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Filling in the 'Larger Puzzle': Clinical Scholarship in the Wake of THE LAWYERING PROCESS

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FILLING IN THE 'LARGER PUZZLE': CLINICAL SCHOLARSHIP IN THE WAKE OF *THE LAWYERING PROCESS*

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Gary Bellow's and Bea Moulton's The Lawyering Process *challenged conventional legal education on every front, from the types of material included to the questions asked about law and lawyers. Their book has inspired a generation (or more) of clinicians to teach and think about law differently. In this article, the authors focus on the impact Bellow's and Moulton's book has had as a teaching text and as early clinical scholarship. The authors discuss four topics addressed in* The Lawyering Process*—the public role of lawyers, ethics and professionalism, theory of lawyering, and the clinical methodology—and how those topics are addressed in their book, an anthology of readings for live-client clinical courses. The authors also show the influence that Bellow's and Moulton's ideas have had on the body of clinical scholarship that has developed since the publication of* The Lawyering Process *and from which most of the material in their anthology was drawn. The article concludes with some reflections on the proper scope of clinical scholarship and its future role in the clinical movement.*

INTRODUCTION

As the articles in this symposium demonstrate, THE LAWYERING PROCESS has meant many things to many people over the past twenty-five years.[1] In this article, we emphasize two aspects—its importance as a teaching text and as early clinical scholarship—that relate most directly to our book, CLINICAL ANTHOLOGY: READINGS FOR LIVE-

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[1] "THE LAWYERING PROCESS" refers, of course, to Gary Bellow & Bea Moulton, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978) [hereinafter THE LAWYERING PROCESS]. Its influence can be measured also by the number of times it is cited, the range of points for which it is cited, and the adjectives that often accompany the citations. *See, e.g.*, Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427, 436 (2000) (a "pioneering" textbook); Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 784 n.38 (1998) (a "magisterial" text).

CLIENT CLINICS.[2] Emphasizing these aspects of THE LAWYERING PROCESS is not much of a limitation, given the context in which the book first appeared. In 1978, clinical legal education was still in its infancy and the publication of a major text for a clinical course was a major event in and of itself, plus it was bound to break new ground across both methodological and substantive lines. At that time, the clinical movement needed both to identify some curricular content for clinical courses and to develop a teaching method unique to the subject matter that came to be known as the lawyering process. THE LAWYERING PROCESS sought concurrently to achieve these two ends.

In a sense, Gary Bellow's and Bea Moulton's book was something of a Trojan horse. By producing a hardbound Foundation Press volume with the traditional look of an elite-faculty-edited law school casebook, Bellow and Moulton seemed to be offering up something familiar—even with the words "lawyering" and "clinical" on the cover. Once opened, however, the text was clearly not just any course book. It challenged conventional legal education on every front, from the types of material included to the questions asked about law and lawyers. It was an inspiration for a generation (or more) of clinicians to teach and think about law differently and it signaled a new day for clinical legal education and all that the clinical movement was trying to achieve.

Almost twenty years later, we developed a paperback volume of readings for use in live-client clinical courses. The CLINICAL ANTHOLOGY is different from THE LAWYERING PROCESS in many important and fundamental ways. Nonetheless, its overall structure and the very existence of most of the materials included in it—works written by clinicians and informed by their clinical practice (so-called clinical scholarship)—can be traced back to Bellow's and Moulton's vision.

Bellow and Moulton discussed activities of lawyering in their text under four headings: preliminary perspectives, the skills dimension, the ethical dimension, and the "larger puzzle." The larger puzzle discussions raised questions about the fundamental principles that underlie lawyers' actions and the rules that govern lawyering. They sought justification for lawyering activities in broad concepts such as promotion of individual autonomy, the administration of justice in a free society, and the integrity of the judicial process. When THE LAWYERING PROCESS appeared in 1978, there was very little scholarly literature tying together the activities of lawyering and the broader concept of the proper role of the legal system in a democracy. Clinical scholar-

[2] CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS (Alex J. Hurder, Frank S. Bloch, Susan L. Brooks, & Susan L. Kay, eds. 1997) [hereinafter CLINICAL ANTHOLOGY].

ship began to fill the gap.

The CLINICAL ANTHOLOGY drew on this new literature and collected works that examined the issues and dilemmas lawyers face in practice from a theoretical perspective. There is also a chapter on clinical legal education that serves to highlight the link between content and methodology in clinical education. Our idea was to produce a volume that could be used in a live-client clinical course to stimulate the exploration of current ideas in clinical scholarship and to encourage clinical faculty and clinic students to develop those ideas in the context of an on-going clinical practice. In our clinical courses and, we expect, in those of others who use the anthology, the students' casework remains the central material for teaching and learning; the readings and classroom sessions during which the readings are discussed supplement the live-client experience. Thus, works in the anthology address the lawyer's role in representing a client as a case develops from the initial relationship with a client, through encounters with adversaries and courts, and finally to relations with the public. The anthology treats ethical issues as an essential consideration in every aspect of practice.

In this article we discuss four topics addressed in both THE LAWYERING PROCESS and the CLINICAL ANTHOLOGY: the public role of lawyers, ethics and professionalism, theory of lawyering, and the clinical methodology. In doing so, we link some of Bellow's and Moulton's central ideas with selected examples of the body of clinical scholarship that has developed since the publication of THE LAWYERING PROCESS. Thus, the section on the public role of the lawyer discusses the still vibrant debate over whether the lawyer's duty is solely to his or her client or to some broader notion of social justice; the section on ethics and professionalism examines often intractable struggles between competing ethical norms; the section on theory of lawyering reflects on key questions about the role of lawyers in the operation of the legal system; and the section on clinical methodology focuses on the links between methodology and content in clinical education. The article concludes with some reflections on the proper scope of clinical scholarship and its future role in the clinical movement.

THE PUBLIC ROLE OF THE LAWYER

THE LAWYERING PROCESS broke new ground by making considerations of the public role of the lawyer a focal point of a law school text. While, on one level, these concerns pervade the entire book, it is especially significant that they form the core of the book's first two chapters. Bellow and Moulton thus use this topic both to set the tone

of the text and to provide the context for their later examination of specific lawyering skills.

Their vision of lawyering does not accept the "traditional paradigm" of a lawyer's sole role as the zealous advocate of his or her client, but rather reflects a broader vision of the lawyer's moral commitment to promote social justice and other important values. Today their ideas hardly seem radical, as there is widespread acceptance of their conception of effective lawyering as more than the mere zealous advocacy of the expressed wishes of the client. Indeed, this shift in attitude about the lawyer's obligation to a 'greater good' is an important legacy of Bellow and Moulton, and one that has radically altered legal education, scholarship, and practice.

In legal education, consideration of the public role of the lawyer is no longer solely the province of clinical programs. Today, numerous law schools have gone so far as to require that every student complete a certain number of hours of pro bono work or complete a service-learning project.[3] Many law schools also have generous "LRAP"—Loan Repayment Assistance Programs. These programs encourage and allow students to choose low-paying public interest careers by subsidizing their loan repayments. Additionally, many schools have vibrant stipend programs in which student-sponsored funding supports summer or full-time public interest positions. Undoubtedly, such programs did not exist at the time Bellow and Moulton published their book. However, their initial chapters communicate the values that now underlie the opportunities or mandates (as the case may be) leading law students into public interest experiences.

At the same time, THE LAWYERING PROCESS does not speak directly to law students about the pro bono obligation of lawyers. Indeed, at the time it was written, the notion of a pro bono obligation was completely foreign to legal education. Such a message was perhaps unnecessary at that time, because the majority of the students participating in clinical programs were already committed to the pursuit of public interest careers. Nevertheless, it would have been radical in the 1970's to suggest that law school would someday become an important vehicle for instilling in the profession the commitment to an

[3] The Association of American Law Schools (AALS) recently published a chart listing numerous law schools that include mandatory participation in public interest or pro bono work as part of their graduation requirements. The chart represents information from 123 law schools. Fourteen schools have a pro bono requirement, including Columbia University, University of Pennsylvania, University of Texas, Florida State, and Tulane. Twelve schools have a public service requirement, including Harvard, University of Maryland, University of Montana, and the University of Puerto Rico. Cynthia Adcock, "Law School Pro Bono Programs," A HANDBOOK OF AMERICAN LAW SCHOOL PRO BONO PROGRAMS (June 27, 2001) (*available at* http://www.aals.org/probono/probono.pdf).

ongoing pro bono obligation.

By the time the CLINICAL ANTHOLOGY was written, the concept of a pro bono obligation was sufficiently well integrated into both clinical and non-clinical legal education that it is the subject of half of the anthology's chapter on the public role of the lawyer. It may also be more of a necessity to emphasize this notion explicitly in today's world, as the students now participating in clinical programs are more likely to be entering the private sector upon graduation. On another level, this change also reflects the broader appeal and acceptance of clinical programs within the law school curriculum.

Bellow and Moulton included excerpts from seminal articles articulating varying viewpoints on the role of the lawyer. These articles, particularly the pieces by Fried[4] and Wasserstrom,[5] represented key positions in the debate over the breadth of the duty of the lawyer: is it defined narrowly as the provision of zealous representation to the client, or is it defined more broadly as the promotion of social justice? It is a testament to Bellow and Moulton, as well as to the authors they included, that these articles are still looked at as seminal works. For instance, in his 1995 excerpt reprinted in the CLINICAL ANTHOLOGY, Paul Tremblay observes: "[t]ogether the Wasserstrom and Fried articles set the contours of the ensuing conversation."[6] Bellow and Moulton described the conceptual debate so well that their writing still resonates in the daily struggles faced by every law student and every practicing lawyer.

Since the publication of THE LAWYERING PROCESS, much has continued to be written about the public role of the lawyer. This bounty is reflected in the array of excerpts included in our anthology.[7] Along with Tremblay, who explores the dimensions of morally activist lawyering,[8] each of these authors elucidates his or her own conception of promoting "the larger aim of the law in furthering social justice."[9] Other examples include Peter Margulies' article on civic republican-

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[4] Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relationship*, 85 YALE L.J. 1060, 1060-62, 1065-72, 1076-89 (1976), *reprinted in* THE LAWYERING PROCESS, *supra* note 1, at 35-52.

[5] Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUMAN RTS. 1-19, 21-24 (1975), *reprinted in* THE LAWYERING PROCESS, *supra* note 1, at 91-103.

[6] Paul R. Tremblay, *Practiced Moral Activism*, 8 ST. THOMAS L. REV. 9, 13 (1995) *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 359.

[7] In addition, there are many more articles addressing these same issues that were not included in the Anthology.

[8] Tremblay, *supra* note 6, *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 358-68.

[9] Amy Gutmann, *Can Virtue Be Taught to Lawyers?*, 45 STAN. L. REV. 1759, 1760 (1993), *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 370 (citing DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 3-147, 393-403 (1988)).

ism[10] and Amy Gutmann's piece on teaching virtue to lawyers.[11]

Margulies' conception of a truly 'civic republican' model of lawyering, incorporating the elements of shared risk and narrative, assists lawyers and law students constructively to address issues of difference.[12] He argues further that, "[a]t its best, clinical education represents the same form of shared risk and narrative."[13] Accordingly, clinical teachers should teach in a manner that is transformative for them as well as for their students, just as they hope that their students' legal representation will be transformative for them and their clients.

Amy Gutmann describes a similar element of the attorney-client relationship, which she refers to as "attorney-client deliberations," as essential to the goal of serving justice.[14] She defines deliberation as "a sharing of information and understanding on relevant matters," which "requires an active engagement with clients that aims at a better understanding of the value of legal action and its alternatives than either party to the deliberation probably had at the outset."[15] In this way, Gutmann also focuses on the transformative potential of engaging with clients on the pursuit of social justice. The work of Margulies and Gutmann, as well as the other excerpts in the anthology, illustrate the depth and richness that new voices and perspectives have added to the early debate presented by Bellow and Moulton.

Little has really changed from the realities of legal practice described in THE LAWYERING PROCESS. These realities can be traced back even earlier than the book's publication date, to the description by Lortie that was written in 1959 and included in the book.[16] Lortie refers to the typical young attorney as having graduated from law school without any contact with real legal work. For Lortie, the young lawyer's appreciation of the daily realities of the profession is a rude awakening. This transformation from 'layman to lawman' principally occurs after graduation and during the first years of practice.

Bellow and Moulton expand on Lortie's theory when they describe the legal profession as "highly stratified."[17] "Law practices differ in status, reward structures, training, mobility, degree of political

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[10] Peter Margulies, *The Mother With Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education*, 88 Nw. U. L. REV. 695 (1994), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 341-52.

[11] Gutmann, *supra* note 9, *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 369-75.

[12] *See* Margulies, *supra* note 10.

[13] *Id.* at 704, *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 343.

[14] *See* Gutmann, *supra* note 9.

[15] *Id.* at 1765, *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 373-74.

[16] Dan C. Lortie, *Laymen to Lawmen*, 29 HARV. EDUC. REV. 352, 363-68, 356-61, 368-69 (1959), *reprinted in* THE LAWYERING PROCESS, *supra* note 1, at 14-21.

[17] *See* THE LAWYERING PROCESS, *supra* note 1, at 23.

participation, and most clearly in the socio-economic background of lawyers and the clients they serve. That is, the profession is divided along 'class' lines."[18] This can be seen in the hierarchy of firms based on size, and the concomitant differences in salaries, personal status and status of clients. As Bellow and Moulton state, "stratification in the profession is integrated with stratification in the society at large."[19] Even more than the stratification between lawyers is the frequent socio-economic gap between lawyers and clients, which often leads to power imbalances.[20]

According to Bellow and Moulton, the influences that actually shape the balance between control by and control of clients are very much a function of the relative socio-economic status of the lawyer and the client. This imbalance can be exacerbated by the form of practice, (be it in a large firm, small firm, or a legal services office), and by the types of organizations with which lawyers and clients interface (including various courts). All of these factors contribute to tensions in defining the role of the lawyer.

Alternatively, it could be the case that the struggle first articulated in THE LAWYERING PROCESS is not a reflection of larger societal socio-economic factors, but is inherent in the profession's lack of a conception of justice. As Bellow and Moulton put it so well,

> Stated more baldly, the profession does not offer an adequate conception of justice. It does not take into account differences of class, race, power, and circumstance—the problems of substantive justice—and therefore cannot reconcile (or more fairly begin to reconcile) private interests and the social good. If it did, however, our hunch would be that such a vision would include giving considerable priority to concrete helping relationships.[21]

The excerpts included in the CLINICAL ANTHOLOGY can be viewed as efforts to bring this vision to life, by offering a range of conceptions of such helping relationships.[22]

The discussion of the public role of the lawyer presented in THE LAWYERING PROCESS stands the test of time. Although current realities may present these enduring dilemmas in different garb, such as the current focus on corporate lawyers' duties to the public, much of the debate can be reduced to the essential questions first raised in Bellow and Moulton's classic text. In this as in many other areas identified in this article, their work is a touchstone for our present under-

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[18] *Id.*

[19] *Id.* at 25.

[20] *See id.*

[21] *Id.* at 116.

[22] *See* text accompanying notes 6-15 *supra*.

standings, and will continue to leave its mark on future generations of new lawyers.

ETHICS AND PROFESSIONALISM

THE LAWYERING PROCESS was unique in many ways, but notably was one of the first texts to undertake analysis of the new Code of Professional Responsibility in context. What now has become trendy—the pervasive teaching of legal ethics within the context of other substantive courses—was innovative in THE LAWYERING PROCESS.

In the mid-1970's, and in response to the involvement of so many lawyers (including the president) in the illegal behavior culminating in the Watergate prosecutions, lawyers—from the Chief Justice of the United States on down—argued for increased emphasis on ethics training for law students and ethical accountability for lawyers. The legal community was outwardly embarrassed by the lack of moral compass demonstrated by members of the White House staff and cabinet. In response to this crisis, the ABA made a major change in the regulation of lawyers' professional responsibility: adopting an accreditation standard requiring that every law student pass a course on professional responsibility as a condition of graduation.[23] This accreditation standard came close on the heels of the adoption of the Model Code of Professional Responsibility.[24]

The Model Code of Professional Responsibility was the first major effort to codify specific rules governing lawyers' conduct. The Code replaced the overly broad and theoretical canons of professional conduct and created a set of rules of conduct governing specific instances of lawyer behavior. It was organized into nine broad canons—each of which was followed by disciplinary rules and ethical considerations. According to the drafters, violation of the disciplinary rules would be grounds for disciplinary action, while the ethical considerations were more aspirational in nature.[25] Within a few years, virtually

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[23] A law school shall require all students in the J.D. degree program to receive instruction in the history, goals, structure, duties, values, and responsibilities of the legal profession and its members, including instruction in the Model Rules of Professional Conduct of the American Bar Association. A law school should involve members of the bench and bar in this instruction.

Standard 302 (b), STANDARDS FOR THE APPROVAL OF LAW SCHOOLS (ABA 2003).

[24] The Model Code of Professional Responsibility was adopted by the American Bar Association in 1969 and amended through 1983, when the ABA adopted the Model Rules of Professional Conduct.

[25] The distinctive feature of the Model Code is its organization into canons, ethical considerations and disciplinary rules. The canons provided the Model Code with its theoretical structure. Each canon was a general directive to lawyers about the law of professional responsibility. The ethical considerations were more detailed in that

every state had adopted either the Model Code of Professional Responsibility or some variation on that Code. Very rapidly, it became the focal point of any discussion of ethical conduct by lawyers.

In addition, and in response to the ABA's accreditation standard requiring training in professional responsibility, most law schools created courses training students in the Code of Professional Responsibility. As a result, at a much greater level than ever before, lawyers were trained in the ethical rules governing the profession.

Interestingly, at most law schools this course was isolated from the other coursework that students were undertaking. Students learned the rules of conduct as discrete rules unrelated to other substantive matters. Bellow and Moulton undertook a study of the Code which was integrated fully into the substance of the material on which they focused.

As discussed previously, each chapter of the book that describes a lawyering skill is divided into three sections: Preliminary Perspectives; the Skill Dimension; and the Ethical Dimension concluded by a discussion of the larger puzzle. Bellow and Moulton describe the book's integrated approach to ethics as follows:

> In this chapter and the five chapters which follow, we will be exploring the ethical dimensions of the particular task under consideration. Our general approach is to ask you to analyze the interaction in terms of the Code of Professional Responsibility and a limited amount of supplemental material. Our interest lies not in exhaustively dealing with the "field," but rather in deepening your understanding of the profession's general approach to typical problems and your ability to evaluate it critically . . . .[26]

Critical to THE LAWYERING PROCESS was not just the manner in which it raised ethical questions as part of the larger text on skills and values of the legal profession, but the questions themselves. As discussed in the previous section, Bellow and Moulton raised questions that continue to be asked and analyzed in clinical scholarship. Interestingly, in culling articles to be included in the CLINICAL ANTHOLOGY, we did not consciously return to THE LAWYERING PROCESS for guidance in making our selections. Nonetheless, what is apparent in

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they discussed actual factual situations that arose under each canon. Each ethical consideration, however, was only aspirational in nature. Lawyers were supposed to strive to follow the ethical considerations, but they were not considered binding. The disciplinary rules were the provisions that lawyers needed to follow to avoid disciplinary liability. These rules established minimum standards that lawyers were required to follow and standards that were enforced by the disciplinary committees.

John S. Dzienkowski, PROFESSIONAL RESPONSIBILITY STANDARDS, RULES AND STATUTES: 2003-04 ABRIDGED ED. 553 (West 2003).

[26] THE LAWYERING PROCESS, *supra* note 1, at 240, note *.

reviewing the text is that it set the template for our later choice of key issues that must be considered by any student in a live-client clinic. The questions that Bellow and Moulton posed twenty five years ago are the same issues which we, as clinicians today, continue to view as imperatives in the field.

For example, in Chapter 3, Bellow and Moulton ask students to consider whether a lawyer who has met with both spouses could continue to represent only one of them in a divorce proceeding.

> In addition, Harrington has listened to confidential communications from both of the Boyds. Consider whether he can now decide to represent only one of them. If you decide he is precluded from representing one or the other, what affect (sic) would these communications have on his continued service?[27]

In their article *Enter at Your Own Risk: The Initial Consultation and Conflicts of Interest*,[28] Debra Bassett Perschbacher and Rex R. Perschbacher continue to seek answers to the ethical dilemma posed when a lawyer receives confidential information from a prospective client and is then forced to decide whether the lawyer can continue to represent either that client alone or both that client and her employer. Clearly, since Bellow and Moulton wrote THE LAWYERING PROCESS more has been written on the subject of conflict of interests, yet the questions they raise continue to puzzle lawyers and commentators.

Later, in the same chapter, Bellow and Moulton face the further quandary that conflict of interest rules place on lawyers in legal aid practices.

> What if a legal services office decided to provide "advice only," along with representation on "emergencies." Clients could be informed in advance of this policy and the advice and representation would be promptly and competently carried out. Or suppose a program decided to accept only "test cases"? Would these policies involve different judgments? Again, allocation decisions of this kind are not entirely in the interest of particular clients, and it is difficult to say that "consent" by clients to such limited representation is freely and intelligently given. Nevertheless, more people might be served in this way and—in some sense—more "good" might be done. Are these reasons enough to justify such accommodations to admittedly limited resources?[29]

The dilemma faced by legal aid lawyers—how much time to devote to individual clients—is one that pervades legal aid practice as

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[27] *Id.* at 250.

[28] 3 GEO. J. OF LEGAL ETHICS 689 (1990), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 132-40.

[29] THE LAWYERING PROCESS, *supra* note 1, at 270.

well as THE LAWYERING PROCESS.[30]

In her article, *Legal Professionalism: Do Ethical Rules Require Zealous Representation for Poor People?*,[31] Michelle Jacobs continues to struggle with this theme of whether poor people should receive the same quality of representation as those who can afford to pay for legal services. Her thesis is that clients of legal aid offices are entitled to the same zealous representation as those who can afford counsel.[32] This thesis resonates with those expounded in THE LAWYERING PROCESS.

Throughout THE LAWYERING PROCESS, one sees the authors reminding the readers that the practice of law always involves the struggle between competing ethical norms. As discussed in the previous section, often the struggle is between the lawyer's personal beliefs and the client's choice of action. Other times, the conflict is between duties to the court and those to the client. Often, the lawyer is forced to choose between his or her own moral values and the profession's rules of conduct. These tensions continue to be addressed and can be seen in many of the articles chosen for the CLINICAL ANTHOLOGY. Geoffrey Hazard explores the conflict between personal values and professional ethics.[33] George Critchlow examines the clinical teacher's conflict between his or her teaching obligations and obligations to the client[34] and Amy Ronner explores choices between duty to the client and candor to the court.[35] Each of these authors has taken an ethical

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[30] *See* text accompanying note 32 *infra*.

[31] 8 ST. THOMAS L. REV. 97 (1995), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2 at 140-46.

[32] Jacobs states:

> Standing alone, the notion that the lawyer representing indigent clients has time pressures that prevent her from providing the client with full and zealous representation is damaging enough. However, in the poverty law context, the issue of allocation of time resources is complicated by notions of client worth. Zealous representation is further diminished when the lawyer makes a value judgment as to which client's matter is important enough for the lawyer to give it more than minimum attention. For the lawyer pressed for time and with too many clients to serve, there will be a tendency to give routine treatment to those matters that appear similar. However important as a legal or moral issue, poverty is presented to legal assistance offices in a stream of individual problems, each of which already has been defined as insignificant in its social ramification. Our students, who do not even experience the true pressures of a poverty caseload, learn how to categorize their cases as routine before they are even half way through their clinical experience.

Id. at 99-100, *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 142.

[33] Geoffrey Hazard, *Personal Values and Professional Ethics,* 40 CLEVELAND ST. L. REV. 133 (1992), *as excerpted* in CLINICAL ANTHOLOGY, *supra* note 2, at 94-100.

[34] George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene,* 26 GONZ. L. REV. 415 (1990/1991), *as excerpted* in CLINICAL ANTHOLOGY, *supra* note 2, at 121-28.

[35] Amy D. Ronner, *Some In-House Appellate Litigation Clinic's Lessons in Professional Responsibility: Musical Stories of Candor and the Sandbag,* 45 AM. U. L. REV. 859

conflict posed by Bellow and Moulton and expanded on it.

What becomes clear in reviewing THE LAWYERING PROCESS twenty-five years after its publication is that it foresaw many of our continuing struggles on issues of ethical behavior. Bellow and Moulton never claimed to have all the answers to the dilemmas they posed—but they provided something much more critical. They showed those of us in clinical education how to think about the problems and learning moments inherent in clinical teaching. They saw two imperatives—that clinical teaching is most probably the best method of teaching professional responsibility and that clinical teaching without an ethical dimension is very limited. By placing ethical issues in context—and by making them "real"—the learning process is broadened and enriched. What we have learned from Bellow and Moulton is that every clinical teaching moment should contain an ethical dimension that both engages and questions the values of the profession. In this way, students can better learn the ethical rules governing the profession, while also better learning the skills and values inherent in the lawyering process.

THEORY OF LAWYERING

Clinical legal education needed a subject matter as well as a teaching method in order to take its place in the law school curriculum. Bellow and Moulton chose the word lawyering to describe the subject matter that clinical courses had in common. By identifying core topics and asking theoretical questions, they launched a wave of scholarship and assured a place for the subject of lawyering in legal education. They also responded to the changing needs of the legal profession and the society.

By 1977, federally funded legal aid offices were providing free legal services for clients with civil cases in almost every county in the United States. That same year Gary Bellow wrote an essay, *Turning Solutions Into Problems,* that criticized the quality of legal services that legal aid clients received.[36] In it he also criticized legal education for failing to teach law students how to interview a client, negotiate a settlement, or examine a witness.

The legal aid experience forced lawyers to confront the question of what "good lawyering" is. Legal aid clients paid no fees. Legal aid lawyers had the authority to decide how much time to spend with a client, whether to address all of a client's legal needs or to focus on one, and how aggressively to pursue a case. A lawyer in private prac-

(1996), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 89-93.

[36] Gary Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106 (1977).

tice could offer a client a range of options for representation and ask which option the client was willing to pay for. The legal aid lawyer had to rely entirely on standards such as competence, quality, and excellence to decide how to represent a client. Neither legal education nor the bar provided content to the concepts of competence, quality, or excellence in lawyering. As Bellow observed, "there are not articulated (or enforced) criteria defining competent legal work (beyond recognition of really good or bad work when one sees it.)."[37]

The questions that arose in the legal aid context were without easy answers. Should an interview be a dialogue between attorney and client, or could it simply be a standardized set of questions? If a judge pressures a lawyer to settle a case, should the lawyer pressure a client to settle? How should a lawyer draw the line between doing everything possible for one client and serving as many clients as possible? The answers require an understanding of the legal system and its fundamental values.

The materials assembled in THE LAWYERING PROCESS address such questions.[38] By setting out to teach law students how to handle a case, Bellow and Moulton also launched an inquiry into the theory of lawyering. THE LAWYERING PROCESS begins with the premise that a lawyer's work can be analyzed, just as an appellate case can be analyzed, and that, in analyzing the work of a lawyer, reasoning from analogy "is a useful way to connect theory to practice."[39] The materials collected by Bellow and Moulton exposed the problems encountered by lawyers in handling cases and began the process of analyzing lawyers' work.

THE LAWYERING PROCESS does not focus on trial practice, but on what a lawyer does for the entirety of a case. It starts with the initial client interview and proceeds through case preparation, fact investigation, negotiation, and counseling. The materials on trial practice deal with examining witnesses and arguing a case. Bellow and Moulton look at each lawyering activity from two perspectives, which they call the skills dimension and the ethical dimension. At the end of each section on the ethical dimension, they add their own observations under the heading, "The Larger Puzzle."

The questions that Bellow and Moulton raised in writing about the larger puzzle exposed problems with the existing paradigm of the

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[37] *Id.* at 118.

[38] *See* Alex J. Hurder, *The Pursuit of Justice, New Directions in Scholarship About the Practice of Law*, 52 J. LEGAL EDUC. 167, 170 (2002) (explaining that the common thread running through descriptions in THE LAWYERING PROCESS "of what lawyers need to know is that the choices lawyers make cannot be isolated from their understanding of the legal system and its fundamental values").

[39] THE LAWYERING PROCESS, *supra* note 1, at xxiv.

practice of law. The categories of skills and ethics do not offer a complete analysis of the work of a lawyer. Bellow and Moulton drew on other disciplines, such as medicine and psychology, for insights into the process of interviewing. However, the best teachings about interviewing and negotiating drawn from other disciplines do not explain what a lawyer does. The lawyer works within a legal system that allocates power and responsibility. The operation of the legal system dictates a substantial part of the role of the lawyer and the client.

Legal ethics also do not give content to the work of a lawyer. Luban and Milleman describe the evolution of legal ethics from a set of aspirational ideals to a code of rules setting the limits of permissible practice.[40] However, good lawyering is not simply a matter of using well-honed skills within limits that do not violate the law. It also requires sound judgment and a theory of the lawyer's role. Bellow's and Moulton's essays on the larger puzzle posed questions that demanded theoretical inquiry. They were intended to initiate discussion "about subjects that are rarely made the subject of inquiry."[41]

Bellow and Moulton asked questions about the relationships that lawyers create with clients, with other lawyers, with witnesses, with judges and other players in the legal system. They asked about the lawyer's responsibilities in these relationships, what powers lawyers have, and how lawyers should use the power conferred on them. Although Bellow and Moulton raise these questions in the context of learning about skills and ethics, their entire text demonstrates that there is a larger puzzle. Lawyers are part of a legal system that is, itself, a part of a changing democratic society. The practice of law requires lawyers to make judgments in the context of this entire system. The questions that confronted the legal aid lawyers, such as how much time to spend with a client, how aggressively to pursue a case, whether to pressure a client to settle, and how to allocate scarce services, are questions that the entire legal profession must address. The answers are elements of a theory of lawyering.

THE LAWYERING PROCESS not only looked like a traditional casebook, it introduced problems and theoretical questions in a style that was familiar to law school faculties. It was also a roadmap for scholarship by the faculty who taught clinical courses. This new clinical scholarship addressed the meaning of "good lawyering" and drew on the experiences of clinical faculty who supervised law stu-

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[40] David Luban & Michael Milleman, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, at 42-55 (1995), *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 100-08.

[41] THE LAWYERING PROCESS, *supra* note 1, at xxv.

dents in the actual practice of law.[42]

The CLINICAL ANTHOLOGY, published in 1997, represented a generation of scholarship on the subject of lawyering. It compiled representative samples drawn from a wealth of writing about the issues and dilemmas that arise in the practice of law. The anthology reveals that the subject matter of lawyering is not static. Two new themes stand out. The first is the importance of understanding and using facts to build a case, a task addressed in much of the literature as the process of storytelling.[43] The second is the importance of understanding the role of the client in every aspect of the lawyering process.

The use of the nonlegal term "storytelling" to describe a core task of lawyering represents a commitment to collaboration with clients in the selection and interpretation of facts in a case. Storytelling is an art that transcends cultures. Clients, as well as lawyers, can organize facts into a story that resonates with the moral values of the community.[44] The anthology collects representative writings about the process of working with clients to transform facts into legally relevant stories under the heading "Framing the Story of the Case." It collects materials about using stories to persuade adversaries and decision makers under the heading "Telling the Story of a Case." The distinction is based on the different responsibilities that a lawyer has to a client in framing the story of a case and to courts, adversaries and the public in telling the story. Much of the debate in clinical scholarship concerns the nature of the relationship between lawyers and clients in the process of framing and telling stories.[45]

Recognition of the importance of the role of facts in the growth of law is not entirely new. The legal realists insisted in the 1930s and '40s that an understanding of the judicial process required an appreciation of the role of facts in judicial decisions.[46] Jerome Frank, a leader in the legal realist movement, was an early advocate of establishing live-client clinics in law schools so that students could observe firsthand the role of facts in the law.[47] The legal realists succeeded in

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[42] For a discussion of scholarship about lawyering, *see* Hurder, *supra* note 38.

[43] *See, e.g.,* Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 225-26.

[44] *See, e.g.*, Lucie White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 215-24.

[45] *See, e.g.*, Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 239-47.

[46] Laura Kalman, LEGAL REALISM AT YALE, 1927-1960 (1986) (describing the history of legal realism at Yale, Columbia and Harvard).

[47] *See* Jerome Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907

reforming casebooks and the content of many traditional law school courses by increasing attention to the fact-specific nature of legal doctrine.[48] However, their vision did not encompass a theoretical approach to the role of lawyers in the legal system, and their calls for clinical legal education were unheeded.

Clinical scholars who studied the role of lawyers had to face the essential role of clients in the process of constructing a case from multiple perceptions of facts. Thus, the materials collected in the CLINICAL ANTHOLOGY address the role of clients, as well as lawyers, at different stages of the lawyering process. The anthology devotes substantial attention to the issues and dilemmas that arise in lawyer-client communication. Materials on the lawyer-client relationship introduce the client-centered approach to lawyering and explore rationales for the allocation of power between lawyers and clients.[49] Other writings confront the challenges to lawyer-client communication posed by differences of race, class, gender and other identifying characteristics of both lawyers and clients.[50] The anthology reflects an evolution of the subject matter of clinical legal education, from the study of skills and ethical rules to study of the construction of a case and of the relationships that are essential to a functioning legal system.

The current success of clinical legal education is a result of the combination of clinical methodology with a subject and theory that is of growing importance. The regulation of lawyers has traditionally been dominated by state courts acting on the advice of the organized bar. Today, federal courts and Congress are acting more frequently to govern the conduct of lawyers.[51] Questions about client confidentiality, conflicts of interest, lawyer competence, and the duty of candor must be resolved in ways that uphold the operation of the legal system, the independence of the judiciary, and the constitutional order. The legal profession must be equipped to interpret and justify its core values to other constituencies. Thus, developing a sophisticated un-

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(1933).

[48] Kalman, *supra* note 46, at 46-47.

[49] *See, e.g.*, Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501, at 506-10, 512-22 (1990), *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 153-60.

[50] *See, e.g.*, Abbe Smith, *Rosie O'Neill Goes to Law School: The Clinical Education of the Sensitive New Age Public Defender*, 28 HARV. C.R.-C.L. L. REV. 1 (1993), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 205-13.

[51] *See, e.g.*, Luban and Milleman, *supra* note 40, at 53-55 (1995), *reprinted in* CLINICAL ANTHOLOGY, *supra* note 2, at 107-08; *see also* Larry Cata Backer, *The Sarbanes-Oxley Act: Federalizing Norms for Officer, Lawyer, and Accountant Behavior*, 76 ST. JOHN'S L. REV. 897, at 922-935 (2002) (discussing the impact of the Sarbanes-Oxley Act of 2002 on the regulation of lawyers).

derstanding of the role of lawyers in the legal system and society is critical not only to legal educators but to the legal profession. The approach taken by Bellow and Moulton to the study of lawyering can help the legal profession and the courts prepare for the challenges they will face in the future.

WRITING ABOUT CLINICAL EDUCATION

THE LAWYERING PROCESS is also a book about clinical legal education, directed at an audience of clinical teachers and their students. This is seen most directly in the Introduction, where Bellow and Moulton distinguish between using the book in a "traditional" educational context and using it in a course that relies on clinical methods—and their clear preference for the latter. Noting that what they had in mind for their book was something different from the usual law school classroom course, they place primary importance on putting students in various lawyer roles through the use of simulations or actual cases.[52] In this way, students will have the opportunity to describe, evaluate, and solve problems and can be encouraged to generalize about what and how they learned from the experience. "With such a method, readings about role and task can only provide background and focus."[53] Coming at the same point from the other side, they also note that the book must be supplemented when put into practice and that "[s]tudents and instructors will have to find some way to capture their out-of-class experience so it can be observed and discussed."[54]

In effect, THE LAWYERING PROCESS is a part of, and not separate from, Bellow's and Moulton's vision of a clinical method of law teaching. As a result, there is clinical education content throughout. If one reads the book as it was intended, as a text for a clinical course, the authors' ideas about the lawyer's role, the material they included on how lawyers work, and the questions they pose to the student-reader helped shape an emerging clinical methodology. And this is exactly what Bellow and Moulton were trying to do:

> For us, the combination of study, practice, and teaching from which this collection emerged offered new vistas on the lawyer's role, and a new appreciation of the possibilities inherent in learning from doing. It has been part of a dialogue throughout the country about how and what one learns when one learns from experience.[55]

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[52] THE LAWYERING PROCESS, *supra* note 1, at xxiii.

[53] *Id.* at xxiv.

[54] *Id.*

[55] *Id.* at xxv. *See also* Michael Meltsner, *Writing, Reflecting and Professionalism*, 5 CLIN. L. REV. 455, 456 n.2 (1999) (noting that although THE LAWYERING PROCESS was published only in 1978, "working drafts were available earlier and influenced many clinicians").

This integration of method and substance has been accepted widely in clinical education circles. Citing THE LAWYERING PROCESS at the head of a long but non-exhaustive list of important early works on clinical education, a recent article described a "burgeoning" clinical scholarship in the 1970s and early 1980s as follows:

> By focusing on clinical education as a method, clinicians began to explore what clinical teachers were and should be doing, how clinical teaching methodology could be infused throughout the law school curriculum, and what the purposes and goals of clinical teaching should be. Important early examples of clinical scholarship focused on clinical methodology, what it meant for students to assume and perform the lawyer's role in the legal system, how to identify and teach the elements of various lawyering skills, how to develop and explain theories of lawyering, how to refine and improve the supervisory process, and how to incorporate experiential learning theory into clinical law teaching.[56]

In other words, THE LAWYERING PROCESS was also a groundbreaking piece of clinical scholarship about clinical education. Perhaps because clinical teachers have been accepted more easily into the legal academy as teaching colleagues than as scholars, many clinicians have chosen to write about law teaching. Objectively, this is a good thing: since the clinical movement is dedicated to reforming legal education, clinical teachers have a special responsibility to write about teaching. Articles and essays on clinical teaching methods appear regularly; much of this work has been received positively in the legal academy, reinforcing the notion that clinical education has had a transformative effect on professional training.[57]

When we conceptualized the CLINICAL ANTHOLOGY, we decided to include the subject of clinical legal education as a way of contextualizing both the courses in which the book would be used and the other selections in the book. Expecting that the book would be read by clinical teachers for their own benefit in addition to their assigning it in conjunction with clinical casework, we sought to offer an introduction to scholarship on clinical education touching on matters particularly relevant to live-client clinical courses. We also chose selections that could be used to help new clinic students understand the goals and values of the clinical movement. Thus, the first chapter of the anthology addresses the subject of live-client clinical education, and does so in two parts: one covering curricular objectives and the

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[56] Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for the Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 16-17 (2000).

[57] *See id.* at 1, 17 (2000) (crediting clinical scholarship about clinical teaching "in large part" with clinical legal education having gained a more prominent place in law schools during the 1980's and 1990's).

other covering the clinical methodology. Beginning with Jerome Frank's seminal article, *Why Not A Clinical Lawyer-School?*,[58] the part on curricular objectives includes articles that map the future of clinical education in the context of its past (or lack thereof),[59] reflect on the influence the MacCrate Report's Statement of Fundamental Skills and Values on a professional training curriculum,[60] and explore the range of learning opportunities that can come from the supervised clinical practice.[61] The part on the clinical methodology includes articles that set forth an educational context for clinical legal education,[62] criticize the actual clinical teaching that takes place,[63] and offer models for clinical instruction.[64]

Our approach to clinical education at Vanderbilt has always emphasized the collaborative relationship between teacher and student and their shared responsibility for client representation. Placing writings that expose this approach to teaching together with writings that explore the goals of teaching fits that model perfectly. The chapter on clinical education is also a statement in support of clinical scholarship on teaching and learning—a scholarship that has its genesis in THE LAWYERING PROCESS. A false dichotomy between teaching and scholarship that plagues legal education generally tends to be applied with special vengeance to clinical law teachers.[65] Articles, or even books, that address clinical legal education are not valued in the same way as is traditional academic scholarship. Even to the extent that the issues addressed in these types of works—law school instruction and preparation for the practice of law—are recognized as important to

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[58] *See* Frank, *supra* note 47, *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 1-4.

[59] Anthony G. Amsterdam, *Clinical Legal Education — A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 5-11.

[60] Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense,* 44 J. LEGAL EDUC. 548 (1994), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 20-23.

[61] Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 29-40.

[62] Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 50-60.

[63] Robert Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 62-69.

[64] Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N. MEX. L. REV. 185 (1989), *as excerpted in* CLINICAL ANTHOLOGY, *supra* note 2, at 77-82.

[65] For a discussion of this and another false dichotomy in clinical legal education, practical training vs. public service, *see* Frank S. Bloch, *Teaching and Doing Justice: The Importance of Clinical Legal Education to Law Schools Facing New Global Challenges* (unpublished paper presented on 8 March 2003 at the Conference on Global Challenges for Legal Education and Human Rights Teaching, sponsored by the UK Centre for Legal Education and the University of Warwick) (on file with Frank S. Bloch).

the legal academy, writing about them is not seen as sufficiently academic.

This is, of course, not unique to clinical legal education; downgrading writing on clinical teaching puts clinicians, in this respect at least, on a par with other law teachers who write about teaching. There are, however, some differences that explain the richness and continuing vitality of what clinicians write about clinical education. At its heart, clinical education is an educational reform movement that must continue to break new ground. Perhaps more importantly, the integration of the clinical method with its subject matter discussed earlier means that scholarship on clinical education is often as much about the law, lawyers, and the legal profession as it is about law teaching. Bellow and Moulton helped spawn a line of clinical scholarship on legal education—from which we drew the pieces in the first chapter of our book—that has motivated, and continues to motivate, new generations of clinical teacher-practitioners not only to teach more effectively but also to train (and be) better lawyers.

CLEARING A PATH FOR CLINICAL SCHOLARSHIP

For the most part, Bellow and Moulton had to go outside the clinical community to find the material excerpted in THE LAWYERING PROCESS. Since then, a rich body of clinical scholarship has developed—on the public role of the lawyer, on professional responsibility, on the theory of lawyering, and on clinical legal education itself—that owes much of its vitality to the ideas in, and the very existence of, that pioneering text.[66] Thus, we were able to draw almost exclusively on works of our clinical colleagues for the material in our book. The CLINICAL ANTHOLOGY is, in a way, a celebration of that accomplishment. The same can be said for the founding and continuing vitality of the *Clinical Law Review*.

There are, however, some signs of discontent and dissension within the clinical community on the subject of clinical scholarship that go to the very heart of the clinical movement. Should clinicians write at all? After all, if clinical programs are intended to counterbalance removed-from-practice classroom instruction, shouldn't clinical teachers devote themselves to practice and practice-based instruction rather than mimic their scholarship-producing non-clinical counterparts? John Elson captures many clinicians' aversion to traditional le-

[66] As Susan Bryant and Elliott Milstein observe in their introduction to this symposium, Bellow and Moulton's work "created the agenda for decades of clinical scholarship." Susan Bryant & Elliott Milstein, *Reflections upon the 25th Anniversary of the Lawyering Process: An Introduction to the Symposium*, 10 CLIN. L. REV. 1, 1-2 (2003). *See generally id.* at Part II(J).

gal scholarship: by devoting such extensive resources to scholarship directed at obscure subjects of the professors' personal interests, law schools and their faculties necessarily limit the amount of attention paid to the central task of educating new lawyers.[67] The logic of the argument continues:

> [F]irst, law schools have a paramount duty to educate their students for practice competence; second, law schools generally are not fulfilling that duty satisfactorily; third, the more emphasis law schools give to the production of legal scholarship, the less satisfactory their education for professional competence is likely to be; and, fourth, the reasons commonly asserted for the primacy of law school's scholarly mission do not justify the resulting cost to their mission of professional education.[68]

Another criticism of clinical scholarship derives from a belief that much of it has become dangerously close to the traditional scholarship criticized by Elson and others,[69] and seeks to identify a uniquely clinical content for clinical scholarship. Thus, Peter Hoffman has set out his vision of a skills-oriented clinical scholarship that should "help lawyers improve their representation of clients and help law students prepare to practice law," "be practical in its orientation and design," "be grounded in experience, rather than deduced from pure theory untested by practice," and "be accessible to its intended recipients, lawyers and law students."[70] Peter Joy urges a definition of clinical scholarship focused on lawyering skills and professional values in a manner "designed to improve the ability of lawyers to represent clients and to help law students prepare to represent clients."[71]

Gary Palm has argued forcefully that clinical scholarship should be incorporated directly into the teaching and public service missions of clinical legal education.[72] According to him, "the 'complete'

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[67] *See* John S. Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343 (1989) [hereinafter *The Case Against Legal Scholarship*]. *See also* John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135 (1997).

[68] Elson, *The Case Against Legal Scholarship, supra* note 67, at 344 (citations omitted).

[69] Thus, Richard Boswell has observed: "some of the recent scholarship of clinicians, while representing a significant contribution to understanding the role of law and lawyers in society, is more exclusive than inclusive. . .. It does not speak in the language of clients, lawyers, or even judges." Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 HASTINGS L.J. 1187, 1192-93 (1992).

[70] Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 CLIN. L. REV. 93, 114 (1994).

[71] Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLIN. L. REV. 385, 387 (1996).

[72] *See* Gary H. Palm, *Reconceptualizing Clinical Scholarship as Clinical Instruction*, 1 CLIN. L. REV. 127 (1994) [hereinafter *Reconceptualizing Clinical Scholarship*]. *See also* Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths From Rheto-*

clinical teacher is one whose collaborative work with students includes some efforts to obtain reforms to correct systemic problems that have been identified through representing individual and organizational clients directly."[73] Although a well-known skeptic on the subject of clinicians engaging in traditional scholarship,[74] he finds that scholarship linked to this type of "complete" clinical work—what he might call "true" clinical scholarship—adds value to the enterprise and can support the ultimate goals of the clinical movement:

> For the clinical teacher who engages in such efforts to achieve systemic reform, scholarship affords a means to expand a clinical program's efficacy by sharing information about successful approaches with other clinical teachers. Moreover, articles of this sort will stimulate others to come up with yet other ideas to improve clinical programs and the quality of representation of clients.[75]

Debate over the content of clinical scholarship can be healthy, so long as efforts to keep the "clinical" in clinical scholarship avoid taking the "scholarship" out. Clinical law teachers have a duty to write about the academic side of their work, whether on the lawyering process, law and society, or legal education reform. Indeed, having both the responsibility for and the opportunity to write clinical scholarship is a key to establishing clinical legal education's rightful place in the legal academy.[76] Clinical teachers are academic lawyers; they are

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ric to Practice, 1 CLIN. L. REV. 157 (1994) (describing an advanced clinical seminar at UCLA in which students investigated grassroots social initiatives and examined the types of organizations involved, the roles of lawyers in the organizations' agendas, and the inherent tensions of the work; stresses the need for critical reflection on the dynamics and process of grassroots organizing, and for increased clinical scholarship).

[73] Palm, *Reconceptualizing Clinical Scholarship, supra* note 72, at 132.

[74] This view was expressed in print during his tenure as Chair of the Section on Clinical Legal Education of the Association of American Law Schools. *See* Gary H. Palm, Message from the Chair, in AALS SECTION ON CLINICAL LEGAL EDUCATION, NEWSLETTER, Sept. 1986, at 1.

[75] Palm, *Reconceptualizing Clinical Scholarship, supra* note 72, at 132. *See also* Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, *Why Not a Clinical Lawyer-Journal?*, 1 CLIN. L. REV. 1, 2 (1994) ("Like their nonclinical colleagues, clinicians have come to see scholarship as a means of disseminating information about innovative approaches and exploring ideas that grow out of clinical teaching experiences").

[76] We do not underestimate the difficulties that clinicians face in this effort, especially those with a live-client clinical practice. As one clinician wrote recently, the challenges clinical teachers face in producing written scholarship are "daunting." Kimberly E. O'Leary, *Evaluating Clinical Teaching—Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 511 (2002). Leary offers a nonexclusive list of "challenges" that includes case work responsibilities, having to learn the clinical teaching methodology, writing about problems not addressed by "traditional" scholarship, not knowing the unwritten rules about scholarly writing, and dealing with political battles surrounding the clinic. *Id.* at 511-14. As David Chavkin points out in his article in this symposium, some schools have hired staff attorneys and lower-status clinical instructors to handle cases in the clinic, which allows full-time clinical teachers greater

uniquely situated and skilled to produce clinical scholarship. Moreover, as Richard Neumann and Stefan Krieger note in their article in this symposium, clinicians are in a far better position to carry out empirical research, which is underrepresented in traditional legal scholarship.[77]

THE LAWYERING PROCESS helped set the standard for today's clinical scholarship, a body of work that activates the clinical movement and made possible our book of readings for live-client clinics. Through their clinical scholarship, clinicians have begun to change the way the profession looks at itself and, to some degree, what it does. Clinical scholars are, and must continue to be, active voices in the profession and the academy. Bellow and Moulton set their clinical colleagues on the right path, but much remains to be explored;[78] perhaps the greatest challenge of THE LAWYERING PROCESS is to keep searching for "larger puzzles" to solve. With a clear focus on a uniquely clinical scholarship, the clinical movement can meet its unique scholarly promise.

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opportunities "to engage in the intellectual process of thinking about what [they] do and why [they] do it" and to contribute to "the growing body of clinical scholarship." David F. Chavkin, *Spinning Straw into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLIN. L. REV. 245, 273 (2003). For a view of these issues from the perspectives of a legal writing instructor, *see* Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007 (2001).

[77] *See* Richard K. Neumann, Jr. & Stefan H. Krieger, *Empirical Inquiry Twenty-Five Years After* The Lawyering Process, 10 CLIN. L. REV. 349, 397 (2003). *See also* Jeanne Charn, *Service and Learning: Reflections on Three Decades of* The Lawyering Process *at Harvard Law School*, 10 CLIN. L. REV. 75, 112 (2003) (noting that clinicians have produced relatively little empirical scholarship despite having "unparalled access to information and data on what happens in the law office, the lower trial courts and in administrative agencies").

[78] *See id.* at 111 ("While clinicians have produced interesting and original scholarly work, it is not clear that we have begun to explore the potential of a distinct clinical scholarship").