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COLLABORATION IN LAW PRACTICE:  
A SATISFYING AND PRODUCTIVE PROCESS  
FOR A DIVERSE PROFESSION

Susan Bryant

To work effectively and to find satisfaction in the modern practice of law, lawyers need skills and perspectives that differ from those that are used by solo practitioners litigating on behalf of individual clients. Increasingly, more lawyers are working in large organizations and firms,\(^1\) litigating in teams,\(^2\) and planning together in meetings.\(^3\) For the most part, however, law schools and post-law school training programs have failed to teach lawyers how to work with other lawyers and professionals for the client's good.\(^4\) This article examines collaboration among lawyers

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I want to acknowledge several groups of colleagues who helped in the development and preparation of this article. Unfortunately, tenure requirements dictated that the paper be my own. A paper about collaboration written by one person seems a contradiction in terms. The joint work and learning I have enjoyed at CUNY Law School provided the impetus and insights for the article. I want to acknowledge all that I have learned about collaboration in my joint work with colleagues, staff, and students, past and present, at CUNY Law School. Because of the innumerable contributions from this richly diverse community, I will follow the CUNY tradition of not naming so as to not exclude. I also want to acknowledge the ideas and encouragement provided by the New York City Woman Clinical Law Professors Group and the Columbia Theory Workshop run by Steve Ellman, Beryl Blaustone, MaryLu Bilek, Carrie Menkel-Meadow, Alice Morey, and Holly Hartstone who were especially helpful in their comments and suggestions on later drafts. I thank the Vermont Law Review for their enthusiastic acceptance of the article and June Tierney for her careful and thoughtful editing. Finally, the transformation of the article from a reporting of experiences to one which incorporates many different disciplines could not have been accomplished without the research and input of Laurie Beck, a CUNY Law School graduate.

1. See infra notes 13-16 and accompanying text.


3. Id.

4. Since its inception, CUNY Law School at Queens College has included collaborative skills as an important aspect of lawyering. A recent report of the American Bar Association identifies collaboration skills as essential for new lawyers. See Report to the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS BAR 201. Several clinical programs have assigned students to work in teams to teach these skills and perspectives to the students. Throughout this article, I relate stories of CUNY law students' collaborations and the lessons I have learned from helping them learn from the experience of working together. See also Michael Meltsner & Philip G. Schrag, Report From a CLEPR Colony, 76 COLUM. L. REV. 581 (1976).
and argues for the necessity of teaching lawyers a new set of skills and perspectives so that they may collaborate more productively. Without these skills and perspectives, lawyers who must work together risk cheating themselves out of the creative potential of collaboration.

The legal profession is more diverse than it ever has been throughout its history. It now faces the issue of whether to socialize newcomers in the traditional paradigms of law practice, or to change those paradigms to accommodate the newcomers’ insights. All lawyers working together face issues about whether and how to use different perspectives to enhance their joint work product; however, lawyers who work in a cross-cultural environment face these issues in special ways. Some of the cross-cultural differences go to the essence of defining the good lawyer, and others relate to the most effective ways to communicate and solve problems. By educating lawyers about how to engage in joint work, lawyers can develop work habits that promote the synthesis of these diverse perspectives.

This article urges lawyers to use collaboration as a way to organize joint work by promoting the conscious use of cooperative structures. Collaboration is a process that involves shared decision making by fellow collaborators; shared decision making allows for the development of ideas that then leads to emergent knowledge rather than to a simple summation of ideas. Collaboration is also a process that makes maximum use of the experiences and knowledge that each collaborator brings to the joint work. It is a process that cherishes differences and recognizes that conflict can be constructive and valuable. Collaboration lends professional autonomy to each lawyer working within a group by structuring joint decision making in a non-hierarchical fashion. As part I of this article points out, if lawyers use a collaborative process after first having been taught the skills and

5. See infra notes 21-32 and accompanying text.

6. “Emergent knowledge” is a term that comes from the collaborative learning literature. The term means ideas that are more than just a collection of the ideas of the group. It is used to describe the potential of a group of learners to develop insight and knowledge through a synthesis of the individual ideas.

7. See infra notes 55-56 and accompanying text (discussing “constructive conflict”).
Collaboration in Law Practice

perspectives needed for collaborative work, their joint effort will result in a better work product and more satisfying work.

Law school is the optimal time and place for exposing students to collaboration. Law students are future lawyers who are still developing their patterns of professional behavior. Courses that stress collaboration can encourage students to discover new, more relevant approaches to modern lawyering. As many of the stories throughout this article demonstrate, students working together in simulated and live-client work situations have much to learn from each other. Requiring students to collaborate in law school exposes them to their differences and gives them the time and methods for exploring these differences. Successful collaboration, however, does not come easily. It involves methods and skills that must be taught.⁸ Thus, parts II and III of this article provide a framework for teachers to use in helping students to analyze their work in ways that will develop these new skills and perspectives.

Part I of this article explores the benefits of a collaborative lawyering process. It describes the changes that are occurring in the legal profession and discusses how collaboration, as a method for doing legal work, enhances the work experience as well as the work product. In the interest of improving legal work product and increasing professional satisfaction, law schools should teach collaboration—the modus operandi that best accommodates and taps the diverse talents and experiences of newcomers to a formerly homogeneous profession. Work done in other fields where collaborative methods have been advocated supports this analysis: the literature on organizational behavior and management theory, collaborative learning, and learning styles. Furthermore, the collaborative model is informed and inspired by the contributions of scholars and practitioners working in the areas of alternative dispute resolution, clinical education, and feminist and critical race jurisprudence. The insightful literature from these many fields provides support for the conscious teaching and use of collaborative methods. Finally, the many collaborations that the author has observed and participated in as a clinical

⁸ See infra notes 104-28 and accompanying text.
teacher during the past seventeen years attests to the benefits of collaboration.9

Part II compares collaboration to other forms of joint work. The essential difference between these methods is that collaboration relies on shared decision making. Shared decision making allows for individual differences, requires interactive exchanges about these differences, and results in shared responsibility for the final product. This section provides lawyers who are working together with a framework10 for identifying the characteristics of different models of joint work so they can have clearer expectations about which tasks involve joint decision making and which tasks involve independent or consultative work.

Part III identifies factors to use in deciding whether collaboration is appropriate for organizing a particular task. Because collaboration is a method that uses differences to improve work product and process, part III considers some of the major differences with which people approach their work. It also examines lawyering tasks and identifies those tasks that can profit most from collaborative methods.

Identifying the strengths that flow from a collaborative process should encourage more lawyers to choose collaboration consciously as a work method. Identifying some of the personal and task differences that affect the collaborative process should encourage lawyers to be more reflective about their own work and the work of others. Finally, by teaching collaborative skills, law schools will produce lawyers who understand the benefits of opening themselves to their colleagues' differences for the sake of working better together.

9. Throughout this article, I use examples from my clinical teaching both to illustrate a point and as authority for points. The vantage point of a clinical teacher yields unique insights into the practice of law. As a clinical teacher, I am able not only to experience law practice first hand, but also to experience it second hand through conversations with my students about their practice. These conversations increase my own understanding of law practice and how different perspectives influence the choices made in practicing law.

10. “According to organizational theory, the most important exercise of organizational power lies in designing and implementing the frameworks in which decisions are made.” Twitchell, supra note 2, at 699 (footnote omitted).
I. IMPROVING THE PROFESSION THROUGH COLLABORATION

The collaborative methods that are discussed in this article promise to increase professional satisfaction and improve legal work product. Furthermore, with the changed demographics of the profession, collaboration provides a process for integrating diverse people and their perspectives.\(^\text{11}\) However, lawyers will not realize the promises of collaboration until law schools, law firms, and legal organizations begin to teach collaborative skills.

A. The Changed Profession

The norms of legal education and the profession are patterned after the image of the solo practitioner representing individual clients.\(^\text{12}\) This atomistic image belies the increasingly collective nature of the practice of law. The solo practitioner no longer typifies the majority of practicing lawyers: by 1988, only one-third of the 723,189 lawyers in the United States were solo private practitioners.\(^\text{13}\) This means that two out of every three attorneys were employed in a capacity other than solo practice.\(^\text{14}\)

\(^\text{11}\) I share the belief that, within the context of a majoritarian culture that is male and white, white women and women and men-of-color have life experiences that may create perspectives which differ from the majoritarian norm. Each person brings a unique perspective to her work as a lawyer. See notes 77-104 and accompanying text (discussing more fully difference and perspective).

\(^\text{12}\) "Ideologically, the paradigmatic lawyer remains the independent practitioner, who neither is employed by another nor depends on employees . . . ." RICHARD L. ABEL, AMERICAN LAWYERS 179 (1989).

\(^\text{13}\) We still cling to the notion that lawyers accomplish their day-to-day activities alone. Although surrounded by contradictory evidence, from the law school graduates who fill the ranks of law firm associates to the hordes of lawyers on the Bhopal streets, we have not built a picture of the smaller work-sharing team into the institutional-professional model. Instead we subscribe to the model of lawyer individuality at the lowest level, ignoring the fact that many lawyers do much, or even all, of their work in groups.

Twitchell, supra note 2, at 708 (emphasis added) (footnote omitted).

\(^\text{14}\) In the last three decades, the relative number of solo practitioners has fallen dramatically. Six out of ten lawyers in 1948 were solo practitioners, as compared to one in three today. ABEL, supra note 12, at 179.

Most lawyers, especially new lawyers, work for large or medium-sized law firms, corporations, legal service organizations, or government. Thus, a focus on the skills and perspectives needed to practice law includes those needed to practice in such organizations.

Lawyers who work outside the realm of solo practice work in groups. For example, legal service and legal aid lawyers regularly co-counsel cases with other offices and organizations. Similarly, national public interest organizations like the ACLU and NAACP Legal Defense Fund work with local counsel on cases and projects and co-counsel cases within their own offices. Lawyers write briefs with other lawyers, file joint lawsuits on behalf of multiple clients, and develop and carry out legislative strategies. Whether co-counseling small cases, working on teams for major litigation, or running law firms through partnerships, lawyers work together to litigate, counsel, and manage large work forces.

Professional education, in the main, does not prepare students to practice in these bureaucratized and hierarchically organized law firms or in situations that involve other kinds of joint work. Most of the literature on lawyering skills and perspec-

15. In 1988, there were 333,662 lawyers age 39 or younger in the United States; of these, approximately 70% were not employed as solo practitioners. Curran & Carson, supra note 14. Recent law school graduates are more likely to be found in firms with more than 5 lawyers, especially firms of more than 20. ABEL, supra note 12, at 180. Although for some the large law firm has become the symbol for the modern professional, in 1980 only 5% of the lawyers practiced in firms with over 50 lawyers and only 9% with over 20 lawyers. Id. at 235. The proportion of private practitioners employed as associates has doubled over the last three decades. Id. at 179. Since statistics have been kept on the organization of law practice, some lawyers have chosen to work together. What is new is the proportion of lawyers choosing this option.


17. See Twitchell, supra note 2, at 708; see also Deborah K. Holmes, Structural Causes of Dissatisfaction Among Large-Firm Attorneys: A Feminist Perspective, 12 WOMEN'S RTS. L. REP. 9, 14-15 (1990). "The changes in the structure of large firms . . . have increasingly compelled them to adopt the bureaucratic forms of their corporate clients." ABEL, supra note 12, at 199.

18. But see Don Peters & Martha M. Peters, Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing, 35 N.Y.L. SCH. L. REV. 169 (1990). The article, written by a lawyer and an educational psychologist, is based on a study of the interactions of legal interns and their clients at a law school clinic. The authors/researchers analyzed the students' results on the Myers-Briggs Type Indicator ("MBTI"), an instrument designed to identify, among other things, preferences in the way people prefer to take in information and the way they choose to
tives, including the literature on professional responsibility, is written to address the dilemmas faced by solo practitioners who work for individual clients. Few, if any, articles or books concerning lawyering skills address how a legal practice that involves significant joint work can be structured to provide maximum job satisfaction and effective work product.

The demographics of the profession have also changed. White women, and men and women-of-color, are graduating from law school and entering the profession in record numbers. In 1971, the 9,947 women in the profession accounted for approximately 3% of all attorneys. By 1988, the percentage had grown to 16%, representing 116,421 women. Only 5% of the lawyers admitted to practice in 1971 were female. By comparison, 36% of

make decisions. The authors identify particular interviewing behavior with the students’ MBTI type. In the process, they demonstrate how students working together on joint interviews may conduct interviews that seem to be at cross purposes from one another or the client.

19. An exception to this statement is the work of Mary Twitchell. See, e.g., Twitchell, supra note 2. Twitchell makes a similar observation and offers a possible explanation for the reluctance of the profession to recognize the predominance of teamwork. She suggests that "the premise underlying the theory of professional organizations [is] that professionals generally work alone in whatever structure they may occupy." Id. at 699 n.6. There is, however, a significant body of professional responsibility literature about the responsibility of an individual lawyer to a group of clients. In addition, a few articles have addressed the responsibility of a group of lawyers to a group of clients in the legal services community. See, e.g., Paul R. Tremblay, Toward a Community-Based Ethic for Legal Services Practice, 37 UCLA L. REV. 1101 (1990).

20. This should be compared to the organizational behavior and business management literature where numerous books and articles, from scholarly to "pop," have proliferated in recent years. See, e.g., DEAN Tjosvold, WORKING TOGETHER TO GET THINGS DONE: MANAGING FOR ORGANIZATIONAL PRODUCTIVITY (1986); WILLIAM G. OUCHI, THEORY Z: HOW AMERICAN BUSINESS CAN MEET THE JAPANESE CHALLENGE (1981); Matthew Hermann, Making Work into Teamwork, Utne Reader, Mar.-Apr. 1992, at 82-83 (excerpted from EAST BAY EXPRESS, Jan. 11, 1991). But see Robert L. Nelson, Bureaucracy, Professionalism, and Commitment: Authority Relationships in Large Law Firms, AM. B. FOUND. WORKING PAPER #8722 (1988) (examining the effect of the large firm on the autonomy of lawyers who work in large firms).

21. A proviso: the American Bar Foundation’s The Lawyer Statistical Report provides detailed demographic and employment data on lawyers. See Curran & Carson, supra note 14. The data in this statistical report are broken down by age, gender, and geographic location, but do not include data on race or ethnicity. Thus, in describing the changes in the racial composition of the legal profession, I am forced to rely on a combination of sources other than the ABF’s statistical report.


23. Id.
the lawyers admitted to practice in 1987 were female.\textsuperscript{24} The percentage of minorities in the legal profession increased from 1.3\% in 1973 to 4.2\% in 1983.\textsuperscript{25} Of the more than 755,000 lawyers in the United States today, approximately 6\% are African-American or Hispanic.\textsuperscript{26} Though these numbers remain unacceptably low relative to the percentage of men and women-of-color in the general population, the percentage increase is significant.

The direction of these demographic changes is likely to continue, given the current population of law school students. In 1963, women represented 3.7\% of all law school students.\textsuperscript{27} By 1983, this percentage had increased to 34\%, and by 1990, 42\% of all law students were women.\textsuperscript{28} The representation of students-of-color\textsuperscript{29} in law school also has increased significantly. In 1971, 5.7\% of all law students were men and women-of-color. By comparison, in 1990, men and women-of-color represented 13.6\% of all law students.\textsuperscript{30} In 1965, African-Americans represented 1\% of all law students enrolled in ABA-accredited law schools; in 1990, they represented 5.8\% of the comparable student population.\textsuperscript{31} In 1988, 10\% of all law degrees were awarded to men and women-of-color.\textsuperscript{32}

The changes in the practice of law and in the demographics of the profession occurred simultaneously with the increase in professional dissatisfaction.\textsuperscript{33} Lawyers have complained about
"fatigue and being worn out at the end of the day,"34 the "lack of a warm and personal atmosphere, . . . a waning sense of respect from superiors . . . [and not having] enough time for themselves."35 These complaints come from a variety of causes: the individualistic, competitive nature of practice in the large legal organizations;36 the difficulties created by joint work organized in hierarchical and bureaucratic ways;37 and the conflicting demands between legal practice and personal obligations.38 In addition to these complaints, legal services and legal aid lawyers experience yet other stresses in their work.39 On a daily basis, 

34. Goldberg, supra note 33, at 36.
36. This complaint is also one that women may express more than men. Carrie Menkel-Meadow, Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers, in 3 LAWYERS IN SOCIETY 196, 227 (Richard L. Abel & Philip S.C. Lewis eds., 1989).
37. In regard to firms, Holmes observes:
   Even more important in terms of overall job satisfaction than number of hours worked may be the type of work lawyers do and the type of atmosphere in which they practice. The salient features of large firms are their hierarchy and bureaucracy. While hierarchy has always been at the core of law firms' organization, it is only in the past ten years that hierarchy has been exacerbated by bureaucracy. Holmes, supra note 17, at 14. But cf. Nelson, supra note 20 (finding in his study of five law firms that reasonable time demands are more significant than bureaucratic structures in predicting career commitments to a firm).
38. See Holmes, supra note 17. One of the major causes of dissatisfaction with private practice, especially for women, is the meshing of work and child care. In all the work I have done in collaboration with women with children, child care issues become an important part of the collaboration; child care issues influence decisions regarding when we can meet, when something can be completed, how much work can be accomplished at home, etc. When issues about home can be discussed at work and those concerns can be integrated into work plans without fear of relegation to a "mommy track," women experience a decrease in the stresses felt by the conflicts between home and work. Can issues of child care be meshed with discussions of timetables and task allocations in a world where billable hours reign supreme? Perhaps, if people share decision making authority about timetables and priorities.
39. Psychologists Christina Maslach and Susan Jackson have documented that public service lawyers are even more vulnerable to burnout (i.e., "a syndrome of emotional exhaustion") than the private bar. They observe:
   [I]n recent years, there has been a growing concern in this country about the high turnover in legal services offices. The turnover rate was approximately 33% in 1976, and recent information suggests that the average length of stay for most attorneys is not much more than two years. Although the causes of this high turnover are undoubtedly multiple and complex, . . . a reason that is commonly cited by the attorneys themselves is that they have burned out. Christina Maslach & Susan E. Jackson, Lawyer Burn Out, BARRISTER, Spring 1978, at 8; see also, Susan E. Jackson et al., Correlates of Burnout Among Public Service Lawyers, 8
these public interest attorneys intervene in the most intimate and the most immediate human problems. They cope with unmanageable caseloads and confront a legal system that often can seem unsympathetic to the problems of poor people.

The current structure of legal work and the stresses that lawyers experience may be related. Lawyers, like all professionals, view autonomy as an essential part of their profession. However, as more attorneys choose to work in hierarchical and bureaucratic organizations, professional autonomy decreases. This may be a cause of professional dissatisfaction. As the next section explains, where work structures include participatory decision making models like collaboration, worker satisfaction increases.

B. Increased Professional Satisfaction

Although no one has specifically studied legal organizations to evaluate how collaborative structures might improve job satisfaction, studies of other industries and professions show clearly that increased participation and collaborative decision making contribute to greater worker satisfaction. These studies provide evidence that increased participation in decision making, the central feature of collaboration, results in greater

J. OCCUPATIONAL BEHAV. 339 (1987) (empirical testing of burnout theories in an attempt to identify the organizational conditions associated with employee burnout).

40. See Holmes, supra note 17 (concluding that the structure of the large private law firm creates irresolvable problems for attorneys, particularly women); JACK KATZ, POOR PEOPLE’S LAWYERS IN TRANSITION 106-07 (1982) (linking the institutional environments of individual legal service programs to whether a lawyer experiences her work as routine); Nelson, supra note 20 (research demonstrating that some aspects of structure—work style—are related to career commitments to firms).

41. Instead, the examination has focused on how and whether lawyers maintain autonomy in large firm practice. See, e.g., Robert L. Nelson, Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm, 37 STAN. L. REV. 503 (1985). Nelson finds that, even in the large firms, the ideology of autonomy continues; however, the reality is that clients, rather than lawyers, exercise autonomy in the large firms. Nelson’s work does not focus on how much autonomy lawyers who work together have, or on whether these working arrangements caused dissatisfaction. Nelson, supra note 20.

satisfaction, motivation, and decision acceptance among workers.\textsuperscript{43} Other studies have demonstrated that increased participation in decision making can reduce stress because workers have (and feel) more control over their work.\textsuperscript{44} Thus, attention to the collaborative work process becomes especially important as more and more of the work performed in contemporary American society is the result of a team effort.\textsuperscript{45}

For the most part, commentators on stress in the legal profession have proposed individual-based solutions, rather than structural changes, for managing the stress that lawyers experience. Lawyers have been advised to work out, to learn deep breathing, and to eat right.\textsuperscript{46} Yet, if bureaucratization and lack of control are some of the causes of stress in the attorney’s work environment, then structural, not individual, solutions are needed.\textsuperscript{47} Collaborative work is a structural intervention that has the potential to eliminate or minimize the sources of this well-documented stress. If lawyers working together could control tasks, timetables, and strategies jointly, then they might expect the same kind of relief from stress experienced by people in other industries and professions who have the benefit of such joint


\textsuperscript{45} Dean Tjosvold, a major proponent of teamwork as an effective management style, has recently noted that “[g]roups, not individuals, are becoming the basic building blocks of organizations.” Tjosvold, supra note 20, at 43; see also George P. Huber, \textit{The Nature and Design of Post-Industrial Organizations}, 30 \textit{MGMT. SCI.} 928 (1984); Patricia Reagan \& John Rohrbaugh, \textit{Group Decision Process Effectiveness}, 15 \textit{GROUP \\& ORGANIZATIONAL STUD.} 20-43 (1990); Twitchell, supra note 2, at 701.


\textsuperscript{47} “A number of researchers … conclude that the professional’s burnout problem cannot be solved by personal coping strategies alone and must involve organization policy changes.” ROBERT KARASEK \& TORES THEORELL, \textit{HEALTHY WORK: STRESS, PRODUCTIVITY, AND THE RECONSTRUCTION OF WORKING LIFE} 51 (1990).
control. If associates in firms could participate in shared decision making, they might experience greater satisfaction at work. Collaboration presents a model for increased professional satisfaction because it loosens the grip of hierarchical structures and dampens the competitive tone of large firms and organizations.

Collaborative arrangements also promote social support in the work environment which, in turn, can reduce stress. This kind of support may be especially valuable for legal service and legal aid lawyers. Although burnout has been recognized in all aspects of the legal profession, these lawyers have been identified as especially vulnerable to this phenomenon. Unlike lawyers working for other kinds of large organizations, legal service lawyers often work alone and have autonomy over their cases. Nevertheless, there are good reasons for legal service lawyers to use collaborative structures as well. Encouraging legal service lawyers to co-counsel cases and to develop other cooperative projects may create opportunities for them to share their ideas as

48. See supra notes 42-47. Note, however, what question these investigators and researchers have not asked: whether workers who have historically maintained control of the decision making process experience more or less stress when they share this function. (Specifically, if increased participation in decision making is positively correlated with stress reduction, one wonders whether lawyers who are use to making individual decisions experience increased stress when they are forced to share decision making authority.) I was intrigued and perplexed by this hole in the stress literature. I wrote to Dean Tjosvold, a professor of business administration and leading advocate of collaborative work models in business, to ask him if he knew of anyone investigating the question of what happens to workers who give up their control and authority. He knew of no one addressing this question. Letter from Dean Tjosvold, Professor of Business Administration, Simon Fraser University, Burnaby, British Columbia, to Susan Bryant, Associate Professor of Law, City University of New York Law School at Queens College (Nov. 29, 1991) (on file with author).

49. Literature on collaborative learning acknowledges an inherent tension between hierarchy and collaborative learning groups. Just as the teacher retains authority for planning and grades, the supervisor/partner retains the power to hire, to fire, and to give raises, etc. While acknowledging this power, the teachers have used collaborative learning techniques to get students to work together with them, and each other, in productive and instructive ways. See Cora Agatucci, Empowering Students through Collaborative Learning Strategies 1 (Mar. 17, 1989) (unpublished manuscript, on file at the Vermont Law School library); see also infra notes 121-23 and accompanying text.

50. KARASEK & THEORELL, supra note 47, at 67-76.

51. See Maslach & Jackson, supra note 39.

52. But see Tremblay, supra note 19. Tremblay describes the practice of legal service lawyers who triage the work they do for individual clients. Although lawyers make these decisions, to say they are in control does not accurately describe a practice because they are not free to represent every client to the fullest due to a lack of resources.
well as their burdens. Such collaborative arrangements may provide the social support they need to mitigate some of the stress associated with the one lawyer-one client model.

Although collaborative work may decrease stress caused by isolation and lack of control over work product, collaborative work also may cause some tensions. As parts II and III of this article point out, all joint work requires people to work together on a team with a diverse group of people. Although these differences are one of the primary reasons for working together, the differences can also result in destructive conflict. However, participants of a work group who have been taught collaborative skills may be more adept at creating constructive, rather than destructive, conflict.

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53. According to psychologist Susan Jackson:

One consequence of increasing participation in decision making may be a general increase in communications among workers and the improvement of interpersonal relations within a work unit. . . . Associations found between participation and reduced strain may be due partly to a side effect of participation, namely, an increase in general communications among co-workers. As a result of these communications, social support increases, and hence, experienced strain decreases.

Jackson, supra note 44, at 6.

54. In my own work with law students on cases involving battered women, students are frequently paired with one another to work on cases. Part of the work on the case includes talking about how it feels to do this kind of work, and how to set professional boundaries that allow you to care for clients and passionately represent them without burning out. One benefit in having two people representing the client is that neither person feels alone with the responsibility. By being able to share the responsibility, the weight of responsibility seems more manageable to the students.

55. I accept the proposition found in the organizational behavior literature that conflict is not inherently destructive; indeed, my collaborative work model rests on the belief that conflict, when managed properly, can be valuable and productive. "Conflict traditionally has been considered painful and harmful, a sign that something has gone terribly wrong. . . . Today conflict is recognized as a natural, sometimes productive part of working with others. The contemporary perspective is that employees must learn to discuss their conflicts rather than suppress and avoid them." Tjosvold, supra note 20, at 111; see also Morton Deutsch, Fifty Years of Conflict, in RETROSPECTIONS ON SOCIAL PSYCHOLOGY 46 (Leon Festinger ed., 1980); PRODUCTIVE CONFLICT MANAGEMENT: PERSPECTIVES FOR ORGANIZATIONS (Dean Tjosvold & David W. Johnson eds., 1983). Compare this to the treatment of conflict in the legal literature where conflict is still characterized as inevitably destructive and something that should be reduced. See, e.g., Joan W. Zinober, Resolving Conflict in the Firm, L. PRAC. MGMT., Sept. 1990, at 21; Twitchell, supra note 2.

56. Although traditionally considered destructive, conflict has been shown to have important potential benefits. It is not conflict per se but how persons discuss it that determines whether it will be productive or unproductive. Group members cannot be expected to be highly skilled in this difficult area; they need training, practice, and positive
C. Improved Work Product

Studies of work outside the legal profession have suggested that collaboration can result in enhanced productivity,\textsuperscript{57} creativity,\textsuperscript{58} accuracy,\textsuperscript{59} and problem solving.\textsuperscript{60} These studies indicate three reasons why collaborative work often results in a superior work product: first, the people who are closest to the facts and the problems are involved in the decision making; second, people with a variety of perspectives have made the decisions; and third, the people who must implement the decisions have participated in making them. Because the characteristics of legal work are similar to the characteristics of work in other settings in which collaborative methods are recommended, work done by lawyers also should improve when collaborative methods are applied.

Like other types of work, lawyers' work product can improve when those with firsthand knowledge participate in the decision making process. For example, a lawyer who takes a deposition, investigates a claim, or interviews a client has a unique vantage point, and possesses important firsthand information about a case. Issues about client credibility and veracity are often best judged by one who has heard the stories firsthand. Facts that become known in discovery become important for later decisions about settlement and trial theories. When the people who have gathered and analyzed this information participate in the decision making process of managing the case, facts that may influence the outcome of the case are more likely to be identified and examined. Facts that may have seemed unimportant during discovery may

\begin{itemize}
  \item \textit{Tjosvold, supra note 20, at 48.}

57. \textit{See Niehoff et al., supra note 43, at 341; Tjosvold, supra note 20, at 33.}

58. \textit{See, e.g., Daniel Plunkett, The Creative Organization: An Empirical Investigation of the Importance of Participation in Decision-Making, 24 J. CREATIVE BEHAV. 140 (1990); Tjosvold, supra note 20, at 91-107. Tjosvold observes that cooperative teamwork in business produces "high-quality solutions." Id. Tjosvold notes further that "[c]ooperation promotes all aspects of effective problem solving. Decision makers with cooperative goals combine their ideas to create high-quality solutions . . . ." Id. at 95.}

59. \textit{See, e.g., Dean Tjosvold, Flight Crew Collaboration to Manage Safety Risks, 15 GROUP & ORGANIZATIONAL STUD. 177 (1990).}

60. \textit{See, e.g., Bruce Joyce et al., Staff Development and Student Learning: A Synthesis of Research on Models of Teaching, EDUC. LEADERS, Oct. 1988, at 17 (noting that in education studies of young children, cooperative/collaborative structures "have substantial effects . . . improving moral judgment"); see also Tjosvold, supra note 59, at 9.}
take on new significance when evaluating a case for settlement or trial.\textsuperscript{61} Indeed, in her ground-breaking work on the professional responsibilities of collaborating lawyers, Mary Twitchell has described how lack of communication and cooperation between the lawyers who know the important facts of a case and the lawyers who are the decision makers at trial can result in poor decisions and bad case management.\textsuperscript{62}

Although stress reduction and the inclusion of firsthand knowledge are good reasons to resort to collaboration, perhaps a more compelling reason for lawyers to use a collaborative work model is that multiple perspectives enhance the final work product. The multiple perspectives that are brought to the substance and process of legal work allow the group to develop emergent knowledge that cannot develop when individuals work alone.\textsuperscript{63} Because legal work is complex and is performed by an increasingly heterogeneous population, it can benefit from the scrutiny of diverse perspectives. Diversity in perspectives can be invaluable, for example, when generating ideas for writing a brief and giving the writer feedback on whether the written communication persuades the reader.\textsuperscript{64}

Including diverse perspectives through joint work can also enhance the final product\textsuperscript{65} because these perspectives inform

\textsuperscript{61} See, e.g., Tjosvold, supra note 59. Tjosvold notes that when team members viewed their work as cooperatively structured, they were more likely to articulate their views openly, and more likely to consider opposing opinions. Such openness was strongly correlated with crew members' abilities to cope successfully with managing safety risks. Id. at 186-87.

\textsuperscript{62} In her article, Twitchell gives an example of malpractice that was committed because the lawyers failed to coordinate authority and share important information in the case. As a result of failure to communicate information, the second and third lawyer missed a potential theory for recovery. Furthermore, as a result of failure to articulate authority, each lawyer assumed the other would take care of placing the case on the trial calendar. Twitchell, supra note 2, at 719-24.

\textsuperscript{63} Tjosvold, supra note 20.

\textsuperscript{64} See, e.g., Kenneth A. Bruffee, Collaborative Learning and the Conversation of Mankind, 46 COLLEGE ENG. 635, 642 (1984). Writing teachers recognize that writing is a conversation, and use peer review as a valuable method for improving students' writing skills.

\textsuperscript{65} See infra part III (discussing how to divide tasks for maximum benefit in both collaborative and independent work settings). In both the collaborative and input models described in part II, multiple perspectives can be used to enhance work products.
the many complex judgments\textsuperscript{66} entailed in legal work. Different lawyers will bring different perspectives to the substantive ideas that inform legal work and the processes used to organize that work.\textsuperscript{67} The collaborative learning literature confirms that complex tasks that require higher thinking benefit the most from collaborative work.\textsuperscript{68} Because many legal tasks involve judgments with no obviously right or wrong answer, lawyers are called upon to choose from many options. Some decisions require judgments about the law and how it will be interpreted,\textsuperscript{69} and others involve predictions about how facts will be determined. Perspectives and biases influence how lawyers and judges interpret and apply cases.\textsuperscript{70} As lawyers structure deals and negotiate settlements, they are called upon to anticipate the future problems and respond to the current wishes of clients. Perspectives and biases also will influence how lawyers hear clients articulate their goals.\textsuperscript{71}

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67. \textit{See infra} part III (setting out in detail how the process differences can effect the substantive results).
68. Joyce et al., \textit{supra} note 60; \textit{see also infra} part III (some tasks are more suited than others to collaborative work).
69. These judgments involve law, which some would argue is indeterminate. Others would argue that rules determine law, but that the rules themselves are subject to interpretation. Still others would argue that the judge's perspective, more than rules, determines the law.
70. One of my most striking encounters with this phenomenon occurred while teaching in a clinical research and writing program for first-year students at Hofstra Law School. The students were asked to research the client's case after an initial interview to determine whether the client had a cause of action. Two students reading and applying the same cases to their client's case reached different conclusions about what the cases required for a cause of action, and whether the client had a cause of action. In exploring this with the students, we discovered that one student, who had found no cause of action, disfavored divorce and recalled that he had identified with the husband, as the wife, our client, told her story in the initial interview. The other student, a divorced woman returning to school, did not share her colleague's values about divorce and had identified with our client. Both students had assumed they were doing the objective analysis asked for in the memo. Although one rarely gets the opportunity to observe clearly how biases affect something as basic as reading cases, this phenomenon is clear to practicing lawyers.
71. \textit{See} Beryl Blaustone, \textit{To Be of Service: The Lawyer's Aware Use of the Human Skills Associated with the Perceptive Self}, 15 J. LEGAL PROF. 241 (1991). Feminist educators in law schools have used this insight to promote an educational environment that encourages students to explore life experiences, which contribute to each student's point of view. \textit{See, e.g.,} Patricia A. Cain, \textit{Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections}, 38 J. LEGAL EDUC. 165, 175 (1988).
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Consider two third-year law students who, while co-counseling a domestic violence case, improved their work product and their judgment skills by identifying and examining their respective perspectives and biases. After many interviews and phone conversations with their client, the students disagreed about what they thought the client’s goals were. One student saw the client as a woman who was moving toward independence from her husband by seeking legal help. In contrast, the other student perceived the client as trying to use the law to improve her relationship with her husband. Each student had heard the client make similar statements and, yet, they differed in their interpretation of these conversations. Through a conversation about these differences, the students discussed what factors in their own experiences had led them to make such differing assumptions about their client. They learned that their respective biases had even led them to seek different information from the client. In this collaborative process, the students improved their own judgment by learning to listen more carefully to what they were hearing from their client. They also improved their representation by working together with the client to clarify her goals.

Where the management of a case can be enhanced by including insights gleaned from the collaboration of multiple perspectives, case management also can be improved by requiring shared decision making of those who are given the task of implementing the strategic and managerial decisions in a case. The collaborative process is ideally suited for bringing about such shared decision making. For example, in multi-team litigation, different lawyers may depose different witnesses. Those lawyers

72. See John M. Sutton et al., A Joint Internship Program for Law and Counseling Students, 1985 J. COUNS. & DEV. 143 (describing a seminar in which counselors and law students worked on simulated cases to discover how their disciplines gave them different views of the facts, client goals, and roles of professionals); see also infra text accompanying note 125.

73. After hearing their descriptions, my own sense of the situation was that the client’s goals were complex and potentially contradictory. The students initially did not see this complexity, but instead were involved in a “who is right?” conversation. At a hearing for an Order of Protection, the client told the judge that she wanted her husband to be ordered into alcoholic treatment; one year later, the client asked us to represent her in a divorce proceeding. My assessment was that the students were hearing different and potentially conflicting goals from a client who wanted her independence, her safety, and a life with her husband. The students, in trying to bring clarity to the situation, were certain that the client wanted what they had heard her say. Through a process of exploring these differences, they developed a more sophisticated clinical judgment.
who have participated in major decisions in the case, such as which witnesses to depose and what information to seek, will be more likely to conduct better examinations. Research in other fields demonstrates that decisions in which workers participate have higher degrees of acceptance because people understand the decisions, understand the rationale for the decisions, and, thus, are more likely to comply with the decisions.

The use of a collaborative structure should improve work product if lawyers recognize the potential of this kind of joint work and actually learn collaborative skills. Without these skills, joint work may produce work products that represent the lowest common denominator of agreement. Developing skills for collaborative work is a beginning for helping lawyers to realize the beneficial promises of collaboration. In realizing this potential, the profession can demonstrate receptivity to the new diversity in the profession.

D. A Process for a Diverse Profession

Because collaboration allows for collective input into the process and the product, it offers the potential for diverse groups to work together to develop a better understanding of cultural diversity, as well as to improve the legal work done in diverse groups. As the two previous parts of this article have demonstrated, collaboration is a way of organizing work that creates a more satisfying workplace for all lawyers and an improved work product. Collaboration holds special promise for newcomers to the profession for two reasons: first, because it rests on assumptions that newcomers will appreciate; second, because it is a process that many women—and some men—especially value. Furthermore, because collaboration actually encourages the articulation

74. See Niehoff et al., supra note 43, at 341.
75. One of the decisions I made about how to organize this section was to write a separate subsection on why collaboration might hold special promise for white women, people-of-color, and others traditionally excluded from the mainstream legal culture. By separating this discussion from the subsections on process and product, I hope to make two points. First, collective work has been encouraged for all workers as a method of improving worker satisfaction across the board, and as a method of improving work product. Second, focusing on collaboration among and between particular groups highlights the potential of their changing professional norms through collaboration.
76. See Agatucci, supra note 49, at 10.
of different perspectives, collaboration may present an opportunity for newcomers to change the way all lawyers conceptualize their role.

The theory of collaboration shares an underlying assumption with the theories of critical race and feminist jurisprudence, that significant differences\(^77\) exist among people and dramatically affect the way people define and assess both problems and their solutions.\(^78\) Although few critical race and feminist scholars have applied this analysis to lawyering, the underlying assumption of their scholarship—that personal experiences give one a unique voice—is similar to the underlying assumption that supports collaboration.\(^79\) Professor Kim Crenshaw, in writing

\(^77\) I digress briefly to explain what I mean to convey throughout this article when I speak of "differences." My understanding and treatment of difference is not meant to be deterministic. Rather, each of us has a history of life experiences that informs our view of the world. The variety of roles and statuses which each of us occupies shapes our world views. I do not mean to convey a reductionist notion of difference: that is, that because all women are different from all men, all women therefore must be the same. My treatment of difference recognizes that in a world that values maleness, whiteness, and heterosexuality, those members who do not possess the valued trait(s) may look at, and interact with, the world differently than those members who possess the valued characteristic. In addition to these differences, there are many other differences that make us, at once, the same and different. As an Irish Catholic, white, heterosexual, professional woman, raised in the Midwest in small cities, and as the oldest of eleven children, I experience most of my colleagues, students, and clients as people with whom I share different and similar characteristics and experiences. These similarities and differences influence our work and influence the way we see the world. There is of course a thicket of legal and non-legal scholarship on the difference question. Although my work is informed by this discourse, it is not the purpose of this article to take sides or to find a definitive answer. In my work with hundreds of law students, I have seen that their relationship to the world is likely to impact the values and perspectives that they bring to the practice of law. These values and perspectives affect the way they read cases, listen to clients, approach adversaries, approach colleagues, etc.

\(^78\) The examples of students and lawyers working together on cases throughout this paper demonstrate that differences affect judgments. See supra note 73 and accompanying text (battered woman example); see also infra note 101 and accompanying text (discrimination example).

\(^79\) See, e.g., Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Richard Delagado, When a Story is Just a Story: Does Voice Really Matter?, 76 VA. L. REV. 95 (1990); Ruthann Robson & S.E. Valentine, Lov(H)ers: Lesbians as Intimate Partners and Lesbian Legal Theory, 63 TEMP. L. REV. 511 (1990) (identifying how the lesbian experience is excluded from the law and in the process, identifying heterosexist assumptions in the law); see also Cain, supra note 71; Carrie Menkel-Meadow, Portia in a Different Voice: Speculations on a Women's Lawyering Process, 1 BERKELEY WOMEN'S L.J. 39 (1985); Alex M. Johnson, Jr., The New Voice of Color, 100 YALE L.J. 2007, 2020-33 (1991). Professor Johnson explicitly recognizes the connection between the feminists' theories of difference and the critical race theorists:
about the domination of the norm of perspectivelessness that exists in law schools, identifies the other perspectives that students of color bring to this process:

[L]aw school discourse proceeds with the expectation that students will learn to perform the standard mode of legal reasoning and embrace its presumption of perspectivelessness. When this expectation is combined with the fact that what is understood as objective or neutral is often the embodiment of a white middle-class world view, minority students are placed in a difficult situation. To assume the air of perspectivelessness that is expected in the classroom, minority students must participate in the discussion as though they were not African-American or Latino, but colorless legal analysts.80

The collaborative process does not rely on the notion of a colorless (or genderless or classless) legal analysis, rather it welcomes different perspectives and experiences. Because collaboration recognizes that legal knowledge and professional judgments are imbedded in personal experiences, an “outsider” will perhaps more readily appreciate the necessity for collaboration.81 Finally, the recognition that collaboration can produce emergent knowledge depends upon the assumption that constructive use of differences enhances the ultimate work product.82 Recognizing and acknowledging these assumptions may be easier

Advocates of the Monistic voice of color have adopted an approach to this issue that is very similar to the different voice in the Critical Feminist Theory; they claim their class-based voice speaks from the perspective of the socioeconomic bottom of society, that it offers a distinctive—different—way of approaching moral, legal, and social issues in legal scholarship.

Id. at 2024.

80. Kimberle Williams Crenshaw, Foreword: Toward a Race-Conscious Pedagogy in Legal Education, 11 NAT'L BLACK L.J. 3 (1989); see also Catherine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 STAN. L. REV. 1299, 1350 (1988). In their article about legal education for women at Yale, Weiss and Melling note that the women interviewed felt more impelled toward discovery of the histories and biases of its human authors and interpreters to make law more challengeable and changeable, than toward uncovering some kernel of truth supposedly inherent in it. Id.

81. See Joseph S. Fiorelli, Power in Work Groups: Team Member's Perspectives, 41 HUM. REL. 1 (1988); see also infra text accompanying note 111 (discussing the potential for domination and exclusion in joint working groups). At the same time, an outsider may also be more aware of the potential for silencing that can occur in groups where traditional power relationships influence control of the discussion. See infra notes 174-77 and accompanying text.

82. See supra note 77 and accompanying text; see also Crenshaw, supra note 80, at 13.
for people who have been "outsiders" to the profession. These individuals may be intimately familiar with the relativity of legal knowledge and professional judgments because they do not necessarily share the "truths" that create these norms.

Collaboration may further appeal to newcomers because it has a highly contextualized and communal nature. Feminists have long recognized the importance of communal values to women. Carrie Menkel-Meadow, a feminist legal scholar and clinician who has written extensively on the feminization of the legal profession, suggests that the increase in numbers of women in the practice may prompt changes that ultimately result in a less hierarchical and more cooperative practice. In addition, if the theory that women prefer affiliation is accurate, collaboration


84. This value has been recognized as part of the critical race literature as well. See, e.g., Johnson, supra note 79, at 2053-62. Voices of color embrace various aspects of communitarianism. See also id. at 2054 n.198. Johnson notes similarity with feminist and critical race theorists in their emphasis on cooperation and connection instead of competition and autonomy. Id. at 2054.

85. Professor Menkel-Meadow is an exception to the generalization that feminist and critical race theorists have not applied their theories to the day-to-day practice of lawyering. Professor Menkel-Meadow has written extensively on the impact of women on the profession and its professional norms. See, e.g., Carrie Menkel-Meadow, Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School," 38 J. LEGAL EDUC. 61 (1988); Menkel-Meadow, supra note 79, at 44; Menkel-Meadow, supra note 36. Another exception to this generalization is the work of Gerald Lopez. See Gerald P. Lopez, Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education, 91 W. VA. L. REV. 305, 350 n.47 (1991) (articulating a different vision of lawyering through development of a different curriculum for representing "subordinated people").

86. See generally CAROL GILLIGAN, IN A DIFFERENT VOICE (1982). I offer this suggestion that collaboration may be more attractive to women with some trepidation. I am well aware of the controversy surrounding Gilligan's difference theory. I also am aware that Gilligan's theories and research have been criticized by many prominent and accomplished legal scholars, feminist and non-feminist alike. Nonetheless, I suggest that collaboration may be more appealing to those with a preference for affiliation. In doing so, I do not want to suggest that all women will be good collaborators or prefer working in a collaborative mode. Because collaboration is a highly contextualized process, it is likely that most women will have both productive and unproductive collaborations. Whether the collaboration is successful will depend as much on whether the collaborators have compatible work styles, communication styles, or values as on the gender of those involved. See infra part III. However, those with a preference for affiliation may be more likely to work on the problems that occur and less likely to dismiss the process because of these difficulties. Finally, I note that my advocacy for using a collaborative method does not rest
may be attractive to women because it is a process that affirmatively establishes affiliation as a valuable component of a lawyer's work.\footnote{87}

As part III further demonstrates, a collaborative process also is highly contextualized.\footnote{88} It recognizes that people bring to their work different life experiences, work styles, and communication styles. Thus, collaboration does not dictate a single method for organizing joint work. Rather, people engaged in joint work decide how and when to work together, taking into account the nature of the work and their own preferences.

Law professors who bring feminist method to the classroom have developed a pedagogy that, like collaboration, uses context and builds trust, engagement, and empowerment. These professors advocate the use of this pedagogy in place of traditional practices that reinforce the competition and the individual achievement found in most law school classrooms.\footnote{89} Anecdotal information from law school classrooms where feminist methods are used demonstrates that the use of a highly contextualized, experientially based inquiry appeals to all students, and yields new insights for them.\footnote{90}

Finally, collaboration allows white women, and men and women-of-color, who are new to the profession in larger numbers, to influence professional choices about the role of lawyers and

\footnotesize{upon the rightness or wrongness of Gilligan's theories.}

\footnote{87. Phyllis Goldfarb, \textit{A Theory Practice Spiral: The Ethics of Feminism and Clinical Education}, 75 MINN. L. REV. 1599, 1670 (1991) (identifying the unifying themes of clinical education and feminism and noting that feminist teaching methods and clinical teaching methods share cooperative and non-hierarchical characteristics).}

\footnote{88. The use of particulars of each situation to assess the appropriate type of joint work may be another characteristic that may have special appeal for women. As Goldfarb noted: [T]he hallmark of feminist practical reasoning is its emphasis on context: on understanding the intricate details of complex human situations that give rise to legal or other conflicts and, with the aid of prior wisdom and experience, using this understanding to find solutions that are tailored to the particularities of the situation. \textit{Id.} at 1636-37.}

\footnote{89. See, \textit{e.g.}, Cain, \textit{supra} note 71, at 171; Leslie G. Espinoza, \textit{Constructing a Professional Ethic: Law School Lessons and Lesions,} 4 BERKELEY WOMEN'S L.J. 215 (1988); see also Menkel-Meadow, \textit{supra} note 85, at 81; Crenshaw, \textit{supra} note 80, at 12-14.}

their relationship to courts, clients, colleagues, and adversaries. If those who support the traditional definition of a "good lawyer"\(^91\) have a genuine understanding of differences and engage in joint decision making with people who are new to the profession, then the profession and its norms have a chance to be transformed.\(^92\) However, if the newcomers are not allowed to participate in redefining professional norms, the potential for change, which includes methods of responding to diverse client groups who may view the new developments positively, is limited.\(^93\)

Recent literature suggests that women may bring different values to the legal profession.\(^94\) These values create tensions in a profession where white men of privilege are the demographic

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\(^91\) Menkel-Meadow, supra note 79, at 44 (citing Cynthia Fuchs Epstein for the observation that the professional norms were created by the white men who were the only lawyers; thus, we have come to identify a "good lawyer" as having those qualities associated with white men, rather than identifying qualities for good lawyers that are independent of their identification with the male gender); see also Abel, supra note 12, at 248. In calling for more equality in the status and income of new entrants to the profession, Abel observes that the newcomers offer transformative potential, and asks that the profession openly recognize the differences instead of expecting the newcomers to assimilate. Id. at 248.

\(^92\) See Menkel-Meadow, supra note 36, at 237 (noting that the question of whether women will actually change the profession is still an open one; women are in the profession in higher numbers, but still not in positions of power); see also Holmes, supra note 17. Holmes notes that without substantial support from male lawyers, women attorneys will not be able to transform the practice of law in large firms because women lack the power in numbers and, more importantly, lack seniority. She argues for a consensus-building orientation rather than a difference orientation to accomplish these goals. Id. at 31.

\(^93\) See infra notes 120-21 and accompanying text (pointing out how power in the relationship may interfere with the collaborative potential).

\(^94\) See, e.g., Menkel-Meadow, supra note 85 and accompanying text; GILLIGAN, supra note 86. But see Joan C. Williams, Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory, DUKE L.J. 296 (1991). I use the terms "may" or "might" in this and other parts of the article to acknowledge the legitimate criticism of Difference Theory. As Williams so eloquently articulates, differences may yield powerful interpretive results in a particular context; however, in other contexts, the category of difference may not be an important characteristic. Thus, she notes that women do not always react as women; sometimes, they react as Democrats, lesbians, bigots, or blacks. Id. at 323. At the same time that differences are not determinative, I used works by difference theorists because the insights that they offer may provide, in the context of the particular collaboration, a valuable explanation of the differences that are experienced among collaborators.
norm.\textsuperscript{95} For example, research suggests that women may bring to the practice of law a "care orientation\textsuperscript{96} that conflicts with the reigning norm of the rational, detached, "hired-gun" orientation.\textsuperscript{97} A similar conflict also may arise for lawyers who come from cultures that value and expect intimacy and community, and where the concept of "professional distance" is counter-cultural. For instance, of the law students I have taught, Latino law students are more likely to ask "should the lawyer be more like family or more like a stranger?" In the Latino culture, a lawyer who is perceived as "more like family" is a lawyer who embodies the model of a trustworthy and helpful person. The professional image, however, that often is promoted in North American legal literature is the exact opposite of a family member.\textsuperscript{98} The involvement and emotional connection that the "care orientation" fosters may change attorney-client, attorney-attorney, and attorney-court relationships. In analyzing the potential for a transformation of the profession by incorporating into it less competitive, more caring traits, scholars have articulated a vision of practice that integrates those traits that have been labeled

\textsuperscript{95} See Menkel-Meadow, supra note 79, at 44 (describing research of Cynthia Fuchs Epstein); see also Weiss & Melling, supra note 80, at 1314. Weiss and Melling describe this tension as one where women law students stand between the image of women on the one hand—"She lacks public power. She serves other people. She is expected to be and often succeeds in being caring, empathetic, cooperative, and generous"—and the image of lawyer on the other hand—"as molded by previous generations of men. He is powerful, instrumental, and adversarial." They note that they both were attracted to, and repelled by, both images. Weiss & Melling, supra note 80, at 1314.

\textsuperscript{96} GILLIGAN, supra note 86, at 163. By drawing upon interviews with a limited number of women and men, two different ways of resolving moral problems were identified. Those who solved moral issues by appeal to an objective, rule-based method, mostly men and boys, were identified as "rights-based moralists," whereas those who solved moral issues by identifying the needs of the individual, rather than appealing to rules, were identified as "care-based moralists." Those with a care orientation are more likely to seek connection with others, whereas those with a rights-based approach are more likely to value individual achievement. \textit{Id.}

\textsuperscript{97} As Dana Crowley Jack and Rand Jack recognize, most of these characteristics come from the culture in which women are raised. By offering the example of what women may do differently, I want to recognize that not all women were raised with this cultural tradition, and that men in some cultures also are raised with a care orientation. Dana Crowley Jack & Rand Jack, \textit{Women Lawyers: Archetype and Alternatives, in Mapping the Moral Domain} 261-88 (Carol Gilligan ed., 1985). Some women raised with a care-oriented tradition also have rejected this tradition in the practice of law. \textit{Id.} at 270-77.

\textsuperscript{98} See ELAINE PINDERHUGHES, UNDERSTANDING RACE, ETHNICITY, AND POWER: THE KEY TO EFFICACY IN CLINICAL PRACTICE (1989). Pinderhughes explains that "to some cultural groups, practitioners are safe only when they can be adopted as relatives." \textit{Id.} at 167.
male and those that have been labeled female. In their study of the experiences of female attorneys, Rand Jack and Dana Crowley Jack observe that female attorneys adapt to the profession in a variety of ways. Quoting Carol Gilligan, they write:

Just as the culture in the past has taught that these traits are mutually exclusive and gender specific, in the future the message should be one of integration and compatibility . . . . In the legal system, the question is no longer either simply about justice or simply about caring, it is about bringing them together to transform the domain.

Collaborative work is a method that can reach the potential envisioned by Gilligan and the Jacks. Where people with different values engage in an examination of the choices made by the "good lawyer," the potential for transformation can be realized.

The following exemplifies how gender differences between students, acting as co-counsel in a discrimination case, contributed to conflicts about appropriate role boundaries. The resolution of these conflicts encouraged both students to examine the attorney-client relationship in a way that neither of them would have on their own. The male student took the position that they should focus on the facts of discrimination alone. The female student viewed their role differently. She thought it appropriate for the client to expect them to listen to her talk about her fears: that her employers would speak negatively about her, that she would lose her ability to support her mother, that it would be difficult to live on a reduced salary from a demotion, or that she

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99. See generally Menkel-Meadow, supra note 85; Espinoza, supra note 89.
100. Jack & Jack, supra note 97, at 287.
101. For purposes of this example, I am highlighting the gender differences of the participants. In their conversations about their different approaches to the client, the woman student attributed these differences to gender, when her male co-counsel responded to her request that he do more of the counseling by saying that, if she thought the hand-holding was an important part of the case, she should do it. The female student responded to this suggestion by saying, "that's a little like my father saying to my mother, if you really think that the dishes in the sink need to be washed, you wash them." These students had other differences, as well, that contributed to the way they responded to the choices about what role to play with the client. The male student saw most things in very stark either-or terms, whereas the female student tended to see ambiguity everywhere. Because these students learned early in their collaboration to communicate about their differences effectively and respectfully, they learned a tremendous amount from each other.
would have to find another job. The female student had given the client her home phone number and had spent endless hours on the phone with her, while the male student had stopped talking to the client except when they met at the law school to prepare the client’s case. The male student had set up professional boundaries that were closer to traditional ones, and the female student established very different boundaries. These differences provided the material for insightful discussions about the role of the lawyer, the strengths and the problems of the different boundaries, and the role that gender may play when boundaries are set without prior critical reflection.

102. Although many lawyers practicing in this field would have explored some of these topics, the exploration would have been time constrained and more narrow than the conversations that the woman student had with the client.

103. I find that students are very willing to explore differences if they have a non-judgmental relationship with one another and with me. I generally begin conversations about these differences by asking the students to focus on two different and important questions: why they think they have these differences, and what strengths and weaknesses they see from each approach. If they do not see the differences as attributable to gender, race, or other differences, I may ask what effect they think these differences could have on their choices. In this example, I would ask the two students what effect they think their gender has on the decisions they are making. By identifying the strengths and weaknesses of the different approaches, I hope to stretch the student’s intuitive way of operating to incorporate ways of working that build on the strengths and minimize the weaknesses of their intuitive approaches.

104. One of the benefits of clinical education is that the student gets a chance to experiment with these ideas before graduating. By allowing this exploration to take place in an educational institution, the student can be encouraged to think critically about professional norms, rather than being told “this is the way lawyers work.” A challenge for clinical teachers is to allow this kind of experimentation, while insuring that the needs of the client are being met. By acknowledging a variety of ways to counsel clients, teachers can allow students to be part of the collaborative process of defining appropriate role boundaries. In this situation, my own sense was that neither student had found the “right” way to counsel. There were strengths and weaknesses to each approach. Clearly, the client appreciated the woman student’s approach and I resonated with many of the decisions to respond to the client’s needs. However, I was concerned about whether the student was disempowering the client in the long run by building a relationship where the client looked to the student for support, rather than find this support in relationships that could continue after the lawyer-client relationship was over. At the same time, this student was beginning to want to set different boundaries when she found herself frequently talking to the client at home. The male student missed critical information by seeing his role as talking to the client “about the case.” He also failed to give the client what she was asking for in the relationship. At the same time, he was able to separate himself from the client in just those ways that the woman student was trying to separate herself. By experimenting with different boundaries and relationships, the students were able to see the strengths and weaknesses of different approaches, and refine as they went along the appropriate role for themselves and their clients.
E. Lawyering Curricula Should Include Collaboration

Collaborative work methods cannot improve the work of lawyers unless they approach their work with an understanding of the value and the limits of collaboration and with good collaborative skills. Law students are unlikely to achieve such understanding and skills unless law schools and practicing lawyers make serious attempts to teach them. Like other learners and workers, lawyers cannot be expected to succeed at collaborative work without training. If the goal of law school is to teach students to be lawyers, then collaborative skills belong in the law school curriculum. Moreover, collaboration provides students with valuable insights into clinical judgment and the attorney-client relationship. Finally, collaboration also teaches skills transferable to other settings, and promotes a method of learning that can be used in practice.

Like other workers, lawyers often do not possess the skills necessary to do collaborative work. They do not know how to listen, give feedback, analyze tasks, delegate work, or use conflicting views constructively. Also, many lawyers do not have the requisite perspectives for working together productively. Law schools, a significant influence on students' professional socialization, can change this by reinforcing messages about the

105. See Tjosvold, supra note 20; Vicki Byard, Power Play: The Use and Abuse of Power Relationships in Peer Critiquing, Address at the Conference on College Composition and Communication (Mar. 16, 1989) (transcript on file at the Vermont Law School library); Hallie S. Lemon, Collaborative Strategies for Teaching Composition Theory and Practice, Address at the Conference on College Composition and Communication (Mar. 16, 1989) (transcript on file at the Vermont Law School library).


107. Agatucci, supra note 49, at 7. Agatucci notes that college level instruction in collaborative skills is especially needed in multi-cultural work groups. Id. at 6. Professor Bruffee notes that collaboration must be skillfully organized and students re-acculturated to make collaborative learning successful. See Bruffee, supra note 106, at 47; David W. Johnson & Roger T. Johnson, Leading the Cooperative School 4:7 (1989) (leading researchers of the effectiveness of cooperative learning explain that for cooperative learning groups to be effective, students must be taught social skills, including communicating, building and maintaining trust, providing leadership, and managing conflicts).

108. Tjosvold, supra note 20, at 48 (recommending training, practice, and positive experience, since group members cannot be expected to be skillful in using conflict constructively).
value of collective, as well as individual, competitive work.\textsuperscript{109} For example, the City University of New York Law School is a new law school, whose mission is to re-examine traditional legal education. Accordingly, the three-year curriculum is designed to teach students collaborative skills by means of simulation exercises and contact with real clients. As many of the examples in this article demonstrate, law schools help students become better collaborators by encouraging them to value and to practice collaboration.\textsuperscript{110}

Simply working together does not ensure that students will develop the emergent knowledge that collaboration can yield. Law schools also must teach students to overcome barriers associated with joint work. The prospect of a better process—and thus a better product—is lost unless these future lawyers learn to use methods that encourage actual participation by all collaborators. Otherwise, joint work risks silencing rather than including new perspectives in the decision making process.

By studying collaborative skills and perspectives in law school, students examine some of the patterns of behavior that exclude participation.\textsuperscript{111} They learn how gender, race, and professional expertise historically have excluded voices within the

\textsuperscript{109} Law schools traditionally stress individual competition. Furthermore, students have been socialized regarding lawyers' work long before they come to law school. From fictitious lawyers like Perry Mason and those in \textit{L.A. Law} to real life lawyers like F. Lee Bailey, most of the images students see are lawyers working alone on behalf of individual clients.

\textsuperscript{110} One of the struggles that we addressed as we developed a curriculum involving significant collaboration was how to judge individual competence in the context of a collaborative learning environment. Another problem we faced was what to do about work that was really the work of one but was signed by multiple collaborators. To address these problems we designed a "Collaboration Code" (on file with the author) that identifies what is meant by collaborative work, and faculty and student responsibility in designing and carrying out collaborative work. \textit{See also} Tjosvold, supra note 20, at 171 ("Cooperation is a double-edged strategy: People work effectively and learn skills that will help them learn to work more effectively in the future.").

\textsuperscript{111} Without education on these points, students are likely to repeat prevalent exclusion patterns. \textit{See} Fiorelli, supra note 81. Research on interdisciplinary collaborative medical teams shows that many teams who are not trained in team work do not realize the potential synergy of an interdisciplinary team, highlighting potential problems that power differentials may create for joint work. \textit{Id.} at 9.
profession. These exclusions occur in a number of ways, including limiting who contributes, whose contributions are recognized, and whose contributions are attributed to others. The failure of collaboration is most obvious when contributors are actually excluded from speaking.

The following is an example of how two first-year students participating in a simulated counseling session learned to recognize and to change patterns of exclusion. The two students, a white male and a white female, were giving advice to a white male client (played by another student). The male client and the male student began a conversation which, as it developed, totally excluded the female student. All observers noticed that the men “bonded,” and in the process of bonding ignored the female student. The female student eventually began to argue with the male student about the advice he was giving to the client.

As they reflected on this counseling session, both students learned valuable lessons. By reviewing the videotape, the male student saw how his actions excluded his partner from the lawyering activity, thus preventing the client from obtaining valuable information from the female student. Conversely, the female student profited from having her feelings of exclusion confirmed. Both students learned valuable lessons in collaboration by brainstorming about strategies for dealing with exclusion.

112. See Celia L. Ridgeway & Joseph Berger, Expectations, Legitimation and Dominance Behavior in Task Groups, 51 AM. SOC. REV. 603 (1986). The authors posit a theory that people will be assigned status in a group based on reference to groups that society values, such as men over women, and white people over black people. They theorize that this will happen especially in heterogeneous groups in which all are equal except for statuses based on race and gender. In these groups, the authors theorize those with preferred status will have different expectations about task performance, be given different tasks, and be permitted to dominate in ways that others are not. See also Lemon, supra note 105, at 9 (literature that questions the use of peer review groups as valuable educational experiences for women: a fear expressed by some is that women will not talk as much in co-ed groups and that they will “take care” of group members rather than get the feedback they require).

113. See infra notes 171-77 and accompanying text.

114. A common complaint among white female students, and male and female students-of-color, is that their ideas are ignored unless repeated by a white male. See Weiss & Melling, supra note 80, at 1321. Studies of groups show that this is not paranoia, but an accurate reflection of what can happen in groups. See, e.g., ROBERTA M. HALL & BERNICE R. SANDLER, ASSOCIATION OF AM. C., THE CLASSROOM CLIMATE: A CHILLY ONE FOR WOMEN? (1982).
in the future. Although collaboration offers a tremendous potential for participation, it also may work to silence participants.\textsuperscript{115} By teaching students to participate in joint work without excluding others and without themselves being excluded,\textsuperscript{116} law schools can educate students to become more effective workers in a diverse profession.\textsuperscript{117}

Learning to use expertise to contribute and not to dominate is an especially valuable lesson for lawyers.\textsuperscript{118} Most lawyering tasks require various types of expertise. Thus, a lawyer rarely will be asked to work with another, "wholly ignorant" lawyer. By teaching students collaboration in law schools, students learn the place of expertise in the practice of law.\textsuperscript{120}

When collaborating on a simulation involving comments to an administrative agency's proposed rule, two students struggled with the dominance of expertise. One student, the "expert," had prepared an excellent memo on the proposed rule. Her co-counsel's section was not as well written or as well analyzed. However, in addition to pointing out the problems with the proposed rule, the "expert" had communicated total contempt for the agency. The second student, intimidated by the legal "expertise" of her fellow student, gave her co-counsel only favorable comments, despite the fact that the intimidated student had an expertise that both students failed to recognize. She had worked as an administrator in a similar public agency prior to law school. When the faculty member asked her whether she found

\begin{itemize}
  \item \textsuperscript{115} Byard, \textit{supra} note 105, at 7.
  \item \textsuperscript{116} Bruffee, \textit{supra} note 106, at 47. Bruffee identifies the willingness to grant authority and the willingness to take on authority as two of the three essential ingredients for successful collaboration. The third is good grace and friendliness. \textit{Id}.
  \item \textsuperscript{117} By recognizing that those who are silenced and those who are silencing can learn valuable lessons from collaboration, I do not mean to deny the culpability of those who silence others or to "blame the victim." However, I think that it is important to acknowledge the difficulties of participation.
  \item \textsuperscript{118} See Fiorelli, \textit{supra} note 81, at 1-12; Tjosvold, \textit{supra} note 59.
  \item \textsuperscript{119} The term "wholly ignorant" comes from Kenneth Bruffee's article, \textit{Collaborative Learning and the Conversation of Mankind}. He uses the term in refuting claims that teachers, rather than other students, should provide students with feedback on their writing. Bruffee, \textit{supra} note 64, at 644. I have effectively used the term with students on many occasions—often as hyperbole for what is happening in the collaboration.
  \item \textsuperscript{120} Lopez, \textit{supra} note 85, at 381 (recognizing the importance of teaching students who will become lawyers how to work with subordinated groups and how to be collaborators with their clients).
\end{itemize}
her co-counsel's memo persuasive, she explained that, as an administrator, she might reject the comments because of the memo's tone. The intimidated student was not as "wholly ignorant" as she had assumed herself to be. Instead, she was able to give the "expert" valuable feedback.

By assuming that legal analysis was the sole expertise needed, the "intimidated" student misjudged her ability to contribute. This collaborative process allowed both students to see the importance of examining the variety of expertise often required to produce the best product. This insight is especially important since the lawyer, often seen as the "expert," may fail to recognize and encourage the client's expertise.

Another reason collaboration must be taught in law school is that the hierarchical structures common in the profession can inhibit collaborative exchange. By learning to collaborate with law professors, students learn to overcome some of the difficulties associated with collaborating in a hierarchy.121 By carefully defining the parameters of collaboration and by acknowledging how the hierarchy effects the collaborative process, overall collaboration within the hierarchy is improved. Students learn how to participate fully in collaborative tasks and, at the same time, maintain a relationship with their superiors that acknowledges the hierarchy. For example, when teachers retain the power to grade and, at the same time, delegate authority to the group for collaborative decision making, students learn how to function in an office that appears to have an ambiguous hierarchical relationship.122

The skills learned in collaboration are helpful for other kinds of joint work. Listening to and understanding differences will improve the ability of supervisees and supervisors to "read" each

121. See Freedman, supra note 90, at 860-61 (discussing both the possibility and the difficulty of a collaborative relationship in which the professor grades students).

122. Teachers need to be very explicit with their students about whether there is genuine collaboration or whether the students simply are providing input to the teacher, who makes the decisions. These distinctions will help students develop clarity when they work with bosses or become bosses in their careers. When collaboration is used in a work environment that is otherwise organized hierarchically, the hierarchy may become hidden. Students need to learn to recognize this ambiguity so that they are not disadvantaged.
other.\textsuperscript{123} In addition, lawyers who are able to think creatively and systematically about how to divide work will be more efficient organizers, capable of dealing with even the most hierarchically organized trial team.

Finally, collaboration should be used in law schools because it is a powerful method for teaching clinical judgment. It teaches students to look at their work through someone else's eyes\textsuperscript{124} and, in the process of doing that, to identify their own biases and assumptions. As part III develops in detail, most people, including lawyers, tend to work in relatively predictable patterns of decision making, learning, organizing, and presentation. Collaborative work presents opportunities for introspective examination, and enables people to break these intuitive patterns. Working with others and sharing decision making provide additional insights into these patterns, especially when the co-workers have different values, assumptions, and work styles.\textsuperscript{125}

Collaboration, with feedback as an integral part of the process, is a mode of work that promotes learning.\textsuperscript{126} Because law schools cannot teach students everything that they need to know to be able practitioners, learning how to learn is a goal of legal education.\textsuperscript{127} Collaboration furthers this goal by providing two distinct types of learning. The first is learning by modeling.

\textsuperscript{123} Michael Meltsner et al., \textit{The Bicycle Leader's Dilemma: Talking About Supervision}, 13 VT. L. REV. 399, 425-27 (1989) (recognizing that consciousness of communication and learning style differences is critical for effective supervision).

\textsuperscript{124} See Bruffee, supra note 106, at 44-45. The author describes a study conducted by M.L.J. Abercrombie, which is reported in her book, \textit{The Anatomy of Judgment}. Abercrombie found that when she asked a group of medical students to diagnose the patient in groups, the students acquired better medical judgment faster than individual students working alone. See also Byard, supra note 105, at 6 (students remember prior feedback by adopting the vantage point of the other in subsequent written work).

\textsuperscript{125} John M. Sutton et al., supra note 72.

\textsuperscript{126} See Donald F. Dansereau, \textit{Transfer from Cooperative to Individual Studying}, J. READING, Apr. 1987, at 614 (college students' individual reading and studying were improved after a cooperative learning lesson focused on these skills).

\textsuperscript{127} From the early beginnings of clinical education to the present, clinical educators have advocated the clinical method as one which would teach students a process of learning from experience which they could continue to use after graduation. See, e.g., Gary Bellow, \textit{On Teaching the Teachers: Some Preliminary Reflections in Clinical Education as Methodology}, in \textit{CLINICAL EDUCATION FOR THE LAW STUDENT} 374, 379 (1973); Meltsner & Schrag, supra note 4, at 586; Anthony G. Amsterdam, \textit{Clinical Legal Education—A 21st Century Perspective}, 34 J. LEGAL EDUC. 612, 617 (1984); Goldfarb, supra note 87, at 1651-53.
When one learns how someone else works, she can ask how that person would do a particular task. The second type of learning is learning by doing. By reflecting on their work, students learn how to learn from their experiences. Often, learning from experience is complicated by the difficulty of analyzing the experience. With more than one participant, this process of identifying what happened, as well as why it happened, is improved. Thus, collaboration helps students learn how to learn by encouraging them to seek and give feedback.

Collaborative skills can be developed throughout the law school curriculum in moot court projects, study groups, joint examinations, and clinical programs. As the examples in this article demonstrate, simulated and live-client programs, in which students work together on cases and projects, provide excellent opportunities for teaching collaborative skills. If students are taught to work together and to reflect on their joint work, they will learn valuable lessons about themselves and about working with others. The remainder of this article presents ways to help students organize and gain insights from their work.

II. MODELS OF JOINT WORK

This section identifies three different models of joint work: the collaboration model, the input model, and the parallel work model. These models reflect different ways of organizing work that lawyers do together on behalf of their clients and on behalf of the organizations for which they practice. Through the use of these models, lawyers can identify who will make decisions, who will be responsible, and who will actually do the work. In the collaboration model, shared decision making predominates, whereas in the input model one decision maker seeks input from others. In the parallel work model, different lawyers work on separate pieces of one case or project and have little involvement with each other. These different models help identify the appropriate questions to ask when work is being organized.

None of these models is a competitive model. Rather, each assumes that lawyers are working together with common objectives for a client or an organization, and each rejects competition as a method of organizing work to accomplish common objectives. Competition is an inappropriate means of organizing joint work because the competitive process may cause co-workers to hide information and, therefore, impede the potential for emergent knowledge.\textsuperscript{129} Also, competition among co-counsel may violate the professional responsibility mandate that lawyers not participate in matters in which they have an adverse interest.\textsuperscript{130}

These models do not describe how an office is organized. Instead, they describe how work is accomplished. An office may be hierarchically organized and still use the collaborative model of shared decision making for some joint projects. At the same time, offices that have no hierarchy can use an input model effectively. At different points in the work process, most co-workers will use all three models.

\textbf{A. Collaboration Model}

The most basic characteristic that distinguishes collaborative work from other joint work is that co-workers share decision making. There is no "boss." However, not every aspect of collaborative work needs to be completed through shared decision making. In fact, one of the first decisions that collaborators often make together is who will make decisions individually about aspects of the joint work. A collaboratively prepared project requires only that group decision making predominate. Thus, where lawyers work collaboratively in co-counseling a case, each expects to play a role in evaluating major options and in setting

\textsuperscript{129} See Tjosvold, \textit{supra} note 20, at 19-27, 34-35 (citing other scientific findings that competitive work environments are not the most effective or most efficient, thus challenging notions that through competition we realize our best work product).

\textsuperscript{130} See Twitchell, \textit{supra} note 2, at 734-37. Twitchell relates stories of tort litigation and money issues involving teams of lawyers in class actions. On the team, all the lawyers share the primary goal of economic recovery for the class members but differ considerably on the important objectives: "Some wanted the professional renown of managing a successful trial; others sought to publicize the problems of Agent Orange through a trial; still others wanted only a quick settlement." \textit{Id.} at 741. Twitchell demonstrates how competitive goals can adversely affect team cohesiveness and client representation.
priorities, such as which arguments to present to a judge, which witnesses to call, or what to request in damages. Nonetheless, these lawyers may choose to delegate a wide range of decisions, such as which reporting service to use, or what questions to ask a particular witness. The key to the collaborative model is giving each lawyer meaningful control over the direction of the case. Thus, shared decision making is the characteristic that distinguishes the collaborative model from both the input and parallel work models.

In the input model, one person makes decisions after consulting with other group members. In the parallel work model, neither shared decision making nor consultation occurs. Because shared decision making is essential to collaboration, good collaboration requires that all co-workers make a genuine contribution and believe that the collaboration process is a worthwhile endeavor. Without respect for one another and for the process, the shared decision making that collaboration requires is more difficult.

What follows from the shared decision making of collaborative work is that co-workers share responsibility for the final product. Collaborators share responsibility for the quality of the process, for the final product, and for the ethical decisions embodied in the product. Thus, even if some decisions are carried out by a single group member, they are still the collective responsibility of the whole group.131

Sharing responsibility for decisions means co-workers must exchange ideas through feedback and discussion, so that perspectives and approaches are synthesized. Thus, the third characteristic of collaboration is that interactive exchange is required. Through the exchange of ideas and feedback, the final product benefits from the emergent knowledge of the group. Although the

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131. See infra notes 138-39 and accompanying text (discussing the ethical responsibilities of those who give input). A common example of this distinction occurs in students' moot court briefs. Students are often assigned separate issues in a case. The brief is pasted together with little input or shared decision making from co-counsel. Neither student feels responsible for the other's work. The program is set up to promote this type of joint work. By doing this, programs may inadvertently be ignoring professional responsibility issues because they fail to promote joint decision making and students' acceptance of joint responsibility.
input model allows the decision maker to reject the ideas of co-workers and the parallel model never exposes co-workers to one another's ideas, the collaborative model requires co-workers to resolve their conflicts. However, resolving conflict alone does not create the synthesis of ideas that is the goal of collaboration. Collaboration requires that co-workers not "let go" of ideas too quickly because harmony is valued over conflict or because individual portions are valued more than the collective product. Thus, good collaboration recognizes the value of conflicting or differing ideas and seeks a wise resolution to disagreement, rather than agreement at the lowest common denominator.  

Finally, issues surrounding delegation of work are more complicated with collaboration than with the other two models. Delegation involves deciding what tasks exist, how they will be accomplished, who will do them, who will have input, what timetable will be used, and which projects will involve joint decision making. In all joint work, delegation is an issue. In collaboration, however, more options and more complex considerations exist. Workers must decide how to delegate so as to maximize individuals' experiences, expertise, work styles, communication styles, and values. They also must delegate so as to promote shared decision making, develop appropriate synthesis, and facilitate the articulation and resolution of disagreements. Thus, collaborators may delegate a variety of work without delegating ultimate decision making authority. Although an unarticulated equality-of-work standard is often used to

132. In my experience, issues surrounding when to let go of ideas and when to advance them are more complicated for students engaged in actual representation of clients, where professional obligations demand zealous representation, than they are in simulation. In simulation, only school work is affected by compromise. However, the decisions about when to "let go" in live-client cases seem even more difficult than in simulation settings because of the consequences to real clients. In some ways, this provides for greater learning. Students are not letting go just for the sake of agreement—a process that produces "group think." Instead, they struggle for the best solution and that requires more than "letting go."

133. See infra part III (discussing each of these differences at length).

134. I have noticed that a major source of disputes that arise in collaborative work revolve around the questions about whether someone did her fair share of work. The measure is often whether each produced an equal amount of work. The teacher's role in those situations is to encourage a conversation about how "fair share" requires that the participants think in a sophisticated way about the tasks involved and the contributions each made to the tasks. This issue of who spent the most time will likely be less of an issue in private practice where lawyers who are paid by the hour may seek to spend the
divide work and to judge whether it is truly collaborative, this is not an appropriate standard. Successful collaboration does not require that each person do the same thing, use the same time-frame, or produce an equal amount of work.\textsuperscript{135}

\textbf{B. Input Model}

The input model often looks like the collaborative model because it involves sharing ideas on a work product, providing feedback\textsuperscript{136} on a work product, or both. Consequently, like collaboration, the input model can produce a work product that benefits from the synthesis of multiple perspectives. For example, when co-workers brainstorm strategies before one of them decides which strategy to employ, the group usually generates a wider selection of more diverse strategies than the decision maker would have generated alone. However, in the input model, co-workers do not share decision making authority.

In all joint work where one person performs the final task or does the final edit, the other co-workers necessarily have a somewhat different and lesser decision making role. In the collaboration model, the person performing the final task or doing the final edit has a very limited authority to change prior decisions, and usually has no authority to abandon prior significant decisions. In contrast, the input model provides one person, usually the person performing the final task or doing the final edit, with ultimate authority to make any and all decisions. The input model may be used in conjunction with a collaborative model for certain tasks. For example, several lawyers may be

\begin{footnotesize}
\textsuperscript{135} When collaboration is used in law schools as a method of organizing simulated work, it becomes a method of lawyering and learning. In those instances, the goal of the process is to educate as well as produce something. Collaborative learning theorists note that it is important to teach students that the learning, rather than the product, is the goal. Otherwise, work may be organized in a way that some learn by doing, and others do not learn because they are not allowed to do so. \textit{See} Lemon, \textit{supra} note 105, at 3-4.

\textsuperscript{136} In his division of the types of ways to organize joint work, Tjosvold has three categories: collective, competitive, and independent. By focusing on the sharing of ideas and not decision making authority, Tjosvold combines the input and collaborative models into his single category of collective work. \textit{See} TJOSVOLD, \textit{supra} note 20, at 19-22. However, I see value in separating the two ways of giving ideas. Although the similarities are strong and require similar skills, the skills and products are influenced significantly by the requirement that joint decision making occur in one model and not the other.
\end{footnotesize}
litigating a case in which one of them has responsibility for filing a particular motion. They may agree on circulating a draft for comments, but the decision on what to incorporate and what to reject remains with the author of the motion.

Lawyers often use the input model to obtain some of the benefits of collaboration and to avoid the potential difficulties involved in conflict resolution. Unlike the collaborative model, the input model does not require conflict resolution. In the input model, the decision maker has no duty to discuss disagreements, much less reach consensus, with co-workers. In fact, the decision maker may unilaterally reject co-workers' input. Frequently, those decision makers who work with the input model attempt to integrate co-workers' perspectives, to synthesize their ideas, and to develop group agreement. Ultimately, however, the final decision rests with one decision maker.

Ordinarily, the input model relieves the co-worker of responsibility for the final product, but where lawyers choose to delegate tasks to co-counsel using the input model, each lawyer retains professional responsibility for the case as a whole. Although most lawyers using the input model this way do not feel responsible for the final product, they cannot escape professional responsibility simply because decision making authority is vested in others.

The input model clearly delineates who has final authority for the work product. Thus, it avoids the most complicated delegation issue associated with collaboration. On the other hand, because decision makers want the most useful contributions their co-workers can provide, some of the delegation issues are identical

137. See supra notes 130-31 and accompanying text. In deciding whether to use input or collaboration models, lawyers need to weigh whether the benefits of improved work product and improved process that collaboration brings out weigh the costs of using a process that requires more time.

138. This escape is not a complete escape. For example, if an associate providing input learns of unethical behavior, he may be subject to disciplinary action or may be required to withdraw from representing the client. MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 1-102, 2-110 (1983).

139. See Twitchell, supra note 2, at 762-64 and accompanying text. Twitchell notes that lawyers working together need to clarify the lines of responsibility: "[A]lthough lawyers are clearly responsible for their own acts, teamwork adds subtle shades of meaning to the obligation." Id. at 760.
to those in the collaboration model. The decision makers still must delegate to gain the most valuable input and to take advantage of individual experiences, expertise, work styles, communication styles, and values.

C. Parallel Work Model

The parallel work model involves no shared decision making and requires no exchange among co-workers. After tasks and decision making authority are delegated to co-workers, they do not give each other input or feedback. There is no opportunity for conflict resolution or synthesis.

This model is used often in law practice, especially where the practice is organized by sequential phases of a case. For example, many large tort firms assign different lawyers to handle the pleading, discovery, and trial phases of a case. Each lawyer makes independent decisions about how to handle the phase they are assigned. Even though the decisions made in framing the case will affect later choices, the lawyer responsible for the pleadings does not consult the lawyers responsible for later phases of the case.

The parallel work model can be combined with the input model. For example, to prepare adequately for a negotiation, a partner in a large law firm might need a memo on the recent relevant cases, an analysis of the damages suffered by the client, and a search of the depositions for important evidence. She would assign associates to work separately on each of these tasks, in parallel fashion. The associates make independent decisions, produce separate work product, and provide input for the

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140. This method of organizing work is used also in public defender organizations. The debate about whether to organize offices horizontally, one client-one lawyer for all phases, or vertically, a different lawyer at each phase of the case, points out the limitations of the parallel model. Twitchell explains the concerns of some critics: "[L]awyers handling only part of the case . . . tend to have a limited perspective. Without responsibility for the entire case, they may fail to relate to the client or to focus on the case as a whole . . . ." Twitchell, supra note 2, at 723. In both tort practices and legal aid practices, the benefits of the vertical systems are that people with the most trial expertise are trying the cases. In the torts area, lawyers with a nursing background often do the pre-trial litigation because of their expertise.
partner's upcoming negotiation that the partner alone will synthesize.

The parallel model works best when no synthesis is necessary, or when it is combined with another model to provide the opportunity for synthesis. Many students who are not taught collaborative skills use the parallel model of organizing joint work reflexively. They divide the task so that each person works independently. Although these students often report successful “collaboration,” especially when each has worked hard, they frequently present a work product lacking in synthesis.  

The same is true of lawyers who use the parallel work model. For example, a trial lawyer in a tort firm may see a theory of the case that the pre-trial lawyer did not spot. Consequently, the trial lawyer may have to juggle pleadings and pre-trial work to present a winning theory. This scenario demonstrates that case management based on the parallel work model can lead to inefficiency.

D. The Value of Using Models

Lawyers engaged in joint work often use a combination of models. By developing a common vocabulary about joint work, lawyers can minimize two sources of potential misunderstanding: who will produce what and who will decide what. By explicitly agreeing upon which model they are using, lawyers can avoid such misunderstandings.

Although no two lawyers work jointly in exactly the same way, understanding the different models can help lawyers define limits and expectations about responsibility and feedback, as well as decision making authority. Because collaborative work

141. See Appendix A for a copy of a structured collaboration reflection memo. In the reflection that students write after the simulation, some students report excellent collaboration because there were no differences of opinion. These reflections then can be used to reinforce the message that the purpose of joint work is to elicit differences. If the students have organized their work so that they never get the benefit of these differences, they have missed the benefits of collaboration. By teaching students the different models of organizing work, we hope that they will see that they have choices in the way they organize their work as lawyers and that they will not reflexively choose parallel work, but instead will choose the model that fits the task and the individuals involved.
Collaboration in Law Practice

depends on interaction between people who often have different work styles, communication styles, and values, collaborative work is likely to produce more dynamic syntheses. Understanding the differences among the three models—collaboration, input, and parallel work—facilitates the development of the clarity needed to have successful collaborations.

III. CHOOSING MODELS: ANALYZING TASKS AND INDIVIDUAL DIFFERENCES

Lawyers must examine the tasks involved in a particular project and the differences that individuals bring to those tasks to decide whether to use the collaboration, input, or parallel models for their joint work, or some combination of the three. The tasks must be identified and analyzed to determine their level of interdependence, complexity, and importance. Such an analysis considers individual communication styles, process values, work styles, expertise, and experience. Each of these steps is critical and interactive. For example, two groups may choose to do the same tasks with different models because the participants have different work styles, thus making some models more suitable than others. Similarly, a group may choose to do different tasks using different models. By considering their individual differences, lawyers can take advantage of the full range of strengths they bring to the joint project.

In electing the collaborative model, lawyers seek to improve the quality of joint work by requiring that co-workers with individual differences engage in shared decision making. The goal is to synthesize the participants' contributions to achieve a better product than any of them could have developed on their own. By analyzing the tasks, lawyers can identify points of critical decision making and determine which task will profit from collaborative work and which should be done by input or parallel work.

Although differences can improve decisions, they also can contribute to making war, poor decisions, or no decision at all. Differences also can spark conflicts that lead to good decisions,

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142. The unresolved conflicts that occurred in the Agent Orange litigation might rightly be described as falling into this category. See Twitchell, supra note 2, at 735-43.
instead of resolutions based on the lowest common denominator.\textsuperscript{143} Furthermore, decision making can become inefficient when considering differences takes so long that any resulting benefit is outweighed by the cost in time and energy. In those instances, using the solo decision maker of the input model may be a more appropriate process for the work group. The point of collaboration is to use differences productively. Lawyers can achieve this goal by first analyzing the participants and the task in question, and then selecting an appropriate model for performing the work.

A. Analyzing the Tasks

Task analysis is the first and easiest step in choosing which model to use. Task identification\textsuperscript{144} is the starting point of this analysis. The steps and tasks necessary to achieve the finished product must be identified to make intelligent decisions about how to conduct joint work.

1. Interdependence

Once the tasks have been identified, the first characteristic to consider in deciding which model to use for a task is the degree of interdependence involved. Interdependence is a function of both the relationships among the co-workers and the relationships among the tasks.

Interdependence among lawyers is common. Lawyers frequently work on a case together or share in the partnership of a firm. Lawyers working on the same case are dependent upon and responsible for the work of the others.\textsuperscript{145} Partners in a law firm depend on each other for income, for the quality of office life, for the resources to support their legal practices, for their

\textsuperscript{143} The joke that a camel is a horse created by a group may be reflective of this type of bad decision. Tjosvold has responded to this joke by remarking that "the group must have worked brilliantly, as anyone who has been in a harsh desert climate knows." Tjosvold, supra note 20, at 47. However, Tjosvold's comments ignore the potential for bad decisions that I have observed groups make when early agreement and concessions are the methods used for group decisions.

\textsuperscript{144} Task identification itself may be a product of work style differences. Some may easily divide the project into parts, others may see it as indivisibly integrated.

\textsuperscript{145} See generally Twitchell, supra note 2.
reputations, and for their debts. Interdependence also exists among lawyers working on similar issues in different cases. Lawyers litigate cases that set precedents for other cases, and they negotiate deals and lobby for laws that affect the entire profession.

Even legal tasks themselves are often interdependent. For example, decisions made early in a lawsuit about causes of action will set the framework for evidence at trial and will limit the grounds for appeal. Often, legal tasks are subdivided and delegated so that decision making is separated from sub-tasks, such as fact investigation, legal research, and legal drafting. Lawyers who must implement decisions also must understand them and, generally, will be more effective if they accept these decisions as well.\footnote{146}

The higher the degree of interdependence of the lawyers' work, the greater the benefits of collaboration.\footnote{147} Participation in decision making results in greater understanding and acceptance of the decisions.\footnote{148} If the interdependence is so high that decisions are to be implemented by others, the collaboration model is usually the most effective and, at the very least, the input model should be used. Whenever decisions seriously affect the responsibilities of others, the collaboration or input models make the most sense.

2. Complexity

Another factor to consider in choosing a work model is the complexity of the task. Complex tasks often involve gathering and coordinating large amounts of information from diverse sources. Complex tasks also generally require the development and evaluation of many options. Therefore, complex tasks benefit most from broad participation and the synthesis of differences.

Collaboration can improve decisions in complex tasks. Collaborative learning theorists have identified the brainstorming

\footnote{146. See supra note 74 and accompanying text.}
\footnote{147. See generally TJOSVOLD, supra note 20; Tjosvold, supra note 59.}
\footnote{148. See generally Niehoff et al., supra note 43, at 340-41.}
phases of a project as uniquely suited to collaborative work. 149 These phases of a project, especially a complex lawyering task, can profit from the larger range of ideas that a collaborative model is likely to generate. Similarly, the evaluation of options also can benefit from the critical input derived from different perspectives. When co-workers avoid masking disagreements or settling for the lowest common denominator, collaborative processes improve the decisions about complex tasks. On the other hand, if the task cannot profit from different approaches, delegation to the person or persons in the group 150 who can best accomplish a particular task will probably yield the most effective joint work process and product. 151

3. Importance

Another factor in deciding which model of joint work to use for accomplishing a task is the importance of that task to the product and the workers. Time is always a limited resource in legal work. Collaboration may improve the work process or product, but it consumes considerable time and other resources. The requisite time must actually be available and the task should be worth the expenditure of the necessary resources if a group opts to use a collaborative model.

In deciding whether the task is worth the time involved in collaboration, lawyers must make two calculations: how much time would be spent by using a collaborative model, and how long

149. Lemon, supra note 105, at 6-9 (survey of university faculty using collaborative methods found that most—81%—use it for pre-writing stage, while collaborative strategies, such as group writing, were used by only 49% of those surveyed).

150. Lemon notes that different collaborative tasks call for different organizational strategies. Pairs work well for an introduction or a collaborative research paper, groups of three are best for in-class revision workshops or researching a topic, and larger groups are optimal for discussions, snowballing, or pyramiding for exploration of a topic. Id. at 10.

151. For example, studies using the Kolb Learning Inventory have identified that people with different learning styles perform certain tasks better than others. See infra note 191. Using Kolb's terminology, researchers have recommended that divergers be used for generating ideas, assimilators for defining problems and formulating models, convergers for evaluating and making decisions, and accommodators for accomplishing tasks and dealing with people involved in carrying out projects. CHARLES S. CLAXTON & PATRICIA H. MURREL, ASSOCIATION FOR THE STUDY OF HIGHER EDUC., LEARNING STYLES: IMPLICATIONS FOR IMPROVING EDUCATION PRACTICES, ASHE-ERIC HIGHER EDUCATION REPORT NO. 4, at 66 (1987).
the task would take if it were completed by other means. Because collaboration involves consensus decision making, initial decision making usually takes longer in a collaborative setting. By comparison, non-collaborative decision making may seem more appealing, but unilateral decisions can require time-consuming revisions and task realignments, and can result in problems that are more detrimental to the quality of the work process and the final product.

B. Analyzing Individuals' Differences

In addition to analyzing the tasks, the individual co-workers' differences must be analyzed in choosing whether, and when, to use the input, parallel, and collaborative models for joint work. This is more difficult than identifying tasks because it presumes that participants are conscious of their own work styles, communication styles, and values. Such analysis further depends on the participants' willingness to share these insights with their co-workers. In addition to their substantive differences, which are greatly influenced by their social roles, experience, and expertise, lawyers also have process differences that derive from different work styles, communication styles, and values. When lawyers have different substantive ideas about legal options, the differences are usually clear or are relatively easy to clarify, thus allowing for clearer synthesis or other resolution. However, when lawyers differ in methods of communication or work, these differences are often subtle and unconscious. As a result, resolution can be awkward or impossible.

By identifying individual process differences and understanding their impact on lawyering, lawyers can use process and substantive differences more productively. They can learn about their own intuitive ways of working, and they can learn to value and to use other methods of approaching work. The collaboration model creates the greatest incentive and the greatest opportunity for lawyers to learn from co-workers' different approaches. Thus, collaboration has the greatest potential to

152. Psychologists and educators tell us that people work in consistent and unconscious ways. See, e.g., Peters & Peters, supra note 18, at 174. Psychological indicators such as the MBTI can be used to identify different learning and working styles, information that has proven helpful in developing collaborative working skills.
enhance the work process and the product through more effective planning, delegation, feedback, conflict resolution, and synthesis.  

C. Communication Style

This section starts with an analysis of communication style differences because communication of ideas is the necessary prerequisite for a process that builds on the different group members' ideas. If the communication patterns of the group exclude some from participation, the benefits of the collaboration model—and even the input model—are lost. The illusion of collaboration may be present, but the benefit of joint decision making—emergent knowledge—never materializes.

Differences in communication styles critically influence lawyers' joint work. As with all the differences discussed in this section, communication differences offer the potential to incorporate a range of communication styles that can improve joint work. However, these differences also increase the potential for miscommunication or silencing of some participants. Thus, learning to recognize differences and to speak in ways that promote participation and understanding are critical skills for effective joint work. Lawyers must be able to communicate about different ideas to collaborate.

153. See supra notes 57-75 and accompanying text.

154. Even the American Bar Association has recognized the critical importance of effective communication skills. In 1991, the ABA convened a national conference on "The Emerging Crisis in the Quality of Lawyers' Health and Lives—Its Impact on Law Firms and Client Services" and subsequently published a report. According to the report, communication problems within firms and with clients pose one of the most serious problems for lawyers working in groups. The report recognizes the paramount importance of effective communication and stresses improved communication as a solution for improving attorneys' quality of life:

Within the firm, failed communication results in a loss of collegiality, increased political intrigue, insecurity, and general dissatisfaction for both associates and partners. Improving communication is critical to developing a firm culture in which all persons in the firm, including support staff, feel in partnership with each other in accomplishing the goals and work of the firm.

One measure of success in collaboration is whether all participants contribute their ideas. If not all workers are contributing, then the group must assess whether its communication dynamic excludes some members. Even if a group comprises only two people, one person's ideas may dominate because of that person's communication style. For example, a person with a fast-paced style of communication may unintentionally silence a person who communicates at a slower pace.155

Listed are some of the differences in communication styles that result in silencing and misunderstanding. By recognizing the different ways that people communicate and by recognizing that these differences can silence some people, lawyers can learn valuable lessons for collaboration and other joint work models.156 Perhaps most importantly, students of collaboration can learn to manage communication patterns so that all group members are willing or able to participate.

1. Sharing Tentative Ideas Versus Completed Thoughts

Lawyers communicate their ideas to one another for a variety of purposes. Some use the communication process to develop their thoughts. These lawyers are very comfortable putting out tentative ideas, and expect that the process of discussion will transform their initial thoughts into polished decisions. Others feel comfortable only when they fully flesh out their ideas by themselves. These lawyers are frequently silent in early brainstorming sessions, and prefer individual work as a prelude to joint work. Although their co-workers may be willing, or even eager, to share tentative ideas for debate and discussion,157 these lawyers hold

155. See infra notes 174-77 and accompanying text.

156. Learning to recognize differences in communication styles and thereby improving understanding of what is being communicated also will improve a lawyer's communications with clients. Learning to be an effective communicator is a critical lawyering skill in both the courtroom and the office. Genuine listening to clients is especially important to public interest lawyers, many of whom come from cultures different than their clients. See The Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development—An Educational Continuum, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS BAR 172-76; see also Carl Hosticka, We Don't Really Care About What Happened, We Only Care About What Is Going to Happen: Lawyer-Client Negotiations of Reality, 26 SOC. PROB. 599 (1979).

157. See infra notes 167-73 and accompanying text (discussing the difference between debate and discussion).
back to organize their thoughts before talking to others. By recognizing these communication style differences, lawyers can increase the chances for a genuine exchange of ideas.

For example, consider the comments of student A, who had volunteered to do the same trial simulation twice, once with student B, and once with student C. In reflecting on her work with student B, student A reported a smooth relationship. They got together early and often to prepare. In their discussion of the case, they worked together to learn what they did not understand and developed a theory of the case. They comfortably discussed tentative ideas. In contrast, student A reported that her collaboration with student C was much less satisfying and productive. Student C did not want to get together until he had thoroughly prepared the case himself. This disturbed student A, who preferred to work together early and share tentative ideas. She felt that her collaboration with student B had resulted in a better synthesis of ideas, whereas her experience with student C involved disputes about when they should get together. Student C also recognized the problem that student A had identified: "I think we could both recognize that the other person has distinct working patterns which each of us failed to appreciate. . . . I could have been more cooperative in giving of myself earlier in the process." 158

Another problem with these communication style differences is the negative judgments which may be made when people with differences work together. 160 The person who shares only

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158. Student-lawyer A had other differences with student-lawyer C, especially "yes, but" versus "yes, and" communication styles. Lawyer B was a woman and lawyer C was a man. How much did this contribute to their different styles? Like other social categories and the experiences that accompany such categories, gender can shape perceptions, values, and communication styles. See infra note 77 and accompanying text (discussing the author's definition of difference).

159. In addition to differences in communication styles, student C valued independent work more than student A, and tended to be a person who worked at the last minute. Differences in work style preferences also can create problems for collaborative work. See infra notes 180-86 and accompanying text.

160. In my experience as a clinical teacher of collaborative methods, I have observed that students in collaborative work are reluctant to suspend judgment about the "right" or "wrong" way to accomplish a joint task. These judgments seriously interfere with the joint work process. Although not every approach to work is equally good, there are far more acceptable ways of proceeding than most may acknowledge.
developed thoughts may resent having to give feedback to someone whose ideas are not fully developed. An example of this occurred when student A complained to her supervisor in a live-client clinic that she was tired of her co-counsel, student B, asking for feedback on work product that was so underdeveloped. She thought that student B showed a lack of respect for her by asking her for feedback on a direct examination that had many questions and open spaces. After all, she explained to the supervisor, she asked only for his input and approval of a product that she considered the absolute best she could do by herself. She did not think that his request for her input at this point was “right.”

Lawyers often interpret the meaning of communications and silence on the part of clients, other lawyers, and judges. By understanding at what point in their thinking process different people communicate, lawyers improve their interpretations of silences. When one lawyer remains silent while others are laying out ideas, the group should ask why. Frequently the person who shares tentative ideas may view the person who is uncomfortable sharing until later in the process as someone who is not “pulling her weight” or as someone who is not sharing ideas to obtain a competitive advantage. By comparison, the person who prefers to communicate more polished ideas may mistakenly think that the person who readily shares thoughts and impressions actually is articulating fully-formed ideas.

By understanding differences in when lawyers communicate fully-formed ideas, lawyers can plan, prepare for, and conduct joint meetings more effectively. Lawyers can clarify whether the purpose of the meeting is to develop ideas or to evaluate fully-formed ideas. Finally, lawyers can clarify the meanings of their own and others’ silences.

161. It is possible that these two students, who were co-counsel and, thus, bound to collaborate on the case as a whole, were working with different models for the planning of examinations. Perhaps one might conclude that student B was using the collaborative model and student A was using the input model. However, having known these two students as I did, I believe that the differences were more attributable to each student’s view of the purpose for the communication rather than a conscious selection of a model for the joint work.
2. Oral Versus Written Communication

People have different modes of communication: some prefer oral, some written. 162 Lawyers often have choices about how they wish to present information and how they wish to receive information. 163 These choices are influenced by the nature of the tasks and by the communication style preferences of the co-workers. 164 Some prefer one mode for giving ideas and another mode for receiving ideas. 165 Others may prefer different modes for different types of communications; many seem to prefer written communication for presenting factual and legal information, and oral communication for developing strategic options and making decisions. Because lawyers usually communicate large amounts of material, lawyers must learn which modes of commu-

162. This too may be the result of learning style preferences. "Learning style" refers to consistent patterns used by an individual to learn and use information. A visual learner may prefer to learn through written information from co-counsel before they meet, whereas an aural learner may be quite satisfied with an oral presentation of the material at the meeting. Another possible explanation for these differences may be that the person who prefers written communication of ideas is an introvert, and the one who prefers oral communication is an extrovert. See Otto Kroeger & Janet M. Thuesen, Type Talk at Work 181 (1992); see also Beatrice Moulton, Cross-cutting Themes in the Teaching of Traditional Lawyering Skills, AALS Conference on Clinical Education (1988) (transcript available from author); Peters & Peters, supra note 18, at 175-78.

163. Thus, lawyers must exercise their judgment and perhaps reflect their own communication preference in choosing between a written or oral presentation. For example, a lawyer doing research to provide input to the group must decide whether to present the findings in oral or written form. A lawyer preparing for trial must decide whether the judge will need a memo in support of a motion in limine or whether oral argument at the time of admission of the evidence will suffice (but a competent practitioner would have both).

164. Sometimes the task absolutely requires written communication, for example, where the next step in the process is to judge whether the specific words in a document reflect the understanding of the parties. Other tasks are primarily oral communication: trials, mediations, negotiations, interviews, counseling. See Paul Bergman, The War Between the States (of Mind): Oral Versus Textual Reasoning, 40 Ark. L. Rev. 505, 519 (1987).

165. Id. at 506-07. Bergman hypothesizes that different thinking is associated with written and oral communication. Written communication imposes on readers a more logical and abstract thinking whereas oral communication is more intuitive and emotional. Bergman explains that one of the reasons for these differences is the amount of non-verbal communication that is present in most oral speech. Id. at 526. When one lawyer suggests, "Let's see it on paper," this may be more than a way to stall. Instead, the lawyer may be signaling the end of the brainstorming phase. This lawyer may be comfortable doing evaluation only after the ideas are developed on paper. Frequently, the issues for collaborators are (1) when in the course of working together and dividing work it makes sense to reduce the ideas to writing, and (2) who will do it.
communication they prefer. They must also learn to spot clues from others about their preferred modes of communication.

In deciding what communication mode will be most effective, each co-worker must identify her own preferences, and then communicate these to the work group. By doing so, the group can enhance the likelihood of effective communication. The reflections of two students with different communication modes working together on a simulated hearing illustrates the potential difficulties of working in different modes. According to student A: “We each did our own work and then met to produce joint work. My early work is always done in my head, rarely do I put it down in written form. My co-counsel had a lot of written material so at times we worked from that.” Student B reported: “A and I met several times to work on preparing the questions for the examination of witnesses. A is more comfortable thinking about the material and not writing until she has a clear understanding of the subject. I tend to write and edit.”

Did this result in successful collaboration—were the lawyers able to produce the best possible product, learn from each other, and consider the work successful? Student A wrote: “It concerned me that this difference in our styles might cause her to feel taken advantage of, but she seemed comfortable.” Student B actually hinted at some problems with this arrangement: “A was very clear and honest in describing her work habits to me. I don’t think I really articulated my needs to her. A is very easy going and I’m sure if I had discussed what my expectations were, I know she would have been responsive.”

These two students tried somewhat successfully to have conversations that would allow each to communicate in the way she felt most comfortable. However, when student B was asked to give feedback to the orally presented ideas of student A, she found this difficult. Not surprisingly, student A did not experience this difficulty because she was allowed to use her preferred

166. By learning to do this together, lawyers will learn to think about this issue when eliciting and presenting information to clients. If a client prefers written communication, for example, putting things in writing and drawing diagrams may be most effective. On the other hand, if the client prefers conversation, oral communication is better. If lawyers do not know the client’s preference, lawyers should learn to use both modes despite their individual preferences.
style of communication for her presentation of ideas and her feedback. If they had communicated about this difficulty earlier, they might have found a way to better accommodate B’s communication style.

3. “Yes, but” Versus “Yes, and”

Lawyers use a full range of conversational styles to communicate their ideas with courts, clients, and opponents. The most effective lawyers are accomplished debaters as well as diplomatic facilitators. They communicate both their own ideas and their openness to the ideas of others. Like most people, lawyers have preferred styles for presenting and communicating their ideas. Effective exchange of different ideas is critical in joint work. Consequently, collaborators must appreciate communication style differences, particularly when they contribute their conflicting ideas.

Linguist Deborah Tannen suggests that individuals tend to communicate ideas in one of two ways: the debater’s “yes, but,” or the discusser’s “yes, and.” These two ways of communicating ideas can have serious implications for the collaborative process. For instance, two student co-counsel in a live-client clinic were asked to identify what was useful about collaboration. Student A favored debates because “you get to fight over ideas and come up with other ideas as a result.” Student B described the best collaborations as discussions where “you put tentative ideas out and play with them.” Absent an awareness of their own communication preferences, these students undoubtedly would have trouble exchanging ideas: one would debate, the other would discuss.

167. See Deborah Tannen, You Just Don’t Understand, Men and Women in Conversation (1990). The terms “yes, but” and “yes, and” are mine, and come from years of hearing different students start conversations with these phrases in response to one another’s ideas.

168. Tannen identifies these as classic differences between the way men and women relate and speak. Id. at 167-68. In the present example, the “fighter” was a male and the “discusser” was a female. See also Mary Field Belensky et al., The Development of Self, Voice and Mind: Women’s Ways of Knowing (1986).

Belensky identifies two different methods for learning. One method of learning, separate knowing, involves an impersonal procedure for arriving at the truth. The other method of learning, connected knowing, uses empathy to understand an idea rather than judge it. Separate knowers tend to debate and challenge ideas. Connected knowers are
Different communication styles can be mistaken for inflexibility. For the "debater," arguing may indicate only a belief that the process of arguing results in the development of better ideas. However, for the "discusser," arguing signals an inflexible commitment to an idea. Deborah Tannen explores these two approaches and attributes the debate style of communication to men. Tannen notes that men use an argumentative style to show respect, intimacy, and support. Tannen explains that, conversely, women ordinarily do not interpret that style as supportive or as seeking intellectual engagement, but as undercutting.

Lawyers must communicate across gender and ethnic lines to clients, courts, and adversaries, as well as co-workers. By understanding the differences between the debate and the discussion styles, lawyers can be more effective communicators. Furthermore, lawyers who understand style differences will listen more carefully to the different ways ideas are expressed, and, therefore, will assess the speaker's commitment to the idea more accurately.

cooperative. According to Belensky, there is "no hard data" indicating that separate and connected knowing are gender-driven, but they may be related. Id. at 103. Belensky's study did find that "even among the ablest of separate knowers," women students are reluctant to engage in critical debate. Id. at 105. Belensky's findings reinforce the need to develop clinical curricula that recognize differences in both learning preferences as well as gender dynamics. See supra notes 158-59 and accompanying text (discussing gender differences).

169. TANNEN, supra note 167, at 159-70. Tannen does not see these differences as anything other than cultural differences in the raising of boys and girls in the United States. She notes that in other cultures, the debate model is used by both sexes as a sign of respect and friendship. Id. at 161. Tannen likens the communication between men and women in the United States to cross-cultural communication, "prey to a clash of conversation styles." Id. at 42.

170. Id. at 169-70. In explaining the difference between these two styles, she repeats a question asked of her by a male student: "Doesn't much of the material of your book fall more easily into the realm of rhetoric and communication than linguistics?" She highlights the difference in approaches when she rephrases the question as "Could you expand on the relationship between your work and the fields of rhetoric and communication?" or "I agree with you, but I have trouble answering people who ask me why what I do is linguistics. How do you answer people like that?" She notes that men may experience the first question as a way to engage respectfully in a discussion whereas she interpreted it at the time as a challenge to her authority.
4. Direct and Indirect Communication

The degree of directness is another variant in communication style that affects the way people articulate their ideas in a group.171 Like the "yes, but?/"yes, and" variation discussed earlier, differences in directness affect how lawyers interpret others' statements, and how lawyers communicate about their differences. For example, some co-workers make suggestions using questions: "Shouldn't we be planning for the possibility that the government will try to introduce these documents against our client?" Others will communicate the same idea more directly: "We have to file a motion in limine." Is one rude, the other polite? Is one honest, the other manipulative? Is one giving orders, the other not? Does the "we have to file a motion in limine" really mean "you file the motion in limine?" Is the question meant to inspire a discussion, but the statement meant to argue a position? All of these interpretations are possible when individuals do not clearly understand the communication styles of their co-workers.172 Thus, effective communication requires understanding that the manner of articulating an idea may reflect a communication style as much as it does a commitment to an idea.

One practical way to determine what is truly being communicated is to have explicit conversations about these process differences. However, the ability and the willingness to have such direct process discussions may vary significantly in different

171. Even an assessment about whether a communication is direct or indirect can be a culturally imbedded assessment. Delpit, in identifying miscommunication across cultures, notes that members of a cultural group communicate implicitly to other members of the group. Often non-members of the group will interpret the same communication as indirect, whereas the members of the group will wonder why the non-members do not understand. See Lisa D. Delpit, The Silenced Dialogue: Power and Pedagogy in Educating Other People's Children, 58 HARV. EDUC. REV. 280, 283 (1988).

172. Delpit notices that these differences in directives often involve a difference in race. For example, a middle class white teacher might say "Is this where the scissors belong?" An African-American counterpart will more likely say, "Put those scissors on that shelf." Id. at 288. But compare this with Tannen, who describes this phenomena as a major difference between men and women. TANNEN, supra note 167, at 231-32; see also Weiss & Melling, supra note 80, at 1299 (discussing how women law students learn to speak differently as "effective" advocates).
cultures. Cultural differences can influence decisions about what is considered too intrusive to discuss directly with others. 173

5. Pace, Space, and Interruption

The pacing of conversation in a group often influences how much "conversational space" an individual participant occupies. Pacing becomes a problem only when co-workers prefer different paces. If the pacing is similar, lawyers will communicate comfortably, knowing when to speak and when to listen. However, if the pacing is dissimilar, some participants may feel excluded or actually may be excluded. For example, in a conversation between a lawyer who talks slowly and pauses between statements and a lawyer who speaks rapidly and overlaps regularly, the fast talker almost certainly will dominate the conversation. In addition, an interrupter often can usurp a conversation topic. Note, however, that all interruptions need not threaten the collaborative process. Although some interruptions actually change topics or redefine issues, researchers also have found that some interruptions may merely overlap. 174

Pacing differences can cause considerable misunderstandings in working groups. People who talk slowly or who do not jump into conversations may not be heard or valued by fast-talking co-workers. The assumption may be that if "Mary had something to say she would just jump in." However, Mary may have been raised in a culture in which people wait for one person to finish speaking before another speaker begins. Fast-paced talkers may be viewed as intentionally dominating the discussion. Although the domination may not be intentional, it occurs because the fast-

173. Pinderhughes discusses the impact of cultural differences on treatment. She cautions, for example, against pushing members of certain cultural groups to work through their feelings early in treatment because of the cultural reluctance to discuss feelings. See PINDERHUGHES, supra note 98, at 166. In my own experience, I also have observed that a high level of trust is required for people of different ethnic groups to discuss feelings or positions with one another openly.

174. See Peter Kollock et al., Sex and Power in Interaction: Conversational Privileges and Duties, 50 AM. SOC. REV. 34 (1985). "[O]verlaps are those instances of simultaneous speech which occur at or very close to a legitimate transition place or ending point in the present speaker's turn . . . ." Thus, overlaps do not deeply intrude in the speaker's turn. Id. at 38.
paced talkers will set a pace that requires the other to interrupt, something that they will not do.\textsuperscript{175}

The domination may reflect gender, racial, or power differences in the group. Researchers have shown that in cross-sex groups, men talk more, interrupt more, and respond less to the speaker.\textsuperscript{176} Researchers also have hypothesized that power plays a central role in accounting for conversation dominance.\textsuperscript{177} Whatever the underlying causes of pace differences—culture, gender, class, power—co-workers’ failure to be sensitive to these differences can interfere with participation and can undermine collaboration.

**D. Work Style**

Like communication differences, differences in working style can influence the ultimate work product as well as a co-worker’s feelings about the process. If mediated successfully, different work styles can enhance a final product because multiple perspectives are included. For example, if a creative, intuitive lawyer works successfully with a logical planner, the work product can benefit from their respective strengths. However, if these two

\textsuperscript{175} If the fast-paced talker belongs to a dominant group (e.g., white in a multi-racial group or male in a mixed-gender group), the excluded talker may interpret the exclusion as an attempt to silence and control. The interruption may be an attempt to control and silence; even if it is not, an answer that dismisses the anger or hurt feelings of the excluded by offering a “this is just the way I talk” fails to address the issue of actual exclusion. See Mary Jo Eyster, Integrating Non-Sexist/Racist Perspectives into Traditional Course and Clinical Settings, 14 S. ILL. U. L.J. 471, 472-73 (1990). A more familiar response to a complaint of exclusion is the “just jump in.” This response reflects a lack of understanding of the acts that cause the exclusion. Such a response fails to respect different styles and also fails to see the significance of the domination created by the pacing.

\textsuperscript{176} See Kollock et al., supra note 174, at 35; Lynn Smith-Lovin & Charles Brody, Interruptions in Group Discussions: The Effects of Gender and Group Composition, 54 AM. SOC. Rev. 424, 432 (1989). The authors find gender inequality in interruptions; men interrupt women far more than they interrupt men, whereas women interrupt both men and women equally. Men’s interruptions are far more successful, especially when they are interrupting women. \textit{Id}.

\textsuperscript{177} See Kollock et al., supra note 174, at 40-45. The authors, through research with cross-sex and same-sex couples, find that power differentials “can create a conversational division of labor parallel to the one ordinarily associated with sexual differentiation.” \textit{Id}. at 42-43. For example, their study shows that in cross-sex conversations, the powerful partner has more successful interruptions and monopolizes the conversation. In both same-sex and cross-sex couples, the less powerful person is more likely to assume responsibilities for conversational support. \textit{Id}. 
Collaboration in Law Practice

Lawyers do not work together successfully, one work style may silence the other's potential contribution. For example, if the "intuitive" lawyer does not believe in planning, then the "planning" lawyer will not be permitted to contribute plans. One of these lawyers will be frustrated by the interaction and will work less effectively because one mode of work, in effect, "trumps" the other.

Although work style differences may be harder for co-workers to spot, like communication differences, they can silence participants. As with communication differences, this silencing also may reflect gender, race, class, and power differences. By recognizing and managing the potential problems that can result from work style differences, co-workers can share work and decision making in ways that minimize the impediments, and actually build on the strengths, of their differences.

1. Decision Making: Timing and Flexibility

Decision making styles can have a significant impact on the collaborative efforts of lawyers. Lawyers make hundreds of decisions, from the most simple to the most complex. Some of these decisions involve predictions about people and the law. Decisions made at one phase of representation often have dramatic effects on the range of decisions that will be available in the future. Sometimes interim decisions must be made if a case is to have a future. Finally, like professional judgments in other fields, clearly "right" judgments are rare. From deciding on what type of discovery to request, to predicting which legal arguments will prevail, lawyers frequently make difficult and uncertain judgments. Thus, when lawyers collaborate on a case, they must make many joint and individual decisions.

Because many joint decisions must be made on joint work, lawyers must be conscious of their own and others' decision making styles. Lawyers, like other people, have decision making

178. See supra notes 57-74 and accompanying text.
179. See DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER 39-42 (1983). In his work with doctors, Schön notes that doctors see patients as presenting unique problems in 85% of their cases. The job of the professional in these settings is to develop "unique" analysis to address the situation, not to perform mechanically. Id. at 15-17.
styles that influence how they resolve questions about whether they have enough information to make a decision, whether they have considered enough options, and whether a decision really is needed. The differences that arise in how lawyers answer these questions will have an impact both on the quality of the lawyering and on the quality of the interactions between lawyers.

For example, lawyers can differ greatly on the timing of decision making. Lawyers who make judgments quickly, who tend to make decisions at the earliest possible moment, who spend less time brainstorming, who evaluate options quickly, and who enjoy the process of making decisions will perform some lawyering tasks exceptionally well. They probably will be good at making on-the-spot decisions required of trial lawyers, and at drafting papers in a timely fashion. They also may be natural planners because the discomfort of living without a decision compels them to act early, thus, leaving them more time to plan subsequent steps. Contrast such lawyers with those who are generally open to revision of all decisions, who comfortably brainstorm for long periods of time, who evaluate options for extended periods of time, and who come to a decision at the last possible moment. These lawyers will generate ideas longer and, as a result, may produce more creative ideas, but they will inevitably have less time to carry out these ideas. Still, good lawyering requires both creative thinking and effective planning.

When different styles are treated as complementary, strengths are enhanced and weaknesses minimized. Consider the comment of a second-year law student on his collaboration with a fellow student for a simulated hearing: "Cooperation made the assignment much easier, . . . M has a way of containing ideas that nicely counterbalanced my tendency constantly to raise another question to the extent that it sometimes negatively affects my time management."

180. Often, these people are perceived perjoratively as procrastinators. Although this may be accurate in some cases, the "procrastination" may be merely a difference in decision making pace, and may reflect an ability to be comfortable with uncertainty. The pejorative label is a classic example of how work style differences can be devalued and can inhibit a collaborative process.
However, when people with these different styles work together, unconscious of their potentially extreme differences, the result can be counter-productive. For the quick decision maker, the results may be particularly frustrating because the ponderous style frequently “trumps” a quick decision making style. If both people work in their intuitive styles, the quick decision maker cannot prompt quick decisions because of the more deliberate co-worker. This can result in high frustration and poor work product.

Another factor in the decision making process that influences joint work is the flexibility that an individual brings to the decision making process. Although closely related to the timing of decision making, flexibility is a separate and very important factor to consider in assessing how work should be divided and what the interim work product should be.

Lawyers, like other people, differ in how flexible they are about the decisions they have made. As new information comes to light, previous decisions require re-evaluation. Co-workers need to be able to rely on previous decisions to complete delegated tasks, but constant change frequently interferes with orderly, efficient work. Again, the decision to revisit a prior decision is usually a matter of judgment rather than the search for a “right” answer. Some decision makers are always willing to re-examine decisions. But other decision makers may feel a sense of betrayal when a joint decision is questioned or when new ideas are put on the table: “I thought we had agreed” has more meaning to these people. Still other decision makers may be willing to change joint decisions only at some stages. Others simply will go along with the changes to mask their disagreement with re-examining decisions. And, finally, to mask disagreement, others will stress and reiterate the value of flexibility and openmindedness, thereby hoping to effect a reconsideration of the decision. Lawyers can take advantage of individual decision making strengths, and minimize the inevitable struggles that

181. In examining the differences in flexibility of decisions made by Kolb's assimilators and accommodators, I find that accommodators change strategies as they take in new information, whereas assimilators construct an analytical strategy and rarely change it as new information occurs.
occurred during collaboration by understanding timing and flexibility differences.

2. Task and Time Orientation

Time management is another important difference in work styles. Some lawyers focus on tasks that must be done without considering time as a factor. Other lawyers consider time the primary criterion. The former asks what needs to be done, and the latter asks what can be done within a limited amount of time.182

For most legal work, task and deadline questions must be addressed. A lawyer rarely has the luxury of following every good idea in completing a task. Although no explicit rules govern the amount of effort that a given case merits, not every case should be pursued as though it were destined for review by the U.S. Supreme Court. However, the lawyer who focuses too narrowly on time will miss opportunities and may risk professional irresponsibility.183 Different ways of organizing work can create problems for co-workers in setting time tables, honoring deadlines, and defining the tasks. Lawyers need to develop a time and task orientation that accounts for and accommodates diverse time-management styles if they are to be successful in their joint work.

3. Aspirational and Practical Orientation

Similar to the time-task orientation, lawyers can differ in their practical and aspirational orientation toward work. Lawyers with aspirational orientations are more likely to think about what they want to accomplish, rather than how they will accomplish it. Those with a practical orientation will be concerned with the methods and feasibility of accomplishing particular tasks within the larger project. Consider three lawyers trying to decide which projects would be best to start a battered women's legal clinic.

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182. This orientation can be explained, at least in part, by the fact that for many attorneys time is money. Thus, asking how much the task will cost and how much the client is willing to spend often defines the task according to the time it will take. What needs to be done becomes simply what can afford to be done. At the same time, lawyers may decide mistakenly quality questions as time questions.

183. A lawyer who fails to do a task simply because the case did not merit it economically may risk malpractice liability.
One wants to start with a narrow focus, take on one particular project, do it well, and become an expert. "Let's be practical about what we can accomplish. I don't care what project we pick, let's just pick one and do it well." The other two want to take on several projects, working with a variety of clients and issues. Their view is that too much needs to be done to focus on one project only.

To a certain extent, professional responsibilities limit these work styles. For example, a lawyer may not take on more work than can competently be accomplished. Furthermore, clients, not lawyers, set goals to be accomplished in cases. If people with different orientations can work together to maximize the benefits of each orientation, cases and offices will be well served. However, without strategies for managing these potentially conflicting orientations, lawyers working in groups may find themselves frustrated.

4. Detail and Theoretical Orientations

Lawyers' learning styles influence their decisions about what to look for in a case and what to present to clients and to fact-finders for consideration. These differences among collaborators affect how the case is developed and presented. Although there is very little empirical data about how learning styles might influence lawyering, the connections between learning and

186. In the example provided in the text, I recall proposing to a colleague that the way we should approach the design of the legal clinic was to set our aspirations high, work like crazy, and forgive ourselves for not reaching our goals. She responded that she could not live that way. She felt terrible when she did not reach her goals and often would not start a project if she felt that it could not be completed. I thought she was setting goals too narrowly by including only those goals we could definitely accomplish. Our resolution required extensive discussions about what we could accomplish. I pushed her on what was possible, she pushed me to focus on what was unrealistic for us to accomplish.

187. Researchers have identified four different levels of personal characteristics that can be called style: (1) personality, (2) information-processing, (3) social interaction, and (4) learning environments and instructional preferences. Claxton & Murrel, supra note 151, at 7.

188. The only article that I am aware of that makes the connection between learning style and lawyering is Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing. The article, written by a lawyer and an educational psychologist, concluded that learning style influenced how students
lawyering work styles is important. Much of what a lawyer does involves learning. Lawyers often are required to learn new factual situations,\textsuperscript{189} new law, perhaps new skills, new courts with new procedures, and needs and goals from a new client. Lawyers also have to teach clients, judges, opponents, and peers about the law and the facts.

In deciding what to learn and to teach and how to learn and to teach, lawyers are likely to make decisions based on their own learning style.\textsuperscript{190} For example, lawyers who prefer absorbing information in abstract ways are more likely to be attracted to policy and legal arguments. They also are more likely to pay attention to themes to organize a case.\textsuperscript{191} Lawyers who prefer to take in information in concrete ways are more likely to focus on

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interviewed and listened to their clients. \textit{See generally} Peters & Peters, supra note 18.

189. Recently, when I had students in the clinic whom I had taught a year earlier in a simulation course that focused some attention on learning styles, I was struck with the connection between choices made about structuring an attorney-client interview, and a person's learning style preferences. As part of this required second-year course, we had administered the Kolb Learning Instrument, and many students shared the individual results with the faculty. As a result, I was very familiar with the students' learning preferences and could see connections between the lawyering and the learning.

For example, one student was having great difficulty learning the funnel approach to interviewing. In the initial stages of the interview, she consistently focused on concrete facts as a way to learn the client's story rather than explore broader themes about the client's goals and concerns. Connecting what I knew about her as a learner—she preferred taking in information in concrete ways—to what I knew about her as a lawyer—she preferred to take in information in concrete ways—helped me understand the difficulty she was having in applying the funnel approach.

190. There is little empirical research that analyzes the connection between learning and teaching styles. See, e.g., Herman A. Witkin, \textit{Cognitive Style in Academic Performance and in Teacher-Student Relations, in Individuality in Learning} \textit{38}, 57-59 (Samuel Messick et al. eds., 1976). Teachers use methods of instruction that relate to their personality types. Faculty who are field-dependent will more likely use discussion, and those who are field-independent are more likely to use lecture. Claxton & Murrel, supra note 151, at 8-16 (noting how type influences teaching style).

191. These two different ways of processing information have been described as "top-down" learners and "bottom-up" learners. The "top-down" learners approach learning by developing a broad framework early in the process, within which they put detailed information. The "bottom-up" learner proceeds in well-defined steps to understand the information, starting with information at the lowest level of complexity. \textit{Id.} at 21-22. Kolb also identifies two different ways of taking in information: concrete and abstract. In addition to the differences in taking in information, he also recognizes two different ways that people process or transform the information. By combining these differences he arrives at four different learning types. \textsc{David A. Kolb, Experiential Learning: Experience as the Source of Learning and Development} \textit{40}-\textit{43} (1984).
details, to pay attention to the facts, and to find factual arguments the most convincing.

Like all teachers, lawyer-teachers risk failing in their pedagogical objectives if their style of teaching is incompatible with their audience's style of learning. Through collaboration, lawyers with different teaching styles can arrive at a product that effectively appeals to a broader range of learning styles. Given the array of choices about how much should be done and what should be done first, lawyers with different learning styles will have different priorities. For example, lawyers planning for a preliminary injunction might have to decide whether to research the law, read massive documents, talk to clients, or question witnesses. By working together, lawyers may uncover potential conflicts about what information they need and how they will use it. Thus, a team of lawyers can profit by using various ways of learning styles to organize their work.

Conflicts about case strategies also arise because of learning style differences. Unlike the preparatory stage, which requires fewer "either-or decisions," the presentation of information to a court demands a more consistent approach. Consider a team of lawyers who were preparing a summary judgment argument. The team jointly prepared voluminous documents in support of the brief and the oral argument. One member of the team had been scheduled to take the lead in oral argument, with the others making shorter follow-up comments. However, co-counsel strongly disagreed about which arguments should be emphasized at the motion hearing. The "lead" lawyer wanted to emphasize the unworthiness of the plaintiff and a theory of defense based on the equitable doctrine of laches. He wanted the judge apprised about how unworthy the plaintiff was in gory details. The other lawyers wanted to emphasize a statute of limitations argument and other more law-focused arguments. Their case strategy emphasized arguments that relied on fewer facts. They argued this would leave them less vulnerable to "a factual issue in dispute" claim.

192. Two of the members of the team had primary drafting responsibility and the others had frequent input into the various drafts.
In anticipating the fact-finder's preference for a particular argument, each lawyer was drawn to the arguments that the lawyer found most persuasive. They were drawn to these arguments that reflected the way the lawyers had come to learn the case which they were about to teach to the fact-finder.193 The judge's and the jury's learning processes are diverse and often unknown. Adopting a case strategy that appeals to a range of learning styles will create an argument that has the greatest likelihood of success.

Good collaboration requires an understanding that people learn and present information with very different intuitive approaches. By being aware both of one's own approach and that of others, the planning and presentation process is more supportive, flexible, and effective.

E. Process Values

In addition to communication and work style differences, people value joint and independent work differently.194 For those who value involvement and group solidarity, subjective satisfaction and self-esteem come from joint work. For those who value independence, success is defined by individual achievements.

The individualist connects with her co-workers for professional purposes only, and the group-player integrates her professional and personal life and seeks broad connection to others. The individualist also is more likely to favor hierarchical decision making with individual accountability. Process differences, like differences in working style, may result in disagreements

193. Although I did not give each of these lawyers a Kolb Inventory Assessment to determine their learning style preferences, I would not be surprised, based on my conversations with the various advocates, to find that they split along the concrete/abstract continuum. Interestingly, the judge liked the laches argument and accepted it over the other ten arguments for summary judgment.

194. DEBORAH TANNEN, THAT'S NOT WHAT I MEANT! HOW CONVERSATIONAL STYLES CAN MAKE OR BREAK RELATIONS WITH OTHERS 31-32 (1986). Tannen notes that individuals and cultures put relative values on the need for independence and involvement. "America as a nation has glorified individuality, especially for men. This is in stark contrast to people in many parts of the world outside Western Europe, who more often glorify involvement in family and clan for women and men." Id.
regarding relationships and timetables.\textsuperscript{195} Even when working in the collaboration model, lawyers may expect different levels of support. They also may disagree about what kind of relationship to establish with their client.\textsuperscript{196}

In identifying which work model to use for the various pieces of a project, the individualist undoubtedly will prefer the input model, and the person valuing involvement will more likely favor the collaboration model. Although no task inherently requires collaboration or input, groups may over-delegate or under-delegate depending upon the group's values about group and individual work.

Process values influence the way individuals respond to conflict and define harmony. When people who value conflict as a way to develop ideas work with those who value harmony, conflicts similar to those described in part II result.\textsuperscript{197} These differences can effect negotiation and litigation planning.

The key to effective collaboration is to ensure that conflicts do not become adversarial and that differences are not smothered in an effort to achieve harmony. Effective collaboration depends on genuine attention to these differences, to produce a collective work product superior to the work product possible from an individual working alone. Nevertheless, synthesis becomes difficult if the goal is to win.

CONCLUSION

A full description of teaching methods designed to help students and lawyers develop the component skills and the

\textsuperscript{195} Two ways these differences come up is in how different people think about meetings. Some will leave the meeting saying "I've got to get back to work," and others may think, "I thought we were working at this meeting." Some may announce, "Let's get down to work and stop wasting time," eliminating conversations that they view as personal, whereas others may view these kinds of conversations as an essential part of developing a working relationship.

\textsuperscript{196} The example of the two students with very different visions about the appropriate distance from the client illustrates how different values concerning connection and independence may influence the decisions about an appropriate role for lawyers. See supra notes 101-04 and accompanying text.

\textsuperscript{197} See supra notes 167-70 and accompanying text.
perspectives for productive collaborations is beyond the scope of this article. However, parts II and III of this article provide roadmaps for the kind of analysis that lawyers and law students can use to organize joint work. As part III demonstrates, a starting place for practicing collaborative lawyering is the law school, where students can be guided to become more self-reflective professionals. To use the insights about different work, communication styles, and process values, law students and lawyers need a better understanding of their own intuitive ways of working. They also must make a conscious effort to increase their repertoire of communication and work skills. If law students and lawyers shed some of the normlessness of law school and learn to think about the variety of ways one might approach a problem, they will learn perspectives that contribute to good collaborations.

By replacing the search for the right idea or for the right way with a more textured approach to problem solving, lawyers can become better, more effective problem solvers for clients. Some of the courses in law school that integrate feminist and critical race theory begin to help students accomplish this task and to assist law students in developing the perspectives necessary for collaboration. Some of the perspectives and skills being taught in mediation and negotiation courses in law schools will help students learn collaborative skills. Perspectives about conflict resolution that reject win/lose solutions will be especially valuable to lawyers involved in collaborations. Genuine listening skills taught in interviewing and in counseling courses also will provide valuable skills for collaborators.

Good collaborations inevitably involve co-workers in disagreements. How people confront these differences is the key to successful collaboration. When the differences harden into win/lose conflicts, collaboration becomes difficult, and solutions often come from the most effective advocate or reflect the lowest common denominator. When collaborators use differences to develop insights and to examine options critically and openly, the differences actually will enhance the final product rather than frustrate the outcome. Legal education can influence how students and lawyers use communication, work style, and process value differences by teaching relevant skills and perspectives in law school.
Finally, law schools can address issues involving professional dissatisfaction, including the structures used to organize joint work. By addressing the problems inherent in both hierarchical organization and collaborative organization, law schools can help their students become more productive and satisfied professionals. As the profession diversifies, a process of working together that values individual differences will allow lawyers to take greater advantage of their diversity. By placing students in working groups, valuing work done by groups, and teaching students how to work effectively in groups, law schools will provide a professional education that recognizes the complex reality of contemporary practice and prepares its students for the law practice of the future, a practice that is more diverse, group-oriented, and less focused on the one lawyer-one client model of the past.
APPENDIX A

CO-COUNSEL FEEDBACK FAIR HEARING SIMULATION

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Please be as specific as you can. Try to describe what occurred as well as your reactions to what you perceived.

Co-counsel to co-counsel feedback focuses on four central themes: communication, decision making, division of labor, and cooperation. These four generic topics are explored within the context of your work with co-counsel in two areas: case preparation and conduct of the hearing.

CASE PREPARATION
(Planning for the hearing)

Communication

How often and in what form (phone calls, face-to-face conversations, written memos to one another) did you and co-counsel communicate about the work that needed to be done (development of joint theory of the case, preliminary research, design of direct and cross, etc.)? Did the amount and form of interaction between you and co-counsel serve your purposes adequately? If not, did you ever discuss your concern with co-counsel? Why or why not?

Assuming that you were to work together again, what could you do to improve communication between you and your partner? What do you think your partner could do?

Decision Making

During the case preparation stage, how were decisions made (mutually, unilaterally)? Did co-counsel let you go ahead and make most of the decisions? Did s/he consult you about decisions that s/he made? Did you ever explicitly discuss the decision making process or did it just happen?
Think about one or two specific instances in which you and co-counsel initially disagreed. What were the disagreements about (overall strategy, particular tactics, ethics)? How did you resolve these disagreements (assuming that you did)? Through negotiation? Compromise? Did you finally agree simply for the sake of peace or to "keep things moving along"? If you found just the right balance, how and why did that occur?

Assuming that you were to work together again, what could you do to improve your joint decision making process? What do you think your partner could do?

Division of Labor

During the case preparation stage, who did what? On what basis was the work divided (individual preference, assessment of comparative strengths and weaknesses, prior experience, etc.)? Did co-counsel volunteer to do particular things? Did s/he decide what each of you should do or vice versa?

Cooperation

Do you feel that you and co-counsel reached a level of comfortable collaboration? If so or if not, what would you say was the root cause (different or compatible work styles, etc.)? To what extent did you feel the cooperation level helped/hindered your overall case preparation?

Were there times when you experienced feelings of competition with co-counsel? Did you feel inferior/superior to co-counsel in certain ways? If so, how did these feelings affect your working together?

Assuming that you were to work together again, what could you do to improve the cooperation level? What could your partner do?
Communication

During the hearing, did your level of communication change or continue about the same? Did you set up a formal or informal communication system for use during the hearing? If so, did co-counsel adhere to it? Did you?

Decision Making

What did you think about the decision co-counsel made in:
1. asking questions (form & content)
2. making and arguing objections
3. choosing what to cover (if applicable)
4. in closing argument?

Division of Labor

Do you feel that the division of labor that was agreed upon or that evolved during case preparation hurt/helped your team’s overall performance during the hearing?

Cooperation

Was the cooperation level the same, higher, or lower during the hearing than during the case preparation stage? Did you feel that you were working at cross purposes or as a team? What, if any, recommendations can you make to co-counsel to improve his/her cooperation skills? What recommendations do you have for yourself?

From the experience of working with co-counsel, what if anything did you learn about collaboration?
APPENDIX B

RECOMMENDED PROCESS FOR SUCCESSFUL COLLABORATION

I. Step One: Individual project analysis and planning

Goal: To have each collaborator clarify how she would organize the work in preparation for later planning with all collaborators.

Each collaborator should:

A. List the project's component tasks;
B. Establish priorities among tasks;
C. Identify her own strengths and weaknesses regarding tasks;
D. Determine her preferences among tasks;
E. Develop tentative timetables, as if doing the project alone.

This step may be unnecessary if co-workers are experienced in collaborating with each other.

II. Step Two: Group project analysis and planning

Goal: To have collaborators participate in planning work in ways that accommodate and take advantage of their different work styles.

A. In group meeting, review individuals' prior analyses and tentative plans.
B. Identify and discuss the significance of differences.
C. If there are significant differences, brainstorm complete list of possible project task organizations.
   1. It is important not to evaluate others' ideas until a full list of options is generated.
   2. It is important not to come to closure too quickly, to allow for full option generation.
D. Identify constraints on individual and group work (work best in morning, other commitments, limited meeting time, etc.).
E. Assess options.
F. Arrive at shared decision on task organization.

This step may be the first step among co-workers who are experienced in collaborating with each other.

III. Step Three: Shared decisions on task delegation

Goal: To have collaborators participate in careful task delegation that accommodates and takes advantage of different work styles, communication styles, process values, and perspectives, and that avoids unnecessary disputes later about authority, responsibility, and timetables.

A. In group meeting, identify critical intermediate decisions that require shared decision making (e.g., the theory of the case before witness examinations are planned).

B. Clarify who will do which tasks and what the group expects as the product of the delegated work.
   1. Consider which tasks should be delegated (which tasks are best performed individually, jointly, ministerially).
   2. Consider which delegation best accommodates and takes advantage of individuals' different expertise and skills without promoting domination.
      a. Focus more on individuals' strengths than on their differences.
      b. Avoid allowing those who have radically different strengths to reject too quickly others' different types of contributions.
   3. Consider what delegation best accommodates and takes advantage of individuals' different:
      a. work styles;
      b. communication styles;
      c. process values.
      a. Premature division of work or absence of regular feedback can result in a product that
lacks synthesis and misses learning opportunities.
   b. Seeing how others approach and do work enables learning from individuals' differences.

   C. Establish clear timetables for delegated work.
      1. Consider individual work styles in setting timetables (identify and discuss individuals' differences about timing of decisions, flexibility, etc.).
      2. Leave adequate time for synthesis of delegated tasks.
      3. Leave adequate time for shared decision making about intermediate and final products.

IV. Step Four: Synthesis of delegated work

   A. Give feedback on work in progress.
   B. Relate each individual's delegated task-work to overall project.
   C. Manage differences and resolve any conflicts to reach shared decision making.

Effective collaboration requires repeated rounds of re-planning, re-delegation, and re-synthesis.