

SEIZING THE DISORIENTING MOMENT: ADULT LEARNING THEORY AND THE TEACHING OF SOCIAL JUSTICE IN LAW SCHOOL CLINICS

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I. INTRODUCTION

#1: I couldn't believe what I saw in court yesterday. While we were waiting for our trial to start, dozens of people were getting evicted by the judge without even having a real chance to defend themselves. A lot of these tenants seemed to have good cases, but just because they were poor and didn't know the system the landlords' lawyers were getting anything they wanted from the judge. I just never realized how poor people get railroaded in what I thought was a fair system.

#2: So if my client receives less than \$300 a month in A.F.D.C. and can't afford transportation to look for a job, much less day care and health care if she finds a low-paying job, how is her family supposed to survive? I didn't know people like her were stuck in such a no-win situation.

#3: You could tell what was really happening during that custody hearing. The judge saw my client as less able to care for her kids than their father just because her income is limited to a disability payment, while he has a good-paying job. My client is real upset and she keeps saying she doesn't see the system as fair. I have to say that I agree with her.¹

Variations of the above statements are repeated so often by students in clinical law courses that clinical teachers may be tempted to take such reactions for granted. However, when clinical students' experiences representing poor, disabled, elderly or otherwise marginalized clients cause the students to question their prior notions of social justice, an important educational dilemma is presented: Should

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¹ Paraphrases of statements made by Indiana University - Indianapolis clinical students in classroom or student-supervisor discussions. These statements reflect common reactions given by clinical students when they first confront systemic injustice in their experience representing clients.

clinical teachers treat these reactions as a natural byproduct or even a happy accident of a poverty-oriented clinical course, or should the teachers and the institutions they represent adopt an active role in facilitating clinical students learning lessons of social justice? Further, if an active role is to be adopted, do clinical teachers know what triggers this type of social justice learning and how they can facilitate the learning?

This article answers these questions by advocating that a complete legal education and, in particular, a complete clinical educational experience, should include lessons of social justice. Clinical teachers should accept as part of their role the exposure of clinical students to experiences and reflective opportunities that will lead to social justice learning. To perform adequately this role, clinical teachers must understand the dynamic that causes the students' justice perspective to be transformed by their clinical experiences, and then design a methodology inspired by adult learning theory that will nurture the social justice learning opportunities a clinical course uniquely provides.

Toward that end, an argument is presented here that lessons of social justice should be a core element of the law school curriculum in general and the content of clinical courses in particular. Discussion of general principles of adult learning theory as applied to clinical legal courses is followed by a review of the concept of the learner's "disorienting moment," such as those described above, that spurs social justice learning in clinical courses. Finally, a methodology is proposed for "seizing the disorienting moment" by providing opportunities for effective social justice learning in law school clinical courses.

II. WHY MAKE EXPLICIT EFFORT TO TEACH LESSONS OF SOCIAL JUSTICE?

There are several powerful arguments to support the notion that lessons of social justice are a necessary part of legal education generally, and clinical legal education in particular. Those arguments can be summarized under two headings. First, it is part of the law schools' overall educational mission to provide opportunities for the learning of social justice concepts. Such learning is not only essential for an accurate portrayal of the adoption and application of the law, it is also necessary preparation for law school graduates' likely roles in shaping public policy and anticipated roles in providing *pro bono* representation of members of oppressed groups. Second, it is part of poverty law clinics' educational mission to provide opportunities for the learning of social justice concepts, since such learning is necessary preparation for the empathic representation of both clinical clients and future clients.

A. *Law Schools' Overall Educational Mission Should Include Opportunities For Learning Social Justice Concepts*

A significant body of literature has developed in support of the notion that instruction in the law is fundamentally lacking unless it includes as a core component significant opportunities for learning about the social setting which shapes the practice of law and issues of justice in the adoption and application of the law.² The core of these arguments questions the Langdellian model of legal instruction based on the concept of law as reason-based, abstract, and value-free, and thus best studied in a detached and scientific method. The Langdellian method, the argument goes, ignores the impact of social and political factors on law and therefore presents a picture of the legal system and lawyers' place in it that is, at best, hopelessly naive, and at worst, dangerously misleading.³

The argument that an intertwined relationship exists between the law and its social backdrop can hardly be refuted in light of the significant historical evidence and current data on legal representation and just adjudications being rationed according to income, race and gender. One commentator used United States Census and American Bar Association figures to estimate that nearly 85% of Americans have limited access to the legal system because of their inability to afford representation.⁴ Lack of access to counsel usually equates to a denial of justice due to our legal systems' demonstrated hostility toward *pro*

² Some particularly compelling discussions advocating a central place for justice instruction in legal education include Jerold S. Auerbach, *What Has The Teaching of Law to Do With Justice?*, 53 N.Y.U. L. REV. 457 (1978); David Barnhizer, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 285 (1992); Barbara Bezdek, *Reconstructing A Pedagogy of Responsibility*, 43 HASTINGS L.J. 1159 (1992); Anthony D'Amato, *Rethinking Legal Education*, 74 MARQ. L. REV. 1 (1990); Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law*, 10 NOVA L. REV. 633 (1986); and Henry Rose, *Law Schools Should Be About Justice Too*, 40 CLEV. ST. L. REV. 443 (1992).

³ Barnhizer, *supra* note 2, at 303. He critiques the positivist view of law:

When politics, law and justice are involved, we go to great lengths to protect what one writer calls our "fragile fictions." This may be necessary politically but it is profoundly dishonest if our goal is full understanding and awareness of the nature and conditions of the reality we inhabit.

See also Duncan Kennedy, *Legal Education As Training For Hierarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 45 (David Kairys, ed., 1990). He also expresses scorn for the Langdellian form of legal instruction:

Teachers teach nonsense when they persuade students that legal reasoning is distinct, as a method for reaching correct results, from ethical and political discourse in general (i.e., from policy analysis).

⁴ Rose, *supra* note 2, at 444. This figure receives support from other studies of legal needs. For example, it is estimated that less than 10% of the legal needs of Indiana's low-income population are addressed by the current system. LEGAL SERVICES ORGANIZATION OF INDIANA, INC., *LEGAL NEEDS STUDY OF THE POOR IN INDIANA* 73 (1992)

se litigants.⁵ This pattern of exclusion inspired one former American Bar Association president to speculate that no other Western civilization, save perhaps South Africa, allows so little access to justice to its poor and middle class citizens.⁶ Of course, the current rationing of justice is the political descendent of a long history of limited access to justice for members of American society marginalized due to economic status,⁷ race⁸, or gender.⁹

When the relationship between law and social justice is viewed in a context broader than simply litigation, the nexus between the two is even more pronounced. The law's creation in the legislative branch of government, as well as its interpretation in the judicial branch and application in the executive branch, has obviously had a significant role in the development of the character of United States society. Law school graduates in the roles of legislators, lobbyists, judges and public advocates have played an integral part in the adoption and application of taxation schemes, regulatory policies, government budgets, criminal laws, public benefit programs, election laws and constitutional rulings that have, among other effects, created a society with the highest level of income stratification¹⁰ and incarceration¹¹ of any industrialized nation.

Perhaps just as significant as these formal roles are the roles that law school graduates play in influencing public policy through advocacy about society's vision of justice in the court room, board room and living room.¹² The intertwined relationship between the legal pro-

⁵ Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 554. She reports an informal study showing that unrepresented tenants were systematically prevented from actively presenting and/or defending claims and, not surprisingly, lost virtually every case to represented landlords in Baltimore's Housing Court.

⁶ Talbot D'Alemberte, *Teaching About Justice and Social Contributions*, 40 CLEV. ST. L. REV. 363, 369 (1992).

⁷ Rose, *supra* note 2, at 444, and INDIANA LEGAL SERVICES ORGANIZATION, *supra* note 4, at 73.

⁸ See, e.g., DERRICK BELL, JR., *RACE, RACISM AND AMERICAN LAW* (1980).

⁹ See, e.g., Nadine Taub & Elizabeth M. Schneider, *Women's Subordination and the Role of Law in THE POLITICS OF LAW*, *supra* note 3, at 151 and JOAN HOFF, *LAW, GENDER AND INJUSTICE: A LEGAL HISTORY OF UNITED STATES WOMEN* (1991).

¹⁰ Keith Bradsher, *Gap in Wealth in U.S. Called Widest in West*, N.Y. TIMES, April 17, 1995, at A1, C4 (citing EDWARD N. WOLFF, *TOP HEAVY: A STUDY OF INCREASING INEQUALITY OF WEALTH IN AMERICA* (1995)). The most recent United States Census Bureau estimate is that over 15% of the United States population lives in a household which has income below the federal definition of poverty. Jason DeParle, *Census Report Sees Incomes in Decline and More Poverty*, N.Y. TIMES, October 6, 1994 at A7.

¹¹ See Michael J. O'Sullivan, *Criminalizing the Mentally Ill*, 166 AMERICA 8, 9 (1992) (noting that the United States has highest incarceration rate—426 prisoners per 100,000 population—in the world, a figure that has doubled from 1980 to 1991).

¹² For a discussion of research on the role of "opinion leaders" on shaping public opinion, see SILVO LENART, *SHAPING PUBLIC ATTITUDES: THE IMPACT OF INTERPERSONAL*

fession and society is perhaps best stated by Jerold Auerbach: "The issue is not whether lawyering can be divorced from social consequences; it cannot. The issue is which social consequences, within the context of modern American society, lawyering shall promote."¹³

Although law school graduates as a group exert enormous influence on public policy, lawyers individually do not necessarily acknowledge this role. The law school-imbued notion that the practice of law is a technical matter of value-free representation of a client's best interests—without regard to societal implications—prevails among practicing lawyers.¹⁴ Legal education needs to confront this narrow vision of legal advocacy not only because it is in error, but because critical analysis of one's role in the social and legal systems should be an essential part of any higher education experience.¹⁵

If law schools are to adequately prepare their graduates to assume the advocate roles, the curricula must supplement the dissection of the intricacies of appellate court decisions with opportunities for exploration of the relationship between law, both as adopted and applied, and the social reality that shapes the law and the legal profession.¹⁶ The format of the presentation of such opportunities can of course be controversial, because retreat from the view of law as an abstract science brings forth the risk of legal education degenerating into an organized attempt to instill instructor values into their students. However, such concerns should be addressed through cautious presentation rather than avoidance of the essential subject matter of justice issues. Some instructors have responded to the need for caution in reviewing social justice issues by describing themselves as issu-

COMMUNICATION AND THE MASS MEDIA 18-20 (1994).

¹³ Auerbach, *supra* note 2, at 474.

¹⁴ Gary Blasi, *The Homeless Seminar at UCLA*, 42 WASH. U. J. URB. & CONTEMP. L. 85, 86 (1992)(describing this phenomena as "the professional myopia of lawyers," a condition that blinds lawyers to all issues that do not present themselves as issues of litigation).

¹⁵ Adult learning theory holds that one of the most significant activities of adult life should be "calling into question the assumptions underlying our customary, habitual ways of thinking and acting and then being ready to think and act differently." STEPHEN BBROOKFIELD, *DEVELOPING CRITICAL THINKING* 258-259 (1987). Noted educational philosopher Paulo Friere cites this type of critical evaluation of the adult self's relationship with the society as being necessary for the continued well-being of both the individual and the society. PAULO FRIERE, *PEDAGOGY OF THE OPPRESSED* 80-81 (1970).

¹⁶ The subject-matter of traditional law school courses has come under criticism not only for its lack of attention to social justice issues, but unwillingness to offer even abstract review of the legal issues that affect low-income members of society:

Law schools are best defined by their curriculum, not only what is taught, but how it is taught. The core curriculum of most law schools not only does little to nurture the social values of students, it undermines these values. What law students do learn focuses disproportionately on the legal problems of those who can afford legal services.

Rose, *supra* note 2, at 446.

ing an "invitation" to the students to explore the issues of social justice that arise during the law school course:

It is no use to insist or expect that students see the social world and moral universe as I do. Yet, I can ask that they take seriously the counter-pictures of the bonds among law, poverty, and practice that I offer.¹⁷

The irony of any discussion of the reluctance to provide justice lessons in the law school setting is that, while the notion of presenting the practice of law as value-laden is at odds with the long tradition of Langdellian formalism, law students often enroll in law school for the express purpose of preparing themselves for a career using the law to advance the social good.¹⁸ A law school curriculum that fails to respond to student desires to learn about the law's relationship with social justice has the predictable result of teaching the regrettable lesson that the law has no relationship with social justice. As one Yale clinical professor lamented:

My point is that students do come to law school filled with passion, with morality, with a sense of justice, and *we* spend, the generic *we*, the law school itself, spends three years doing our best to crush them under the weight of the rule of law instead of helping them to integrate their ideas and values with the law.¹⁹

In response to these student desires to learn how to integrate justice interests and the law, one specific goal of social justice instruction could be the encouragement of future *pro bono* representation of indigent clients. In spite of the extensive unmet need for civil legal representation of poor members of American society and the limited chances that an unrepresented person will have any meaningful access to justice, *pro bono* programs among the legal profession do not include even a significant fraction of the practicing bar.²⁰ Instructors of poverty-law related courses have reported success in achieving an explicit goal of encouraging a significant amount of *pro bono* repre-

¹⁷ Bezdek, *supra* note 2, at 1173. See also Lesnick *supra* note 2, at 642. Bezdek's and Lesnick's use of the concept of an "invitation" to increase awareness about the relationship between social justice and the practice of law is borrowed from the Socratic concept that persuasion is more of an invitation than a command.

For a discussion of ethical issues that arise when adult educators aspire to change social systems through their influence on students see Thomas A. Singarella & Thomas J. Sork, *Questions of Value and Conduct: Ethical Issues for Adult Education*, 33 ADULT EDUCATION QUARTERLY 244 (1983).

¹⁸ Rose, *supra* note 2, at 444. See also, ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (1989) (describing the process whereby many public interest-minded law school enrollees abandon their goals of using the law to better the social good before graduation).

¹⁹ Robert A. Solomon, *Teaching Morality*, 40 CLEV. ST. L. REV. 507, 508 (1992).

²⁰ See Esther F. Lardent, *Mandatory Pro Bono in Civil Cases: The Wrong Answer to the Right Question*, 49 MD. L. REV. 78, 90 (1990).

sentation from their students after they were experientially and theoretically exposed to the problems of the poor in obtaining justice.²¹

However, the overall goal of instruction in issues of social justice cannot be limited to the advocacy of *pro bono* involvement. Put bluntly, social justice instruction can not be considered successful if its sole effect is to inspire future lawyers who will operate without social conscience in their primary work to donate a few *pro bono* hours to the poor of their community.²² A larger goal of social justice instruction should be the learners' attainment of a level of understanding of the relationship between law and issues of social justice at both broad-based and personal levels. One poverty law course's goals in this area were described this way:

It was thought that since most lawyers will be in policy making positions rather than in public interest firms or in legal services offices, the course should give students the tools to analyze the policy assumptions underlying the current social programs. The students could then incorporate those tools to analyze the effects their actions would have on the poor, whether they practice in government, business, or a Wall Street firm.²³

It is clear that even when goals such as those described above are not an explicit part of a law school curriculum, lessons on the relationship between law and social justice are being provided. The question then becomes whether those lessons accurately reflect the legal practitioner's integral role in the building or destroying of a socially just society, or whether the lessons perpetuate the myth of the practice of law as an abstract and value-free exercise. The study of legal doctrine in isolation provides the basis for the inaccurate assumption that all parties come to disputes equally situated in terms of power, assets and access to competent counsel.²⁴

²¹ Catherine L. La Fleur, *Surveying Poverty Law: Addressing Poverty Law in a Required Course*, 42 WASH. U. J. URB. & CONTEMP. L. 147, 157 (1992); BARBARA BEZDEK, "Legal Theory and Practice" *Development at the University of Maryland: One Teacher's Experience in Programmatic Context*, 42 WASH. U. J. URB. & CONTEMP. L. 127, 129, 140.

²² The notion that a primarily conscience-less lawyer cannot be deemed a socially-just actor by performing some *pro bono* work was most witheringly described by Thomas Shaffer and Robert Rhodes:

The burdens of poverty are fashioned in Wall Street offices faster and more effectively than legal services and public interest offices can lift them. If you spend the day on corporate takeovers and plant closings without thinking about the people you put out of work, you cannot make up for the harm that you do by giving a woman free legal advice in the evening when her unemployed husband takes out his frustration by beating her.

Thomas L. Shaffer & Robert E. Rhodes, Jr., *A Christian Theology for Roman Catholic Law Schools*, 14 U. DAYTON L. REV. 5, 18 (1988).

²³ La Fleur, *supra* note 21, at 148. See also Rose, *supra*, note 2, at 451.

²⁴ Richard Boldt & Marc Feldman, *The Faces of Law In Theory and Practice: Doctrine*,

Law schools should therefore not be wary of acknowledging their duty to explicitly—and accurately—teach the lessons of social justice necessary for a complete legal education. It has been noted before that any process of formal learning, since it is a process of bringing about change in student perspectives, is necessarily a moral activity.²⁵ So too is the practice of law, as the nature of the legal process contemplates the advocacy of positions with moral consequences both within and outside the confines of the case facts. A legal education worthy of the title must include an acknowledgement and significant consideration of the relationship between social justice and the practice of law.²⁶

B. Poverty law clinics' educational mission includes providing opportunities for learning social justice concepts

Clinical law courses present unique opportunities for presenting and discussing the relationship between the law and social justice issues. In recognition of these opportunities, law school clinics have adopted a mission which includes the teaching of such issues. The Association of American Law Schools (AALS) Section on Clinical Education has identified "imparting the obligation for service to indigent clients, information about how to engage in such representation and knowledge concerning the impact of the legal system on poor people" as one of nine teaching goals present in most law school clinics.²⁷

The experiential nature of the clinical course brings abstract notions of justice to life and inspires classroom or informal teacher-student or student-student dialogue on the relationship of the legal practice to the lives of clients and to society as a whole. The focus of most clinical courses is the representation of clients who, by reason of

Rhetoric, and Social Context, 43 HASTINGS L.J. 1111, 1117 (1992). See also Rose, *supra* note 2, at 447. He comments:

Law students are trained to be neutral—to objectively analyze legal problems and to present arguments from all sides. This is an important part of the process of teaching analytic skills. Yet it leaves students with a sense of moral relativism about the work of lawyers—a sense that any argument is legitimate.

²⁵ SHARAN B. MERRIAM & ROSEMARY S. CAFFARELLA, *LEARNING IN ADULTHOOD* 286 (1991).

²⁶ "Ideals without technique are a mess. But technique without ideals is a menace." Karl Llewellyn, *On What Is Wrong With So-Called Legal Education*, 35 COLUM. L. REV. 651, 662 (1935).

²⁷ *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 515. Lessons of ethical practice, whose relationship to lessons of social justice is one of partial overlap, are also historically emphasized in clinical legal education. See, e.g., Steven Hartwell, *Moral Development, Ethical Conduct, and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131 (1990) and James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprenticeship System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 113-18 (1991).

low income, disability, incarceration or other impediment, are members of groups that have great difficulty attaining any justice inside or outside of the legal system.²⁸ Learning about the client's place in the system usually is not only a necessary part of the technical preparation of cases involving public benefits, domestic violence, landlord-tenant issues and the like, but also an important component of developing an effective attorney-client relationship through empathic listening to the client's description of her problem and desired solution.

Empathy with a legal client, as defined by Stephen Ellman and others, begins with the expression of the lawyer's understanding of the client's expression of her problems and situation.²⁹ Ellman describes broadening the lawyer's perspective as a prerequisite for an empathic attorney-client relationship:

Empathic lawyering aspires to a vision of lawyers capable of overcoming their own limitations of perspective so as to see or feel the world as other persons do, despite the differences of race, gender, class, culture or simply identity that divide us from each other. The experiences and perspectives of the powerful, however, are not the same as those of the powerless. To cross the gap—and to be perceived by one's client as having crossed it—the lawyer generally needs more than just intellectual curiosity. She needs some sympathetic identification with those from whom her experience may otherwise separate her.³⁰

Given law students' disproportionately high level of economically-privileged or at least non-poor backgrounds, it is simply impossible to expect student lawyers to achieve a true understanding of a poor client's situation, to "cross the gap," without significant exposure to the realities of social injustice faced by this country's poor. For example, how is a student to express understanding with a client's fear of eviction without first being exposed to the scarcity of low-income housing in the client's community? How is a student to express understanding of the implications of a client's welfare benefits termination without first being exposed to the scarcity of good paying jobs

²⁸ Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992) cites clinics' representation of indigent clients as the basis for the fact that, "[t]o many people, the relationship between clinical programs and the justice mission of American law schools is so clear as to be self-evident."

²⁹ Stephen Ellman, *Empathy and Approval*, 43 HASTINGS L.J. 991, 991-93 and DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 21-22 (1991). For extensive discussion on the importance of close attention to the impoverished client's narrative description of problems and proposed solutions, see Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) and Anthony Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991).

³⁰ Ellman, *supra* note 29, at 1003.

and affordable decent child care faced by the client? Basic lessons in social justice, or social injustice as the case may be, are essential background for a student lawyer wishing to have the ability to present herself as an empathic representative of a low-income client.³¹

Even if a clinical student never represents another poor person after graduation, the presentation of issues of institutional bias and structural barriers facing clinical clients can be a good skills model for the future development of effective attorney-client relationships. The graduate in practice will be well-served by the habit of analyzing her cases for the influence of social justice issues such as sexism and racism that can influence the course of the case and/or the relationship with the client.³² The clinical exercise of assessing the social-political landscape and the client's and case's location on that landscape is an exercise which, given the inherent inequality of both American society and its legal system, will hopefully lead to practicing lawyers' regular assessment of the moral and social consequences of their role in every case of their practice.

III. ADULT LEARNING THEORY AND CLINICAL LEGAL EDUCATION

Opportunities for social justice learning in legal education can best be provided through application of principles of adult learning theory in the clinical setting, where experiential learning is central to the teaching methodology. The learner's clinical experience of representing victims of injustice often includes a "disorienting moment" for the learner, in which her prior conceptions of social reality and justice are unable to explain the clients' situations, thus providing what adult learning theory holds is the beginning stage of real perspective transformation. The principles of adult learning theory, their application in the experiential learning setting of the law school clinic, and the concept of the "disorienting moment" in the clinical setting are all reviewed here.

A. *Principles of Adult Learning Theory*

As its name implies, adult learning theory is concerned with the way adults gain knowledge. Adult learning theory is sometimes re-

³¹ Homer C. La Rue, *Developing an Identity of Responsible Lawyering Through Experiential Learning*, 43 HASTINGS L.J. 1147, 1151 discusses the need for students in the University of Maryland's Legal Theory and Practice (LTP) course to understand "the way law impacts on the day to day life of the poor" before they begin to represent these persons.

³² For discussion of the use of clinical settings as a backdrop for addressing issues of sexism see Mary Jo Eyster, *Analysis of Sexism in Legal Practice: A Clinical Approach*, 38 J. LEGAL EDUC. 183 (1988).

ferred to as “andragogy,” literally the practice of helping adults learn, to distinguish it from “pedagogy,” which refers to helping children learn. The term “andragogy” and many of the central theses of adult learning theory were popularized in the United States by Malcolm Knowles.³³ Central to the philosophy of adult learning is that the instruction of adult students, whether they be enrolled in law school courses or community quilting class, must be framed by a methodology that acknowledges the vast differences between the cognitive processes of adults and children.³⁴

Knowles articulates four characteristics of adult learners that separate them from child learners, thus mandating different instructional approaches.³⁵ First, adults see themselves as self-directing human beings, as opposed to child learners whose self-concept is one of depending on an instructor’s will. Second, adults’ greater reservoir of personal experience can be used as a basis for learning. Third, adults’ readiness to learn is quite high if the subject of learning is related to their developmental tasks, i.e., the performance expected of them in their social role. Finally, adult learners are much more inclined than child learners to acquire knowledge that is able to be immediately applied rather than acquiring knowledge that has some future benefit. In other words, adults approach learning with a “problem-centered” frame of mind.³⁶

Other adult learning theorists direct similar attention to the differences between adult and child learners. Paulo Friere and Jack Mezirow are associated with the “critical theory” of adult learning, which is based on adults’ capacity to learn through critical scrutiny of both their own and their culture’s values, assumptions and beliefs. Both Friere and Mezirow advocate the use of the critical method of adult learning to tap into the learners’ abilities to question prevailing societal norms they may have previously passively assimilated.³⁷ Unlike Knowles, whose theory of andragogy focuses on learning characteristics, Friere and Mezirow explicitly contemplate adult education as empowering learners to think and act in opposition to the dominant

³³ David Dashler & Nancy Hagan, *Adult Education Research: Issues and Directions*, in HANDBOOK OF ADULT AND CONTINUING EDUCATION 155 (Sharan B. Merriam & Phyllis M. Cunningham, eds., 1989).

³⁴ MALCOLM KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* 57 (1990).

³⁵ It should be noted that Knowles relied heavily on the work of humanist psychologists Carl R. Rogers and Abraham Maslow in assessing the characteristics of adult learners. *Id.* at 39-43.

³⁶ *Id.* at 57-63.

³⁷ FRIERE, *supra* note 15, at 74; JACK MEZIRROW ET AL., *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* 12 (1990).

culture.³⁸ Similarly, if less radically, John Dewey's philosophy of adult education focuses on the extension of the skills of deliberation, civic awareness and public advocacy to learners previously shut out of the democratic process.³⁹

When applied to the learning process, adult learning theory focuses on democratic teaching and experiential learning. In democratic teaching, hierarchy is diminished for the purposes of catering to the adults' need for self-direction and taking full advantage of the learners' experiential knowledge.⁴⁰ Learners have significant roles in both the planning and execution of the learning process, so as to insure that explicit connection is made between the learning areas and the current needs and problems confronting the adult learners.⁴¹

This concept of democratic teaching is a radical departure from the traditional pedagogical view of the teacher as the sole provider of information and organization of the learning process. In the 1920's, adult learning theory pioneer Eduard C. Lindeman articulated a vision of the democratic teacher's role that still resonates through discussions of adult learning:

I am conceiving adult education in terms of a new technique for learning, a technique as essential to the college graduate as to the unlettered manual worker. . . . In this process the teacher finds a new function. He is no longer the oracle who speaks from the platform of authority, but rather the guide, the pointer-out who also participates in learning in proportion to the vitality and relevance of his facts and experiences.⁴²

Especially relevant in light of clinical teaching method is adult learning theory's preference for experiential learning—learning through actual experience and participation—over passive absorption of concepts.⁴³ A central tenet of adult learning theory is bolstering the learners' ability to be a self-directed learner in the future through opportunities for reflection on the lessons gained through experi-

³⁸ FRIERE, *supra* note 15, at 100; JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING 211 (1991).

³⁹ See Kenneth Teitelbaum & Michael W. Apple, *John Dewey*, in THE AMERICAN RADICAL 186 (Mari Jo Buhle, Paul Buhle & Harvey J. Kaye, eds., 1994).

⁴⁰ Diane M. Lee, *Becoming an Expert: Reconsidering the Place of Wisdom in Teaching Adults*, in INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING 243 (Jan D. Sinnott, ed., 1994).

⁴¹ Knowles, *supra* note 34, at 86.

⁴² EDUARD C. LINDEMAN, THE DEMOCRATIC MAN: SELECTED WRITINGS OF EDUARD C. LINDEMAN 160 (Robert Gessner, ed., 1956).

⁴³ Although students' learning style and/or a lesson's subject matter will sometimes call for a lecture presentation, the lecture method is neither very democratic or experiential, and studies have shown it to be a method that is over-used in adult instruction. See GORDON DARKENWALD & SHARAN MERRIAM, ADULT EDUCATION: FOUNDATIONS OF PRACTICE 128-29 (1982).

ence.⁴⁴ The parallels between adult learning theory and effective clinical law teaching begin with the shared reliance on experiential learning and opportunities for reflection.

B. *Experiential Learning and Reflection in Clinical Settings*

Experience-based learning, the provision of opportunities for reflection, explicit connection between class material and applied practice, and democratic teaching are all very familiar concepts to the clinical law teacher. Adult learning theory's teaching methodology has found its law school home in clinical courses. As Frank Bloch noted in his excellent 1982 article on the topic, clinical legal education succeeds because it is "andragogically sound."⁴⁵

Clinical courses' widespread popularity with law students is in large part attributable to its adult learning methodology. Studies have shown that adult learners find educational activities to be most meaningful when a direct connection is made between past experiences (traditional law school courses) and current concerns ("I am graduating in four months and I do not know what a court room looks like."). The experiences take on even greater resonance when the learner is confronted with a significant challenge ("This client/person has real problems and he expects me to address them!").⁴⁶ It is not surprising that many law students are quite stimulated by the challenges of student practice, especially when compared to traditional law teaching methodology which often ignores the adult learners' desire for self-direction, discounts the value of prior life experience, and sometimes fails to make an explicit connection between course matter and future lawyers' practice.⁴⁷

⁴⁴ John Dewey summarizes his philosophy of both experience-based learning and the need for making such learning inspire future learning thusly:

All genuine education comes through experience. . . . The central problem of an education based on experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences.

JOHN DEWEY, *EXPERIENCE AND EDUCATION* 13, 16-17 (1938), as quoted in Knowles, *supra* note 34, at 88.

⁴⁵ Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 *VAND. L. REV.* 321, 352 (1982).

⁴⁶ Stephen D. Brookfield, *Facilitating Adult Learning*, in *HANDBOOK OF ADULT AND CONTINUING EDUCATION*, *supra* note 33, at 206.

⁴⁷ One critic of traditional law teaching describes a sort of teacher-student code of silence regarding the banality of "big classroom" teaching methodology:

But the truth is that most teachers who practice their teaching in the big classroom don't have a very self-conscious idea of why it is they do what they do. They simply find themselves—like their students—trapped in a largely unexamined set of structures and routines. Indeed some teachers and students in law schools seem to have cut something of a deal. The students permit themselves to be bored, boring, and infantilized, so long as no one challenges too openly their disengagement. The teachers permit themselves to be bored, boring and thoroughly unambitious so long as no

In live-client clinics, these clinical challenges are experience-based and thus constitute the ideal adult learning environment when accompanied by the opportunity for reflection on the lessons provided by those experiences. The significant challenge of playing the lawyer role for the first time is the type of learner challenge that has been found to lead to learning episodes of personal significance.⁴⁸ The value of experience-based learning is certainly not a new concept with either clinical legal education or twentieth-century adult learning theory. As the well-worn phrase borrowed from a Chinese proverb states: "Tell me, I forget. Show me, I may remember. Involve me, and I understand."⁴⁹

Although experiential learning can and does take place in the workplace, the advantage of the experiential learning opportunities provided in the clinical setting as opposed to those available in the actual practice of law is found in the clinics' structured opportunity to reflect on lessons learned through the experience provided. Adults' capacity for self-direction is dependent on their ability to be self-aware and to reflect on the implications of their experiences for future action.⁵⁰ While busy practitioners often do not have the chance to reflect on the broader lessons learned from each experience before opening up the next case file,⁵¹ clinical education contemplates both

one examines too closely their teaching.

Gerald P. Lopez, *Training Future Lawyers to Work With the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989).

Like its dominant teaching methodology, the law school curriculum has also come under challenge because of its lack of connection to the students' future role in the legal profession, a concept stressed by adult learning theory as central to effective adult instruction:

At a more general level, our students have an inadequate appreciation of what lawyers actually do. In the largest sense, they have little understanding of what it means to be a professional and to be part of a profession. . . . In a more situational sense, our students learn too little of how lawyers interact with clients, develop sensitivity to ethical issues, sharpen skills other than critical analysis of primary source materials, and contribute actively in the non-litigious resolution of social conflict.

Robert A. Gorman, *Assessing and Reforming the Current Law School Curriculum*, 30 N.Y. L. SCH. L. REV. 609, 611 (1985).

⁴⁸ Brookfield, *supra* note 44, at 206.

⁴⁹ For a more contemporary treatment on the value of experience-based learning in the clinical law setting, see Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn From Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 285-86 (1981).

⁵⁰ Brookfield, *supra* note 44, at 202; Dewey, *supra* note 42, at 25 and DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* 61 (1983) specifically question whether a learner can gain any value from experience if the learner does not have the opportunity to reflect on the lessons and assimilate them into knowledge for future use. Rose, *supra* note 2, at 452, also notes the value of the reflective environment of the clinical setting.

⁵¹ Lois Johnson & Louise G. Trubek, *Developing A Poverty Law Course: A Case Study*, 42 WASH. U. J. URB. & CONTEMP. L. 185, 195 (1992), discuss the tension discovered when

experience and reflection on the experience. In its ideal form, this leads to learning on two levels: students learn a direct lesson from the experience and learn how to assimilate future experience-based lessons.⁵²

IV. THE DISORIENTING MOMENT: WHY CLINICAL LEGAL EDUCATION OFFERS A UNIQUE OPPORTUNITY TO LEARN LESSONS OF SOCIAL JUSTICE

A. *The Concept of the Disorienting Moment*

Adult learning theory maintains that when a learner begins describing an experience with the phrase, "I just couldn't believe it when I saw . . .," an opportunity for significant learning has been opened. This phenomenon is called the "disorienting moment," when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner's prior understanding—referred to in learning theory as "meaning schemes"—of how the world works.⁵³ The process that begins with the disorienting moment has been described as follows:

Psychologists and educators thus have some understanding about how adults learn from life experience. If an experience is unsettling or puzzling or somewhat incongruous with our present meaning structure, it captures our attention. If the gap is too great between how we understand the world and ourselves in it and the experience, we may choose to ignore it or reject it. If however we choose to grapple with it, learning results. Some of this learning affects us more than others. Powerful learning experiences may even transform how we think and act.⁵⁴

Jack Mezirow is the adult learning theorist most often associated with the notion that transformative learning can be produced from a

reflective and theoretically-inquisitive clinical students interacted with Legal Aid lawyers whose work did not include inquiring into such questions as, "Why are the clients poor?" See also Blasi, *supra* note 14, at 86.

⁵² See Kreiling, *supra* note 47, and *Report of the Committee on the Future of the In-House Clinic*, *supra* note 27, at 513, for discussions of supervisors' role in fostering the ability for self-analysis in clinical students. One clinical teacher describes the goal of producing self-directed learners who can effectively incorporate experience-based lessons:

The difference between persons who learn how to learn from experience and those who don't is the difference between a person who after five years as a lawyer has progressed and developed into a different kind of lawyer versus the person who has essentially been repeating their initial year in practice five times.

William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Professor: A View From the First Floor*, 28 AKRON L. REV. 463, 474-75 (1995).

⁵³ MEZIROW, *supra* note 37, at 13-14.

⁵⁴ Sharan B. Merriam, *Learning and Life Experience: The Connection in Adulthood*, in INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING, *supra* note 40, at 86.

disorienting moment. He calls the change that can result from the disorienting moment "perspective transformation," where such trigger events cause the learner to engage in critical thinking focusing on re-assessment of societal and personal beliefs, values, and norms.⁵⁵

Mezirow and others describe this learning pattern as possessing at least three stages: First, the "disorienting experience," second, the "exploration and reflection," and finally, "reorientation." Upon re-orientation, the learner's perspective is transformed in such a way that the previously disorienting experience is explained.⁵⁶ Mezirow's description of the perspective transformation learning process has been empirically confirmed, most recently by a large-scale study of adult learners.⁵⁷

The role of the instructor in "disorienting moment" learning is to provide a proper environment for these three stages to unfold. Initially, the instructor must design learning experiences that will provide the opportunity for such disorienting moments to occur. Thereafter, the instructor facilitates the productive assimilation of the experience through reflection and exploration of other information related to the disorienting experience so that the final stage, "reorientation," occurs. Thus, learning, rather than confusion and retreat, is the product of the disorientation.

B. Learning from Disorienting Moments in Clinical Legal Education

A review of the three stages of "perspective transformation" learning theory in the context of clinical legal education reveals that the supervised representation of clients in a poverty law-oriented clinical course is an ideal setting for the learning of social justice concepts.

⁵⁵ MEZIROW, *supra* note 38, at 168, describes the phenomenon:

Perspective transformation can occur either through an accretion of transformed meaning schemes resulting from a series of dilemmas or in response to an externally imposed epochal dilemma such as death, illness, separation or divorce, children leaving home, being passed over for a promotion, failing an important exam or retirement. A disorienting dilemma that begins the process of transformation also can result from an eye-opening discussion, book, poem, or painting or from efforts to understand a different culture with customs that contradict our previously accepted suppositions. Any major challenge to an established perspective can result in a transformation. These challenges are painful; they often question deeply held personal values and threaten our very sense of self.

See also Friere, *supra* note 15, at 100.

⁵⁶ MEZIROW, *supra* note 38, at 167-164, and MEZIROW, *supra* note 37, at 14.

⁵⁷ SHARAN B. MERRIAM & M. CAROLYN CLARK, *LIFELINES: PATTERNS OF WORK, LOVE AND LEARNING IN ADULTHOOD* 184-187, 199-209 (1991). See also MEZIROW, *supra* note 38, at 167-72.

1. *Providing the environment for the "disorienting moment."*

The experiential basis of live-client clinical settings is ideal for the provision of disorienting experiences for the learner. Most clinical courses involve the learners' direct representation of clients who, due to poverty, disability, discrimination or the like, are the victims of systemic injustice. Most law students come to the course without significant exposure to the victims of injustice and almost none come to the course with experience representing a person trying to wring a just result from an often unresponsive legal system. When the learners are confronted with their clients' very real suffering and frustration, the learners' necessarily abstract understanding of social justice often prevents assimilation of the experience. Hence, disorientation occurs, as was described by the student remarks that began this article, and was also observed by two clinical instructors:

Very often the students who return from crumbling rowhouses in disintegrating neighborhoods containing tired and cheerless people are shaken beyond their expectations. The students find it difficult to believe the degree of deprivation and unrequited perseverance which mark their clients' lives. This shocks many of the students, whose lives have been comparatively comfortable, safe and orderly.⁵⁸

[I]t is the first time in which they (students) have had an opportunity to become involved in the "everyday life" of someone whom they had considered marginal and somewhat blameworthy for their living condition. As one student stated, "Before I started representing Mrs. B., I had all the typical biases about people on welfare. My client, however, works everyday at McDonald's and is trying to take care of her two kids. She shouldn't have to live with roaches all over the place."⁵⁹

Every clinical teacher has several compelling stories about students' disorienting moments. The most powerful such event this author observed was that experienced by a middle-aged accountant and part-time law student whose politics were revealed by his active involvement in campaigns of right-wing Republican political candidates. During the first few weeks of the clinical course, this student had shown himself to be quite responsible and thorough in his work in the clinic office. However, the first evening he was involved in a client interview at a battered women's shelter, the student unexpectedly stopped the interview and, visibly shaken, approached the supervisor to request permission to end his involvement in the case. When asked why he was unable to respond to the client, a single mother and rape

⁵⁸ Bezdek, *supra* note 21, at 135.

⁵⁹ La Rue, *supra* note 31, at 1156.

victim struggling with both the criminal justice and welfare systems, the student said, "Her life is so messed up, I don't know how to respond. She has so many problems I don't see a way out of her situation."

This student's inability to conceive of an individual-initiative solution to the client's problems was so disorienting to his social view that he was unable to complete the interview. The following day, the student entered the clinic office, still quite shaken and a little sheepish, to apologize for leaving the scene with the explanation, "I just had never experienced anything like that before."

Another student began his clinical semester by publishing an article in the student newspaper asserting that workers' unions are no longer necessary because "employers just cannot get away with screwing employees any longer." Not surprisingly, this same student later expressed astonishment when viewing the systemic indifference to *pro se* tenants' rights in eviction hearings in the city's local small claims courts. He concluded the semester with a classroom call to his fellow students to perform *pro bono* service to protect the rights of poor litigants.

Live-client clinics' ability to engender these types of disorienting experiences is unmatched in the abstract educational settings which dominate both traditional law school courses and undergraduate education. However, the significance of the disorienting experience itself can be lost if the clinical courses do not also provide opportunities for reflection, the second stage of learning from such experiences.

2. *Providing the environment for exploration and reflection*

The learning power of a disorienting experience can be blunted if the learner does not attend to the experience and reflect upon its meaning and impact on the learner's prior manner of understanding.⁶⁰ The clinical instructor's role in the reflective process is to create occasions for the learners to identify their prior meaning schemes and consider why the new experience did not fit into those meaning schemes.⁶¹ As is more completely outlined in the proposed methodology presented later in this article, clinical instructors have access to a

⁶⁰ MEZIROW, *supra* note 38, at 110-11. See also Karen S. Kitchener & Patricia M. King, *The Reflective Judgment Model: Transforming Assumptions About Knowing*, in MEZIROW, *supra* note 39, at 159.

⁶¹ MICHAEL BASSECHES, *DIALECTICAL THINKING AND ADULT DEVELOPMENT* (1984) discusses the role of the instructor post-disorienting experience:

What then becomes important in educational settings is for instructors to promote adults' development through engaging with existing structures of thought, challenging those structures to their limits, being careful not to reach the point where learners experience this as an attack and react defensively.

variety of mediums for such reflection, including classroom discussion, journals, self-evaluations and supervisor-student conversations. The following is an example of the reflective process that occurred in one experientially-based poverty law course:

Students' reactions to the poverty, the people, and the legal responses they encountered, created numerous openings for conversation between teacher and student about the possible meanings for their responsibilities as lawyers. Most students departed the course with a sharper awareness that to be poor in Rent Court meant as little, and as much, as the utter inability to raise another fifty dollars from family or friends. Some students shared moments of surprising candor. "I never would have believed one could work so hard, and still make so little." "He needed that sum to avoid an eviction. I spent that much on the weekend, and I can't even think what it was for." "It occurred to me to wonder, can I stand outside the courtroom talking with one more tenant, wearing a ninety-eight dollar 'barn jacket'?"⁶²

In the examples cited above, the students reassessed their own meaning schemes of financial need and necessary consumption in light of their clients' struggle to afford life necessities. Although the author was describing classroom discussion, the nature of the comments also revealed significant personal reflection on the meaning of the Rent Court experience. Reflection like this allows the learner to contrast the lessons of the disorienting moment with the learner's existing meaning schemes and determine what part of his or her meaning schemes must be amended to account for the surprising information provided in the disorienting moment.

3. *Providing opportunity for "reorientation"*

The final phase of the process of social justice learning from disorienting moments is the transformation of the learner's perspective on social justice, i.e. "reorientation" of their meaning schemes about justice. Mezirow describes the reorienting process in terms of the adult learner broadening her perspective on the world and then making choices or otherwise acting upon this new understanding.⁶³

Perhaps the greatest advantage clinical law settings have in completing the learning process is the "ripeness" of adult law students to reorient their perspectives on justice issues. In general terms, adults are known to be highly motivated learners who are more ready to

⁶² Bezdek, *supra* note 2, at 1171. A similar pattern of reflection in this course was described by Theresa Glennon, *Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175, 1182 (1992).

⁶³ MEZIROW, *supra* note 38, at 167.

engage in critical thinking than even college-age learners.⁶⁴

This generalized eagerness of adults to learn can find a logical direction in the consideration of social justice issues.⁶⁵ Most psychological human development "stage" theories hold that the development of a broader sense of self as responsibly interactive with outside society is best able to be accomplished in adulthood.⁶⁶ Therefore, in human development terms, adult law students are likely to respond rather than retreat from the challenges of reassessing their vision of social justice and social responsibilities as lawyers.

Opportunities for such responses are structurally present in law school clinical courses primarily through the learners' actions on behalf of poor persons facing injustice, but also through classroom and student-supervisor discussions, assigned readings and self-evaluation processes that are included in most clinical courses. Many clinical students react to the perspective-transforming experience by reorienting their post-law school career goals, their perception of professional responsibility toward the poor, or even their attitudes about government's responsibility to provide for the social welfare of its citizens.

IV. AN ADULT LEARNING THEORY-INSPIRED METHODOLOGY FOR TEACHING SOCIAL JUSTICE IN CLINICAL SETTINGS

The argument having been made that social justice lessons are a necessary part of the law school curriculum and that clinical courses are uniquely suited to providing such lessons, attention is directed to providing the means for social justice learning. Possibilities for facilitating the social justice learning process are reviewed here in order to provide a framework for an adult learning theory-inspired methodology for teaching social justice in clinical settings.

⁶⁴ Carolyn Harringer, *Adults in College*, in INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING, *supra* note 40, at 177. One oft-cited survey of United States adult learners shows high motivation for learning even in non-formal settings, as 90% of adults surveyed were found to be involved in at least one informal self-directed learning project per year, with the typical adult being involved in 5 projects averaging 100 hours per year on each project. Allen Tough, *Major Learning Efforts: Recent Research and Future Directions*, 28 ADULT EDUCATION 250, 272 (1978).

⁶⁵ Deidre A. Kramer & Weizhen Tang Bacelar, *The Educated Adult in Today's World: Wisdom and the Mature Learner*, in INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING, *supra* note 40, at 40, describe recent research in adult cognition as confirming the widely-theorized belief that humans spend the first half of their lifespan internalizing myths and illusions of their culture, and the second half of their lifespan questioning these cultural lessons.

⁶⁶ For a discussion of psychological stage theories' relevance to adult educators, see Darkenwald & Merriam, *supra* note 42, at 86-99. Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLIN. L. REV. 505 (1995) proposes a Kohlberg-inspired method for learning morality in a law school setting.

A. *Observation and Sharing of Clinical Experiences: Description of and Reflection on the Disorienting Moment*

Although many different settings can provide disorienting moments for the adult learner, the formal educational setting of the clinical course is able to provide several different opportunities for the reflection on the disorienting moment. Some of those opportunities which will be reviewed here include student-to-student discussions, personal reflection mechanisms such as journal entries or self-evaluations, and supervisor-student discussions.

1. *Student-to-Student Discussions.*

Research on adult learners has revealed that cooperative learning—learning that takes place when peers share experiences and insights—is not only the most common type of adult learning, it is perhaps the most effective style.⁶⁷ These findings are consistent with the very foundation of adult learning theory, namely that self-directed adult learners will draw upon their own experience and motivation to learn by gaining information from a variety of sources, a habit which follows the oral tradition of informal learning through tales of shared experiences.⁶⁸

Receiving information on fellow students' experiences and peer response to the learners' own stories are important elements of the reflection and reorientation stages of social justice learning. Not only are fellow learners representing clients in presumably similar circumstances of poverty and/or injustice, other learners may have had pre-clinic exposure to social justice dilemmas in their work or prior life experiences that would give valuable insight to the clinical student trying to make sense of surprising experience with social injustice.⁶⁹ The topic of social justice and individual attitudes toward society's provi-

⁶⁷ Barbara Mills, Neil Davidson, & Phillip Cottrell, *Enhancing Adult Critical Thinking Skills Through Cooperative Learning*, in INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING, *supra* note 40, at 271. Mills *et al.* trace the philosophical basis of cooperative learning to John Dewey. WILBERT J. MCKEACHIE, PAUL R. PINTRICH, ET AL., TEACHING AND LEARNING IN THE COLLEGE CLASSROOM: A REVIEW OF THE RESEARCH LITERATURE 63 (1986), conducted a review of learning literature to determine what was the single best method for teaching. Although a definitive answer could not be determined because of the variation of teaching goals and contexts, the method most often identified as most effective was students teaching other students.

⁶⁸ Stephen Brookfield, *Self-Directed Learning: A Critical Review of the Research*, in SELF-DIRECTED LEARNING: FROM THEORY TO PRACTICE, NEW DIRECTIONS FOR CONTINUING EDUCATION 8 (Stephen Brookfield, ed., 1985).

⁶⁹ Johnson & Trubek, *supra* note 49, at 199, noted that their poverty law seminar's discussions were significantly enriched by the contributions from students who had either personally experienced poverty and/or discrimination or had work experience in the field of anti-poverty advocacy and/or research.

sion for justice is certainly conducive to the sharing of peer opinions, because peer influence has a documented significant effect on the formation of political and moral attitudes and beliefs.⁷⁰

Also, any single clinical student's personal exposure to justice issues—though often powerful—is necessarily limited in scope to the observation of a handful of situations. The addition of other students' experiences to the student's knowledge is an important part of adding context to the student's experience and allows for some consideration of the universal applicability of the knowledge gained. For example, the benefits of sharing experiences in a law school seminar on homelessness were explained this way:

[t]here are substantial benefits from sharing reflections in a seminar setting . . . Some lessons derived from individual experience are simply wrong. There is now a substantial body of literature in experimental and cognitive psychology demonstrating the existence of pervasive biases in the processing of experiential information of all kinds. For example, we are all subject to a tendency to generalize too strongly from very striking examples. One way to correct these errors in individual assessments of experience is to subject them to commentary and comparison. This was one of the functions of the seminar discussions.⁷¹

Such peer-provided context can work in different directions. The clinical student who has had several clients miss appointments and fail to respond to telephone messages and letters can learn from other students with very involved clients that not all poor people conform to the "irresponsible" stereotype which the non-responsive clients' behavior seems to confirm. Similarly, students who have been offended by the callousness of a welfare case worker can learn from others' experiences that not all participants in the "system" are inherently uncaring or mean-spirited.

Although the method of social justice learning discussed here involves students learning from fellow students, the instructor has a necessary role in facilitating such learning. First, the instructor must fully engage in what adult learning theory calls the "spirit of mutuality" of learning between students and instructors.⁷² Students will respect the experiences and feedback of their fellow students only when the in-

⁷⁰ Two of the classic psychological studies of peer influence on political attitudes are THEODORE M. NEWCOMB, PERSISTENCE AND CHANGE: BENNINGTON COLLEGE AND ITS STUDENTS AFTER TWENTY-FIVE YEARS 138-165 (1967) and Philip R. Costanzo, *Conformity Development As A Function of Self-Blame*, 14 J. PERSONALITY & SOC. PSYCH. 366, 372 (1970).

⁷¹ Blasi, *supra* note 14, at 96-97. Bezdek, *supra* note 2, at 1167 reports a similar perspective-broadening effect of class discussions in a clinical course.

⁷² Bloch, *supra* note 43, at 348.

structor has clearly demonstrated through shared class planning and client representation that she also respects and values the students' insight.

Second, explicit opportunities for student-to-student discussions of their experiences must be provided. Inside the classroom, class-wide "case reviews" of each student's experiences or student presentations on selected justice-oriented topics stimulate consideration of the social issues coloring the clinic cases. More generalized discussion sessions will also include the students' relation of their experiences if the students are made to feel free to offer their own experiential knowledge to the review of broader justice issues.⁷³ In the field, co-counsel arrangements are a natural provider of opportunities for discussion of shared disorienting experiences.⁷⁴

2. Journals/Self-Evaluation

Although group-oriented reflection has considerable merit in learning potential, the term "reflection" often connotes private meditation on the meaning of experiences.⁷⁵ Such personal reflection can be spurred by journal writing and/or asking for students to conduct a formal self-evaluation.

Journal writing is a highly-valued tool for reflection in a variety of adult educational contexts because journals have been shown to facilitate adults in the process of organizing their thoughts about sometimes chaotic experiences.⁷⁶ This process has been described as "sorting, naming and framing" the experiences, thus setting the stage for reorientation of the learners' perspectives.⁷⁷ When students are asked to use a journal to answer specific questions such as, "The most surprising thing I learned this week was. . ." or generally reflect upon

⁷³ A collection of essays on the discussion method of post-secondary teaching is provided by C. ROLAND CHRISTIANSEN, DAVID A. GARVIN & ANN SWEET, *EDUCATION ON JUDGMENT: THE ARTISTRY OF DISCUSSION LEADERSHIP* (1991). A more brief review of specific techniques for the management of class discussion is provided by WILBERT J. MCKEACHIE, *TEACHING TIPS: A GUIDEBOOK FOR THE BEGINNING COLLEGE TEACHER* 35-67 (1978). See also La Fleur, *supra* note 21, at 161, and Johnson & Trubek, *supra* note 21, at 199 for discussion of two types of classroom discussion management in poverty law courses.

⁷⁴ See, e.g., David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 *CLINICAL L. REV.* 199 (1994).

⁷⁵ JOHN DEWEY, *DEMOCRACY AND EDUCATION* 150 (1944).

⁷⁶ See Joseph Lukinsky, *Reflective Withdrawal Through Journal Writing*, in MEZIRROW, *supra* note 37, at 213; Phyllis Kahaney & Kathleen Heimrich, *Journal Writing as Social Interaction: Writing as Learning in the Workplace*, in *INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING*, *supra* note 40, at 218. James R. Elkins, *Writing Our Lives: Making Introspective Writing A Part of Legal Education*, 29 *WILLAMETTE L. REV.* 45 (1993) discusses the use of journal writing in an Introduction to Law course.

⁷⁷ Kahaney & Heimrich, *supra* note 76, at 223.

their experiences, students can express their feelings in a less intimidating forum than classroom discussion. Through journal writing, students can also take a break from the results-oriented pressure of actual student practice and reflect on the meaning of their sometimes whirlwind clinical experiences.

Similarly, formal self-evaluation can spur reflection. Self-evaluation is an accepted tenet in clinical methodology in terms of skills training,⁷⁸ however, self-evaluation exercises can also lay the groundwork for a lifetime of regular consideration of the learner's place in the society. Students asked to comment on their relative success in establishing a productive attorney-client relationship may use the opportunity to reflect on the cultural boundaries between themselves and their clients. Students asked to assess the "impact" of their client representation can hardly help but consider the structural constraints faced by their clients and by themselves in their roles as advocates. A self-evaluative process contemplates the type of critical thinking about one's perceptions of the world and her place within it that is urged by "liberation" adult learning theorists such as Friere and Mezirow.

3. *Supervisor-Student Discussions*

Perhaps the most challenging aspect of the clinical instructor's job involves the supervisor-student co-counsel relationship in the representation of real clients, which is unique in the legal educational or professional world.⁷⁹ However, the level of difficulty of the supervisory role is matched by its potential for providing real learning opportunities consistent with adult learning theory. In most of her desirable roles as co-counsel, the clinical supervisor is truly the "guide by the side" rather than the "sage on the stage"⁸⁰ performing the role of learning partner involved in an adventure of mutual inquiry with the student.⁸¹ Properly performed, this co-counsel role is an ideal opportunity for the instructor to play the role of "facilitator" of learning—as opposed to director of the student experiences—which is a pre-

⁷⁸ See Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 and Bloch, *supra* note 42, at 350.

⁷⁹ See, e.g., Michael Meltsner, James V. Rowan & Daniel J. Givelber, *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399 (1989); Peter Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986); Robert J. Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1990); and Kathleen A. Sullivan, *Self-Disclosure, Separation and Students: Intimacy in the Clinical Relationship*, 27 IND. L. REV. 115 (1993).

⁸⁰ Marcy P. Driscoll, *Evaluating the Clinical Program 1* (unpublished paper presented at AALS Section on Clinical Education meeting, St. Louis, MO., May 1995) (on file with author.)

⁸¹ Bloch, *supra* note 43, at 338.

ferred method of adult instruction.⁸²

The challenge of balancing supervisor direction and learner autonomy is well-chronicled in clinical literature,⁸³ and although the debate is far from resolved, it is clear that the amount of supervisor direction depends on a variety of factors, including student abilities, client need, and case type.⁸⁴ Similarly, the delicate question of level of instructor influence must also be considered when introducing issues of social justice to supervisor-student discussions.

Often, the supervisor and clinical student share experiences in the context of client representation that resonate with social justice implications. Co-counsel share the frustration of dealing with a bureaucratic and unresponsive welfare system, the desperation observed in a client's efforts to hang on to a place in government-subsidized housing, or the revulsion of observing the conditions of a homeless shelter or correctional facility. It is not only appropriate for the clinical instructor to point out the pervasiveness of these situations the student may believe are unique to her individual client, the instructor must do so when such information lends the appropriate context to the student experience. One such episode was related by a clinical instructor:

In a later private discussion with me and in Rounds the student, a white male, remarked that the judge never really saw who his client was. The judge only saw a poor person of color and assumed that she was trying to get more than that to which she was entitled. He was genuinely outraged by the judge's inability or unwillingness to see past her racial and class biases. . . [O]nly after discussion with me and in Rounds did he begin to make the connection between what happened to his client, the social system, and the rules which undergird that system. . . [T]he reality of the system is that it often fails to see or hear those subordinated by race, gender or class.⁸⁵

It should be obvious that, given the potential for both hierarchy and intimacy in the student-supervisor co-counsel relationship, it may be difficult for a clinical instructor to observe the fine line between instructor-as-facilitator and instructor-as-social advocate. Perhaps the best way to observe this line is to heed Howard Lesnick's call for law teachers to "share" their values and "invite" their students to explore the nexus between law and social justice.⁸⁶ The instructor's relation of

⁸² Brookfield, *supra* note 44, at 201.

⁸³ Condlin, *supra* note 76; Meltsner et al., *supra* note 76; Quigley, *supra* note 50, at 30; Moliterno, *supra* note 27, at 129.

⁸⁴ Despite their allegiance to self-directed learning, even adult learning theorists acknowledge that there are times when limits on the autonomy of learners need to be set, such as when learners are clearly unable to accurately assess their needs or required level of supervision. Brookfield, *supra* note 44, at 204.

⁸⁵ La Rue, *supra* note 31, at 1155.

⁸⁶ Lesnick, *supra* note 2, at 642-44. *But see* Robert J. Condlin, "Tastes Great, Less

her experience in and observations of the legal system's intersection with social justice should be provided in terms of an invitation to the student to reach her own conclusions about the incidents observed.

For example, a student-supervisor case review meeting could provide the opportunity for a supervisor to respond to a student's description of a disorienting moment with an invitation to explore the issue's social justice component more fully:

STUDENT: I am amazed that my client is even fighting this eviction action. By her description of the apartment and the pictures I have seen, the place is clearly unfit for her and her family to live in. I would think she would want to move out.

SUPERVISOR: It is amazing she wants to hang on to this place, but it has been my experience in past cases that the only housing in this area our client can afford is often in even worse condition than where she lives now. One local agency has done a study on the difficulty of finding safe and decent low-income housing in this area, and it includes their suggestions on how to improve the situation. I have a copy of the study if you would like to read it.

Issuing such an invitation to explore the broader implications of the student's case is consistent with the role of the clinical-teacher-as-adult-educator in the democratic teaching style. Since this invitation is neither an assignment nor a lecture, it conforms to adult learning theory's call to reject the role of the "oracle who speaks from the platform of authority" in favor of the role of the guide or the "pointer-out."⁸⁷ At the same time, the clinical teacher shirks her duty if she avoids the opportunity to be a "pointer-out" of social justice issues because of a fear of getting too political with the student she supervises.

B. Confrontation of Broader Justice Issues: Use of Other Perspectives

Adult learning theory holds that disorienting information is most powerful in its potential to inspire real learning when it is experientially-based and/or is provided by the narratives of fellow learners.

Filling:" *The Law School Clinic and Political Critique*, 35 J. LEGAL EDUC. 45, 55. He doubts that the egalitarian ideal espoused by Lesnick is possible in a clinical setting:

Clinical students are not good critics of their professors' work because students and professors are not true colleagues within the social and political structure of the law school. The two groups have different levels of experience, status, perspective and formal authority, and in each of these categories teachers have the upper hand, and often use it to suppress nonconforming views. Clinicians sometimes pretend they are no different from their students, but this usually appears patronizing or silly, and is the opposite of what the students bargained for in paying tuition.

⁸⁷ LINDEMAN, *supra* note 42, at 160.

However, just as there are limits to the experiential knowledge possessed by any one individual learner, the learning group also has significant limits on its experiential knowledge base. Therefore, broad-based objective empirical data on social justice issues, as well as cross-cultural and comparative perspectives on justice issues from a variety of disciplines, often must be presented to students to fully inform their reflection after their disorienting moments.⁸⁸

It is of course possible that confrontation with disturbing data on social justice can itself inspire the disorienting moment and thus open the window for significant learning, although there is much more potential for such an event when the knowledge is gained experientially.⁸⁹ Surprising information provided in classroom presentations or reading assignments, when combined with experiential learning, can provide the impetus for disorientation with the learner's prior perspective on poverty, race, or other social justice issues. At a minimum, such information certainly informs the reflection process following the disorienting moment.

For example, a handout entitled "Confronting the Myths of Poverty and Welfare" provided to Indiana University-Indianapolis clinical law students covers information well known to justice-oriented lawyers and teachers (i.e. welfare benefits are well below levels necessary for subsistence living; full-time employment often does not equate with financial survival; most AFDC recipients are white, etc.). However, this information is often surprising to many students who, at least at Indiana University-Indianapolis, have often heard contradictory information through such impeccable sources as Rush Limbaugh. The surprising data inspires discussion and, importantly, students' relation of the abstract data to the real-life, non-abstract situations faced by the students' clients.

However, presentation of uninterpreted data may well leave the clinical student confused about the cause and effect of the paucity of social justice available to their clients. Theoretical context can be supplied by a discussion of different perspectives on the relationship between law and society, including critical legal studies' "rule-skepticism" view of law in American society,⁹⁰ feminist jurispru-

⁸⁸ For discussions of how some clinical and poverty law classes integrate empirical data into their justice presentations, see La Fleur, *supra* note 21, at 153 and Bezdek, *supra* note 21, at 135-37.

⁸⁹ MEZIROV, *supra* note 37, at 14.

⁹⁰ See, e.g., Mark Tushnet & Jennifer Jaff, *Critical Legal Studies and Criminal Procedure*, 35 CATH. U. L. REV. 361 (1986). Phyllis Goldfarb, *Beyond Cut Flowers: Developing A Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717, 722 (1992) sees a particularly appropriate connection to be made between clinical instruction and critical legal theory:

dence,⁹¹ critical race theory,⁹² or theories about the relationship between law and cultural norms.⁹³ Reference to justice theories of sociology, political science, anthropology, and psychology should also give broader meaning to the raw data provided through the student/client experiences or through instructor-provided empirical data.

The clinical instructor can provide the objective data and the coverage of multidisciplinary perspectives of social justice issues through outside reading assignments. Another more traditional, but to some adult learning theorists and clinical instructors also more controversial, method is to provide the information through the lecture method. Although both adult learning theory and traditions of clinical education express strong preferences against the much-criticized lecture method of teaching,⁹⁴ this criticism is more fairly directed at the lecture method's dominant status in law and many other disciplines rather than its usefulness in achieving some instructional goals.⁹⁵

Of course, the instructor must resist any temptation to turn either

"Like clinical educators, critical legal scholars seek to illuminate the assumptions, biases, values and norms embedded in law's workings in order to heighten awareness of the political and moral choices made by lawyers and the legal system . . ."

⁹¹ See, e.g., Catherine A. MacKinnon, *Reflections on Sex Equality Under the Law*, 100 YALE L.J. 1281 (1991) and Taub & Schneider, *supra* note 9.

⁹² See, e.g., Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992) and Richard Delgado, *Critical Legal Studies and the Realities of Race*, 23 HARV. C.R.C.L. L. REV. 407 (1988).

⁹³ See, e.g., Lisa C. Bower, *Queer Acts and the Politics of Direct Address: Rethinking Law, Culture and Community*, 28 L. SOCIETY REV. 1009 (1994).

⁹⁴ When data and/or theoretical perspectives are to be presented to learners, pre-class reading assignments followed by classroom discussion is both more democratic and engaging than the instructor lecturing on her interpretation of such information. The mind-numbing effect of a professor reading from notes to students who furiously transcribe those orally-transmitted notes perhaps cannot be adequately described, but the sheer inefficiency of the process has been, by HUGH SKILLING, *DO YOU TEACH* (1969): "Lectures became obsolete when the printing press was invented." Of course, the traditional case method of law teaching has also come under methodological criticism. See, e.g. Paul F. Teich, *Research on American Law Teaching: Is There A Case Against the Case System?*, 36 J. LEGAL EDUC. 167 (1986) and Myron Moskowitz, *Beyond the Case Method: It's Time to Teach With Problems*, 42 J. LEGAL. EDUC. 241 (1992).

⁹⁵ Even as they promote the many valuable learning opportunities offered by cooperative learning methods, Millis, Davidson & Cottrell, in *INTERDISCIPLINARY HANDBOOK OF ADULT LIFESPAN LEARNING* *supra* note 40, at 273, are careful to point out that cooperative learning can supplement but not replace traditional learning techniques such as lecture or instructor-directed discussion. This perspective is consistent with research showing that there is no single most effective method of teaching. See McKeachie, Pintrich, et al., *supra* note 64, at 63. For example, since the normative style of law teaching, and most likely the normative teaching style confronted by law students during their undergraduate years, is the lecture/case method of instructor presentation and control, some students may feel more comfortable receiving at least their introductory information on social justice issues through the voice of their instructor. Michael Meltsner & Phillip G. Schrag, *Scenes From A Clinic*, 127 PA. L. REV. 1, 32 discuss a multi-week process in which their clinical students adapted to a self-directed learning atmosphere.

the assigned readings or the classroom presentation into a one-sided presentation of only data and perspectives that conform to her feelings on social justice issues. Intellectual integrity demands an even-handed approach and, ironically enough, psychological studies on persuasion techniques also recommend it. Research on persuasion shows that presentations acknowledging both sides of an issue are in fact more effective tools of persuasion to an educated audience, who innately mistrusts presentations that ignore the existence of alternative perspectives.⁹⁶

C. "Loosening the Reins:" Student Involvement in the Selection of Clinical Experiences

A core component of adult learning theory's position on course planning is the direct and significant involvement of the adult learner in the design of course material and experiences. As Malcolm Knowles notes:

[A] cardinal principle of andragogy (and in fact all humanistic and educational theory) is that a mechanism must be provided for involving all of the parties concerned in the educational enterprise in its planning. One of the basic findings of applied behavioral science research is that people tend to feel committed to a decision or activity in direct proportion to their participation in or influence on its planning and decision-making. The reverse is even more relevant: people tend to feel *uncommitted* to any decision or activity that they feel is being imposed on them without their having a chance to influence it.⁹⁷

Beyond Knowles' analysis of the increased commitment provided by learner involvement in planning is the well-demonstrated notion that different people learn in different ways.⁹⁸ Therefore, allowing for learners' self-direction is not only a concession of power, it is a concession to the idea that the learner has significant insight on the types of experiences from which she best learns.

In the context of clinical legal education, this learner self-direction is most compellingly manifested in student involvement in the

⁹⁶ RICHARD E. PETTY & JOHN T. CACIOPPO, ATTITUDES AND PERSUASION: CLASSIC AND CONTEMPORARY APPROACHES (1981). See also La Fleur, *supra* note 21, at 156 for a discussion of class evaluations showing students in a Poverty Law course found speakers and writers most compelling when they avoided the temptation to become too one-sided.

⁹⁷ Knowles, *supra* note 34, at 125. This aspect of Knowles' theory, which is consistent with the positions held by humanist psychologists Carl Rogers, Abraham Maslow and Gordon Allport, has been confirmed by studies that learners found educational activities to be most meaningful when the activities made direct connection to both past experiences and current concerns. Stephen Brookfield, *Facilitating Adult Learning*, in HANDBOOK OF ADULT AND CONTINUING EDUCATION, *supra* note 33, at 206.

⁹⁸ See, e.g., Merriam & Caffarella, *supra* note 25, at 175-77.

selection of clinical experiences, including honoring students' choices of the types of cases that are most interesting to them.⁹⁹

Several steps can be made to increase student involvement in case selection. For example, a formal request can be directed to newly-enrolled students asking that they indicate prior to the start of the semester the types of experiences they desire, thus allowing some "lead-time" for clinical instructors to attempt to organize case transfers and new case selection to accommodate students' desires. Also, student involvement in client intake interviews conducted at the clinical offices or the local Legal Services or Public Defender offices can trigger student sympathy or empathy with a particular client's plight and allows students the opportunity to choose to involve themselves in the representation of particular persons.

The logistical problems in attempting to honor student choices in case selection can be considerable, especially in clinical courses that focus on very limited types of cases.¹⁰⁰ Frankly, this process is also quite scary for the instructor: abdicating curriculum control to the student in a traditional non-experiential course has been described by one adult learning teacher as an experience akin to white-water rafting.¹⁰¹ In a clinical course where clients' well-being and the instructor's reputation and license to practice is often on the line, perhaps the rafting metaphor would be more apt if it included the absence of a paddle.

However, adult learning theory and supporting research states that such student-initiated experiences lead to better understanding of the concepts presented by these experiences, whether they be the skills-oriented lessons of conducting an effective cross-examination or broader lessons of social justice highlighted by a client's difficulty in finding affordable housing.¹⁰² These research results conform to the

⁹⁹ Bloch, *supra* note 42, at 351-52, notes the connection between case selection in clinical education and adult learning theory's call for providing experiences that teach adult students what they believe they need to learn:

[s]tudents should be able to choose to the extent possible those cases that appear most interesting to them. . . The important point from an andragogical perspective is that students must be able to relate what they are learning from the clinical experience to their own projected future careers.

¹⁰⁰ The clear andragogical advantages offered by allowing for some range of student case selection is a compelling argument in favor of clinical programs that offer more generalized case experiences. Indiana University-Indianapolis' Civil Practice Clinic is directly affiliated, and actually housed in, the local Legal Services office, thus providing our students with case choice whose only limit is the types of cases accepted by the Legal Services offices. Students conduct intake interviews at the Legal Services office and participate in weekly attorney case selection meetings, and are free to accept cases for representation from these sources.

¹⁰¹ Brookfield, *supra* note 44, at 204.

¹⁰² One clinical teacher highlighted the justice-learning potential that is activated by al-

anecdotal data observed in the Indiana University-Indianapolis clinical courses, where students who "choose" their clients appear to relate much more closely to the clients' personal justice struggles than do students who have clients thrust upon them.

Of course, student involvement in case selection may tempt some students to limit the level of disorientation the case experience otherwise provides, such as the student who has clerked in a family law practice choosing to represent primarily divorce clients. Such self-limitation of the disorienting experience is not necessarily a barrier to learning, however, since new experiences provided in doses that the student decides she can "handle" increases the likelihood that disorienting experiences will lead to reorientation rather than withdrawal, recognized by adult learning theorists as a potential response to an overly-disorienting experience.¹⁰³

Also, honoring the student's choice of legal forum does not equate to allowing student avoidance of the experience of confronting the unique injustices experienced by the poor or oppressed clients of a poverty law clinic. In the example of the student who has familiarity with the procedures of family law, the nature of the not-quite-parallel experience of representing a poor client may itself trigger social justice learning. When the family law clerk/student confronts her poor clients' difficulties filing actions when they cannot afford court fees, or worries about financial situations' impact on child custody determinations, the obvious comparison with her firm's non-poor clients may cause her to realize that the legal system is not equally responsive to persons who do not possess financial means.

Similar lessons can be gained by students who choose to concentrate their student practice in legal arenas where they intend to obtain future employment. Clinical students who wish to concentrate on labor-related cases or consumer fraud because they intend to represent corporate clients in these areas can gain significant insight on the social implications of their career choice during a semester of representing low-income people struggling to gain access to unemployment benefits or refunds from unscrupulous vendors.

Student autonomy should not be limited to case selection. Students should be encouraged to add to the semesters' dialogue on social justice issues not only through oral classroom discussion, but with

lowing the content of the clinical course to be "student driven:"

Students must be given the opportunity to help plan things, and not only innovative legal work. They need to help plan innovative service systems, innovative ways to get into the community. Students sometimes have crazy ideas that may be worth a try. At least in the homelessness clinic they usually get the opportunity to try.

Solomon, *supra* note 19, at 509.

¹⁰³ MEZIROU, *supra* note 38, at 171-72, Merriam, *supra* note 54, at 86.

the addition of assigned readings of their choice addressing the social problems at issue during the course. If students want to contribute an article on welfare fraud from Rush Limbaugh's magazine or the *American Spectator*, they should be free to do so. The addition of student-selected readings not only increases the contributing students' "investment" in the course dialogue, but also presents both instructor and student with often worthwhile alternative perspectives on the social justice issues addressed.

Granting students autonomy in the actual representation of clients is a central tenet of clinical legal education, and as one clinical student noted, is certainly a contributing factor in clinical programs' popularity with law students weary of excessive instructor control of the curriculum of traditional courses:

There is a worry that we will offer a clinic and no one will come. The way you get around that is to listen to students, be open to them, and make it known that you are willing to accommodate their questions. Be open and flexible and let students run with their ideas. Only good can come from it.¹⁰⁴

Allowing students similar autonomy in case selection and course planning only increases clinical instructors' ability to provide significant social justice learning experiences to their students.

D. Simulated Experiences

Another method for presentation and reflection on social justice issues in a clinical classroom setting is through simulations that place students in the roles of individuals who are experiencing poverty and/or injustice. An example of a simulation exercise that employs this method is asking students to attempt to make a budget for a family based on expected living expenses and the income and benefits provided by traditional welfare assistance and/or low-wage employment.¹⁰⁵ This type of exercise places the student in a presumably familiar role—planning a budget—with the handicap of limited resources that in most cases do not allow a poor person to afford a healthy lifestyle.

In Indiana University - Indianapolis' civil practice clinical course, a classroom exercise has been developed that has students break into three groups with each group representing a family of a single parent and three children. The three "families" have the varying sources of income of AFDC, Supplemental Security Income, and full-time em-

¹⁰⁴ Frank Trinity, *Homelessness and the Use of Reality to Enrich the Experience of Law School*, 40 CLEV. ST. L. REV. 513, 516 (1992).

¹⁰⁵ This type of "poverty budget" exercise was proposed by Jean Koh Peters, *Clinician's Tidbits*, CLINICAL LEGAL EDUCATION ASSOCIATION NEWSLETTER, September 1994 at 2.

ployment at a wage slightly exceeding minimum wage. Provided with estimates of necessary expenditures for a "healthy" Indianapolis lifestyle provided by the local United Way (i.e. \$400 per month for rent, \$220 per month for food, etc.), the groups are asked to make a budget for "their" family.¹⁰⁶

Since this exercise is conducted early in the semester, most of the students are unaware of the low levels of benefits, and this information is not provided until after their budgets—which greatly exceed the entitlement programs' benefit levels—are revealed to the class. Discussion about poverty levels and even about the necessity of systemic welfare fraud for family survival often follow. Similarly, when the "working" group reveals its frustration at attempting to budget for child care, transportation and health care expenses, discussion ensues about the disincentives for parents working in a low-wage economy. Such an exercise often provides insight on the difficulties that the students' clients face in day-to-day living that is not necessarily revealed through the attorney-client relationship. It also offers the advantage of instructor control over the facts which the students confront.¹⁰⁷

The use of such simulations to convey messages on social justice is well-grounded in adult learning theory. When students do not have direct experience in grappling with the issues presented by poverty, racism, etc., an abstract presentation of social justice issues is insufficient to trigger awareness of the personal level of the injustice present. The intensity of the personal struggles of poor people are much clearer when the students have to eliminate "frills" such as prescriptions or transportation from a monthly budget in order to balance income and expenses. One social justice instructor calls this process the stimulation of "the moral imagination."¹⁰⁸

It should be emphasized that without connection to the "real" experiences of clinical representation, simulations lose much of their effectiveness as a teaching tool. The nexus between the simulations and the experience of representing victims of injustice is vital to the potential learning offered by the exercise, as studies of adult learners have shown that educational activities are most meaningful when they

¹⁰⁶ UNITED WAY/COMMUNITY SERVICE COUNCIL AND INDIANA COALITION FOR HUMAN SERVICES, *MOVING FORWARD: INVESTING IN INDIANA'S HUMAN RESOURCES* 7 (1992).

¹⁰⁷ See, e.g., Samuel R. Gross, *Clinical Realism: Simulated Hearings Based on Actual Events in Students' Lives*, 40 J. LEGAL EDUC. 321, 322 (1990) and Paul Bergman & Roger Burrige, *Learning From Experience: Nonlegally-Specific Role Plays*, 37 J. LEGAL EDUC. 535 (1987).

¹⁰⁸ Robert Craig, *Social Justice and the Moral Imagination*, 57 SOCIAL EDUCATION 333. Craig describes exercises that stimulate the moral imagination such as classroom role-playing and empathic gestures such as missing meals voluntarily to gain understanding of clients' hunger.

make direct connection to current experiences and concerns.¹⁰⁹ Much has been written about the irreplaceability of actual clients in clinical skills instruction, and it is just as clear that exposure to actual incidents of injustice is a necessary part of effective instruction in the area of social justice.¹¹⁰

E. "Staged" Experiences: Testimonials and Observations

Given the well-established value of experiential learning about issues of social justice, and the inevitable limitations of an individual student's experiences during a clinical course, the instructor can provide the opportunity for "staged" experiences. Such experiences may provide the "disorienting moment" or simply add context to the reflection after such a moment. "Field trips" such as tours of housing projects, homeless shelters, jails and other locales of intense poverty can offer such experiences and lead to useful classroom discussion or individual reflection after the event.¹¹¹

Also, discussion with persons experiencing poverty can be illuminating whether these discussions take place in conjunction with or separate from such trips. Former clinic clients may be willing to talk with the current class, or community advocates may be able to refer the clinical instructor to persons who are willing to talk about their experiences with injustice. The value of the learning opportunity offered by such conversations is aptly described by Myles Horton, founder of the Highlander Folk School, an Appalachian institute dedicated to the empowerment of the area's poor: "Education mushrooms when students in one area become teachers in another."¹¹²

¹⁰⁹ Brookfield, *supra* note 44, at 206.

¹¹⁰ Bloch, *supra* note 42, at 346-47, notes in his discussion of the andragogical benefits of clinical legal education:

An andragogically based model for clinical legal education should rely heavily on actual client representation. A relationship based on shared, mutual inquiry simply can not be established through the alternative technique of simulation. . . . In a simulation setting, however, students can become unsure about the relationship between the simulation and the actual practice of law, and, consequently, they can become less interested in what the teacher is trying to teach.

See also Michael Meltsner & Phillip Schrag, *Report from a CLEPR Colony*, 76 COLUM. L. REV. 581, 584-87 (1976). See also Craig, *supra* note 101, on the difficulty of learning about social justice without the benefit of actual experience.

¹¹¹ Craig, *supra* note 101, at 335 describes a technique where students are asked to place questions regarding the field experiences in a "question box" which is to be opened for class discussion after the field experience.

¹¹² Ronald W. Jimmerson, Laird W. Hastay & James S. Long, *Public Affairs Education*, in HANDBOOK OF ADULT AND CONTINUING EDUCATION, *supra* note 33, at 453. In their review of their experiences teaching a Families, Poverty and Law seminar course, Johnson & Trubek, *supra* note 49, at 204, discuss their conclusion that "voices from the bottom," i.e. poor people describing their own experience, is a necessary part of the methodology of any course that purports to fully review perspectives of oppressed and impoverished groups.

Although such staged experiences have been described as ideal for teaching lessons of social justice in non-clinical courses dealing with poverty law,¹¹³ such experiences' separation from the confines of the attorney-client relationship can offer a useful perspective to the clinical student as well. For example, a student speaking with a resident of a homeless shelter who consents to discuss her family's plight may feel more comfortable asking questions about the resident's personal life than she would be with her own client, whom she senses wishes to maintain as much privacy as possible.¹¹⁴ Also, the large number of individual situations capable of being observed in a field experience can provide some perspective of the "typical" poor person's experience that representation of a handful of individuals may not provide if the clients' situations are atypical.¹¹⁵ Like the information obtained from hearing other students' experiences and reviewing survey data, field experiences inform the reflective learner whether their "disorienting moment" is an aberration or an indication of widespread injustice.

F. *Synthesis of Several Techniques*

Although the different techniques reviewed above can be used in isolation to introduce social justice concepts in a clinical course, it is preferable to use a combination of these techniques. Research on adult learners reveals that the logical result of teaching widely varying subjects to students who have different learning styles¹¹⁶ is that there is no single most effective method of teaching.¹¹⁷ Indeed, one adult learning researcher concludes that flexibility in teaching methodology is essential:

It is apparent that there is no Holy Grail of facilitating adult learning and no one way to institutional enlightenment. Indeed, facilitators who are critically alert and sensitive to altered contexts will be immediately skeptical of standardized concepts or models that purport to be replicable in all possible situations.¹¹⁸

The regular rotation of classroom formats is sound adult instruc-

¹¹³ La Fleur, *supra* note 21, at 159, 162.

¹¹⁴ Kimberly O'Leary, *Creating Partnership: Using Feminist Techniques to Enhance the Attorney-Client Relationship*, 16 L. STUD. F. 207, 277 (discussing the need for lawyers to respect some clients' wishes to limit intrusion into the clients' private lives).

¹¹⁵ One such experience provided at the University of Maryland School of Law consisted of students observing the process and collecting data regarding the experiences of indigent tenants in Baltimore's Rent Court. Bezdek, *supra* note 5.

¹¹⁶ 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. SCH. L. REV. 169 (1990).

¹¹⁷ McKeachie et al., *supra* note 64, at 63.

¹¹⁸ Brookfield, *supra* note 44, at 207.

tion technique: simulations one week can be followed by case discussions the next and outside presenters the following week. It should come as no surprise to anyone who has either instructed or learned in a formal class setting that stimulation is a necessary part of the learning process for adults as well as children, and that variety in presentation style is an excellent way to stimulate learners.¹¹⁹

One suggestion for achieving a synthesis of teaching techniques in the presentation of social justice concepts would be for the instructor to ease into the more self-directed methods of learning, since adult learners traditionally react with some surprise and even resistance to expectations that they have significant roles in the planning and control of their learning.¹²⁰ A practical application of these findings in a clinical course would be to introduce some concepts of social justice in an instructor-initiated discussion or even presentation, and then gradually release control over discussion management, class topic selection, and project initiation to the learners as the course progresses.

IV. CONCLUSION

History tells us that today's law students, including clinical students, will play key roles in determining the level of justice provided to the poor and disempowered members of our society. Clinical instructors should use well-established adult learning techniques to seize the disorienting moments so often provided by these students' clinical experiences, and accept the obligation to teach lessons of social justice.

These future policy-makers clearly deserve such enlightened instruction. A just society clearly demands it.

¹¹⁹ Raymond L. Wlodowski, *Stimulation*, 39 TRAINING & DEVELOPMENT J. 38-40 (1985).

¹²⁰ Similar reactions in clinical settings are described by Bloch, *supra* note 43, at 340, and Meltsner & Schrag, *supra* note 89, at 32.