students should make deliberate choices about what structure and preparation best serve the goals for the particular conversation. These four rounds structures are common:

1. Case Planning.¹¹² If a student is asking for advice on how to proceed, the conversations focus on planning for specific lawyering

¹¹⁰ The teacher’s job then is to help the students generalize and particularize the lesson. See *supra* notes 63-72 and accompanying text.

¹¹¹ Collaborative work can result in lowest common denominator thinking when the group avoids conflict and seeks agreement in a way that simplifies the problem and the solution. See Bryant, *supra* note 32.

¹¹² This structure is useful for option generation and evaluation. We have found these types of conversation the best for building a sense of cohesion in the group. As the students begin to experience themselves as helpful to each other they begin to see themselves as a working unit. The students are always interested in a report back about what happened as a result of the ideas that were generated.

tasks or events. Students give the factual context through a critical incident and/or a broader narrative, presenting sufficient facts to discuss planning.¹¹³ Thinking out loud about a problem in a case or testing case theory, the presenting students and/or their case are the focal points for feedback, brainstorming, and strategic analysis.¹¹⁴ Students learn to present facts efficiently and to identify the aspects of the case that benefit from group input. For example, in case planning rounds, students might ask others to evaluate direct examinations for credibility or to explore ways to build confidence and trust with a client. In externships, they ask colleagues for help with supervision issues or with maneuvering in institutional settings.

2. Reflections on Performance. When a teacher or student wants to mine an experience for lessons from practice, presenting students describe a critical event in detail and the group searches for lessons to take from the experience, using parallel universe thinking to identify a range of explanations for why things worked the way they did.¹¹⁵ For example, the rounds exploring the successful litigation of an asylum case used this structure to reflect about what influenced the outcome of the case and what lessons for the future the experience taught them.¹¹⁶

The students' reports often criticize their own performance or decision-making, sometimes tinged with embarrassment and self-deprecation. The supervisor's critique of the team's performance should ordinarily be saved for supervision. In response to the presenter's report, the group often jumps in to provide support. If the teacher withholds his or her own criticism and instead encourages reflective thinking, the group may ultimately critically examine what happened and learn the value of self-criticism and reflection.

3. Case Presentations. Case presentation mode involves students as peer educators, teaching what they have learned to their colleagues.

¹¹³ See *infra* notes 123-27 and accompanying text.

¹¹⁴ See *infra* notes 147-48 and accompanying text.

¹¹⁵ In these sessions the challenge for faculty is to move the students from description of the experience to analysis of why it occurred. A faculty member with a broader range of experience may have different explanatory theories than the students. This may be a place for a mini-lecture if the students' experiences cannot generate a long enough list of a thoughtful analysis. Ultimately, the skills of reflection which students learn are as important as the lesson to be learned from the reflection itself. Often, teachers cut this learning short to get to the ultimate lesson. As the asylum rounds conversations illustrated, a teacher who wants to raise other important points chooses to deliver a summative point to allow the group to change topics.

¹¹⁶ Presenting a question or an issue leads to formal reflection on that incident, moment, or experience. Drawing on prior experience, resources from other classes, other educational experiences and the wisdom of their supervisor and faculty, students can build theories from their own experiences. See *infra* notes 123-27 and accompanying text.

These presentations can be law, skills or practice focused.¹¹⁷ They might involve a formal presentation showing completed work product and identifying the choices made. They can also involve creative use of video, PowerPoint or other mediums.¹¹⁸ While a teacher could address these topics, students learn from presenting and often enter the topic appropriately for other novices. For example, students in an immigration clinic who recently conducted United States Custom and Immigration Service (USCIS) adjustment interviews might prepare a joint presentation, pooling their experiences to teach about the interviews to help other students plan future appearances before USCIS officers.¹¹⁹

4. Applying classroom theory to the cases. Rounds conversations can be focused on particular lawyering theories that are presented in seminar and arise in cases. For example, students used this structure in the “third person in the interview” rounds story where students brought experiences from first interviews to rounds after having had classroom instruction in interviewing. These rounds conversations pool collective experiences and allow students to explicitly examine how and whether the classroom theories were of use to them.¹²⁰

D. Preparation for the Conversation

A teacher’s approach to and goals for rounds shape preparation expectations for rounds. As a result, clinical teachers differ widely in

¹¹⁷ Sue’s colleague Janet Calvo asked her internship students in a rounds to interview each other to identify a particular lawyering skill that each had learned from work in their placements that changed the way they each approached work in the setting. Janet asked the students to interview each other to learn information that would prepare other students to work in the placement better. Students then presented what they learned from their interviews to the group as a whole. Interestingly, several students raised time management as the skill they needed the most and learned in the placement. A conversation followed about what they had learned in the different settings about time management and how the setting shaped their challenges and learning of time management.

¹¹⁸ Elliott’s colleagues, Rick Wilson, Muneer Ahmad, Jayesh Rathod and Kristine Huskey, assigned their students the task of describing the theory of the case, encouraging them to use video, poems, plays, etc. They videotaped the assignment and put it on YouTube. Accepting the creativity challenge, their students develop many multi-media ways to tell clients’ stories. Many faculty who contributed to the Mlyniec email exchange noted that rounds that used the presentation structure could get boring if students did not prepare a story of relevant facts and clear lessons. *See supra* note 14. We agree. Presentations should be chosen when they involve prior cases that have been the subject of rounds and thus need limited time to recount facts or where the students have learned something that other students will see as useful to their cases. Students should be warned not to just summarize a case but instead to focus the case presentation. Clinical faculty who use the presentation structure report that this structure can be a useful way to build students’ communication skills.

¹¹⁹ Often these presentations are combined with reflection conversations.

¹²⁰ We especially like to use this format in early rounds classes.

the amount of preparation they ask of students. A teacher should announce preparation expectations for presenting students, including whether material should be assigned ahead of time.¹²¹ Preparation for student-selected, open agenda conversations requires students to think ahead about good topics and questions. Teachers should alert a particular student when teachers anticipate talking about a point from the student's case or project, to enable the student to engage in planning to present the student's case.¹²² Teachers should also be clear about how peers should prepare. Teachers should set norms about how much and whether materials should be assigned. Should other students read or be told relevant law, ethical rules or file documents?

A spectrum of preparation options exists, each with advantages and disadvantages. By not requiring preparation, spontaneity prevails and teachers or students have flexibility to not only select the most current event as the initial topic but also to select sub-topics based on the interests of the group and the learning opportunities that are presented. The rounds conversation is not locked into a predetermined order of prepared cases and topics. With tightly prepared rounds conversations, teachers may find themselves reluctantly moving the group to the next prepared case just as the group gets going on an important topic.

However, prepared conversations allow students to have different and potentially more in-depth and thoughtful conversations about decisions in a case. When presenting students describe their case in writing, explaining the relevant facts and law, they often have a crisper presentation; when they identify questions ahead of time, their colleagues can prepare for a more sophisticated discussion of the decisions or options in a case. Preparation also allows students working as co-counsel to develop a more collaborative presentation.

Perhaps the question of how much preparation depends on the kind of topics selected for discussion. For example, a discussion that requires sophisticated knowledge of the law may be improved by student preparation whereas role questions may not need as much preparation because students are all struggling with these issues constantly.

¹²¹ We often provide feedback or ask classmates to provide feedback to the presenting student about the presentation or case description, especially in beginning case rounds. Early in the semester, we use different case presentations to explore what kinds of case narratives work for different kind of structures. How much law should be explained and how? How does a chronological explanation compare with a thematic one and how do you choose the facts to present?

¹²² Of course, whether the students or the faculty are selecting the topic, they rarely spontaneously select it. Often, they are thinking throughout the week about what would be a good rounds topic; the final selection may await the moment the conversation starts but this selection for the teacher or suggestion for the student rarely occurs without some preparatory thinking.

Feedback on opening argument is probably improved if students are being introduced to it as the fact-finder might be, with little preparation.

Through selecting topics, structures and ground rules, teachers set up rounds to succeed. The next section explores what teachers do in the midst of rounds conversations to maximize student learning.

IV. FACULTY ROLE AND TEACHING STRATEGIES

A. *Choosing Faculty Roles*

Teachers play different roles in rounds. Within rounds structures, faculty chose interventions that move along the familiar continuum of being non-directive and consultative to being directive and forthcoming. These choices are shaped by essential goals of students seeing both that they can learn from and teach each other, and that attention to the process of doing that enriches their understanding of professional practice. In other classroom settings, including the clinic seminar, the agenda is highly teacher directed; in rounds, the conversation is highly student directed. Nonetheless, the teacher is not there just to listen but instead to play active roles that preserve the student-centeredness of rounds.¹²³ Among these roles are facilitator, coach, expert, co-participant, and observer.

1. *Facilitator*

The most basic job of the rounds teacher is as a facilitator,¹²⁴ the traffic cop keeping student participation balanced, ensuring that multiple voices are heard and intervening lightly to help the group. The facilitator decides who will speak first, which team or person will give a presentation, and guides the conversation to promising topics. Occasionally, the facilitator calls on a silent student so that verbal students do not dominate the conversation.

In this role, the teacher prevents gross mistakes and wide digressions;¹²⁵ and challenges participants to tell parts of stories that remain untold. As the group matures, the teacher passes more responsibility

¹²³ Several of our colleagues who design rounds as student presentations resist playing any role other than listener. See *supra* note 14. We assume these other roles as well because we think faculty intervention can aid student-centered learning. We do see the benefits of moving to less faculty involvement as the semester progresses.

¹²⁴ Indeed, this is the role we play most often in our own rounds.

¹²⁵ At our presentation at the Clinical Theory Workshop in November 2006, in a conversation about what to do when students go off "topic," Elliott commented that there is no such thing as "off topic" in rounds. While this comment was perhaps an exaggeration, the comment reinforces our sense that students should play a major role in defining topics. Once defined, by either faculty or students, faculty assist students to have a coherent and focused conversation.

for facilitation to its members.¹²⁶ A facilitator avoids value judgments, hoping that the group develops them through discussion among themselves. As facilitator, the teacher makes explicit (either by naming it or getting the students to name it) what the students learn from each other and the potential benefits of the particular framework developed in the conversation. A facilitator points out the connections between multiple student comments or ideas to focus the discussion.

Stating the group's rules and observing violations, faculty comment on process, helping the group operate effectively. For example, where conversation is dominated by a few, "*we hope that in rounds everyone has a chance to contribute. Let's find out what some other people think about this.*" Or, the rules of the group can be implicitly stated when the teacher's interventions are designed to reinforce certain behaviors. "*You guys have come up with a creative list, can you keep going?*" The teacher can also note when another behavior makes it difficult for the group to achieve its objectives. "*Maybe we will make more progress with this topic if people suspended judgment at the stage where we are trying to come up with ideas.*"

2. Coach

In the role of coach, teachers help students tell stories that engage their colleagues and present questions for discussion. By preparing them for rounds in advance¹²⁷ or by interventions in class that shape the story in particular ways, a coach helps presenting students to identify essential parts of a story. Coaches, when necessary, push the presenting student along – then step back for the student to re-enter as leader of the activity. In this way, coaches build self-confidence; they identify choices and encourage students to select from them or they show a student how to do something and then step aside. By giving encouragement and feedback, teachers build motivation for participation.

Coaches may be tempted to abandon this role when the students' details about a case show misunderstanding or misinterpretation of supervision or leave out important facts that are necessary for the

¹²⁶ See KADUSHIN & HARKNESS, *supra* note 46, at 408 (noting that an "increasing proportion of initiative, responsibility, control and direction should pass to the group").

¹²⁷ Several faculty prepare students for rounds work in advance. This happens especially when students are given major responsibility for conducting rounds or where the rounds are formal presentations. See *supra* note 14. Authors in other fields have suggested that students need scripts and examples. See, e.g., Walter Kernan, Vincent Quagliarello & Michael Green, *Student Faculty Rounds: A Peer-mediated Learning Activity for Internal Medicine Clerkships*, 27 MEDICAL TEACHER 140, 143 (2005) (suggesting that students need help in assuring that the topics are presented in a way that assists peer-learning).

group to understand and learn from the case.¹²⁸ By staying in role and gently nudging the presentation or adding the missing element or correcting a mistake, the coach allows the group to continue to contribute to and learn from the case.¹²⁹ However, if the conversation becomes a supervisory dialogue between the teacher and the team or a lecture by the teacher to the class, the learning value for the other students can be substantially reduced.¹³⁰

3. *Expert*

Faculty members often know helpful information that students are unlikely to know or develop through collective dialogue. As expert, the teacher provides the missing bit of knowledge, enriching students' understanding and permitting the discussion to continue. Students are particularly open to learning what the faculty member has to say when their knowledge gap becomes apparent. Although in rounds teachers primarily help students teach each other, teachers should consider intervening consciously to correct a mistake.¹³¹

Another way to bring expertise to bear is to connect a particular event or insight of a student to larger recurring themes. In this role, the teacher finds and identifies the metaphors that give deeper meaning to students' particular experiences. Sometimes the expert contributes insights through questions. For example, in the asylum round story the teacher identified the importance of exploring the government lawyer's cross examination in one asylum case to predict what other government lawyers would do in other asylum cases, in another kind of administrative law case or even a criminal case. Sometimes the expert delivers a mini-lecture so the moment will yield its potential

¹²⁸ The same instinct to abandon role might occur when a team reveals a new fact or circumstance that did not come out in supervision.

¹²⁹ Coach is the term used by Schön to describe a teacher who guides students in the process of learning. "Teachers should coach, not prescribe; learners should participate, not look on; and instruction should occur in the field, not the classroom." Neumann & Schön, *supra* note 33, at 415 (quoting Jack Ende, *Reflections on Teaching: An Essay Based on Two Books by Donald Schön*, 5 J. GEN. INTERNAL MED. 183 (1990)).

¹³⁰ We are sometimes tempted in these instances to try to engage in a "lecture in disguise" in which we try to get the students to say what we want them to say and make the points we would make. In these instances, if the teacher has clear points to make, he can go to mini-lecture mode as an expert rather than trying to get the students to make our points. If something the teacher tried to convey in supervision is misquoted and the class is being misled, the teacher may need to set the record straight. However, rounds are usually not the best venue to explore why the team got it wrong since that can be deferred to a private context. The goal for the teacher instead is to tweak the case presentation minimally in whatever ways necessary to open it up for discussion, analysis, contribution, and reflection by the entire group.

¹³¹ Although it is counter-intuitive to some of us, it is sometimes useful to answer a question. A mini-lecture can provide the lesson that seems necessary at the time. See *infra* notes 150-51 and accompanying text.

and not get lost.¹³²

4. *Co-participant/collaborator*

A teacher who adds ideas as a co-participant risks changing the student-centered conversation dynamic. Students may have difficulty accepting the teacher's attempt to be at their level of discovery, at being a "co-thinker."¹³³ At the same time, teachers do learn from students' insights and experiences, and sharing the excitement when that occurs shows that learning is a life-long endeavor.¹³⁴ To the extent that the teacher can reveal his or her own doubts, the students are provided with a role model who examines successes and failures as opportunities for learning.¹³⁵ Still, everything the teacher says gets weighted differently from what students say to each other and therefore, a teacher's comments often stop the conversation rather than assist it to develop more fully.¹³⁶

5. *Observer*

The teacher's role may differ over time as students move from novice to more proficient rounds participants.¹³⁷ As students have more experiences to draw upon, they become more adroit at descrip-

¹³² An example of this occurs at the end of the asylum rounds story illustrating moving from the particular to the general. The faculty member summarized the lesson to enable the class to move on to other issues. Often teachers in medical rounds will play this role. See SAMUEL DURSO, *TEACHING AMBULATORY MEDICINE: MOVING MEDICAL EDUCATION INTO THE OFFICE* 109 (2002) (this role works best when it starts with a question requesting information from the students).

¹³³ See Rust & Orland, *supra* note 43. In leading a group of secondary school teachers working to become mentors, one of the authors described two roles that she played, "co-thinker" and "meta-mentor." In the first role, she encouraged the learners to "articulate their beliefs about mentoring" and then to reflect upon how those beliefs were "translated into action." In the latter role, she identified for the learners the techniques that she used to model the behaviors she was teaching them. *Id.* at 100.

¹³⁴ And in some limited circumstances, where the faculty member is co-counsel rather than supervisor of students, the teacher's learning from the experience itself can be parallel to that of the students.

¹³⁵ In agreeing with Schön's characterization of teacher as coach, Neumann notes the value of the coach surfacing his own confusion: "To the extent he can do so authentically, he models for his student a new way of seeing error and "failure" as opportunities for learning." Neumann & Schön, *supra* note 33, at 417.

¹³⁶ Another contextual point: as we know, some clinics have both novice clinic students and returning students, or some number of student "supervisors" who were in the clinic the previous year. How does phenomenon affect the structure and value of rounds? For example, does the presence of the slightly more experienced colleague (who is not the clinical professor) free up the discussion to explore additional possibilities, or does this person's presence in some subtle way undercut the teacher's efforts to get the students to focus on their own capacities and observations?

¹³⁷ See KADUSHIN & HARNESS, *supra* note 46, at 408 (suggestion that an "increasing proportion of initiative, responsibility, control and direction should pass to the group").

tion and at providing feedback to each other. Hopefully, as they internalize the ways of thinking about their cases and learning from the experiences, both the content and the process of the group's interactions improve.

At this stage, students direct the conversation and the teacher observes with decreasing intervention, staying available only if the students get stuck or need expertise. This role challenges the teacher to put a higher priority on what students can learn from leading the inquiry over what the teacher can add through other interventions.¹³⁸

B. Teacher Interventions: Starting and Keeping the Conversation Going

Good topics and good case experiences do not always result in the best conversations. Sometimes the conversation is flat, students argue bullet points to each other instead of listening, or the teacher's interventions inadvertently shut down the conversation. When teachers intervene purposefully, using some of the strategies described below, generative topics actually produce authentic conversations. As described above, in role as facilitator, teachers ask questions, make process observations, and mirror and reflect conversations. In role as expert, faculty name and label conversations as well as deliver mini-lectures and in role as coach, faculty engage students in brainstorming and role-plays. This next section is designed to identify strategies that faculty (and students) can use to build successful rounds conversations.

1. Questions

As facilitator, faculty use questions to focus narrowly on presenting students as well as to open the dialogue to all. Some questions can be conversation killers and some magically open the session.¹³⁹ While teachers often jump into rounds without thinking purposefully about the questioning, teachers' questions, like lawyers' questions in interviews, shape the conversation.¹⁴⁰ Typical questions for rounds include

¹³⁸ We feel a tension between the realization that they will soon be lawyers without our direct support or that of the clinic, an argument for weaning them, and the realization that we only have them for a very short time and there is so much they need to know, an argument for greater involvement. See Kernan, et al., *supra* note 127, at 143 (suggesting that if students are going to play a greater role, faculty need to play different roles in preparing students for their leadership roles).

¹³⁹ BROOKFIELD & PRESKILL, *supra* note 29, at 85-91; Barlow et al., *supra* note 25, at 179 (noting that a key skill for the teacher is the ability to use questions that are regarded as 'gifts rather than intrusive assaults')

¹⁴⁰ BROOKFIELD & PRESKILL, *supra* note 29, at 85-91 (identifying a taxonomy of questions that encourage different kinds of conversations). By naming them, students learn the role that questioning plays in starting and sustaining professional conversations. When

the following:

Clarifying questions, designed to refine or add to the information presented, commonly occur in rounds conversations following the students' initial presentations. Before colleagues engage in more generative conversations, they ask for information.¹⁴¹ Often times, teachers also ask clarifying questions to fully develop the facts. These questions do not start long conversations and instead should be used as warm up questions. Examples include: "*When did the client come to the United States? How did he get here? Did he have a visa?*"

Probing questions seek to assess understanding, explore key concepts, and uncover basic principles. Like clarifying questions, probing questions, directed to the presenting students, rarely start a dialogue among the students. Examples include: "*Why do you think your client would lose his claim for visitation of his child? You say you have a weak case, can you explain? What does the law say about this issue?*"

Questions about questions are probing questions that expose the assumptions that underlie the question. Often students ask questions based on implicit premises; questions exploring these assumptions help the immediate conversation as well as teach students to pay attention to their questions. Examples include: "*Why are you asking this question? How would the information you ask for help her make her decision?*"

Explanatory questions or reflection questions call for perspectives from the group to explain why events occur the way they do or what events mean,¹⁴² or ways to accomplish the goals. These questions spark generative conversations because they call for higher order thinking and multiple answers. Examples include: "*Why might the client be withholding information? What can the lawyer do to improve the situation? Is the closing argument persuasive? What would make it stronger?*"

Connecting questions develop multiple examples in the group and allow comparisons. Connecting questions also generate participation. A conversation focused on multiple cases can shift the frame from a particular list of choices to a comparison and analysis of goals and

students are assigned role of teacher or facilitator, they require more scripting, in the form of coaching or discourse guidelines to ask more thought provoking. See Kernan et al., *supra* note 127, at 143. As students learn what kinds of questions enlarge the conversation as well as what kinds are more likely to result in shorter answers, they learn valuable skills for interviewing as well as building facilitation skills.

¹⁴¹ And we will sometimes want to explore why particular questions are being asked. See *infra* notes 144-45 and accompanying text, identifying how "Questions About Questions" can be a useful strategy for identifying assumptions and building conversation.

¹⁴² These questions promote parallel universe and reflective thinking, key goals of rounds. See *supra* notes 51-60, 82-85 and accompanying text.

methods. These questions invite students to dialogue with each other and create joint learning from the collective experiences: *Have others experienced anything similar? How does your experience compare with what is happening in this case? How does your idea compare or contrast with what another student has said?*

2. *Mirroring and Rephrasing*

One important facilitative method involves mirroring a student comment and, thereby, opening the topic for further discussion. By mirroring conversation pieces, a teacher shapes the agenda while staying centered in the students' frames of reference. These interventions sometimes involve rephrasing what a student has said or implied. *"You are concerned that the judge will be angry with you if you object to his ruling and will hold that against your client? When your client missed her appointment, you saw it as a sign of disrespect of you?"* Students can accept or reject the accuracy of the rephrased statement; theirs and others' responses can deepen the exploration of the topic.

Mirroring that unites multiple student comments illustrates how individual observations weave together and generate explanatory or predictive theories. *"Both Arlene and Marcus say that for each client using a family member as interpreter presented problems."* Teachers also rephrase a comment, connecting it to a framework for emphasis. For example, to a student who says, "I did not object because it helped me," a teacher says, *"You didn't object because you thought the prosecutor's leading question was consistent with your case theory?"* Finally, paraphrasing can summarize and conclude a discussion, reinforcing the lesson. *"And so we all agree that getting a client to trust us is impossible if we are judgmental."*

3. *Process Observations*

Sometimes facilitators focus on the group's process to reinforce a particularly productive effort (*"You guys are really listening to each other"*) or to overcome impasses in the group's dynamic (*"You might be making more progress if you stay focused on Larry's question"*). Even — or maybe especially — when a teacher gives the group autonomy over content, a teacher's process interventions make important contributions.

Process-focused intervention also teach students the utility of a particular process. A teacher can announce a process for engaging a particular topic (*"Let's brainstorm ideas about this case theory"*) and end with a discussion of whether the process was effective. (*"I wonder whether you think using brainstorming to be this expansive is a useful approach to problems like this one?"*)

4. *Brainstorming*

Teachers can promote brainstorming when the group or presenting students are thinking too narrowly about solutions or a case. Brainstorming helps increase options at a defined choice moment, using parallel universe thinking to develop alternative explanations, or identifying possible consequences. In case planning rounds, brainstorming helps gather peers' advice. Students expansively contribute their ideas without evaluation, increasing the likelihood that presenting students will consider a broader range of possibilities.¹⁴³ As the students' ideas build upon each other, brainstorming demonstrates the reality that not only are two minds better than one but that eight (or more) minds are geometrically better than two.

5. *Role-Playing*

When the conversation seems too theoretical or not sufficiently concrete, a teacher can ask students to demonstrate their point rather than describe it, moving the conversations from the abstract to the concrete, connecting theory to practice. With these concrete examples, the group's conversation provides opportunities for teachers and students to connect practice back to theory. In situations where the group is engaged in strategic decision-making, role-playing makes a choice-moment vivid and often results in a segue from the role-play to brainstorming about what to do next. Through role-play, students practice before taking action and get feedback from the group.

For example, students preparing for trial rehearse their motion arguments and receive critique and advice from peers. In role as judges, the group gains different insights and responds differently to a student making an argument in role. Through role-play, students evaluate the argument's viability in ways that might not otherwise be apparent. The pedagogical challenge is to use the rehearsal to teach the entire group and not just to prepare a better case for the presenting team.¹⁴⁴

¹⁴³ We have also experienced rounds conversations that expanded the number of possibilities and overwhelmed the presenting students. Sometimes lawyers need to act on imperfect information and make decisions before they can follow through on all possible ideas. We can model that by engaging the group in setting priorities, recognizing that not all possibilities can be pursued.

¹⁴⁴ This tension between supervising a particular team and serving the needs of the entire group occurs regularly in rounds. Role-plays often allow participants, including the supervisor, to see the case differently. When a team role-plays a case that has been vetted in supervision, the teacher often has a new insight in rounds. The faculty member should raise the new insight only if it benefits the group. Otherwise, the teacher should resist the temptation and save it for supervision. In the case of team-taught rounds where each of the teachers is supervising different teams, the teacher hearing about the case for the first time should resist giving different perspectives unless it will benefit the group.

6. Naming, Labeling and Categorizing

As experts, teachers help students learn transferable lessons by listening to their observations, questions, actions and decisions with an eye to uncovering and labeling the conversations within the framework of lawyering theory.¹⁴⁵ Clinical faculty and other lawyers make sense of practice by creating lawyering theory that identifies and creates categories and then, names its parts. Lawyering theory creates a language to describe, analyze and communicate the lawyering process. As students learn this lawyering theory and the concepts embedded in it, they place discrete pieces of learning together, making it transferable.¹⁴⁶ Teachers reinforce this learning by connecting the student narratives to lawyering theory, enhancing the transferability of the conversation. Examples include: *"Let's think about your dilemma as a problem of information bargaining. In every negotiation, planning for the information you want to get . . ."* *"Is there a more 'client-centered' way to think about talking with your client?"*

7. Mini-lectures

Often an issue cannot be discussed or analyzed unless the class understands a concept of law, a bit of history or something else that the teacher knows. A teacher's mini-lecture provides the needed information. Experts also understand and interpret events in more detail and with more insight than novices. For example, if the students had not learned about information bargaining, before the teacher makes the naming comment above, the teacher could use the mini-lecture to explain the concept. Mini-lectures should be given infrequently and kept purposefully short to avoid dominating the group and changing the dynamic into a more familiar faculty-centered classroom.¹⁴⁷

¹⁴⁵ Learning theorists tell us that information that is categorized is much more likely to be remembered and used. See DURSO, *supra* note 132, at 28 (stating that good teachers help students encode new information and integrate it with organizational schemes, "principles, laws and experiences"). The transformation from novice to expert problem solver has been described as marked by the increased "accessibility" of the schemata. Susan D. Bennett, *Embracing The Ill-Structured Problem In a Community Economic Development Clinic*, 9 CLIN. L. REV. 45 (2002); see also Morin & Howells, *supra* note 38.

¹⁴⁶ Because students may be less likely to see the information as part of a broader category, especially in the middle of a rounds conversation, it is especially important for the teacher to identify the categories.

¹⁴⁷ To re-stimulate the student-centered conversation following the mini-lecture, a teacher should direct questions to the group. We know that the student-centered conversation has been disturbed when students begin to direct comments to the teacher rather than each other or the teacher continues to occupy more dialogue space.

C. Addressing Impediments to Successful Rounds

Some frustrated students believe their questions have answers that the teacher knows or should know and that teachers withhold these answers because of the inherent perversity of law professors or failure of preparation. This search for expert answers has a potential corollary: skepticism that their peers, as inexperienced as they are, have anything useful to say. Sometimes faculty do not have answers; more often, faculty are interested in seeing what develops in the conversation either because new ideas may emerge or because learning how to think through the answers together is an important goal.

Facing this same student impulse in supervision, typical faculty responses identify the faculty's reluctance to offer an answer. *"It sounds as if you think I (should) know the answer to this and that my failure to provide it to you is upsetting."* *"Would my providing the answer help you learn how to find solutions yourself?"* *"How can an experienced lawyer be helpful to you?"* In rounds, the teacher has other opportunities to teach these points. By engaging the group in thinking about how the frustrated team can find answers to its question, the teacher demonstrates the process: *"How will research or investigation help?"* *"Does anyone have any leads or suggestions?"* *"If you think that there is an experienced person or expert who can help, how will you find him or her, what do the rest of you think is the best way to prepare for talking with the expert? What question(s) will you ask, and how will you use the information you get?"* To the extent that students participate in answering these kinds of questions, their answers can be more persuasive to their reluctant colleagues than any attempt to directly defend the clinical method of maximizing student responsibility for professional work.

When students espouse strong views that "violate" other students' or faculty's fundamental views of role and justice, teachers have difficulty selecting appropriate interventions. Outliers among the students will affect the group dynamic in both negative and positive ways. Multiple voices with differing perspectives enrich a conversation. A conversation about client-centered counseling can sharpen understanding of that concept, for example, by a student who believes with certainty that he or she knows what is best for a client. When other students engage that position, the teacher does not feel the need to explicitly persuade the group to adopt the "right" position.¹⁴⁸

¹⁴⁸ This can be especially challenging when the student pushes our hot button issues and we jump almost instinctively to persuasive mode. Engaging the group in inquiry mode by asking them to engage in parallel universe thinking or using methodological belief and doubt is another way to explore the opinions of the group. See PETER ELBOW, *EMBRACING CONTRARIES: EXPLORATIONS IN LEARNING AND TEACHING* 258 (1986); Jean Koh Pe-

Sometimes one or more of the students reveal attitudes or values that are especially troubling, e.g., "poor people are just lazy," "it isn't a lawyer's job to think about non-legal consequences," or "my client is supposed to respect me and do what I tell her." The teacher's puzzle is responding without letting the outlier dominate the time of the class, without silencing dissent from clinic orthodoxy, without imposing groupthink and without causing students who experience these comments as micro-aggressions¹⁴⁹ to feel unsupported. While the challenge is difficult enough in the teacher-dominated classroom, in the student-dominated rounds classroom, a teacher must approach the dialogue cautiously, blending group support and challenge.¹⁵⁰

Teachers are balancing what can feel like competing goals. Beginning lawyers need support for independence, originality and a capacity to challenge the existing order. At the same time, faculty transmit a set of values about what it means to be a professionally responsible,¹⁵¹ zealous lawyer and challenge students to meet these professional goals. Fortunately, the clinical teacher has many opportunities to interact with and teach the students in close supervision and in subsequent rounds and seminar classes, permitting the issue to be revisited in multiple contexts.¹⁵²

ters & Mark Weisberg, *Experiments in Listening*, 57 J. LEGAL EDUC. __ (forthcoming 2008) (on file with authors).

¹⁴⁹ The term "microaggression" was coined by Peggy Davis to describe subtle and often automatic "put down" that have a cumulative effect on black self-esteem. Peggy Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989).

¹⁵⁰ Sue discussed the role the teacher plays in providing support and challenge in cross-cultural instruction. The teacher can ask the group for support and challenge. Seminar classroom instruction that normalizes conversations about difference and gives students a vocabulary and theory will help students have these conversations in rounds. See Bryant, *supra* note 10, at 60-63, 78-97 (describing classroom exercises and discussion).

¹⁵¹ Among the values that the MacCrate Report identified as ones to which the lawyer should have a commitment are: Striving to Promote Justice, Fairness, and Morality by Promoting Justice, Fairness, and Morality in One's Own Daily Practice and Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) at 213 - 217 (1992).

¹⁵² The challenge is not to let an issue that may be very disturbing to another student sit unanswered. For example, students who experience the conversation as "racist," may expect the teacher to name it that as well. Especially where a student is the "only" person of color, person from a poor background, gay student, etc. in the class, the teacher may have to explore the issue in the conversation. Where students have established a high degree of trust with each other, we have seen students raise and engage these issues with each other. These often result in conversations that are high points in rounds conversations. If possible, a teacher waits until after the group has formed to trigger these conversations in rounds.

CONCLUSION

In the triumvirate of teaching contexts that for us define clinical legal education—supervision, seminar and rounds—rounds serve a distinctive purpose. Rounds differ from supervision, although often built around events vetted in or insights shaped in that close setting. In rounds, freed from the necessity of immediate decision-making, students work with their colleagues to probe more deeply into the meaning of their experiences. In these conversations, students learn not just to work but also to learn collaboratively.

Rounds differ from seminar, although theories about lawyering learned in seminar get tested in rounds through conversations among colleagues as they apply those theories in the real world. In rounds, teachers keep the students focused on answering a fundamental question: “*What did you learn about lawyering from this conversation?*”¹⁵³ In answering, students connect what they have learned to known concepts, seeing themes and principles rather than simply accumulating information. By connecting experiences to known frameworks, some drawn from the seminar, and developing unifying ideas, students develop transferable knowledge about lawyering. By clearly articulating the goals and process of rounds, teachers transmit transferable knowledge about learning.

And so, if a “signature pedagogy” is one that is distinctive to a profession and one that “functions as [a] ‘window’ into ‘what counts most significantly as the essence of a profession’s work,’”¹⁵⁴ then rounds surely qualify. In rounds students share and compare their experiences, anxieties and insights, and, with the help of the teacher, reach tentative conclusions that shape how they will behave throughout their professional lives. In these conversations with peers, they test their ideas and consider those of others. They begin the life-long project of learning from their own experiences as well as those of colleagues. As conveners and facilitators of these conversations, we teachers have an opportunity to shape both the process and the content, starting from a trust that the experiences within the group contain the seeds of what we want them to learn. Our questions, interventions, and reflections reinforce and build from what they individually know to a collective vision of professional identity that sees legal work as challenging, exciting and important. Through thinking together about causes and remedies, students develop dynamic and engaged ways of seeing law and lawyering. In rounds exchanges in

¹⁵³ See Rust & Orland, *supra* note 43, at 111-12. The authors note that questions and comments about process to teachers working as mentors encouraged the participants to “reflect on what they were learning about being a mentor from each other . . .” *Id.* at 111.

¹⁵⁴ See FOSTER ET AL., *supra* note 1.

which students scrutinize choices, actions, and conclusions in light of the experiences of their peers, they develop a professional identity open to new ideas that challenge their reactions and test their assumptions. And, perhaps most fundamentally, observations about clients, opponents, and the possibilities and difficulties of using law to empower the powerless enable students to see that the core project of being a lawyer involves commitment to clients and service to society.