Feeling Like A Lawyer
Michael Meltsner

Talking to clinical teachers about their teaching methods, one risks too sharp a distinction between issues that ought to concern clinicians and those that ought to concern all law teachers. While the context of my remarks is the law-school clinic and the classroom in which students play legal-system roles under simulated conditions, my subject, grandly put, is how we should learn when we learn the practice of law. I regard this as a matter that cannot be relegated exclusively to the clinical domain or divorced from what happens in the typical law-school classroom.

While there is much debate within the profession over how far legal education should go in preparing a graduate to practice I hear little dissent from the proposition that law schools present and transmit powerful norms of professional conduct. Legal education stimulates and reinforces changes in individual students as well as in the society which is subjected to the individual so transformed. If it did not, many of us would look for other work. Naturally, students also affect the behavior and self-conception of the school they attend. They do this through their reaction to the structure and message of legal education and because of who they are and the baggage they bring with them.

Thus, a central fact of law teaching, and especially clinical law teaching, is that as students take on the skills and norms of the lawyer’s role, they are changing themselves and us, altering their own and our conception of how they act and should act—not only in professional but also in personal terms. David Kaplow has observed to me that law schools not only attempt to make students “think like a lawyer” but, perhaps more important, have success (an unadvertised and unexamined success) in teaching students to feel like a lawyer—by which he meant teaching that is right to be controlling, cool, dispassionate, unfeeling, arrogant.¹

Law teachers can avoid talking about such changes that take place in themselves and their students, but they cannot avoid influencing and being influenced by them. For example, students are given the opportunity to

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¹. Personal communication with the author.

question—or not to question—the professional role being handed down to them. They are given the opportunity to consider—or not to consider—the interaction between their selves and their work. The impact of such opportunities, gained or lost, abides—regardless of whether we decide to acknowledge it.

Here is a case, drawn from my clinical experience, not untypical I think for the issues it raises, though, perhaps, unusual in range and intensity. I describe it in some detail—though not nearly the detail that would be necessary to work on the issues it raises in a clinical setting—because it illustrates the opportunities and difficulties we face once we decide to transcend the usual doctrinal and vocational concern of what is often called "skills training." I do not intend to analyze it. There is simply too much debris to clear away first. Rather I wish to put us in a frame of reference where we might think through our choices were we to confront a similar case in a clinical setting.

A pair of students is responsible for the representation before an administrative hearing examiner (and potentially an appeal to a court) of a woman in danger of eviction from public housing because one of her sons is said to have committed a robbery. There is evidence that the teenage boy mugged an elderly resident of the housing project where they both lived. The Housing Authority takes the position that it can evict “undesirable” tenants. Such charges as those lodged against the client’s son are usually broken down to a misdemeanor in criminal court and as the youth is a first offender, jail is unlikely. On the other hand, eviction will deal a serious blow to the youth and to his entire family as alternate housing of the same quality is not available.

The students work in a clinic where such eviction cases are regularly handled by student practitioners, with the assistance of a supervisor who is a member of the law faculty.

The case has been assigned to a Housing Authority attorney who is reported to take a dim view of student lawyers and to enjoy besting them in gamesmanlike encounters. Before creation of the clinic, virtually no lawyers appeared at these administrative hearings. This lawyer seems especially threatened by and hostile to students. One of his tactics is to move cases very quickly, and this case is due to go to hearing in two weeks.

The students meet with their supervisor to go over the entire file, plan the hearing, and try to make sense of a number of problems that have plagued them. In memos prepared for this meeting and at the meeting itself several legal issues emerge. They include: (1) whether to put the HA to its proof (the charge is still pending in criminal court) or admit the violation and concentrate on disposition (probation is a possible outcome); (2) whether to press for a postponement until the criminal charge is resolved; (3) whether to use this case as a vehicle for mounting a constitutional challenge to the eviction of a family for the acts of a single member; (4) whether to

2. For a description of the clinical setting, see Michael Meltsner & Philip G. Schrag, Scene from a Clinic, 127 U. Pa. L. Rev. 1 (1978).
recommend to the mother that her son be placed outside the home with a relative, a circumstance which would moot the proceeding; and, (5) how, if at all, to use the testimony of a police officer whose partner arrested the youth but who seems to like him and to understand "how tough a life he has had." The students and the supervisor discuss these and other legal questions. A number of other matters surface: some are accepted by all the participants, some by just one or two of them; some are stated explicitly, some are interpretations and inferences offered and either accepted or rejected (or ignored) by the others; some are thoughts in the heads of participants, which are only later exposed.

One student is a white male of high academic achievement who nevertheless has performed at an average level in the clinic. The other is a Hispanic woman who has performed in an average manner in law-school courses but whose clinic record suggests she has enormous promise as a litigator.

The students have found it difficult to reach decisions in this case and others. They are constantly hurting each other’s feelings and then making up. For example, the Hispanic woman often mentions racism. The white student feels she is talking about him. The woman then says, "No, I'm talking about the system. You are different."

The white male views himself as a copet. He makes decisions in order to move the case along, but his partner feels he does not sufficiently consult with her. The supervisor cannot decide how much actual consultation takes place, but it is clear to him that the two students misperceive each other often: Offers of consultation are not heard and opinions offered in response to such offers are forgotten.

The two students have radically different views about the client in this case. The woman feels that the client has been a negligent mother and that it may be in both her and her son’s interest to act in a way that happens to be consistent with the Housing Authority’s goal of removing the child from the housing project. The male believes any deference to the HA position is a failure of professional responsibility to defend a client’s legal interests. He feels uncomfortable evaluating the relationship between mother and child. The client refuses to decide whether her son should move out. She is often passive and sounds as if she is deferring to the judgment of her lawyers, but the lawyers hear different messages in her sometimes confused rambling on the subject.

As to the police officer, the male student wants to have a full and frank conversation with him but the woman fears that, if the male has that conversation, the witness will turn from apparent friendliness to hostility. The male is afraid that, if the woman has this conversation, they will not know enough about the likely performance of the cop on the witness stand because he will likely tell the student what she wants to hear.

The male has a job for next year with a flashy firm at a handsome salary but fears that by taking it he will be selling out; he will, he says, use the firm as a place to obtain solid training and then look for a public interest job. The woman has yet to hear from an equally flashy firm whose offer she will accept if she gets it. If not, she expects to work for a legal aid office. She
thinks she had a spectacular interview with the firm and cannot understand why she has not heard from them. She is getting bitter. He already feels guilty.

In working with the supervisor, the woman tends to ask questions and to be disappointed when the supervisor does not have a firm, clear answer. On the other hand, the man tends to dispute the supervisor's opinion, subjecting any firm and clear advice he gets to immediate critique. The students share a feeling that the supervisor knows more than he is telling them about the work and "how they are doing."

At their meeting, the group begins by focusing on decisions that have to be made and work yet to be done. The students are indecisive, and the supervisor does not know where he comes out on several of the issues before the group. He wonders whether he should step in to resolve them as best he can because the students are having so much trouble working together. Yet he is not privy to much of the fact finding done by the students; he has a dozen other students to supervise and does not have a great deal of confidence in his judgment in this case. Taking a case away from a student in this sort of clinic, where student responsibility for clients is a key value, is taken hard and marked down by everyone as a failure. Even if he does take more of a role in the case for the client's sake, the supervisor is not at all confident it will work out to her benefit. The supervisor is perplexed: He knows the students are too able and too conscientious to commit malpractice but also that they are not working in a way that will lead to success.

The supervisor has strong feelings about the students with whom he has worked for weeks. He thinks the woman would be more successful at her work if she were more aggressive, the man if he were less controlling. He thinks he sees ways in which the impact of full responsibility for a client is making them defensive, less able to perceive without distortion. He likes them both, but he finds the woman easier to work with than the man. He wonders whether this is because she is quite attractive and her partner quite competitive.

There are many, many more legal questions involved—strategic, tactical, doctrinal, ethical. There are also more interpersonal questions about them—as members of various groups and as a pair. One might say more about the clinic and its place in the law school and the relationship of the supervisor to clinical colleagues and the rest of the institution.

But you have enough to consider what interests me, which is the proper attitude and perspective of the group in confronting the questions that arise at the intersection of the legal tasks to be performed and the developmental stages, professional roles, and personal relationships of the group members, both among themselves and between them and outsiders such as clients, witnesses, adversaries, and the like.

How does one view these issues? And how does one work?

These are questions that interest me, but first we must deal with a preliminary matter. A surprising number of law teachers not only would find it difficult to deal with many of these matters, they would decide not to deal with them. Or they would downgrade the importance of these matters, dealing with them only if absolutely necessary.
My hypothesis, based on my own clinical experience, is that unless a serious effort is made to untie the knots into which this group has tied itself, clear thinking about the client's problem will be impeded, application of such analysis as takes place will be of but moderate assistance, and, quite aside from the level of student performance, all three participants will have lost an opportunity to learn about processes that will continue to affect their work and how they feel about it.

The first question to be considered in dealing with such issues—evaluation of performance, role and career aspiration, interpersonal relations, sexual and racial stereotypes, authority and leadership, competition and passivity—is, as I said, whether to acknowledge them at all.

If I were in the audience I might say at this point, "Come now, who could possibly take that position?" Yet it is taken all the time. Many lawyers and law teachers are committed to getting the job done, to performing, to dealing with behavior divorced from feelings about that behavior, to narrowly conceiving legal problems, to not playing head shrinker, to avoiding what might be labeled "touchy-feely," to objectifying and to not subjectifying legal work. And it is easy to understand these attitudes. Students came to study law, and their sense of the practice of law, not to mention the understanding of the supervisor's colleagues on the faculty, may be that personal and interpersonal agendas are tangential, if they are legitimate at all.

At least two arguments are raised to exclude such material from consideration. We might call one the argument from narcissism and the other the argument from competence. The argument from narcissism is primarily a fear that by concerning themselves with the events and feelings within relationships, individuals will become so absorbed in themselves that they will avoid effective action. The fear is that insight into, and awareness of, oneself and one's relationships will interfere with the realization of instrumental or social goals. William Simon offers an articulate statement of this position in his article "Homo Psychologicus: Notes on a New Legal Formalism." Simon finds the psychological man of his title bent on achieving "a sense of apolitical moral engagement" by celebrating "an ahistorical and apolitical conception of human nature." He claims that the law teachers who have worked with the psychological vision "create a self-contained world of emotional transparency, self consciousness, and a personal care in which the routine tasks of practice can be invested with sentiment and in which all political considerations are reduced to feeling or treated as hypothetical."

While Simon admits he is oversimplifying, his article takes pains to contrast psychological man (whom he describes as essentially a practitioner of the sin of Onan) with political man. Political man, in Simon's conception, is an activist and transformer of the world who recognizes and accepts "a coercive dimension to his actions." He regards social action as

4. Id. at 554.
5. Id. at 557.
fulfilling in itself. He recognizes norms of conduct, but concern for them does not lead political man into conformity. He is capable of finding both personal fulfillment and solidarity in conflict. Political man acknowledges the value of intimate personal relationships and experience but insists on the distinction between the private realm of intimacy and the public world and on the value of relatively impersonal action in the public world.

Simon’s fears are valid if one assumes a certain stereotype: turning inward as narcissism; turning inward, not for awareness, but for escape. I take this as a real warning. Just the way anybody with any sense would fear indoctrination and intolerance from a stereotypical political man, a stereotypical psychological man stimulates concern about the substitution of feeling good for acting well.

At its best the argument from narcissism is a reminder of the seductive illusion of neutrality, of how difficult our culture makes certain forms of political action, of how passive we can be in the face of authority and how the introduction of psychological motives and discourse into disputes over concrete goals and resources can serve as a pacifier or, at its most sinister, a control device. But at its worst the avoidance of psychological awareness produces as many bogeys—one thinks of the dictatorship of true believers, the false dichotomy between social and psychic realms, the empty lives led by so many lawyers, the collapse of the inner life, the destructive impact of inattention to how people can sabotage collaborative endeavor, and even the mechanical instrumentalism of the gun for hire. Thus, here are dangers to be avoided but surely not cause for ignoring real issues of relationship, organizational dynamic, and personal growth.

More significant, I think, than the argument from narcissism, is what I shall call the argument from competence. “I can’t do it” is the cry, or, if you prefer the more elegant formulation, “I wasn’t trained to do it.” Of course, the complaint also makes a great deal of sense. This deficiency in legal training is one reason for clinical legal education in the first place. Lawyers work with people at crisis points. They must evaluate intentions, credibility, and motives and predict behavior all the time. Yet their education is largely intellectual. Legitimate needs to protect the analytic and scholarly function have been inflated to the point where significant aspects of the lawyer’s role have been excluded from serious consideration. One who obtained the finest legal education in the nation and then clerked at all levels of the federal and state court system before trying cases for Williams and Connelly would be hard pressed to deal with the agenda of issues presented by our hypothetical case.

No one wants to be accused of blundering clumsily inside students’ heads. Much of this fear, however, is based on a confusion between psychology (the science) and matters which relate to individual thoughts and feelings. Anthony Amsterdam made this point by reminding me that psychologists and psychiatrists may assume they have a corner on the market but that we do not have to accept their assumption. Other professions—notably that of teacher—have equally relevant insights and expertise.6

6. Personal communication with the author.
Nevertheless, one might want to know something—no, not just something but a great deal—about many disciplines in order to feel fully prepared to cope with the potential problems in the hypothetical I have described. Unfortunately, we cannot farm the task out to others. A mental health professional might be of some assistance, but his or her skill would not measurably improve one’s chance of success unless put together with the requisite legal and pedagogical skills. Lawyering well requires an integration of functions. The clinical law teacher must acquire many of the necessary skills and then put them to the service of education. Of course, this task requires familiarity with the literature, ideas, and approaches of many disciplines, but the synthesis and the application falls within the domain of the law teacher. And the appropriate language, I might add, is the language of intelligent discourse, not the jargon of other professions or trendy psychobabble.

The fear of competence, in short, is useful if it tells us the way to do our work well. It is not useful if it prevents us from confronting issues that we should confront and which are not the exclusive preserve of experts, scientists, and specialists, any more than, to quote Amsterdam, “[t]he millions of priests and rabbis, wise uncles and platoon sergeants, athletic coaches and purveyors of Tea and Sympathy, teachers and (yes) lawyers, who work with those mechanisms daily and very effectively without ever having read Freud or any other professional psychiatrist or psychologist.”

I would refashion the argument from competence into a normative inquiry. The question is not whether I am competent but how one becomes competent.

Aware of the dangers but also, I trust, of the advisability of considering issues of interpersonal and group relations as they arise in the lawyering process, how can clinical teachers work to best effect? I have a number of suggestions, some commonplace, some familiar, some that may strike you as decidedly odd, but all requiring that clinicians expand their concerns and draw lines in different places than they have in the past.

**Contracting**

When I worked at Morningside Heights Legal Services, Inc., our clinic at Columbia Law School, we went through a fairly elaborate procedure before the start of each semester to ensure that prospective applicants were informed about the nature of the clinic before they applied. We designed entry as a kind of contracting process, in which students would agree on a basic set of principles and methods, within the bounds of which they would be free to discover and pursue those learning goals and ways of working that seemed best for them. The contract referred to was not a legal instrument, of course, but it did define the mutual rights and obligations of the members of the clinic, their various roles, and at least some of the ways of working that would be recognized as “legitimate” if students wished to engage in them.

With respect to interpersonal and group relations, the contracting process exposed to students that each would work with a partner, a supervisor, other

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7. Personal communication with the author.
students, and other supervisors and that each would play a variety of roles: lawyer acting alone, partner, one of a pair of supervisees, member of the group as a whole. Students would, of course, also work with clients and their friends and relatives; with favorable and opposing witnesses, usually lay but occasionally expert; with attorneys, cooperating and opposing; and with agency administrators, hearing officers, and judges. This work would take place in various settings, ranging from social situations to negotiations to adversarial hearings and appeals. Students were put on notice that the clinic provided an opportunity to learn how interpersonal and group dynamics affected work and vice versa and that their supervisors believed that learning to be aware of and, sensitive to, these dynamics would prove useful in their work.

Some students expressed early interest in working with such matters; some did not wish to consider them. Others started with one point of view and changed. Still others were faced with a partner or supervisor who believed that the removal of roadblocks to effective representation of clients required consideration of group and interpersonal relations. Different patterns were not only tolerated but encouraged. To the extent consideration of such matters is advisable, a contracting process improves (though hardly assures) the likelihood that consideration of them will be successful. Whenever a norm is being changed, and consideration of these issues is an alteration of expectations in most law schools, contracting is not a matter to take lightly.

**Task Clarity**

Once issues of individual and group relations are on the table, how does work on them actually take place? Here we must be clear about what sort of an effort this is and is not.  

(1) A group working on issues of interpersonal and group relations must focus on an exchange of common experience, perception, and feeling. The expressions of legal as well as political opinion must share air time with issues of process and relationship.

(2) A group working on such issues is not a therapy group, and thus diagnosing or analyzing or prescribing for the problems of its members should be discouraged.

(3) Such a group is more attentive to the here-and-now of shared experience than to recalling the previous history of its members.

(4) The leadership of such a group does not come from an expert who stands above or outside it delivering wisdom; rather, all members are participants in the group in every sense. A supervisor may have greater experience or power but is not thereby an observer or critic.

(5) Such a group is not an encounter or sensitivity group that puts pressure on its members through confrontational tactics.

(6) Because this is a task group and not one convened to facilitate the personal growth of its members, consideration of issues of interpersonal and group relations must be justified by a relationship to task. The question to ask is, “Will consideration of a matter facilitate the work?”

(7) The primary purpose of such a group is to facilitate learning, and thus respect must be shown to members’ definition of learning goals.

(8) Finally, such a group has responsibilities beyond its members to clients and institutions. Individual satisfaction will, therefore, always be partial and require that distinctions be

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8. Styles and working principles of various groups are described in David Singer et al., Boundary Management in Psychological Work with Groups, 11 J. Applied Behav. Sci. 134 (1975).
drawn and conflicts balanced. This kind of work will not necessarily make participants “feel good.”

Working in the manner suggested involves all sorts of risks. Excluding the functions of such a group from your work creates, I think, more. As my colleague Karl Klare has put it, while describing what is left out of the standard law-school curriculum: “Omitted is systematic training in how to learn from others; in how to learn about lawyering from practice, that is, how to acquire the capacity for continuing self-development over the span of a career; and in how to act in the central relationships that constitute the lawyering process: adversary, client, co-worker relationships and so on. Omitted also is systematic training in how to work closely and cooperatively with others in situations of high vulnerability and high risk. . . .”

Human relations, in and among working groups, should be understood as more than the sum of various personality dispositions. Attention should be given to behavior and its impact on others, quite aside from the idiosyncratic origins of that behavior. I have observed literally hundreds of encounters within the legal system from intake interview to appellate court argument, where issues of relationship affected the proceedings and where the participants declined to acknowledge to others and to themselves what was taking place. Much of what I urge upon you can be accomplished by widening the boundaries of what clinicians, students, and faculty regard as legitimately acknowledged, discussed, taken account of, and evaluated in the course of clinical work. A historical inquiry into the source of feelings is not needed to deal with their expression within the lawyering process.

**Role Clarity**

Moving through what I have described is the importance of role clarity. We all wear different hats at different times, and not only should we know what we are wearing but others should also. Issues between people that are thought to be differences in personality, style, and ideology often upon inspection turn out to be issues of role confusion.

A supervisor who is demonstrating “how to do it,” for example, is taking a different stance than one who views himself as a resource, available under certain, perhaps negotiated, conditions to help with a problem.

A student assistant on a case is in a different situation regarding clients and others than one who has direct and primary responsibility for representation.

A student who has been explicitly authorized to do a certain task by a partnership of students is in a different situation than one who has simply decided to do the task without confirming his authority to proceed.

A supervisor who has decided to observe and to convey her perceptions to students representing a client had better play this role—unless she wishes to inject confusion into the working arrangement—in a different manner than one who will intervene to ask a clearer question or raise a forgotten argument.

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Specific Examples

If we take just one process—interviewing—here are some questions about interpersonal relations that participants in the Center for Applied Legal Studies at Georgetown are asked to consider:

1. About expectations: What expectations, for example, do the students have about the interview, themselves, and their clients? What are the clients' expectations and objectives?

2. About personality: How will the personal predisposition of the students be perceived by clients and affect the achievement of the client's goals?

3. About class: How will the relationship between the social class of the students and that of the client affect their perception of each other and the course of the relationship? What will be the effect of differences between student and client in age, race, sex, and education?

4. About sharing and competition: How does the division of responsibility between students affect their feelings toward each other? How does their relationship toward the supervisors affect their work?

5. About communication: What factors are likely to inhibit (or facilitate) effective communication between students and clients or students and each other?

This is just the skimpiest summary of the inquiries suggested to one set of students in one clinic about one process. Obviously, this list can be greatly refined, but it shows the direction this work can take.

Attitude

Many of us have the notion that the best lawyering is the product of hard-boiled, hard-edged, tough-minded, impersonal, analytic thinking. This view of lawyering ultimately derives from science and scientific method, though not even its adherents would today claim that law is a science. While only an extreme anti-intellectual would disregard the importance of objective thought, rational deduction, and empirical proof to the practice of law, a method of training lawyers which ignores the intuitive, the emotive, and the personal belongs not to the history of science but to the history of pseudoscience.

The premise of clinical work is that the best sort of lawyering is a blend. Analysis of a case is valuable; so too is an understanding that the internal process of developing new ideas is essentially poetic. One cannot help the poor without understanding economics and social policies that promote poverty; one cannot help the poor without understanding how it feels to be poor. Almost ten years ago Gary Bellow put it well:

The (clinical) method to which I am referring has three main features: (1) the student's assumption and performance of a recognized role within the legal system; (2) the teacher's reliance on this experience as the focal point for intellectual inquiry and speculation; and (3) a number of identifiable tensions which arise out of ordering the teaching-learning process in this way. What is envisioned is a mode of education which involves the systematic interaction of pedagogical technique and the psychological dynamics involved in role adjustment and definition.  

10. Office Manual, Center for Applied Legal Studies, Georgetown Law School (Fall 1982).
We have made great strides in skills training and in structuring practice settings where it can take place. We have some distance to go in dealing with what Bellow calls the "interaction of pedagogical technique and psychological dynamics."

Progress is impeded because as sensible people we understand (implicitly if not explicitly) the risks of cutting into an ongoing group process where participants are result oriented and result rewarded. The format of this conference, as I understand it, allows you an opportunity to explore the here-and-now dynamics of relationships that develop when persons playing various roles encounter each other in a clinical setting. My advice is to try on these new styles of working, find out if they suit you or if you want to return them to the store.

Conclusion

Because few of us were trained in settings where the attitudes and skills necessary to work on these issues were nurtured, acquiring the necessary training is something of a personal journey. For many of us it does not come naturally and is experienced as against the grain of our "get the job done" ethic. What follows is thus relevant not as a biography but as an illustration of what it took for one person to move ahead. I do not, of course, assume that everyone wants to move ahead on this front. My own voyage is thus presented for what you make of it—illustrative but not exemplary.

First, I was transformed by clinical experience. Again and again the failure to deal with the issues I have alluded to today obstructed my own performance and learning and, most critically, the opportunities for professional development of my students. I also found that censoring my personal insights and trying to conform to some preexisting role of the law teacher sapped my potential as well as my strength.

I took a number of steps that helped me change the nature of my teaching—I studied acting. I learned the way actors prepare, using a method described by Uta Hagen in her book, Respect for Acting.\(^2\) I learned that a good acting teacher can work from the surface of a scene to the consciousness of the actor and can greatly expand a student’s awareness of what he or she is communicating and meta-communicating.

I attended a variety of conferences on group relations. Some were useful; some were vapid; some were soul wrenching. But all gave me a sense of how other professionals deal with the issues we are considering in their own training.

I taught before my peers and thus learned an enormous amount about patterns of communication in my work of which I was previously unaware, as well as methods of conveying evaluation of performance that did not inhibit learning.

I kept a log of what went on in my clinic and published portions of it—an act which forced me to a more rigorous understanding of why I was doing what I was doing.

I developed relationships with colleagues that allowed examination of the interpersonal processes in our work so that I was not asking students to do what I would not do.

After these and other steps that it would be tedious for you to hear, I had polished up the handle so carefully that, as you can see, I am the law-school equivalent of an admiral in the queen’s navy: out of the work, reduced, as deans are, to wishing you well and urging you to dare the unknown whilst he goes off to budget and committee meetings.

The ideas I have discussed here have been valuable for me. It is up to you and your perception of the needs of your institutions, your students, clients, and yourselves to decide if they have any utility for the future of legal education.